



# VOICE OF REASON

The Newsletter of Americans for Religious Liberty

2005, No. 3 [92]

## Supreme Court Forbids Some Commandments Monuments

On June 27, the last day of its 2005 rulings, the U.S. Supreme Court held 5 to 4 that county commissioners in McCreary and Pulaski Counties in Kentucky ran afoul of the Establishment Clause by erecting Ten Commandments plaques in the courthouse six years ago. The High Court ruled that erecting religious insignia on government property constituted an improper and unconstitutional promotion of religion. But at the same time and by the same 5-4 margin, the Court upheld a Commandments monument at the Texas Capitol because it was older (44 years), was mixed with other secular historical material, and was seen as less controversial and less visible. (ARL had joined an *amicus* brief to the Court in the Texas case.) This somewhat contradictory decision came about because of the single vote of Justice Stephen Breyer, who cast the deciding vote in both cases.

In announcing the Kentucky ruling (*McCreary County v. ACLU of Kentucky*, No. 03-1693), Justice David Souter said, "The divisiveness of religion in current public life is inescapable. This is no time to deny the prudence of understanding the establishment clause [of the First Amendment] to require the government to stay neutral on religious belief, which is reserved for the conscience of the individual." Souter added, "Context matters."

Justice Sandra Day O'Connor issued a concurring opinion with an eloquence that will stand the test of time. "Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?" O'Connor reiterated another long-standing principle when she observed, "Allowing the government to be a potential mouthpiece for competing religious ideas risks the sort of division that the Constitution sought to avoid."

The Court held that the Kentucky authorities, in specifying that the Protestant King James version be used in its gold-framed copies of the Commandments in their courthouses, showed "a predominant religious purpose." The county supervisors and other Kentucky lawmakers clearly intended to promote Christianity when they also endorsed Alabama Chief Justice Roy Moore's attempts to keep a similar religious display in the rotunda of the Alabama Supreme Court.

Souter argued, "The touchstone for our analysis is the principle that the First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion."

The majority opinion, written by Souter and joined by Stevens, O'Connor, Ginsburg and Breyer, took careful pains to show that the Ten Commandments is "a sacred text." Attempts to deny or soften that, in order to pass muster constitutionally, are dishonest. "This is not to deny that the Commandments have had influence on civil or secular law; a major text of a majority religion is bound to be felt. The point is simply that the original text viewed in its entirety is an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction. When the government initiates an effort

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## Stem Cell Research Passes House, Stalled in Senate

The House of Representatives gave President Bush a rare rebuke on May 24 when it voted 238 to 194 to authorize federal funding for more stem cell research. The House bill repealed Bush's 2001 restrictions and would allow research on stem cells donated by couples who have completed *in vitro* fertilization and no longer need their remaining frozen embryos. Many scientists believe that such research will one day lead to cures for a number of crippling ailments, including Parkinson's disease, spinal cord injuries, diabetes and some types of cancer.

Democrats voted 187-14 (93% yes) in favor of the Stem Cell Research Enhancement Act, while Republicans voted 180-50 (21.7% yes) against it. The lone Independent, Vermont's Bernie Sanders, voted yes.

Regionalism played a major role in the vote. All 22 New Englanders, including its five Republicans, voted yes, as did 81% of members from the Pacific Coast states. The third highest support level was the Mid-Atlantic region, where 67% were supportive, though socially conservative Pennsylvania was a bit of a drag, voting 10-9 against. The rise of conservatism in the Mid-Atlantic GOP, once a bastion of moderate Republicanism (New York, New Jersey and Pennsylvania), can be seen in the 19-8 negative vote among this region's Republicans. Mid-Atlantic Democrats voted 33-1 in favor.

The Border South split 50-50, with Eastern-oriented Delaware and Maryland voting 8-1 yes, while Baptist and evangelical Kentucky and Oklahoma voted 9-2 no. In the somewhat Mormon, somewhat secular, Rocky Mountain states, 43% voted yes. A real surprise came in the

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Midwest-Plains states, which were almost as conservative as the South on this issue. The yes vote was 42% in the Midwest and 41% in the South.

In the following states, every member, including Republicans, voted yes: Alaska, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota and Vermont. Unanimous opposition came from Idaho, Montana, Nebraska and Wyoming.

Party differences were paramount in a number of states. All Democrats voted yes, and all Republicans no, in Alabama, Arkansas, Colorado, Indiana, Kansas, Kentucky, Oklahoma, South Carolina, Utah, Washington State and Wisconsin. In quirky West Virginia, however, the one Republican voted yes and the two Democrats voted no.

Republican defectors were strongest in New England and the Pacific Coast. Almost half (45%) of California Republicans supported the bill.

Religion generally followed partisanship, though nine of the 14 Democrats who opposed the bill were Catholics. On the other hand, ten Catholic Republicans broke with the president (and the U.S. Catholic Conference) on this issue and voted yes. Four of the five Florida Republicans and three of the four Republicans in New York who voted yes were Catholics. Other subgroups with a big defection rate were Episcopalian Republicans, ten of whom voted yes, and nondenominational Protestant Republicans, seven of whom voted yes, as did seven Methodists and seven Presbyterians. Three of the five Christian Scientist Republicans voted in the affirmative. (In California the GOP defectors even included two Baptists, one Mormon and a conservative Christian.)

The main Senate roadblock had been Majority Leader Bill Frist of Tennessee. Republican Senator Arlen Specter of Pennsylvania and Democratic Senator Tom Harkin of Iowa have co-sponsored a companion bill. Frist, who had initially supported more research, seemed likely to block the Senate bill until July 29, when he announced a change of heart. Frist, a physician, told the Senate, "While human embryonic stem-cell research is still at a very early stage, the limitations put in place in 2001 will, over time, slow our ability to bring potential new treatments for certain diseases." Frist noted that only 22 existing cell lines are now eligible for federal funding, instead of the 78 foreseen by the administration, and some of those are deteriorating or contaminated. "It's not just a matter of faith, it's a matter of science," Frist concluded.

### Stem Cell Research Vote by Region

Region	%	% of Republicans
	Yes	Yes
New England	100.0	100.0
Pacific Coast	80.9	45.8
Mid-Atlantic	67.2	29.6
Border South	50.0	22.2
Rocky Mountain West	42.9	20.0
Midwest/Plains	42.2	16.7
South	41.2	11.0
All	55.1	21.7

A number of prominent Republicans, including former First Lady Nancy Reagan, praised Frist's decision, but conservative and Religious Right groups were vociferous in their denunciations. Especially harsh reactions came from Concerned Women for America, the Catholic League, and the National Pro-Life Action Center. The Christian Defense Coalition said Frist should not expect its support if he seeks the Republican presidential nomination in 2008. Frist was disinvited to an evangelical rally, Justice Sunday II, held in his home state of Tennessee on August 14. He spoke by video to the April Justice Sunday in Louisville, but was pointedly excluded from the second because of his support for stem cell research funding.

Judging from the House vote, a threatened presidential veto of enhancing stem cell research may harm Republicans, even among their most devoted allies. White House spokesman Scott McClellan indicated that President Bush is still likely to veto the bill if it passes the Senate. His veto would probably be upheld, since it requires a two-thirds vote to override.

This issue clearly divides Blue America and Red America. In the Blue States, which backed John Kerry, 70.8% of House members voted for the bill. In the Red States, where George W. Bush was victorious, only 40.4% were supportive. ■

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Senior Editor: Edd Doerr  
 Editor: Albert J. Menendez  
 Production Editor: Teri Grimwood  
 Canadian Correspondent: John Clubine

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# Air Force Downplays Religious Discrimination Evidence

A 16-member military panel that examined the heated religious climate at the U.S. Air Force Academy found that there was no “overt discrimination” against non-evangelical Christians but rather “a failure to fully accommodate all members’ needs.” The 100-page report issued on June 22 found that some officials were guilty of “a lack of awareness over where the line is drawn between permissible and impermissible expression of beliefs.” The report admitted several instances in which cadets and professors were “overly aggressive in the expression of their faith.”

General Roger Brady, the Air Force deputy chief of staff for personnel, told a Pentagon press conference that Academy commanders have not been given “useful operational guidance” as to the appropriate boundaries. Students were harassed for not attending “voluntary” prayer meetings during basic training, were pressured to attend the film “The Passion of the Christ” in 2004, and were harassed by over-zealous evangelicals on the faculty and in the sports programs.

While Abraham Foxman, national director of the Anti-Defamation League (ADL) praised the report, many critics remain unconvinced. Representative Lois Capps (D-CA), who asked for a high level investigation of the charges, commented, “I continue to have severe concerns. The report downplays the full extent of an environment consumed by religious intolerance. I am offended and shocked by the proselytizing that has been going on.” Representative Steve Israel (D-NY) said the report “could have been more forthright than it is” and urged Academy officials to take decisive action to remedy the situation. Academy superintendent Lt. General John Rosa Jr. told the executive committee of the ADL on June 3 that religious intolerance did exist and that “it’s going to take a while to fix, perhaps a half-dozen years.” Rosa, who shortly after decided to leave the Academy and become president of The Citadel, singled out his second in command, Brigadier General Johnny Weida, for “inappropriate actions,” especially his open endorsement of the National Day of Prayer activities in Colorado Springs.

The report ignored the transfer of Lutheran Chaplain McLinda Morton after she protested against religious discrimination at the Academy. Morton resigned from the military on June 20 rather than accept transfer to Okinawa. Her attorney, Eugene R. Fidell, issued a statement which said, in part, “Chaplain Morton has been an outspoken critic of the academy’s willingness to tolerate a pervasive evangelical climate that is threatening to members of other faith groups and disregards the constitutional separation of church and state. . . . It is clear that the academy has a lot of work to do to rectify the numerous First Amendment problems that have become a matter of public concern over the last several months. I think Chaplain Morton, because of her outspokenness and leadership on these issues, had concluded that it would be difficult for her at this point to contribute in the way she would like to the academy’s transition to a better and more constitutional environment.”

Morton is not the only chaplain who ran afoul of the evangelicals, who increasingly dominate the U.S. military. In a letter in *The Washington Post* on July 9, former Lutheran chaplain Christine Miller, of Waldorf, Maryland, wrote: “Having been a Lutheran chaplain in the military, I can tell you that the issues at the Air Force Academy are not new. They may be pervasive there now, but even when I was serving on active duty in the 1970s and ‘80s as the first female Lutheran chaplain (Navy) in any of the military services, there was an attitude among many evangelicals, both chaplains and non-chaplains, that Catholics and liturgical Protestant (especially Lutheran and Episcopal) churches were

not “Christian.” It has only gotten more confrontational as many feel that (finally!) their views are dominant.”

The task force that issued this report has also been criticized for not meeting with two outspoken critics whose allegations sparked the inquiry. One was Kristen Leslie, a Yale theology professor who highlighted the evangelical domination of the chaplaincy and religion program at the Academy. The other was Mikey Weinstein, an Academy graduate and former Reagan administration official, who lamented the anti-Semitism at the tax-supported school, and said he had heard from 117 students and graduates who cited examples of religious intolerance. These 117 people included 98 non-evangelical Protestants, ten Catholics, eight Jews and one atheist. Leslie’s 2004 report concluded, “There’s one religious voice, the conservative evangelical Christian voice, that has decided that it has the right to lay claim to the environment, and it is able to do that by working with the Academy power structure.”

As a response to Leslie’s findings, the Academy rather half-heartedly established a “sensitivity training” program to teach tolerance. But the program was watered down at the request of top brass and chaplains, and references to non-Christian religions were eliminated.

The response to these allegations and reports by evangelical leaders and by Republicans has been lukewarm at best and occasionally hostile. House Democrats, led by Wisconsin’s David Obey, tried to pressure the Air Force to mount a full-scale inquiry into the problems at the Academy. But his amendment to H.R. 2863 was defeated on June 20 by a vote of 210 to 198. Only eight Republicans joined 189 Democrats and

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## *ARL in Action*

Research Director Al Menendez spoke on “The Rise of the Religious Right and Its Implications for Democracy” at the National Education Association convention in Los Angeles on June 29. His address is available on ARL’s website, [www.arlinc.org](http://www.arlinc.org).

President Edd Doerr presented two workshops on church-state matters at the Unitarian Universalist General Assembly in Fort Worth, also in late June. Several of Doerr’s recent articles are also available on the ARL website.

ARL has joined an *amicus* brief to the U.S. Supreme Court in the Oregon assisted suicide case, *Gonzales v. Oregon*. ARL has joined with numerous national organizations in opposition to the extension of vouchers in the District of Columbia, expanded funding for faith-based initiatives that do not guarantee the religious liberty of employees or recipients of the aid, and the accelerated funding of abstinence-only sex education programs, which lack scientific integrity and are empirically unsound.

A Menendez-Doerr article, “That Wall,” which appeared in *Liberty* (September-October 1999) will appear in the forthcoming book, *Contemporary Issues Companion: Civil Liberties*, to be published by Thomson-Gale in the spring of 2006.

Doerr also joined a group of 130 international signatories who urged Prime Minister Mikulas Dzyrinda of the Slovak Republic to reject a treaty between the Republic and the Holy See that might take precedence over Slovak civil law and threaten the separation of church and state.

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## Air Force Academy, *continued from page 3*

one Independent in support of the amendment, while 207 Republicans and three Democrats blocked it. This roll call vote shows the stark difference between the parties on the issue of religious tolerance: 98.4% of Democrats and only 3.7% of Republicans voted for religious tolerance. The GOP, as former Senator John Danforth (R-MO) has observed, has become the political arm of conservative Christianity.

Evangelical leaders scoffed at the charges. An executive at Focus on the Family, the powerful evangelical lobby whose headquarters can be seen from the Academy, called the inquiry “a witch hunt.” Focus vice president Tom Minnery twisted the report’s findings in an interview with Conor O’Clery in *The Irish Times*. “We fervently hope that this ridiculous bias of a few against the religion of the majority – Christianity – will now cease.” The Navigators, an evangelical group that has worked officially with the military since the 1930s, was not concerned by the inquiry. “I don’t think there’s a pervasive or major problem at the Academy,” Jeffrey White, president emeritus of the Navigators and a former Academy instructor, said. “If anything, it’s a bit of intolerance among the cadets who are young kids and sometimes say stupid things,” he told Religion News Service.

One grudging admission that something might be wrong came from former Virginia Governor James Gilmore, chairman of the Academy’s Board of Visitors. “Some people thought, apparently, that they were doing the right thing by expressing their faith, but they failed to understand the impact it would have on people with other faiths or with no faith. They understand that now. I think they recognize that some faculty members probably went over the line.” (As Virginia’s last Republican governor, Gilmore intervened in a right to die case similar to the Terri Shiavo spectacle in Florida, and tried to force a Virginia woman to keep her brain-dead husband alive. His grandstanding was rejected by state courts.)

The Academy did name a rabbi, Arnold Resnicoff, former top chaplain in the U.S. military’s European Command, to serve as a “special assistant for values and vision.” The retired U.S. navy captain will advise Acting Air Force Secretary Michael Dominguez on implement-

ing recommendations made by Lt. General Roger Brady to “accommodate adherents to minority beliefs” at the Air Force Academy. New guidelines for appropriate religious expression and training in religious diversity and respect are goals of the Academy, according to a report in Reuters on June 27.

*The New York Times* remained skeptical. In an editorial, “Separation of Church and Air Force,” it said, “Right now, it is hard to believe that there can be true reform from within. It is time for the higher chain of command to deposeolytize this institution of national defense.”

The conflict may represent a larger trend. As Laurie Goodstein pointed out in an article in *The New York Times* on July 12, “Evangelicals are a growing force in the military chaplain corps. Evangelical chaplains have more than doubled their numbers from 1994 to 2005, while Catholic chaplains declined from 167 to 94, Presbyterians from 30 to 16, Methodists from 64 to 50 and United Church of Christ chaplains from 11 to 3.” These trends have intensified since historian Anne Loveland found a similar pattern in her book, *American Evangelicals in the U.S. Military, 1942-1993*. It was, therefore, not surprising that the Air Force paid \$300,000 to bring hundreds of its chaplains to a four-day Spiritual Fitness Conference in June at a Hilton hotel in – where else? – Colorado Springs, the “evangelical Vatican” which delivered Colorado to George Bush in the 2004 election.

This controversy has not gone unnoticed overseas. Conor O’Clery, U.S. correspondent for *The Irish Times*, asked openly in a lengthy July 16 article in Ireland’s leading newspaper, “Have evangelical organizations made the U.S. Air Force Academy a test case for the Religious Right agenda?” He concluded in the affirmative and cited an interesting fact. “The U.S. Air Force Academy registered 55 allegations of religious bias dating back to 2000, compared with just one complaint at West Point and none at Annapolis.”

O’Clery also professed amazement that Pastor Ted Haggard of the huge New Life Church in Colorado Springs and defender of the Academy confers with the White House every Monday. “That would not go down well in Ireland if Catholic bishops called the Prime Minister’s office every Monday to discuss policy,” he observed. ■

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## Report Scores School Bible Course

An elective Bible course which is supposed to begin in fall 2006 in the Odessa, Texas, schools has been labeled sectarian, inaccurate and biased in a report issued by the highly respected Texas Freedom Network Education Fund. Author Mark Chancey, who teaches biblical studies at Southern Methodist University, studied the National Council on Bible Curriculum in Public Schools (NCBCPS)’s course, “The Bible in History and Literature.” He concluded: “In my professional judgment as a biblical scholar, this curriculum on the whole is a sectarian document, and I cannot recommend it for usage in a public school setting. It attempts to persuade students to adopt views that are held primarily within certain conservative Protestant circles but not within the scholarly community, and it presents Christian faith claims as history.”

The course claims that the Bible is inspired by God, that its claims to factual authenticity are sustained by all archaeological discoveries, and that the Dead Sea Scrolls validate early Christianity – views held by few scholars. The Jewish world of Jesus is given little treatment. Says Chancey,

“The course argues for Christian authorship of one of the Dead Sea Scrolls, ignores the historical problems posed by Matthew’s and Luke’s genealogies and erroneously implies that the Jewish Temple was a vast depository of genealogical records.”

Creationism also permeates the course. “The curriculum’s discussion of scientific issues also appears designed to support the theological claim that the Bible is completely accurate. It cites no scientific literature.”

The course resembles a Protestant Sunday school offering rather than the kind of factually objective and religiously neutral course of study that would be constitutionally acceptable in schools. All references are made to Protestant translations of the Bible, and the course misrepresents the Vulgate translation of the Fourth Century C.E. “The role of the Bible in Roman Catholic and Eastern Orthodox Christian thought receives little attention. Indeed, Eastern Orthodox Christianity is virtually invisible in this curriculum.”

The Ten Commandments are presented only in their Protestant version. “A discussion of the Ten Commandments reflects a primarily Protestant perspective. The list of the Commandments follows a standard Protestant enumeration, without noting that the Roman Catholic [and Lutheran] enumeration is different. . . . Students who study this curriculum are receiving an introduction to a specific Bible – the Protestant Bible. That Bible is presented as the standard; Bibles of other

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## Morgentaler Honored

On June 16 the University of Western Ontario (UWO) awarded an honorary Doctor of Laws degree to Dr. Henry Morgentaler – physician, Auschwitz survivor, and the single most important figure in establishing abortion rights in Canada. Amid standing ovations and applause, the university's vice president said that Morgentaler was being honored for "his determination, courage and effectiveness in promoting human rights and especially the right of women to make their own decisions regarding reproduction."

The university's decision to honor Dr. Morgentaler was opposed by Catholic Church officials. The ceremony was protected by police as several hundred demonstrators against abortion rights gathered outside the university.

"I wish to congratulate the university and its president, Dr. Paul Davenport, for standing by its decision in spite of protests by people opposed to what I represent and stand for," Morgentaler told the audience. "Over the past 37 years I have dedicated myself to the struggle to achieve rights to reproductive freedom and to provide facilities where women could obtain safe abortions in an atmosphere of acceptance and compassion," he added. "I am proud to have been given the opportunity to make an important contribution to a safer, kinder society where women are treated with the dignity and respect they deserve."



Dr. Henry Morgentaler and ARL president Edd Doerr, Belgium, 1990.

In 1988 Morgentaler won the landmark Supreme Court of Canada ruling that acknowledged women's right to choose. Before that ruling Morgentaler had to fight a 20-year battle with provincial and national governments, conservative religious leaders, attempted assassinations, and a patriarchal social system. For openly performing thousands of procedures, one on Canadian television, he had to endure arrests, trials, raids on his clinics, a fire-bombing and ten months in jail. But nothing deterred him. If the Nazis couldn't do him in during the Holocaust, he wasn't too worried about Canadians. "I believe what I do is important," he once said. "We have a safer, better society as a result. I felt it was my duty. And I've never regretted it."

In 1990 Morgentaler and I were at a conference in Brussels at which the Canadian physician presented an award to the Belgian physician who led the struggle for choice in that country.

During a break in the meetings Morgentaler and I and others were wandering around downtown Brussels looking for a restaurant when I heard someone call out, "Hey, Edd!" I wondered who the heck knew me in Belgium. It turned out to be Margie Pitts Hames, the Georgia attorney who argued *Doe v. Bolton*, the companion case to *Roe v. Wade*, before the U.S. Supreme Court. Small world!

More heroes like Morgentaler are needed everywhere, especially in the America of 2005. I count it a great privilege to have known Dr. Morgentaler for over 30 years.

—Edd Doerr

traditions, if they are mentioned at all, are often presented in ways that imply that they are deviations from that Protestant standard."

The course also lacks scholarly balance. "Many of the sources the curriculum uses are nonacademic in nature. The curriculum does not sufficiently make clear its dependence on its sources. In fact, it often cites no sources at all. In addition, the curriculum contains numerous factual errors and vastly oversimplified (some might say misleading) presentations of complex issues." The curriculum does not even identify its authors.

The NCBCPS was founded in 1993 by a Greensboro, North Carolina, real estate broker, Elizabeth Ridenour. Ridenour is a member of the Council on National Policy, an umbrella organization of right-wing leaders. Its eight-member Board of Directors and its Advisory Committee read like a "who's who of the Religious Right": David Barton, D. James Kennedy, Rabbi Daniel Lapin, Dr. Charles Stanley, Howard Phillips. Also there are Ben Kinchlow, former host of CBN's 700 Club, evangelist Joyce Meyer, U.S. Senate Chaplain Barry Black, actor Chuck Norris, beer magnate Holly Coors, and two Republican members of Congress from North Carolina, Sue Myrick and Robin Hayes.

The group claims that its curriculum is used in at least 308 school districts in 36 states, with 1,000 schools and 175,000 students in its programs. *The Dallas Morning News* reported on May 1 that 49 school districts in Texas had adopted the Bible course.

One problem, say critics, is that teachers who teach the course are trained by NCBCPS and are not evaluated or certified as religion specialists by public school accrediting agencies. Tracey Kiesling, the NCBCPS teacher trainer, founded the Creation Evidence Museum in Glen Rose, Texas, to promote a creationist view of science and history.

Critics of the program are speaking out. In addition to the TFN study, an article in a 2003 issue of *The Journal of Law and Education* said

the course "suffers from a number of constitutional infirmities and fails to present the Bible in the objective manner required." *The Lufkin Daily News* in East Texas editorialized on August 2: "Such courses are a bad idea for public schools. Our teachers and staff have enough problems to contend with, without having to add religion to the mix. Even if our public schools were in the business of religious instruction, parents could not be assured that the instruction their child received was a reflection of their own beliefs. The only way that can be assured is to leave religious instruction to parents and clergy, not educators."

The program's defenders are also numerous. John Waggoner, a real estate appraiser in Odessa, Texas, presented 6,000 signatures in support of the Bible class to the Ector County school board in April. Ector County is 80% Protestant and its residents gave George W. Bush 76% of their votes in 2004. ■

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## Commandments Monuments, *continued from page 1*

to place this statement alone in public view, a religious object is unmistakable.”

The Kentucky context was politically significant and constitutionally suspect. “At the ceremony for posting the framed Commandments in Pulaski County, the county executive was accompanied by his pastor, who testified to the certainty of the existence of God. The reasonable observer could only think that the Counties meant to emphasize and celebrate the Commandments’ religious message. . . . [T]he display’s unstinting focus was on religious passages, showing that the Counties were posting the Commandments precisely because of their sectarian content. That demonstration of the Government’s objective was enhanced by several religious references and the accompanying resolution’s claim about the embodiment of this in Christ. Together, the display and resolution presented an indisputable, and undisputed, showing of an impermissible purpose.”

In his dissent, Justice Antonin Scalia, joined by Chief Justice William Rehnquist and Justices Clarence Thomas and Anthony Kennedy, issued another scathing attack on his colleagues. He charged that it is “false that the government cannot favor religious practice” and said the Kentucky decision “extends the scope of that falsehood even beyond prior cases.” Attacking once again the *Lemon* test of 1971, which requires a secular purpose in legislative actions, Scalia said the *McCreary* ruling “modifies *Lemon* to ratchet up the Court’s hostility to religion.” Scalia argued that government acknowledgment or invocation of a Creator is not an establishment of religion. “Governmental invocation of God is not an establishment.”

Scalia’s harsh rhetoric, which caused Souter to issue a multi-page rejoinder in his majority opinion, suggests that future church-state cases will be pervaded by rancor and incivility. (Scalia even suggested that this case “does not rest upon consistently applied principle” and therefore may represent “the dictatorship of a shifting Supreme Court majority” rather than “the rule of law.”)

There was one Scalia sentence in a footnote to his dissent that does raise hopes that he is not totally impervious to religious liberty. Scalia wrote, “The Establishment Clause would prohibit governmental endorsement of a particular version of the Decalogue as authoritative.”

Scalia also invoked the personal religious views embodied in several presidential inaugural addresses, but that argument seems largely irrelevant

to the case at hand.

The justices reached a different conclusion in *Van Orden v. Perry* (No. 03-1500). A 5-4 majority upheld district court and Fifth Circuit Court of Appeals rulings that a Texas Commandments monument was so embedded with other historical memorabilia that it had a valid secular purpose.

Chief Justice Rehnquist wrote for the majority and was joined by Justices Scalia, Kennedy and Thomas. Scalia and Thomas also submitted separate concurring opinions. Justice Breyer filed an opinion concurring in the judgment, which resulted in the overall favorable verdict. Justice Stevens filed a dissenting opinion, which Justice Ginsburg joined. Justice O’Connor filed her own dissenting opinion. Justice Souter filed a dissenting opinion and was joined by Stevens and Ginsburg. This paper flood caused the Chief Justice to quip that he never knew there were so many members of the Court!

Rehnquist’s opinion concluded that the Commandments monument, a six-foot-high monolith erected by the Fraternal Order of Eagles in 1961, was “passive” and did not constitute direct government endorsement of religion. He argued that there has been an unbroken history of official acknowledgement of religion’s role in American life by all three branches of government since at least 1789.

The majority admitted that “the Ten Commandments are religious – they were so viewed at their inception and so remain. The monument, therefore, has religious significance, . . . But Moses was a lawgiver as well as a religious leader and the Commandments have an undeniable historical meaning, . . .”

In conclusion, the majority held, “Texas has treated her Capitol grounds monument as representing the several strands in the state’s political and legal history. The inclusion of the Ten Commandments monument in this group has a dual significance, partaking of both religion and government. We cannot say that Texas’ display of this monument violates the Establishment Clause of the First Amendment.”

It was hardly a ringing endorsement.

Justice Breyer decided the case even though he admitted that it was “a borderline case.” Seemingly reaching for evidence to buttress his conclusion that the monument was constitutional, he argued, “In certain contexts, a display of the tablets of the Ten Commandments can convey a religious message but also a secular moral message (about proper standards of social conduct). And in certain contexts, a display of the tablets can also convey a historical message (about a historic

### Excerpts from the Kentucky Commandments Decision

“. . . [T]he principle of neutrality has provided a good sense of direction: the government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals under the Free Exercise Clause.”

“. . . the history of posting the Commandments expressed a purpose to urge citizens to act in prescribed ways as a personal response to divine authority.”

“We are centuries away from the St. Bartholomew’s Day Massacre and the treatment of heretics in early Massachusetts, but the divisiveness of religion in current public life is inescapable.”

– Justice David Souter for the majority

“Reasonable minds can disagree about how to apply the Religion Clauses in a given case. But the goal of the Clauses is clear: to carry out the Founders’ plan of preserving religious liberty to the fullest extent possible in a pluralistic society. By enforcing the Clauses, we have kept religion a matter for the individual conscience, not for the prosecutor or bureaucrat. At a time when we see around the world

the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish.”

“It is true that the Framers lived at a time when our national religious diversity was neither as robust nor as well recognized as it is now. They may not have foreseen the variety of religions for which this Nation would eventually provide a home. They surely could not have predicted new religions, some of them born in this country. But they did know that line-drawing between religions is an enterprise that, once begun, has no logical stopping point. . . . The Religion Clauses, as a result, protect adherents of all religions, as well as those who believe in no religion at all.”

“Those who would renegotiate the boundaries between church and state must therefore consider a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?”

– Justice Sandra Day O’Connor, concurring opinion

relation between those standards and the law) . . . Here the tablets have been used as part of a display that communicates not simply a religious message, but a secular message as well. The circumstances surrounding the display's placement on the Capitol grounds and its physical setting suggest that the state itself intended the latter, nonreligious aspects of the tablets' message to predominate."

Breyer was also swayed by the fact that no opposition was expressed for the first 40 years. "As far as I can tell, 40 years passed in which the presence of this monument, legally speaking, went unchallenged." Breyer also praised the Eagles for trying to "find a nonsectarian text," as if such a text actually exists.

Even Breyer, in casting the decisive vote, admitted that "these factors provide a strong, but not conclusive, indication that the Commandments' text on this monument conveys a predominantly secular message."

Justice Scalia's concurrence said, "There is nothing unconstitutional in a state's favoring religion generally, honoring God through public prayer and acknowledgement, or, in a nonproselytizing manner, venerating the Ten Commandments." Justice Thomas used his concurrence to advocate "a more fundamental rethinking of our Establishment Clause jurisprudence" and allowing almost every public support for religion that falls short of "coercion."

Justice Stevens' dissent emphasized that "the Establishment Clause has created a strong presumption against display of religious symbols on public property." Texas has violated that principle. "The message transmitted by Texas' chosen display is quite plain: This state endorses the divine code of the 'Judeo-Christian' God."

Stevens clearly expressed concern that decisions breaking down or weakening the wall of separation between church and state "is plainly not worthy of a society whose enviable hallmark over the course of two centuries has been the continuing expansion of religious pluralism and tolerance."

Stevens added that the text used in Texas was "the expurgated text of the King James version of the Ten Commandments that is unlikely to be accepted by Catholic parishes, Jewish synagogues, or even some Protestant denominations." He concluded, "The judgment of the Court in this case stands for the proposition that the Constitution permits governmental displays of sacred religious texts. This makes a mockery of the constitutional idea that government must remain neutral between religion and irreligion."

In dissent Justice Souter observed, "The Ten Commandments constitute a religious statement, their message is inherently religious, and the purpose of singling them out in a display is clearly the same."

Reaction to the two decisions varied widely. Activists on both the separationist and accommodationist sides of church-state issues cited a victory, though no one thought the results would add clarity to the debate over religious symbolism on public property. *The Washington Post* opined that the decisions "were not a model of clarity or judicial consensus . . . but in practical terms [they] were not a bad way to evaluate public religious monuments." *The New York Times* said, "They are an important reaffirmation of the nation's commitment to separation of church and state."

University of Texas law professor Douglas Laycock warned that the decisions "mean we will be litigating these cases one at a time for decades." Dr. C. Welton Gaddy, president of the Interfaith Alliance, observed, "Today's Supreme Court split decision will, for now, keep the wall of separation between religion and government intact but greatly weakened. The venerable wall remains seriously threatened as intense assaults on religious liberty continue from many different parts of the nation. First Amendment guarantees of a free exercise of religion without entanglement between the institutions of religion and government are no longer secure in the present environment."

*New York Times* legal correspondent Linda Greenhouse predicted

that the ruling in the Texas case "will immunize from constitutional challenge hundreds of granite Ten Commandments monuments that were erected in public places around the country by the Fraternal Order of Eagles, a national civic organization, in the 1950s and 1960s." She added, "Outside the court, the split decisions enabled each side in the larger debate over the role of religion in the public square to claim a measure of victory. It may take further litigation, not in these particular cases but in others that raise related questions, before the import of the decisions becomes clear."

Reaction from the Religious Right and from conservative Republicans was swift and predictable. Rev. Patrick Mahoney, director of the Washington, D.C.-based Christian Defense Coalition, announced a campaign on the steps of the Boise, Idaho, city hall to install Commandments displays in at least 10 cities and towns during the coming year. Mahoney, a minister in the very conservative Reformed Presbyterian Church, said a coalition of evangelical Christian organizations would lead the effort. Idaho religious conservatives want the city of Boise to restore a Commandments monument in a public park that was removed last year by the Boise City Council. Brandi Swindell, director of the Keep the Commandments Coalition of Idaho, said the monument is now constitutional. But Boise Mayor David Bieter said he preferred that it stay in front of an Episcopal church, where it had rested for the past year. Bieter said, "It's very difficult to tell what kind of display would be constitutional." He noted that the Texas monument was one of 38 historical markers around the state capitol complex, something not present in Boise.

U.S. House Republicans were quick to enter the fray. Rep. Ernest Istook (R-OK) introduced a constitutional amendment with 107 co-sponsors on June 30 to reverse the Supreme Court's Kentucky ruling. Istook's so-called Religious Freedom Amendment, defeated back in 1998, would have allowed prayers and religious displays on public property, including schools. Rep. Trent Frank (R-AZ) said, "The Supreme Court seems determined to continue its arrogant and inexorable march to strip the American people of their constitutional rights." Rep. Spencer Bachus (R-AL) claimed, "Our forefathers clearly based our legal system on biblical moral law, and to prohibit the displaying of that law contradicts their intent. The usurpation of this collective wisdom by five members of the Supreme Court continues and is simply disgraceful and baseless."

The present Court apparently thought it has solved the controversy, and on June 29 denied review of cases regarding the Commandments in Harlan County, Kentucky, and Adams County, Ohio. (In both cases lower courts declared such displays in public schools unconstitutional.)

Some communities are trying to apply the Court's dual rulings in local circumstances. Authorities in Montgomery County, Maryland, have decided that a Commandments plaque in the county judicial center in Rockville is constitutional because it is part of a larger secular exhibit. The Commandments have been displayed at the Montgomery County Circuit Court since 1940 and are part of an exhibit including the Magna Charta, the U.S. Constitution, the Declaration of Independence and the Maryland Toleration Act. In Arizona it is likely that a stone monument of the Commandments in a park across from the state capitol will remain despite an ACLU lawsuit. Attorneys in Baltimore are undecided which ruling applies in Frederick, Maryland, where a federal judge recently allowed a privately owned display in a Frederick city park. Robert Percival, a constitutional law professor at the University of Maryland, said the issue turns on the motivation behind the decision to erect a Commandments monument. Did the city intend to promote religion or to recognize religious documents as part of a legal or historical display? "It really turns on the difficult decision of how you go about discerning what the motive is behind a decision that allows something religious in nature to be on public property," Percival told the Associated Press. ■

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# On the Brink of ‘Theocracy’

by Reverend Carlton W. Veazey

Progressives who think warnings about “theocracy” are an exaggeration should take a closer look at “Justice Sunday: Filibustering People of Faith,” The Christian Right telethon headlined by Senate Majority Leader William Frist. Envision the carefully designed image that the far-right Family Research Council, the main organizer of the April 24 event, beamed into conservative churches across the country: a political rally from a large, comfortable megachurch in Louisville, with a middle-class audience listening with rapt attention to political operatives who self-identify as religious leaders – and at the bottom of the screen, streaming video with the photos, names and phone numbers of targeted U.S. senators. The visual message was clear: the church is dominant over the state and senators should toe the line on eliminating the filibuster and confirming Bush judges or pay the price.

There is a right way and a wrong way to engage religious voices in the public square. I believe “Justice Sunday” reflects the latter and highlights several disturbing trends. I agree with the Rev. Dr. Susan Brooks Thistlethwaite, president of the Chicago Theological Seminary, who called “Justice Sunday” sacrilegious and said, “The radical religious right turned a sanctuary into a political platform.” As a Baptist minister for more than 40 years with a profound respect for religious freedom and pluralism, I fear it will get worse. In fact, I think we are teetering on the brink of theocracy, and the Christian Right could conceivably use the battle over the judiciary and weakening support for reproductive rights to push us over the edge. Unfortunately, although Frist has been vigorously, and appropriately, criticized for his poor judgment and political

opportunism in taking part in the telethon, the greater problem of sectarian religious manipulation of public policy debates has been minimized. President George W. Bush brushed off a question about the role of faith in politics at his April 28 press conference with the innocuous response that “people in political office should not say to somebody you’re not equally American if you don’t agree with my view of religion.” Rather than give a high school civics lesson, he should have had the courage to disavow the religious arrogance and extremism of “Justice Sunday.”

The Christian Right’s posture in the showdown over the “nuclear option” has been a stark lesson in how religious language and imagery are inappropriately seeping into government and politics. First, of course, religion is defined as a particular religion and then defined further as a particular brand of that religion so as to exclude all other views and versions as irreligious, immoral, or wrong. Moreover, in this worldview, Christianity and Country are inseparable. One of the “Justice Sunday” speakers, Dr. Albert Mohler, president of the Southern Baptist Theological Seminary, put it in terms as chilling to religious liberty and diversity as any I’ve ever heard. Like other fundamentalists, Mohler believes there is only one correct interpretation of the Bible – his – and he equated the inerrancy of his interpretation of the Bible with the inerrancy of the Constitution, based on his biblical beliefs. In bringing the Bible and the Constitution together, fundamentalists like Mohler are moving toward mainstreaming their biblically-based interpretation of the Constitution. Judges would be held to the standard of biblical

## BJC and TFN: Two Groups Worth Knowing

Two organizations – one founded back in the Depression, the other, only a decade ago – are playing increasingly important roles in the effort to preserve religious liberty and separation of church and state in the U.S. ARL is privileged to work with them.

**The Texas Freedom Network (TFN)** is celebrating its tenth anniversary this year. Set up in 1995 after George W. Bush became governor, the organization is seen as a counterforce to the rising power and aggressiveness of the Religious Right. But it is more than that. It lobbies forcefully for public education, human rights, religious liberty, and church-state separation. TFN monitors the state legislature, maintains an effective presence in state affairs, and runs a lively and comprehensive website that covers appropriate news events with thoroughness and precision. TFN publishes special reports on a variety of topics. The Texas Freedom Network Education Fund “supports research and education efforts in support of religious freedom and individual liberties.” Two recent reports (reviewed elsewhere in this issue) are “The Bible and Public Schools: Report on the National Council on Bible Curriculum in Public Schools” and “The National Day of Prayer Task Force: Turning a Day of Faith into a Rally for the Christian Right.” Texans are lucky to have this Austin-based group fighting for their rights. (TFN, PO Box 1624, Austin, TX 78767, 512-322-0545, [www.tfn.org](http://www.tfn.org).)

**The Baptist Joint Committee for Religious Liberty (BJC)** goes back to 1936, when a coalition of U.S. Baptists of different denomi-

nations set up a Washington, DC office to bring their religious perspectives before Congress. Quakers, Methodists and Roman Catholics were then the only other religious bodies with a presence in the nation’s capital. The BJC, then called the Baptist Joint Committee on Public Affairs, primarily focused on religious liberty, seen as a basic, unshakeable Baptist principle, and its “corollary,” separation of church and state. It opposed any efforts to mix government and religion, particularly at the financial line where subsidy can quickly become establishment. The BJC has been noted for capable and eloquent leaders like J.M. Dawson, who wrote in his 1948 book, *Separate Church and State Now*, “It is a fixed American opinion that whenever and wherever churches have been able to invoke the power of the state in their behalf, the effects have been disastrous to moral character, to spiritual ideals and the good order of society.”

The BJC opposed all manner of federal and state aid to faith-based schools, to the establishment of U.S. diplomatic relations with the Holy See, and to constitutional amendments requiring school prayer. When its largest constituent member, the Southern Baptist Convention, moved to the Right, repudiated many historic Baptist principles, and withdrew funding from the BJC, the group restructured and maintained its identity. It is known for a strong legal program, an informative newsletter, *Report from the Capital*, and a succession of outstanding staffers, including James Dunn, Brent Walker, James Wood, Melissa Rogers and K. Hollyn Hollman (200 Maryland Avenue NE, Washington, DC 20002, 202-544-4226.).



## Supreme Court Upholds Prison Religious Accommodation

teachings, as interpreted by fundamentalists. I don't doubt the sincerity of Mohler and other fundamentalist ministers who share this view that the Bible is literally true and they alone know what it means, but they are on dangerous ground when they then suggest that they alone also know what the Constitution means – and that anyone who thinks differently is anti-Christian. Christians have strong differences of opinion on the meaning of scriptures and most of us don't want to see a particular brand of Christianity held up as the only real Christianity. We certainly don't want a particular brand of Christianity enacted as the law of the land.

The theocracy envisioned by the Christian Right centers around their interpretation of “family” and “values,” with the U.S. Supreme Court portrayed as the font of the anti-religious moral decay that is destroying America. James Dobson of Focus on the Family, another “Justice Sunday” speaker, railed against the Supreme Court as “arrogant and imperious and determined to redesign the culture according to their own biases and values,” holding up the 1973 Supreme Court *Roe v. Wade* decision for special scorn. *Roe v. Wade*, abortion rights, and women's rights generally are among the favored code words for the America that the Christian Right loves to attack – an America of women and families where equality is possible. Reproductive justice is an issue on which they hope to divide and conquer progressives.

In my view, the intensifying battle over the courts has brought progressives face-to-face with the need to take a firm stand on the morality of reproductive rights. Not only must we overcome the polarization generated by the Christian Right, we also must find a way to come together in compassionate concern for women and families. Speaking as a minister, I believe that the realities of women's lives must be included in any vision of a moral society that honors individual dignity and worth. I believe that women, and men, cannot live in dignity and equality if they cannot render for themselves their most intimate family decisions. We must affirm that women's reproductive health and decisions about bearing children and forming a family are an integral part of a just society, related to and interdependent with health, legal, economic, racial, environmental, and peace commitments. We must acknowledge that poverty, physical and sexual violence, lack of education, poor health care, lack of affordable quality child care, and other economic and social injustices affect women's options and decisions about childbearing. Whether we are pro-choice or not on the issue of abortion, we must not ignore or further marginalize an aspect of life that is important to both women and men and essential to women's full participation in society. If we do so, we will cause irreparable harm to our own principles of justice and equality.

“Justice Sunday” gave progressives an opportunity to watch the Christian Right at work, stoking fears about change and inciting religious divisiveness. We have also seen, in the past few weeks, other religious and social justice leaders speak out about this divisiveness, including leaders of the Evangelical Lutheran Church in America, the National Council of Churches USA, Presbyterian Church (USA), African Methodist Episcopal Church, Religious Action Center of Reform Judaism, and the Interfaith Alliance. Millions of mainstream, moderate people of faith, and people who profess no faith, are concerned about more than the filibuster and confirming a handful of judges – they are concerned about the direction of their country and the future of a vibrant, inclusive democracy. Decades of progress for minorities, women, religious freedom, the environment, workers' rights, and other issues and groups that had been relatively powerless cannot be lost. Let “Justice Sunday” be a wake-up call; unless we are unified on all of these issues, we are vulnerable. ■

*Reverend Veazey, a minister in the National Baptist Convention USA, has been president of the Religious Coalition for Reproductive Choice since 1997. On August 14, 2005, a second Justice Sunday rally was held at Two Rivers Baptist Church in Nashville.*

In an unusual unanimous ruling, the U.S. Supreme Court held that a federal law requiring prison officials to meet the reasonable religious needs of prisoners is constitutional. Justice Ruth Bader Ginsburg issued the majority opinion on May 31 in *Cutter v. Wilkinson*, No. 03-9877. The Court overruled the U.S. Court of Appeals for the Sixth Circuit, which had struck down the congressional law known as the Religious Land Use and Institutionalized Persons Act (RLUIPA) as a violation of the Establishment Clause.

The Supreme Court said this law “fits within the corridor between the Religion Clauses: On its face, the Act qualifies as a permissible legislative accommodation of religion that is not barred by the Establishment Clause.” Ohio officials claimed the law elevated religion above all other reasons a prisoner might seek privileges, but the Supreme Court rejected that argument. Ginsburg did note, however, that “prison security is a compelling state interest.” The Act, which also applies to zoning laws affecting religion, was compatible with the Constitution “because it alleviates exceptional government-created burdens on private religious exercise.”

The decision does not grant arbitrary rights to prisoners in all situations. Ginsburg noted, “Should inmate requests for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition. In that event, adjudication in as-applied challenges would be in order.”

The decision strengthens the Free Exercise Clause, wrote K. Hollyn Hollman, general counsel of the Baptist Joint Committee for Religious Liberty (BJC), because “the decision recognizes that religious practice sometimes calls for accommodation” and that “legislative accommodations of religion to promote free exercise do not necessarily run afoul of the Establishment Clause.” Hollman added, “Valid concerns about government promotion of religion or favoritism toward certain religions limit the extent of government accommodation.” Hollman concluded, “Beyond the specific context of prisons, the Court noted that when evaluating similar laws courts must take notice of the burdens a requested accommodation would impose on non-beneficiaries and must ensure that accommodations are administered neutrally among different faiths. . . . No doubt, challenges to RLUIPA's prison provisions will recur. Religious accommodation cases will remain hard fought. Still, *Cutter* is a very positive milestone. It affirms religious freedom as a fundamental value, legitimately protected by laws that ensure free exercise for all.”

Americans for Religious Liberty supported the position taken by the Supreme Court and joined an *amicus* brief submitted by the BJC. ■

### Safeguarding the Future

Religious liberty and church-state separation will never be completely secure. But you can help provide the means for their defense in the future in two ways.

Include a bequest to Americans for Religious Liberty in your Will, or include ARL as a beneficiary in a life insurance policy. Bequests and insurance proceeds to ARL are tax deductible.

Please contact us if you would like further information.

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301-260-2988 • fax 301-260-2089 • email: arlinc@erols.com

## Supreme Court: The Times They are A'Changin'

Every sentient being in the U.S. knows by now that President Bush named Judge John G Roberts Jr., who has served for two years on the U.S. Court of Appeals for the District of Columbia Circuit, to replace Justice Sandra Day O'Connor. The long dreaded day when Bush could begin the process of extending the long arm of conservatism to encompass the third branch of government has now arrived.

First, we should remember some of the contributions of Justice O'Connor over the past quarter century. Ronald Reagan's first appointee, O'Connor proved to be a reliable conservative on some issues, particularly involving corporate interests and national security. But she began to carve out an independent posture on some issues, including those dealing with religious liberty and women's rights. Her argument for an "endorsement of religion" test proved to be compelling, and resulted in opposition to coercive types of school prayer and government efforts to promote symbolic veneers of religion. Her votes saved *Roe v. Wade* from being gutted, affirmative action from effective dismemberment, and prevented some, though not all, actions of government endorsement of religious symbols. She seemed increasingly sensitive to the plight of religious minorities in a public square dominated by religious majorities. But she was clearly wrong on the broad issue of government subsidies for faith-based private schools, arguing, erroneously in our view, that private choice of religious education by parents renders the Establishment ban irrelevant. Her demeanor and her unwillingness to engage in the kind of ideological rancor employed by Justices Scalia and Thomas, and her pragmatic, case-by-case approach to resolving cases may have been the glue that held a fractious and contentious Court together. She was the swing vote in many cases, and for good reason. Her surprise resignation pleased the Religious Right, one of whose spokesmen said, "Thank God Justice O'Connor has resigned." In a polarized nation, it is sometimes necessary to have a "moderate" on the High Court, and O'Connor proved to be the most

moderate and least ideological of President Reagan's three appointees.

Judge Roberts appears to be a classic Establishment Republican, more attuned to the corporate world than to movement conservatism. His record on the D.C. Appeals Court and his few years as deputy solicitor general in the George H. W. Bush administration offer few clues to his performance. While working for Republican presidents, he wrote that *Roe v. Wade* was "wrongly decided." But in his confirmation hearings for the appeals court, he said the abortion decision was "settled law" and that his personal convictions, whatever they may be, would not clash with his duty to uphold precedent. In another case he defended, on behalf of the first Bush administration, the practice of prayers at high school football games in Texas, but whether that represents his settled opinion or merely the positions adopted by his superiors is unclear.

He should certainly explain his legal philosophy, and his view of the place of the Court in the American polity when his confirmation hearings begin in the Senate on September 6.

Roberts is certainly well qualified. A graduate of both Harvard College and Harvard Law School, he is often described as brilliant and as open to different points of view.

One fact in Roberts' resume has led to considerable discussion already: his Roman Catholic faith. He will be the tenth Catholic out of more than 100 justices if he is confirmed. This issue should not be a concern at all, given Article VI's ban on religious tests for public office. In an ideal world it would hardly matter. But it has already become a question of some concern. Some conservatives hope his religion will influence his decisions on issues that matter to them, such as abortion, gay rights, and religious participation in public funding. Some liberals worry that his personal views may color his thinking on the same issues. One scholar, David Yalof, a political scientist at the University of Connecticut and author of *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees* argues that religious affiliation is not a good predictor of judicial conduct. "We have a small sample of Catholic justices now, and there's no pattern on whether their Catholicism determined anything," Yalof told a *New York Times* interviewer. Justices Scalia and Kennedy bitterly disagree over capital punishment and school prayer, for example, and both are Catholic Republicans appointed by Ronald Reagan.

The battle lines have been drawn, and some elements in today's charged political environment are not above using religion as a wedge issue. Ironically, conservative Protestant Republicans are accusing liberal Catholic Democrats of bigotry because the Democrats plan to question Roberts at length about a host of issues. The Senate Judiciary Committee will be a target of the endeavors: Four of the eight Democrats are Catholics, as are two of the ten Republicans. The Religious Right is backing Roberts, hoping that his religion will prove helpful for their agenda. But *U.S. News & World Report* said that leading religious conservatives expressed "concerns" about Roberts' religious affiliation in private meetings the day after his nomination was announced. If Roberts is confirmed, the Supreme Court will have four Catholics, three Protestants and two Jews.

Many liberal and pro-choice groups have already announced their opposition to the Roberts appointment. A word of caution is in order, however. President Bush was reelected last November, and Republicans now hold 55 Senate seats. The voters knew – or should have known – that the makeup and character of the Court were major issues in the campaign. But 51% of the electorate chose Mr. Bush, knowing that in his hands rested the future of the Judiciary. If Mr. Roberts is rejected, it

### Coming This Fall

The fall term of the Supreme Court, commencing on October 3, will have three major church-state cases that could well be affected by O'Connor's replacement:

*Ayotte v. Planned Parenthood of Northern New England*, the first abortion case in five years, centers on the constitutionality of a New Hampshire parental notification law, which includes an exception for life-threatening pregnancies but not for other health problems. It mandates a 48-hour waiting period for minors and a seven-day period for a judicial bypass. A judge may allow the abortion in the absence of parental notification if the judge believes the minor is mature enough to make the decision.

*Gonzales v. Oregon* tests the Oregon assisted-suicide law (officially the Death with Dignity Act), that allowed physician-assisted suicide under carefully guarded circumstances. The Justice Department has said doctors have "no legitimate medical purpose" in prescribing federally controlled drugs to help terminally ill patients end their lives.

The third case involves whether the government can prohibit a Brazilian-American sect from importing hallucinogenic tea for use in church rituals. This is a free-exercise case that may reopen or reexamine judgments rendered in the 1990 *Smith* case.

is altogether likely that someone even worse will be nominated. Bush's track record of in-your-face appointments to the Cabinet and to the federal courts is well established. It may be that Roberts is the least unacceptable under the circumstances. This is the hard reality of American politics in the year 2005. Those who believe in the broadest protection of religious and civil liberties may well be disappointed in this nomination. But the time to have prevented that was last November.

— Al Menendez

## 'Under God' Redux

He's back. Once again California atheist Michael Newdow is back in federal court challenging the 1954 congressional insertion of the phrase "Under God" into the Pledge of Allegiance. Congress took this step during the height of the Cold War, even though the U.S. had earlier won two world wars against an adversary whose troops wore the motto "Gott mit uns" (God is with us) on their uniforms.

Newdow's case was dismissed by the Supreme Court last year for lack of standing and lack of custody of his plaintiff-daughter.

Newdow and I debated the issue a few days before he argued the case before the Supreme Court. I agreed with him that the insertion of the phrase was very likely unconstitutional, but added that whether the Court agreed or disagreed with him the results would be disastrous. If the Court ruled in his favor Congress would surely introduce an unstoppable constitutional amendment that would likely shred the First Amendment and likely add school prayer, pro-voucher, and anti-abortion language. And if the Court ruled against him, the ruling would be written by either Justice Thomas or Chief Justice Rehnquist and would also likely shred the First Amendment.

Fortunately, the Court took the middle way, as suggested in the *amicus* brief filed by the ACLU and ARL, and dismissed the suit for lack of standing.

The moral, or lesson, of this affair is that it is not enough to be right or gutsy. What matters is avoiding a suicide mission. Had the Allies in World War II advanced D-Day by one year they would have been decimated. If after Pearl Harbor the U.S. had attempted immediately to invade Japan, we would have lost the war in the Pacific.

In law, as in nearly everything else, strategy is all important. Religious liberty and church-state separation are far too important, the courts and Congress too unreliable, and public opinion too uninformed and fickle for anyone to launch a kamikazi mission that is sure to bring disaster.

Location, location, location is the key to a successful business. Strategy, strategy, strategy is the key to successfully defending church-state separation.

— Edd Doerr

*Perhaps on this anniversary of our independence, we can rediscover that America is at its best when religion is one, but only one, thread in the tapestry of public discourse and life. . . . The Constitution draws on classic theological principles like the supremacy of the individual. Yet the power of our civic religion lies not in any sanction it imposes but in the moral sensibility it nurtures.*

— Jon Meacham, managing editor of *Newsweek*, in the *Washington Post*, July 3, 2005.



## Church and State in the Courts

While two major U.S. Supreme Court decisions overshadowed other court rulings, there has been considerable activity in lower courts. On May 16, the American Civil Liberties Union (ACLU) of Massachusetts filed suit in federal court challenging the federal government's grants to an abstinence-only sex education program. The recipient, The Silver Ring Thing (SRT) of Moon Township, Pennsylvania, says its mission is to offer teenagers "a personal relationship with Jesus Christ as the best way to live a sexually pure life." SRT operates sexual abstinence programs for teenagers and includes the distribution of Bibles and proselytizing for Christianity. Since 2003 the program has received more than \$1 million from the Department of Health and Human Services (HHS). The suit, filed in U.S. District Court in Boston, primarily named HHS officials as defendants. "The Courts have repeatedly said taxpayer dollars cannot be used to promote religion," said ACLU attorney Julie Sternberg. SRT claims that more than 30,000 young people have committed themselves to "premarital purity" as a result of gatherings in dozens of cities over the past five years. The group, an offshoot of the John Guest Evangelistic Team in Sewickley, Pennsylvania, compiles data on those who make "commitments to Christ." Students are encouraged to enroll in a Bible-based follow-up program after conversion.



In a related case ACLU lost in federal court in Louisiana. In a June 23 decision, Federal District Judge Thomas Porteous held that the Governor's Program on Abstinence website did not unconstitutionally endorse religion. While religious references are included on the website, they did not rise to the level of constitutionally impermissible support for religion. A 2002 court order required Louisiana to stop using public funds to promote religion. ACLU had particularly objected to one passage which said, "God chooses this one sin above all others as destructive to your soul and spirit."



The aggressive evangelistic activities of Child Evangelism Fellowship (CEF), which sponsors Good News Clubs after school hours in public schools, received good news in California. After a federal lawsuit was filed in Sacramento by the right wing Liberty Counsel, the Chico Unified School District in July repealed its policy of charging higher facilities usage fees to religious groups than are charged to secular groups. Liberty Counsel also filed suit in June against the San Diego City Schools on the same grounds. Another federal court ruled in 2003 that the Los Angeles Unified School District had discriminated against CEF in its fees.



Two recent court cases have tried to resolve how and under what conditions divorced parents can influence their children's religious upbringing. In June a New Jersey appeals court held unanimously that a divorced mother cannot enroll her children in Catholic religious classes over the objections of their Jewish father, who has primary custody. But she can take the children to Catholic services when they visit her. This reaffirms previous rulings granting the parent with primary custody the right to determine the religious education of minor children. "Courts

*continued on page 12*

## Church and State in the Courts, *from page 11*

do not choose between religions,” the appeals court ruled, but decisions in that regard belong to the custodial parent. In a strange case from Indiana, a judge prohibited a divorced couple from exposing their nine-year-old son to “non-mainstream religious beliefs and rituals.” The order from Marion County Superior Court in Indianapolis forbade Thomas Jones and his ex-wife Jammie Bishop, both adherents of the Wiccan religion, from taking their son to Wiccan events. The boy attends a Catholic elementary school. The parents have joint custody. Jones, who has organized Pagan Pride Day events in Indianapolis, has challenged the court order in the Indiana Court of Appeals with the support of the Indiana Civil Liberties Union. ICLU says the order is “constitutionally vague” because it does not define mainstream religion. The Superior Court ruling violates the constitutional rights to freedom of religion for the parents and their child, says ICLU. The Court also failed to explain how exposing the boy to Wiccan beliefs and practices would cause harm. The Indiana Court of Appeals overruled this decision on August 19.



Other recent legal developments include the following:

- The Freedom From Religion Foundation, based in Madison,

### ARL Brief Seeks Preservation of Religious Freedom

Americans for Religious Liberty and several religious organizations filed an *amicus curiae* brief on July 18, seeking to sustain the Oregon assisted-suicide law. The brief, written by counsel of record Gregory A. Castanios, says: “These organizations and leaders represent a variety of religious and spiritual faiths and their congregations that support an individual’s freedom to choose physician-assisted dying as a both moral and honorable means of ending one’s life with dignity and grace. The *amici* therefore support Oregon’s enactment of the Death With Dignity Act as a means of honoring and respecting each individual’s freedom of religion and conscience in making this most deeply personal and sacred of choices.”

Furthermore, “At its core, this case is about social policy, religious freedom, and preserving the right to pursue one’s individual beliefs about human dignity, personal autonomy, and spirituality. The heart of this case is the right of the states and their citizens to decide for themselves the weighty and intensely personal and spiritual question of whether to allow terminally ill patients to seek the aid of their physicians in dying as a means to relieve their pain and suffering and preserve their human dignity in accordance with their own beliefs.”

The brief also asserts the principle of federalism: “The people of Oregon have sought to enhance religious freedoms, rather than restrict them, while the Attorney General has sought impermissibly to burden Oregon’s right to do so under the principles of federalism. Oregon was acting within its sovereign authority in not only regulating medical practice and standards within the states but also in further protecting religious freedoms.”

Historically, “Because regulation of medical practices is a traditional state power, a federal agency can regulate medical practices only under clear congressional authorization.” The case, *Gonzales v. Oregon* (No. 04-623), will be heard in the fall term by the Supreme Court.

### Looking Back

During one of the battles over a school prayer amendment in 1984, President Ronald Reagan said he didn’t know what the fuss was all about since he had prayed in school as a child in Dixon, Illinois. Long time ARL member Howard Katz, who was then working as a volunteer in the Chicago ACLU office, decided to check out the story. He tracked down one of Reagan’s elementary school teachers and interviewed her by phone. Was Reagan correct? “Goodness no,” she replied, because the Illinois Supreme Court had ruled the practice unconstitutional in 1910, the year before Reagan was born. The case had arisen when Catholic parents objected to Protestant prayers and, after being turned down by the school board, took the matter to court.

The ACLU released the story to the press.

— Edd Doerr

Wisconsin, filed suit against the U.S. Department of Education for giving \$1 million to a tiny entity known as Alaska Christian College. The school, founded in 2000 and affiliated with the Evangelical Covenant Church, has only 37 students, is not accredited and does not grant degrees. The tiny school offers choir and physical education and calls itself “a Bible-centered college where students study and apply God’s Word.” It admits that its primary purpose is to produce ministers for the Evangelical Covenant Church. The *Anchorage Daily News* endorsed the suit in a May 2 editorial. “It is hard to imagine a more clear violation of the separation of church and state than the \$1 million the federal government has given the fledgling Alaska Christian College. There is no way the government can give the college money without impermissibly advancing a religious mission.”

- A parent who was banned from reading a Bible verse in her son’s kindergarten class filed a federal lawsuit on May 3, accusing the Marple-Newtown School District of Delaware County, Pennsylvania, of violating her free exercise of religion rights. A Religious Right group, the Rutherford Institute, is supporting the plaintiff, Donna Busch. District superintendent Robert Mesaros, defended the school’s action in a letter sent to parents: “Because a public school teacher cannot read aloud from a religious text in a classroom setting, a parent can’t do it in that setting either. . . . We have an obligation to protect the rights of all our students and their families.”

- The American Jewish Congress filed suit on behalf of a Christian employee of a Home Depot store that denied him full-time employment because of his refusal to work on Sunday. The suit was filed on June 8 in the U.S. Court of Appeals for the Second Circuit.

- A federal judge held that a lawsuit against an evangelical Christian program for inmates in Iowa may go to trial. Judge Robert Pratt of the U.S. District Court for the Southern District of Iowa said the case, *Americans United v. Prison Fellowship Ministries*, filed in 2003, should be brought to trial “as soon as feasibly possible because of the importance of the constitutional issue at stake.” Iowa prison officials had tried to have the case dismissed.

- A federal judge in Florida has allowed Brevard County high schools to hold their commencement exercises at Calvary Chapel in Melbourne. At the same time, he said the case filed against the practice, *Musgrove v. School Board of Brevard County*, could go forward. Judge Gregory Persnell of the U.S. District Court for the Middle District of Florida said school officials should have scheduled commencements at a neutral location rather than at an evangelical megachurch.

- A Utah court banned six trustees of a polygamist Mormon sect from spending or selling any of the church’s assets. An independent auditor will monitor church funds until new trustees are appointed by

the court. The Fundamentalist Church of Jesus Christ of Latter-day Saints owns most of the businesses and homes in the sect's strongholds of Hildale, Utah, and Colorado City, Arizona, where its 10,000 members reside. Its leader, Warren Jeffs, is under scrutiny by authorities in both states for a host of possible civil law violations.

- The federal government has sued the Rockland County, New York, village of Airmont for allegedly violating the religious freedom of Hasidic Jews by prohibiting faith-based boarding schools. The Justice Department argues that the ban violates the Fair Housing Act and the Religious Land Use Act, recently upheld by the U.S. Supreme Court.

- A federal jury held on May 28 that the southwest Chicago suburb of Palos Heights, Illinois, did not violate the civil rights of Muslims when the city council tried to prevent Muslims from buying a vacant Christian church. The Muslims had wanted to erect a mosque and school on the property. The lawsuit was filed five years ago by the Al Salam Mosque Foundation. The decision may be appealed.

- On May 13 the U.S. Court of Appeals for the Fourth Circuit upheld a display of the motto "In God We Trust" at the Davidson County (North Carolina) Government Center. A panel held that "reasonable observers" (the touchstone enunciated years ago by Justice Sandra Day O'Connor) would know the phrase was the national motto of the U.S. (since 1956) and not an endorsement of religion. In May 2004 a lower federal court came to the same conclusion. The case began in 2002 when two local lawyers objected to what they saw as the use of public property to present a religious message. Michael Lea, a Thomasville, N.C., lawyer, told *The Christian Science Monitor*, "I am a Christian and have been on the governing board of a local church. It is not that I am anti-Christian. I just don't think it should be up on a government building." Charlotte attorney George Daly said the plaintiffs will appeal to the U.S. Supreme Court. Three other federal appeals circuits, the fifth, ninth and tenth, have also upheld the national motto in recent years. One religious right group, the American Family Association, has mounted a campaign to display "In God We Trust" posters in public school classrooms and other public buildings. At least 18 states have passed laws supporting the campaign, according to a May 23 report by *Christian Science Monitor* reporter Warren Richey, who called the issue the "next church-state dispute."

- The ACLU filed suit in July against the state of North Carolina in order to expand the definition of "Holy Scripture." State law requires witnesses in court proceedings to swear on the Bible or to invoke the phrase "So Help Me God" without the use of a Bible or religious symbol. A Guilford County court ruled this spring that Muslims cannot legally take an oath on the Koran. ACLU's suit argues that persons of other faith groups should be allowed to take their oaths on their own faith's holy books. ■

## Evolution Update: Creationists Target Kansas and Pennsylvania

The Kansas State Board of Education's "hearings" on science education in public schools turned into a farce when creationists and Intelligent Design (I.D.) advocates dominated the sessions to such an extent that mainstream scientists boycotted the hearings. The American Association for the Advancement of Science, which publishes the journal *Science*, declined to participate. "This was not a scientific exchange but a political show trial," was the acid comment of anthropologist Eugenie Scott, director of the National Center for Science Education and member of the ARL National Advisory Board. Ostensibly, the four-day colloquy was designed to rewrite science standards for public school science classes in the Jayhawk State. Religious conservatives hold a 6-4 majority on the Kansas Board of Education and voted to advance a critical evaluation of evolution in August. A final vote is expected in October.

In Pennsylvania the state legislature heard testimony on June 20 over whether I.D. should be required in any curriculum that currently mentions evolution. House Bill 1007 was introduced by a Republican state representative from Lancaster County, Thomas Creighton, who claimed that "the current state education code has a bias toward atheists who promote evolution theory." The House Subcommittee on Basic Education heard presentations from civil liberties, scientific, and Religious Right spokespersons, as well as I.D. advocates. The bill was not referred to the Education Committee and had few co-sponsors.

In Dover, Pennsylvania, school board elections in May did not resolve the conflict over I.D. versus evolution in public school science classes. The November 8 general election will be the showdown. Seven candidates from a list of 14 contenders have lined up on both sides of the contentious issue. All seven incumbent Republicans favor the school board's announced policy of requiring the teaching of I.D. in the schools. The seven Democratic candidates are opposed to the policy. Three of them are registered Republicans who did well in the Democratic primary. These moderate Republicans may attract Republicans who are embarrassed by the board's decision last October. The Dover Area School District has 3,600 students under its jurisdiction. A federal lawsuit has challenged the decision. The opposition slate, Dover Cares, is campaigning hard to oust the present school board. The Pennsylvania Education Association has donated \$2,100 through its political action committee to Dover Cares, whose leader is Warren Eshbach, a retired minister in York County. "I don't believe that science is antithetical to faith, nor faith antithetical to science," said Rev. Eshbach in an interview at his farmhouse with *Education Week's* Sean Cavanagh. Dover Township voters favored President Bush last year by 66% to 34%.

New York Assembly Bill 8036 died in committee. It would have required "all pupils in public schools to receive instruction in both theories of Intelligent Design and evolution." In Florida a similar bill, House Bill 837, also died when the legislative session ended on May 6, 2005. In Utah a Republican state senator, Chris Buttars, plans to introduce a bill to teach something he calls "divine design" in Utah public schools. He announced plans to introduce the bill during the next legislative session in January, 2006. "The only people who will be upset about this are atheists," he confidently asserted in an interview with the *Salt Lake Tribune* on June 3. "The divine design is a counter to the kids' belief that we all came from monkeys," said the legislator who sponsored the state constitutional amendment banning same-sex marriage. Buttars said he was rethinking his proposal after withering editorial criticism in the Salt Lake City and Provo newspapers. In Beebe,

*continued on page 14*

*Apart from confirming an unwholesome disrespect for traditional American values, like checks and balances, the assault on judges is part of a wide-ranging and successful Republican campaign to breach the wall between church and state to advance a particular brand of religion. No theoretical exercise, the program is having a corrosive effect on policy-making and the lives of Americans.*

— Editorial, *The New York Times*, April 27, 2005; reprinted in *The International Herald Tribune*, May 11, 2005.

Arkansas, the school board voted 3-2 on July 11 to remove anti-evolution stickers from the district's science textbooks. Arkansas's ACLU branch urged the action after a federal court in Georgia ruled such disclaimers unconstitutional.

The Tulsa, Oklahoma, zoo reversed an earlier decision to add a display depicting God's creation of the world in six days to the zoo's exhibits. The June decision in favor of the display was reversed on July 7. Supporters claimed that "Judeo-Christians" were discriminated against because the zoo included a statue of the Hindu God Ganesh outside the elephant enclosure as well as American Indian maxims. The Oklahoma Museum Association appealed the ruling, and a group calling itself the Friends of Religion and Science helped to convince the Tulsa Park and Recreation Board to reverse itself. Tulsa Mayor Bill LaFortune, who supported the creationist display, now says he wants Ganesh out.

The Smithsonian Museum of Natural History found itself in an embarrassing place when it agreed to allow a documentary film on "Intelligent Design" to be shown on its premises. The film, "The Privileged Planet," is an argument for creationism and is based on a book by Iowa State University astronomy professor Guillermo Gonzalez. The Smithsonian withdrew its customary co-sponsorship and refused to accept the normal screening fee, in an effort to dissociate itself from the event. A June 3 *Washington Post* editorial, "Dissing Darwin," criticized the venerable museum for screening "an extremely sophisticated religious film" which seeks "to give a patina of scientific credibility to the idea of an intelligent Creator."

The Roman Catholic archbishop of Vienna, Cardinal Christoph Schönborn, caused an uproar in intellectual circles after his essay questioning evolution appeared on the op-ed page of *The New York Times* on July 7. Apparently seeking to challenge the long-held view that most Catholics, including the late Pope John Paul II, accept evolution as a reasonable and well-attested explanation of the origins of life, the cardinal wrote in "Finding Design in Nature": "Ever since 1996, when Pope John Paul II said that evolution (a term he did not define) was 'more than just a hypothesis,' defenders of neo-Darwinian dogma have often invoked the supposed acceptance – or at least acquiescence – of the Roman Catholic Church when they defend their theory as somehow compatible with Christian faith.

"But this is not true. The Catholic Church, while leaving to science many details about the history of life on earth, proclaims that by the light of reason the human intellect can readily and clearly discern purpose and design in the natural world, including the world of living things.

"Evolution in the sense of common ancestry might be true, but evolution in the neo-Darwinian sense – an unguided, unplanned process of random variation and natural selection – is not. Any system of thought that denies or seeks to explain away the overwhelming evi-

*Biologists aren't alarmed by intelligent design's arrival in Dover and elsewhere because they have all sworn allegiance to atheistic materialism; they're alarmed because intelligent design is junk science.*

– H. Allen Orr, in *The New Yorker*, May 30, 2005.

dence for design in biology is ideology, not science."

Adding insult to injury, Schönborn dismissed John Paul's 1996 letter on evolution as "rather vague and unimportant."

The essay provoked furor and dismay among many biologists and scientists, especially from Christian scientists who have long championed belief in evolution as compatible with theism. Dr. Kenneth R. Miller, a professor of biology at Brown University and a Catholic, thought the essay unnecessarily created a new wedge between science and religion. Miller, whose book *Finding Darwin's God* sought to harmonize evolutionary concepts with Christian faith, said the essay seemed to equate belief in evolution with disbelief in God. "It may have the effect of convincing Catholics that evolution is something they should reject," he told *New York Times* reporters Cornelia Dean and Laurie Goodstein. In a commentary entitled "Darwin, Design and the Catholic Faith," Miller wrote, "The Cardinal is wrong in asserting that the neo-Darwinian theory of evolution is inherently atheistic." Miller joined two other professors of biology, Francisco Ayala (an ARL National Advisor) and Laurina Krauss, in a letter to Pope Benedict XVI which said, in part, "It is vitally important in these difficult and contentious times the Catholic Church not build a divide, long ago eradicated, between the scientific method and religious belief.

Dr. Francis Collins, a researcher on the human genome, said Schönborn's essay was "a step in the wrong direction."

In other news:

- This is the 80<sup>th</sup> anniversary of the Scopes trial, which electrified Americans during the long hot summer of 1925.

- National Center for Science Education executive director Eugenie Scott's book *Evolution vs. Creationism* will be issued in October in a paperback edition from the University of California Press.

- President Bush endorsed the teaching of the "Intelligent Design" theory in public schools in an interview at the White House with a group of Texas reporters on August 1. "Both sides ought to be properly taught," he said. White House press secretary Scott McClellan, at a briefing to reporters a day later, added, "He has said that going back to his days as governor." Rep. Barney Frank (D-MA) quipped, "It is further indication that a fundamentalist right has really taken over much of the Republican Party. People might use George Bush as proof that you can be totally impervious to the effects of Harvard and Yale education." ■

### Intelligent Design on "The Privileged Planet"?

The Smithsonian Institution is to be commended for distancing itself from the showing of "The Privileged Planet." Co-sponsorship of the creationist film would tarnish the Smithsonian's reputation in the scientific community.

The Smithsonian should consider sponsoring a program on cosmology and evolution featuring reputable, mainstream scientists.

– Edd Doerr, President, Americans for Religious Liberty, in *The Washington Post*, June 8, 2005.

*As we mark the 80th anniversary of the Scopes trial, the pressure to teach ID as a scientific alternative to evolution has been gaining ground in many U.S. states. There is also increasing ID activity in Latin America and Europe. . . . The problem is that ID advocates attempt to dress up religious beliefs to make them look like science. By redefining what is and isn't science, they also put the public – particularly young people – at risk of being inadequately prepared to live in modern society.*

– Alan I. Leschner, Editorial, *Science*, July 8, 2005.

# Abortion Update: Courts Continue to Uphold Rights

A federal appeals court upheld a ruling by a lower court striking down the Partial-Birth Abortion Ban Act, which bars a type of late-term abortion. The ruling by a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit in St. Louis was the first such ruling by an appellate court. The case originated in Nebraska, also the site for the *Stenberg v. Carhart* decision by the U.S. Supreme Court five years ago. The Eighth Circuit ruled that the Nebraska law lacked a provision to preserve the health of the woman. The ruling could make another Supreme Court test possible. Two previous lower court decisions in California and New York reached the same conclusion as in the Supreme Court's original 2000 ruling. The Bush Justice Department is appealing all of these decisions. President Bush signed the ban after Congress passed it in 2003.

In June a panel of the conservative U.S. Court of Appeals for the Fourth Circuit in Richmond voted 2 to 1 to strike down a similar Virginia law for the same reason: it lacked an exception to safeguard a woman's health. The law was passed in 2003 over the veto of Governor Mark Warner. In a bitter dissent Judge Paul Niemeyer said the majority decision "constitutionalizes infanticide" and "amounts to a momentous step in disconnecting our law from accepted moral norms." Niemeyer was appointed by President George H. W. Bush. The majority decision was authored by two appointees of President Bill Clinton.

U.S. District Judge Tom Lee declared unconstitutional a Mississippi law barring second-trimester abortions at clinics. The law would have required patients to undergo the procedure at hospitals.

In South Dakota, Planned Parenthood has asked a federal judge in Sioux Falls to strike down a new state law that requires doctors to inform patients that abortion "ends a human life." The group contends that

the law compels doctors to give patients inaccurate medical information.

In June Texas Governor Rick Perry signed a law that requires minors wanting an abortion to get written parental consent, which expands parental notification. Abortions after 26 weeks of pregnancy are also banned, unless the woman's life is endangered. In Florida Governor Jeb Bush signed legislation giving the state increased oversight of clinics that perform second trimester abortions. A new Georgia law requires a 24-hour waiting period and parental notification for minors. The doctor is also required to inform the woman of the age of the fetus, alternatives to abortion, and the likelihood that the fetus will feel pain during the abortion. *The Christian Science Monitor*, which reported this state action in its June 13 issue, said, "Efforts at the state level to curb abortions are intensifying, adding to the nation's culture wars."

On May 25, the U.S. House of Representatives rejected a measure to allow elective abortions at military hospitals overseas by a vote of 233 to 194. The mostly party-line vote reiterated a policy implemented by Congress in 1996. In 1988 the Reagan administration prohibited elective abortion in military hospitals. President Clinton overturned this action in 1993, but the Republican takeover of Congress restored the Reagan-era ban. The attempt to allow abortions in military hospitals was introduced by Rep. Susan Davis (D-CA). The House action was praised by the U.S. Conference of Catholic Bishops.

The Bush administration filed a friend-of-the-court brief on August 8, asking the Supreme Court to uphold New Hampshire's parental notification law that has no exceptions for pregnant women whose health is at risk. Thirty-three states have similar laws. ■



## The Voucher Watch

The Texas House of Representatives defeated a massive voucher program in late May. The dramatic vote came on May 23, when the House spent five hours of debate on S.B. 422. The bill would have siphoned hundreds of millions of dollars from hard-pressed public schools. The lobbying was fierce on both sides, and 13 Republicans joined the entire Democratic contingent to scuttle the voucher plan. Leading the fight against was the Coalition for Public Schools, comprised of 40 education, civic and religious organizations, including ARL. The Texas Freedom Network (TFN) reported on June 7:

"The final gavel on Memorial Day ended a legislative session that saw coordinated assaults on public schools, religious freedom and civil liberties. Yet the decisive defeat of private school vouchers and other anti-public education bills highlighted many key victories for mainstream Texans during the legislative session. . . . A dramatic showdown in the House saw the first floor votes on private school vouchers since 1997. An attempt to strip a voucher program from legislation reauthorizing the Texas Education Agency failed on a tie vote. Later, however, a bipartisan coalition of House members voted to drop private schools from the program, effectively gutting the voucher measure. Speaker Tom Craddick then killed the TEA bill in a parliamentary ruling. The defeat of vouchers came after months of pressure and intense lobbying by TFN and other members of the Coalition for Public Schools."

In the District of Columbia, a scheme to allow District voucher students to attend private high schools in Maryland and Virginia was shelved when its main proponent, Senator Sam Brownback (R-KS),

*continued on page 16*

## U.S. Education: Some Facts and Figures

Buried in *The Condition of Education 2005*, just released by the National Center for Education Statistics, are these tidbits:

- Most public school teachers who transfer move to another public school; only 2 percent transferred to a private school at the end of 1999-2000. In contrast, 53 percent of private school teachers who transferred moved to a public school.
- Private school teachers are more likely to leave teaching than public school teachers.
- In 2003, the number of home-schooled students was 1.1 million, up from 850,000 in 1999. They represented 2.2% of the total school population. Home-schooled children tended to be white and from two-parent households (54% were in two-parent households with only one parent in the workforce); 72% of parents chose home schooling "to provide religious or moral instruction" unavailable in other schools. Nearly half of home-schooling households had annual incomes above \$50,000, and 45% of parents were college graduates.
- 42% of public school students were members of minority groups compared to 24% of all private school students in 2002. Minorities (all groups other than non-Hispanic whites) were 26% of nonsectarian private school student bodies, 25% of Catholic school students and 21% of other religious school students. The fastest growing segment of both public and private school pupils were Hispanics, now 19% of public school students and 9% of private school students.

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## Voucher Watch, *continued from page 15*

withdrew the proposal because of time constraints. Brownback, who may seek his party's presidential nomination, said on July 14 that there was not enough time to pass legislation authorizing the changes before the fall term. Brownback, chairman of the Senate Appropriations Subcommittee on the District, also wanted to increase the \$7,500 annual grant to voucher recipients. There was strong opposition to the Brownback proposal from Mayor Anthony Williams and other DC officials.

Nearly 1,000 students and 53 schools participated in the federally funded voucher program this academic year, and those figures are expected to climb to 1,600 students and 67 schools in the 2005-2006 year.

The voucher program has been a financial boon to Catholic schools, *The Washington Post* reported on June 13. Public subsidies of \$3.5 million have gone directly to schools run by the Archdiocese of Washington. Critics say that private and faith-based schools do not release their student test scores, and federal officials refuse to release the scores of voucher students by schools. Tanya Clay, deputy director of public policy at People for the American Way, said, "There is no standard to make the determination whether the private school is any better than the public school they left." The *Post* concluded that "vouchers breathe new life into DC Catholic schools," which enroll 61% of the voucher students.

Ohio is more than tripling the size of its school voucher program. Governor Bob Taft's new budget includes funding for 14,000 additional students who leave "public schools that persistently fail academic tests" and move to private schools, beginning in the fall of 2006. The state will pay \$4,250 for students in kindergarten through grade eight and \$5,000 for high schoolers. They will bring the voucher student body to 20,000 students.

Voucher bills have not met with much success in most states, except Utah, which approved a program only for students with disabilities. The governors of Arizona and Wisconsin vetoed voucher expansion. Governor Jim Doyle of Wisconsin has vetoed three attempts to expand the Milwaukee voucher program, which disproportionately aids faith-based schools. The *Milwaukee Journal-Sentinel* reported on June 14 that the existing voucher law "has resulted in an unprecedented level of public funding for religious education. More than two-thirds of voucher students attend religious schools. Almost two-thirds of students who attended private schools in the city did so with vouchers. Voucher payments – now running about \$60 million a year – have given new

life to old Catholic and Lutheran schools and brought about the creation of more than 20 Christian schools, run by African Americans and serving almost all-black student bodies." The voucher program includes 35 Catholic, 23 Lutheran, 22 other Christian, 3 Muslim and 1 Jewish schools. The Milwaukee paper also concluded, after reporters visited 106 of 115 schools, that "religion permeates the content." "Parents choose the school because they want religion for their kids," reporter Alan J. Borsuk observed.

But voucher bills failed to pass in Indiana, Missouri and Nevada. In Louisiana the state house passed a voucher program for New Orleans in June, but it did not reach a Senate vote. Governor Kathleen Blanco opposed the bill but did not say she would veto it.

Voucher guru Milton Friedman, who is credited with giving birth to the voucher idea fifty years ago, told *Education Week*, "I won't be around to see it, but I would be amazed if you did not have an almost complete termination of the government running schools fifty years from now." Friedman, 92, still works at the Hoover Institution at Stanford University, and his pro-voucher Milton and Rose D. Friedman Foundation is headquartered in Indianapolis. ■

### Friedman 'Willfully Ignores' Voucher Damage

School voucher granddaddy Milton Friedman's comments during his interview with *Education Week* ("Friedman: The Solution Is Choice," [www.edweek.org](http://www.edweek.org), June 22, 2005) show that he willfully ignores the fact that vouchers would raise schooling costs, seriously damage the teaching profession by imposing religious tests on teachers, and promote and subsidize the fragmentation of school populations along sectarian, class, ethnic, and ideological lines. They also show that he scorns the wisdom of the millions of voters who have rejected voucher plans or their analogues by 2-to-1 in 25 statewide referendums between 1967 and 2004, and that he scoffs at the wisdom of national and state constitution writers since 1787 who recognized that forcing taxpayers to support sectarian schools is, in Thomas Jefferson's words, "sinful and tyrannical."

One wonders what Mr. Friedman thinks of the 3-to-1 rejection by Newfoundland voters of their in-place universal voucher plan in the 1990s and its replacement by American-style religiously neutral public schools.

– Edd Doerr, President, Americans for Religious Liberty, *Education Week*, July 27, 2005.

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## Update

### Day of Prayer Now Political, Says TFN

America's National Day of Prayer, established by Congress and signed into law by President Harry Truman in 1952 has been transformed from relatively low-key community events into a full-fledged day of propaganda for the Religious Right and its political allies. This is the conclusion of a study published by the Texas Freedom Network Education Fund.

The national celebrations were co-opted in 1988 when the National Day of Prayer Task Force was established as a private 501(c)(3) nonprofit organization headquartered at the Focus on the Family complex in Colorado Springs. Its annual budget for a one-day event (the first Thursday in May, since Ronald Reagan's presidency) exceeds \$2 million. Its chair is Shirley Dobson, wife of Focus founder James Dobson. It claims to sponsor 50,000 prayer events nationally on that day,

and its "Prayer Proclamation" was adopted by 26 states in 2005.

The TFN study concluded:

"In contrast to the original spirit of the event, the NDP Task Force has cloaked the National Day of Prayer in a political mantle. Adopting the culture war language of the Christian right, the group explicitly instructs participants to pray about such social issues as 'condom distribution, the promotion of homosexuality and a refusal to acknowledge God [in public schools]."

"In addition to high-profile events in Washington, D.C., and many state capitals, the NDP Task Force also organizes local events in city halls and other venues around the country, more than 50,000 such 'prayer events' in 2005. These events apply a strict religious test for participants, excluding not only non-Christian groups, but also disallowing participation by any non-evangelical Christians."

A copy of the full report, "The National Day of Prayer Task Force: Turning a Day of Faith into a Rally for the Christian Right," is available from [www.tfn.org](http://www.tfn.org).



## Faith-Based Providers Cause Controversy

A faith-based adoption agency in Mississippi that receives state funding from Choose Life license plate fees refused to place children with Catholic couples. Bethany Christian Services, based in Jackson and affiliated with the conservative Presbyterian Church in America, said only couples who accept their "Statement of Faith" are eligible. "It has been our understanding that Catholicism does not agree with our Statement of Faith," said state director Karen Stewart. Two sets of Catholic parents were rejected by Bethany in 2004 and 2005. Bethany has a national headquarters in Grand Rapids, Michigan, and maintains 75 offices in 30 states, all of them affiliated with evangelical religious groups. Its president, Glenn DeMott, said national policy does not ban Catholic adoptions but allows local affiliates to make their own rules. After negative publicity, the Mississippi affiliate voted July 19 to change the practice of barring Catholics.

The U.S. Department of Education has expanded its faith-based tutoring contracts. Supplemental educational services under the No Child Left Behind Act are increasingly being given to faith-based groups. In 2003 only 2% of state programs that tutor students went to faith-based organizations; by 2004 the number had risen to 15% of the 771 service providers. Among the largest grantees last year were: the Pleasant Hill Missionary Baptist Church in Providence, Kentucky; Good Hope Economic Development Corporation, affiliated with the Christian Faith Fellowship Church in Milwaukee; Gideon's Gate in Indianapolis; and the Bresee Foundation, founded by the First Church of the Nazarene in Los Angeles.

## Governors Push Faith-Based Programs

Two Republican governors, Indiana's Mitch Daniels and Florida's Jeb Bush, are promoting expanded faith-based programs. Daniels has created three Indiana prisons with separate units for prisoners who "volunteer" for religious training. On a recent visit, Daniels, a member of a conservative Presbyterian Church in Indianapolis, discussed his personal religious convictions with prisoners in the faith-based rehabilitation programs and read from the Book of Job. In Florida Gov. Bush said on Fathers Day that he wanted every public school to host a Christian-based program called All Pro Dad. The program, featuring popular professional athletes, encourages fathers to be "the head of the household, which is the Biblical blueprint for a successful marriage," according to All Pro Dad director Bryan Davis. About a dozen schools in the Tampa area sponsor the group, which has affiliates in 20 states. The group's curriculum was created by Family First, a Tampa-based "research and educational organization." A prominent Southern Baptist layman, S. Truett Cathy, founder of Chick-Fil-A fast foods, is promoting the group nationwide. The restaurant is often the location for group meetings. Family First president Mark Merrill serves on Bush's Volunteer Florida, a 25-member nonprofit agency charged with promoting faith-based outreach programs.

## Romney's Vetoes Aimed at Presidential Bid

Massachusetts Gov. Mitt Romney vetoed a bill on July 25 that would have expanded access to the morning-after pill. He said the pill was not really a birth control but "an abortion pill." The measure passed both houses of the legislature by veto-proof margins, as did a stem-cell research bill which Romney also vetoed. The bill would allow pharmacists to dispense the pill without a prescription and would require hospitals to offer it to rape victims. Romney wrote an essay in *The Boston Globe*, saying he believed that life begins at conception and that the pill, considered a contraceptive by the FDA and by the American College of

## Visit ARL's Web Site

You can now visit Americans for Religious Liberty's internet website: [arllinc.org](http://arllinc.org). The site contains information about the organization, books available on church-state issues, and reprints of important articles. New material will be added as available.

Obstetricians and Gynecologists, "terminates life after conception." Romney's actions were praised by the Family Research Council and criticized by Dianne Luby, president of Planned Parenthood of Massachusetts. Luby commented, "It is totally disappointing that he would care less about women in Massachusetts than he did about his national ambitions." Romney is expected to seek the Republican nomination for president in 2008.

In a related case, New York Governor George Pataki, another potential GOP nominee in 2008, also vetoed a nearly identical bill, making an oral contraceptive available without a prescription. Pataki claimed the legislation, passed by both houses, would allow minors access to the drug. Supporters do not have the votes to override Pataki's veto.

## Ohio Gets Tough with Charter Schools

A new Ohio state law will require charter schools to meet a new set of standardized tests at the beginning and end of each school year, in addition to the regular assessments given to all public schools. Charter schools that fail to meet state-prescribed criteria for three years in a row face the possibility of being closed. These new regulations were incorporated into the state budget signed into law by the governor in June. At the same time, Ohio State University researchers found that nearly half of Ohio charter school teachers left their positions after the 2003-2004 school year. This attrition rate far exceeded that of public school teachers, 11% of whom left their positions.

## Texas Governor Mixes Church and State, Again

Texas governor Rick Perry is a conservative Republican whose policies are increasingly tied to the Religious Right. The Republican incumbent is up for reelection next year and may even face a Republican primary challenge. So what better way to shore up his candidacy than to ally himself with the state's powerful religious conservatives. In an unprecedented event, Perry signed two pieces of legislation – parental consent for minors seeking an abortion and a ballot initiative banning same-sex marriage – at a Pentecostal church school in Fort Worth. The June 5 event was widely criticized as an improper mixture of church and state. The event at Calvary Christian School took on the characteristics of a Republican campaign rally cum Pentecostal revival. Tarrant County Republican chair Pat Carlson said, "We want to completely fill this location with pro-family Christian friends. We may also film part of this to be used later for TV." Perry was flanked by a phalanx of Religious Right leaders at the ceremony, including the Rev. Rod Parsley, an Ohio Pentecostal pastor who is heading up a shadowy movement designed to install a fundamentalist "Restoration" government in the U.S.

## Mormons Decline in Utah

Mormons, while still a majority of Utah's population, declined to 62% of state residents in 2004, according to an unusual source. While

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church membership data are not gathered by government agencies on a state or national basis, and are not included in the decennial U.S. Census, Utah's Office of Planning and Budget has been receiving secret membership counts from the Mormon Church's headquarters for years. The *Salt Lake Tribune* obtained data from 1989 to 2004 under a public records request, even though the data are "normally secret," according to an Associated Press report. Mormons have steadily declined, as a percentage of the state's population, from 70% to 62% over that period. No data on other religious communities are gathered by the state agency.

## International

**London:** Britain's 1.6 million-member Muslim community has been shaken by the July terrorist attacks in London. Shocked that the perpetrators were British citizens and Muslims and fearful of a backlash against all Muslims, community leaders denounced the suicide bombing as a violation of the basic principles of the Koran. Shahid Malik, a member of Parliament from Dewsbury, a suburb of Leeds, where three of the bombers lived, told the House of Commons, "This is the most profound challenge yet faced by the British Muslim community. This is a defining moment for this country. Condemnation is not enough, and British Muslims must, and, I believe are, prepared to confront the voices of evil head on."

Prime Minister Tony Blair met with four Muslim MP's on July 13 and pledged to mobilize "the moderate and true voice of Islam." Blair added, "This is not an isolated criminal act we are dealing with. It is an extreme and evil ideology whose roots lie in a perverted and poisonous misinterpretation of the religion of Islam." Blair urged his countrymen not to blame innocent Muslims for the acts of a few and pledged to defend their community against revenge attacks. *The Guardian* reported at least 300 hate crime attacks on Muslims, including the murder of a man in Nottingham.

**Madrid:** June 30 was a momentous day in Spain. Spanish lawmakers in the Congress of Deputies voted 187-147 to approve same-sex marriage. The measure also granted gay and lesbian couples the legal right to adopt children and receive inheritances. Spain became the third nation to legalize same-sex marriage. Prime Minister José Luis Rodríguez Zapatero took the unusual step of speaking in support of the measure in parliament. "We are expanding the opportunities for happiness of our neighbors, our colleagues, our friends and our relatives. At the same time, we are building a more decent society," the Socialist prime minister told a packed gallery, which erupted in applause.

The Spanish Bishops' Conference denounced the move, calling it an "unjust law that must be opposed through every legitimate means." Church leaders were also unhappy that parliament had liberalized Spain's divorce laws, making divorce easier to obtain. For the first time in 20 years, the Church endorsed an anti-gay marriage rally which brought thousands to Madrid in June to protest the bill's impending passage. A national poll, however, showed Spaniards in favor of the government's action by 62% to 30%. Individual Catholic archbishops and bishops were vehement in their denunciation of the action, calling it an "iniquitous law," "a step backward because it goes against natural law," etc. Pope Benedict XVI told an audience at Rome's Basilica of St. John Lateran that same-sex unions are "expressions of anarchic freedom which falsely try to pass themselves off as the true liberation of man."

The Netherlands legalized same-sex marriage in 2001 and Belgium followed suit in 2003. Civil unions are legal in Denmark, Sweden, France, Germany, Finland, and in certain cantons of Switzerland. Britain's civil union law takes effect in December 2005.

*America's religious wars are only going to intensify. The polarization of politics along religious lines is deepening by the day. America's wars of religion will get a lot nastier before any long-lasting peace can be declared, if ever.*

— *The Economist*, May 28, 2005.

**Mexico City:** Catholic Church officials denounced President Vicente Fox for allowing "morning after" contraceptive pills to be sold in public health clinics. Church leaders said the pill is tantamount to abortion, which is still illegal in Mexico.

**Montreal:** Quebec's assembly voted unanimously to reject a Muslim request to use Islamic Sharia law in the province's legal system. Family disputes, private financial matters and inheritance questions would have been referred to a Muslim tribunal, as is the case in Ontario. A Muslim human rights activist, Huma Arjomand, praised the decision, while the Muslim Council of Montreal called it "total bigotry or total ignorance of what Islam is."

**Ottawa:** Canada became the fourth nation to legalize same-sex marriage on July 19 after the Senate approved the House action. The Canadian House of Commons voted 158-133 on June 28 to legalize same-sex marriage. Nine of Canada's 13 provinces and territories had already approved legalization. Liberal Prime Minister Paul Martin endorsed the measure as an advancement of human and civil rights. He made it clear that this is a civil law that does not compel acceptance in religious communities, most of which refuse to sanction same-sex marriage. The opposition Conservative Party opposed legalization, and its leader, Stephen Harper, vowed to repeal the law if his party came to power in the next election. The issue was emotional and divisive, with polls showing a fairly close divide among the electorate. Two dozen Liberal Party members voted against their party's position, and one Liberal cabinet member resigned in protest. Several prominent national political figures are openly gay, and gays are accepted in the Canadian military with full spousal benefits for partners. One potentially thorny dispute may occur when American gay couples married in Canada return to those U.S. states that have banned same-sex marriage. Marriages performed in other countries are generally accepted in the United States but this issue may end up in U.S. courts. Only Massachusetts recognizes same-sex marriage, and Vermont and Connecticut recognize civil unions.

One Canadian Member of Parliament, Charles Angus, a Catholic and a member of the small New Democratic Party, was denied communion at his home parish in retaliation for his yes vote on gay marriage.

The priest at St. Patrick's Parish in Cobalt, Ontario, said that Angus was "scandalizing members of our faith community." Angus responded, "I feel that we are starting to move into some very uncomfortable water when the priest is telling me how to vote in the House of Commons." The local bishop, Paul Marchand, also denounced Angus and another Catholic member of parliament, Anthony Rota, for their favorable votes. Marchand said, "Their position is clearly contrary to the teachings of our Catholic faith and is inconsistent with the vast majority of the men and women who elected them to the House of Commons." Both men were reelected at the last election.

**Paris:** *The Rationalist International's* June 22 issue reports that the ban on religious symbols in French state schools is largely successful. Only 40 Muslim girls complained of the ban on veils during the previous school year, compared to 1,500 complaints the year before. A threatened exodus to religious private schools has not occurred, according to

the newsletter's Paris correspondent Jocelyn Bézecourt. "Muslim girls understood that removing the *hijab* at school did not mean giving up their faith."

**Rome:** The Vatican won a small victory of sorts when Italian voters largely ignored a referendum designed to repeal parts of a restrictive fertility law passed last year. Under Italian law, 50% of eligible voters must cast ballots for a referendum to be valid. Only 26% of Italians voted in the June referendum, so votes remained uncounted. It automatically failed. Supporters sought to overturn a section of the law that granted equal rights to an embryo and a child and that sharply limited fetal experimentation for medical research. The Vatican and Italian bishops urged voter abstention. "The results would seem an immediate victory for the church and for the young papacy of Benedict in a Europe where Church influence has declined significantly in recent decades," wrote Ian Fisher in *The New York Times*. Other observers attributed the outcome to apathy and ignorance of the issues. The new law, which remains on the books, defines life as beginning at conception. Critics say that conflicts with the right to abortion, which was overwhelmingly ratified by Italian voters in 1981.

**Stephenville, Canada:** The Catholic Church in Newfoundland faces a potential loss of 100 of its 150 properties, including churches, parish halls and rectories, to pay \$10.5 million in a settlement for victims of clerical child abuse. The main perpetrator, former priest Kevin Bennett, served four years in prison for abusing at least 39 altar boys. A court settlement for compensation was reached in June but the diocese will find itself nearly destitute after settling the claims.

The new bishop, Douglas Crosby, has taken an active role in trying to settle the lawsuits expeditiously. A Washington, D.C., attorney, Rev. Thomas Doyle, said, "This is a wake-up call for the entire church. The Newfoundland case could be potentially devastating for dioceses in the U.S." Canada's Supreme Court ruled that the Newfoundland diocese owns all of its parishes' property. "If I were a U.S. diocese, I would be very worried about the Newfoundland case," Charles Zech, a Villanova University specialist on church finances told a *Washington Post* reporter.

**Toronto:** The *Toronto Globe & Mail* reported that Quebec's provincial government will end all religious instruction in publicly-financed schools beginning in September 2008. "The move is another indication of the important transformation of the province's once religiously dominated society. Backed by support from parents' groups, school boards, teachers and religious organizations, Education Minister Jean-Marc Fournier said Quebec is at a point where it can turn the page on its narrow religious past and open up to all religions," reported the paper. For more than a century, all Quebec schools were either Catholic or Protestant. In 1997 the religious school boards were replaced by boards based on language.

**Vatican City:** A prominent Mexican priest, Rev. Marcial Maciel deGollado, the 85-year-old founder of the Legionaires of Christ, will apparently not face a church trial on allegations that he had sexually abused seminarians in decades past.

The Vatican decision, the first such ruling under Benedict XVI, stunned the eight accusers, who first lodged formal complaints in 1998. There was no further explanation from Vatican officials on why the controversial priest will not face a "canonical process," or church trial. The Legionaires of Christ is a conservative religious order founded in Mexico in 1941. It has 650 priests worldwide, 2,500 seminarians in 20 countries, and maintains a dozen universities, including the recently founded University of Sacramento in California. ■

## Books and Culture

Books about the new pope are pouring out from various publishers. Matthew E. Bunson's *We Have a Pope!* (Our Sunday Visitor, Inc.) is a dry, academic study befitting an author who compiles Catholic encyclopedias and almanacs. It is also wholly hagiographical.

Mario Bardazzi's *In the Vineyard of the Lord* (Rizzoli International Publications, Inc.) is an Italian journalist's take on Benedict's life and is particularly engrossing in his portrait of the German years. Bardazzi, the U.S. correspondent for the Italian news agency ANSA, also includes selections from Benedict's many books, articles and speeches. Andrew Greeley's *The Making of the Pope 2005* is due in the fall. Another papal biography, Stephen Mansfield's *Pope Benedict XVI: His Life and Mission* (Tarcher/Penguin) presents the assessment of an evangelical who sees the new pope as one who will preserve ancient traditions at all cost and will not compromise even if it costs the church members and influence.

Southern Baptist publisher Broadman & Holman continues its drift to the Right. On its fall list are *The ACLU vs. America* by Alan Sears and Craig Osten and *One Nation Under Man?: The Worldview War Between Christians and the Secular Left* by Brannon Howse. The Howse book has received early endorsements from Tim LaHaye, Ed Meese, Michael Reagan and Rep. Jim Ryan (R-KS).

On the other side are at least three fall books that will appeal to church-state separationists. Michael Schiavo's attorney, John Eisenberg, has written *Using Terri: The Religious Right's Conspiracy to Take Away Our Rights*, from Harper San Francisco. And, from Basic Books in September comes *The Republican War on Science* by former *American Prospect* writer Chris Mooney. *National Catholic Reporter* Vatican correspondent John Allen takes a look at *Opus Dei*, due in October from Doubleday.

*Divided by God: America's Church-State Problem and What We Should Do About It*, by Noah Feldman, Farrar, Straus and Giroux, 306 pp., \$25.00.

Noah Feldman, a professor at New York University Law School, proposes to end America's church-state crisis with a simple formula: No coercion and no money. What is this crisis? "Religious division threatens the unity of the American nation more clearly than at any time in a century," he writes. To defuse the crisis, he endorses "greater latitude for public religious discourse and religious symbolism, and at the same time insistence on a stricter ban on state funding of religious institutions and activities." In other words, "The State may neither coerce anyone in matters of religion nor expend its resources so as to support religious institutions and practices." He adds, "We should permit and tolerate symbolic invocation of religious values and inclusive displays of religion while rigorously protecting the financial and organizational separation of religious institutions from institutions of government."

There are problems with this proposal. Symbolism and government endorsement of religious values are replete with contradictions. Whose religious values deserve governmental approbation? Will minority religions be protected? Will individuals not wanting to identify with any religion be marginalized? Feldman seems naïve and not well informed when he argues that "public manifestations of religion – at least at the national level – are becoming increasingly pluralistic. . . . In some instances pluralistic public religion even holds out the possibility of enabling new religious minorities to participate fully in the American public sphere." If anything, the increasing power of the Religious Right makes it likely that evangelical Protestantism will continue to dominate the U.S. public square, whether at presidential inaugurations, National Days of Prayer, or at the U.S. military academies.

Feldman insists on dividing the American people into two broad

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categories, which he labels “values evangelicals” and “legal secularists,” though the totality of the U.S. seems much broader and more diverse than this. He claims that values evangelicals can include Catholics, Jews and Muslims, or anyone who holds ethical values. Legal secularists are those who believe religion should be a private concern that has little or no impact on public policy. Most Americans would probably feel uncomfortable being categorized in this fashion. Values evangelicals include all who “care primarily about identifying traditional moral values that can in theory be shared by everyone.” But he never identifies what these values are or how they shape the public discourse.

He is certainly correct in this assessment: “The deep divide in American life is not primarily over religious belief or affiliation; it is over the role that belief should play in the business of politics and government.”

Commendably, he condemns the view that opposition to state aid for faith-based schools rests solely on a tradition of 19<sup>th</sup> century anti-Catholicism. “The framers who prohibited establishment at the federal level, and the Constitution drafters who did likewise in the states both before and after the framing, were not yet in the grips of bigoted anti-Catholic politics.” But he says the opponents of aid to Catholic schools should have “accommodated Catholic public school children either by exempting them from practices they saw as Protestant, or by taking those rituals out of the schools altogether.”

Church-state separationists will endorse some of Feldman’s thesis, particularly when he writes, “The tradition of institutional separation that must be reasserted goes beyond funding for religious schools. All attempts to use government resources to institutionalize religious practices countermand the American tradition of nonestablishment, grounded historically in the belief that government has no authority over religious matters.”

Feldman aims for even-handedness. “Secularists must accept the fact that religious values form an important source of political beliefs and identities for the majority of Americans, while evangelicals need to acknowledge that separating the institutions of government from those of religion is essential for avoiding outright political-religious conflict.”

### *The Separation of Church and State*

Edited by Forrest Church

*In this attractive pocket-sized, readable book, Church pulls together, with useful commentary, the more important writings of the Founders that show clearly that they intended our system of government to incorporate the principle of separation of church and state.*

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But Feldman should have acknowledged that religious neutrality on the part of government, in both the symbolic and financial realms, is much more likely to guarantee religious liberty and to preserve and advance freedom of conscience than any form of politically-motivated accommodationism. Religious freedom is safe and secure when a secular government neither advances nor inhibits religion – anybody’s religion.

— *Al Menendez*

*Can God & Caesar Coexist? Balancing Religious Freedom and International Law*, by Robert F. Drinan, S.J., Yale University Press, 2004, 266 pp., \$30.00.

Robert Drinan was a five-term liberal Democratic congressman from Massachusetts and now teaches at the Georgetown University Law Center. His new book contains a wealth of information on international agreements regarding religious freedom and includes considerable detail on the religious liberty situations in many parts of the world.

“Support for the right to practice the religion of one’s choice,” he begins, “is very new in human history, and it prompts dozens of questions. If the new right to religious freedom were accepted and enforced, for example, would the world be spared the savagery of wars prompted at least in part by the clash of religious beliefs?” He adds that “the painful fact is that religions, which in everyone’s estimation are designed to bring peace, continue to be sources of conflict and hostility.” And while most nations pay at least lip service to religious freedom, their practice often does not match their preaching. He admits that his own church, the Roman Catholic, has a lot to answer for. This book is so rich in detail that it cannot be easily summarized.

Drinan laments the fact that “there is as yet no worldwide network of organizations united in their efforts to protect the religious freedom of a wide variety of religious nonconformists, dissidents, and conscientious objectors.” (Thirty years ago at an international conference on religious freedom in Amsterdam, sponsored by the Seventh-day Adventist Church, I proposed the creation of such an organization, analogous to Amnesty International. The conference participants agreed on the need for such, but no further progress was made.)

Drinan explains the various UN declarations on the subject, but finds too little effort to implement them.

I am bothered by his use of the term “believers and nonbelievers” because everyone is a nonbeliever in whatever conflicts with his/her beliefs.

While on the whole Drinan’s book is important and useful, it contains some odd mistakes and weaknesses. He repeatedly leans toward the idea that faith-based schools should receive tax support, without any discussion of the pros and cons, and both misrepresents and declares “somewhat dated and artificial” the U.S. First Amendment. He erroneously writes that the Supreme Court “disallowed prayers and Bible reading in public schools; he knows better, as he was a key leader in the House of Representatives in defeating a school prayer amendment in 1971. Nor did the Court ban moments of silence at the beginning of the school day.

He also suggests that religious organizations should be allowed “to use the full power of their considerable strength to attempt to fashion national and global societies into cultures compatible with their views of what is good.” That view, an echo of Falwell, Robertson, and Dobson, would inflict major damage on religious liberty.

Drinan asserts that “the Catholic Church in Vatican II . . . gave up its seat at the table of governmental affairs.” Really? Then how to explain the Holy See’s unique position as an influential “permanent observer” at the UN General Assembly, and its continuing to seek wide diplomatic recognition and new national concordats? Then, too, he suggests an international accord that would limit the right of women to freedom of conscience in dealing with problem pregnancies, and endorses the

Borkian notion that local majorities, transient or permanent, be allowed to impose one-size-fits-all rules on women.

In sum, while there is much of value in this book, I am saddened that the author has backslid from the liberal positions he took as a Massachusetts congressman.

— Edd Doerr

*God vs. the Gavel: Religion and the Rule of Law*, by Marci A. Hamilton, Cambridge University Press, 2005, 414 pp., \$28.00.

Marci Hamilton is a distinguished expert on church-state matters at Yeshiva University School of Law, a significant church-state litigator, and, incidentally, a somewhat conservative churchgoing Presbyterian. Her new book is important, useful, provocative, and, at the end of the day, a bit puzzling.

She starts out on very solid ground, noting that history abounds with horror stories of religious wars, persecutions, and intolerance in both the Western and non-Western worlds. She then shows that some religious institutions and leaders have the mistaken idea that “religious liberty” shelters them from sanctions for actions by religious institutions, clergy, and members that interfere with public health, safety, welfare, and even their lives and liberties. Hamilton emphatically rejects this notion, as do I.

Among the excesses she details at length are sexual abuse of children and women by clergy and cover-ups by church officials and law enforcement; religiously motivated medical neglect and physical abuse of children; abuse of women and children by religious polygamists; abandonment of children for religious reasons; opposition to equal rights for gays and lesbians; “pressure by a subset of Christians to push for a single moral vision under the heading of ‘Christian’ . . . as a drive to institute a theocracy in their own image”; successful efforts by religious entities to set aside zoning laws; allowing children’s formal education to be ended after the eighth grade (upheld by the Supreme Court in *Wisconsin v. Yoder*) for religious reasons; exempting homeschoolers and private schools from accountability.

Hamilton then goes on to criticize the Religious Freedom Restoration Act (RFRA), which Congress passed in 1993 as a response to a broad negative reaction, from the ACLU to evangelicals, to the Supreme Court’s 1990 ruling in *Employment Division v. Smith*. The ruling, written by Justice Scalia, went against two Native Americans in Oregon whose offense was to have used peyote, a mild hallucinogenic, as part of their religion, which dated to before Europeans came to America. What stirred so much opposition to Smith was the fact that Scalia based the opinion largely on a 1940 ruling (*Gobitis*) that the Court itself reversed in 1943 (*Barnette*, which Hamilton does not mention). Scalia seemed to be saying that accommodating religious minorities is an unaffordable “luxury” and that the accommodation should be left to legislative and political processes. Yeah, fat chance!

Hamilton agrees with Scalia and went on to successfully challenge RFRA in 1997 in *Boerne v. Flores*.

In her new book Hamilton writes that religious minorities seeking exemption from generally applicable laws should seek relief from legislation. She does not mention the 200-year-old precedent for judicial review that began with *Marbury v. Madison* and remains in force today. Without judicial review schools would still be segregated, state government could still mandate prayers and creationism in public schools, women could be denied the right to choose contraception or abortion, and nonreligious conscientious objectors would not have been able to avoid conscription during the Vietnam War.

Hamilton is absolutely right in insisting that the evils referred to in paragraph three need to be ended through legislation and the courts. But discarding judicial review and some forms of “no harm” accommodation would seriously damage religious liberty.

— Edd Doerr

*Democracy Under Assault: Theopolitics, Incivility and Violence on the Right*, by Michele Swenson, Sol Ventures Press, 2005, 259 pp., \$20 (available from ARL; please add \$2.50 for postage and handling).

This important, compact, quite readable book could easily have been titled “Everything you might ever want to know about the theopolitical right: personalities, ideologies, agendas, connections, goals, catch phrases, propaganda gimmicks, and methods of operating.”

Michele Swenson spent 15 years putting together this encyclopedic (1,071 endnotes) who’s who, or rogue’s gallery, of the fundamentalist and secular movers and shakers of the now thirty-plus years campaign to transform the U.S. into a narrow, intolerant, fundamentalist, racist, sexist, economically ultraconservative banana republic. Of particular value is her explanation of the interconnections between the fundamentalist religious right, the gun fanatics, the racists, and the anti-abortion and anti-contraception sexists.

This book is far too rich in detail to be summarized in a review of reasonable length. Suffice it to say that the author has not missed anything or anybody.

Foremost on the theopolitical agenda is the destruction of the wall between church and state, which entails replacing public schools with voucher-funded faith-based schools, replacing government operated welfare programs with discriminatory faith-based operations, polluting public school science education with creationism, reintroducing government-mandated school prayer, and stripping women of reproductive freedom of conscience. Beyond that the movement wants to clamp down on gays and lesbians, eliminate civil rights protections, and turn the country into an ultra-Puritan “city on a hill.”

Among their methods are paranoid rants about Christians being persecuted (though 85% of Americans and 90% of members of Congress are Christian), wild accusations that Satanists and humanists have taken over the country, and manipulation of extremely powerful media machines.

This book will make you upset and angry, but it merits the widest possible circulation. I wish I had written it.

— Edd Doerr

*Evolution vs. Creationism: An Introduction*, by Eugenie Scott, introduction by Niles Eldredge, Greenwood Press, 296pp; Hardback \$49.95, Paperback: University of California Press, \$19.95.

Eugenie Scott’s book is a fascinating hybrid: analyses of the C-E debate, critique of creationist claims from the viewpoints of scientists, teachers, theologians and the law, and a critical edited compilation of major creationist documents and arguments. The result is a one-stop resource for the newcomer and veteran alike. Anthropologist Scott, an ARL National Adviser, draws on her experience of 20 years or more as executive director of the National Center for Science Education to provide a sweeping overview of the multiple forms of antievolutionism. NCSE is the principal organization devoted to evolution education and critiquing creationist claims [Disclosure note: I am an NCSE Board Member].

Major sections of the book are “Science, Evolution, Religion, and Creationism,” “A History of the Creation-Evolution Controversy,” and “Selections from the Literature.” Unfortunately, the “Intelligent Design” writers were not forthcoming with permission to reprint their own arguments, very unlike the case in normal academic discourse (and unlike the more traditional creationists, as well). This Part Three may otherwise be the most valuable aspect of the book, with excerpts on cosmology, astronomy, geology, patterns and processes of biological evolution, legal issues, educational issues, religious issues, and “the nature of science.” Earlier, Chapter Six on Neocreationism is especially important, addressing the current state of affairs—especially the “Intelligent

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Design Movement” with deep roots in conservative Christianity but professing to be secular (unless one scratches the surface ever-so-gently to find admissions by its leading lights that they are using I.D. as a “wedge tactic” to get religion taught in the science classroom). The August 2005 comments by President George Bush advocating I.D. teaching demonstrate the political reach of this movement.

Creationism is a handmaiden to a mixture of resurgent anti-intellectualism, anti-elitism, and an array of conservative cultural values. There are many divisions in the “followship” of creationist leaders, but a general reaction against evolution education sews together this sometimes divergent group into a potent political force often willing to overlook otherwise large theological, political and cultural differences. Scott shows how science and religion are different and argues that they are not necessarily in conflict.

As an introduction to a huge problem facing science and religion, this book is very valuable and should be on the shelf of teachers, clergy, students – and politicians. Extensive bibliographies and suggested readings give good leads to each topic in vastly greater detail than a survey volume can include.

—John Cole

*John Cole holds a Ph.D. in anthropology from Columbia University and is a member of the board of the National Center for Science Education.*

***Exodus: Why Americans Are Fleeing Liberal Churches for Conservative Christianity***, by Dave Shiflett, Sentinel, 196 pp., \$23.95.

Shiflett, a competent free lance journalist, tries to find reasons to substantiate his thesis that “Americans are fleeing” progressive or moderate churches for traditionalist ones. But his book is episodic and superficial. He only discusses a few religious traditions: the Episcopalians, whom he mercilessly skewers, while calling himself “an itinerant Presbyterian” who rarely attends church; and evangelicals, Southern Baptists, and the Orthodox Churches, which he says “are little known and less understood.” One chapter deals with the Catholic Church, though the author restricts his discussion to its conservative wing and interviews Fathers Richard John Neuhaus and John McCloskey, “who had played a central role in many high-profile conversions, including Robert Bork, Robert Novak, Laura Ingraham and Senator Sam Brownback.” The author admits that American Catholicism is also “the spiritual home of highly motivated liberals, including the writer Garry Wills and socialists too numerous to count.”

For a supposedly informed journalist, however, the author has failed to keep up with recent changes among the few people he interviewed or cited. Thomas Reeves, author of *The Empty Church*, did write from the perspective of a mainline Episcopalian in his 1996 book, but became a Roman Catholic a few years later. Father John McCloskey is no longer director of the Catholic Information Service in Washington, D.C. This only goes to show that books purporting to chart great national trends need more than interviews to have permanent value.

Books like this appear regularly, at least since Dean Kelley’s *Why Conservative Churches Are Growing* in 1972. The thesis, buttressed by an apparently unassailable array of church membership statistics, argues that highly traditional, doctrinally unchanging, and high-demand denominations are growing stronger and thus more influential in the general culture than churches which adapt their teachings and mores to the changing culture in which they live. While this argument may have had some validity decades ago, it is not an absolute certainty. Church membership data are highly malleable and are only one measure of religious vitality.

The author shows no knowledge of the scholarly literature on religious change in the U.S. Several previous empirical studies have shown

that much of the growth in conservative churches is a purely demographic one: Members of conservative churches have a significantly higher birth rate than members of most other religious communities, and they do a better job of retaining their younger members into adulthood. Some scholars say this accounts for more than half of the conservative growth rate. Another factor ignored by the author is that religious change in America goes in many directions, not just from liberal to conservative. Some surveys show that evangelicals often choose the more historic, liturgically-oriented churches in adulthood. *Evangelicals on the Canterbury Trail* was the title of Robert Webber’s best-seller a few years ago, recording as it did a number of evangelical converts to the Episcopal Church. The author cites Episcopalian defections to Rome as an example of his evidence. But conservative Episcopalians/Anglicans have been converting to Rome since John Henry Newman’s defection 150 years ago. And, liberal Roman Catholics are becoming Episcopalians. The road between churches goes in both directions, and always has. Another point worth remembering is that “conservative” growth has slowed in the past decade. The growth was much greater in the 1960s. The Southern Baptists hardly grew at all during the 1990s. Their annual number of baptisms has declined, and baptisms of new members as a percentage of overall church membership is much lower than in the 1950s and 1960s. Finally, surveys from John Green, the Pew Trust, George Barna, and George Gallup all show that a considerable percentage of religious conservatives are not active in their communities. Many rarely or never attend church. The percentage of evangelicals as a percentage of all Americans, and of American voters, has changed little over several decades.

Of course, these nuances matter little to Religious Right activists and Republican Party operatives who love to cite superficial examinations like *Exodus* to demand greater recognition in and control of public life. Admittedly, religious conservatives have more political power today, and near-total control of the U.S. military, than ever before. Some of that may be due to perceptions of strength rather than actual strength in the U.S. population. Some is due, no doubt, to the abdication of other religions, which have been out-hustled and eclipsed by the aggressiveness and self-confidence of the conservatives.

Explanations for religious change are complex. Shiflett’s *modus operandi* – interviewing a few participants in America’s religious wars and trying to draw grandiose, sweeping conclusions from them – leaves much to be desired. For example, he says, “The Episcopal Church has lost a majority of its members.” Apparently, he lacks a basic knowledge of mathematics. Episcopalians have declined from 3.6 million in 1966 to 2.4 million today, a one-third loss, which is bad enough, but not more than half. “Churches that have maintained allegiance to traditional Christian belief, comparatively speaking, have experienced membership increases.” What is “traditional Christian belief?” Mormons, Southern Baptists, Pentecostals and Eastern Orthodox Christians all maintain that they are the inheritors and preservers of truth and tradition, but they regard each other as heretics.

*Exodus*, incidentally, is published by a conservative special interest publisher, Sentinel, the conservative wing of Penguin Books.

—Al Menendez

***The Rise of Benedict XVI***, by John L. Allen, Jr., Doubleday, 249 pp., \$19.95.

Vatican correspondent John Allen told *Publishers Weekly* that he had written this book in eleven days. He may be the only writer who knows the Holy See so thoroughly that his claim is not only credible but realistic. Allen, the *National Catholic Reporter*’s well informed and internationally respected bureau chief in Rome, has produced a knowledgeable and insightful look at the last days of John Paul II, the conclave that elected Benedict XVI and the probable changes in direction that the new papacy might embark upon.

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How did Germany's Cardinal Ratzinger win the post, and so soon? Allen suggests a number of reasons why the 115 voting cardinals made this choice. Some were purely pragmatic, political boiler room factors. "Ratzinger ran the best campaign, had the best campaign staff, and was the first candidate to benefit from John Paul's rule allowing the cardinals to elect a pope on the basis of a simple majority after seven days of voting." Ratzinger was apparently ahead from the beginning and his election became more inevitable after each passing ballot. "The anti-Ratzinger vote in the College of Cardinals simply was never able to organize in a way sufficient to halt Ratzinger's momentum. The more progressive cardinals never united behind a single candidate around whom a coalition might emerge."

Many cardinals saw Ratzinger as the best qualified candidate and, ironically, thought he might turn out to be a reformer. "Some cardinals felt the Church was long overdue for some needed reforms that only someone of Ratzinger's stature and unquestioned orthodoxy could engineer, beginning with a serious reform of the Roman Curia."

On issues that might affect the world community (abortion, birth control, divorce, ecumenism) as well as Catholics, Benedict XVI is likely to maintain the status quo, says Allen. "Pro-choice voices within Catholicism, whether belonging to politicians, moral theologians, or reform groups, will find life increasingly difficult on his watch."

Allen predicts that Benedict XVI will crack down on sex abuse by priests. "Under Benedict's papacy, Rome's engagement on the issue is likely to be swifter and more aggressive. There will be a clear sense that someone in Rome is paying attention." Some other predictions: "Benedict will also be someone to whom the world pays attention. He will be a forceful participant in moral and political debates." Allen says that Benedict will need to "reassure Catholic theologians in the developed world and progressive Catholic women" since both groups "felt that they were specially targeted by then-Cardinal Joseph Ratzinger and both approach his papacy with a palpable heaviness of heart."

And, while George W. Bush has lavished praise on Benedict XVI, he may be disappointed in the new pope's policies. "When it comes to America, the policies of Benedict's papacy may be more unpredictable than some anticipate, and no one should expect that he will always be a reliable moral apologist for American policy."

—Al Menendez

*Religion and Public Life in the Southern Crossroads: Showdown States*, edited by William Lindsey and Mark Silk, AltaMira Press, 190 pp., \$19.95.

This fifth volume of a highly acclaimed series devoted to religion

and politics in the U.S. invents a new geographic subregion, the Southern Crossroads. These states, Missouri, Arkansas, Louisiana, Oklahoma and Texas, are, says co-editor Lindsey, "a place of borders and boundary lines, a region of showdowns, where people fought intimate battles over turf, slavery, family and, always, religion." Lindsey adds, "The Crossroads is a flashpoint region, where the intersection of frontier ideals and Old South realities has historically produced political and religious clashes of pronounced intensity."

In the Crossroads area, Protestants outnumber Catholics 58% to 22%, and most of the Protestants are Baptists, Pentecostals, and evangelicals. Political research data now show that this region is the most conservative in the country, particularly on abortion, gay rights, "family values" and "law and order" issues. (This conservatism persists despite some of the highest levels of divorce, crime, incarceration and executions in the nation.) Catholics, who are influential in parts of Louisiana, Texas and Missouri, are also more conservative than Catholics in any other part of the U.S. Even the mainline Protestants are more conservative than their counterparts elsewhere. Lindsey and Silk note, "What makes the Crossroads different is that here the evangelicals' views and values exert a greater gravitational pull on the rest of the population (including the non-religious)."

This is the region which produced the last three U.S. presidents. Three of these states (Missouri, Arkansas and Louisiana) have supported the winner in every presidential election since 1972. (Three other states, Tennessee, Kentucky and Ohio have similar records, and Kentucky and Tennessee border the Crossroads.)

About 12% of all Americans live in the Southern Crossroads. Crossroads voters backed George W. Bush over John Kerry by 59% to 40%. Bush's popular vote margin of 2,731,403 votes in the Crossroads states represented 90% of his entire national victory margin of three million. That shows how important a role this culturally conservative, Religious Right-dominated area plays in national politics.

Among the relevant facts found in this excellent collection of essays are these:

- Andrew Manis defines the "Crossroads Evangelical Establishment" as a modern reflection of "a distinctively contentious mode of religious interaction in America's Southwestern frontier."

- Historian Bill Leonard says, "The Crossroads is in many ways a bastion of conservatism amid the culture wars of the late twentieth and early twenty-first centuries. Crossroads preachers and their programs are actively engaging the public square today in an effort to convert sinners, transform society, and conquer culture."

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## Books and Culture, *continued from page 23*

• Andrew Manis writes, “All of the state Baptist Conventions of the Southern Crossroads have now come under the control of the Christian Right.”

—*Al Menendez*

*Religion and Public Life in the South*, edited by Charles Reagan Wilson and Mark Silk, Alta Mira Press, 224 pp., \$24.95.

This sixth volume of what will surely be the definitive study of religion, region and politics in the U.S. concentrates on the Southeast. (The geographers who prepared this series included Kentucky and West Virginia in “the South,” while transferring Arkansas, Louisiana and Texas to the “Southern Crossroads” region, a novel approach, to be sure.)

Of the South Charles Reagan Wilson writes, “Religion in the American South has been distinguished by the long cultural hegemony of evangelical Protestants. An assumed religious consensus governed the day, partly because of the numerical dominance of evangelicalism through most of the South and the assertiveness of missionary-driven evangelical groups.” This clearly affected politics and public policy. “States passed blue laws to regulate Sunday conduct, and gaming laws as well as Prohibition gave evangelical moral standards legal force. Public schools were like ancillary evangelical institutions, with local pastors serving as school chaplains and denominational Sunday school teachers leading students during the week in Bible reading and prayer.”

Religious pluralism was limited to South Florida, where Catholics, Jews and Episcopalians were numerous and socially significant, and to Appalachia, where fundamentalist sectarians and independent Baptists found nowhere else in the U.S. were dominant. Elsewhere, white regular Baptists were supreme, with Methodists a distant second. There were pockets of Lutherans and Presbyterians in the Carolinas and Virginia, and Episcopalians resided in the coastal towns. Pentecostalism and the Churches of Christ had some influence in Tennessee and Alabama. African American churches were strong but were marginalized until the civil rights movement achieved a place in public life for them.

Wilson also says that “white evangelicals in the South have mobilized politically to seek public support for a worldview still rooted in the nineteenth century.” “They seek recognition of the legitimacy of their vision of a Christian civilization.”

—*Al Menendez*

*The Two Americas*, Stanley B. Greenberg, St. Martins, 428 pp., \$14.95 paperback.

This is the revised and expanded paperback version of Stanley Greenberg’s first rate study of the Great Divide in American politics that first appeared early last year (see review in *VOR*#86).

Greenberg’s analysis of the 2004 vote is compelling. “Bush won by waging an all-out culture war that deepened and generalized the current cultural polarization of our country. In that, 2004 was simply the next phase of a spiraling cultural politics that began in earnest in 1984, accelerated in the 1990s, and was pushed to yet new, unimagined limits in 2000 and 2004.”

Nothing mattered to cultural conservatives but, well, culture and religion. “In the end, the Republicans asked people not to judge Bush’s performance in office but to vote their beliefs and worldview. The power of these cultural forces are evident in every measure of change. . . . Bush’s determined cultural war energized and raised turnout disproportionately of Republican-aligned, social conservative voters.”

It is, therefore, no surprise that Bush’s greatest gains between 2000 and 2004 came in Alabama, Tennessee and Oklahoma (all anti-Kennedy, anti-Catholic states in 1960), as well as Louisiana and Hawaii.

Kerry also gained among some liberal groups, making the divide between the parties even wider than in 2000. But turnout favored the GOP. The solidly Red states went from 32% to 33% of the overall vote, while the Blue States declined from 32% to 29%. The Democratic-leaning “Cosmopolitan States” (New England, New York, New Jersey, California) also found their share of the total vote declining from 24% to 22%. The conservative share of the electorate increased by 4 points, while the moderates declined by 1 point.

Greenberg also notes that Kerry’s support “crashed” in parts of the East, though it did not cost him any states, because “downscale America decided to vote the cultural line on the ballot.” Prosperous, college-educated Easterners were even more for Kerry than for Gore, but non-college voters, especially married Catholic women in the unfashionable sectors of the East, reluctantly gave Bush a larger share of their votes than in 2000. All of these conflicting currents make for continued volatility in U.S. politics.

Greenberg still believes 2004 was “a status quo election,” because the overall shifts were small, with Bush eking out a 2.4% majority over Kerry in the popular vote, the worst reelection margin for a first-term president in U.S. history. The future is still up for grabs, and if both parties continue to wage the kind of campaign they did in 2004, the next election is likely to be just as close.

—*Al Menendez*