

Students

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Pennies for Heaven

More than a decade after a landmark ruling, some say colleges still discriminate against religious groups by withholding funds

By THOMAS BARTLETT

In 1991 three Christian students sued the University of Virginia after they were denied funds for their evangelical newspaper. The students said the case was about free speech; the university argued it was about separation of church and state. The U.S. Supreme Court found in favor of the students, a landmark ruling that guaranteed equal treatment for campus religious groups.

Or did it? More than a decade later, some public universities still have policies that appear to run counter to the spirit and letter of *Rosenberger v. Rector and Visitors of the University of Virginia*. In fact, a review of more than a dozen student handbooks across the country reveals a confusing and contradictory mishmash. Some policies explicitly welcome religious groups to apply for student-activity funds and inveigh against any "viewpoint discrimination." Others prohibit religious groups from receiving any money. Still others are so vague that it's unclear who is and is not eligible for support.

That, unsurprisingly, has led to more lawsuits. A Roman Catholic group at the University of Wisconsin at Madison sued after its recognition was withdrawn this past fall. In May the university backed down, agreeing to recognize the group and award it \$250,000 in student-activity funds.

Last year two students at the Georgia Institute of Technology sued over, among other issues, the university's policy against providing support for "religious activities." That case is pending.

At the heart of such disputes is whether religious groups and nonreligious groups should receive the same treatment. Put another way, should there be any difference, from a university's point of view, between the chess club and Campus Crusade for Christ?

Dimly Aware

David A. French doesn't think so. He is director of the Center for Academic Freedom at the Alliance Defense Fund, the courtroom muscle behind the Wisconsin and Georgia Tech lawsuits. The organization was founded in the mid-90s by a handful of powerful Christian leaders, including James Dobson. Its stated mission is to "aggressively defend religious liberty."

Mr. French says administrators are frequently only "dimly aware" of what's in their student handbooks. Often the policies are old or have been altered multiple times over the years by different officials. "It's getting to be absurd how many colleges still have these policies," he says.

A policy at California State University at Long Beach, for example, prohibits giving funds to activities that "promote religious purposes" — which, according to Mr. French, directly contradicts the *Rosenberger* decision.

An official at Long Beach is not sure whether the university's policy is legal. "We're going to review it," says Mike Hostetler, associate vice president for student services and dean of students. "I can say with good

conscience that I think our actual practice is consistent. Whether the language is consistent is exactly what we want to take a look at."

Mr. Hostetler says a lawsuit was recently filed against the university over a similar policy (he declined to say who had brought the action). But he points out that the university does officially recognize religious groups on the campus and has supported some of their activities. Last year, for instance, a Christian group applied for and received money to stage a choral performance. "They did some singing that could be considered religious," he says.

Open to Interpretation

There is little agreement on how the *Rosenberger* ruling should be interpreted. William E. Thro, state solicitor of Virginia and former general counsel at Christopher Newport University, sees it as a free-speech case. "It said, basically, speech that has a religious component should be treated no worse than any other form of speech," he says.

But, read narrowly, it could be seen as referring only to publications, thus allowing public universities to refuse funds for, say, a student-led Bible study (which, under a broader reading, would be eligible). "Whether you can simply refuse to fund a religious club in terms of their activities is an open question," he says. "But how are you going to draw that line?"

The only surefire solution, Mr. Thro says, would be to get rid of student-activity funds altogether. No money, no problem.

That would be a shame, says Steven K. Green, a professor of law at Willamette University. Mr. Green is a former director of policy for Americans United for Separation of Church and State and has written about the intersection of religion and government. He agrees that the message of *Rosenberger* is muddy: "It's difficult to know how far it goes."

That has led, Mr. Green says, to a "patchwork of policies" at public universities. "Universities have more or less responded in a hit-or-miss fashion," he says. "They often respond more to the immediate situation that they're facing rather than looking at these issues holistically."

Lawrence White is less critical. Mr. White, former general counsel at Georgetown University, thinks most institutions have done a "pretty good job" of handling a particularly thorny issue. "Taking into account religious views and religious utterances requires deftness on the part of university administrators," he says. "Most public institutions have adapted to the *Rosenberger* decision by being more sensitive to the complexity of the situation."

(When asked to review some of the widely varying policies on the financing of religious groups, though, Mr. White wrote in an e-mail message that he did not "like commenting on others' policies.")

Equal Access

Ruth Malhotra is one of the students who is suing Georgia Tech. The lawsuit objects to several of the university's policies, among them its ban on funds for "religious activities." Ms. Malhotra, a graduate student in international affairs and public policy, describes herself as an evangelical Christian (the other plaintiff, Orit Sklar, is a former Hillel president).

Ms. Malhotra argues that other events, such as a recent Islamic-awareness week, were designated by the administration as educational rather than religious in order to get around the prohibition. She wonders whether a similar Christian event would have been treated the same.

Other groups "can concentrate on their well-funded mission," Ms. Malhotra says, "while we face an uphill battle since we must spend our time and energy searching for funding."

The lawsuit has not won her many friends on the campus. Ms. Malhotra says she has even received death threats from other students. "People think we're trying to defund their activities, and we're not," she says.

"We just want to have equal access."

The university says that they do have equal access. What's more, according to Gary Wolovick, a lawyer for Georgia Tech, religious groups have been granted money in the past. "Whenever they've asked for funds, we've given it to them," he says. As an example, he mentions that a religious group received money to help victims of Hurricane Katrina. "It depends on what they're doing, not who they are," he says.

But there are limits. Mr. Wolovick says the university would not sponsor a purely evangelical mission by a religious group, even though some, like Mr. French, believe that the *Rosenberger* decision requires them to do so. "On that we obviously disagree," he says. "We don't think *Rosenberger* keeps us from having a rule that says we won't fund that kind of activity."

The Next Generation

In 2005 the Christian Legal Society sued Southern Illinois University at Carbondale after the institution withdrew the campus chapter's official recognition. The group had violated the nondiscrimination policy of the university, it said, by refusing to admit homosexual members. The group argued that doing so would go against its Christian beliefs.

In May the two parties reached a settlement, with the university agreeing to reinstate the group and pay its legal costs. The group is allowed to exclude homosexual students.

Such disputes over antidiscrimination policies may be "the next generation of *Rosenberger*," according to Mr. Green. "That's not really settled yet," he says. "Courts have been unsure how to deal with those cases."

Buoyed by recent victories, Mr. French promises that more lawsuits are on the way. "It's taken quite some time for groups to realize 'All right, we're entitled to an equal share,'" he says.

"But they're starting to wake up."

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