

SUPREME COURT OF THE UNITED STATES

No. 94-780

CAPITOL SQUARE REVIEW AND ADVISORY BOARD,
ET AL., PETITIONERS v. VINCENT J. PINETTE, DONNIE A.
CARR AND KNIGHTS OF THE
KU KLUX KLAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 29, 1995]

JUSTICE THOMAS, concurring.

I join the Court's conclusion that petitioner's exclusion of the Ku Klux Klan's cross cannot be justified on Establishment Clause grounds. But the fact that the legal issue before us involves the Establishment Clause should not lead anyone to think that a cross erected by the Ku Klux Klan is a purely religious symbol. The erection of such a cross is a political act, not a Christian one.

There is little doubt that the Klan's main objective is to establish a racist white government in the United States. In Klan ceremony, the cross is a symbol of white supremacy and a tool for the intimidation and harassment of racial minorities, Catholics, Jews, Communists, and any other groups hated by the Klan. The cross is associated with the Klan not because of religious worship, but because of the Klan's practice of cross-burning. Cross-burning was entirely unknown to the early Ku Klux Klan, which emerged in some Southern States during Reconstruction. W. Wade, *The Fiery Cross: The Ku Klux Klan in America* 146 (1987). The practice appears to have been the product of Thomas Dixon, whose book *The Clansman* formed the story for the movie, *The Birth of a Nation*. See M. Newton & J. Newton, *The Ku Klux Klan: An Encyclopedia* 145-146 (1991). In the book, cross-burning is borrowed from an "old Scottish rite" (Dixon apparently believed that the members of the

Reconstruction Ku Klux Klan were the “reincarnated souls of the Clansmen of Old Scotland”) that the Klan uses to celebrate the execution of a former slave. T. Dixon, *The Clansman: An Historical Romance of the Ku Klux Klan* 324-326 (1905). Although the cross took on some religious significance in the 1920's when the Klan became connected with certain southern white clergy, by the postwar period it had reverted to its original function as an instrument of intimidation. Wade, *supra*, at 185, 279.

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To be sure, the cross appears to serve as a religious symbol of Christianity for some Klan members. The hymn “The Old Rugged Cross” is sometimes played during cross-burnings. See W. Moore, *A Sheet and a Cross: A Symbolic Analysis of the Ku Klux Klan* 287–288 (Ph.D. dissertation, Tulane University, 1975). But to the extent that the Klan had a message to communicate in Capitol Square, it was primarily a political one. During his testimony before the District Court, the leader of the local Klan testified that the cross was seen “as a symbol of freedom, as a symbol of trying to unite our people.” App. 150. The Klan chapter wished to erect the cross because it was also “a symbol of freedom from tyranny,” and because it “was also incorporated in the confederate battle flag.” *Ibid.* Of course, the cross also had some religious connotation; the Klan leader linked the cross to what he claimed was one of the central purposes of the Klan: “to establish a Christian government in America.” *Id.*, at 142–145. But surely this message was both political and religious in nature.

Although the Klan might have sought to convey a message with some religious component, I think that the Klan had a primarily nonreligious purpose in erecting the cross. The Klan simply has appropriated one of the most sacred of religious symbols as a symbol of hate. In my mind, this suggests that this case may not have truly involved the Establishment Clause, although I agree with the Court's disposition because of the manner in which the case has come before us. In the end, there may be much less here than meets the eye.