

# Religious Freedom Advances in Rosenberger Case

The United States Supreme Court has ruled that the University of Virginia must allow student activities fees to be used to help defray publication costs of a religiously oriented student magazine. Rejecting the university's argument that funding a Christian publication would violate the First Amendment's Establishment Clause, five justices concluded the university's refusal to fund the magazine was a denial of free speech and "would risk fostering a pervasive bias or hostility to religion, which would undermine the very neutrality the establishment clause requires."

The Court's opinion in *Rosenberger v. Rector and Visitors of the University of Virginia* was written by Justice Anthony Kennedy, and was joined by Chief Justice Rehnquist and justices Scalia, Thomas and O'Connor.

It upheld the claim of Ronald Rosenberger, a student at the university and editor of "Wide Awake: A Christian Perspective at the University of Virginia," who sought a share of the school's Student Activities Fund to assist in publication costs for his magazine. The money in the fund is derived from mandatory fees paid by students and provides financial support to a wide range of extracurricular student clubs and activities.

The university refused Mr. Rosenberger's request to fund the Christian magazine because of a regulation that prohibits support for "religious activities." After exhausting the available appeal procedures within the university without success, Rosenberger and other editors of the magazine filed suit in federal district court. They alleged the university's refusal to provide funding on the basis of the magazine's editorial viewpoint violated their rights to freedom of speech

and press and to the free exercise of religion.

Although a federal district court and the United States Court of Appeals for the Fourth Circuit ruled in favor of the university, a majority of the Supreme Court agreed with Rosenberger's free speech argument, noting that "[v]ital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and if so for the State to classify them. The second, and corollary, danger is to speech from the chilling of individual thought and expression."

The Catholic League filed a friend of the court brief in support of Mr. Rosenberger. Authoring the League's brief was Professor Edward Gaffney, Dean of Valparaiso University Law School. The brief argued that the publication of religious viewpoints deserves the highest level of First Amendment protection and was in fact a central concern motivating both the First and Fourteenth Amendments. Furthermore, the brief argued that the lower court's attempt to artificially isolate religious speech from campus debate will impoverish discourse at public universities.