

# High Court Asked to Review Virginia Case

The Catholic League has joined a coalition of religious organizations in asking the Supreme Court to review a lower court decision that held constitutional a university's refusal to fund a Christian journal.

## Background

The University of Virginia collects mandatory student activity fees each semester.

These fees are placed in a Student Activities Fund (SAF) and distributed to student organizations meeting certain eligibility guidelines. During the 1990-91 school year, the University distributed SAF money to 118 student organizations including fifteen student publications, the Jewish Law Students Association, the Muslim Students Association, and the C.S. Lewis Society.

In 1980, Ronald Rosenberger, a student at the university and the plaintiff in this case, formed an unincorporated association known as Wide Awake productions to publish a non-profit journal titled *Wide Awake: A Christian Perspective at the University of Virginia*. The purpose of the journal was to address a wide array of social, philosophical and school-related issues from a Christian point of view. When Mr. Rosenberger applied to SAF for funds to defray \$5,862 in first-year publication costs, the university denied funding under the SAF guidelines which excluded "religious activities." Rosenberger responded by filing suit challenging the constitutionality of the "religious activity" exclusion.

## The Decision

The U.S. Court of Appeals for the Fourth Circuit upheld a

lower court ruling in favor of the university. The court said that although the funding guidelines “create an uneven playing field on which the advantage is tilted toward [student groups] engaged in wholly secular modes of expression,” the university had successfully demonstrated that its regulation was narrowly drawn to achieve a compelling governmental interest. The court ruled that funding *Wide Awake* would violate the Establishment Clause; such funding, according to the appeals court, would have the primary effect of advancing religion under the second prong of the *Lemon* test and would also involve “excessive entanglement” between the university and religion, thereby violating the third prong of *Lemon*.

The petition for certiorari will ask the Supreme Court to review the Fourth Circuit’s Establishment Clause analysis, which makes it virtually impossible for any public school to fund religious expression. Under *Rosenberger* as it now stands, religious students in public universities may be forced to pay fees to fund expression of every opinion except their own.

### **The Brief**

The League’s brief argues that publication of religious viewpoints deserves the highest level of First Amendment protection and offers an examination of constitutional history to support its claim. Religious expression played a significant role in motivating colonists to join the struggle for independence, the brief notes, and the abolitionist movement was lead by religious leaders. In fact, protection of such religious expression was an important impetus in the framing of the Fourteenth Amendment. This nation’s more recent history is replete with instances of national dialogues being conducted in explicitly religious terms. For example, the Reverend Martin Luther King, Jr. acknowledged the religious roots of the civil rights movement and both the recently passed crime bill and health care reform were often debated in specifically religious terms.

Finally, the brief points out that the Fourth Circuit's decision veers from the religious pluralism of the Founders toward a relentlessly secular society, where religious expression is frowned upon and religious persons are denied the privileges afforded other citizens.

Since the respondents in this case refused to grant permission for the filing of this brief, in compliance with Supreme Court rules the brief was accompanied by a motion asking the Court for leave to file. Signing the motion and brief along with the Catholic League were the Christian Legal Society, the Southern Baptist Convention, the Church of the Latter-Day Saints, the Family Research Council and the National Association of Evangelicals.