

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

Supreme Court No.

JOSEPH RAYMOND HANAS,

Court of Appeals No. 254434

Defendant-Appellant.

Lower Court No. 02-9621-FH

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**DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL**

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## STATEMENT OF QUESTIONS PRESENTED

- I. WHETHER JOSEPH HANAS' RIGHTS UNDER THE FREE EXERCISE CLAUSES OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS WERE VIOLATED WHEN HE WAS CRIMINALLY PUNISHED DUE TO HIS REQUEST FOR AN ALTERNATIVE TREATMENT PLACEMENT WHERE HE WOULD NOT BE COERCED TO PRACTICE A RELIGIOUS FAITH OTHER THAN HIS OWN AND WHERE HE WOULD BE FREE TO PRACTICE CATHOLICISM?

Defendant-Appellant answers, "yes."

- II. WHETHER JOSEPH HANAS' RIGHTS UNDER THE ESTABLISHMENT CLAUSE OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 4 OF THE MICHIGAN CONSTITUTION WERE VIOLATED WHEN THE July 19, 2004 PLACED HIM IN A RESIDENTIAL TREATMENT CENTER THAT COERCED BELIEF IN THE PENTECOSTAL FAITH THROUGH A VARIETY OF ACTIVITIES AND CRIMINALLY PUNISHED HIM WHEN HE REQUESTED AN ALTERNATIVE PLACEMENT WHERE HE WOULD NOT BE COERCED INTO PRACTICING A RELIGIOUS FAITH ALIEN TO HIS OWN?

Defendant-Appellant answers, "yes."

- III. WHETHER JOSEPH HANAS' APPLICATION FOR LEAVE TO APPEAL SHOULD BE GRANTED BECAUSE THIS CASE (1) RAISES ISSUES OF SIGNIFICANT PUBLIC INTEREST REGARDING A STATE COURT'S POLICY, (2) INVOLVES ISSUES OF MAJOR SIGNIFICANCE TO THE STATE'S JURISPRUDENCE AND (3) THE DECISION BELOW IS CLEARLY ERRONEOUS, WILL CAUSE MATERIAL INJUSTICE, AND CONFLICTS WITH PRECEDENT?

Defendant-Appellant answers, "yes."

### **DATE AND NATURE OF ORDERS BEING APPEALED**

Defendant seeks leave to appeal the Michigan Court of Appeals order dated May 26, 2004, denying his Delayed Application for Leave to Appeal (Exhibit L). His application in the Court of Appeals requested leave to appeal (1) the Genesee County Circuit Court's Judgment of Sentence, dated March 13, 2003, which was amended by an Amended Order of Probation, dated May 5, 2003 (see both orders, Exhibit A); and (2) the Circuit Court order entered on February 10, 2004, denying his Amended Motion for Drug Court Reinstatement (Exhibit B).

### **STATEMENT OF APPELLATE JURISDICTION**

This Court has jurisdiction to consider this Application for Leave to Appeal pursuant to MCR 7.301(A)(2), this being an appeal from a decision by the Court of Appeals.

## INTRODUCTION

Joseph Hanas was criminally sanctioned by the Genesee County Drug Court because he asked the court for a transfer out of a rehabilitation program that coerced him into practicing the Pentecostal faith and prevented him from practicing his own faith, Catholicism.

The trial court placed Mr. Hanas in the Inner City Christian Outreach rehabilitation center (hereinafter “Christian Outreach”) as a condition of remaining in the Drug Court’s deferred sentencing program. However, Mr. Hanas was denied the right to practice his own religion at Christian Outreach. In fact, his Catholic faith was mocked and referred to as “Witchcraft.” Moreover, he was repeatedly made to engage in Pentecostal religious activities. When Mr. Hanas asked the Court for placement in a secular rehabilitation center, the Court punished him by removing him from the deferred sentencing program, convicting and sentencing him under the general sentencing process.

Thus, the choice given Mr. Hanas by the state was clear: remain in Christian Outreach, where he was coerced to practice a faith alien to his own and where he was discouraged from practicing Catholicism, or face criminal sanctions. This is a quintessential case of religious coercion and indoctrination in violation of the most basic tenets of the federal and state Free Exercise Clauses. See *Employment Division v Smith*, 494 US 872, 877; 110 S Ct 1595, 1599; 108 L Ed 2d 876 (1990).

The state can never engage in or support coercive religious indoctrination regardless of the state interest asserted. Even if there could ever be a justification for state action supporting the coerced indoctrination of a citizen in a faith other than his or her own, the government would need to meet the compelling interest test in order to support such action. *People v DeJonge*, 442 Mich 266, 280; 501 NW2d 127 (1993). In the present case, the state has not carried its burden of meeting that test.

The trial court's actions also violate the Establishment Clause. It is axiomatic that the state may not coerce citizens to engage even in nonsectarian religious activities or exercises, even when that coercion is indirect. *Lee v Weisman*, 505 US 577; 112 S Ct 2649; 120 L Ed 2d 467 (1992). Here the coercion was directly backed by the imposition of a criminal sanction and it involved sectarian and proselytizing religious conduct of the most extreme sort.

Moreover, there are numerous decisions addressing the placement of criminal defendants in religiously affected substance abuse rehabilitation programs, and all of these demonstrate that the Establishment Clause was violated in the present case. In fact, none of these decisions involved facts as extreme as those in the present case. Thus, the trial court's actions in assigning Mr. Hanas to Christian Outreach and then criminally sanctioning him when he sought to transfer to a center that would not constantly proselytize him and berate his Catholic faith violated the Free Exercise and Establishment Clauses of the United States Constitution and Article 1, §4 of the Michigan Constitution.

Mr. Hanas' Application for Leave to Appeal should be granted. Mr. Hanas' case is one brought by the state and it involves issues of significant public interest; it raises legal principles of major significance to state jurisprudence; it is an appeal from a clearly erroneous decision of the Court of Appeals that will cause material injustice; and it conflicts with decisions by the Supreme Court. See MCR 7.302(B)(2), (3) and (5).

## STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

Genesee County Circuit Court has created a “Drug Court” for non-violent drug offenders. Those who qualify for the Drug Court may tender a guilty plea and the court will “defer sentencing pending successful completion of the Drug Court program.” (See Exhibit C, Genesee County Drug Court Program Guidelines, p 4). Defendants then enter the program for 12-18 months. They agree to comply with all conditions that are imposed during the term of the program which may include drug treatment, random drug testing, counseling and “all other treatment as may be required.” (*Id.*) Upon a defendant’s “successful completion of the Drug Court Program, the Prosecuting Attorney agrees to file a Nolle Prosequi (dismissal) motion . . . thereby dismissing all . . . charges with prejudice” and there is no conviction placed on the defendant’s record. (*Id.*, p 5; also see Exhibit D, Plea Transcript, pp 5, 9).

In February, 2001, Defendant Joseph Hanas was charged with possession of marijuana with intent to deliver. (Exhibit D, p 5). On March 25, 2002, he pled guilty to the charge in exchange for a “Drug Court referral for possible dismissal if he completes Drug Court.” (Exhibit D, pp 5, 13-14). Mr. Hanas was then required to appear for a review approximately every other Thursday in the Drug Court. The Central Intake Division of Genesee Circuit Court was responsible for Mr. Hanas’ drug testing and verification of his treatment. (Exhibit D, p 9; see also Docket Entries, attached as Exhibit E).

In January, 2003, Mr. Hanas violated the conditions of his Drug Court program by being ticketed for being a minor in possession of alcohol. (Exhibit E, Docket Entry 37; Exhibit F, p 15). On January 24, 2003, Mr. Hanas appeared for a review hearing before Genesee Circuit Court Judge Robert M. Ransom. The court decided that in order for Mr. Hanas to remain in the Drug Court program, he had to successfully complete a residential program called the Inner City Christian Outreach

Residential Program. (Exhibit E, Docket Entry 39; Exhibit G, 1/24/03 Order requiring placement in Inner City Christian Outreach).

Unbeknownst to Mr. Hanas when he entered the program, one of the goals of Christian Outreach was to convert him from Catholicism to the Pentecostal faith. Mr. Hanas was a practicing Catholic. However, the staff at Christian Outreach told him that Catholicism was a form of witchcraft. (See Exhibit H, Chris Hanas Affidavit, attached to defendant's Motion for Reassignment, ¶ 27; Exhibit F, pp 11-12). When Mr. Hanas' mother gave him a rosary and a Holy Communion prayer book, Christian Outreach staff confiscated them. (See Exhibit H, p 26).

Christian Outreach further prohibited Mr. Hanas from seeing his priest. (See Exhibit I, Affidavit of Diane Kropelnitski attached to defendant's Motion for Reassignment, p 2). In fact, when Mr. Hanas' aunt called Christian Outreach to try to make arrangements for his deacon to visit him, the director of Christian Outreach, Pastor Rottier, told the aunt, that Mr. Hanas "gave up his right of freedom of religion when he was placed into this program." (*Id.*). The deacon further said that he had spoken with Judge Ransom several times about this issue and that Judge Ransom knows that he "won't have any other religious clergy in here." (*Id.*).

Christian Outreach did not have any drug and alcohol counselors on staff and the program prohibited Mr. Hanas from having access to Alcoholic Anonymous classes until he had been at Christian Outreach for ten months. (Exhibit H, p 20). Rather, Christian Outreach is essentially a program designed to indoctrinate its residents in the teachings of the Pentecostal Church. According to Pastor Rottier, Mr. Hanas was "not permitted any contact with the secular world for 10 months." (See Exhibit H, p 21). Mr. Hanas was required to study the bible for seven hours a day. (Exhibit H, p 29; Exhibit

F, p 19). He was also given tests on Pentecostal principles. (See Exhibit J).

When Mr. Hanas unwittingly violated one of the church's rules, he was forced into a three-day "word fast" during which time he was required to remain silent and read the bible continuously. (Exhibit H, p 28). Initially, Mr. Hanas' mother was not able to speak with him except when she attended Pentecostal church services, but she was later told that she could not even attend the services. (Exhibit H, pp 30-31).

At one of the Wednesday night religious services, Pastor Rottier told Mr. Hanas and the other participants in Christian Outreach that in order to successfully complete the program they would have to go up to the altar and declare that they were saved. (Exhibit F, pp 11-12). In fact, the pastor repeatedly threatened that Mr. Hanas would be "washed of the program and go to prison" if he did not do what the pastor said. (Exhibit F, p 14; Exhibit H, pp 32-33).

On February 14, 2003, Mr. Hanas, through counsel, filed a motion for reassignment to a residential treatment program other than Christian Outreach, supported by several affidavits. However, Judge Ransom not only denied the motion for reassignment, but based on Mr. Hanas' "inability" to satisfactorily complete the program at Christian Outreach, decided to accept Mr. Hanas' guilty plea, remove him from the Drug Court and sentence him as he does defendants who do not enter the Drug Court. (See Exhibit F).

On March 13, 2003, the day set for sentencing, both Mr. Hanas' defense counsel and counsel for *Amicus Curiae* American Civil Liberties Union<sup>1</sup> argued that Mr. Hanas could not be constitutionally

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<sup>1</sup>The ACLU also filed an amicus brief in the trial court arguing that punishing Mr. Hanas for asking to be moved out of Christian Outreach to a secular placement violated his rights under both the Free Exercise Clause and the Establishment Clause of the First Amendment.

punished because he asked to be placed in a treatment center other than Christian Outreach. They detailed the manner in which Christian Outreach prohibited Mr. Hanas from practicing his religion and the coercion he faced to adopt the Pentecostal faith. Trial counsel urged the Court to keep Mr. Hanas in the Drug Court program and to assign him to a secular placement center. (*Id.*). Finally, trial counsel asked the Court to hold an evidentiary hearing where he could examine witnesses, including the pastor, about the coercive nature of Christian Outreach (*Id.*, p 19).

When Judge Ransom suggested that Mr. Hanas was not required to participate in the program, trial counsel pointed out that Mr. Hanas did not have a choice given that his alternative was jail. (*Id.*, p 14). Also, as the Court recognized, Mr. Hanas did not have options for other residential programs because he did not have any funds and Christian Outreach was the only residential program available free of charge. (*Id.*, p 25).

Nonetheless, Judge Ransom removed Mr. Hanas from the Drug Court and sentenced him because he was not able to finish the treatment programs<sup>2</sup> that he entered; the judge viewed the failure to follow through as an indication that he was not committed to overcoming substance abuse. (*Id.*, pp 22-23). However, the record demonstrates that had Mr. Hanas not moved to be placed in a different treatment program, the judge would not have sentenced him. In fact, Pastor Rottier stated on the record that Mr. Hanas had “done good” while he was at Christian Outreach and that “if he chooses to leave, that’s his choice. . . . I wish him the best.” (*Id.*, p 18).

Judge Ransom sentenced Mr. Hanas to four years probation with the first six months in the

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<sup>2</sup> The reference to “programs” in the plural included two Salvation Army programs that Mr. Hanas voluntarily placed himself in prior to being sent to Christian Outreach.

county jail. The judge also ordered a psychological evaluation and indicated that if the evaluation was positive, Mr. Hanas would be transferred from jail to boot camp. After jail or boot camp was completed, he was to be released to a secular drug treatment program called New Paths. (*Id.*, pp 26-29; also see Exhibit A, 3/13/03 Judgment of Sentence and Commitment to Jail).

Judge Ransom stated that Mr. Hanas would not be in the Drug Court program while at boot camp and New Paths. However, Judge Ransom left open the possibility that he would reconsider admitting Mr. Hanas back into the Drug Court if he successfully completed boot camp and the first 60 days at New Paths (Exhibit F, pp 29-30).

Mr. Hanas successfully completed boot camp and, according to his probation report, adjusted well to New Paths and was a positive example to others. (Exhibit K). Nonetheless, Judge Ransom denied Mr. Hanas' motion to set aside his plea-based conviction and reinstate him in the Drug Court. (See 2/10/04 order, Exhibit B.) The judge denied Mr. Hanas' motion because Mr. Hanas stated that one of the reasons he wanted to be reinstated into the Drug Court program was to have his conviction vacated. (See 1/23/03 Transcript, Exhibit M ).

On March 15, 2004, Mr. Hanas filed a Delayed Application for Leave to Appeal from both the trial court's initial judgment of conviction and sentencing and the order denying him reinstatement in the drug program. Mr. Hanas argued that the trial court unconstitutionally ousted him from the Drug Court – thereby causing him to have a conviction on his record – because he requested a treatment program where he would not be coerced into practicing the Pentecostal faith and where he would be free to practice his own faith.

On May 26, 2004, the Court of Appeals denied the application in a one sentence order (Exhibit

L). For the reasons that follow, this Court should grant leave, or alternatively, either peremptorily reverse Mr. Hanas' conviction or order the court of appeals to address the merits of this important case as if leave was granted.

## **ARGUMENT**

**I. THIS COURT SHOULD GRANT LEAVE TO HEAR THIS CASE BECAUSE IT INVOLVES STATE COERCION OF A CITIZEN TO VIOLATE THE TENETS OF HIS OWN FAITH AND TO ADOPT ANOTHER FAITH, THE MOST SERIOUS VIOLATION OF A CITIZEN'S FREE EXERCISE RIGHTS RECOGNIZED UNDER THE UNITED STATES AND MICHIGAN CONSTITUTIONS.**

**A. Standard of Review**

The question of whether the trial court's actions constituted religious coercion in violation of the United States and Michigan Constitutions' Free Exercise Clauses is a matter of constitutional law that is reviewed *de novo*. See *J & J Construction Co v Bricklayers and Allied Craftsmen, Local 1*, 468 Mich 722, 729; 664 NW2d 728 (2003).

**B. Analysis**

Joseph Hanas was criminally sanctioned because of his desire to transfer from a rehabilitation program that was designed and administered in a manner that coerced him to participate in and adopt the Pentecostal faith, and which denied him the ability to practice his own faith, Catholicism. Mr. Hanas was placed in this treatment center by the trial court. (Exhibit E, Docket Entry 39; Exhibit G, 1/24/03, Order requiring placement in Inner City Christian Outreach). When he sought an alternative placement

that would not coerce him to practice a faith in which he did not believe and which would not disparage and prevent him from practicing the Catholic faith, he was criminally sanctioned by removal from the Drug Court program and sentenced under the general sentencing process. (See Exhibit F). Thus, the choice given him by the state was clear: remain in the Inner City Christian Outreach Program (hereinafter “Christian Outreach”), where he was coerced to practice a faith alien to his own and where he was discouraged from practicing Catholicism, or face criminal sanctions. A clearer violation of a citizen’s free exercise rights is hard to imagine.

Significantly, this is not a case of a citizen seeking exemption from a generally applicable law, *Employment Division v Smith*, 494 US 872, 110 S Ct 1595, 108 L Ed 2d 876 (1990) (members of Native American Church sought exemption under state unemployment compensation laws after being denied benefits due to ritual use of peyote); *People v DeJonge*, 442 Mich 266; 501 NW2d 127 (1993) (parents sought and were granted exemption to state teacher certification requirement when they were criminally sanctioned for home schooling their children). Rather, this is a quintessential case of religious coercion and indoctrination in violation of the most basic tenets of the federal and state Free Exercise Clauses. As the United States Supreme Court stated in *Employment Division v Smith*, 494 US at 877:

The Free Exercise Clause means first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all “governmental regulation of religious *beliefs* as such.” *Sherbert v Verner*, *supra*, 374 US, at 402, 83 S Ct, at 1793. The government may not compel affirmation of religious belief, *see Torcaso v Watkins*, 367 US 488, 81 S Ct 1680, 6 L Ed 2d 982 (1961), punish the expression of religious doctrines

it believes to be false, *United States v Ballard*, 322 US 78, 86-88, 64 S Ct 882, 886-87, 88 L Ed 1148 (1944), impose special disabilities on the basis of religious views or religious status, (string cite omitted), or lend its power to one side or the other side in controversies over religious authority or dogma, (string cite omitted).

In this case, the trial court's assignment of Mr. Hanas to Christian Outreach, a residential program, resulted in regulation of Mr. Hanas' beliefs and compelled him to affirm the Pentecostal faith despite his differing religious convictions. Moreover, the trial court's subsequent actions imposing criminal sanctions upon Mr. Hanas when he requested transfer into a secular program constituted punishment for refusing to be religiously indoctrinated by a program that the state provided as his only choice to avoid a conviction and incarceration. While at Christian Outreach Mr. Hanas was denied the right to profess his faith, and in fact his Catholic faith was mocked and referred to as "witchcraft." Moreover, he was repeatedly made to engage in Pentecostal religious activities. These actions violated the most basic tenets of free exercise recognized in *Smith*, 494 US at 877. Perhaps the greatest irony is that the primary reason Mr. Hanas was sent to Christian Outreach—substance abuse counseling and rehabilitation—was not evident in Christian Outreach's program. There were no drug counselors or psychologists in this program, only repeated and all-encompassing religious indoctrination.

This court held in *People v DeJonge*, 442 Mich at 275 (1993):

[The]. . . American experiment includes an unprecedented protection of religious liberty from tyrannical government action. Springing forth from this nation's founding principle that government is "instituted for [the] protection of the rights of mankind," the Free Exercise of Religion Clause ensured protection from government interference as the first freedom in the Bill

of Rights. (Footnotes omitted).

The actions of the trial court in the present matter rode roughshod over these important freedoms and violated one of the most fundamental rights animating the framers: the right to be free from state supported religious indoctrination and coercion.

The state can never engage in or support coercive religious indoctrination regardless of the state interests asserted. See *Smith*, 494 US at 877 (referring to religious coercion and interference with religious beliefs in manner suggesting that such state action might be a per se violation of the Free Exercise Clause). Assuming arguendo that such state action is not a per se violation of the Free Exercise Clause—i.e., that there could ever be a justification for state action supporting the coerced indoctrination of a citizen in a faith other than his or her own—the government would need to meet the compelling interest test in order to support such action. *Church of the Lukumi Babalu Aye, Inc v City of Hialeah*, 508 US 520, 546; 113 S Ct 2217; 124 L Ed 2d 472 (1993) (strict scrutiny applies to government actions that are not generally applicable and which harm and are aimed at a particular religious faith). As noted above, this is not a case about exemptions to laws of general applicability, but rather a case of religious coercion resulting from the decision of a state actor in a specific circumstance. Cases involving government sanctioned coercive indoctrination into a specific religious faith under threat of criminal sanction have rarely arisen in American Free Exercise Clause jurisprudence,<sup>1</sup> but since such cases do not—can not—involve laws of general applicability, they must involve per se constitutional violations or at the very least violations to which the compelling interest test would apply. *Id.*

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<sup>1</sup> There are cases that have addressed somewhat analogous facts under the Establishment Clause. These cases are discussed *infra* at Part II. As will be seen, these cases also demonstrate the unconstitutionality of the trial court's actions here.

This Court has laid out the elements of the compelling interest test in the free exercise context. In *DeJonge*, this Court relying on *Wisconsin v Yoder*, 406 US 205, 214-30; 92 S Ct 1526, 1532-40; 32 L Ed 2d 15 (1972), held that criminal laws burdening an individual's right to freely practice his or her religion must survive strict scrutiny in order to pass constitutional muster. Under the strict scrutiny test, the court examines the following five elements:

- (1) whether a defendant's belief, or conduct motivated by belief, is sincerely held;
- (2) whether a defendant's belief, or conduct motivated by belief, is religious in nature;
- (3) whether a state regulation imposes a burden on the exercise of such belief or conduct;
- (4) whether a compelling state interest justifies the burden imposed upon a defendant's belief or conduct;
- (5) whether there is a less obtrusive form of regulation available to the state.

*DeJonge*, 442 Mich at 280.

In the present case, the state has not carried its burden of meeting the strict scrutiny test. As shown in the Statement of Facts, the record is uncontradicted that Mr. Hanas is a practicing Catholic who wanted to pray using his rosary and Holy Communion bible. Mr. Hanas also wanted to meet with his priest while at the Inner City Christian Outreach Center. There is no doubt that Christian Outreach burdened Mr. Hanas' rights when they denied him the ability to see his priest, and confiscated his rosary and bible on the ground that Catholicism is "witchcraft." Instead, Christian Outreach attempted to convert Joseph Hanas to a brand of Pentecostal Christianity and threatened Mr. Hanas by stating that he would go to jail if he did not follow Christian Outreach's instructions because they would report that he failed his treatment program. (See Exhibit F, pp 11-12, Exhibit H and Exhibit I).

The trial court criminally punished Mr. Hanas when he asked the court to be placed in a different treatment center where he could practice Catholicism. The court sentenced him to jail, and removed him from the Drug Court program, thereby denying him the opportunity to have his case dismissed. Indeed, because of his desire to practice Catholicism, he now has a conviction on his record which may impact his ability to find employment and enjoy other opportunities in the future.

The record is void of any compelling state interest that could possibly justify this burden on Mr. Hanas' religious freedom. While there may have been an important interest in rehabilitating Mr. Hanas and placing him in a residential drug or alcohol treatment facility, there is no valid state interest—much less a compelling one—to place him in a center whose goal is to convert him to the Pentecostal faith. Such a goal is directly contrary to the Founding Fathers' goal of “protecting religious liberty from tyrannical government action.” *DeJonge*, 442 Mich at 275.

Finally, there existed “less obtrusive” means of achieving the Drug Court's goal of rehabilitating Mr. Hanas. At the hearing on the motion for reinstatement and at the sentencing hearing, counsel made it clear that there were secular alternatives available for Mr. Hanas such as New Paths. (Exhibit F, pp 15-16). By criminally punishing him for requesting that he be placed in one of these alternatives, the trial court, as a matter of law, violated his free exercise rights. *DeJonge, supra*.

Therefore, when the trial judge sentenced Joseph Hanas for requesting transfer to a facility where he would not be subjected to religious indoctrination and where he would be free to practice his own faith, Mr. Hanas' rights under the Free Exercise Clause of the United States Constitution and Article I, § 4 of the Michigan Constitution were violated. The standards applied under Article I, § 4 of the Michigan Constitution are at least as strict as those applied under the United States

Constitution. See *DeJonge*, 422 Mich 266, 280 n. 27 (“we may certainly interpret the Michigan Constitution as affording additional protection to the free exercise of religion,” but noting there was no need to address the scope of free exercise protections under the Michigan Constitution in *DeJonge* because even under the reasoning in *Smith* strict scrutiny applied).

**II. THIS COURT SHOULD GRANT LEAVE TO HEAR THIS CASE BECAUSE IT INVOLVES BLATANT RELIGIOUS COERCION AND ENDORSEMENT OF THE PENTECOSTAL FAITH, AS WELL AS DISCOURAGEMENT OF THE CATHOLIC FAITH, IN VIOLATION OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS.**

**A. Standard of Review**

The question of whether the trial court's actions violate the Establishment Clauses of the United States and Michigan Constitutions is a matter of constitutional law that is reviewed *de novo*. See *J & J Construction Co*, 468 Mich at 729.

**B. Analysis**

The United States Supreme Court has applied several tests to questions arising under the Establishment Clause; the coercion test, the endorsement test, and the Lemon test are the most commonly applied. *Santa Fe Indep SchoolDist v Doe*, 530 US 290, 120 S Ct 2266, 147 L Ed 2d 295 (2000) (applying all three tests to school district policy that promoted prayer at public school football games). Significantly, the state action here easily fails the strictest of these tests, the coercion test.

In *Lee v Weisman*, 505 US 577; 112 S Ct 2649; 120 L Ed 2d 467 (1992), a case involving prayer at public school graduations, the Court applied what has come to be called the "coercion test" to analyze a challenge to graduation prayer under the Establishment Clause. The prayer in question was delivered by a Rabbi at the request of school officials and pursuant to guidelines for non-sectarian prayer that were provided by the school. *Id.* at 581. Justice Kennedy, writing for the majority, wrote:

It is beyond dispute 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 a way which "establishes a [state] religion or religious faith, or tends to do so."

*Id.* at 587.

In *Lee*, the coercion was indirect. The Court found that even though attendance at graduation was not mandatory the state could not condition attendance at one's high school graduation on participating in a religious exercise. *Id.* at 593. The pressure to attend and participate was indirect because it involved peer pressure to participate in a religious exercise rather than threat of sanction by the state. *Id.* at 593-594. Several Justices who joined the majority opinion wrote concurrences applying some combination of the less strict *Lemon* and Endorsement tests, rather than the coercion test, see *Lee*, 505 US at 599 (Blackmun, J., concurring); *id.* at 609 (Souter, J., concurring), but all the Justices in the majority agreed that at the very least the state can not coerce participation in a religious exercise. *Id.*

Joseph Hanas faced far more than the indirect coercion to participate in prayers at one ceremony. He faced direct coercion under threat of criminal sanction – sanctions that were realized when he resisted the religious coercion by seeking to transfer to a secular program. Surely, this is an easy case under the standard set forth in *Lee*. Joseph Hanas' constitutional rights under the Establishment Clause were infringed. In fact, the state action here would also fail the actual (as opposed to indirect) coercion test proposed by Justice Scalia in his *Lee* dissent, see *Lee*, 505 US at 640-642 (Scalia, J., dissenting) (focusing on coercion "by force of law or threat of penalty"). This approach, which has never been adopted by the Court because it has been seen by a majority of Justices as inadequately protective of Establishment Clause rights, requires actual coercion under penalty of law in

order for a government action subjecting a citizen to a religious exercise to be found unconstitutional.

*Id.* While such situations are rare in this State and this nation, Mr. Hanas' case presents just such a situation.

The Michigan Constitution speaks to religious coercion directly. Article 1, §4 of the Michigan Constitution states: "No person shall be compelled to attend, or, against his consent, . . . support any place of religious worship. . . . The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious beliefs." The actions of the trial court violate this provision on its face. The court put Mr. Hanas to the choice of attending a program that was connected to, and functioned as, a place of religious worship or being criminally sanctioned. When Mr. Hanas sought an alternative placement because of his religious beliefs his rights and privileges were severely limited by the trial court.

Significantly, several courts have addressed the placement of a criminal defendant in a substance abuse rehabilitation program with religious underpinnings. Most of these cases involve Alcoholics Anonymous (hereinafter "AA"), or similar groups, that have a less obvious religious mission and less encompassing religious practices than Christian Outreach. Significantly, all of these cases suggest that the actions of the trial court in Mr. Hanas' case violate the Establishment Clause. These cases generally fall into three categories.

First, there are a number of cases where courts found placement of criminal defendants in substance abuse rehabilitation programs with religious underpinnings to violate the Establishment Clause. See *Kerr v Farrey*, 95 F3d 472 (CA 7 1996) (Court granted injunction to prisoner against attendance in religious- based Narcotics Anonymous where no secular alternatives existed and non-attendance

could result in a higher security risk classification and adverse parole decisions); *Warner v Orange County Department of Probation*, 95 F3d 202 (CA 2 1996), *vacated and remanded*, 115 F3d 1068 (CA 2 1997), *re-aff'd*, 173 F3d 120 (CA 2 1999) (where no secular alternatives were offered, a grant of probation conditioned on enforced religious practice was unacceptable government coercion under the test set forth in *Lee v Weisman*, 505 US 577 (1992)); *Bauch v Sumiec*, 139 F Supp 2d 1029 (ED Wisc 2001) (violation of the Establishment Clause where the only alternative to parole revocation offered was placement in the religiously-oriented Exodus House); *Arnold v Tennessee Board of Paroles*, 956 SW2d 478 (Tenn 1997) (prison violates the Establishment Clause by punishing prisoner for refusing to attend religious-based Alcoholics Anonymous where there are no secular alternatives); *Ross v Keelings*, 2 F Supp 2d 810 (ED Va 1998) (finding a violation of the Establishment Clause where non-participation in prison substance abuse recovery program which made frequent mention of “God” resulted in longer prison term); *Griffin v Coughlin*, 88 NY2d 674 (1996), *cert. denied*, 519 US 1054 (1997) (same); *Scarpino v Grosshiem*, 852 F Supp 798 (SD Ia 1994) (same). The pervasiveness of religion in the Christian Outreach program was even greater than in the above cases.

Second, there are cases where courts found such placement constitutional because the defendant had a real and adequate secular alternative to the religious based program. A notable example is *O'Connor v State of California*, 855 F Supp 303 (CD Cal 1994), where the court upheld a program that enabled drunk drivers to go to AA, a secular program called Rational Recovery, or to design their own program with state approval, as part of the terms of probation. O'Connor challenged the program because AA had far more (and more convenient) meeting times than did Rational

Recovery. The court rejected O'Connor's challenge, and most notably for present purposes, wrote:

Significant to this Court's decision is that the individual has a *choice* over what program to attend. Rational Recovery is a viable, although less frequently offered, self-help program that does not use any concept of "spirituality" to treat alcohol-related problems. Moreover, individuals who do not want to attend either Alcoholics Anonymous or Rational Recovery may devise their own means of "self-help" and seek approval from the County. Given this array of options, it cannot be said that the State and County are endorsing the religious message of AA rather than promoting the concept of "self-help."

*Id.* at 308.

Unlike O'Connor, Mr. Hanas had no viable alternative, and in fact was criminally sanctioned when he requested one after being repeatedly proselytized at Christian Outreach. Moreover, the proselytization at Christian Outreach was far more sectarian and direct than the vague mention of G-d or a higher power in AA that O'Connor complained of. *Id.* at 306.

Third, there are a few cases where courts have held that AA or similar programs are not religious (or not religions), *Feasel v Willis*, 904 F Supp 582 (ND Tex 1995) (adopting Magistrate Judge's findings that AA's 12 step program is not a program of religious indoctrination); *Stafford v Harrison*, 766 F Supp 1014, 1017 (D Kan 1991) (same), an argument that can hardly be made about the Pentecostal faith, which is clearly a well established religion in the United States. Moreover, unlike AA, which uses some religious symbolism and language in its programs but is primarily focused on substance abuse rehabilitation, *O'Connor*, 855 F Supp at 306, Christian Outreach is a religious program sponsored by a specific religion, the substance of which is focused on religious indoctrination

of those in the program.

Ironically, the trial court would have a hard time justifying any argument that Christian Outreach is not a program of religious indoctrination into the Pentecostal faith under these facts, since Christian Outreach had no substance abuse counselors on staff and its program of rehabilitation was based totally on religious immersion and indoctrination. Forcing Mr. Hanas to stay in the program or face criminal sanctions coerced him to adopt the Pentecostal faith. Thus, the trial court's actions violate the Establishment Clause.

Moreover, the assignment of Mr. Hanas to Christian Outreach cannot be saved by arguing that the cooperative arrangement between the trial court and Christian Outreach was a valid "charitable choice" type program, because there was no "choice," only coercion. Even if charitable choice programs are constitutional they could only be so if they are facially neutral and involve "true private choice." *Zelman v Simmons-Harris*, 536 US 639; 122 S Ct 2460; 153 L Ed 2d 604 (2002). There was clearly no secular choice for Mr. Hanas; his choice was to be indoctrinated in an alien faith or be sentenced to further criminal sanctions. There was no secular option presented by the trial court despite the attempts by Mr. Hanas' attorneys to suggest he be placed in New Paths, a secular alternative that Mr. Hanas was ultimately successful in, albeit after further sanctions had been imposed. (See Exhibit F).

**III. THIS COURT SHOULD GRANT LEAVE BECAUSE THIS CASE (1) RAISES ISSUES OF SIGNIFICANT PUBLIC INTEREST REGARDING A STATE COURT'S POLICY, (2) INVOLVES ISSUES OF MAJOR SIGNIFICANCE TO THE STATE'S JURISPRUDENCE AND (3) THE DECISION BELOW IS CLEARLY ERRONEOUS, WILL CAUSE MATERIAL INJUSTICE, AND CONFLICTS WITH PRECEDENT.**

IV. " \12 Mr. Hanas' situation meets multiple grounds for granting leave to appeal as set

forth in MCR 7.302(B), which provides, in relevant part:

The application [to the Michigan Supreme Court for leave to appeal] must show that... (2) the issue has significant public interest and the case is one by or against the state... (3) the issue involves legal principles of major significance to the state's jurisprudence... (5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Each of these factors considered individually would be sufficient grounds for granting leave, and taken together, they provide overwhelming support for an appeal.

Mr. Hanas' application clearly meets both prongs of MCR 7.302(B)(2), as it is a case involving both the state and issues of significant public interest. Drug courts are a relatively new phenomena in this state and are widely viewed as creative programs that are viable, cost-effective and positive alternatives to incarceration. As more and more circuit courts begin to establish drug courts it is important that this Court define the constitutional boundaries in which they may operate.

Additionally, the Free Exercise and Establishment Clause issues raised by this case involve constitutional issues of major importance to this state's jurisprudence. MCR 7.302(B)(3). Although this Court has outlined the framework for Free Exercise Clause cases in *DeJonge, supra*, the doctrine has never been applied in Michigan published cases to a situation where a person is criminally punished for asking to leave a drug treatment program that denied him the opportunity to practice his own religion. Further, while there are cases from foreign jurisdictions addressing the Establishment Clause problems with failing to offer probationers, parolees and prisoners secular alternatives to religious-based treatment programs (see Argument II), there are no such published cases in Michigan.

Finally, the Court of Appeals denial of leave "for lack of merit on the grounds presented" (see Exhibit L), is clearly erroneous and conflicts with this Court's decision in *DeJonge, supra*, as well as the

numerous U.S. Supreme Court cases cited throughout this application. MCR 7.302(B)(5). Indeed, imposing criminal sanctions upon an individual for his religious beliefs is repugnant to the values embodied in the religious clauses of the First Amendment. See, e.g., *Employment Division v Smith*, 494 US at 877, citing *Sherbert, supra*, *Torcaso, supra*, and *Bullard, supra*.

**RELIEF REQUESTED**

For the foregoing reasons, Defendant Joseph Hanas respectfully requests that this Honorable Court grant this application for leave to appeal so that this court may fully address the important constitutional issues raised herein. Alternatively, Mr. Hanas requests that this Court either peremptorily reverse his conviction or remand this case to the Court of Appeals for full consideration of the issues raised as if leave to appeal had been granted.

Respectfully submitted,

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