Court closes term with controversial decisions

University must provide funding for religious paper

By Patricia Zapor
Catholic News Service

WASHINGTON – The University of Virginia was wrong to refuse funding for a student-run newspaper that contained religious material, the Supreme Court said in a 5-4 ruling June 29.

In *Rosenberger vs. University of Virginia,* the court said there was no likelihood that the messages of Wide Awake Publications would be construed as state endorsement of a religion, which was the university's key argument in denying money from the student activities fund to cover publishing costs of the newspaper.

An official of the U.S. Catholic Conference said the decision is significant for emphasizing "the need for neutrality toward religion in government programs."

"The *Rosenberger* decision puts government officials on notice that they cannot rely on overly broad interpretations of the Establishment Clause to justify discrimination against religious organizations," said John Liekweg, associate general counsel for the USCC, public policy arm of the U.S. bishops.

The 4th U.S. Circuit Court of Appeals had upheld lower court rulings saying discrimination was justified against religious speech in the University of Virginia's allocation of student funds.

"Vital First Amendment speech principles are at stake here," Justice Anthony Kennedy wrote for the majority. "The first danger to liberty lies in granting the state the power to examine publications to determine whether or not they are based on some ultimate idea and, if so, for the state to classify them.

"The second, and corollary, danger to speech is from the chilling of individual thought and expression," he continued, adding that free speech could be endangered on college and university campuses.

Kennedy said funding a student publication from a student activity fee cannot be likened to using general tax revenues to subsidize a church.

"Here the disbursements from the fund go to private contractors for the cost of printing that which is protected under the speech clause of the First Amendment. This is a far cry from a general public assessment designed and effected to provide financial support for a church."

He noted that a key to the decision was the newspaper's status as a "contracted independent organization" under university guidelines. As such, it was eligible or funds for certain activities, including publishing, but excluding religious, philanthropic or political activities. The school refused the publication's funding request on the grounds that its content constituted a religious activity.

The Constitution is not violated when a university grants access on a religion-neutral basis to a wide spectrum of student groups, Kennedy wrote.

OKs placement of KKK cross on Ohio statehouse grounds

WASHINGTON (CNS) – The Ku Klux Klan must be allowed to erect a cross on the grounds of the Ohio Statehouse if other religious symbols are permitted there, the Supreme Court ruled June 29.

Agreeing 7-2 but basing the conclusion on several legal reasons, the justices said the Klan had the right to erect a cross at the Columbus statehouse grounds.

The Klan requested permission to put up a cross on the 10-acre Capitol Square in Columbus during the holiday season, when a Christmas tree and a menorah had already been placed in the square. The Capitol Square Review Board rejected the request on the grounds that the cross would be an unconstitutional endorsement of religious beliefs.

Federal courts disagreed, saying the square was a traditional public forum open to all and, ultimately, the cross was allowed to be erected. *Capitol Square Review Board vs. Pinette* was the state agency's appeal.

Numerous religious and civil-liberties organizations that usually oppose the Klan because of its racist, anti-Semitic and anti-Catholic tenets had supported the legal right to display a cross regardless of what group sponsored it.

Writing for the majority, Justice Antonin Scalia rejected attempts by Vincent Pinette, leader of the Ohio Klan, to portray the state's treatment of the Klan as an infringement of political rights. The case presented by the 6th U.S. Circuit Court of Appeals discussed only the issue of First Amendment protections against the establishment of a state religion, Scalia noted, and therefore was the only area on which the Supreme Court ruled.

"Capitol Square is a genuinely public forum, is known to be a public forum and has been widely used as a public forum for many, many years," Scalia said in deciding that the case was not about favoritism toward Christian beliefs. "Private religious speech cannot be subject to veto by those who see favoritism where there is none.

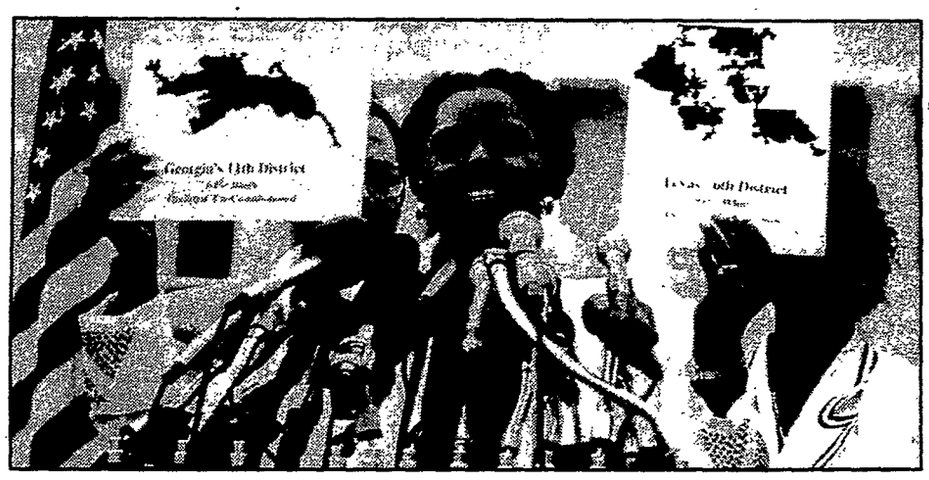
Joining him in the majority were Chief Justice William Rehnquist and Justices Sandra Day O'Connor, Anthony Kennedy, David Souter, Clarence Thomas Jr., and Stephen Breyer. Breyer, Souter and O'Connor filed separate opinions in which they concurred in part, but disagreed with what O'Connor called "an exceedingly narrow view of the Establishment Clause that is out of step both with the court's prior cases and with well-established notions of what the Constitution requires."

Justices John Paul Stevens and Ruth Bader Ginsburg dissented.

Thomas also wrote a separate concurrence, in which he noted "there is little doubt that the Klan's main objective is to establish a racist white government in the United States.

"In Klan ceremony, the cross is a symbol of white supremacy and a tool for the intimidation and harassment of racial minorities, Catholics, Jews, communists and any other groups hated by the Klan. The cross is associated with the Klan not because of religious worship but because of the Klan's practice of cross burning."

Thomas said he joined the conclusion that the Klan's cross cannot be excluded based on constitutional grounds, but the legal issue "should not lead anyone to think that a cross erected by the Ku Klux Klan is a purely religious symbol."



Reuters/RNS

WASHINGTON – During a June 29 press conference at the Lincoln Memorial, Rep. Cynthia McKinney asserts that a June 29 Supreme Court ruling represents a "setback" for American democracy. Holding diagrams of voting districts that had been redesigned to enhance black voting strength, McKinney protested the court's finding that such efforts are unconstitutional.