Supreme Court to Review Rosenberger

In a welcome move, the United States Supreme Court has agreed to review a federal appeals court decision supporting a university's decision to deny funding to a Christian journal published by students even though the university regularly grants money to other student organizations.

The plaintiff in the case, *Rosenberger v. Rector and Visitors of the University of Virginia,* was a student at the University of Virginia when he founded a nonprofit journal called *Wide Awake: A Christian Perspective at the University of Virginia.* The journal was created to address a wide range of social, philosophical and school-related issues from a Christian point of view. Mr. Rosenberger sought money to help defray publication costs from the university's Student Activities Fund (SAF), which is funded by mandatory student activities fees collected by the university each semester. Citing a provision of the SAF guidelines excluding "religious activities," the university denied Rosenberger's request, even though more than 100 student organizations and a dozen publications receive subsidies from SAF. Mr. Rosenberger then sued the university challenging the constitutionality of the "religious activities" exclusion.

A federal district court upheld the university's decision, as did the United States Court of Appeals for the Fourth Circuit. The appeals court ruled that while discriminating among publications based on their content would ordinarily be barred by the Free Speech clause of the First Amendment, the university's action was justified in this case because it demonstrated a compelling state interest in maintaining the separation of church and state. Funding *Wide Awake* would violate the Establishment Clause the court said, and would "send an unmistakably clear signal that the University of

Virginia supports Christian values and wishes to promote the wide promulgation of those values."

This is the only religion case on the court's docket so far this term and will give the court an opportunity to reconsider the current precedent now used to decide Establishment Clause cases. The test, from a 1971 case *Lemon v. Kurtzman,* has proved difficult for the justices to apply and has led to great confusion in the court's religion clause jurisprudence.

The League joined the Christian Legal Society and others in filing a friend of the court brief urging the court to hear this case; now that review has been granted, the League plans to file a friend of the court brief urging the court to overturn the erroneous court of appeals decision which sanctioned discrimination against religion.

The *Lemon* Test

In *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.