

Church & State - Now It's The Court's Turn

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down last January respecting a creche in Pawtucket, Rhode Island. While the Supreme Court ruled then, in *Lynch v. Donnelly*, that a municipality may finance the displaying of a nativity scene, it is unclear whether the Justices meant to authorize such a practice in the face of a local government -- in this case, the city of Scarsdale, New York -- having made a decision not to use public land for that purpose.

Although a lower court ruled in favor of Scarsdale, an appeals court ruled that the town must allow a creche to be erected, citing both *Lynch* and *Widmar v. Vincent*, the latter a decision which allowed student religious clubs to meet at universities which have established a "public forum." Representing the Scarsdale Village Board, Marvin E. Frankel, a former federal district court judge, argues that the appeals court wrongly viewed "an unattended symbol left standing in the park for two weeks" as the First Amendment equivalent of the actual religious speech involved in *Widmar v. Vincent*.

In addition to these four cases already taken by the Supreme Court, two more appellate court decisions await possible High Court scrutiny. These cases -- arising from Pennsylvania and Georgia -- found that student-initiated religious clubs meeting in public schools constituted an unconstitutional establishment of religion. This is the so-called "equal access" question.

The stakes are especially high this term. This past year a shock wave was felt throughout the land as the Court sought to redefine church/state doctrine established as long ago as 1947. We have witnessed a dramatic turn to the political right by the Supreme Court in recent years. A conservative majority has infused the concept of "judicial activism" (formerly the bane of such

self-styled "strict constructionists") with new and dangerous life. The conservative voting bloc -- Justices White, Lewis Powell, William Rehnquist, Sandra Day O'Connor and Chief Justice Warren Burger -- have now become the dominant force.

In addition to these controversial substantive issues, the Court also appears to be undertaking major changes in its heretofore "club-like" operating methods. In an unprecedented move, three sitting Justices recently went public with their frustration over the Court's direction and approach to these serious issues. Justice Harry Blackmun told an audience that sitting on the Supreme Court has become "a rotten way to earn a living." Justice John Paul Stevens feels that "the Court is overstepping its judicial authority." And Justice Thurgood Marshall argued that "the Court is eroding faith in the nation's legal system." A distinguished observer of the Court recently noted that these critical comments,

coming as they do from sitting justices, are "nothing short of extraordinary."

All of these concerns, of course, are magnified by the re-election of Ronald Reagan which, in the words of Moral Majority leader Jerry Falwell, "gives us at least two seats on the Supreme Court." Since the four "liberal" Justices now sitting average over 73 years of age, while the "conservatives" average less than 67 years, it is quite likely that any new appointments will come at the expense of those Justices who now struggle to keep their right-leaning colleagues at bay.

Whether or not the four church-state cases now before the Supreme Court settle or rupture our constitutional framework, one can rest assured that eternal vigilance will remain the price for maintaining the wall which separates church from state and thus protects our fundamental liberties.

Flap Develops Over Party Venue To Follow Orange Bowl Classic

MIAMI (WNS) — The traditional post game New Year's Eve party following the Orange Bowl classic football game here will be quietly boycotted by at least two members of the Orange Bowl Committee, one of whom is the publisher of the Miami Herald. The reason: the party will be held at the Indian Creek Country Club which has

a history of restricting its membership on the basis of race and religion, according to news reports here.

Also boycotting the party will be David Blumberg, who told the Miami Herald that "My wife and I do not attend that party. We don't attend any public functions at clubs that limit their membership based purely on

religious or ethnic or racial origins." Blumberg is one of the members of the 150 Orange Bowl Committee.

Both teams participating in the Orange Bowl game celebrate at the Country Club, a heavily guarded 29 mansion Island community of Indian Creek Village. It has taken place there for the last 12 years. The 11-officer police force limits access for the rest of the year to residents, their guests, country club

members and the hired help.

But a club official told the Herald that he is unaware of any membership restrictions. He said he was also

unaware of whether membership roles now include Blacks and Jews. President of the Orange Bowl Committee, Bob Lafferty, dismissed the controver-

sy, saying, "We have 800 people who come (to the party) all sizes, and all shapes and all colors and all races."

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