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IN THIS ISSUE:

- **Religious groups scramble to assess church-state ruling**
- **Supreme Court declines appeal in parent-led Bible club case**
- **Addition**

Religious groups scramble to assess church-state ruling

By Larry Chesser

WASHINGTON (ABP) -- Religious and civil-liberties groups are scrambling to assess the impact of the U.S. Supreme Court 's June 29 ruling that a state university cannot use separation of church and state as a reason to deny student funds to religious groups.

In a narrow 5-4 ruling, the high court said the state-supported University of Virginia's policy of denying religious groups access to student activity funds is neither commanded nor justified by the First Amendment's requirement of church-state separation.

The university's policy was challenged by Ronald Rosenberger and other students who wanted student funds to pay for printing their Christian publication, Wide Awake. Lower courts said subsidizing the publication would violate church-state separation, but the Supreme Court, in an opinion written by Justice Anthony Kennedy, disagreed.

Given the range of assessments from church-state specialists, it may be some time before it becomes clear how much the court's ruling will alter the nation's church-state landscape.

Baptist Joint Committee General Counsel Brent Walker called the decision "a sad day for religious liberty.

"For the first time in our nation s history, the Supreme Court has sanctioned funding of religion with public funds," he said. "Although Madison and Jefferson won their battle against state-subsidized religion in the 18th century, they lost in the Supreme Court today."

Walker criticized the majority s reliance on the fact that the university would pay an outside contractor for printing and that no money would go to the student club.

"This is a distinction without a difference," he said. "It's like saying, 'we won t give you money, but we ll pay your bills.' The economic reality is the same."

Barry Lynn, executive director of Americans United for Separation of Church and State, called the ruling "a miserable decision."

"Evangelism should be supported by the voluntary donations of the faithful, not extracted forcibly from other Americans who don't share their beliefs," he said. "Christians at a university have every right to evangelize through publications, but they shouldn't be allowed to pick other students pockets to pay for it."

Richard Land, executive director of the Southern Baptist Christian Life Commission, took a different view. "I am delighted that at least five Supreme Court justices agree with our conviction and contention that the First

Amendment not only doesn't require discrimination against religious expression but in fact protects religious expression and guarantees it equal treatment under the laws of the land," he said. "All the students at the University of Virginia were asking is that religious groups be treated no differently than other student groups. That's the Baptist way and the American way."

Steven McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom, agreed. The court "has reminded educators a forgotten civics lesson: the First Amendment prohibits, rather than requires, discrimination against religious expression," he said.

McFarland praised the court majority for implying "support for a common-sense balance to the First Amendment, ruling that the establishment clause does not trump free speech and free press rights."

While McFarland welcomed the ruling, he insisted it did not lessen the need for a constitutional amendment ensuring equality of religious expression. Conservative religious groups and lawmakers are working to bring such an amendment before Congress.

"The court's splintered and narrow ruling leaves plenty of hope for the left to tie up religious expression for additional decades in court."

Walker disagrees.

"The decision in this case makes clear that this court is certainly not hostile to religion, Walker said. "If anything it is too helpful in Rosenberger. There is no need for a new 'religious equality' constitutional amendment."

Jay Sekulow, chief counsel of Pat Robertson's American Center for Law and Justice, called the ruling "a major victory for religious freedom."

"We have crossed a critical threshold in the fight for religious liberty." The message of the court's ruling, Sekulow said, is that "religious speech or speakers must be treated exactly the same way as any other group."

Sekulow said the opinion will impact other church-state issues, including subsidizing tuition vouchers for religious schools.

"The same concept applies," he said. "Religious discrimination is wrong whether the target is a school newspaper or a school voucher."

While the court's opinion did not address vouchers, Justice Kennedy drew a line between the court's approval of using student fees to pay the printing costs of a student journal and the use of general tax funds in the direct support of a church.

"Our decision ... cannot be read as addressing an expenditure from a general tax fund," Kennedy wrote.

He also narrowed the ruling by noting the unique context of university life and that the student club, unlike primary and secondary parochial schools, is not a "religious organization."

Kennedy's decision also emphasized that religion did not dominate among the groups supported by student activity funds.

"In voucher schemes, religious schools would receive the lion's share of tax dollars," said BJC Associate General Counsel Melissa Rogers. "Also, funds from vouchers would end up in parochial schools' coffers."

Justice David Souter and the colleagues who joined him in dissent criticized the majority's rationale in upholding for the first time direct funding of core religious activities.

"The court is ordering an instrumentality of the state to support religious evangelism with direct funding, Souter wrote. "This is a flat violation of the establishment clause."

Souter's dissent acknowledged that the impact of the majority's ruling remains unclear.

"Since I cannot see the future I cannot tell whether today's decision portends much more than making shambles out of student activity fees in public colleges."

But Souter, a George Bush appointee, said his apprehension about the ruling is "whetted" by a warning from the late Chief Justice Warren Burger, who said: "In constitutional adjudication some steps, which when taken were thought to approach 'the verge, have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can be a 'downhill thrust easily set in motion but difficult to retard or stop."

-30-

Supreme Court declines appeal in parent-led Bible club case

WASHINGTON (ABP) -- The U.S. Supreme Court declined June 29 to disturb a federal appeals-court ruling that a Ladue, Mo., junior high school could not open its facilities after hours for groups such as Boy Scouts and Girl Scouts while denying access to a parent-led Bible club.

Ladue school officials established a policy in 1986 that permitted use of facilities by a broad range of groups from 3 p.m. to 6 p.m. on school days. In response to complaints about the religious content of the Good News-Good Sports Club, the district amended its policy by closing the facility except for Scouting clubs and athletic groups.

When the amended policy was challenged, a federal district court upheld the school officials. But that opinion was reversed by the appeals court's finding that the amended policy resulted in viewpoint discrimination.

The appeals court based its ruling on a 1993 Supreme Court ruling that a New York school district that opened its facilities for after-hours use by a range of community groups could not deny access to a religious group.

Such a denial, the high court ruled, constituted viewpoint discrimination and violated the religious group s free-speech rights.

The appeals court rejected the school district's argument that the discrimination was justified by the compelling interest of complying with the Constitution's requirement of church-state separation.

The original policy had a secular purpose of opening the schools for expressive conduct, the court said. In addition, the original policy did not advance religion or create excessive entanglement between government and religion.

While the court's refusal to review the Missouri case does not necessarily translate into an endorsement of the appeals court's ruling, it is not inconsistent with the high court's own rulings concerning the principle of equal access for religious groups.

In addition to the 1993 New York case, the Supreme Court upheld a 1984 statute guaranteeing equal access for religious groups to public secondary school forums, and in 1981, justices ruled that state universities must provide religious groups equal access to campus facilities.

-30-

-- By Larry Chesser

ADDITION: In the June 28 story "SBC racism resolution a ploy...", please add the following after the 7th paragraph:

Robert Wilson Sr., director of the Congress for Christian Workers, National Baptist Convention of America, said he had a mixed reaction to the Southern Baptist resolution.

"On the one hand, however late it may have been, repentance always is a positive step, and it is up to us now to be accepting and meet that repentance with forgiveness," said Wilson, pastor of Cornerstone Baptist Church of Christ in Dallas and former president of the Central Baptist State Convention of Texas.

"On the other hand, I am aware that Southern Baptist growth is flattening out, and I know how much numerical growth has meant to Southern Baptists. This could be an attempt to open the door to growth for Southern Baptist black churches at the expense of our churches."

END