

# Opening act: Uniting church and state

by [Martin E. Marty](#) in the [May 2, 2006](#) issue

That's ridiculous! So spake the brilliant, productive, acerbic federal judge Richard Posner. What was ridiculous, in his eyes, was the position taken by an attorney for the University of Notre Dame. As reported in the *Chicago Sun-Times* (January 11), the issue was \$465,000 of federal money allocated to Notre Dame, which the school used to train Catholic school teachers, an act that violated First Amendment strictures. Posner said the money should be returned. "Lots of luck!" was effectually the response from Michael Carvin, Notre Dame's attorney, prompting Posner's judgment: "That's ridiculous!"

The judge followed with a hypothetical which he evidently thought would draw a "That's ridiculous!" from Notre Dame.

"What if Congress said, 'OK, we love Valparaiso University, so we're going to make Lutheranism the national religion of the United States and we're going to give a billion dollars to the Lutheran Church,' and the Lutheran Church takes the billion dollars and builds lots of nice churches," Posner suggested. "All the money is spent before the ACLU brings its suit. Are you saying . . . the Lutheran Church could keep all their buildings?" Carvin's yes drew another "That's ridiculous!" from the bench.

Let me intervene with my own ridiculousness. Whether or not Congress loves Valparaiso University, I do, being a satisfied customer. Two of my family members graduated from there, and I've often spoken or enjoyed activities at the school. So for a split second I thought Posner's hypothetical would make for a great reality. But as I pondered the rest of his sentence, the dream turned into a will-o'-the-wisp: Posner pictured Valparaiso deeding that billion dollars to the Lutheran Church. And the will-o'-the-wisp turned into a nightmare with Posner's fantasizing that Congress and Valparaiso could conspire "to make Lutheranism the national religion of the United States." As they say in court, Objection!

First, it's more likely that Congress would choose not Lutheran Valparaiso or Catholic Notre Dame but one of the universities still affiliated with the Southern Baptist Convention. The SBC peoples Congress with aggressive pro-establishment legislators. Lutherans are fairly rare figures on Capitol Hill, and in the U.S. Lutherans rather strenuously disbelieve in a "national religion."

A second objection arises because Lutherans sadly have had some experience with representing a national religion. Until 2000 they did that in Sweden, which numbers 7.2 million Lutheran communicants. But only 7 seven percent of those Lutheran men and only 11 percent of those Lutheran women ever darken a church door. Some estimates say only 1 percent of Swedes can be found in church on any Sunday. Lutheranism is and has been for centuries the national religion also in Norway, Denmark and Iceland, where participation is not much better.

Final objection: Congress and Valparaiso could not make Lutheranism the national religion because they'd have to ask *which* Lutherans. The Evangelical Lutheran Church in America and the synods of Missouri and Wisconsin don't talk much to each other, and there are 17 smaller Lutheran bodies out there ready to fuss if privilege were shown to one rather than another. The ruckus these squabbling Lutheran bodies would raise would certainly stir the ACLU to intervene early enough to abort the scheme.

If Congress did adopt a "Lutheranism as the national religion" policy, I'd hope that Lutherans would demand a recount.