

Court ruling opens schools to religion clubs

By Liz Schevtchuk
Catholic News Service

WASHINGTON — The U.S. Supreme Court ruled 8-1 June 4 that students at public high schools can conduct after-school religion-club meetings on school premises without violating the Constitution.

The ruling came in the case *Board of Education vs. Mergens*, involving Westside High School in Omaha, Neb., and a challenge to the federal Equal Access Act.

Passed by Congress in 1984, the act guarantees for religion-oriented student clubs — as well as those focusing on politics or philosophical topics — the same access to public high school facilities as is enjoyed by other extracurricular student clubs.

"Thus, even if a public secondary school allows only one 'non-curriculum-related student group to meet' ... the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during non-instructional time," Justice Sandra Day O'Connor wrote in court's majority opinion.

The ruling drew immediate praise from the top lawyer for the U.S. Catholic Conference, one of several groups that had filed friend-of-the-court briefs on behalf of the students.

"In this case, the court specifically said that allowing such a club is not the same as endorsing or sponsoring it," said Mark E. Chopko, USCC general counsel. "On the contrary, exclusion of a religion club on the basis of its religious content conveys a message of hostility, contrary to constitutional tradition and a sense of justice."

While agreeing on the legitimacy under the Equal Access Act of allowing the student clubs to meet on school property, the justices' reasons for reaching that conclusion differed.

For example, O'Connor's written opinion was adopted in its entirety by only three other justices — Chief Justice William H. Rehnquist and Justices Byron R. White and Harry A. Blackmun.

Justices Anthony M. Kennedy and Antonin Scalia said they concurred with most of O'Connor's views, and "agree that the (Equal Access) Act does not violate the Establishment Clause" of the Constitution's First Amendment. But they cited differences over an "analytic premise" and issued a separate opinion, written by Kennedy.

Justices Thurgood Marshall and William J. Brennan concurred in the judgment but declared that the school administration "must fully disassociate itself from the club's religious speech and avoid appearing to sponsor or endorse the club's goals."

Justice John Paul Stevens dissented from the decision.

The dispute began when Westside High School denied permission to meet at the school to students who had formed a Christian Bible club. A federal district court rul-


ed in favor of the school authorities who barred them, but the 8th U.S. Circuit Court of Appeals overturned the lower court.

The equal access law applies to public high schools that receive federal funding and that permit a "limited open forum" — that is, allow club meetings of some sort outside official class hours.

If public high schools do not want religion clubs meeting alongside other extracurricular clubs, "a school district ... could simply forgo federal funding," O'Connor's opinion for the court stated.

"Although we do not doubt that in some cases this may be an unrealistic option, Congress clearly sought to prohibit schools from discriminating on the basis of ... speech, and that obligation is the price a federally funded school must pay if it opens its facilities to non-curriculum-related student groups," the court opinion added.

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