

SUPREME COURT OF THE UNITED STATES

No. 91-2024

LAMB'S CHAPEL AND JOHN STEIGERWALD, PETITIONERS v. CENTER MORICHES UNION FREE SCHOOL DISTRICT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
[June 7, 1993]

JUSTICE KENNEDY, concurring in part and concurring in the judgment.

Given the issues presented as well as the apparent unanimity of our conclusion that this overt, viewpoint-based discrimination contradicts the Speech Clause of the First Amendment and that there has been no substantial showing of a potential Establishment Clause violation, I agree with JUSTICE SCALIA that the Court's citation of *Lemon v. Kurtzman*, 403 U. S. 602 (1971), is unsettling and unnecessary. The same can be said of the Court's use of the phrase "endorsing religion," see *ante*, at 10, which, as I have indicated elsewhere, cannot suffice as a rule of decision consistent with our precedents and our traditions in this part of our jurisprudence. See *Allegheny County v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 655 (KENNEDY, J., concurring in judgment in part and dissenting in part). With these observations, I concur in part and concur in the judgment.