League Files Brief in Rosenberger Before High Court

The Catholic League has filed a friend of the court brief before the United States Supreme Court protesting discrimination against religious speech at a public university. The University of Virginia denied a student's request for money from a student activities fund (SAF) to support publication o f a Christian journal, even though SAF money was given to 118 student organizations that year. The school's refusal was based on a provision in the SAF guidellnes excluding "religious activities" and the League's brief in *Rosenberger v. the Rector and Visitors of the University of Virginia* argues that such religious speech is protected by the First Amendment.

The University of Virginia collects mandatory student activities fees each semester and places the money in the SAF for distribution to student organizations meeting certain eligibility requirements. Ronald Rosenberger was a student at the University of Virginia when he and other students formed an unincorporated association known as Wide Awake Productions, the purpose ofwhich was to publish a Christian journal. *Wide Awake: A Christian Perspective at the University o f Virginia* dealt with a wide array of social, philosophical and school-related issues from a Christian point of view. When the school denied Rosenberger's application for SAF money, he filed suit challenging the constitutionality of the guidelines' "religious activities" exclusion.

The United States 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 ofexpression," 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 court o f appeals, would have the primary effect o f 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 League's brief argues that the protection of religious speech was a central concern motivating both the First and Fourteenth Amendments and that the court of appeals' attempt to artificially isolate religious speech from campus debate would impoverish discourse at public universities.

The brief examines the suppression of religious speech which was an element of the colonial experience and points out that the desire to protect religious speech was an important consideration prior to the adoption of the First Amendment. Although early English emigrants to America included many religious refugees seeking to escape the influence of an established church, attempts to suppress the speech o f religious dissenters occurred in the Congregationalist colonies of New England and the Anglican colonies of the South.

It is ironic, the brief notes, that while Thomas Jefferson, the founder of the University of Virginia, opposed an established church in order to protect citizens' freedom "to profess, and by argument to maintain, their opinion in matters of religion," his university now contends that allowing religious students to freely express their views with the same privileges as other students would violate the First Amendment.

The free press protections were incorporated against the states through the post-Civil War Fourteenth Amendment, and the brief reminds the Court that a significant impetus in the

framing of the Fourteenth Amendment was a history of attempts by slave states to silence the religious speech of abolitionists who based their zeal to eradicate slavery on the premise that all human persons are created by God as equals, and that to assault human dignity through enslavement was an egregious sin.

The brief states:

The abolitionist background leading up to the Fourteenth Amendment suggests that a particularly high constitutional value should be placed on the right of religious individuals to freely express their views. Just as with the history of the First Amendment, the Fourth Circuit's decision again subverts constitutional history by holding that the Religion Clause imposes special disabilities on religious expression.

The brief concludes by urging the Court to reverse the decision of the Fourth Circuit Court of Appeals, because its 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."

The *Lemon* Test

ln *Lemon v. Kurtzman* (1971) the Supreme Court enunciated a three part test (the Lemon test) for determining whether government action violates the Establishment Clause of the Constitution. Under *Lemon,* a governmental action does not offend the Establishment Clause if: (1) it has a secular purpose: (2) its principal effect neither advances nor inhibits religion; and (3) it does not foster excessive entanglement of government with religion.