

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond, on Monday, the 28th day of April, 2008.

Jeremy Jaynes, Appellant,
against Record No. 062388
Court of Appeals No. 1054-05-4

Commonwealth of Virginia, Appellee.

Upon A Petition For Rehearing

The Court grants the Petition for Rehearing filed by the Appellant limited, however, to the following issues:

1. In the context of a claim brought in a state court challenging a state statute under the First Amendment overbreadth doctrine, are state courts required to apply the same standing requirements as to that claimant that the claimant would be accorded in a federal court considering a similar First Amendment overbreadth claim?

2. Assuming, arguendo, that the first question is answered in the affirmative, has the Appellant (a) waived the argument presented in the Petition for Rehearing at pages 1 through 5 as not made in Appellant's briefs or on oral argument; and (b) is appellate consideration of the issue barred because Appellant approbated and reprobated (e.g., did Appellant agree in prior proceedings in this case that a state court may establish its own standing requirements but in its petition for rehearing contend that a state court must, at a minimum, apply federal standing requirements)?

3. Assuming, arguendo, that the first question is answered in the negative and a state court is not required to accord equivalent standing, as in a federal court, in a First Amendment overbreadth challenge to a Virginia statute involving commercial speech, what is the precedential effect of Wayside Restaurant, Inc. v. City of Virginia Beach, 215 Va. 231, 208 S.E.2d 51 (1974)?

Appellant's brief, which shall not exceed 20 pages, shall be filed no later than May 8, 2008; Appellee's brief, which shall not exceed 20 pages, shall be filed no later than May 16, 2008; and

Appellant's reply brief, if any, which shall not exceed 10 pages, shall be filed no later than May 22, 2008.

Justice Keenan took no part in the consideration of this matter.

A Copy,

Teste:

Patricia L. Harrington, Clerk