2005-2006 Nebraska Mock Trial

Case Law

Pat Christianson vs. William Jennings Bryan Public High School,
Eddie(y) U. Cation

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TABLE OF CONTENTS

BETHEL SCHOOL DISTRICT NO. 403 ET AL. v. FRASER

FACTS:
Fraser, a student at Bethel High School in Pierce County, Washington, delivered a speech nominating a fellow student for student elective office. Approximately 600 high school students, many of whom were 14-year-olds, attended the assembly. Students were required to attend the assembly or to report to the study hall. The assembly was part of a school-sponsored educational program in self-government. Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.

Two of Fraser's teachers, with whom he discussed the contents of his speech in advance, informed him that the speech was "inappropriate and that he probably should not deliver it," and that his delivery of the speech might have "severe consequences." One teacher reported that on the day following the speech, she found it necessary to forgo a portion of the scheduled class lesson in order to discuss the speech with the class.

The morning after the assembly, the Assistant Principal called Fraser into her office and notified him that the school considered his speech to have been a violation of [a school] rule. Fraser was presented with copies of five letters submitted by teachers, describing his conduct at the assembly; he was given a chance to explain his conduct, and he admitted to having given the speech described and that he deliberately used sexual innuendo in the speech. Fraser was then informed that he would be suspended for three days, and that his name would be removed from the list of candidates for graduation speaker at the school's commencement exercises.

ISSUE:
May a school discipline a student who makes a vulgar campaign speech to students during a mandatory school assembly?

HOLDING:
[The] School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech.

ANALYSIS:
The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.

The "fundamental values necessary to the maintenance of a democratic political system" disfavor the use of terms of debate highly offensive or highly threatening

to others. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." . . . The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

Unlike the sanctions imposed on the students wearing armbands in Tinker, the penalties imposed in this case were unrelated to any political viewpoint. The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students. Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education. Justice Black, dissenting in Tinker, made a point that is especially relevant in this case:

> "I wish therefore, . . . to disclaim any purpose . . . to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students."

Schools have wide discretion to control the content of public debate within the school, especially when the debate is using the communication machinery of the school itself and the debate is sponsored by the school.

EDWARDS V. AGUILLARD, 482 U.S. 578 (1987)

SUMMARY:
Action was brought challenging constitutionality of Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act. On remand from the Court of Appeals, following answer to certified question from Louisiana Supreme Court, the United States District Court for the Eastern District of Louisiana, held the statute unconstitutional, and appeal was taken. The Court of Appeals for the Fifth Circuit affirmed and suggestion for rehearing en banc was denied, and the Supreme Court noted probable jurisdiction. The Supreme Court, Justice Brennan, held that: (1) Act serves no identified secular purpose, and (2) Act has as its primary purpose the promotion of a particular religious belief and is thus unconstitutional. Affirmed.

FACTS:
Louisiana's "Creationism Act" forbids the teaching of the theory of evolution in public elementary and secondary schools unless accompanied by instruction in the theory of "creation science." The Act does not require the teaching of either theory unless the other is taught.
It defines the theories as "the scientific evidences for [creation or evolution] and inferences from those scientific evidences."

PROCEDURAL HISTORY:
Appellees, who include Louisiana parents, teachers, and religious leaders, challenged the Act's constitutionality in Federal District Court, seeking an injunction and declaratory relief. The District
Court granted summary judgment to appellees, holding that the Act violated the Establishment Clause of the First Amendment. The Court of Appeals affirmed.

ISSUE:

HOLDING:
1. The Act is facially invalid as violative of the Establishment Clause of the First Amendment, because it lacks a clear secular purpose.
2. The District Court did not err in granting summary judgment upon a finding that appellants had failed to raise a genuine issue of material fact. Appellants relied on the "uncontroverted" affidavits of scientists, theologians, and an education administrator defining creation science as "origin through abrupt appearance in complex form" and alleging that such a viewpoint constitutes a true scientific theory. The District Court, in its discretion, properly concluded that the postenactment testimony of these experts concerning the possible technical meanings of the Act's terms would not illuminate the contemporaneous purpose of the state legislature when it passed the Act. None of the persons making the affidavits produced by appellants participated in or contributed to the enactment of the law.

REASONING:
The Establishment Clause forbids the enactment of any law "respecting an establishment of religion." The Court has applied a three-pronged test to determine whether legislation comports with the Establishment Clause. First, the legislature must have adopted the law with a secular purpose. Second, the statute's principal or primary effect must be one that neither advances nor inhibits religion. Third, the statute must not result in an excessive entanglement of government with religion. Lemon v. Kurtzman. State action violates the Establishment Clause if it fails to Satisfy any of these prongs:

(a) The Act does not further its stated secular purpose of "protecting academic freedom." It does not enhance the freedom of teachers to teach what they choose and fails to further the goal of "teaching all of the evidence." Forbidding the teaching of evolution when creation science is not also taught undermines the provision of a comprehensive scientific education. Moreover, requiring the teaching of creation science with evolution does not give schoolteachers a flexibility that they did not already possess to supplant the present science curriculum with the presentation of theories, besides evolution, about the origin of life. Furthermore, the contention that the Act furthers a "basic concept of fairness" by requiring the teaching of all of the evidence on the subject is without merit. Indeed, the Act evinces a discriminatory preference for the teaching of creation science and against the teaching of evolution by requiring that curriculum guides be developed and resource services supplied for teaching creationism but not for teaching evolution, by limiting membership on the resource services panel to "creation scientists," and by forbidding school boards to discriminate against anyone who "chooses to be a creation-scientist" or to teach creation science, while failing to protect those who choose to teach other theories or who refuse to teach creation science. A law intended to maximize the comprehensiveness and effectiveness of science instruction would encourage the teaching of all scientific theories about human origins. Instead, this Act has the distinctly different purpose of discrediting evolution by counter-balancing its teaching at every turn with the teaching of creationism.

(b) The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind. The legislative history demonstrates that the term "creation science," as contemplated by the state legislature, embraces this religious teaching. The Act's primary purpose was to change the public school science curriculum to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety. Thus, the Act is designed either to promote the theory of creation science that embodies a particular religious tenet or to prohibit the teaching of a scientific theory disfavored by certain religious sects. In either case, the Act violates the First Amendment.

The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust

public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure. Furthermore, "[t]he public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools...."

Lemon's first prong focuses on the purpose that animated adoption of the Act. "The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of religion." In this case, appellants have identified no clear secular purpose for the Louisiana Act. While the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham. Historic and contemporaneous antagonisms between the teachings of certain religious denominations and the teaching of evolution are present in this case. The preeminent purpose of the Louisiana Legislature was clearly to advance the religious viewpoint that a supernatural being created humankind.

GOOD NEWS CLUB V. MILFORD CENTRAL SCHOOL

SUMMARY:
Christian club for children, a sponsor, and a member brought § 1983 action against public school, alleging that school's refusal to allow club to use school facilities violated, inter alia, their free speech rights. The United States District Court for the Northern District of New York granted school summary judgment, and club appealed. The United States Court of Appeals for the Second Circuit affirmed and certiorari was granted. The Supreme Court, Justice Thomas, J., held that: (1) school's exclusion of Christian children's club from meeting after hours at school based on its religious nature was unconstitutional viewpoint discrimination, and (2) school's viewpoint discrimination was not required to avoid violating the Establishment Clause. Reversed and remanded.

FACTS:
Under New York law, respondent Milford Central School (Milford) enacted a policy authorizing district residents to use its building after school for, among other things, (1) instruction in education, learning, or the arts and (2) social, civic, recreational, and entertainment uses pertaining to the community welfare. Stephen and Darleen Fournier, district residents eligible to use the school's facilities upon approval of their proposed use, are sponsors of the Good News Club, a private Christian organization for children ages 6 to 12. Pursuant to Milford's policy, they submitted a request to hold the Club's weekly after school meetings in the school. Milford denied the request on the ground that the proposed use—to sing songs, hear Bible lessons, memorize scripture, and pray--was the equivalent of religious worship prohibited by the community use policy.

PROCEDURAL HISTORY:
Petitioners (collectively, the Club), filed suit under 42 U.S.C. § 1983, alleging, inter alia, that the denial of the Club's application violated its free speech rights under the First and Fourteenth Amendments. The District Court ultimately granted Milford summary judgment, finding the Club's subject matter to be religious in nature, not merely a discussion of secular matters from a religious perspective that Milford otherwise permits. Because the school had not allowed other groups providing religious instruction to use its limited public forum, the court held that it could deny the Club access without engaging in unconstitutional viewpoint discrimination. In affirming, the Second Circuit rejected the Club's contention that Milford's restriction was unreasonable, and held that, because the Club's subject matter was quintessentially religious and its activities fell outside the bounds of pure moral and character development, Milford's policy was constitutional subject discrimination, not unconstitutional viewpoint discrimination.

ISSUES:
1. The first question is whether Milford Central School violated the free speech rights of the Good News Club when it excluded the Club from meeting after hours at the school.

2. The second question is whether any such violation is justified by Milford's concern that permitting the Club's activities would violate the Establishment Clause.

HOLDING:
1. Milford violated the Club's free speech rights when it excluded the Club from meeting after hours at the school.

2. Permitting the Club to meet on the school's premises would not have violated the Establishment Clause.

3. Because Milford has not raised a valid Establishment Clause claim, this Court does not address whether such a claim could excuse Milford's viewpoint discrimination.

REASONING:
Because the parties so agree, this Court assumes that Milford operates a limited public forum. A State establishing such a forum is not required to and does not allow persons to engage in every type of speech. It may be justified in reserving its forum for certain groups or the discussion of certain topics. The power to so restrict speech, however, is not without limits. The restriction must not discriminate against speech based on viewpoint and must be reasonable in light of the forum's purpose.

By denying the Club access to the school's limited public forum on the ground that the Club was religious in nature, Milford discriminated against the Club because of its religious viewpoint in violation of the Free Speech Clause. That exclusion is indistinguishable from the exclusions held violative of the Clause in Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384, where a school district precluded a private group from presenting films at the school based solely on the religious perspective of the films, and in Rosenberger, where a university refused to fund a student publication because it addressed issues from a religious perspective. The only apparent difference between the activities of Lamb's Chapel and the Club is the inconsequential distinction that the Club teaches moral lessons from a Christian perspective through live storytelling and prayer, whereas Lamb's Chapel taught lessons through films. Rosenberger also is dispositive: Given the obvious religious content of the publication there at issue, it cannot be said that the Club's activities are any more "religious" or deserve any less Free Speech Clause protection. This Court disagrees with the Second Circuit's view that something that is quintessentially religious or decidedly religious in nature cannot also be characterized properly as the teaching of morals and character development from a particular viewpoint. What matters for Free Speech Clause purposes is that there is no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for

their lessons. Because Milford's restriction is viewpoint discriminatory, the Court need not decide whether it is unreasonable in light of the forum's purposes.

Permitting the Club to meet on the school's premises would not have violated the Establishment Clause. Establishment Clause defenses similar to Milford's were rejected in Lamb's Chapel, where the Court found that, because the films would not have been shown during school hours, would not have been sponsored by the school, and would have been open to the public, not just to church members, and there was no realistic danger that the community would think that the district was endorsing religion--and in Widmar v. Vincent, where a university's forum was already available to other groups. Because the Club's activities are materially indistinguishable from those in Lamb's Chapel and Widmar, Milford's reliance on the Establishment Clause is unavailing. As in Lamb's Chapel, the Club's meetings were to be held after school hours, not sponsored by the school, and open to any student who obtained parental consent, not just to Club members. As in Widmar, Milford made its forum available to other organizations. The Court rejects Milford's attempt to distinguish those cases by emphasizing that its policy involves elementary school children who will perceive that the school is endorsing the Club and will feel coerced to participate because the Club's activities take place on school grounds, even though they occur during non-school hours. That argument is unpersuasive for a number of reasons. (1) Allowing the Club to speak on school grounds would ensure, not threaten, neutrality toward religion. Accordingly, Milford faces an uphill battle in arguing that the Establishment Clause compels it to exclude the Club. (2) To the extent the Court considers whether the community would feel coercive pressure to engage in the Club's activities, the relevant community is the parents who choose whether their children will attend Club meetings, not the children themselves. (3) Whatever significance it may have assigned in the Establishment Clause context to the suggestion that elementary school children are more impressionable than adults, the Court has never foreclosed private religious conduct during non-school hours merely because it takes place on school premises where elementary school children may be present. (4) Even if the Court were to consider the possible misperceptions by schoolchildren in deciding whether there is an Establishment Clause violation, the facts of this case simply do not support Milford's conclusion. Finally, it cannot be said that the danger that children would misperceive the endorsement of religion is any greater than the danger that they would perceive a hostility toward the religious viewpoint if the Club were excluded from the public forum. Because it is not convinced that there is any significance to the possibility that elementary school children may witness the Club's activities on school premises, the Court can find no reason to depart from Lamb's Chapel and Widmar.

HAZELWOOD SCHOOL DISTRICT ET AL. v. KUHLMEIER 1988

This case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum. Several students contend that school officials violated their First Amendment rights by deleting two pages of articles from the May 13, 1983, issue of the school newspaper, Spectrum.

FACTS:
Spectrum was written and edited by the Journalism II class at Hazelwood East. The newspaper was published every three weeks or so during the 1982-1983 school year. More than 4,500 copies of the newspaper were distributed during that year to students, school personnel, and members of the community. The Board of Education allocated funds from its annual budget for the printing of Spectrum. These funds were supplemented by proceeds from sales of the newspaper.

The practice at Hazelwood East during the spring 1983 semester was for the journalism teacher to submit page proofs of each Spectrum issue to Principal Reynolds for his review prior to publication. The principal objected to articles about teen pregnancy and divorce.

The Hazelwood East Curriculum Guide described the Journalism II course as a "laboratory situation in which the students publish the school newspaper applying skills they have learned in Journalism I." The lessons that were to be learned from the Journalism II course, according to the Curriculum Guide, included development of journalistic skills under deadline pressure, "the legal, moral, and ethical restrictions imposed upon journalists within the school community," and "responsibility and acceptance of criticism for articles of opinion." Journalism II was taught by a faculty member during regular class hours. Students received grades and academic credit for their performance in the course.

ANALYSIS:
A school need not tolerate student speech that is inconsistent with its "basic educational mission," Fraser, supra, at 685, even though the government could not censor similar speech outside the school. [*14] Accordingly, we held in Fraser that a student could be disciplined for having delivered a speech that was "sexually explicit" but not legally obscene at an official school assembly, because the school was entitled to "disassociate itself" from the speech in a manner that would demonstrate to others that such vulgarity is "wholly inconsistent with the 'fundamental values' of public school education." 478 U.S., at 685-686. We thus recognized that "[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board," id., at 683, rather than with the federal courts.

The question whether the First Amendment requires a school to tolerate particular student speech -- the question that we addressed in Tinker [Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969)]-- is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," Fraser, 478 U.S., at 685, not only from speech that would "substantially interfere with [its] work . . . or impinge upon the rights of other students," Tinker, 393 U.S., at 509, but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. n4 A school must be able to set high standards for the student speech that is disseminated under its auspices -- standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the "real" world -- and may refuse to disseminate student speech that does not meet those standards. [*23] In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting. A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with "the shared values of a civilized social order," Fraser, supra, at 683, or to associate the school with any position other than neutrality on matters of political controversy. Otherwise, the schools would be unduly constrained from fulfilling their role as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

HOLDING:
Principal can exercise discretion concerning the contents of a school newspaper.

LAMB'S CHAPEL AND JOHN STEIGERWALD, PETITIONERS v. CENTER MORICHES UNION FREE SCHOOL DISTRICT ET AL. 1993

ISSUE:
The issue in this case is whether, against this background of state law, it violates the Free Speech Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment, to deny a church access to school premises to exhibit for public viewing and for assertedly religious purposes, a film series dealing with family and child-rearing issues faced by parents today.

FACTS:
Petitioners (Church) are Lamb's Chapel, an evangelical church in the community of Center Moriches, and its pastor John Steigerwald. Twice the Church applied to the District for permission to use school facilities to show a six-part film series containing lectures by Doctor James Dobson. The film series would discuss Dr. Dobson's views on the undermining influences of the media that could only be counterbalanced by returning to traditional, Christian family values instilled at an early stage. The School District denied the first application, saying that "this film does appear to be church related and therefore your request must be refused." The second application for permission to use school premises for showing the film series, which described it as a "Family oriented movie -- from a Christian perspective," was denied using identical language.

The Church also presses the claim, rejected by both courts below, that the rejection of its application to exhibit its film series violated the Establishment Clause because it and Rule 7's categorical refusal to permit District property to be used for religious purposes demonstrate hostility to religion. Because we reverse on another ground, we need not decide what merit this submission might have.

With respect to public property that is not a designated public forum open for indiscriminate public use for communicative purposes, we have said that "control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral." The Court of Appeals appeared to recognize that the total ban on using District property for religious purposes could survive First Amendment challenge only if excluding this category of speech was reasonable and viewpoint neutral. The court's conclusion in this case was that Rule 7 met this test. We cannot agree with this holding, for Rule 7 was unconstitutionally applied in this case. That all religions and all uses for religious purposes are treated alike under Rule 7, however, does not answer the critical question whether it discriminates on the basis of viewpoint to permit school property to be used for the presentation of all views about family issues and child rearing except those dealing with the subject matter from a religious standpoint.

There is no suggestion from the courts below or from the District or the State that

a lecture or film about child rearing and family values would not be a use for social or civic purposes otherwise permitted by Rule 10. That subject matter is not one that the District has placed off limits to any and all speakers. Nor is there any indication in the record before us that the application to exhibit the particular film series involved here was, or would have been, denied for any reason other than the fact that the presentation would have been from a religious perspective. In our view, denial on that basis was plainly invalid under [*17] our holding in Cornelius, supra, at 806, that

"although a speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum . . . or if he is not a member of the class of speakers for whose especial benefit the forum was created . . . , the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject."

The film series involved here no doubt dealt with a subject otherwise permissible under Rule 10, and its exhibition was denied solely because the series dealt with the subject from a religious standpoint. The principle that has emerged from our cases "is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others."

The District, as a respondent, would save its judgment below on the ground that to permit its property to be used for religious purposes would be an establishment of religion forbidden by the First Amendment. This Court suggested in Widmar v. Vincent, 454 U.S. 263, 271, 70 L. Ed. 2d 440, 102 S. Ct. 269 (1981), that the interest of the State in avoiding an Establishment Clause violation "may be [a] compelling" one justifying an abridgment of free speech otherwise protected by the First Amendment; but the Court went on to hold that permitting use of university property for religious purposes under the open access policy involved there would not be incompatible with the Court's Establishment Clause cases.

We have no more trouble than did the Widmar Court in disposing of the claimed defense on the ground that the posited fears of an Establishment Clause violation are unfounded. The showing of this film series would not have been during school hours, would not have been [*19] sponsored by the school, and would have been open to the public, not just to church members. The District property had repeatedly been used by a wide variety of private organizations. Under these circumstances, as in Widmar, there would have been no realistic danger that the community would think that the District was endorsing religion or any particular creed, and any benefit to religion or to the Church would have been no more than incidental.

HOLDING:
School may not refuse to permit religious speakers from using school property to discuss issues of general concern simply because they are religious.

Justice Scalia, concurring said:

I cannot join for yet another reason: the Court's statement that the proposed use of the school's facilities is constitutional because (among other things) it would not signal endorsement of religion in general. Ante, at 395. What a strange notion, that a Constitution which itself gives "religion in general" preferential treatment (I refer to the Free Exercise Clause) forbids endorsement of religion in general. The attorney general of New York not only agrees with that strange notion, he has an explanation for it: "Religious advocacy," he writes, "serves the community only in the eyes of its adherents and yields a benefit only to those who already believe." Brief for Respondent Attorney General 24. That was not the view of those who adopted our Constitution, who believed that the public virtues inculcated by religion are a public good. It suffices to point out that during the summer of 1789, when it was in the process of drafting the First Amendment, Congress enacted the Northwest Territory Ordinance that the Confederation Congress had adopted in 1787 -- Article III of which provides: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means [*28] of education shall forever be encouraged." Unsurprisingly, then, indifference to "religion in general" is not what our cases, both old and recent, demand. See, e.g., Zorach v. Clauson, 343 U.S. 306, 313-314, 96 L. Ed. 954, 72 S. Ct. 679 (1952) ("When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions"); Walz v. Tax Comm'n of New York City, 397 U.S. 664, 25 L. Ed. 2d 697, 90 S. Ct. 1409 (1970) (upholding property tax exemption for church property); Lynch, 465 U.S. at 673 (the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions . . . . Anything less would require the 'callous indifference' we have said was never intended" (citations omitted)); id., at 683 ("Our precedents plainly contemplate that on occasion some advancement of religion will result from governmental action"); Marsh, supra; Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 97 L. Ed. 2d 273, 107 S. Ct. 2862 (1987) (exemption for religious organizations from certain provisions of Civil Rights Act).

ROSENBERGER V. RECTOR AND VISITORS OF UNIVERSITY OF VIRGINIA

SUMMARY:
University student organization which published newspaper with Christian editorial viewpoint brought action against university challenging denial of funds from fund created by university to make payments to outside contractors for printing costs of publications of student groups. The United States District Court for the Western District of Virginia, 795 F.Supp. 175, granted summary judgment in favor of university, and students appealed. The Court of Appeals for the Fourth Circuit affirmed, 18 F.3d 269, and certiorari was granted. The Supreme Court, Justice Kennedy, held that: (1) denial of funding amounted to viewpoint discrimination; (2) exclusion of several views on an issue is just as offensive to the First Amendment as the exclusion of only one; (3) scarcity of funds does not permit university to discriminate on the basis of viewpoint; and (4) program was neutral toward religion, so that provision of funding would not violate establishment clause. Reversed.

FACTS:
An understanding of the case requires a somewhat detailed description of the program the University created to support extracurricular student activities on its campus. Before a student group is eligible to submit bills from its outside contractors for payment by the fund described below, it must become a "Contracted Independent Organization" (CIO). CIO status is available to any group the majority of whose members are students, whose managing officers are fulltime students, and that complies with certain procedural requirements. A CIO must file its constitution with the University; must pledge not to discriminate in its membership; and must include in dealings with third parties and in all written materials a disclaimer, stating that the CIO is independent of the University and that the University is not responsible for the CIO. CIO's enjoy access to University facilities, including meeting rooms and computer terminals. *824 A standard agreement signed between each CIO and the University provides that the benefits and opportunities afforded to CIO's "should not be misinterpreted as meaning that those organizations are part of or controlled by the University, that the University is responsible for the organizations' contracts or other acts or omissions, or that the
University approves of the organizations' goals or activities."

All CIO's may exist and operate at the University, but some are also entitled to apply for funds from the Student Activities Fund (SAF).
Established and governed by University Guidelines, the purpose of the SAF is to support a broad range of extracurricular student activities that "are related to the educational purpose of the University." The SAF is based on the University's "recogni[tion] that the availability of a wide range of opportunities" for its students "tends to enhance the University environment." The Guidelines require that it be administered "in a manner consistent with the educational purpose of the University as well as with state and federal law." The SAF receives its money

from a mandatory fee of $14 per semester assessed to each full-time student. The Student Council, elected by the students, has the initial authority to disburse the funds, but its actions are subject to review by a faculty body chaired by a designee of the Vice President for Student Affairs. Some, but not all, CIO's may submit disbursement requests to the SAF. The
Guidelines recognize 11 categories of student groups that may seek payment to third-party contractors because they "are related to the educational purpose of the University of Virginia." One of these is "student news, information, opinion, entertainment, or academic communications media groups." The Guidelines also specify, however, that the costs of certain activities of CIO's that are otherwise eligible for funding will not be reimbursed by the SAF. The student activities that are excluded from SAF support are religious activities, philanthropic contributions and activities, political activities, activities that would jeopardize the University's tax-exempt status, those which involve payment of honoraria or similar fees, or social entertainment or related expenses. The prohibition on "political activities" is defined so that it is limited to electioneering and lobbying. The Guidelines provide that "[t]hese restrictions on funding political activities are not intended to preclude funding of any otherwise eligible student organization which ... espouses particular positions or ideological viewpoints, including those that may be unpopular or are not generally accepted." A "religious activity," by contrast, is defined as any activity that "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality."

The Guidelines prescribe these criteria for determining the amounts of third-party disbursements that will be allowed on behalf of each eligible student organization: the size of the group, its financial self-sufficiency, and the University-wide benefit of its activities. If an organization seeks SAF support, it must submit its bills to the Student Council, which pays the organization's creditors upon determining that the expenses are appropriate. No direct payments are made to the student groups. During the 1990-1991 academic year, 343 student groups qualified as CIO's. One hundred thirty-five of them applied for support from the SAF, and 118 received funding. Fifteen of the groups were funded as "student news, information, opinion, entertainment, or academic communications media groups."

Petitioners' organization, Wide Awake Productions (WAP), qualified as a CIO. Formed by petitioner Ronald Rosenberger and other undergraduates in 1990, WAP was established "[t]o publish a magazine of philosophical and religious expression," "[t]o facilitate discussion which fosters an atmosphere of sensitivity to and tolerance of Christian viewpoints," and "[t]o provide a unifying focus for Christians of multicultural backgrounds." WAP publishes Wide Awake: A Christian Perspective at the University of Virginia. The paper's Christian viewpoint was evident from the first issue, in which its editors wrote that the journal "offers a Christian perspective on both personal and community issues, especially those relevant to college students at the University of Virginia." The editors committed the paper to a two-fold mission: "to challenge Christians to live,

in word and deed, according to the faith they proclaim and to encourage students to consider what a personal relationship with Jesus Christ means." The first issue had articles about racism, crisis pregnancy, stress, prayer, C.S. Lewis' ideas about evil and free will, and reviews of religious music. In the next two issues, Wide Awake featured stories about homosexuality, Christian missionary work, and eating disorders, as well as music reviews and interviews with University professors. Each page of Wide Awake, and the end of each article or review, is marked by a cross. The advertisements carried in Wide Awake also reveal the Christian perspective of the journal. For the most part, the advertisers are churches, centers for Christian study, or Christian bookstores. By June 1992, WAP had distributed about 5,000 copies of Wide Awake to University students, free of charge.

WAP had acquired CIO status soon after it was organized. This is an important consideration in this case, for had it been a "religious organization," WAP would not have been accorded CIO status. As defined by the Guidelines, a "[r]eligious [o]rganization" is "an organization whose purpose is to practice a devotion to an acknowledged ultimate reality or deity." At no stage in this controversy has the University contended that WAP is such an organization.

A few months after being given CIO status, WAP requested the SAF to pay its printer $5,862 for the costs of printing its newspaper. The Appropriations Committee of the Student Council denied WAP's request on the ground that Wide Awake was a "religious activity" within the meaning of the Guidelines, i.e., that the newspaper "promote[d] or manifest[ed] a particular belie[f] in or about a deity or an ultimate reality." It made its determination after examining the first issue. WAP appealed the denial to the full Student Council, contending that WAP met all the applicable Guidelines and that denial of SAF support on the basis of the magazine's religious perspective violated the Constitution. The appeal was denied without further comment, and WAP appealed to the next level, the Student Activities Committee. In a letter signed by the Dean of Students, the committee sustained the denial of funding.

PROCEDURAL HISTORY:
Having no further recourse within the University structure, WAP, Wide Awake, and three of its editors and members filed suit in the United States District Court for the Western District of Virginia, challenging the SAF's action as violative of Rev.Stat. § 1979, 42 U.S.C. § 1983. They alleged that refusal to authorize payment of the printing costs of the publication, solely on the basis of its religious editorial viewpoint, violated their rights to freedom of speech and press, to the free exercise of religion, and to equal protection of the law. They relied also upon Article I of the Virginia Constitution and the Virginia Act for Religious Freedom, Va.Code Ann. §§ 57- 1, 57-2 (1986 and Supp.1994), but did not pursue those theories on appeal. The suit sought damages for the costs of printing the paper, injunctive and declaratory relief, and attorney's fees. On cross-motions for summary judgment, the District Court ruled for the University, holding that denial

of SAF support was not an impermissible content or viewpoint discrimination *828 against petitioners' speech, and that the University's Establishment Clause concern over its "religious activities" was a sufficient justification for denying payment to third-party contractors. The court did not issue a definitive ruling on whether reimbursement, had it been made here, would or would not have violated the Establishment Clause.

The United States Court of Appeals for the Fourth Circuit, in disagreement with the District Court, held that the Guidelines did discriminate on the basis of content. It ruled that, while the State need not underwrite speech, there was a presumptive violation of the Speech Clause when viewpoint discrimination was invoked to deny third-party payment otherwise available to CIO's. The Court of Appeals affirmed the judgment of the District Court nonetheless, concluding that the discrimination by the University was justified by the "compelling interest in maintaining strict separation of church and state." We granted certiorari.

ISSUES:
1. Is the regulation invoked to deny SAF support, both in its terms and in its application to these petitioners, a denial of their right of free speech guaranteed by the First Amendment?

2. Is the violation following from the University's action excused by the necessity of complying with the Constitution's prohibition against state establishment of religion?

HOLDING:
1. The Guideline invoked to deny SAF support, both in its terms and in its application to these petitioners, is a denial of their right of free speech.

2. The violation following from the University's denial of SAF support to petitioners is not excused by the necessity of complying with the Establishment Clause.

REASONING:
1. It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. Other principles follow from this precept. In the realm of private speech or expression, government regulation may not favor one speaker over another.
Discrimination against speech because of its message is presumed to be unconstitutional. These rules informed our determination that the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression. When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must

abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.

(a) The Guideline violates the principles governing speech in limited public forums, which apply to the SAF under, e.g., Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37. In determining whether a State is acting within its power to preserve the limits it has set for such a forum so that the exclusion of a class of speech there is legitimate, this Court has observed a distinction between, on the one hand, content discrimination-- i.e., discrimination against speech because of its subject matter-- which may be permissible if it preserves the limited forum's purposes, and, on the other hand, viewpoint discrimination-- i.e., discrimination because of the speaker's specific motivating ideology, opinion, or perspective--which is presumed impermissible when directed against speech otherwise within the forum's limitations. The most recent and most apposite case in this area is Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384, in which the Court held that permitting school property to be used for the presentation of all views on an issue except those dealing with it from a religious standpoint constitutes prohibited viewpoint discrimination. Here, as in that case, the State's actions are properly interpreted as unconstitutional viewpoint discrimination rather than permissible line-drawing based on content: By the very terms of the SAF prohibition, the University does not exclude religion as a subject matter, but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints.
(b) The University's attempt to escape the consequences of Lamb's Chapel by urging that this case involves the provision of funds rather than access to facilities is unavailing. Although it may regulate the content of expression when it is the speaker or when it enlists private entities to convey its own message, the University may not discriminate based on the viewpoint of private persons whose speech it subsidizes. Its argument that the scarcity of public money may justify otherwise impermissible viewpoint discrimination among private speakers is simply wrong.

(c) Vital First Amendment speech principles are at stake here. The Guideline at issue has a vast potential reach: The term "promotes" as used there would comprehend any writing advocating a philosophic position that rests upon a belief (or nonbelief) in a deity or ultimate reality, while the term "manifests" would bring within the prohibition any writing resting upon a premise presupposing the existence (or nonexistence) of a deity or ultimate reality. It is difficult to name renowned thinkers whose writings would be accepted, save perhaps for articles disclaiming all connection to their ultimate philosophy.

2. (a) The governmental program at issue is neutral toward religion. Such neutrality is a significant factor in upholding programs in the face of Establishment Clause attack, and the guarantee of neutrality is not offended where, as here, the government follows neutral criteria and evenhanded policies to extend benefits to recipients whose ideologies and viewpoints, including

religious ones, are broad and diverse. There is no suggestion that the University created its program to advance religion or aid a religious cause. The SAF's purpose is to open a forum for speech and to support various student enterprises, including the publication of newspapers, in recognition of the diversity and creativity of student life. The SAF Guidelines have a separate classification for, and do not make third-party payments on behalf of, "religious organizations," and WAP did not seek a subsidy because of its Christian editorial viewpoint; it sought funding under the Guidelines as a "student ... communications ... grou[p]." Neutrality is also apparent in the fact that the University has taken pains to disassociate itself from the private speech involved in this case. The program's neutrality distinguishes the student fees here from a tax levied for the direct support of a church or group of churches, which would violate the Establishment Clause.

(c) This case is not controlled by the principle that special Establishment Clause dangers exist where the government makes direct money payments to sectarian institutions, since it is undisputed that no public funds flow directly into WAP's coffers under the program at issue. A public university does not violate the Establishment Clause when it grants access to its facilities on a religion-neutral basis to a wide spectrum of student groups, even if some of those groups would use the facilities for devotional exercises. This is so even where the upkeep, maintenance, and repair of those facilities are paid out of a student activities fund to which students are required to contribute. There is no difference in logic or principle, and certainly no difference of constitutional significance, between using such funds to operate a facility to which students have access, and paying a third-party contractor to operate the facility on its behalf. That is all that is involved here: The University provides printing services to a broad spectrum of student newspapers. Were the contrary view to become law, the University could only avoid a constitutional violation by scrutinizing the content of student speech, lest it contain too great a religious message. Such censorship would be far more inconsistent with the Establishment Clause's dictates than would governmental provision of secular printing services on a religion-blind basis.

Justice O'CONNOR, concurring.
"We have time and again held that the government generally may not treat people differently based on the God or gods they worship, or do not worship." This insistence on government neutrality toward religion explains why we have held that schools may not discriminate against religious groups by denying them equal access to facilities that the schools make available to all. See Lamb's Chapel & Widmar v. Vincent. Withholding access would leave an impermissible perception that religious activities are disfavored: "[T]he message is one of neutrality rather than endorsement; if a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion." "The Religion Clauses prohibit the government from favoring religion, but they provide no warrant for discriminating against religion." Neutrality, in both form and effect, is one hallmark of the Establishment Clause.

As Justice SOUTER demonstrates, however, there exists another axiom in the history and precedent of the Establishment Clause. "Public funds may not be used to endorse the religious message." Our cases have permitted some government funding of secular functions performed by sectarian organizations. (funding for sex education); (cash grant to colleges not to be used for "sectarian purposes"); (funding of health care for indigent patients). These decisions, however, provide no precedent for the use of public funds to finance religious activities.

This case lies at the intersection of the principle of government neutrality and the prohibition on state funding of religious activities. It is clear that the University has established a generally applicable program to encourage the free exchange of ideas by its students, an expressive marketplace that includes some 15 student publications with predictably divergent viewpoints. It is equally clear that petitioners' viewpoint is religious and that publication of Wide Awake is a religious activity, under both the University's regulation and a fair reading of our precedents. Not to finance Wide Awake, according to petitioners, violates the principle of neutrality by sending a message of hostility toward religion. To finance
Wide Awake, argues the University, violates the prohibition on direct state funding of religious activities.

When two bedrock principles so conflict, understandably neither can provide the definitive answer. Reliance on categorical platitudes is unavailing. Resolution instead depends on the hard task of judging--sifting through the details and determining whether the challenged program offends the Establishment Clause. Such judgment requires courts to draw lines, sometimes quite fine, based on the particular facts of each case. ("Our jurisprudence in this area is of necessity one of line-drawing"). As Justice Holmes observed in a different context: "Neither are we troubled by the question where to draw the line. That is the question in pretty much everything worth arguing in the law. Day and night, youth and age are only types."

In Witters v. Washington Dept. of Servs. for Blind, 474 U.S. 481 (1986), for example, we unanimously held that the State may, through a generally applicable financial aid program, pay a blind student's tuition at a sectarian theological institution. The Court so held, however, only after emphasizing that "vocational assistance provided under the Washington program is paid directly to the student, who transmits it to the educational institution of his or her choice." The benefit to religion under the program, therefore, is akin to a public servant contributing her government paycheck to the church. We thus resolved the conflict between the neutrality principle and the funding prohibition, not by permitting one to trump the other, but by relying on the elements of choice peculiar to the facts of that case: "The aid to religion at issue here is the result of petitioner's private choice. No reasonable observer is likely to draw from the facts

before us an inference that the State itself is endorsing a religious practice or belief."

The need for careful judgment and fine distinctions presents itself even in extreme cases. Everson v. Board of Ed. of Ewing, 330 U.S. 1 (1947), provided perhaps the strongest exposition of the no-funding principle: "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." Yet the Court approved the use of public funds, in a general program, to reimburse parents for their children's bus fares to attend Catholic schools. Although some would cynically dismiss the Court's disposition as inconsistent with its protestations, the decision reflected the need to rely on careful judgment--not simple categories--when two principles, of equal historical and jurisprudential pedigree, come into unavoidable conflict.

So it is in this case. The nature of the dispute does not admit of categorical answers, nor should any be inferred from the Court's decision today. Instead, certain considerations specific to the program at issue lead me to conclude that by providing the same assistance to Wide Awake that it does to other publications, the University would not be endorsing the magazine's religious perspective.

SANTA FE INDEPENDENT SCHOOL DISTRICT v. JANE DOE, INDIVIDUALLY AND AS NEXT FRIEND FOR HER MINOR CHILDREN, JANE AND JOHN DOE, ET AL. 2000

The school district adopted a policy that permits, but does not require, a nonsectarian, nonproselytizing prayer initiated and led by a student at all home games.

ISSUE:
"Whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause." It does.

"The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed [*21] by the Establishment Clause. 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 (citations omitted) (quoting Lynch v. Donnelly, 465 U.S. 668, 678, 79 L. Ed. 2d 604, 104 S. Ct. 1355 (1984)).

[1B] [5]In this case the District first argues that this principle is inapplicable to its October policy because the messages are private student speech, not public speech. It reminds us that "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens, 496 U.S. 226, 250, 110 L. Ed. 2d 191, 110 S. Ct. 2356 (1990) (opinion of O'CONNOR, J.). We certainly agree with that distinction, but we are not persuaded that the pregame invocations should be regarded as "private speech."

[1C] [6A] [7]These invocations are authorized by a government policy and take place on government property [*22] at government-sponsored school-related events. Of course, not every message delivered under such circumstances is the government's own.

The District has attempted to disentangle itself from the religious messages by developing the two-step student election process. The text of the October policy, however, exposes the extent of the school's entanglement. The elections take place at all only because the school "board has chosen to permit students to deliver a brief invocation and/or message." App. 104 (emphasis added). The elections thus "shall" be conducted "by the high school student council" and "upon advice and direction of the high school principal." Id. at 104-105. The decision whether to deliver [*28] a message is first made by majority vote of the entire student body, followed by a choice of the speaker in a separate, similar majority election. Even though the particular words used by the speaker are not

determined by those votes, the policy mandates that the "statement or invocation" be "consistent with the goals and purposes of this policy," which are "to solemnize the event, to promote good sportsmanship and student safety, and to establish the appropriate environment for the competition."

The actual or perceived endorsement of the message, moreover, is established by factors beyond just the text of the policy. Once the student speaker is selected and the message composed, the invocation is then delivered to a large audience assembled as part of a regularly [*31] scheduled, school-sponsored function conducted on school property. The message is broadcast over the school's public address system, which remains subject to the control of school officials. It is fair to assume that the pregame ceremony is clothed in the traditional indicia of school sporting events, which generally include not just the team, but also cheerleaders and band members dressed in uniforms sporting the school name and mascot. In this context the members of the listening audience must perceive the pregame message as a public expression of the views of the majority of the student body delivered with the approval of the school administration. In cases involving state participation in a religious activity, one of the relevant questions is "whether an objective observer, [*32] acquainted with the text, legislative history, and implementation of the statute, would perceive it as a state endorsement of prayer in public schools."

School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherants "that they are outsiders, not full members of the political community, and an accompanying message to adherants that they are insiders, favored members of the political community." Lynch v. Donnelly, 465 U.S. at 688 (1984) (O'CONNOR, J., concurring). The delivery of such a message -- over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school [*35] policy that explicitly and implicitly encourages public prayer -- is not properly characterized as "private" speech.

This policy likewise does not survive a facial challenge because it impermissibly imposes upon the student body a majoritarian election on the issue of prayer. Through its election scheme, the District has established a governmental electoral mechanism that turns the school into a forum for religious debate. It further empowers the student body majority with the authority to subject students of minority views to constitutionally improper messages. The award of that power alone, regardless of the students' ultimate use of it, is not acceptable. n23 Like the referendum in Board of Regents of Univ. of Wis. System v. Southworth, 529 U.S. 217, 146 L. Ed. 2d 193, 120 S. Ct. 1346 (2000), the election mechanism established by the District undermines the essential protection of minority viewpoints. Such a system encourages divisiveness along religious lines and threatens the imposition of coercion upon those students not desiring to participate in a religious exercise. Simply by establishing this school-related procedure, which entrusts the inherently nongovernmental subject of religion to a

majoritarian vote, a constitutional violation has occurred. n24 No further injury is required for the policy to fail a facial challenge.

THE CHIEF JUSTICE accuses us of "essentially invalidating all student elections," see post, at 5. This is obvious hyperbole. We have concluded that the resulting religious message under this policy would be attributable to the school, not just the student, see supra, at 9-18. For this reason, we now hold only that the District's decision to allow the student majority to control whether students of minority views are subjected to a school-sponsored prayer violates the Establishment Clause.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court distorts existing precedent to conclude that the school district's student-message program is invalid on its face under the Establishment Clause. But even more disturbing than its holding is the tone of the Court's opinion; it bristles with hostility to all things religious in public life. Neither the holding nor the tone of the opinion is faithful to the meaning of the Establishment Clause, when it is recalled that George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many [*49] and signal favors of Almighty God." Presidential Proclamation, 1 Messages and Papers of the Presidents, 1789-1897, p. 64 (J. Richardson ed. 1897).

But the Court ignores these possibilities by holding that merely granting the student body the power to elect a speaker that may choose to pray, "regardless of the students' ultimate use of it, is not acceptable." Ante, at 25. The Court so holds despite that any speech that may occur as a result of the election process here would be private, not government, speech. The elected student, not the government, would choose what to say. Support for the Court's holding cannot be found in any of our cases. And it essentially invalidates all student elections. A newly elected student body president, or even a newly elected prom king or queen, could use opportunities for public speaking to say prayers. Under the Court's view, the mere grant of power to the students to vote for such offices, in light of the fear that those elected might publicly pray, violates the Establishment Clause.

WIDMAR V. VINCENT, 454 U.S. 263 (1981)

SUMMARY:
Members of registered religious group at state university brought action challenging, as violative of First Amendment, university policy of excluding religious groups from the university's open forum policy whereby university facilities were generally available for activities of registered student groups. On writ of certiorari, the Supreme
Court, Justice Powell, held that: (1) having created a forum generally open for use by student groups the university was required to justify its discriminations and exclusions under applicable constitutional norms; and (2) challenged exclusionary policy, as based on content of the religious speech, violated fundamental principle that state regulation of speech be content neutral; and (3) by itself, state's interest in achieving greater separation of church and state than is already ensured under the establishment clause was not sufficiently "compelling" to justify discrimination against instant group.

FACTS:
The University of Missouri at Kansas City, a state university, makes its facilities generally available for the activities of registered student groups. A registered student religious group that had previously received permission to conduct its meetings in University facilities was informed that it could no longer do so because of a University regulation prohibiting the use of University buildings or grounds "for purposes of religious worship or religious teaching." Members of the group then brought suit in Federal District Court, alleging that the regulation violated, inter alia, their rights to free exercise of religion and freedom of speech under the First Amendment.

It is the stated policy of the University of Missouri at Kansas City to encourage the activities of student organizations. The University officially recognizes over 100 student groups. It routinely provides University facilities for the meetings of registered organizations. Students pay an activity fee of $41 per semester (1978-1979) to help defray the costs to the University.

From 1973 until 1977 a registered religious group named Cornerstone regularly sought and received permission to conduct its meetings in
University facilities. Cornerstone is an organization of evangelical Christian students from various denominational backgrounds. According to an affidavit filed in 1977, "perhaps twenty students ... participate actively in Cornerstone and form the backbone of the campus organization."
Cornerstone held its on-campus meetings in classrooms and in the student center. These meetings were open to the public and attracted up to 125 students. A typical Cornerstone meeting included prayer, hymns, Bible commentary, and discussion of religious views and experiences.

In 1977, however, the University informed the group that it could no longer meet in University buildings. The exclusion was based on a regulation, adopted by the Board of Curators in 1972, that prohibits the use of University buildings or grounds "for purposes of religious worship or religious teaching." The pertinent regulations provide as follows: No University buildings or grounds (except chapels as herein provided) may be used for purposes of religious worship or religious teaching by either student or nonstudent groups.... The general prohibition against use of University buildings and grounds for religious worship or religious teaching is a policy required, in the opinion of The Board of Curators, by the Constitution and laws of the State and is not open to any other construction.

PROCEDURAL HISTORY:
Eleven University students, all members of Cornerstone, brought suit to challenge the regulation in the Federal District Court for the Western District of Missouri. They alleged that the University's discrimination against religious activity and discussion violated their rights to free exercise of religion, equal protection, and freedom of speech under the First and Fourteenth Amendments to the Constitution of the United States.

Upon cross-motions for summary judgment, the District Court upheld the challenged regulation. It found the regulation not only justified but also required by the Establishment Clause of the Federal Constitution. The court reasoned the State could not provide facilities for religious use without giving prohibited support to an institution of religion. The District Court rejected the argument that the University could not discriminate against religious speech on the basis of its content. It found religious speech entitled to less protection than other types of expression.

The Court of Appeals for the Eighth Circuit reversed. Rejecting the analysis of the District Court, it viewed the University regulation as a content-based discrimination against religious speech, for which it could find no compelling justification. The court held that the Establishment Clause does not bar a policy of equal access, in which facilities are open to groups and speakers of all kinds. According to the Court of Appeals, the "primary effect" of such a policy would not be to advance religion, but rather to further the neutral purpose of developing students' " 'social and cultural awareness as well as [their] intellectual curiosity.'

ISSUE:
This case presents the question whether a state university, which makes its facilities generally available for the activities of registered student groups, may close its facilities to a registered student group desiring to use the facilities for religious worship and religious discussion.

HOLDING:
The University's exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral. (a) Having created a forum generally open for use by student groups, the University, in order to justify discriminatory exclusion from such forum based on the religious content of a group's intended speech, must satisfy the standard of review appropriate to content-based exclusions; i.e., it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. (b) Although the University's interest in complying with its constitutional obligations under the Establishment Clause may be characterized as compelling, an "equal access" policy would not be incompatible with that Clause. A policy will not offend the Establishment Clause if it can pass the following three-pronged test: (1) It has a secular legislative purpose; (2) its principal or primary effect would be neither to advance nor to inhibit religion; and (3) it does not foster "an excessive government entanglement with religion." Here, it is conceded that an "equal access" policy would meet the first and third prongs of the test. In the context of this case and in the absence of any evidence that religious groups will dominate the University's forum, the advancement of religion would not be the forum's "primary effect." An "equal access" policy would therefore satisfy the test's second prong as well. (c) The State's interest in achieving greater separation of church and State than is already ensured under the Establishment Clause is not sufficiently "compelling" to justify content-based discrimination against religious speech of the student group in question.

REASONING:
Through its policy of accommodating their meetings, the
University has created a forum generally open for use by student groups. Having done so, the University has assumed an obligation to justify its discriminations and exclusions under applicable constitutional norms. The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place. Although a State may conduct business in private session, "[w]here the State has opened a forum for direct citizen involvement," exclusions bear a heavy burden of justification.

This Court has recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum. "The college classroom with its surrounding environs is peculiarly 'the marketplace of ideas.' Moreover, the capacity of a group or individual "to participate in the intellectual give and take of campus debate ... [would be] limited by denial of access to the customary media for communicating with the administration, faculty members, and other students." We therefore have held that students enjoy First Amendment rights of speech and association on the campus, and that the "denial [to particular groups] of use of campus facilities for meetings and other appropriate purposes" must be subjected to the level of scrutiny appropriate to any form of prior restraint.

At the same time, however, our cases have recognized that First Amendment rights must be analyzed "in light of the special characteristics of the school environment." We continue to adhere to that view. A university differs in significant respects from public forums such as streets or parks or even municipal theaters. A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and nonstudents alike, or that a university must grant free access to all of its grounds or buildings.

Here the UMKC has discriminated against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion. These are forms of speech and association protected by the First Amendment. In order to justify discriminatory exclusion from a public forum based on the religious content of a group's intended speech, the University must therefore satisfy the standard of review appropriate to content-based exclusions. It must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.

"It is to be remembered that the effect of the College's denial of recognition was a form of prior restraint, denying to petitioners' organization the range of associational activities described above. While a college has a legitimate interest in preventing disruption on the campus, which ... may justify such restraint, a 'heavy burden' rests on the college to demonstrate the appropriateness of that action."

In this case the University claims a compelling interest in maintaining strict separation of church and State. It derives this interest from the "Establishment Clauses" of both the Federal and Missouri Constitutions. The University first argues that it cannot offer its facilities to religious groups and speakers on the terms available to other groups without violating the Establishment Clause of the Constitution of the United States. We agree that the interest of the University in complying with its constitutional obligations may be characterized as compelling. It does not follow, however, that an "equal access" policy would be incompatible with this Court's Establishment Clause cases. Those cases hold that a policy will not offend the Establishment Clause if it can pass a three-pronged test: "First, the [governmental policy] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally, the [policy] must not foster 'an excessive government entanglement with religion."

In this case two prongs of the test are clearly met. Both the District Court and the Court of Appeals held that an open-forum policy, including nondiscrimination against religious speech, would have a secular purpose and would avoid entanglement with religion. But the District Court concluded, and the

University argues here, that allowing religious groups to share the limited public forum would have the "primary effect" of advancing religion.

It is the avowed purpose of UMKC to provide a forum in which students can exchange ideas. The University argues that use of the forum for religious speech would undermine this secular aim. But by creating a forum the University does not thereby endorse or promote any of the particular ideas aired there. Undoubtedly many views are advocated in the forum with which the University desires no association.
Because this case involves a forum already made generally available to student groups, it differs from those cases in which this Court has invalidated statutes permitting school facilities to be used for instruction by religious groups, but not by others. In those cases the school may appear to sponsor the views of the speaker.

The University has opened its facilities for use by student groups, and the question is whether it can now exclude groups because of the content of their speech. In this context we are unpersuaded that the primary effect of the public forum, open to all forms of discourse, would be to advance religion.

We are not oblivious to the range of an open forum's likely effects. It is possible--perhaps even foreseeable--that religious groups will benefit from access to University facilities. But this Court has explained that a religious organization's enjoyment of merely "incidental" benefits does not violate the prohibition against the "primary advancement" of religion. We are satisfied that any religious benefits of an open forum at UMKC would be "incidental" within the meaning of our cases. Two factors are especially relevant. First, an open forum in a public university does not confer any imprimatur of state approval on religious sects or practices. As the Court of Appeals quite aptly stated, such a policy "would no more commit the
University ... to religious goals" than it is "now committed to the goals of the Students for a Democratic Society, the Young Socialist Alliance," or any other group eligible to use its facilities.

University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion. The
University argues that the Cornerstone students themselves admitted in affidavits that "[s]tudents know that if something is on campus, then it is a student organization, and they are more likely to feel comfortable attending a meeting." In light of the large number of groups meeting on campus, however, we doubt students could draw any reasonable inference of University support from the mere fact of a campus meeting place. The University's student handbook already notes that the University's name will not "be identified in any way with the aims, policies, programs, products, or opinions of any organization or its members."

Second, the forum is available to a broad class of nonreligious as well as religious speakers; there are over 100 recognized student groups at UMKC. The provision of benefits to so broad a spectrum of groups is an important index of secular effect.

If the Establishment Clause barred the extension of general benefits to religious groups, "a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair." At least in the absence of empirical evidence that religious groups will dominate UMKC's open forum, we agree with the Court of Appeals that the advancement of religion would not be the forum's "primary effect."

Arguing that the State of Missouri has gone further than the Federal Constitution in proscribing indirect state support for religion, the University claims a compelling interest in complying with the applicable provisions of the Missouri Constitution. The Missouri Constitution requires stricter separation of church and State than does the Federal Constitution.

Our holding in this case in no way undermines the capacity of the University to establish reasonable time, place, and manner regulations. Nor do we question the right of the University to make academic judgments as to how best to allocate scarce resources or "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." Finally, we affirm the continuing validity of cases that recognize a University's right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education.

The basis for our decision is narrow. Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech. Its exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards. For this reason, the decision of the Court of Appeals is Affirmed.