

# Housing Discrimination Case Sent to Trial in Massachusetts

Paul and Ronald Desilets, Catholic landlords who were sued by the state of Massachusetts in 1990 when they refused to rent an apartment to an unmarried couple, are faced with continuing court proceedings.

A lower court had ruled in the Desilets' favor against a claim by the state attorney general's office that their action in refusing to rent to an unmarried couple violated a state anti-discrimination law. But on July 14, a closely divided Massachusetts Supreme Judicial Court vacated the lower court's grant of summary judgment for the Desilets and sent the case back to the lower court for trial.

In December 1992, Superior Court Judge George C. Keady Jr. dismissed the case against the Desilets on constitutional grounds, finding that the Desilets' right to act on their religious beliefs outweighed the state's interest in ending discrimination. The state Supreme Court, however, while agreeing that the anti-discrimination law "substantially burdens the free exercise of religion by a landlord who does not believe in leasing premises to unmarried couples," ruled that the Desilets must stand trial. At trial the state will have the burden of proving it has a compelling interest in "eliminating housing discrimination against cohabiting couples that is strong enough to justify the burden placed on the defendants' exercise of their religion," the Court said.

This issue, which pits the constitutional rights of property owners against the power of the state to mandate compliance with state law at the expense of individual conscience, is one which has divided courts across the country. In California,

there has been a second decision at the appellate level allowing landlords to refuse to rent to unmarried couples on religious grounds. In *Smith v. FEHC*, the 3rd District Court of Appeal cited the constitutional guarantee of free exercise of religion in upholding the right of a landlord to refuse to rent an apartment to an unmarried couple. In 1992 the California high court said it would review a similar decision, *Donahue v. Fair Employment and Housing Commission*, after an appellate court upheld landlords' refusal to rent to an unmarried couple because of the landlords' religious conviction that cohabitation is sinful. The state Supreme Court eventually reversed itself and declined to review the *Donahue* decision, so attention now has turned to *Smith* which is likely to be appealed.

Two other state supreme courts have reached opposite results when they addressed this question. The Minnesota Supreme Court ruled in favor of a landlord who refused to rent to an unmarried couple while the Alaska Supreme Court ruled for the prospective tenants in a similar case. The Catholic League joined a coalition of religious organizations in filing a friend of the court brief in support of the Desilets, urging the Massachusetts Supreme Court to uphold the decision of the lower court dismissing the case.

When the decision overturning the lower court ruling was announced, the Catholic League issued a press release denouncing the Court's opinion as "a groundless action by an unabashedly liberal court...that places long-standing constitutional rights at the mercy of aggressive special interests, arbitrary bureaucracies and an activist judiciary."

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# League Prevails in Georgia, Vermont and Colorado Incidents

This past spring the Catholic League experienced three important victories, winning in Georgia, Vermont and Colorado, all without ever going to court. It is no exaggeration to say that without the League's help, the outcome in all three cases would almost certainly have been different.

In the last edition of *Catalyst*, mention was made of the plight of detective Mark Clay, the LaGrange, Georgia policeman who was suspended without pay for refusing to remove ashes from his forehead on Ash Wednesday. As reported, the League contacted those involved in the appeal process pledging its support for Mr. Clay. If necessary, the League counseled, it would take this matter to the courts. Fortunately, justice was delivered without a lawsuit. Upon receipt of a letter from the Catholic League, LaGrange City Manager Jim Hanson announced that the suspension was rescinded and that detective Clay would be paid for the day's loss of salary; in addition, reasonable provisions were made to accommodate all Catholics in the future. In a news release on the subject, the Catholic League stated its hope that "the experience of detective Clay will not be duplicated elsewhere, for if it is, we will move aggressively to restore justice."

The League was also delighted with the way things turned out in Vermont. Last winter, Professor Anna-Theresa Houthakker called the Catholic League asking for assistance. Professor Houthakker and her husband were anticipating the release of one of their sons from a treatment center for schizophrenics. Accordingly, they advertised in the local newspapers for a live-in companion for their son. Because their son had a record of being occasionally violent, they were looking for

someone who had both a military background and training in rehabilitative techniques.

In the course of one of the interviews, an applicant indicated that he was a homosexual. While this revelation did not sit well with Professor Houthakker, it is also true that the man had already admitted that he did not possess either of the two desired attributes, and was therefore not a serious candidate for the job. The interview ended cordially. But before long, Professor Houthakker was charged by the office of the Vermont Attorney General with discrimination on the basis of sexual orientation. She was notified that the case could be settled out of court for \$10,000. When she agreed to pay \$1,000, the office countered with a figure of \$5,000. Then she contacted the Catholic League.

We advised her not to pay a dime, obtained an attorney for her and wrote a letter expressing our interests to Vermont Attorney General, Jeffrey Amestoy. Though our concerns were multiple, we were focused in our statement: "[The Catholic League] would be most interested in knowing whether it is your conclusion that the laws on sexual orientation discrimination extend to private residences. And please keep in mind that according to Section 2[a][4] of the recently passed Religious Freedom Restoration Act, 'government shall not substantially burden a person's exercise of religion if the burden results from a rule of general applicability.'"

As a result of our effort, and the work of attorney John Fitzhugh, the Attorney General's office decided to drop the matter entirely. Once again, victory was achieved without going to court.

The League's intervention in an anti-Catholic episode at Metropolitan State College in Denver, Colorado, also ended in justice. This past academic year, student Matt McGuinness, leader of the campus group Auraria Catholics, was denied school funding for a program entitled "Human Sexuality:

What Catholics Believe.” McGuinness was interested in offering a rebuttal to a program that occurred in July, 1993 called “Searching for a Place Within the Catholic Community.” That event featured speakers from Planned Parenthood, Dignity, and Colorado Catholics for Choice.

Four reasons were cited by the Metro Activities Council (M.A.C.) for denying funds to Auraria Catholics: a) the request came late in the year and thus M.A.C. “had already spent the greater portion of the budget” b) M.A.C. requires all clubs to sign a “non-discrimination clause which includes sexual orientation” c) there was a concern that “the issues presented would be oriented to one particular set of religious views” and d) considerations of “diversity and separation of church of state” were also cited.

Matt McGuinness contacted the Catholic League for help and we provided it. In a letter to Metro State President Shelia Kaplan, the League stated that only one of the reasons offered, namely budgetary concerns, “bore any semblance of reasonableness.”

The statement that M.A.C. did not want to “present one particular set of religious views” was chided for intellectual dishonesty. The League reminded college officials of its earlier sponsorship of a program that was nothing but a one-sided attack on the Catholic Church. “And is it true,” the League wondered, “that a program that focused on the religious beliefs of Native Americans would not be allowed at Metro State lest it be balanced with a program of opposing views?”

Finally, there was the inane contention about diversity and separation of church and state. “A commitment to diversity,” the League said, “would weaken the position of M.A.C. and strengthen the right of Auraria to funding. Or are Catholic clubs considered a threat to diversity rather than an embellishment?” As to the remark about church and state, the League countered by stating that “it is sad to point out to

anyone, never mind to those on a college campus, that student clubs are clubs, not churches, hence the foolishness of the old canard about church and state.”

The letter to President Kaplan ended with a plea to offer Auraria the same privileges and opportunities offered those who sponsored the anti-Catholic event. “It is in no one’s interest,” the League concluded, “that this case proceed to the next level.” Fortunately, it never did.

President Kaplan wrote “to express my regret that certain misunderstandings have developed,” and then went on to say that the college’s non-discrimination policy on sexual orientation contains an exception for student religious organizations like Auraria Catholics. The other points were not addressed, save for a sentence regarding the late request for funding and the budgetary constraints that were operative at the time. Matt McGuinness is now free to request his program next year and should experience no difficulty in getting the funding he needs.

Victory is always sweet but the fact remains that none of these incidents should ever have happened in the first place. Those who belong to other religions are rarely asked to remove religious symbols from their clothes or body. Similarly, the idea of dictating to someone of another religion whom they must hire as a live-in companion for a troubled relative is not something that most people would even consider. And funding for a college program that simply disseminates the views of a major religion on contemporary issues would not present a problem if that religion were something other than Catholicism. But making exceptions for Catholics is nothing new and that, of course, is the *raison d’etre* of the Catholic League.

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# Gay Rights Week Marked by Illegal Parade, Anti-Catholic Furor

From June 18th to the 26th, New York was home to the largest gathering of homosexuals the world has ever seen. U.S. Attorney General Janet Reno did her part by welcoming people with AIDS from all over the world, suspending the ban against those with a communicable disease from entering the country. But what began as the Gay Games ended in an ugly display of anti-Catholic bigotry.

Throughout the week the blame for AIDS was put on everyone but those responsible for it. Most disgusting were the countless photos of former President Ronald Reagan that were altered to suggest that he has AIDS; the red blotches that were placed on his face adorned billboards in every corner of Manhattan.

The events that were of most interest to Catholic League members occurred on the last weekend of the festivities. On Friday night, June 24th, Dignity – an organization of homosexuals who claim to be Catholic, though they are not recognized by the Church – held a demonstration across the street from St. Patrick's Cathedral.

The Friday night vigil outside St. Patrick's was poorly attended. No more than 200 persons showed up to sing a few songs and listen to the two speakers, "Rev." Jim Mallon and Marianne Duddy. "Father" Mallon is a defrocked priest, and Ms. Duddy is the national president of Dignity. Both had the same message: there are two churches in the Catholic faith, one for the hierarchy and the other for the people. According to this

logic, the “institutional Church” is not representative of the masses and that is why Mallon and Duddy urged the people to “take back their Church.”

On Saturday, June 25th, St. Bartholomew’s Episcopal Church hosted Dignity. The Park Avenue Cathedral was packed for the “Mass.” A man wearing earrings, a necklace and short leather pants greeted the crowd with a program of the event. The Prayer of the Faithful, in an allusion to the discredited “history” book by Boswell (story, pg. 6) included calls for the Church to “once again recognize” homosexual relations. There was a Hymn to the New Age and a Lord’s Prayer which began, “Our Mother/Father in heaven....” But most striking was the homilist, Dr. Mary Hunt.

Dr. Hunt drew a distinction between the “hierarchical Church” and what she believed to be the “real” Church. But she didn’t bother to explain why a group of officially unrecognized Catholics could in any way substitute itself for the official Church. She was too busy talking about the “Legacy of Love” that the movement had allegedly spawned to worry about such particulars.

Presiding over this gathering of “lesbians, gays, bi-sexuals, and transgendered persons” was Episcopal priest Ronald E.F. Hoskins. It was ironic. A renegade Catholic group that could not find a Catholic church in all of New York in which to hold its so-called Mass turned for help to the one church that has lost more members than any other because it has yielded to the pop culture on virtually every demand.

Two gay rights marches on Sunday, June 26th marked the grand finale of the week. A legal march on First Avenue was festive and without incident, but the demonstrators on Fifth Avenue were vulgar, both in word and in deed. In front of St. Patrick’s Cathedral, they bellowed four letter words, pointed their middle finger at the Cathedral and laid down in the street. Amidst the vulgar chants were dozens of bare breasted



women, as well as a dozen or more fully naked men and women. Almost all showed some sign of disrespect as they passed the Cathedral, especially the contingents from Act Up and Pagans and Witches.

Dr. William A. Donohue had this to say about the event:

“What happened on Fifth Avenue on June 26th was in stark contrast to the respectful and legal demonstration on First Avenue. Those who marched on Fifth Avenue showed no respect for the law, engaged in the most vile anti-Catholic behavior and jeopardized the public safety of all New Yorkers. Led by Act Up, the gay radicals once again showed their anarchists’ stripes by flaunting a court order not to march.

“The degree of anti-Catholic bigotry that was vented in front of St. Patrick’s Cathedral could not have been outdone by the Ku Klux Klan. Filled with hate, the demonstrators conducted themselves in a manner that gives new meaning to the term blasphemous. They also showed how very different they really are from all other protesters: only gay events inspire marchers to undress. And their mockery of the one institution that has done more to service AIDS patients than any other in the city of New York shows how irrational this segment of the gay population is.

“In addition to the vengeful Fifth Avenue protesters, criticism must also be made of Mayor Giuliani, Police Commissioner Bratton and the media. The media failed to report the Catholic-bashing that took place outside of St. Patrick’s Cathedral. If the identical behavior had taken place outside an Orthodox Jewish synagogue, it is doubtful that the disrespect would have gone unreported.”

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# Catholic League Subway Ad Explodes in Controversy

By William A. Donohue



It all began on January 19th. That was the day the Catholic League registered its criticisms of the New York City subway ads posted by the Gay Men's Health Crisis, a radical homosexual outfit. The posters included pictures of young people of the same sex kissing each other, complete with photos of condoms and dental dams. The legend "Young! Hot! Safe!" was meant to convey a message that teenagers can have all the sex they want and not worry about a thing, just as long as condoms are used. Karen Lynn Krugh and I challenged the conventional wisdom on radio and TV and gave thought to having our own ad campaign. Now it's almost ready to start and the media are already going ballistic. Here's what happened.

On January 19th, while discussing the gay ad on FOX TV with former New York City Mayor Ed Koch, I rhetorically asked whether the time had come for the Catholic League to sponsor its own ad. My objections centered on the usurpation of parental rights that the gay ads embodied. Was it not the business of Catholic parents – and not gay activists – to decide what, when and how their children learned about sex? Ed Koch replied that yes, the Catholic League should run its own ads, if that is what it wanted. I left the studio still undecided. My indecision, however, didn't last long.

Before the day was over, I had been asked by newsmen whether I was serious about launching our own ad campaign. I said yes, I was giving it very serious consideration. Again that evening, while discussing this issue for two hours on a local radio show, I was asked several times by callers whether the Catholic League would respond in kind to the Gay Men's Health Crisis. All were urging me to post our own ads. By that point I just couldn't say no. There would be a campaign, and it would be an aggressive one, intentionally designed to start a public dialogue on the wonders of condoms.

Our ad has a straightforward message: "Want to Know a Dirty Little Secret? CONDOMS DON'T SAVE LIVES. But Restraint Does. Only fools think condoms are foolproof. Remember, better safe than sorry."

Once the media knew we were going to post our own ad, they wouldn't let go. They knew we were on to something big – that our ad would create quite a stir – and they were right. On April 25th, we formally announced that our ad would begin June 1st. The reaction: we were besieged with calls, both positive and negative. More important, we experienced our biggest media blitz since the MTA's Madonna poster last fall. Radio, television, newspapers, wire services – they called for interviews locally, nationally and internationally (England and Japan). It was clear that our ad had hit home with a lot of people.

The difference between our ad and the one featured by the Gay Men's Health Crisis is striking. We speak to values and they don't. They profess a faith in technology and we ask for changes in human behavior. We admonish restraint and they talk about what's "Hot." Their ads are provocative and offensive. Ours are provocative without being offensive. Our ad is countercultural and their's is, sadly, the voice of the culture. But that's all the more reason to speak up and provide leadership.

I am convinced that most Americans would endorse our ad more than the gay ad. It is high time that we break the monopoly that gay activists, Planned Parenthood and others have had on the issue of sex education. Our ad speaks to more than Catholics, it speaks to Americans of all religions who are tired of the “just give ‘em condoms” approach to sexuality.

Judging from the success of this ad, even before it actually appears, it is plain that it won’t be our last. Our side has been taking it for far too long. We hope to change that, and one way to do it is through the medium of public service messages. And unlike the ads of our critics, our messages truly do provide a public service.

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## **N.Y. Post Editorial Backs League Ads**

*The following editorial appeared in the **New York Post** on Saturday, April 30, 1994. It is reprinted with permission.*

### **The Truth About Condoms**

A new AIDS-prevention campaign has drawn the ire of the Gay Men’s Health Crisis, which seems to want to maintain a virtual stranglehold on the dissemination of AIDS-related information.

This development isn’t surprising- the 2,500 public-service ads that will soon be appearing in the city’s subways, courtesy of the Catholic League, are a far cry from GMHC’s dubious “Young! Hot! Safe!” campaign.

The Catholic League ad warns of a “dirty little secret” – that “Condoms don’t save lives. But restraint does.”

For all the insistence that abstinence is integral to their AIDS-prevention efforts, GMHC and its allies pay nothing but lip service to the notion. Suggestions to the contrary are disingenuous.

Indeed, GMHC and other AIDS – awareness groups have distributed graphic explanatory materials about gay sexual practices – some manifestly targeted at young folks – in the guise of health-oriented information.

At times, these organizations appear interested in seizing the moment to increase awareness of gay lifestyles. How else to explain an ad featuring an embracing pair of teen-age girls? Except by way of tortured logic, lesbians are not an especially vulnerable class vis-a-vis AIDS. The girls in the ad are wearing rubber gloves meant for use in a particular lesbian sexual practice.

The Catholic League ads speak to the failure rate of condoms; and condoms, of course, are not foolproof. Indeed, the GMHC crowd has itself begun referring to condom use as “safer” – rather than “safe” – sex.

GMHC’s rage at the Catholic League campaign – while not unexpected – seems altogether unjustifiable. Certainly, condoms are safer than totally unprotected sex. Far safer. But they are not safer than sexual restraint. At the very least, it seems to us, there’s room for this dual message.

The GMHC has long been an extraordinary organization – it arose to fill a need at a desperate moment and its achievements should not be slighted. But recent GMHC forays in the AIDS-education realm seem misguided.

William Andrew, a member of the Board of Education’s AIDS advisory council, who’s especially concerned with ads aimed at black and Latino youth, argues that GMHC “is promoting sex acts that can be suicidally dangerous by misrepresenting them as perfectly harmless.”

To be sure, the Catholic League, like GMHC, also has an agenda. By warning that condoms are not a foolproof means of preventing sexually transmitted diseases, it promotes the church's doctrine against premarital and homosexual sex.

Common sense, however, suggests that there's room – at the very least – for this message, as well as the GMHC's.

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## **League Threatens RICO Action Against ACT-UP; Demonstration at National Shrine Fizzles**

**By William A. Donohue**

As an anti-defamation organization, much of what the Catholic League does is reactive in nature, that is, we respond to instances of bias and bigotry. But given the times we live in, it is not always acceptable to wait until problems emerge. Being pro-active has its risks, but being passive is not without risks either. The recent near confrontation between the gay outfit ACT-UP and the Catholic League is a case in point.

During Holy Week, ACT-UP spokesman Wayne Turner announced that his group was going to demonstrate against James Cardinal Hickey and possibly break into the National Shrine of the Immaculate Conception on Easter Sunday while the Cardinal was saying Mass. Upon hearing of this, the Catholic League immediately made an announcement of its own: try it and we'll sue under RICO (Racketeer Influenced and Corrupt Organizations Act). On Easter Sunday, ACT-UP protested outside the church, but never attempted an invasion.

ACT-UP, which is no stranger to church-busting, was angry with Cardinal Hickey for the remarks he made in a letter to President Clinton. The Cardinal was justifiably outraged over the irresponsible statements that Dr. Joycelyn Elders, the Surgeon General, made in her March 22nd interview in the *Advocate*, a gay magazine. Dr. Elders, who has a track record of Catholic-bashing, took another swipe at those whose religion she disagrees with by crudely characterizing Catholic teaching on sexuality. She also went so far as to endorse homosexuality as an acceptable lifestyle. It would take too long to list all of her amazing comments. Suffice it to say that I discussed this matter with Pat Buchanan for one hour on his radio show and still didn't cover all the issues .

It comes as no surprise that in a democracy there will be many competing voices on virtually every issue. But democrats are committed to resolving their grievances peacefully. To do otherwise is to abet anarchy, and anarchy, as Aristotle knew, typically abets despotism. So when ACT-UP said that it might invade the nation's largest Roman Catholic Church on Easter Sunday, we took them at their word and issued a news release alerting the media to our pledge: if ACT-UP invades, the Catholic League will sue. More than that, we'll use RICO.

RICO is the law that was originally intended to be used against organized crime but has more recently been used against anti-abortion protesters. Ideally, the application of this law should be limited to its original intent. But if those whose agenda we do not share are willing to use it, with the blessings of the court, against pro-lifers, then surely RICO can be, and indeed ought to be, used against church-busters.

In the news release, I said the following: "Invading houses of worship is what Nazis do, and there is literally no difference between busting into a service in a synagogue and busting into a Roman Catholic church during a Mass. Both are equally despicable acts of terrorism." I added that "What ACT-UP is

threatening has nothing to do with civil disobedience: it is terrorism, pure and simple.”

No doubt there are some who think this response is too strong. They would countenance dialogue. Dialogue is fine, but in order for it to have a chance of succeeding, both parties must be willing to abide by the rules of civilized discourse. The evidence suggests that ACT-UP is not interested in talk. It favors assault. It also needs to be said that passivity during war does not yield peace; it more typically yields bloodshed, as well as the loss of liberty. And that is not a prospect the Catholic League is willing to accept.

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## **League Backs Boston St. Patrick's Parade Cancellation**

The Catholic League applauded the decision of the South Boston Allied War Veterans Council to cancel the St. Patrick's Day parade rather than submit to a court order allowing homosexual activists to march as a separate unit. The League's Boston office director C. Joseph Doyle called the decision an “act of courage, principle and integrity.”

The decision to cancel the parade was made after the Massachusetts Supreme Judicial Court upheld a lower court decision which held that the parade was a “public accommodation.”

The Catholic League, which filed an amicus brief in the case in support of the Veterans Council, blasted the court's decision.



Catholic League president William A. Donohue stated that the ruling brought to a head “the war that homosexual militants have been waging against Catholics and the Catholic Church.”

Donohue went on to accuse the homosexual militants of lying to achieve their end. “It is a patent lie ... to say that homosexuals have been excluded from marching in the St. Patrick’s Day Parade. It is well-known that homosexuals have long marched in every St. Patrick’s Day Parade from Boston to San Francisco. But when gays marched, they did so by marching with their parish or association, and did not try to make a public display of their lifestyle.” He went on to note, “The reason why Irish Catholics don’t want a homosexual contingent to march as a group has everything to do with their religious beliefs and their First Amendment rights. Homosexuality, like adultery, incest and bestiality, is viewed by Catholics, as well as millions of others, as morally wrong. That is why they object when attempts are made to hijack their festivities for ends they do not support.”

Catholic League General Counsel Andrew J. McCauley indicated that an appeal to the United States federal courts on First Amendment religious freedom grounds was being considered. (See page 12 for a commentary on the Massachusetts decision by McCauley).- *JP*

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## **Vermont printers win three-year fight**

Three years ago, the Catholic League stepped in to help Chuck and Susan Baker, owners of Regal Art Press in Vermont, when the ACLU brought suit against them on behalf of "Catholics for Free Choice." The Bakers' "crime" was their refusal to print pro-abortion materials for the abortion industry front organization.



Chuck and Susan Baker in September, 1991 with thousands of postcards and letters of support from Catholic League members.

The Bakers won a victory for themselves and for religious freedom when, on February 18, 1994, the Franklin County Superior Court in Vermont dismissed the case brought by Catholics for Free Choice.

In her decision, Judge Linda Levitt stated that "it cannot be said as a matter of law that the state of Vermont's interest in eliminating discrimination overrides a person's rights to free speech and the free exercise of religion."

The judge further explained that Regal Art Press was exempt from Vermont's Fair Housing and Accommodation Act in regard to the plaintiff's claim.

Catholics for Free Choice, an anti-Catholic front group that has admitted receiving funding from Hugh Hefner's Playboy Foundation, was represented by the American Civil Liberties Union. Catholics for Free Choice had prevailed before the Vermont Human Rights Commission in 1990, when their spokesman, Linda Paquette, argued that support for abortion was part of her "religious creed."

Catholic League Operations Director C.J. Doyle was quoted by Catholic News Service describing the lawsuit as “a shameful attempt to coerce Catholics into acting against their religious beliefs.” He went on to note that “In a genuinely free society, Christians cannot be forced to violate their conscience as a condition of doing business.”

The Catholic League brought the Bakers’ plight to the attention of a national audience and a League mailing generated thousands of cards and letters of support for the beleaguered Bakers from Catholics all across the country.

The case, *Paquette vs. Regal Art Press*, is expected to be appealed to the Vermont Supreme Court.

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## **Free speech rights defended in Florida clinic protest case**

The Catholic League has joined a coalition of religious and civil rights organizations filing a friend of the court brief defending the free speech rights of pro-life demonstrators. The League’s brief challenges the constitutionality of a state court injunction which restricts the speech and expressive activities of abortion pro-testers.

Several Florida abortion clinics successfully petitioned the court for the injunction, claiming it was necessary to protect women wishing to have an abortion. The petitioners in *Madsen v. Women’s Health Center, Inc.* are pro-life advocates whose free speech rights are threatened by the terms of the injunction.

The injunction establishes a 36-foot buffer zone around a Melbourne, Florida abortion clinic prohibiting anyone from “congregating, picketing, patrolling, demonstrating or entering” the area. It also forbids anyone from physically approaching those seeking the services of the abortion clinic within a 300 foot zone around the clinic. The League’s brief argues that the injunction violates the First Amendment in two ways. First, the injunction is so vague it allows discriminatory, viewpoint-based enforcement, a clearly unconstitutional effect. Speakers on one side of the controversy (pro-life advocates) were arrested, while speakers on the other side (pro-abortion advocates) were not, even though they were also gathered near the clinic making noise.

Second, even where the terms of the injunction are clear, it is so overbroad that it chills speech protected by the First Amendment. The injunction at issue here has a ripple effect far beyond the parties, so that a person would think twice before engaging in speech or expressive activity that is clearly protected. As the League’s brief notes, the ability to influence public debate on matters of public concern, free from excessive regulation or control by government, is an essential civil right. All members of the coalition are committed to the principle of equality of all speakers before the law, and view with alarm any diminution of First Amendment rights.

Members of the coalition include the Christian Legal Society, Americans United for Life, Family Research Council, and the National Association of Evangelicals. Oral argument in *Madsen* will take place in April, and a decision is expected sometime in late June.

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# League testifies in opposition to N.Y. clinic protest law

The Catholic League offered testimony in hearings before the Committee on Public Safety of the City of New York questioning the appropriateness of a proposed new law aimed specifically at curtailing demonstrations at abortion clinics. The statement by Catholic League president William A. Donohue follows:

“Whenever legislation is being considered, three relevant questions to ask are: 1) Why are present laws inadequate? 2) Who are the likely beneficiaries of the bill and 3) Who, if anyone, stands to lose? A defensible bill, I would suggest, is one that fills a legislative void and grants relief to some without burdening the rights of others. It is not clear, however, how Intro 33 meets this test. Let me be explicit.

“New York already has laws that cover harassment, physical obstruction of entryways, stalking, trespass and violence. What, then, does Intro 33 add to any of these laws? In short, where are the inadequacies in existing legislation? I would be most anxious to see this evidence.

“To be sure, this bill does increase the penalties for the aforementioned offenses. But it would be instructive to learn why. Is there evidence that existing penalties have failed to deter an increasing number of lawbreaking anti-abortion protesters? I would be most anxious to see this evidence.

“Regarding the second question, who, precisely, are the intended beneficiaries of Intro 33? Has there been a rash of incidents whereby women in New York have been denied the right to seek an abortion? Indeed has there been even one case in the 1990s – in all of New York – whereby a woman seeking an

abortion has been blocked from doing so because of anti-abortion protesters? If such evidence exists, I would be most anxious to see it.

“If in fact there is no evidentiary basis for this bill, then it suggests that Intro 33 was crafted on the basis of politics, not principle. Indeed if principle were the motivating factor then surely demonstrators other than anti-abortion protesters would have been targeted. But no, this bill provides no penalties whatsoever for militants aligned with the homosexual, feminist, environmental, animal rights and pacifist causes. Is it because such demonstrators have always conducted themselves with grace? The record, as everyone must concede, shows otherwise.

“Even if one were to concede for the sake of argument that Intro 33 will bring relief to some segment of the population, it would do so in a way that would necessarily violate the rights of innocents. It will not do to say that no provision of this bill “shall be construed or interpreted so as to prohibit expression by the First Amendment.” If that is indeed the intent, then justice requires that the bill be more specific. “Why not just come right out and say that the First Amendment rights of anti-abortion protesters to demonstrate, pray, picket and counsel is protected by this law, the Constitution of the State of New York and the Constitution of the United States? It is surely not the intent of Intro 33 to create a “chilling effect” on freedom of expression, so why not alleviate the fears of law-abiding anti-abortion protesters and simply affirm, in detail, their right to freedom of expression?

“It is in no one’s interest to have a law passed and then have it challenged immediately in court. But if this bill passes unamended, then that is exactly what will happen. To be sure, the courts have determined that abortion is a constitutional right. But they have also determined – and for a far longer period of time – that freedom of expression is central to

liberty.

“To summarize, it is not clear what laws have proven to be so inadequate that Intro 33 is necessary. Moreover, there is no evidence that the kind of offenses that this bill addresses have increased in recent years. Nor is there any evidence that the intended beneficiaries will in fact benefit in any demonstrable way. However, we do know that if Intro 33 passes as is, the First Amendment rights of anti-abortion protesters will almost certainly be abridged. And if that happens, more than just their free speech rights will be impacted – the rights of all Americans to lawfully express themselves will be effected.”