



# VOICE OF REASON

The Journal of Americans for Religious Liberty

2010, No. 3 [112]

## Elena Kagan Confirmed

Solicitor General Elena Kagan's appointment to the Supreme Court was confirmed by the Senate on August 5 by a vote of 63 to 37. It was a mostly party line vote. All Democrats except Nebraska's Ben Nelson voted yes. Most Republicans were opposed. Only five Republicans favored the nomination: Olympia Snowe and Susan Collins of Maine, Richard Lugar of Indiana, Judd Gregg of New Hampshire, and Lindsey Graham of South Carolina. Kagan becomes the fourth woman to serve as a justice, and the third on the present Court, joining Ruth Bader Ginsburg and Sonia Sotomayor.



Kagan's views on church-state questions were explored in some detail during her confirmation hearings in the Senate. Responding to a question from Senator Diane Feinstein (D-CA) about the interplay between the Establishment and Free Exercise Clauses of the First Amendment, Kagan said: "Both are very important to our constitutional system and neither should be subordinated to the other. There are times when they are in some tension with each other. Now, I think it's important to recognize that there are many times when that's not so, where they in fact go hand in hand and function perfectly well together, but there are some times when they may be in tension and they can cut in either direction."

She noted that every case has a different set of facts. The Establishment Clause, she said, can be approached from many angles, including the three-prong test (requiring a secular legislative purpose, prohibiting excessive entanglement between church and state, and forbidding laws that advance or inhibit religion), the endorsement test, and the coercion test, among others. She added, "In general, I think what both First Amendment clauses are designed to do—and this is the way in which they work hand in hand with each other—what they're both designed to do is to ensure that you have full rights as an American citizen. You are a part of this country, no matter what your religion is, and to ensure that religion just never functions as a way to put people because of their religious belief or because of their religious practice at some disadvantage with respect to any of the rights of American citizenship. So, I think that that's the sort of overall purpose of both parts of the amendment."

While generally seen as favorable to abortion rights and gay rights, Kagan's memos as a law clerk to Justice Thurgood Marshall and as a domestic policy aide to President Bill Clinton raised some questions among civil liberties and reproductive freedom groups. She said there is "no federal Constitutional right to same-sex marriage" in her solicitor general confirmation hearing and said she would defend the Defense of Marriage Act "if there is any reasonable basis to do so."

She suggested in a 1988 memo that prisoners in Monmouth County, New Jersey, did not have a right to receive state-funded elective abortions, but recommended that the decision requiring payment should stand as a practical matter. She also urged President Clinton to oppose most late-term abortions in a 1996 memo as policy adviser. Clinton,

however, vetoed a total ban because it did not allow the procedure in the case of threats to the life or serious health consequences to the woman. She called "partial birth" abortion "an incredibly difficult issue," and said she "had no agenda with respect to this issue," in responding to a question from Senator Lindsey Graham (R-SC).

As dean of Harvard Law School, Kagan was critical of military recruiting efforts on campus because of the "don't ask, don't tell" policy toward gays and lesbians in the military, which she saw as an injustice.

Two other incidents may reveal a certain ambivalence by Kagan on matters relating to government's role in religion. In a 1987 memo to Marshall, Kagan opposed federal funding for a religion-infused federal adolescent pregnancy program. She wrote: "The funding here is to be used to support projects designed to discourage adolescent pregnancy and to provide care for pregnant adolescents. It would be

difficult for any religious organization to participate in such projects without injecting some kind of religious teaching. The government is of course right that religious organizations are different and these differences are sometimes relevant for the purposes of government funding....But when the government funding is to be used for projects so close to the central concerns of religion, all religious organizations should be off limits." The Court, however, upheld the program in

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# Supreme Court Rejects Christian Students' Claim

In a closely-watched decision, the U.S. Supreme Court upheld a California law school's nondiscrimination policy and rejected a Christian legal group's complaint that it was singled out for non-recognition for its views on religion and sexual conduct.

Writing for a five to four majority, Justice Ruth Bader Ginsburg posed the question: "May a public law school condition its official recognition of a student group—and the attendant use of school funds and facilities—on the organization's agreement to open eligibility for membership and leadership to all students?" The answer was yes. The non-discrimination policy enunciated by Hastings Law School was "a reasonable, viewpoint-neutral condition on access to the student-organization forum." The Christian Legal Society's (CLS) claim that it was a victim of discrimination was without merit. Indeed, Ginsburg stressed that "CLS seeks special dispensation from an across-the-board open-access requirement designed to further the reasonable educational purposes underpinning the school's student-organization program." This amounted to a plea for a "preferential exemption."

Upholding both the federal district court and the Ninth U.S. Circuit Court of Appeals, the Supreme Court majority held: "The First Amendment shields CLS against state prohibition of the organization's expressive activity, however exclusionary that activity may be. But CLS enjoys no constitutional right to state subvention of its selectivity."

The majority concluded that the Hastings policy regarding membership in Registered Student Organizations (RSO) ensured that all students may partake of the benefits these groups afford.

Ginsburg noted that limited forums may regulate membership as long as all organizations are treated equally. "But when access barriers are viewpoint neutral, our decisions have counted it significant that other available avenues for the group to exercise its First Amendment rights lessen the burden created by those barriers." She noted that under the present law 60 student organizations exist at Hastings, and three of them had a religious orientation. She added, "Private groups, from fraternities and sororities to social clubs and secret societies, commonly maintain a presence at universities without official school affiliation." Numerous alternative venues and access to school facilities were offered to CLS.

In short, the Hastings policy did not violate First Amendment requirements regarding free exercise of religion and freedom of speech. It is reasonable because it ensures that opportunities are available to all

students and encourages tolerance, cooperation and learning among students and incorporates state-law bans on discrimination, as a public university is expected to do. Finally, the open membership requirement for all groups shields the university from any charge that it makes distinctions based on viewpoint, which would transgress the Constitution.

Justice John Paul Stevens filed a concurring opinion in which he argued, "Although the First Amendment may protect CLS's discriminatory practices off campus, it does not require a public university to validate or support them." He added, "As written, the Nondiscrimination Policy is content and viewpoint neutral. It does not reflect a judgment by school officials about the substance of any student group's speech. Nor does it exclude any would-be groups on the basis of their convictions. Indeed, it does not regulate expression or belief at all."

Justice Anthony Kennedy, in a separate concurrence, said, "A vibrant dialogue is not possible if students wall themselves off from opposing points of view.... The school's policy therefore represents a permissible effort to preserve the value of its forum."

Justices Stephen Breyer and Sonia Sotomayor supported the majority position.

Justice Samuel Alito wrote a vigorous dissent, accusing the majority of rendering a decision that is "a serious setback for freedom of expression in this country" and hoping "that this decision will turn out to be an aberration." Alito wrote that the Court "ignores strong evidence that the accept-all-comers policy is not viewpoint neutral because it was announced as a pretext to justify viewpoint discrimination." He added, "Religious groups like CLS obviously engage in expressive association, and no legitimate state interest could override the powerful effect that an accept-all-comers law would have on the ability of religious groups to express their views."

Joined by Justices Antonin Scalia and Clarence Thomas and Chief Justice John Roberts, Alito accused the majority of caving in to the "prevailing standards of political correctness."

This case, *Christian Legal Society v. Martinez* (Case 08-1371), decided on June 28, may have far-reaching consequences for public universities, say observers.

The Court did remand the case to the Ninth Circuit to ascertain whether Hastings "selectively enforces" its policy. ■

*Voice of Reason* is the quarterly journal of Americans for Religious Liberty, PO Box 6656, Silver Spring, MD 20916 (telephone 301-260-2988; fax 301-260-2989); e-mail: arlinc@verizon.net; website: www.arlinc.org). The journal is sent to all contributors to ARL.

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# Abortion Restrictions Gain Ground in States

State legislatures have passed numerous laws this spring regulating or restricting access to abortion. *The New York Times* reported that restrictions on abortion were enacted in 11 states, and four other states saw restrictions pass in one house of the legislature.

The laws have taken several forms. Arizona, Mississippi, and Tennessee banned coverage of abortion in the health insurance exchanges that are slated to begin in 2014. Arizona also banned coverage of abortion in state employees' health care plans and in state Medicaid programs. Nebraska lawmakers banned all abortions after 20 weeks, which is likely to end up in federal court. Oklahoma and Arizona required strict reporting requirements for abortion providers as well as ultrasound procedures. Tennessee now requires clinics to post signs stating it is illegal to coerce a woman into having an abortion. One rare pro-choice victory came in Florida where Gov. Charlie Crist vetoed a bill that would have required women seeking an abortion to undergo an ultrasound examination at their expense.

The Guttmacher Institute, which monitors and compiles data on abortion, said that 18 states passed or introduced legislation requiring stringent counseling for women seeking abortions. The organization reported that 24 restrictive bills had been passed so far this year and that 370 bills aimed at regulating abortion were introduced nationwide, up from 350 last year, and an average of 250 in the 1990s.

Many bills were left pending until next year's sessions. The South Carolina legislature allowed state health insurance to cover abortions in cases of rape, incest, or a threat to the woman's health. But the Republican majority indicated that next year they will introduce a 24-hour

waiting period for abortions and new restrictions on abortion coverage in health insurance plans.

Noted *New York Times* reporter John Leland, "While opponents of abortion rights hope ultimately to overturn *Roe v. Wade*, the Supreme Court decision that guarantees a woman's right to an abortion, they have made the most impact at the state level, where laws passed in one state often appear in other legislatures in subsequent years. State laws also have the potential for national consequences by setting off court battles that challenge or limit the scope of *Roe*."

There was one setback to the abortion restriction movement when enforcement of a Nebraska law requiring pre-abortion screening and counseling was stopped by U.S. District Judge Laurie Smith Camp on July 14. Camp said the law, passed by the legislature and signed by the governor in April, would "place substantial, likely insurmountable, obstacles in the path of women seeking abortions in Nebraska." She also held that the law's vagueness would make it difficult for doctors to follow and would likely lead to lawsuits against physicians. The judge granted a preliminary injunction against the law, which was requested by Planned Parenthood of the Heartland.

Judge Smith Camp warned that the literal effect of the law "will require medical providers to give untruthful, misleading and irrelevant information to patients." Her decision came one day before the law was supposed to take effect. The state attorney general was uncertain whether the decision would be appealed.

Another restrictive law banning all abortions after 20 weeks is scheduled to go into effect in October. ■

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## Elena Kagan, *continued from page 1*

*Bowen v. Kendrick*. Years later, Kagan repudiated her views in confirmation hearings as Solicitor General. When a *New York Times* reporter asked her in March why she had changed positions, she said: "I think it incorrect... essentially to presume that a religious organization will use a grant of this kind in an impermissible manner."

In August 1996 Kagan urged the Clinton administration to intervene in a California case involving a conflict between a state law prohibiting housing discrimination and the religious conscience of a landlady who refused to rent an apartment to an unwed couple. The California Supreme Court ruled four to three that the state nondiscrimination law trumped any religious free exercise claims in this case. Kagan said the court's reasoning was "outrageous," but in any event the Clinton administration stayed out of the case, and the appeal of the decision was denied. Kagan saw this case as a clash between rights in conflict and thought the 1993 Religious Freedom Restoration Act, prohibiting most burdens on free exercise, would apply. As it turned out, the act itself was struck down by the High Court in 1997 and subsequently modified by Congress.

While Kagan's views on abortion and gay rights are nuanced, opponents of choice and equal rights for gays opposed her confirmation.

George Washington University law professor Jeffrey Rosen wrote that "Obama seems to feel that Kagan's inclination to find common ground between liberals and conservatives will equip her to achieve consensus on the Supreme Court, winning over swing justice Anthony Kennedy and moving the court to the center." Rosen continued, "For now, however, conservative activists fear that Kagan will be too liberal, and liberal activists fear that she will be too conservative—which seems exactly where President Obama wants Kagan to be."

Kagan was criticized by Republicans for not having judicial experience, but that has been true for about a third of all justices in history. She will be the first justice since William Renquist and Lewis Powell to lack prior experience as a judge. Both were nominated in 1971 by President Richard Nixon. She will also be the first solicitor general to become a justice since Thurgood Marshall was nominated by President Lyndon Johnson in 1967.

Kagan has argued six cases before the Supreme Court since she was named solicitor general by President Barack Obama. In that position she supported retention of the cross on public property in *Salazar v. Buono*, but stayed out of *Christian Legal Society v. Martinez*. ■

## To Safeguard 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.

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# Texas Passes Flawed School Curriculum Standards

As expected, the Texas State Board of Education (TSBOE) gave final approval to controversial social studies and history standards that deny separation of church and state, ignore religious freedom, downplay the civil rights movement and imply acceptance of the Confederate government that Texas recognized from 1861-1865.

The year-long battle came to an end on May 21, when the TSBOE passed the changes on 9-5 party-line votes, with one Republican board member, Geraldine Miller, absent. The changes are not cosmetic. They are significant. Michael Birnbaum noted in the *Washington Post*: "Texas students will get very different history lessons than does the rest of the country, as early as next year. Many teachers, academics and politicians on both sides of the aisle have condemned the standards."

The final vote came in a tense session whose symbolism was exemplified by outgoing Republican member Cynthia Dunbar, who led with a prayer for a nation that is, she said, "a Christian land governed by Christian principles."

Earlier in the week, 120 people testified for and against the standards. Opponents included Rod Paige, education secretary under President George W. Bush, and NAACP president Benjamin Todd Jealous, who lamented the watering-down of the civil rights movement in proposed history revisions. Rita Haecker, president of the Texas State Teacher's Association, was equally critical. "The ultra-conservative members of the board have a narrow ideological view that not only ignores history but also ignores the changing world," Haecker recently said, adding that its members "are constantly painting Hispanics in negative terms as foreigners and illegal immigrants, and they are discounting the roles of African Americans as well."

Some of the approved changes are outrageous. The United States must now be referred to as a "constitutional republic, not a Democracy." Students and teachers must continue to use B.C. and A.D. as reference points for historic periods, rather than the more generally used B.C.E. and C.E. Thomas Jefferson is no longer seen as an example of an "influential philosopher." The United Nations is criticized as an attempt to undermine U.S. sovereignty. McCarthyism is said to have been vindicated by the fall of the Soviet Union. Students must read Jefferson Davis's inaugural address along with that of Abraham Lincoln. Students must recognize a long list of Confederate officials.

Supporters of religious freedom and church-state separation bristled at the changes. Wrote AP's April Castro: "In one of the most significant changes leading up to the vote, the board attempted to water down the rationale for the separation of church and state in a high school government class, pointing out that the words were not in the Constitution and requiring that students compare and contrast the judicial language with the wording in the First Amendment."

Several of the board members who initiated these changes were defeated in the Republican primary, retired, or face Democratic opposition in November, but this did not prevent their actions. They explained that they were merely trying to balance the scales against liberal bias in existing textbooks, which is difficult to accept since conservatives have long dominated the Texas board. One frustrated Democrat, Rep. Mike Villareal of San Antonio, said: "They have ignored historians and teachers, allowing ideological activists to push the culture war further into our classrooms. They fail to understand that we don't want liberal textbooks or conservative textbooks. We want excellent textbooks, written by historians instead of activists."

Will the Texas standards influence textbook adoption in other states? One trend that may limit the traditional influence of Texas is the movement toward national standards. Every state but Alaska and Texas has recently agreed to adopt national standards in history, according to

*School Library Journal*.

California is the first state to reject the Texas standards. On May 28 the California Senate passed SB1451, which requires the State Board of Education to review and report discrepancies between the new Texas curriculum and California's standards. The bill goes to the California assembly, the lower house, and then to Gov. Arnold Schwarzenegger. California's 6.2 million public school students outnumber Texas's 4.8 million.

Vermont Education Commissioner Armando Vilaseca condemned the Texas actions and said they would not be accepted in Vermont. "I am very concerned by any attempt by state school boards to rewrite history to fit a particular ideological view," Vilaseca said. "What has happened in Texas is very disconcerting." Vermont's local school boards select textbooks, not a central state agency, Vilaseca told the *Rutland Herald*. Schools are also increasingly using e-books and supplemental reading materials. ■

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## Charter Schools Are No Panacea

Students who attended charter middle schools did no better in mathematics and reading than students in regular public schools, according to a national study released on June 29 by Mathematica Policy Research of Princeton, New Jersey. The federally commissioned study involved 2,330 students who applied to 36 charter middle schools in 15 states. The study included urban, suburban and rural schools. Students were selected by random lottery, enabling researchers to compare academic outcomes for those who won slots at charter schools with those who attended nearby public schools.

The study also found that charter students did no better than regular public school students on behavior and attendance. The study did show that economically disadvantaged students in urban area charter schools did relatively well, particularly in mathematics.

This is the third national survey showing that charter schools generally do not outperform regular public schools. In fact, they vary widely in performance. A 2009 study by Stanford University researchers found that 37% of charter schools produce academic results that are worse than public schools, while 17% are superior. The other 46% are about the same. Another factor, say education specialists, is regulation. Charter schools do better in Boston, Washington, D.C., and Chicago, where they are closely monitored but those in Arizona, Florida, California, Ohio and Texas, which have little oversight, perform poorly.

Another federal study of urban school systems reveals that charter schools have not outperformed traditional public schools. Eighteen urban school systems participated in a 2009 National Assessment of Educational Progress (NAEP), compared to eleven in 2007, so not all systems could be compared. Reading achievement scores for fourth graders and eighth graders formed the major part of the study.

In the District of Columbia, which has the highest percentage of students attending charter schools in the nation, public school students registered gains of nearly six points compared to a charter school gain of four points in fourth grade. In eighth grade public school students gained four points while the reading comprehension scores of charter schoolers declined five points. The overall D.C. results were a draw. In fourth grade, traditional public schools led charter schools by five points, while charter schoolers led by four points among eighth-graders. The trend, however, in both grades favored traditional public schools, hardly the news charter school advocates had anticipated.

The entire report is available at [www.nationsreportcard.gov](http://www.nationsreportcard.gov) ■

# Religion May Dog Republican Candidates

By Albert J. Menendez

While religious affiliation and church attendance may not matter to most voters, such questions could play a role in Republican primary contests for president in 2012. For one thing, an estimated 43% of GOP primary voters in 2008 were white evangelicals, and they favored fellow-believer, ex-Gov. Mike Huckabee of Arkansas, 39% to 33% over John McCain. Evangelicals did not coalesce around any one candidate, diluting their overall influence on the nomination success. That may not happen in the next round of nominating.

Huckabee, now a Fox Television personality, is still performing well in national polls and was the subject of a major feature in *The New Yorker* magazine on June 28. Huckabee has indicated that he is nudging toward another run for the presidency. His views on many church-state issues reflect the Religious Right, especially on abortion, gay rights, and the alleged religious underpinning of the Constitution (Huckabee told a Michigan primary audience that he wanted to change the Constitution to reflect Biblical values). In his previous run, Huckabee received less than 5% support among GOP voters who are not evangelicals.

Former House Speaker Newt Gingrich, creator of a tax-exempt organization, "American Solutions for Winning the Future," and author of a number of forgettable books, told Associated Press on July 13 that he is seriously weighing a White House bid. Gingrich has lately been promoting the view that President Obama and the Democrats are promoting a "secular socialist" America that conflicts with the "Christian," or "Judeo-Christian," foundation of the Republic. Gingrich, who tended to avoid church-state issues during his years in Congress, now openly espouses Religious Right concepts of history and considers David Barton, a notorious promoter of controversial theories of history, his mentor.

Gingrich will have other problems. A former Southern Baptist deacon, he admitted to numerous adulterous affairs as well as a callous divorce from his first wife (He notified her of divorce proceedings while she was battling cancer). His third wife, Callista Bisek, is a choir singer at Washington's National Shrine of the Immaculate Conception, and Gingrich converted to Catholicism a few years ago. Gingrich admitted he had an affair with Bisek, a congressional aide, while married to his second wife in 1998. This unsavory history could hurt Gingrich among Baptists, one of whom, Richard Land, has been highly critical. It is unlikely that Gingrich will appeal to conservative Catholic Republicans either, though he still draws well among Republican voters in some national polls.

Minnesota's outgoing Gov. Tim Pawlenty was raised Catholic but adopted his wife's evangelical Protestant faith years ago. His wife graduated from Northwestern College near Minneapolis, whose second president during the 1940s was Billy Graham. The Pawlentys attend Wooddale Church, a large megachurch in the Twin Cities suburb of Eden Prairie that is historically known as a bastion of fundamentalism. It is affiliated with the Baptist General Conference, a northern fundamentalist branch of Baptists. Its long-time pastor Leith Anderson is president of the National Association of Evangelicals. How Pawlenty's religious switching will play among a national electorate has yet to be tested, but his views seem compatible with the Religious Right. He was twice elected governor of Minnesota, but both times he barely won in three-way races, since Minnesota has a vigorous Reform Party move-

ment (called the Independence Party) associated with Ross Perot and Jesse Ventura.

Former Massachusetts Gov. Mitt Romney has indicated interest in another race for the White House, and his Mormon faith is still seen as a liability among evangelicals, only 20% of whom supported his 2008 campaign. Romney is more associated with national security and economic conservatism than with social issue conservatism. He ran relatively well among Catholic and mainline Protestant Republicans. His staff has reportedly accepted the fact that many voters will not support him because of his religion.

Finally, former Alaska Gov. Sarah Palin, the party's 2008 vice presidential nominee, is almost certain to try for the big prize. Her campaign committee has intervened in numerous GOP primaries for Congress this year, and her support has gone for upstart, insurgent candidates on the extreme right, like Rand Paul in Kentucky and Sharron Angle in Nevada. She has also endorsed more mainstream conservatives in Florida, California and Arizona, but she seems to be aiming for Tea Party enthusiasts and anti-government populists. She is especially popular among evangelical women. Lisa Miller wrote recently in *Newsweek*, "The Christian Right is now poised to become a women's move-

ment, and Sarah Palin is its earthy Jerry Falwell." Miller continues, "A certain kind of conservative, Bible-believing woman worships her." However, polls show Palin to be a weak, polarizing figure in a general election. If there is an influx of new Republican women elected to Congress this fall (96 are running, so far), Palin can take some credit for energizing them, as she has crisscrossed the country, speaking at rallies and frequently endorsing women candidates in primaries.

While Palin toned down any explicit religious message in her vice presidential campaign, she is not reticent to do so today.

For a party that has constantly emphasized and embraced religion, the Republicans may face some serious internal debates about the subject in the crucial months ahead. ■



## 'Not kosher'

Gov. Paterson's attempt to provide \$18 million for the training of rabbis clearly violates Article XI, Section 3 of the New York constitution, the First Amendment, and the court rulings in the Kiryas Joel cases ("Furor at Budget's \$18 million for 'Rabbis'," June 21).

It is also ridiculous in view of the state's enormous debt crisis. Does Paterson also plan to provide for the training of priests and preachers?

I have been under the impression that Paterson swore an oath to uphold the New York and US constitutions.

*Edd Doerr*

Letter published June 27, 2010, in the *New York Post*.

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## House Repeals Gay Ban

The House of Representatives repealed the ban on gays serving in the military (the so-called “don’t ask, don’t tell” rule) on May 27 by a vote of 234-194. Partisan differences were stark as 90% of Democrats and only 3% of Republicans supported the “provisional repeal” amendment proposed by Rep. Patrick Murphy (D-Penn). A majority of Jewish, Catholic, Lutheran and non-affiliated members supported repeal, while most Protestants and Mormons were opposed to the change. Strongest support for repeal came from the Northeast and Pacific Coast while opposition was strongest in the South. (31% of Southern Democrats voted no compared to 5% of Democrats in the North and West).

Party dissenters often reveal the cutting edge when religion, culture and region intersect. Among the five Republicans who supported repeal were two Asian-Americans, Anh Cao of New Orleans and newly-elected Charles Djou of Honolulu (Mr. Djou is expected to have a short term, since he received only 40% of the vote in a May special election, while two Democrats split 60% and are expected to return the seat to the Democrats in November). Ileana Ros-Lehtinen, who represents a Cuban-American district in Miami, also cast a yes vote. All of them were unexpected, as was the yes vote from Ron Paul of Texas, the unpredict-

able libertarian who sought the GOP presidential nomination in 2008 and is widely expected to run again in 2012. Judy Biggett of Illinois, who represents the wealthy suburbs north of Chicago, cast the fifth supportive Republican vote.

There were 26 Democrats who opposed repeal. All represented socially conservative districts, 19 of them in the South and Border States. Most were Methodist, Baptist or Presbyterian, while two were Disciples of Christ members. The only African American Baptist to vote no was Sanford Bishop of Georgia.

The only Hispanic Democrat to vote no was Solomon Ortiz of Texas, who is also the only Methodist among congressional Latinos. Five Catholics from socially conservative Northern districts, such as western Pennsylvania and northern Indiana, also opposed repeal, among them newly elected Mark Critz, who replaced John Murtha in Pennsylvania’s 12<sup>th</sup> district. A couple of southern Catholics and a Minnesota Lutheran, Colin Peterson, were also among the minority of their co-religionists who voted against repeal. Passage is expected in the Senate before adjournment, though some Republicans, led by John McCain, are threatening a filibuster. ■



## Church and State in the Courts

The Supreme Court under the direction of Chief Justice John Roberts is the most conservative court in decades, according to an analysis of political science data reported by *The New York Times* on July 24. The trend is likely to intensify, says *Times* reporter Adam Liptak, and Roberts “is settling in for what is likely to be a very long tenure at the head of a court that seems to be entering a period of stability.”

“If the Roberts court continues on the course suggested by its first five years, it is likely to allow a greater role for religion in public life.” Liptak warns, “Abortion rights are likely to be curtailed.”

The Roberts court has reached more conservative decisions (71%) than any court since 1953, even more than the Burger court, (1969-1986), and the Rehnquist court (1986-2005).

Much of the rightward shift is due to the appointment of Justice Samuel Alito, who has become “the third-most conservative justice to serve on the court since 1937.” Only Clarence Thomas on the present court has a more conservative record. Liptak admits that the overall shifts are still relatively “modest,” since Democratic presidents Clinton and Obama consistently appointed progressives to the High Court. “The correlation between the political party of appointing presidents and the ideological direction of the rulings of the judges they appoint is quite strong.” Liptak also noted that the Roberts court “is more cautious than earlier ones” and has struck down fewer laws.



Pennsylvania’s 1977 blasphemy law was ruled unconstitutional by a federal court on June 30. U.S. District Judge Michael Baylson said the law violated the First Amendment by allowing state employees to determine what constitutes blasphemy. The decision came in a case involving filmmaker George Kalman of Downingtown, whose request to name his company “I Choose Hell Productions,” was denied by state officials.

The case began in 2007 when independent film director Kalman came up with his company name as an anti-suicide message since “life is already hell,” he explained to *Philadelphia Inquirer* staff writer Nathan Gorenstein. He challenged the law, with ACLU help, in the U.S. District Court for the Eastern District of Pennsylvania.

The 1977 statute arose when a western Pennsylvania gun shop owner decided to call his business “The God Damn Gun Shop.” The name offended local ministers, government officials, and, eventually, the Pennsylvania legislature, which passed a law that corporate names “shall not contain words that constitute blasphemy, profane cursing or swearing, or profane the Lord’s name.”

Judge Baylson ruled that the law advanced Christianity and allowed state officials at the Department of State’s Corporate Bureau in Harrisburg to apply the rules arbitrarily and without any training in religion. The office has approved such names as Butt Beer, the Satan Management Corp., Devil Media, Hell Razor Records, Hell Mountain Farm, and Hell’s Half-Acre Lake Volunteer Fire Co.

The judge wrote that the law “impermissibly entangles [state] employees with religion by requiring them, at their own discretion, to make standardless determinations as to what constitutes blasphemy, profane cursing or swearing, or what profanes the Lord’s name, based on nothing but their own religious beliefs.” He concluded, “Choosing Hell may be an irreverent choice for a corporate name, but under the Constitution this fact alone cannot be the basis for its suppression.”

The state may appeal the ruling in *Kalman v. Cortes*.



A Connecticut public school system cannot hold its graduation exercises at a church, a federal judge ruled on June 1. District Judge Janet Hall concluded that the Constitution’s Establishment Clause for-

bidding government endorsement of religion, applied to the holding of commencement at the First Cathedral Church in Bloomfield. Enfield High School and Enrico Fermi High School had held exercises at the church in recent years despite complaints from some families about the numerous religious symbols inside the church. Schools paid \$9,200 to use the church, even though comparable neutral sites were available at considerably lower cost. Judge Hall wrote, “Based upon its findings, the court concludes, on the record before it, that the [defendants] have clearly demonstrated a likelihood of irreparable harm in the absence of the injunction and a substantial likelihood of success on the merits that holding the graduation ceremonies at First Cathedral violates the First Amendment of the United States Constitution.”

Judge Hall visited the site and concluded that the megachurch was “so overwrought with religious symbols” that it could be seen as “coercing students” who were required to go there for graduation. She wrote, “A reasonable observer attending the 2010 Enfield graduations would perceive the message that Enfield endorsed the readily perceptible religious views of First Cathedral based upon the character of that forum which Enfield schools selected.”

Two students and three parents had sued to move the graduation exercises to a religiously neutral location, rather than “being forced to submit to a religious environment.”




The clerical child abuse controversy continues to spill over into U.S. civil courts. The Vatican has filed a motion to dismiss a federal lawsuit in Louisville, Kentucky. The case was filed in 2004 by three men who claim they were abused by priests decades ago and charge the Vatican with negligence. The Vatican’s U.S. attorney, Jeffrey Lena, asserted that bishops are not employees because they are not paid by Rome, do not act on Rome’s behalf, and are not involved daily in papal activities.

In a brief filed with the U.S. Supreme Court on May 21, the Departments of State and Justice joined the acting solicitor general asking the court to send *John Doe v. Holy See* back to the Ninth U.S. Circuit Court of Appeals. The Obama administration argues that the Foreign Sovereign Immunity Act of 1976 protects foreign governments from being sued in U.S. courts. The administration brief says, “Improperly subjecting a foreign state to suit can in some circumstances raise foreign relations and reciprocity concerns.” Similar interventions by Presidents Bush in 2005 and Clinton in 1994 also defended the Vatican position, based on the 1976 law passed by Congress.

The cases are considered important. AP’s Nicole Winfield observed, “The motion is being closely watched as the clerical abuse scandal swirls around the Holy See, since the court’s eventual decision could have implications for a lawsuit naming top Vatican officials that was recently filed in Wisconsin and another one in Oregon that is pending before the Supreme Court.”

On its last day of work, the U.S. Supreme Court let stand a lower-court ruling allowing the Vatican to be sued in the Oregon case. The justices, without comment, declined the Vatican appeal that the case should be thrown out. The lower federal court had ruled that the Holy See could be sued in a U.S. court on certain grounds. This now means that pretrial discovery can go forward, allowing attorneys for the plaintiff to subpoena church documents and call Vatican officials to testify under oath. Vatican attorney Jeffrey Lena, a sovereign immunity law specialist in Berkeley, California, told Religion News Service that the Supreme Court’s refusal to intervene was not unexpected since there have been no conflicting appellate court rulings that might need review. He said, “The issue of foreign sovereign immunity is far from over. The Supreme Court simply declined to review one narrow issue. The key issue—whether this priest, Andrew Ronan, was an employee of the



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Holy See—was not addressed. That question will be taken up now by the district court in Oregon.”

The other cases, in Kentucky and Wisconsin, do not involve the same legal issues.

Barbara Blaine, president of a group representing victims, supported the plaintiff’s attempts “to expose Vatican complicity in horrific child sex crimes.”

In related instances, the Catholic Church’s political arm has blocked measures in Wisconsin, Arizona and Connecticut that would have extended the statute of limitations for bringing civil lawsuits in abuse cases. New York is debating a one-time, one-year suspension of statute of limitations. Both the New York State Catholic Conference and Orthodox Jewish officials oppose the Child Victims Act. *The New York Times* urged the legislature to pass the bill.



Texas does not have to grant authority to a creationist graduate school to offer a degree in science education, a federal court ruled on June 18. In 2009 the Dallas-based Institute for Creation Research Graduate School (ICRGS) was denied the authority to grant a Master of Science degree in science education by the state agency that handles the matter. ICRGS filed suit charging the Texas Higher Education Coordinating Board with engaging in “viewpoint discrimination” that violated its right to free exercise of religion and free speech.

Federal Judge Sam Sparks handed down his ruling, concluding that

*continued on page 8*



the creationist group was properly disallowed because its program lacked the necessary scholarly merit. He wrote: “[T]he evidence in this application clearly indicates this proposed program is not about science education. Science education emphasizes that science is learning about the unknown from a neutral perspective, relying on observable evidence and experimentation. In contrast, this program is about religion, not science[.]. . . The [ICRGS] program clearly does not meet the standards of the [Board]. In particular the proposed course of study in no way ‘adequately cover[s] the breadth of knowledge of the discipline taught.’ The vast majority of the proposed science courses do not resemble any offered for graduate credit by other Texas colleges and universities in breadth, depth, or content, and they would not be acceptable for transfer or credit as a result. The proposed program of study in no way would adequately prepare students in the field of science education, at any level, and certainly not at the graduate level.”

Sparks denied that the board and its commissioner of higher education Raymond Paredes had engaged in religious discrimination. “The court finds the Board’s decision was rationally related to a legitimate governmental interest and there is no evidence the decision was motivated by animus toward any religious viewpoint. Therefore, ICRGS’s free exercise claim fails as a matter of law.”

Sparks rejected ICRGS’s argument that the decision burdened its free exercise rights because the group claimed that it offered legitimate science and denied that its program was religious in nature. “In this case ICRGS has failed to show the Board’s denial imposed a substantial burden on its free exercise of religion. ICRGS has not presented any evidence indicating it is substantially motivated by sincere religious belief in offering the Master of Science in Science Education degree.”

Judge Sparks, of the U.S. District Court for the Western District of Texas, also noted the inconsistency in ICRGS’s claim to be offering a genuine scientific program. He cited the following material from its catalogue:

“1. It is the position of the institute that . . . all genuine facts of science support the Bible.

“2. The phenomenon of biological life did not develop by natural processes from inanimate systems but was specially and supernaturally created by the creator.

“3. All things in the universe were created and made by God in the six literal days of the Creation Week described in Genesis. . . . [.] The creation record is factual, historical, and perspicuous; thus all theories of origin and development that involve evolution in any form are false.”

The Texas Freedom Network hailed the decision as “clearly a huge setback for anti-science extremists.”



The Virginia Supreme Court ruled unanimously on June 10 that nine breakaway congregations are not immediately entitled to take their property with them, as a lower court had ruled. Virginia’s highest court found that an 1867 law governing church property disputes was incorrectly applied in this case. The court remanded the case to the Fairfax County Circuit Court to determine who owns the property, the national Episcopal Church or the dissident congregations that have joined an Anglican jurisdiction based in Argentina. Numerous other denominations joined the Episcopal Church in amicus briefs before the court urging it to reject the departing congregations’ claims, which violate, they maintain, a U.S. Supreme Court decision in 1892. Observers expect the case to drag on for years, much like the California cross cases.

The U.S. Supreme Court announced on May 24 that it would review Arizona’s tax credit law. The case, to be heard in the fall term, involves a 1997 Arizona program that provides tax credits for donations made to organizations that provide scholarships for private, mostly faith-based, schools. The High Court will review an April 2009 ruling from the Ninth Circuit which held that the Arizona program advances religion in violation of the First Amendment. The Ninth Circuit held that the law “lacks religious neutrality and true private choice in making scholarships available to parents.”

Pro-voucher organizations welcomed the review of *Arizona Christian School Tuition Organization v. Winn* and *Garriott v. Winn*. Kevin G. Welner, director of the Education and the Public Interest Center at the University of Colorado, told *Education Week* that the case is vitally significant. “The key question framed for the court is whether the state can effectively delegate to its wealthier taxpayers a decision process that, as applied, favors some religious institutions over others.”

The Arizona law funnels about \$50 million yearly to nonpublic schools, according to *Education Week*. Eight states joined Arizona and urged the Supreme Court to take the case. They are Florida, Indiana, Louisiana, Michigan, New Jersey, Pennsylvania, South Carolina, and Utah.

A group of taxpayers who challenged the tax credit program has urged the Supreme Court to strike it down. “The Arizona program is neither based on financial or academic need nor neutral with respect to religion,” said the taxpayers’ brief. “Instead it awards most of its scholarships to the children of middle-class and wealthy parents on the basis of religion.”



Schools in Plano, Texas, may constitutionally regulate the time and place for distribution of religious materials. This was the result of the U.S. Supreme Court’s refusal to hear an appeal to a lower court decision. The Plano school district permits students to circulate materials before and after school, at three annual parties, during recess and at designated tables in school. Middle and high school students are allowed to hand out items in hallways and during lunch. The Fifth U.S. Circuit Court of Appeals upheld that policy last December. Religious conservatives, led by the Liberty Institute, had wanted no restrictions on religious-themed materials.



A crisis pregnancy center in Silver Spring, Maryland, filed suit in federal court in May, claiming that a Montgomery County law requiring the posting of information violates freedom of speech. The Centro Tepeyac Women’s Center, a Catholic agency that does not provide abortion services or birth control information, is required to notify prospective clients that they do not provide the full range of reproductive health services, nor do they have a licensed medical professional on staff. The suit is the second filed in Maryland (see *Voice of Reason*, Issue 111, page 13). Plaintiffs claim the law is “vaguely worded” and violates core principles of free speech. Defenders of the law say it will protect women from erroneous information. Baltimore, Maryland, and Austin, Texas, have recently passed laws regulating crisis pregnancy centers, of which there are about 2,300 nationwide.





An appeals court panel allowed a Sudanese Christian pastor to distribute religious literature at an Arab International Festival in Dearborn, Michigan. The June 17 decision by a three-judge panel of the Sixth U.S. Circuit Court of Appeals came on the eve of the 15<sup>th</sup> Dearborn Arab International Festival. Last year the Dearborn Police Department threatened to arrest Pastor George Saieg of Arabic Christian Perspective if he distributed religious literature at the gathering, which is sponsored by the American Arab Chamber of Commerce. The Sixth Circuit issued a temporary restraining order forbidding the city to restrict the pastor's free speech rights while the case is pending on appeal. Pastor Saieg is supported by a conservative Catholic legal group, the Thomas More Law Center. The City of Dearborn is 30% Muslim and 30% Arab Christian.



The Texas Education Agency's policy of requiring "neutrality" by its employees when "talking about evolution and creationism" was upheld by the Fifth U.S. Circuit Court of Appeals on July 2. The case, *Comer v. Scott*, was initiated by Chris Comer, former director of the agency, when she was forced to resign her post in November 2007. Comer had notified employees that Barbara Forrest, a noted advocate of evolution, was speaking in Texas. Comer argued that the neutrality policy violated the Establishment Clause, but the Fifth Circuit said the policy "does not primarily advance religion" nor should it be "construed or perceived as the State's endorsement of a particular religion."



A federal judge has allowed a challenge to tax breaks for clergy housing allowances to continue in California. On May 21 U.S. District Judge William Shubb rejected a motion filed by the U.S. Treasury Department to dismiss a suit filed by the Freedom From Religion Foundation, which argues that the IRS tax write off for clergy housing allowances (Section 107), allowed since the 1950s, is unconstitutional. Judge Shubb wrote, "Plaintiffs have alleged sufficient facts which, if accepted as true, 'leave open the possibility' that... Section 107 goes too far in aiding and subsidizing religion by providing ministers and churches with tangible financial benefits not allowed secular employers and employees."



A federal judge ordered the reinstatement of a 13-year-old student who had been suspended for wearing a rosary to school. The judge's June 1 decision came on the same day a suit was filed in U.S. District Court in Albany against the Schenectady City School District by the parents of Raymond Hosier and the American Center for Law and Justice. The Pat Robertson-backed legal group said the school's action violated free speech and free exercise of religion. The school district banned rosaries because some gangs in the area had adopted the thousand-year-old Catholic religious symbol. The student received support from two groups normally at odds with each other, the Catholic League for Religious and Civil Rights and Americans United for Separation of Church and State.



A Sikh temple near Austin, Texas, must be moved or torn down, said the U.S. Court of Appeals for the Third Circuit in July. The appellate court held that the hours of worship in a subdivision of western Travis County violated a deed restriction. The Sikh group, Gurdwara Sahib, bought property in the Bees Caves West subdivision in 2003 and built a permanent temple a few years later. The Bees Cave's Planning and Zoning Commission and the City Council approved the building, but neighbors filed suit in 2008, claiming the building was illegal because it lacked bedrooms and separated bathrooms by gender. A district court agreed with the Sikhs but was overruled by the Third Circuit. The Sikh group said it will appeal the decision. The Texas Supreme Court has ruled in several recent cases that the Texas Religious Freedom Restoration Act requires a broad application of the free exercise principle.



A Native American student's religious right to wear his hair in traditional braids was upheld by a federal appeals court in July. Adriel Arocha, a member of the Liban Apache tribe, was refused an exemption from the dress code of the Needville Independent School District in Texas two years ago. His family argued that his hairstyle was a "symbol and outward extension" of their religious and cultural ancestry. A federal district court agreed, as did the Fifth U.S. Circuit Court of Appeals. The appeals court ruled that the Texas school district violated the youngster's religious freedom rights mandated by the Texas Religious Freedom Restoration Act.

Texas guarantees individual free exercise above and beyond the Free Exercise Clause of the federal Constitution's First Amendment, the enforcement of which was weakened by the U.S. Supreme Court in 1990. After Congress passed a federal Religious Freedom Restoration Act in 1993, to counter the effects of the 1990 *Employment Division v. Smith* case, the High Court invalidated it in 1997, ruling that Congress had exceeded its powers. Since then, 14 states have passed laws that protect free exercise and insist that government must have "a compelling state interest" to restrict or limit it. These states are the following: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas and Virginia. These states are a mixture of red and blue. Seven backed McCain and seven supported Obama. Free exercise may be one area where religious civil rights transcend politics. (As *VOR* went to press, Louisiana became the fifteenth state to adopt a Preservation of Religious Freedom Act.) ■

## Back Issues of *Voice of Reason*

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## The Voucher Watch

- The most recent attempt to introduce vouchers in Congress is a new pilot program for children of military families who have special education needs. The program would grant \$7,500 per year, and the funds would be used in faith-based and other private schools as well as public schools. Voucher advocates are also encouraging state legislatures to pass complementary legislation. A parallel effort to establish public charter schools on military bases gained impetus when the Maryland legislature approved a charter school for Andrews Air Force Base in Prince Georges County. One other military charter school is located in Belle Chasse, Louisiana.

- The “final report” for the D.C. voucher program, called the D.C. Opportunity Scholarship Program (OSP), concluded that it “had mixed longer-term effects on participating students and their parents.” The evaluation by the Institute of Education Sciences for the U.S. Department of Education also concluded that there was “No conclusive evidence that the OSP affected student achievement overall, or for the high-priority group of students who applied from ‘schools in need of improvement.’”

While the program was generally popular among parents and improved students’ chances of graduating from high school (82% compared to 70% for non-voucher students), it was clearly not the successful program that its advocates promised or predicted.

The student achievement finding is significant. The researchers based their analysis on the final, spring 2009 data and found: “There is no conclusive evidence that the OSP affected student achievement. On average, after at least four years, students who were offered (or used) scholarships had reading and math test scores that were statistically similar to those who were not offered scholarships. The same pattern of results holds for students who applied from schools in need of improvement, the group Congress designated as the highest priority for the Program. Although some other subgroups of students appeared to have higher levels of reading achievement if they were offered or used a scholarship, those findings could be due to chance. They should be interpreted with caution since the results were no longer significant after applying a statistical test to account for multiple comparisons of treatment and control group members across the subgroups.”

In addition only about a third (34%) of students who applied for the program ever actually used the vouchers. Of those who did not or could

not accept the vouchers, 31% did so because there was “a lack of space at their preferred private school, and 22% because there was an “absence of special needs services” in the private school. Another 16% preferred a public charter school to the voucher schools, while 11% found that their “preferred private school did not participate in the program.”

The researchers found that 81.7% of all the voucher schools were faith-based, 53.3% of them “archdiocesan Catholic” schools.

The voucher schools also lacked some basic services provided by D.C. public schools. The voucher schools were less likely “to offer special programs for students who may be academically challenged, including programs or services for non-English speakers and for students with learning problems” and “were less likely to have special programs for advanced learners.” The voucher schools were less likely to have a “cafeteria facility, a nurse’s office, counselors and art programs.”

The entire report (NCEE 2010-4019) is available from the U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304 or online at [www.edpubs.gov](http://www.edpubs.gov).

- Texans are opposed to school vouchers 55% to 42%, a statewide survey from Greenberg Quinlan Rosner Research reported in July. Democrats and Independents were strongly opposed while Republicans were narrowly in favor. The poll also found that political liberals were against vouchers 67% to 31%, as were political independents 61% to 36%. Political conservatives supported vouchers but only by 50% to 46%. Since Texas is considered one of the nation’s most conservative and Republican states, this lukewarmness toward vouchers among a constituency heretofore regarded as favorable is significant. Vouchers or their variants have been defeated in 25 state referenda over the past four decades.

- Students who participated in a Louisiana voucher program scored significantly lower than their public school counterparts in math, English, science and social studies. Tests administered to third and fourth grade students who attend 32 nonpublic schools under a 2008 state plan revealed low test scores. Students who attended public Recovery School District schools performed better. The pilot program provided \$10 million for 1,113 children from kindergarten through fourth grade to attend private schools in New Orleans, most of which are faith-based. Gov. Bobby Jindal supports the program.

## Updates

### Geography, Politics, and Evolution: New Data

It is not surprising that the recent Alabama Republican primary for governor was dominated by rhetoric over which candidate was a true creationist. One candidate, state legislator Bradley Byrne, was accused of not being a creationist, forcing him to say he believed “every word of the Bible is true.” Alabama is in the region of the country where opposition to evolution is strongest. Only 32% of residents in the Census area designated as East South Central states (Alabama, Tennessee, Kentucky and Mississippi) endorse evolution.

*Discover* magazine reported that belief in evolution is highest (70%)

in New England, followed by 60% in the Middle Atlantic states—roughly the Greater Northeast. Support reached 54% in the Pacific Coast states, which was lower than expected, and 50% in the Mountain states. The Midwest was split down the middle (49% in the West North Central States, 44% in the East North Central). Belief was lowest in the South (42% in the South Atlantic, 40% in the West South Central and 32% in the East South Central regions).

Two recent polls found that Democrats and Independents are more likely to believe in evolution than Republicans. A Daily Kos weekly National Poll conducted May 24-27 found that 71% of Democrats, 66% of Independents and only 44% of Republicans accepted the age

## Religious Tidbits from the Campaign Trail

- Nikki Haley, Republican nominee for governor of South Carolina, is the daughter of Sikh immigrants from India. She is a Methodist, however, and was forced to reiterate her “strong Christian faith” in campaign addresses in her staunchly evangelical state. Even that did not suffice. Religious-based attacks on Haley intensified during the two-week runoff. Phillip F. Bowers, chairman of the Pickens County GOP told fellow Republicans, “Haley can’t seem to make up her mind about her faith.” Pickens, in the northwest corner of the state and home to Clemson University, is the most Republican county in the state. Attacks on Haley also came from Tony Beam, pastor of Mount Creek Baptist Church in heavily fundamentalist Greenville, and Pastor Ray Popham of Oasis Church in Aiken. Both questioned the authenticity of her faith. She was also called a “raghead” and an unbeliever by State Sen. Jake Knotts. Haley, who attends a Methodist church in Lexington, fought off the attacks and won the Republican runoff on June 22 by 65% to 35% over Rep. J. Gresham Barrett.

- Sharron Angle, Republican opponent of Democratic State Majority Leader Harry Reid, supported the Church of Scientology’s “rehabilitation” program for prison inmates while she was a member of the Nevada legislature. Angle was once a member of the Independent American Party, the Nevada affiliate of the far-right Constitution Party (CP), founded in 1992 as the U.S. Taxpayers Party, and an exponent of theocratic Biblical Reconstructionism. The CP favors “returning America to its Christian foundations under Biblical principles.” Angle was endorsed by Rod D. Martin, president of the National Federation of Republican Assemblies and a former adviser to Republican presidential candidate Mike Huckabee. Martin is a supporter of Christian Reconstructionism. Angle told a Las Vegas television station June 29 that “the tenet of the separation of church and state is an unconstitutional doctrine” and is “un-American.”

- Florida Gov. Charlie Crist’s June 11 veto of an ultrasound sonogram bill won praise from pro-choice groups. He said the bill “places an inappropriate burden on women seeking to terminate a

pregnancy.” Observers think this will strengthen Crist’s independent campaign for the U.S. Senate. Both his Democratic and Republican opponents, Kendrick Meek and Marco Rubio, criticized his decision as “political expedience.” Crist framed his veto in the context of privacy and a limitation on government interference in personal decisions, which may appeal to libertarians and Tea Party activists, who generally support Rubio.

- Indiana Gov. Mitch Daniels urged fellow Republicans to “call a truce on the so-called social issues,” provoking outrage from Religious Right leaders, primarily Family Research Council president Tony Perkins. Daniels was forced to backtrack and reiterate his opposition to abortion. Daniels is considered a contender for the 2012 GOP presidential nomination.

- An attempt by a group of conservative Christian lawyers to unseat four San Diego Superior Court judges failed on June 8. All of the targeted judges were reelected. The campaign, called “Better Courts Now,” was mounted by Pastor Brian Hendry and the Zion Christian Fellowship. The group said, “God has called upon us to do this only with the judiciary.” Voters obviously disagreed.

- Abortion has emerged as a sleeper issue in the Wisconsin governor’s race. Both Republican primary candidates, Scott Walker and Mark Neumann, received the endorsement of Wisconsin Right-to-Life, which opposes all abortions, even to save the mother’s life, and all forms of birth control. Walker and Neumann, however, distanced themselves from the group’s birth control stand. Both candidates support pharmacists and other medical personnel who refuse to dispense birth-control information for religious reasons. Planned Parenthood’s political action committee endorsed Democratic candidate Tom Barrett, who has called for abortion to be “safe, legal and rare,” the mantra that goes back to Bill Clinton’s 1992 presidential campaign. Barrett praised outgoing Democratic Gov. Jim Doyle’s efforts to expand access to health care for women and opposed Republican legislative efforts to weaken freedom of choice in reproductive health matters.



of the earth calculated by astronomers at about 13.7 billion years. Younger respondents, blacks and Latinos and residents of the north and west were more likely than older responders, whites, and Southerners to express these views. A May 12-18 survey by Virginia Commonwealth University found that Democrats, by 53% to 34%, said that evolution is “mostly compatible with their religious beliefs.” On the other hand, Republicans, by 55% to 37%, said that evolution “conflicts with their religious beliefs.” The poll also revealed that 71% of Republicans say scientific research “does not pay enough attention to the moral values of society,” while only 47% of Democrats agreed.

### Texans Support Separation

Almost 70% of Texans say that “separation of church and state is a key principle of the Constitution,” according to a statewide survey released in July. This overwhelming 68% to 26% endorsement in-

cluded Democrats (76%), Independents (74%) and Republicans (59%), even though successive Texas Republican Platforms have denounced the principle.

On other questions, Texas voters, by 72% to 19%, say they want teachers and academic scholars, not politicians, to be responsible for writing curriculum standards and textbook requirements for public schools. About 57% of voters oppose the narrowly conservative standards recently imposed on schools by the Texas State Board of Education.

Voters overwhelmingly (80% to 19%) support “teaching about contraception, such as condoms and other birth control, along with abstinence, in high school sex-education classes.” A majority of all types of voters endorsed this comprehensive approach. At the same time voters wanted religion to have more influence on education: 49% wanted more influence, 26% the same amount of influence as at present while 21% wanted less influence for religion.

*continued on page 12*

## Updates, continued from page 11

The poll, conducted by Greenberg Quinlan Rosner Research, shows voters are fed up with the state's culture wars. For example, 63% of Republicans think educational curriculum decisions should be made by teachers and scholars, as did 76% of Independents and 84% of Democrats. Even voters who want more religion in schools supported teachers and academics over elected school board members 63% to 25%.

### Abortion Affects Aid Programs and Military Hospitals

The never-ending conflict over accessibility to abortion affects U.S. foreign aid programs, particularly the President's Plan for Emergency Aids Relief (PEPFAR). PEPFAR was reauthorized in 2008 for five years at a cost of \$48 billion. It provides HIV testing and drugs primarily to Africa. Conservatives are now complaining that the program promotes condom use and abortions and limits participation by abstinence-only groups. Kristin Kapralos wrote June 16 in Religion News Service, "Foreign aid officials say federal programs abroad continue to emphasize abstinence and fidelity along with contraception, but conservatives worry that the Obama administration is leaning toward abortion-friendly policies. If the two sides can't find common ground, analysts say, poor Africans who benefit from the U.S. government's multi-billion-dollar AIDS relief strategy could lose out."

Former Bush speechwriter Michael Gerson added to the controversy in a speech to a foreign aid conference held at conservative Wheaton College in Illinois. He warned, "The foreign development coalition is very fragile, and this is a debate that could break it beyond repair." Gerson criticized Secretary of State Hilary Clinton for telling G8 foreign ministers in March that "reproductive health includes contraception and family planning and access to legal, safe abortion." Susan Cohen of the Guttmacher Institute told RNS, "Family planning is not abortion, and abortion is not a part of the U.S. Global Health Initiative. Family planning is essential, and it makes a difference in saving people's lives, both in preventing HIV and making sure women are pregnant at intervals that are safe for them and safe for their newborns."

Abortions may be possible at military hospitals in the future. The Senate Armed Services Committee on May 27 passed an amendment to allow privately financed abortions at military hospitals and bases. Current law bans most abortions at military hospitals. "It's an issue of basic fairness," said Cecile Richards, president of the Planned Parenthood Federation of America, which lobbied for the amendment along with seven other women's advocacy groups. The amendment passed 15 to 12, but faces stiff opposition in the entire Senate and in the House, where Armed Services Committee Chairman Ike Skelton of Missouri is opposed. According to Elisabeth Bumiller, writing in *The New York Times* on June 11, "Taxpayer-financed abortions were com-

mon in American military hospitals in the first years after *Roe v. Wade*—there were 26,000 abortions performed between August 1976 and August 1977, according to a 2002 Congressional Research Service report—but Congressional Republicans began restricting access to them in the late 1970s."

Privately funded abortions on military bases were banned by the Reagan administration in 1988, overturned by the Clinton administration in 1993, and then banned by the Republican Congress in 1996.

### Homeschoolers Plan Political Future

Generation Joshua (GJ), a political action program run by the Home School Legal Defense Association (HSLDA), involves 5,000 teenagers who are working "to help America return to her Judeo-Christian foundations." Many of them attend a weekly iGovern Summer Leadership Camp, which invites conservative speakers, such as Rep. Michele Bachmann (R-Minn) and Rep. Mike Pence (R-Ind). Indiana University associate professor Robert Kunzman, an expert on homeschooling, wrote recently on religiondispatches.org: "The real power of the GenJ experience, however, is the opportunity for genuine political involvement. Students are encouraged to participate in summer camps such as iGovern, voter registration drives, regional clubs, and an intriguing feature called Student Action Teams (SATs). These adult-supervised teams of students engage directly with the political process through participation in electoral campaigns. Several prominent politicians credit the efforts of GenJ's SATs with their campaign victories, most recently Rep. Tom McClintock, who won California's 4<sup>th</sup> Congressional district by a mere 2,000 votes."

### New York Legislators Face Religious Pressures

Several bills mandating state aid to faith-based schools in the form of tax credits have been filed in the New York State Legislature. All would almost certainly be held unconstitutional under the state's strict constitutional ban, upheld in a 1967 referendum, on public support for religious institutions (Article XI, Section 3). The *New York Post* reported on June 21 that the lower house, the State Assembly, is trying to kill an \$18 million tuition subsidy for rabbinical schools in New York City and its suburbs. Under this program, 3,660 "rabbinical" students would receive grants of up to \$5,000 per student from state funds. This expansion of the state's Tuition Assistance Program was apparently added to the 2010-2011 budget by outgoing (and discredited) Gov. David Paterson. New York is facing a huge budget deficit and is considering cutting funds for public schools and colleges. The rabbinical subsidy is, however, supported by Senate Finance Chairman Carl Kruger.

### Antievolution Bills Fail in South Carolina

The notoriously conservative South Carolina legislature adjourned on June 3 without even bothering to schedule hearings on two antievolution bills. They were referred to the Senate Education Committee, where they languished. One bill, S.873, would have required the state board of education "to examine all curriculum [sic] in use in this State that purports to teach students about the origins of mankind to determine whether the curriculum maintains neutrality toward religion." The bill also required a review of science curricula to see if "hostility to religion" was present. The other bill, S.875, would have required teachers "to review the scientific strengths and weaknesses of existing scientific theories."

The National Center for Science Education reported that since 2004, "Thirty-two academic freedom antievolution bills have been introduced

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in state legislatures, and all but one, in Louisiana, failed to pass.”

## Preacher's Endorsement Could Lead to Court

A South Dakota minister endorsed a candidate for the Republican nomination for governor, defying the IRS in hopes of provoking a landmark constitutional case affecting church tax exemption. Rev. H. Wayne Williams, pastor of Liberty Baptist Tabernacle in Rapid City endorsed state Sen. Gordon Howie on May 16. Williams is supported by the Alliance Defense Fund, a Religious Right group that has encouraged clergy to challenge federal tax code restrictions.

A 1992 appeals court ruling held that a church cannot endorse a political candidate or party but can speak on public policy questions. Endorsements of candidates could cause a church to lose its tax exemption, though, as a matter of practice, the IRS rarely investigates churches that appear to break the law, which was passed in 1954. (Churches by the thousands routinely ignored or violated that law in 1960, when they endorsed Richard Nixon over John F. Kennedy in the presidential election.) The Alliance Defense Fund is hoping for a test case that would have the IRS regulation invalidated as an infringement on the First Amendment's provision for free exercise of religion. Most constitutional specialists reject that argument, since tax exemption for church property is not considered an absolute right. The law itself is somewhat murky, since clergy can express their views on political matters if they are speaking as individuals rather than representatives of an entire church congregation without jeopardizing their church's tax exemption.

## Religious Right Dominates Texas Republicans

How far Right can a party go? Texas Republicans have adopted a platform for the 2010 election that embraces old Birchite ideas (get the U.S. out of the U.N., abolish Social Security and the Federal Reserve System) and New Right lunacy (abolish the Endangered Species Act, discourage people from answering the national census, require presidential candidates to present an original, certified copy of their birth certificate). It even calls for weakening the Americans with Disabilities Act (signed by Texas Republican President George H.W. Bush) and minimum wage laws.

The Texas GOP calls separation of church and state a “myth” and wants Congress to forbid federal courts from ruling on any cases involving religious establishment or discrimination against same-sex relationships. This would end all jurisprudence regarding school prayer and religious activities in public schools (assuming there are any left in the future), abortion and reproductive health, gay rights, and a myriad of other interactions that fall under the First Amendment protections of religious liberty and religious neutrality.

The 2010 Texas Republican Platform supports teaching “intelligent design” and creationism in public school science classes and would abolish embryonic stem-cell research. It calls for the re-criminalization of homosexuality, prohibiting adoption by gay couples, and opposes same-sex marriage and the service of gays and lesbians in the military (which is not a state but a federal question, after all). The GOP wants censorship of public school curriculum materials and plans to extend such regressive standards to public colleges and universities in Texas.

## Churches Win New Protection in Arizona

Arizona Gov. Jan Brewer signed a law barring local government from imposing zoning or land-use regulations on churches. The Republican-dominated legislature said no restrictions could be placed on

churches “in a manner that imposed an unreasonable burden on a person's exercise of religion.”

## Mormons Fined for Election Reporting Errors

The Mormon Church was fined \$5,539 by the California Fair Political Practices Commission in June. The church failed to report \$36,928 in “non-monetary contributions” in support of the Proposition 8 campaign to repeal the state's same-sex marriage law, which was passed 52% to 48% in 2008. The church acknowledged its error in June.

## Bachmann Loses on Military Prayers

Minnesota's fiery Rep. Michele Bachmann, a hero of the Religious Right and the Tea Party movement, tried to bring denominationally-specific prayers back in the military. In recent years all of the branches of the Armed Forces have required chaplains to engage in inclusive prayers at official military events, angering many fundamentalists. Bachmann introduced an amendment to the National Defense Authorization bill that would allow all military chaplains “to close a prayer outside of a religious service according to the dictates of the chaplain's conscience,” which generally means praying in the name of Jesus. The amendment was rejected as irrelevant to the bill, Religion News Service reported in June.

## Muslim Community Center Approved

Despite considerable opposition, the New York City Landmarks Preservation Commission effectively allowed a Muslim community center and mosque to be erected in lower Manhattan, two blocks from the former World Trade Center site. The Commission voted unanimously in August to deny historic status to the building presently standing on the site. In May the New York City Council voted 29-1, with 10 abstentions, to allow the construction of Cordoba House, which is named for the Spanish city where Muslims, Jews and Christians lived amicably for centuries. Mayor Michael Bloomberg saw the issue as a test for religious liberty. In a speech devoted to religious freedom delivered at Governors Island, the mayor said, “Should government attempt to deny private citizens the right to build a house of worship on private property based on their particular religion? That may happen in other countries, but we should never allow it to happen here.”

## International Updates

**Baden Wurttemberg, Germany:** A German appeals court ruled in May that an individual cannot resign from the “statutory body” of the Catholic Church but remain part of the “community of faith.” Harmut Zapp, a retired canon lawyer, sought to avoid paying the church tax, which is deducted from German citizens on behalf of the Roman Catholic, Evangelical Protestant and Old Catholic churches. Failure to pay the church tax results in excommunication and denial of funeral rites. Zapp won his suit before a lower court in July 2009, but the appeals court said the law on church membership did not allow for a distinction between statutory body and community. Thousands of Germans continue to withdraw from the State-recognized churches each year, largely reflecting their inactivity or lack of participation in church life. This declining participation has even affected the tiny Bavarian village

*continued on page 14*

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## Updates, *continued from page 13*

of Oberammergau, which is staging its renowned Passion Play this summer and fall. *The New York Times* reported that declining church attendance, disillusion over clerical sex abuse scandals and a sagging economy have combined to reduce attendance at the event, performed almost every 10 years since 1634.

**Belfast:** Northern Ireland Minister of Culture Nelson McCausland came under fire for urging the Ulster Museum to give more attention to creationism in its exhibits on the origin and development of human life. McCausland is a member of Rev. Ian Paisley's Democratic Unionist Party, which represents conservative Protestant opinion and is the largest political party in Northern Ireland. McCausland asked the National Museums of Northern Ireland to recognize "alternative views on the origin of the universe and the origin of life." Sinn Fein, the largely Catholic partner of the DUP in Ulster government, called the letter "unacceptable and undue political interference in the running of our museums," while Brian McClinton of the Humanist Association of Northern Ireland told Ulster Television, "I think the government has no right to interfere with the independence of a scientifically based organisation."

The *Belfast Telegraph* reported on May 31 that McCausland made his proposal after meeting with a group of Bible evangelists known as The Caleb Foundation. McCausland also asked for more recognition of the Orange Order and Ulster-Scots traditions that reflect "the views, beliefs and cultural traditions that make up society in Northern Ireland."

**Berlin:** The Catholic Church continues to hemorrhage members. Opposition to the church tax may be one cause. More than one million German Catholics officially broke ties to the church between 1998 and 2007. Last year the number of departures reached 125,585, up from 121,155 in 2008. However, German Lutherans saw an even greater departure, 168,901 in 2009.

**Cairo:** Egypt's complex marriage laws are pitting religion against the state, often resulting in court rulings. In particular, the Coptic Orthodox Church is required to register religious marriages with civil authorities for them to be recognized as legal. Members may obtain a civil divorce but the church, which rarely recognizes divorce, will not remarry them, making their second marriages invalid. A recent case dramatizes this problem. Hani Wasfi Naguib sued Pope Shenouda III in Cairo's Administrative Court after Shenouda, who is considered the 116<sup>th</sup> successor to St. Mark of Alexandria (author of one of the New Testament gospels), refused to remarry him. The court ruled in Naguib's favor, as did the Supreme Administrative Court on May 29. That court ruled that "The right to establish a family is a constitutional right, which is above all other considerations." The ruling has been sent to its final stop, the Supreme Constitutional Court, after Shenouda and other bishops said, "There is no power on earth that could make us violate the teachings of our Lord Christ."

Islamic law is easier to administer since a Muslim marriage registrar is a public servant, making Muslim marriages legally binding. Muslims then register the marriage ceremony as a civil marriage at the justice ministry. Jewish weddings are also regulated by Jewish religious law. Islamic laws are recognized by the state. Islam forbids a Muslim woman from marrying a non-Muslim man but allows a Muslim man to marry a non-Muslim woman. The Coptic Church is losing members to evangelical sects, which allow divorce and remarriage. Notes *The Economist*, "The affair has stirred a debate over whether civil and religious law should be separate. Secularists have long argued that Egyptians should be able to marry outside their faiths."

**Casablanca:** The expulsion of nearly 100 Christians from Morocco in March led to a U.S. Congressional committee hearing in June. Chaired by Rep. Tom Wolf (R-VA), the committee raised questions about the \$700 million in American aid that goes to the North African Muslim nation. Wolf urged suspension of funding and accused the generally pro-Western government of "forcibly expelling American citizens without due process of law." The U.S. maintains a free trade agreement with Morocco and cooperates closely in military and anti-terrorism programs. The problem arose when Mustapha Ramid, a prominent Islamist political leader, complained to police that the George Washington Academy, a private school run by Americans, was trying to convert students to Christianity, which is forbidden by Moroccan law. While the school denied the charges of proselytizing, it is currently under investigation by the police. Founded in 1997, its student population is 60% Moroccan, 20% American and 20% from other countries, according to the June 17 *Christian Science Monitor*. Many evangelicals have asked the U.S. government not to retaliate against Morocco.

**Kabul:** The Afghan government suspended operations of two Christian relief groups on May 31 on suspicion that the organizations were engaged in proselytizing Muslims, a practice forbidden by Afghan law. The suspended groups were American-based Church World Service and Norwegian Church Aid. Both denied that they proselytize, and the Ministry of Economy, which regulates foreign aid and relief programs, admitted there was no actual evidence against the two church-based societies. The government will now investigate their activities after a television report claimed they were violating Afghan law. Norwegian Church Aid general secretary Atle Sommerfeldt said his group "is not engaged in missionary work anywhere in the world and not in Afghanistan." The Norwegians spent \$8 million in Afghan aid last year and employ 50 people in a variety of development programs. Afghan law considers conversion from Islam to any other religion a crime, and proselytizing is also outlawed. No Christian churches exist in the country, although some foreign embassies hold worship services within their own compounds. Even the TV station that reported "suspicions" of religious activity admitted that it had no evidence that the groups violated the Afghan Constitution. Investigations will be conducted by the National Security and Interior Ministries. Church World Service represents 30 Protestant and Eastern Orthodox Church bodies and operates in 80 countries. It is based in Elkhart, Indiana.

**Lisbon:** Portuguese president Anibal Cavaco Silva has ratified a gay marriage law, making Portugal the sixth European nation to legalize same-sex marriage. (Belgium, Norway, Spain, Sweden and the Netherlands, while France and Denmark recognize civil unions.) The May 18 decision was criticized by Pope Benedict XVI at the shrine of Fatima. He said "The family based on the indissoluble marriage between a man and a woman, helps to respond to some of today's most insidious and dangerous threats to the common good." The Pope also criticized the country's legalization of abortion in 2008, though public opinion polls show support for both abortion rights and same-sex marriage.

**London:** *The Tablet* reported that the number of Catholic MPs fell from 85 to 70 after the May 18 general elections. More than two thirds belong to the Labour Party, which was swept from power after 13 years. The 20 newly-elected Catholics are divided about equally between Conservative and Labour members. Only a few belong to the Liberal Democrats, who joined the Conservatives to form an unusual coalition government, the first since World War II. There are also eight Muslim MPs in the 650-member House of Commons.

**Manila:** Philippine public schools will start teaching sex education courses in the fall, beginning with pilot programs in 80 elementary

## By the Numbers

- At least 15 anti-abortion House Democrats who voted for the final version of the health care reform bill are being targeted by anti-abortion groups and singled out by Republican campaign organizations. The National Republican Congressional Committee called them “Stupak’s Sellouts,” in honor of the Michigan Democrat who supported the health care overhaul only after President Obama issued an executive order forbidding direct government funding for abortions. Stupak decided not to seek reelection but many of his allies are being attacked as “pro-abortion.” Rep. Kathy Dahlkemper of Erie, Pennsylvania, and Rep. Steve Driehaus of Cincinnati, Ohio, are being denounced by radio ads for “their ultimate betrayal of women and unborn children” by the Susan B. Anthony List and National Right to Life.

- Seven Indian-Americans, most of them Hindus, are running for Congress, governor or other state offices in 2010, which may constitute a trend or mini-trend at least. Manan Trivedi, an internist at a hospital in Reading, Pennsylvania, won the Democratic nomination for Congress in Pennsylvania’s Sixth District, while Surya Yalamanchili is the Democratic nominee in Ohio’s Second Congressional District and Raj Goyle is the Democratic candidate in Kansas’



Fourth District. All three face Republican incumbents.

Kamala Devi Harris is the Democratic candidate for attorney general of California. Nikki Haley is the Republican candidate for governor of South Carolina. Others are running in primaries in New York and Louisiana that are yet to be decided. Religion has become an issue in some races. While most of the candidates are Hindu or Sikh, Haley is a convert to Methodism while Ravi Sangisetty, running for the Democratic nomination for Louisiana’s Third District, is a Catholic. Harris, the California attorney general candidate, is listed as a Hindu on one web site and a Baptist on another. San Francisco’s district attorney, she is the daughter of an Indian immigrant mother, a cancer specialist, and a Jamaican father who teaches economics at Stanford.

The seventh Indian-American candidate this year is Reshma Saujani, who is challenging Rep. Carolyn Maloney for the Democratic nomination in the September 14 primary. She is reportedly the first woman of Indian ancestry to run for Congress, though she is seen as an underdog to Maloney, who has held the Manhattan Upper East Side district (New York 14) since 1992.

schools at the fifth grade level and in 79 high schools. Assistant Education Secretary Teresita Inciong is heading the program, which is funded by the United Nations Population Fund. The classes will not include information about contraception, which is frowned upon in this conservative Roman Catholic nation that still bans divorce and abortion.

**Moscow:** A new holiday in Russia, called the Christianization of Rus, has provoked interfaith conflict. The July 28 holiday will become the nation’s ninth “memorial holiday.” These holidays commemorate historic events in Russian history but are not days when work ceases. The new holiday recognizes the baptism of Vladimir the Great in 988, when Kievan Rus, the predecessor to the Russian Empire, formally entered the Orthodox communion. The ceremony took place in Kiev, now in Ukraine, and is considered the birth of Christianity in Russia by Orthodox leaders.

Protestants and Muslims raised objections, saying they want national holidays, too. Protestants suggested October 31 in honor of Martin Luther’s posting of his 95 theses, which inaugurated the Reformation. Muslims want May 16 to be recognized as the “Day Islam Came to Russia” in 922. Islam became the state religion in the Middle Volga region at that time.

President Dmitry Medvedev signed the law for the new holiday on June 1, after it sailed through parliament. Since the day is also celebrated in Ukraine, *The Moscow Times* suggested its passage was partly designed to improve relations with Ukraine and Belarus, neighboring Orthodox countries once part of the Soviet Union. The Russian Orthodox Church, which has little interest in improving ties with other religions, endorsed the move. “Russia is an Orthodox state, and we should not be ashamed of declaring it,” said Vsevolod Chaplin, head of the Moscow Patriarchate’s department for church and society affairs.

**Rome:** Italy’s church tax, the *otto per mille*, takes 0.08% of individual income taxes and distributes it to the Roman Catholic Church, three Protestant denominations and the Jewish community. Roman Catholics receive the vast majority, about \$1.2 billion, even though only 20% of Catholic expenditures go to “charitable works,” according

to *The Tablet*. The Waldensian Protestant Church earmarks 93% of its share of the church tax to charitable projects.

**Sarajevo:** Bosnia-Herzegovina has dropped a religious affiliation question from the 2011 census, largely because relations between Muslims, Orthodox Christians and Catholics are tense. The last census, taken before the 1992-95 civil war which cost 270,000 lives, showed 44% of the population was Muslim, 35% Eastern Orthodox and 18% Catholic. Data from four Catholic dioceses show less than half of the Catholic population has remained in Bosnia, despite a 2007 Concordat with the Vatican. The Serbian Orthodox population largely seceded into a rump state called the Serb Republic. Roman Catholic Cardinal Vinko Puljic said the government discriminates in favor of Muslims, and he has encouraged the European Union to admit Bosnia in order to assure greater equality among the nation’s religious and ethnic groups.

**Strasbourg:** The Council of Europe on June 23 adopted a unanimous resolution against bans on Muslim veils, saying that such laws, already passed or pending in several countries, would deny rights to women who wished to cover their faces for religious reasons. At the same time it said some security requirements made it necessary for women to show their faces. The Parliamentary Assembly, which has no legal authority, urged Muslims “to abandon any traditional interpretations of Islam which deny gender equality and limit women’s rights – Women are equal to men in all respects and must be treated accordingly.”

The Council condemned “some Islamic organizations” that seek “national political expansion under the disguise of Islam” and called upon European schools to teach Islam, Judaism and Christianity objectively.

**Vienna:** The sex abuse scandal is being blamed for the increased departures of Catholics from the church. As in Germany, the Austrian government collects a church tax on members of recognized denominations. Last year, 53,216 Catholics renounced their faith by formally removing their names from church registries. This represents a 31% increase over 2008. The tax office at the archdiocese of Vienna estimated that resignations may reach 80,000 this year. ■

# Books and Culture



*Science vs. Religion: What Scientists Really Think*, by Elaine Howard Ecklund, Oxford University Press, 2010, 228 pp., \$27.95.

Rice University sociologist Elaine Ecklund decided to investigate the age-old conflict between science and religion by surveying 1,700 scientists at 21 “elite research universities” to determine their personal religious beliefs as well as their take on the conflict. Avoiding the kind of polemicism that usually prevails in discussions of this issue, she has made an admirable contribution to dialogue by replacing common mythologies with empirical data.

Her basic findings are not unexpected. About half of “elite scientists” say they are not religious compared to 16% of all Americans. Jews are disproportionately represented (16% compared to 2% of all Americans), which is no surprise either. Mainline Protestants are about the only group whose scientific contingent (14%) mirrors that of all Americans. About 9% are Catholic, which is well below the national figure, and 7% belong to “other” religious traditions, which run the gamut from Mormon to Hindu. Only 2% are evangelical Protestants, compared to 28% nationally.

But affiliation is only one aspect of religiousness. Many scientists call themselves “spiritual but not religious,” a belief shared by many Americans across religious lines. Only a third are non-theists. Another 30% say there is “no way to find out if there is a God.” Only a small minority are actively hostile to religion, while many scientists work to reduce misunderstandings between their community and the broad community of believers.

She cites two other interesting facts: 20% of scientists are “actively involved in a house of worship,” while 52% of those who were raised Protestant and 58% of those who were raised Catholic have switched to “no affiliation.”

The book is enriched by interviews with 275 scientists and portraits of ten representative ones, many of whom are “spiritual entrepreneurs” and “boundary pioneers” working to create a common ground between science and religion when and where possible.

Her survey research concludes: “Much of what we believe about the faith lives of elite scientists is wrong. The ‘insurmountable hostility’ between science and religion is a caricature, a thought-cliché, perhaps useful as a satire on groupthink, but hardly representative of reality.”

## *ARL in Action*

- ARL joined with the National Coalition for Public Education in supporting a “sense of Congress” resolution urging that states adopt social studies curriculum standards that are academically sound and devoid of hidden political agendas. The resolution, H.Res. 1593, was introduced by Texas Rep. Eddie Bernice Johnson in response to the highly flawed social studies standards recently adopted by the Texas State Board of Education. The Texas standards, which downplay religious liberty and slight the civil rights movement, could affect textbooks in all other states.

- ARL president Edd Doerr presented a roundup of church-state issues that affect education in a July 21 meeting with two dozen doctoral candidates in education. The panel, held annually in Washington, D.C., was sponsored by the University of Mary Hardin-Baylor and its Center for Religious Liberty, directed by Dr. Derek Davis.

Much of this thought-provoking book, based on four years of active research, deals with the “secularization of the academy,” or the presence or absence of religion in the classroom. “The religion-science conflict narrative is upon us again, returning with a vengeance in the early twenty-first century. The debate, propelled by current controversies, depicts higher education in particular as the enemy of religion and the friend of science. And there is some evidence that the more educated individuals become, the less likely they are to be religious. Highly religious individuals, especially those Christians who believe that the Bible must be taken literally, tend to have a more adversarial relationship with science, particularly evolutionary theory.”

But militant atheists, she says, do not help the situation. “Aggressive attacks on religion such as Richard Dawkins’s *The God Delusion* do not accurately represent the complex ways in which scientists—even those who are not religious—actually engage religion and spirituality. The general public misunderstands what scientists really think about the relationship between science and religion; many accept the extreme hostility of a few as representative of all scientists’ views about faith.”

Issues such as embryonic stem cell research and environmental degradation are affected by the negative, sterile, and often unnecessary conflicts between science and religion. She also laments that, “American public schools have suffered from the religion-science conflicts.”

Like any good sociologist, Ecklund draws some interpretive conclusions from the data. “Scientists must provide a better rationale for the types of research that they do and how their research helps the general public... Scientists need to do a better job of communicating the importance of science to religious people.”

If the book deserves any criticism, it is in the lack of geographic diversity in the colleges selected for the study. Most are in the Northeast or Pacific Coast region, precisely the most secular parts of the country. All Ivy League colleges except Dartmouth and Brown are included, compared to only two Southern universities, both in North Carolina. The author acknowledges this deficiency in an appendix. But she says these are the acknowledged “research” universities based on nine criteria. Concentrating on “elite institutions was initiated because elites are more likely to have an impact on the pursuit of knowledge in American society.”

This is a must-read book for anyone interested in the future of American culture.

—Al Menendez

*Balancing Change and Tradition in Global Education Reform*, edited by Iris C. Rotberg. Rowman & Littlefield Education, 2010, 439 pp., \$100 cloth, \$49.95 paper.

In this important book education experts from sixteen countries (China, Russia, South Africa, Chile, Germany, France, Turkey, Sweden, Israel, Japan, Singapore, Canada, New Zealand, England, Australia, United States) provide in-depth reports on how their countries and societies are dealing with social change and modernization. While there are some similarities among these nations, there is also considerable diversity involving culture, history, resources, politics, and religion. Each country has to deal with increasing cultural and linguistic diversity, serious economic disparities and poverty, parental demands and expectations, and politics, politics, politics.

School “choice” crops up everywhere, and here things get interesting and odd. In Chile, for instance, we have the most significant adoption of a pure Milton Friedman school voucher plan. But it was not “adopted.”



It was imposed on Chile by the brutal Pinochet military dictatorship that seized power in 1973. The effect of the Chilean voucher plan? No significant educational gains, but increased social stratification. Sadly, the Chilean voucher program developed a constituency and has become entrenched.

The sections on Australia and Canada are curious. The Australia section contains no mention of the decades-long raging controversies over tax aid for faith-based private schools, which led to the founding of a political party and a legal challenge that reached the Australian Supreme Court, where our side lost in 1981, even though the Chief Justice opposed the aid on constitutional grounds (See *Lionel Murphy: the Rule of Law*, Akron Press, Sydney, 1986). I am familiar with the case because I helped create the lawsuit! Losing the case was a serious defeat for public education, as tax aid to nonpublic schools has helped raise their enrollment to nearly one-third of Australia's school population.

As for Canada, the section's author does not mention the long controversy in Ontario, where provincial taxes support public and Catholic schools but not Protestant or Jewish schools. Nor does it mention the case of Newfoundland, where voters in the 1990s approved the transition from a situation of only tax-supported faith-based schools to a comprehensive public school system with no tax aid for nonpublic schools.

The best sections in the book are the ones on U.S. schools by Peter Schrag and Richard Rothstein and the concluding chapter by editor Rotberg, who is a professor at the George Washington University Graduate School of Education. The U.S. section touches on school vouchers, mentions the referendum defeats, and is critical of the No Child Left Behind (NCLB) legislation passed by majorities of both parties in Congress during George W. Bush's first term. The Schrag/Rothstein and Rotberg critiques of NCLB parallel those of Diane Ravitch in her new book *The Death and Life of the Great American School System: How Testing and Choice are Undermining Education*, reviewed in our last issue.

(Interestingly, cognitive scientist George Lakoff (*Don't Think of an Elephant!*, 2004) writes that NCLB, as Ravitch pointed out later, contributes to the decline of public schools and helps set the stage for vouchers. Lakoff writes that "Vouchers and school testing [a la NCLB] are not about vouchers and school testing; they are about conservative control of the content of education.")

What comes through loud and clear in every section of Rotberg's book is that adequate education for all children worldwide should be a top priority for all governments and that failure to alleviate poverty invariably harms the education and development of the poorest among us.

—Edd Doerr

*Cowboy Conservatism: Texas and the Rise of the Modern Right*, by Sean P. Cunningham. University Press of Kentucky, 2010, 293 pp., \$40.00.

Anyone who has ever wondered why once loyally Democratic Texas, the only Southern state to support Hubert Humphrey in 1968, has become a Republican and conservative stronghold today, will profit from reading this history. Cunningham shows how economic, cultural and religious trends came together around the candidacy of Ronald Reagan, producing a nearly invincible new political reality.

By the late 1970s the impulses of Texas culture and politics had become "anti-liberal and populist-conservative" as voters lost faith in Washington's responses to critical domestic and foreign policy issues. "The Reagan Revolution of 1980 established Texas at the forefront of modern American conservatism," the author writes.

Religion was clearly a "major factor" in the swing to the Right, with many voters believing "it was Republicans who defended faith and

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religion." The author argues, "A revival in politically active evangelicals suddenly and forcefully began to alter the state's political agenda in the early 1970s."

Evangelicalism became an identifiable political movement that permeated the state, particularly in the Dallas metropolitan area. "Evangelical Christianity did more than simply mobilize suburban conservatives. By 1975, religion had become a more common form of identification among Dallas's suburbanites. Evangelical Christianity became an identifier not simply of one's spiritual condition but of one's acceptability in the new social, economic, and political climate."

The Texas brand of conservatism has a militant and aggressive quality. Cunningham concludes, "The rise of modern Texas conservatism not only coincided with a similar ascendancy nationwide, but also gave the movement shape and momentum. With its unique regional identity and boundless expanse of political bravado, Texas has become the heart of modern conservative Republicanism."

—Al Menendez

*Bible Babel: Making Sense of the Most Talked About Book of All Time*, by Kristin Swenson. HarperCollins, 2010, 343 pp., \$24.99.

Devotional reading of the Bible was common in our public schools until the Supreme Court held the practice unconstitutional in 1963. This essentially Protestant activity was one of the reasons why the Catholic Church began setting up faith-based ("parochial") schools in the nineteenth century. After 1963 Catholic schools began to decline in enrollment from 5.5 million students to fewer than 2.5 million today.

Since 1963 attempts have been made to try to reintroduce Bible reading in public schools but with rather limited success. And these efforts have generally been objectionable on First Amendment grounds. (See my article "The Bible Goes to School" in our journal No. 94).

Kristin Swenson, professor of religious studies at Virginia Commonwealth University, shows in her excellent and witty new book just how difficult this is to do. There are, she notes, at least 140 versions of the Bible available in English. Not one is unobjectionable to all.

Among the juicy bits in her book:

- There is no explicit condemnation of abortion anywhere in the Bible.
- In his 1845 autobiography the great civil rights pioneer Frederick Douglass wrote: "For all the slaveholders with whom I have ever met,

*continued on page 18*

## Books and Culture, *continued from page 17*

religious slaveholders are the worst. I have ever found them the meanest and basest, the most cruel and cowardly, of all others.”

- “Depending on whom you ask, the Bible portrays Jesus as a radical pacifist, a militant religious reformer, a political gadfly, a wise sage and teacher, a social justice activist, a miracle worker, a healer, an animal lover, a feminist, and so on.”

- The “rapture” is not a term found in the Bible. (Someone should tell Tim LaHaye.)

While not denigrating the Bible, Swenson makes it quite clear that it is extremely difficult to design a course about the Bible that would be both constitutionally acceptable and also appealing to the whole diverse religious community. With an abundance of churches, synagogues, Sunday schools, and Bible camps, there is hardly any need for public schools to open this box of headaches.

—Edd Doerr

**Last Call: The Rise and Fall of Prohibition**, by Daniel Okrent. Scribner, 2010, 468 pp., \$30.00.

Before there was a Religious Right, there was the organized Prohibition movement, led by the Anti-Saloon League (ASL) and the Woman's Christian Temperance Union. Of the two the ASL was more effective. Journalist and historian Daniel Okrent tells why. The ASL “may not have been the first broad-based American pressure group, but it certainly was the first to develop the tactics and the muscle necessary to rewrite the Constitution,” because it “mobilized the nation's literalist Protestant churches and their congregations.” The group called itself “The Church in Action,” though it represented only the evangelical churches. Okrent continues, “Any pressure group would be fortunate to be blessed with a constituency like this one. It was scattered across the American landscape, yet easily reached when there was a message to deliver or an action to initiate. By its self-definition, it wore the mantle of moral authority. In its religious ardency, it was prepared for apocalyptic battle.” Clergy were given at least three fourths of the ASL's board members in all states.

While they achieved their goal of amending the Constitution, their policy ultimately failed. Concludes the author: “In almost every respect imaginable, Prohibition was a failure. It encouraged criminality and institutionalized hypocrisy. It deprived the government of revenue, stripped the gears of the political system, and imposed profound limitations on individual rights.”

While the story of Prohibition has been told many times before, it has rarely been told as well as in this book.

—Al Menendez

**When God Took Sides: Religion and Identity in Ireland—Unfinished History**, by Marianne Elliott. Oxford University Press, 2009, 330 pp., \$34.95.

While Ireland's religious wars have just about subsided, this book tells how they got started, why they were so virulent and why they lasted so long. For centuries both Protestants and Catholics demonized each other and accused their opponents of disloyalty and persecution, thus constructing a narrative of victimhood. Wherever either side controlled the civil realm or the institutions of government and culture, the other was unwelcome, disregarded or banished whenever possible.

On the Protestant side religion was paramount. “But one thing has united Irish Protestants in the past and to some extent still does, particularly in Ulster. That is anti-popery, the fear and dislike of the Roman Catholic Church as an institution and of popery as a system....Much of the history of Ulster Protestants after 1920 was taken up with protect-

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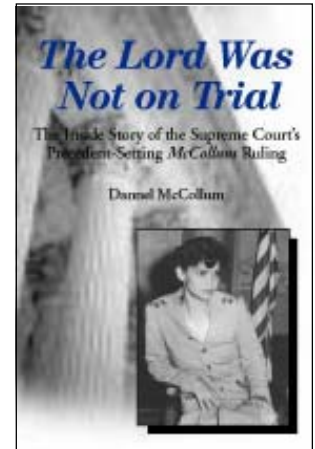
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ing the purity of their Zion, politics and religion becoming indistinguishable.”

For Catholics identity with the state in the South was inextricable. Northern Catholics and Southern Protestants became the outsiders. “As in the North, the historically antagonistic Churches coexisted by keeping apart, and the sense that they were a tiny and receding island in a threatening sea of Catholicism made southern Protestants even more sensitive.” This was also true in the North. “There were two common elements which united Catholics. Firstly, institutional Catholicism defined their lives and their politics and suffused their entire identity. Secondly, they knew that political Protestantism considered them inferior in every way....After partition northern Catholic society turned in on itself and, like the Protestant minority in the South, developed a parallel universe to the majority one.”

As a result both religions developed “origin-myths.” “The problem in Ireland is that there were two ‘peoples’ whose origin-myths have been based on extremely negative views of each other and because these were religiously based, the clerics had far more power than they should have had.”

What of the future? Elliott writes, “The march of secularism and the retreat of religion to the private sphere might further the Northern Ireland peace process.”

The author seems to have read every book about religious conflict in Ireland published in the past century, which is what one might expect from the Director of the Institute of Irish Studies at Liverpool University. Her knowledge of the subject and excellent writing style make for a splendid book. (And it doesn't hurt that she grew up in Northern Ireland.)

—Al Menendez

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*Saving Schools*, by Paul E. Peterson, Belknap/Harvard, 2010, 320 pp., \$25.95.

Lurking behind this innocent-sounding title is a vicious, underhanded assault on public schools, public school teachers, teacher certification, teacher unions, and church-state separation by a Harvard professor of government who appears to have never spent a day teaching in a school.

Peterson has long been a worshipper at the altars of Milton Friedman, William Bennett, and James Coleman, and in this sorry opus he heaps praise on the school voucher idea, though he wistfully regrets that a “few” referenda have pretty well quashed the idea. He doesn’t actually discuss the more than two dozen statewide referenda from coast to coast in which tens of millions of voters have rejected vouchers or their analogs by an average margin of two to one. Not once does he refer to the arguments against vouchers, such as federal and state constitutional objections, or to the fact that widespread implementation of voucher plans would fragment education in many ways while similarly harming the teaching profession and increasing financial and social costs.

With vouchers a moribund issue, Peterson pushes an equally destructive new product, for the promotion of which he repeatedly extols a “stealth strategy,” or “below the surface” financial strategy much like, as he puts it, “an Everglades alligator” with a “quiet, underwater approach.” His new device for destroying public schools is “virtual education,” using computer technology, not to supplement but to gradually replace on-site education. His model is the tax-supported Florida Virtual School, which can be used, like the discredited “shared time” gimmick, to get public funds to subsidize home-schooling and a growing multiplicity of sectarian and ideological private schools. Peterson seems not to be bothered that “virtual education” might isolate children from their peers, retard their socialization, and render them easier to indoctrinate. Peterson pines for the disappearance of public education as we know it. Why does Harvard associate itself with such dreck?

— Edd Doerr

*Losing Our Religion: The Liberal Media’s Attack on Christianity*, by S.E. Cupp. Threshold Editions, 2010, 269 pp., \$24.00.

Shallow, one-sided, and incoherent, this product of a fevered paranoid imagination is a vicious slam at the small segment of the print and electronic media that is even remotely liberal. The author, who purports to be an atheist, defends the “Religious Right,” attacks evolution, rails against an imaginary “war on Christmas,” and slings mud at JFK, Bill Clinton, Al Gore, and Barack Obama. In her profound ignorance she

equates all Christianity with Falwellian fundamentalism. In several places she states that Christians (undefined) make up 80% of the U.S. population and in other places she puts the figure at 57%. It’s no wonder her screed earns the praise of kooky Rep. Michele Bachmann, Brent Bozell, and Newt Gingrich. If the Bard of Avon were reviewing this shameless mess, he would doubtless liken it to “a tale told by an idiot, full of sound and fury, but signifying nothing.”

— Edd Doerr

*To Save America: Stopping Obama’s Secular-Socialist Machine*, by Newt Gingrich, Regnery, 2010, 356 pp., \$29.95.

This awful book conjures up a number of appropriate adjectives, among them: unbalanced, demagogic, vitriolic, mean-spirited, and dishonest. It is apparently intended to be a handbook for use by the Tea Party movement, but it will not convince well-informed or fair-minded readers.

Of interest to readers of this journal are Gingrich’s views on church-state issues. As befits a follower of pseudo-historian David Barton, Newt grossly misinterprets our constitutional separation of church and state. He favors: school vouchers, a word he refuses to use, preferring the misleading “K-12 Pell Grants”; government-sponsored school prayer; home-schooling; allowing public school teachers to proselytize; barring federal courts from hearing establishment cases; stopping U.S. funding for the UN Population Fund; reinstating the anti-choice Reagan-Bush I and II “Mexico City policy”; using churches for politicking; and increasing the number of charter schools without limit.

The publisher should be embarrassed, but this is the usual stock-in-trade for Regnery.

— Edd Doerr

*Our Bodies, Our Crimes: The Policing of Women’s Reproduction in America*, by Jeanne Flavin. New York University Press, 2009, 306 pp., \$35.00.

In this important book sociologist/anthropologist Flavin not only thoroughly explores the abortion rights issue but ranges far beyond to cover our society’s “patriarchal oppression” of women in our legal and criminal justice systems. This “malignant patriarchy,” as I have termed it, is not likely to end until women have gained true political equality, and that will not be done by the likes of Sarah Palin, Sharron Angle, or Carly Fiorina. This book rates five stars.

— Edd Doerr



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## Commentary

Federal District Judge Vaughn Walker ruled forcefully and decisively on August 4 that the U.S. Constitution protects the right of same-sex couples to marry. He held in *Perry v. Schwarzenegger* that the passage of Proposition 8 by California voters in 2008 was designed to discriminate against same-sex couples. He wrote, "Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite sex couples are superior to same-sex couples. Because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis, the court concludes that Proposition 8 is unconstitutional."

Judge Walker, who was appointed to the federal bench by President Ronald Reagan and approved by the Senate during the early days of George H. W. Bush's administration, based his decision on both clauses of the Fourteenth Amendment. "Proposition 8 both unconstitutionally burdens the exercise of the fundamental right to marry and creates an irrational classification on the basis of sexual orientation."

He concluded that "there is a significant symbolic disparity between domestic partnership and marriage," thereby violating the Due Process Clause. "The evidence shows that domestic partnerships do not fulfill California's due process obligation to plaintiffs for two reasons. First, domestic partnerships are distinct from marriage and do not provide the same social meaning as marriage. Second, domestic partnerships were created specifically so that California could offer same-sex couples rights and benefits while explicitly withholding marriage from same-sex couples." Since "domestic partnerships exist solely to differentiate same-sex unions from marriage" and "withholding the designation of marriage significantly disadvantages same-sex couples," marriage is "a culturally superior status compared to a domestic partnership." Therefore, "California does not meet its due process obligation to allow plaintiffs to marry by offering them a substitute and inferior institution that denies marriage to same-sex couples."

Walker invoked the language of the U.S. Supreme Court in its landmark 1943 ruling involving Jehovah's Witnesses (*West Virginia State Board of Education v. Barnette*), which held that "fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Walker concluded that the Equal Protection Clause is violated because "Proposition 8 discriminates both on the basis of sex and on the

basis of sexual orientation....Because Proposition 8 disadvantages gays and lesbians without any rational justification, Proposition 8 violates the Equal Protection Clause of the Fourteenth Amendment."

One of the two winning attorneys opposing Proposition 8 was Ted Olson, the noted conservative who represented George W. Bush in the 2000 case, *Bush v. Gore*.

The case now moves to the Ninth Circuit Court of Appeals and possibly to the U.S. Supreme Court. Neither Governor Arnold Schwarzenegger nor Attorney General Jerry Brown defended Proposition 8, and both have called for resumption of same-sex marriages in the state. ■

### 'Hard-won, not God-given rights'

In his July 9 letter, "Declaring our independence," Newt Gingrich erred on where our basic rights come from. When Thomas Jefferson wrote the Declaration of Independence, we were a small band of revolutionaries up against the world's most powerful empire. A third of our people supported independence, a third were Tories and a third were indifferent. Jefferson invoked the Deity to challenge the prevailing European idea of the divine right of kings.

If our rights come from the Deity, then why was this discovered only in 1776, why were these rights confined to some white men, and why has the Deity been so stingy about spreading rights throughout the world?

We have rights because we conceived them, asserted them, fought for them and created the machinery for protecting them. Our basic document, the Constitution, begins with "We the People," not "We the Worshipers."

—Edd Doerr

Letter published in the *Washington Post* July 21, 2010.