

Churches may use public facilities granted to others

Public school systems that allow their schools to be used after hours by community groups cannot refuse to extend the same privilege to religious groups, the Supreme Court has ruled.

In an opinion written by Justice Byron White, the Court reaffirmed the principle that “the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.”

The case, *Lamb’s Chapel v. Center Moriches School District*, was filed in 1990 by an evangelical Christian Church, Lamb’s Chapel, which had been refused permission by the school district in Long Island, New York to use a room at the Center Moriches High School after school hours in order to show a film with a Christian perspective on family life and child rearing.

Although the school district routinely allowed community groups to use school premises, it denied the church’s request because of a policy that barred the use of school premises “by any group for religious purposes,” while at the same time permitting “social, civic, or recreational use” of school buildings by community groups.

Calling the district’s refusal “plainly invalid,” Justice White wrote that because the district allowed other speakers to address family life and child rearing, it could not deny a forum to a group wishing to address those subjects from a religious perspective.

Although the *Lamb’s Chapel* decision was based on the free speech guarantee of the First Amendment, the Court used the case as an opportunity to reaffirm the validity of the three-

part test for determining whether government action violates the establishment clause of the Constitution first enunciated by the Court in *Lemon v. Kurtzman*. The *Lemon* test, a precedent which dates to 1971, has been the subject of much recent criticism, particularly from conservative justices. There was speculation last year and again during this term that the Court would jettison *Lemon* and fashion a new formula for deciding establishment clause cases.

Justice Scalia, who filed a separate opinion concurring in the judgment, expressed his disapproval of *Lemon* in typically colorful language. "Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad after being repeatedly killed and buried," Justice Scalia wrote, "*Lemon* stalks our establishment clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches." Justice Thomas joined Justice Scalia's opinion and Justice Kennedy also filed a separate concurring opinion criticizing *Lemon*.

The Catholic League joined a coalition that included the Christian Legal Society, the United States Catholic Conference, the Baptist Joint Committee on Public Affairs and the National Association of Evangelicals in filing a friend of the court brief in this case.