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Alabama forced to continue funds to gay student groups

Appeals panel leans on Virginia magazine case in ruling

By Frank J. Murray
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A federal appeals panel has used a Supreme Court decision that restored funding to a college religious magazine in Virginia to bar Alabama from ending subsidies to student groups advocating illegal sodomy.

"It is well established that the First Amendment protects advocacy to violate a law," the three-judge panel said in Tuesday's opinion that said the state law cutting off funds stifles "protected speech."

The ruling written by U.S. 11th Circuit Court of Appeals Judge Joel F. Dubina called the Supreme Court's 1995 Rosenberger vs. Virginia decision "directly on point," citing its 5-4 ruling that the University of Virginia cannot cut off student activity funds to Wide Awake magazine just because it expresses "a particular belief in or about a deity."

Judges Dubina and Susan Harrell Black are Bush appointees; President Nixon nominated the third panelist, Senior District Judge William C. O'Kelley.

Homosexual advocacy groups reveled in their victory yesterday, particularly after Alabama Attorney General William H. Pryor Jr. decided not to appeal.

"The case is over. We're not going to take any further appeals," Chief Deputy Attorney General Richard Allen told The Washington Times.

"The issue that bothers us is the use of state funds. If they want to do their thing, not using state funds, that's their business," Mr. Allen said.

A lawyer for the University of Southern Alabama Gay Lesbian Bisexual Alliance, Ruth E. Harlowe, said of the decision not to appeal: "We're thrilled with the result, but it's really been a long time coming. We're even more thrilled that the state of Alabama has apparently given up its long struggle against gay and lesbian rights."

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She challenged contentions by family-values groups that many universities already favor homosexual rights and liberal causes more than less "politically correct" religious interests.

"I'd dispute that. It is in fact a victory for everybody that young people at universities can explore different ideas and talk with anybody about those ideas, whether they are about politics or about sexuality," said Miss Harlowe, a lawyer for the Lambda Legal Defense and Education Fund who worked with Alabama lawyer Fern Singer on the case.

The judges ruled the state funding for student activities created a "limited public forum" in which officials may restrict content but not viewpoint. For example, the judges said, activities could be limited to Shakespearean literature but not exclude Shakespeare critics.

Alabama's law blocked colleges from spending public funds on a group that "fosters or promotes a lifestyle or actions prohibited by the sodomy and sexual misconduct laws." The key element of those laws is outlawing anal or oral sex except for married couples.

GLBA sued, contending homosexuals have the same rights as those who advocate following sodomy and sexual misconduct laws. Miss Harlowe said the students actually do not advocate lawbreaking but fell victim to a law aimed at quashing campus homosexual activism.

"This was one of my fears about the Rosenberger decision," said Cathleen Cleaver of the Family Research Council. "Now we see this playing out against us — conservatives at the FRC — on the subject of homosexuality."

She said the 1995 ruling contradicts the tenet that governments need not finance speech against public policy on topics such as pornography and abortion.

Robert A. Alt of the Center for Individual Rights, which also backed religious rights in the Rosenberger case, said he was not surprised but does not endorse the practical result.

"It's CIR's general opinion that government should not pick and choose which speech it wants to support," he said.

"In academia, unfortunately, there's a tendency toward funding more liberal causes. Alabama's a rarity in being willing to take a stand on its anti-sodomy laws against a group that's outside the social mores," Mr. Alt said.