

Groups hope court keeps faith

The Washington Times

Justices face second case on religion

By Nancy E. Roman
THE WASHINGTON TIMES

Heartened by Monday's Supreme Court ruling giving church groups access to school facilities after hours, religious leaders hope the high court will rule in their favor again this month.

Congregations meeting in schools were relieved by the court's holding that schools may not open their facilities for civil uses while denying access to religious groups.

"We're encouraged. If schools are going to be open to other groups, religious groups should be included, whether Jewish or Christian," said the Rev. Vic Rader, pastor of Emmanuel Faith Church, whose congregation meets in Park View High School in Sterling, Va.

The Rev. Billy Riggs, pastor of Crossroads Fellowship, which meets in a school building in Raleigh, N.C., described the ruling as "a step toward being reasonable. ... This sounds sensible."

Monday's ruling stemmed from a Long Island case in which a school denied after-hours access to a church based on the content of a film series the group planned to show. The films on family advocated a return to traditional Christian values.

The court ruled that the action against Lamb's Chapel violated the church's First Amendment right of free speech because the denial of school access was based on the content of a film.

Religious groups hailed the decision as far-reaching, protecting religious speech and affirming the rights of churches and synagogues to meet in schools on weekends, a common practice nationwide.

"The bottom line is if the Kiwanis can meet in a school, so can a church," said Jay Sekulow, chief counsel to the American Center for Law and Justice, who argued Lamb's Chapel's case before the high court.

But Robert Peck, counsel to the American Civil Liberties Union, said the ruling is narrow because it focuses on speech rather than the separation of church and state. He said future legal challenges to church services in schools are possible.

But unless another round of litigation begins, religious groups are free to meet in schools. This encour-



Photo by Sharon Nat

The Rev. Vic Rader leads his congregation, the Emmanuel Faith Church, in services every Sunday at Park View High School in Sterling, Va.

THURSDAY, JUNE 10, 1993

ages them to hope for a second, broader victory when the Zobrest case is decided, probably within three weeks.

Both sides say the pending case is more complicated. It asks whether the state may fund a sign language interpreter for a deaf student who attends a parochial school.

"An interpreter is not like a mechanical device. It is a person who is a public employee," said Dean Kelley, counselor on religious liberty to the National Council of Churches. "If the interpreter has to interpret a religious service, then that would be dubious."

Mr. Sekulow said he is optimistic that the court will use the case to overturn its controversial Lemon test, used since 1971 to measure disputes, such as aid to parochial

schools, that are based on the First Amendment clause banning congressional establishment of religion.

Under the Lemon test, laws must have a secular legislative purpose, may neither advance nor inhibit religion, and may not foster excessive entanglement with religion.

Its critics say the criteria are arbitrary, difficult to apply and too often yield results hostile to religion.

Past rulings under the test have allowed government to:

- Provide religious school students with transportation to and from school but not on field trips because they may be linked to religious instruction.

- Defray the cost of English, math and other secular textbooks but not equipment, such as projectors, tape

recorders and maps, that can be used for religious instruction.

- Enact tax schemes that let parents write off tuition for the secular part of a parochial school education.

When the Zobrest and Lamb's Chapel cases were argued in February, Justice Antonin Scalia made several cracks about the arbitrariness of those rulings.

On Monday, he wrote a biting opinion in which he agreed with the court's conclusion in Lamb's Chapel but not with its reasoning.

Joined by Justice Clarence Thomas, he suggested scrapping the Lemon test, noting that at various times "no fewer than five of the court's currently sitting justices have, in their own opinions, personally driven pencils through the creature's heart, and a sixth has joined

an opinion doing so."

Mr. Sekulow praised the opinion.

"Three justices of the court in Lamb's Chapel clearly attempted to send a signal that it is time for Lemon to be buried," he said, referring to Justices Scalia, Thomas and Anthony Kennedy, who wrote separately. Mr. Sekulow said Justice Byron White and Chief Justice William Rehnquist "have also expressed that it is time for the test to go."

But Mr. Peck said Monday's ruling says little about what the court will do in Zobrest because the majority of justices cited the Lemon test as support for their ruling.

"You wouldn't affirm a ruling in one case to overrule it two weeks later," he said.