

# State may provide services for handicapped parochial students

The Supreme Court divided 5-4 in deciding the First Amendment's establishment clause does not bar a school district from providing a sign language interpreter to a profoundly deaf high school student at the Catholic high school he attends.

Chief Justice William Rehnquist, joined by Justices Byron White, Antonio Scalia, Anthony Kennedy and Clarence Thomas, wrote the majority opinion in *Zobrest v. Catalina Foothills School District*.

"When the government offers a neutral service on the premises of a sectarian school as part of a general program that 'is in no way skewed towards religion,'" wrote the Chief Justice, "it follows under our prior decisions that provision of that service does not offend the Establishment Clause."

The opinion pointed out that the chief beneficiary of the aid would be Jim Zobrest, while any benefit accruing to the school would be incidental.

Citing the Court's decisions in *Mueller v. Allen* (upholding a Minnesota law allowing taxpayers to deduct certain educational expenses even though a majority of the deductions were claimed by parents with children attending sectarian schools) and *Witters v. Washington Dept. of Services for Blind* (upholding state aid to a blind person studying at a private Christian college to become a pastor, missionary or youth director) Chief Justice Rehnquist noted that "we have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge

just because sectarian institutions may also receive an attenuated financial benefit.”

Justice Blackmun, joined by Justices David Souter, John Paul Stevens and Sandra Day O’Connor, wrote in dissent that the majority erred in deciding the constitutional question presented in *Zobrest*, arguing instead that the Court should have sent the case back to a lower court to consider the statutory and regulatory issues presented.

In Part II of his dissent Justice Blackmun, joined only by Justice Souter, wrote that provision of a state-employed sign-language interpreter to Jim Zobrest in his Catholic school would violate the Establishment Clause because the interpreter “would serve as a conduit for petitioner’s religious education” thereby involving government “in the teaching and propagation of religious doctrine.”

The Zobrest family was represented by the distinguished constitutional attorney, William Bentley Ball of Harrisburg, Pennsylvania, a former member of the Catholic League’s Board of Directors.

The Catholic League joined a broad based coalition which included the Christian Legal Social, the National Association of Evangelicals and the Association of Christian Schools International in filing a friend of the court brief on behalf of Jim Zobrest and his family.

### **The Zobrest case: Round two**

While most readers will think that this decision in the United States Supreme Court marks the end of the Zobrests’ long and arduous quest for justice, you may be surprised to learn that the Zobrests may not have seen the last of courts and judges just yet.

Despite the high court win, there are still several legal questions to be settled regarding the specific statutes and

regulations governing the provision of a sign language interpreter for Jimmy Zobrest.

Zobrest attorney William Bentley Ball – a nationally recognized authority on religious freedom rights who has served on the Catholic League board – argued the case through the court system for four years on a *pro bono* basis, waiving all of his fees. According to Ball, John Richardson (the attorney for the Catalina Foothills school district) has indicated that he would recommend trying to work out a settlement thus avoiding further litigation. The board has spent more than \$90,000 on their attorneys and technically now owe fees to Ball.

Several stories on the Zobrest case have construed the decision as a major victory for school choice, but a careful reading of this very narrowly drawn decision may not sustain such a broad interpretation.

Douglas Kmiec, a law professor at Notre Dame, noted in a *Chicago Tribune* op-ed piece that the *Zobrest* decision suggests that “aid can only be successfully channeled to a religious entity through parents or students for highly limited purposes, not for the cost of the overall education program or teachers generally.” Kmiec also pointed out that *Zobrest* was a 5-4 decision, with retiring Justice White in the majority.

One of the happiest people in this story is, of course, Sandy Zobrest, Jimmy’s mother, who was interviewed shortly after the decision by Mary Benson of the *Lakeshore Visitor*, weekly of the diocese of Erie, Pennsylvania. Mrs. Zobrest made it clear that this was a fight for rights that required an enormous amount of energy and personal sacrifice, concluding, “If you don’t know your options, how can you fight for anything?”

And in Harrisburg, Pennsylvania, Attorney William Ball had his own special way of celebrating this important victory. After

he called Sandy Zobrest with the good news he headed off to a nearby church to offer a prayer of thanks.