

ATTEMPT TO IMPOSE “RELIGIOUS TEST” FAILS

On November 7, Ninth Circuit U.S. Court of Appeals Judge John Noonan, Jr. declined to recuse himself from a case involving a firebombed abortion clinic.

His action was taken in the wake of an attempt to exclude him from public office simply because of his religion. Noonan is a Roman Catholic.

In August, a Ninth Circuit panel that included Noonan filed a decision unfavorable to an Everett, Washington, abortion clinic. Though the decision was confined to technical concerns and not to the issue of abortion rights, plaintiffs' counsel, Kristin Houser, filed a recusal motion in November trying to force Judge Noonan from rehearing the case, Feminist Women's Health Center v. Codispoti. Houser maintained that after reading some of Noonan's articles on abortion (articles that appeared in Human Life Review in 1981), she was convinced that Noonan could not be objective when ruling on abortion.

In her recusal motion, Houser charged that Noonan's "fervently-held religious beliefs would compromise his ability to apply the law." Noonan replied that this contention runs afoul of Article VI of the U.S. Constitution which bars a religious test for holding public office. Indeed, he took strong exception to Houser's emphasis on his "fervently-held religious beliefs," contending that "No thermometer exists for measuring the heatedness of a religious belief objectively. Either religious belief disqualifies or it does not. Under Article VI it does not."

Once the Catholic League learned of this matter, it offered its assistance to Judge Noonan. But we were not called upon to do anything as Noonan had already dealt with the issue in a

quick and successful manner.

The Catholic League is unaware of any judge from any other religion being asked to recuse himself from an abortion case because of his religious affiliation. As Yet as Judge Noonan explained in his ruling, the abortion teachings of Orthodox Judaism and the Church of the Latter-Day Saints are similar to that of the Roman Catholic Church. Once again, there appears to be a double standard: one standard for Catholics and one for everyone else.