



VOICE OF REASON

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Corporations Win “Religious Exemptions” and Weaken Contraceptive Mandate

In a major ruling, whose implications may be felt for years to come, the U.S. Supreme Court ruled on June 30 that “closely held” for-profit corporations whose owners have “sincere religious beliefs” are exempt from providing certain types of birth control in their employee health plans.

The cases, *Burwell v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties Corp. v. Burwell*, were decided by a 5 to 4 vote.

The majority held that the 1993 Religious Freedom Restoration Act (RFRA) prohibited the government from substantially burdening a person’s exercise of religion unless there was a compelling government interest and the least restrictive means of furthering that interest has been employed. (Ironically, RFRA was passed as a response to a ruling widely viewed as trashing the religious exercise rights of Native Americans in a 1990’s case, *Employment Division v. Smith*, written by Justice Antonin Scalia.)

The majority opinion, written by Justice Samuel Alito, reached its conclusion by allowing “closely held” (usually family-owned) corporations to be seen as “persons.” If such entities have a “sincerely held” religious belief, government cannot compel them to act in a way that “substantially burdens” their religious faith. The majority, including Antonin Scalia, Clarence Thomas, John Roberts, and (barely) Anthony Kennedy, accepted the compelling interest argument (generally), but thought the government failed the least restrictive means standard by requiring the two corporations to provide some types of birth control they claimed violated their conscience.

The usual “swing” vote, Justice Kennedy, filed a concurring opinion which he said tried to balance competing claims. He endorsed “the HHS regulation that furthers a legitimate and compelling interest in the health of female employees.” At the same time, he said, “In a complex society and an era of pervasive government regulation, defining the proper realm for free exercise can be difficult.”

Kennedy was convinced that “there is an existing, recognized, workable, and already-implemented framework to provide coverage.... The accommodation works by requiring insurance companies to cover, without cost sharing, contraception coverage for female employees who wish it.” (This accommodation has been granted temporarily to religious nonprofits or auxiliaries, though many have refused to accept it and have sued the government in federal courts.)

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Americans Still Oppose Vouchers

The 46th annual Phi Delta Kappa/Gallup Poll shows 63% of Americans oppose “allowing students and parents to choose a private school to attend at public expense.” This is quite similar to the average opposition to vouchers or similar programs found in more than two dozen referendum elections across the country in the past half-century.

While down seven points from the 70% opposition found in the 2013 poll, this year’s opposition is higher than in most previous annual surveys. Public school parents are opposed to vouchers by the same percentage as are all those surveyed.

Strong political differences are found on the voucher issue, which is often reflected in congressional and state legislative voting and in national party platforms. Democrats are solidly opposed (77%) as are Independents (63%). But 52% of Republicans favor vouchers. This Republican result, however, may be grounds for pause, since nearly half of Republicans oppose an educational policy endorsed in recent party platforms and by overwhelming margins by Republicans in Congress.

Charter schools are favored by about two-thirds of Americans, with majorities among all political parties. (Republicans are the most favorable, followed by Independents and Democrats). But there is widespread misunderstanding about exactly what charter schools are. The poll’s authors, William Bushaw, CEO of PDK International, and Valerie Calderon, senior education research consultant at Gallup, explained:

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Reactions to *Hobby Lobby* Run the Gamut

For:

"We welcome the Supreme Court's decision to recognize that Americans can continue to follow their faith when they run a family business. In this case, justice has prevailed."

U.S. Conference of Catholic Bishops

"Hallelujah. This is as close as it gets to a Southern Baptist dancing for joy."

Russell D. Moore, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention

"We rejoice in this strong upholding of religious freedom."

Rev. Dr. Matthew C. Harrison, presiden, The Lutheran Church, Missouri Synod

The Southern Baptist annual convention in Baltimore on June 11 prayed openly "for a favorable ruling by the Supreme Court of the United States for the cause of religious liberty." The prayer was given by incoming president Rev. Ronnie Floyd. The Green family, owners of Hobby Lobby, are prominent Baptists and were given a standing ovation at the meeting. Religious historian and Dartmouth professor Randall Balmer said it was striking that a national religious convention would be "blatant about a judicial matter."

Against:

"The highest court in the country ruled today that it is acceptable for closely held corporations to use their religious beliefs to take away benefits guaranteed to their employees by law – something the Supreme Court has never before sanctioned. Everyone has the right to his or her religious beliefs, but those beliefs cannot be imposed on others."

American Civil Liberties Union

"Hobby Lobby supporters weren't fighting for 'religious liberty.' They were fighting for an affirmation of privilege for advocates of conservative sexual morality."

Brian Beutler in The New Republic, June 30, 2014

"With Hobby Lobby, the Court has imposed the religious beliefs of a few on the many, burdening thousands of employees and creating legal precedence that turns the notion of a secular society on its head. The Court's decision has drastically distorted religious liberty protections as we as a nation have known them."

Center for American Progress

"We believe that the owners of for-profit companies should not be allowed to assert their personal religious views to deny their employees federally mandated benefits. The decision jeopardizes the health of women."

Josh Earnest, press secretary to President Barack Obama

"The Religious Coalition for Reproductive Choice is dismayed by the Supreme Court decision...which perverts our nation's historic understanding of religious liberty. As a coalition of denominations and religious organizations, RCRC is gravely concerned that the Court's notion that a for-profit corporation is able to exercise religion...By privileging a boss's religious beliefs over the beliefs and conscience of individual employees, the Court's decision today callously places financial and spiritual burdens on thousands of workers until the government can find a remedy."

Rev. Harry Knox, president/ceo of RCRC

"The decision turns the concept of religious freedom on its head. Saying that employers may impose their religious beliefs on the deeply personal decisions their workers make fundamentally redefines religious freedom."

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Court Adds to the Controversy in Wheaton College Ruling

Scarcely three days after the wrenching *Hobby Lobby* decision, the U.S. Supreme Court dropped another bombshell. In an unsigned opinion the Court said that Wheaton College in Illinois does not have to comply, temporarily at least, with the compromise provisions of the Affordable Care Act as it relates to religious nonprofits.

Under this arrangement, nonprofit religious groups that object to providing birth control to their employees must file a form, EBSA Form 700, to indicate their religious objections. The responsibility for payment is then borne by insurers or third-party administrators. But even with this accommodation, 50 groups have filed suits in federal courts, objecting to even this indirect involvement. These cases are supposed to make their way through the federal court system, and some could end up in the Supreme Court.

But the Court's unexpected decision to short circuit the process involving evangelical Wheaton College caused consternation among the three female justices. On July 3 Justice Sonia Sotomayor said that this order "evinces disregard for even the newest of this court's precedents and undermines confidence in this institution." She added, "Those who are bound by our decisions usually believe they can take us at our word. Not so today."

The order says that Wheaton, and presumably other plaintiffs, need only file a letter with the federal government stating their objections. It is assumed that the appropriate government agency would notify a third party. "Nothing in this interim order affects the ability of the applicant's employees and students to obtain, without cost, the full range of FDA approved contraceptives," the order said.

Sotomayor vigorously disagreed, arguing that this order "risks depriv-

ing hundreds of Wheaton's employees and students of their legal entitlement to contraceptive coverage."

Both a district court and the U.S. Court of Appeals for the Seventh Circuit had rejected Wheaton's appeal for an injunction allowing it to opt out until the final court resolution. The Supreme Court overruled those decisions in its surprise opinion.

Sotomayor was scathing in her denunciation of the order. "After expressly relying on the availability of the religious-nonprofit accommodation to hold that the contraceptive coverage requirement violates RFRA as applied to closely held for-profit corporations, the court now... retreats from that position." She concluded, "I do not doubt that Wheaton genuinely believes that signing the self-certification form is contrary to its religious beliefs. But thinking one's religious beliefs are substantially burdened – no matter how sincere or genuine that belief may be – does not make it so."

The Wheaton College decision only raises the stakes for more legal and political fighting. Wesley Lowery, writing in *The Washington Post* on July 5, noted the implications. "Legal experts say the temporary decision is likely to embolden religious groups and lead to a wave of lawsuits and objections to the required form."

Lowery added that the ruling had the "potential to deepen the political backlash among Democrats that could keep the battle over the contraception requirement in the headlines and in the minds of voters deep into the summer."

Coincidentally, a new Gallup Poll found that the American people's confidence in the Supreme Court has reached its lowest point in years. (It's still higher than Congress.) ■

Reactions, continued from page 2

In effect, this radical view holds a woman's personal decisions about whether and when to have children hostage to the religious dictates of her employer."

Kathy Miller, president, Texas Freedom Network

"Today's ruling by the Supreme Court is a devastating blow to real religious liberty in America. The claim that institutions or corporations have a conscience or religious liberty is disingenuous and offensive. Conscience and religious liberty rights belong properly to individuals.... These cases are about far more than birth control or access to healthcare. At stake are the religious liberty rights of all workers in the United States – their right to live their lives according to their own beliefs and consciences, and their freedom from having their employers' beliefs forced upon them."

Jon O'Brien, president, Catholics for Choice

"The ruling holds the potential to create great mischief by keeping alive the flawed legal notion that companies can pick and choose which laws to follow so long as they cite a religious justification."

Boston Globe editorial, June 30, 2014

"The Supreme Court's deeply dismaying decision on Monday in the Hobby Lobby case swept aside accepted principles of corporate law and religious liberty to grant owners of closely held, for-profit companies an unprecedented right to impose their religious views on employees. It was the first time the court has allowed commercial business owners to deny employees a federal benefit to which they are entitled by law based on the owners' religious beliefs, and it was a radical departure from the court's history of resisting claims for religious exemptions from neutral laws of general applicability when the exemptions would hurt other people."

New York Times editorial, July 1, 2014

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Serious Flaws Found in Bible Curriculum

Hobby Lobby founder Steve Green's Bible curriculum, (called *The Book: The Bible's History, Narrative and Impact*), was scheduled to be introduced this fall in Mustang, Oklahoma, public schools. Dr. Mark A. Chancey, a professor of religious studies at Southern Methodist University, says the course falls far short of constitutionally permissible education. "To be legal, Bible courses must be nonsectarian, not promoting or denigrating the religious views of any particular sect or promoting religion or non-religion over the other."

Chancey's analysis says that Green "appears to have created the curriculum for an explicitly religious purpose, namely, the promotion of particular theological understandings of the Bible and its significance." The course assumes that "the Bible's complete accuracy and historical reliability are simply matters of fact."

The course's publisher, Museum of the Bible, says its work is "to inspire confidence in the absolute authority and reliability of the Bible," which are views held only by conservative Protestants. But, reminds Chancey, these views "are not widely shared elsewhere across the religious spectrum or within the broad academic community."

The curriculum "presents Adam, Eve and all other biblical characters unambiguously as historical personages" and "unquestioningly affirms traditional claims about the authorship of biblical books" even though such interpretations are rejected by "many Jews and Christians." In its labored attempt to prove reliability, the curriculum "builds

its case on oversimplifications, misrepresentations, logical fallacies, and outright mistakes."

Chancey suggests that "a curriculum might avoid some of the thorny issues regarding the Bible's accuracy by sticking more strictly to a literary approach. However, if it does choose to foreground historical concerns, then it has an obligation to explore them in a balanced, thorough, and factually accurate manner. The current form of this book falls far short in these regards, seemingly taking its primary cues from the literature of conservative Christian apologetics rather than academic scholarship."

Chancey, who has explored the constitutional, political and academic issues raised by attempts to introduce religion courses into public schools, concludes: "The combination of a religious purpose, pervading sectarian bias, and frequent factual errors demonstrates that this curriculum has a long way to go before being appropriate for a public school classroom... Thorough revamping, not minor editing, would be required to transform this curriculum into a product that matches the Supreme Court's requirement that material be presented 'objectively as part of a secular program of education.' Whether such revision can be accomplished by the start of the new school year remains to be seen."

The complete study, "Can This Class Be Saved? The 'Hobby Lobby' Public School Bible Curriculum," is available from the Texas Freedom Network Education Fund. ■

Religious Mandate, *continued from page 1*

A powerful dissent was written by Justice Ruth Bader Ginsburg, who read it from the bench, indicating her displeasure with the outcome. Joined by Justices Stephen Breyer, Elena Kagan and Sonia Sotomayor, Ginsburg wrote, "In a decision of startling breadth, the Court holds that commercial enterprises, including corporations, along with partnerships and sole proprietorships, can opt out of any law (saving only tax laws) they judge incompatible with their sincerely held religious beliefs." Ginsburg stressed that "Congress enacted RFRA to serve a far less radical purpose," and predicted that the Court's judgment would introduce havoc.

The dissenting opinion warned that the exception for "religiously grounded exemptions" could "extend to employers with religiously grounded objections to blood transfusions (Jehovah's Witnesses); antidepressants (Scientologists); medications derived from pigs, including anesthesia, intravenous fluids, and pills coated with gelatin (certain Muslims, Jews, and Hindus); and vaccinations (Christian Scientists, among others)."

Ginsburg was unpersuaded by Alito's claim that "our decision should not be understood to hold that an insurance-coverage mandate must

necessarily fail if it conflicts with an employer's religious beliefs." Alito claimed "our decision in these cases is concerned solely with the contraceptive mandate."

But Ginsburg saw the broader picture and worried that such a radical departure from prior holdings would logically be applied in future cases to other religion-based objections.

Further, the dissent asserted that "accommodations to religious beliefs or observances, the Court has clarified, must not significantly impinge on the interests of third parties. The exemption sought by Hobby Lobby and Conestoga would override significant interests of the corporations' employees and covered dependents. It would deny legions of women who do not hold their employers' beliefs access to contraceptive coverage that the ACA [Affordable Care Act] would otherwise secure."

Ginsburg was adamant: "Until this litigation, no decision of this Court recognized a for-profit corporation's qualification for a religious exemption from a generally applicable law, whether under the Free Exercise Clause or RFRA." This decision "is bound to have untoward effects" and "has ventured into a minefield."

Justices Elena Kagan and Stephen Breyer filed brief dissents which suggested they did not believe that RFRA even applied in these cases.

Responses to the decision were intense. Religious conservatives hailed it, while religious progressives were dismayed. Most medical care and women's health care groups saw it as a devastating blow to women's health and choice. Protestants and Catholics were divided. Most Jews were opposed, except for the Union of Orthodox Jewish Congregations. Newspapers and magazines broke down along conservative/liberal lines. (See "Reactions Run the Gamut," page 2.) ■

Moving?

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What Can Be Done: Beyond Hobby Lobby

The issue is far from resolved. For one thing approximately 50 cases are in federal courts around the country filed by religious nonprofits that object to even the government's compromise solution that those who object to providing birth control directly may turn it over to insurance carriers or third party administrators. (Some of the groups suing include the University of Notre Dame, Wheaton College (the evangelical Harvard), and the Little Sisters of the Poor). Any one of them may end up in the Supreme Court. There are also 50 cases involving for-profit plaintiffs that will probably return to lower federal courts for final resolution.

At first blush it would appear that these nonprofits would have a better case than the for profit corporations whose owners can now evoke "sincerely held" religious beliefs to avoid the contraceptive mandate. But that may not be true. Both Justice Kennedy's concurring opinion and Justice Alito's majority ruling contain language suggesting that the Court looks favorably on this "accommodation" as the "least restrictive" way a "compelling government interest" may be achieved.

Robert P. George, professor of jurisprudence at Princeton University and theoretician for the extreme Religious Right, admitted in *First Things* to "a bit of anxiety" in Kennedy's concurrence. George thought that Kennedy might be "signaling a friendly attitude towards the accommodation." He predicted that the nonprofit cases "will work their way through the system – mostly winning in the lower federal courts." George added, "What is certain is that Kennedy's vote will decide the cases that consider the accommodation."

These upcoming nonprofit cases are also complicated because some involve claimants who self-insure their employees while others purchase insurance from companies. One ripple effect has already occurred. A three-judge panel of the U.S. Circuit Court of Appeals for the Elev-

enth Circuit in Atlanta issued an order barring enforcement of the contraceptive mandate on the Eternal Word Television Network, a conservative Catholic cable network based in Alabama. The appeals court said enforcement ordered by a district court should be halted pending the outcome of the network's appeal.

There is also a political dimension to this issue. *Politico*, the political insider's journal, says the decision may energize Democrats and women's groups in time for the fall congressional elections. But the ruling also solidifies conservative support for the GOP. Senate Majority Leader Harry Reid thundered, "If the Supreme Court will not protect women's access to health care, then Democrats will." His counterpart, Mitch McConnell, praised the decision, as did Republican National Chairman Reince Priebus. Former Secretary of State Hillary Clinton said she found the ruling "deeply disturbing."

Both parties hope to capitalize on the ruling. Jeremy Peters and Michael Shear wrote in *The New York Times* on July 1: "Democratic party strategists believe their ability to hold on to the Senate this year depends in large part on persuading women that a Republican Senate and White House would only produce more outcomes like Monday's ruling, which they contend is harmful and hostile to women's rights. Democrats have already started to discuss sharp contrasts with their Republican rivals in several races that will determine which party controls the Senate: Colorado, North Carolina, Michigan, Alaska and Iowa."

Republicans, however, hope to unite the conservative wing with the anti-government libertarian wing around this issue. Kentucky Senator Rand Paul, considered the leader of libertarians, said, "Americans can stay true to their faith without fear of big government intervention or punishment." Not all libertarians share that view.

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Vouchers, *continued from page 1*

"Most Americans misunderstand charter schools, believing they can charge tuition and admit students based on ability, and nearly half believe they can also teach religion."

A majority (54%) believe students "receive a better education at a public charter school than at other public schools," while 33% think the regular schools provide a better education. Among public school parents, charters receive a lower endorsement, 41% to 37%, while 15% think there is no difference. Republicans think charters are better by more than 2 to 1 and Independents by nearly 2 to 1, while a small majority of Democrats think public schools outperform charters.

This endorsement of charters is a misperception, since numerous studies, most recently by Stanford-CREDO, concluded that the vast majority of charter schools were no better than or worse than public schools in educational performance despite their selectivity and other advantages.

The overall ranking of public schools has not changed much in recent years. About 50% give "the public schools in your community" an A or B grade, unchanged since 2010. About a third give the schools a C grade and about one sixth a poor grade. However, two-thirds give the "school your oldest child attends" an A or B, still high but a few points lower than in the previous four years.

But only 17% give "the public schools in the nation as a whole" A or B marks, while half give them a C and 30% a poor grade. This

breakdown has remained unchanged since 2010, which many believe reflects constantly critical reporting by the media.

"Lack of financial support" for public schools is cited as the "biggest problem" facing public schools. Twice as many Democrats as Republicans believe this to be the case.

Americans also (by 54% to 45%) think standardized tests are "not helpful" in determining teacher quality, with no political differences. A majority (56%) think local school boards should have the greatest influence in deciding what is taught in public schools, compared to 28% who think it should be the state government and 15% who think the federal government should set the standards. Republicans (68%) strongly favor the local school board, compared to 55% of Independents and 45% of Democrats. (28% of Democrats and only 3% of Republicans want the federal government to decide.)

The Common Core standards adopted in most states are opposed by Americans 60% to 33%, with public school parents opposed 62% to 32%. There is a big political difference regarding the Common Core: Republicans are opposed 76% to 17%, while Democrats are favorable 53% to 38%. Independents are near the national average, 60% to 34% in opposition. This puts Democratic voters at odds with their traditional allies in the teachers' unions.

The PDK/Gallup Poll is a survey of 1,001 Americans 18 years and older, and was released on August 20. ■

What Can Be Done, *continued from page 5*

Supreme Court vacancies in the near future may also become more crucial in the light of this decision.

Some have suggested that Congress amend RFRA to make clear that it should not apply to corporate entities. A July 1 *Washington Post* editorial said: “The Constitution generally does not require religious exceptions to generally applicable laws. The ruling relied on the Religious Freedom Restoration Act, a statute that does not mention corporations and that lawmakers could easily narrow. They should not only guarantee contraception coverage but also repair the federal government’s ability to provide for wholly legitimate common goods such as public health and marketplace regulation.”

A June 30 *Boston Globe* editorial said, “Sooner or later, the court must reinforce that a business owner’s religious beliefs don’t create a legal reason to violate a worker or customer’s rights. . . . Congress can change the law to eliminate Hobby Lobby’s new exemption from the health care mandate—and it should.”

Another nationally read paper, *The Christian Science Monitor*, opined on June 30: “The task now for President Obama and Congress is to make sure women working in such corporations are themselves not burdened in obtaining insurance to their health needs. Lifting the burden on some employers in the name of religious liberty should not restrict the liberty of others. Lawmakers may need to expand Title X of the Public Health Services Act which currently provides limited funding to family planning. In this way, female workers at companies exempt from the mandate will not feel their employer’s beliefs are being imposed on them.”

The Center for American Progress, a research and educational institute, urged legislators to modify RFRA in the following way: “Federal lawmakers should consider adding language to RFRA that brings it to

the level that Congress intended—providing strong religious liberty protections for those who deserve it, but ensuring that the provided exemptions do not burden others. In states with existing RFRA-like legislation—or states considering RFRA-like legislation—advocates and policymakers should seek to introduce language that will put reasonable restrictions on religious liberty protections, ensuring that religious liberty is not used as a tool to discriminate or deny needed medical care.”

Such a modification, the Center says, could include language that RFRA “does not authorize exemptions that discriminate against, impose costs on, or otherwise harm others, including those who may belong to other religions and/or adhere to other beliefs.”

Congressional Democrats moved immediately to address the *Hobby Lobby* ruling and its implications. On July 9 a bill was introduced in both the Senate and House that would require all employers to pay for contraception even if they claim religious exceptions. (It does include exemptions for houses of worship and an accommodation for religious nonprofits.) The bill would “essentially exempt the Affordable Care Act from the Religious Freedom Restoration Act,” wrote *Politico*’s Jennifer Haberkorn.

The Senate bill was drafted by Sens. Patty Murray (D-WA), and Mark Udall (D-CO) and was spearheaded by Richard Durbin (D-IL) and Mark Begich (D-AK). House sponsors include Reps. Diana DeGette (D-CO), Jerrold Nadler (D-NY) and Louise Slaughter (D-NY).

A Republican filibuster essentially killed the bill (S 2578, the “Protect Women’s Health from Corporate Interference Act”) on July 16 when a procedural vote requiring 60 supporters failed. The vote was 56-43, with three Republicans voting in the affirmative. They were Susan Collins of Maine, Mark Kirk of Illinois, and Lisa Murkowski of Alaska. ■

Cantor Defeated in GOP Primary

The stunning defeat of House Majority Leader Eric Cantor in the Republican primary in the Seventh Congressional District of Virginia on June 10 sent shock waves throughout the nation. The vote by a wide margin of 11 percentage points particularly upended Republican politics and revealed once again the still potent brand of Tea Party ideology. (The Tea Party, again pronounced dead by many poorly informed journalists, swept the Texas Republican primaries but lost in a number of other states.)

The underfunded underdog, Dave Brat, an economics professor at tiny Randolph-Macon College, turns out to be an extremist of the far right, who has somehow fused in his thinking the seemingly irreconcilable philosophy of Ayn Rand with Calvinistic evangelicalism. Brat heads the “Moral Foundations of Capitalism” program at the private college in Ashland, Virginia. The program promotes Randian views of free-market economics with a \$500,000 grant from BB&T Bank. This bank conglomerate has funded programs in 68 universities, which defend unreconstructed “capitalism from an ethical perspective,” according to former BB&T board chairman John Allison.

Brat allied himself with hardline anti-immigration activists, constantly denouncing “amnesty for illegal immigrants” and accusing business groups such as the Chamber of Commerce of supporting immigration reform to create “cheap labor and low-paying jobs.” Brat claims Ronald Reagan as his personal hero, conveniently ignoring the fact that

President Reagan signed a 1986 “amnesty” bill that regularized the citizenship status of three million immigrants. Brat said that immigration was “the central policy issue in this campaign,” that catapulted him to victory.

Brat was supported by Religious Right groups, including the Christian Family Association of Virginia and the Family Research Council, whose leader, Tony Perkins, has long been associated with Nativist and racist causes.

Brat campaigned in evangelical churches. A native of rural Michigan, he graduated from Reformed Church-related Hope College and Princeton Theological Seminary, before getting a doctorate at American University.

His speech on election night included religious ranting, claiming that his victory was “a miracle from God.” Apparently, the Princeton Seminary grad never learned the difference between the theological virtue of humility and the deadly sin of pride. He also claimed that his win was “David versus Rome.” Even a third grade Sunday school student would know that “David versus Goliath” would have been a more accurate metaphor. The Roman Empire did not even exist when David was King of Israel. This strange comment could suggest a subliminal anti-Catholicism, since Brat once wrote that Protestantism was the essential ingredient in whether a country is rich or poor, invoking the Max Weber theory that Calvinism produced Capitalism and prosper-

ity. (To add to the confusion, Brat is reportedly a Catholic.)

These bizarre comments indicate that Brat may become the darling of a revitalized Tea Party. He now becomes the favorite in a heavily Republican district of rural and suburban Virginia, where polls found that anti-immigration sentiment outweighed economic concerns, suggesting a kind of backwoods populism that surfaces from time-to-time when voters are angered and confused by seemingly hostile forces.

Eric Cantor was the only Jewish Republican in Congress, and he was on track to succeed House Speaker John Boehner and to become "the highest-ranking Jewish official in American history," wrote Alexander Burns in *Politico* on June 11. He was the first House Majority Leader to ever lose a primary since the position was created in 1899. *Politico*

added, "His defeat has left Jewish organizations in both parties reeling, especially the GOP's long-suffering Jewish coalition groups. . . . Jewish nonprofits and advocacy groups have no other natural person in leadership to look to for a sympathetic ear." Most Jewish voters (70% or more) routinely vote Democratic, but Cantor's defeat in an overwhelmingly white, Protestant district only strengthens the belief that the GOP is hostile to religious and ethnic minorities.

Politico concluded, "As Democrats seek to cement a public perception of the GOP as an intolerant and homogeneous party, the defeat of the nation's leading Jewish Republican over his support for more relaxed immigration laws can only help." ■



Church and State in the Courts

The U.S. Supreme Court has unanimously struck down protest-free buffer zones outside abortion clinics in Massachusetts. The justices held that the 35-foot zone violated the First Amendment free speech rights of protesters. But the June 26 ruling was narrow, since the majority decision by Chief Justice John Roberts said that other states and cities had enacted less intrusive ways to protect women seeking abortions, as well as protecting the rights of opponents. Roberts and the Court's four liberals said the 35-foot area "closed a substantial portion of a traditional public forum to all speakers."

The Court's four conservatives, while agreeing with the outcome, issued two concurring opinions that chastised the majority for not seeing the Massachusetts law as "viewpoint discrimination" against abortion opponents.

Cecile Richards, president of Planned Parenthood, said the decision showed "disregard for American women, who should be able to make carefully considered, private medical decisions without running a gauntlet of harassing and threatening protesters."

Massachusetts Attorney General Martha Coakley, the defendant in *McCullen v. Coakley*, said the state will try to find a solution that protects "everyone from harassment, threats, and physical obstruction."

Governor Deval Patrick signed into law on July 30 a measure allowing police to order anti-abortion protesters away from clinic entrances if their presence impedes public access. The new law will allow police to move protesters 25 feet away from entrances for eight hours. State officials said the law was modeled on those of other states.



The Obama administration and a number of religious groups are urging the U.S. Court of Appeals for the Seventh Circuit to reject a federal district court's 2013 ruling that tax-exempt housing allowances for clergy violate the "No Establishment" clause of the First Amendment.

Assistant attorney general Kathryn Keneally's brief on behalf of the government claimed that clergy are akin to "seamen living aboard ships, workers living in 'camps,' cannery workers, and hospital employees." A clergyman's house is "an extension of the church" and used as "an office, a study, a place of counseling, a place of small meetings, such as

boards or committees, and a place in which to entertain and lodge church visitors and guests," she added.

Church-owned parsonages, which account for only 11% of clergy housing, are not challenged in this case. About 87% of U.S. clergy receive housing allowances worth \$700 million a year, according to the *2014-2015 Compensation Handbook for Church Staff*.

The Center for Inquiry has urged the appeals court to uphold the lower court ban, because such allowances grant tax benefits to religious persons that are not available to all citizens.



The U.S. Court of Appeals for the Seventh Circuit held on July 14 that the Indiana Code on marriage-solemnization violates the First Amendment by giving some religions a privileged role. Humanist groups that reject the label "religion" are excluded from Indiana's list of permissible celebrants. "The U.S. Supreme Court has forbidden distinctions between religious and secular beliefs that hold the same place in adherents' lives," said the appellate court. Therefore, Indiana must allow secular celebrants for marriages for those who request them. (*Center for Inquiry v. Marion County Circuit Court*)



The never-ending battle between the national Episcopal Church and breakaway dissenters has moved to a South Carolina courtroom. The Diocese of South Carolina withdrew two years ago and took 50 parishes and \$500 million in property with it, while 20 congregations remained loyal to the national body, which now wants claim to all land and buildings occupied by the seceders. Some of the departing parishes were founded in the early 18th century, when they belonged to the Church of England – a complicating factor, according to some legal experts. Hearings in the case began on July 8 in the Dorchester County Courthouse in the appropriately named town of St. George.

In a related move, a Texas Supreme Court decision in favor of dissident Episcopal congregations in Fort Worth was appealed in June to

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Church and State in the Courts, *cont. from page 7*

the U.S. Supreme Court, which declined to hear a similar case from Virginia earlier this year.



An ancient dispute between civil and canon (church) law concerning the “seal of confession,” or confidentiality between penitents and confessors, has reappeared in Louisiana. The Louisiana Supreme Court ruled that a hearing must be held in a lower court over whether a confession was heard five years ago between a girl who alleged sexual abuse against a funeral home director. The girl claimed she told her parish priest, the Rev. Jeff Bayhi, about the incident but he did nothing. A lower court concluded there was still a dispute over whether this was a genuine confession, the contents of which cannot be revealed, or whether the priest learned of the alleged abuse from other sources, which would require him to report it to the police.

The Catholic Church has always maintained that a priest may never reveal the confidential nature of a sacramental confession nor can he even admit that such a confession, or “sacramental reconciliation,” even existed. Most courts throughout the world have upheld this right, including a number of cases in early 19th century New York. Under canon law, a priest would accept imprisonment rather than reveal the nature of the conversations. Similar views of sacramental confession are held in other Christian churches, while others maintain counseling sessions that, while not held to be sacramental, are confidential and protected by law. These laws are similar to doctor/patient confidentiality and to lawyer/client privileges.

The Diocese of Baton Rouge, in an official statement, said the state Supreme Court’s decision is “a clear and unfettered violation of the Establishment Clause of the Constitution of the United States.” The statement added, “The Supreme Court of Louisiana cannot order the district court to do that which no civil court possibly can – determine what constitutes the sacrament of reconciliation in the Catholic Church.” The diocese, which claimed that the ruling “is of serious consequence to all religions,” announced it will appeal to the U.S. Supreme Court.

Ironically, the accused in this case of alleged child abuse died in 2009.



The U.S. Supreme Court’s refusal to hear a challenge to an appeals court ban on holding high school graduations in a church probably means that issue is settled, or close to it. The June 16 denial of cert in a case from the U.S. Court of Appeals for the Seventh Circuit “effectively ruled that schools cannot use church facilities for graduation ceremonies,” wrote Religion News Service correspondent Daniel Bennett. In an unusual dissent, Justices Scalia and Thomas said the Court should have taken the case in light of the recent *Town of Greece v. Galloway* ruling upholding prayer before government meetings. (Some analysts say that decision has nothing to do with schools.) It is customary for justices to say nothing when they choose not to hear a case, which was true for the seven other justices in *Elmbrook School District v. Doe*.

New Republic writer Yishai Schwartz praised the Court’s refusal to hear the case. “Elmbrook is about children, and the Court’s decision to deny review reflects a proper recognition of the fundamental differences between children and adults.”



In a case of judicial déjà vu, the U.S. Supreme Court declined to hear another appeal to the Soledad cross in California. On June 30, the High Court sent the case, *Mount Soledad Memorial Association v. Trunk*, back to the U.S. Court of Appeals for the Ninth Circuit. The case goes back to 1989, when citizens challenged a veterans group’s erecting a 43-foot cross atop Mount Soledad on public land in San Diego. After considerable back and forth rulings, a federal court ruled in December 2013 that the cross should come down. But the court granted a stay, until an appeal is heard. This Supreme Court ruling means the case will last another two or three years. In the meantime, the cross remains.



A mosque in Tennessee passed its last legal hurdle on June 2 when the U.S. Supreme Court declined to hear a challenge from those who tried to prevent the construction of the Islamic Center of Murfreesboro. The four-year conflict began in 2010 when Rutherford County officials approved plans for a mosque. Televangelist Pat Robertson warned that Muslims were trying to take over the Tennessee town of 112,000 about 30 miles south of Nashville. An arsonist set fire to construction equipment on the building site.

Opponents filed suit to block the mosque, and a local judge ordered a halt to construction. But a federal court overturned that decision, and the mosque opened in 2012. A state appeals court also upheld the center’s right to exist.

Members of the Islamic Center received support from interfaith groups that cited the First Amendment’s religious liberty provisions. Local college professor and mosque member Saleh Sbenaty told Religion News Service, “Today the Constitution prevailed. It shows that the Constitution upholds the rights of those who are in the minority.”



The U.S. District Court for the Western District of Virginia refused to remove its injunction against prayer at government meetings because “the government of Pittsylvania County dictated the content of the prayers opening official board meetings...and that content was consistently grounded in the tenets of one faith.” Also, the board “directed the assembled citizens to stand during the prayer.” The August 4 ruling in *Hudson v. Pittsylvania County, Virginia*, concluded that the prayer “falls outside the prayer practices approved of in *Town of Greece*.” U.S. District Judge Michael Urbanski said he would wait until the U.S. Court of Appeals for the Fourth Circuit remands the case for modification. ■

Back Issues of *Voice of Reason*

Since 1982 Americans for Religious Liberty has published 128 issues of its journal, the *Voice of Reason*. All of these issues are now available in downloadable PDF format at our website, www.arlinc.org.

If for any reason you should need an original printed version, these are also available from Americans for Religious Liberty at:

ARL, PO Box 6656, Silver Spring, MD 20916



The Voucher Watch

- Louisiana's voucher program has expanded and now covers 8,800 students for the 2014-15 school year, compared to 6,751 last year. This 30% increase was announced by Gov. Bobby Jindal. There are 133 voucher schools in 30 of the state's 64 parishes (counties). The program is still plagued by low test scores (well below the state average for standardized tests) and legal challenges.

Religious schools receive the bulk of state voucher aid. The New Orleans *Times-Picayune* reported on July 7 that 72% of voucher schools in New Orleans and Baton Rouge, where most private schools are located, are Catholic, while 23% are Protestant and 5% are secular.

- Florida Republican Gov. Rick Scott signed a bill expanding the state school voucher program on June 20. The legislature set aside more than \$18 million for the program. Parents of "special-needs" children will receive state funding for private-school tuition. Kathleen McGrory noted in the *Tampa Bay Times*, "The measure was a priority for the Foundation for Florida's Future, the influential think tank founded by former Gov. Jeb Bush."

The school voucher program, as it is commonly called, is really more of a tax credit or neo-voucher. McGrory explained, "The voucher program, also known as the Florida Tax Credit Scholarship Program, provides private school scholarships for children from low-income families. The scholarships are funded by businesses, which receive dollar-for-dollar tax credits to exchange for their donations." Public education and civil rights groups launched a last-minute campaign to urge a veto, but Gov. Scott, up for reelection in what might be a tight race, decided to go with his fellow Republicans.

Just as the governor signed the legislation, a reporter in the *Sun-Sentinel* reported that many disabled students in private schools lack full-time teachers with special education training. Dan Sweeney wrote, "Learning disabled students can get up to \$19,829 of taxpayer money each year to attend private school if they choose – but there is no state accountability to ensure the kids' needs are being met. The law that created the vouchers does not require private schools to have anyone on staff with any sort of certification in dealing with children with learning disabilities. Nor are there public controls in place to check whether the schools are helping them."

Voucher opponents struck back on July 16 when the Florida Education Association (FEA), representing 140,000 public school personnel, filed suit charging the voucher expansion violated a constitutional requirement that each law be limited to a single subject. (The voucher expansion was tacked on to another bill at the last minute.)

FEA attorney Ron Meyer said his group had "grave concerns about the constitutionality of the tax credit (scholarship) program and the damage potentially being done in these unregulated, unaccountable schools." Florida voters rejected a very similar plan in November 2012 by 55% to 45%.

- North Carolina's Wake County Superior Court Judge Robert Hobgood ruled on August 21 that the state school voucher plan violates the state constitution. The Republican-dominated General Assembly had set aside \$10 million for the voucher program. Plaintiffs sued on constitutional grounds and Hobgood blocked the program in February pursuant to a trial on merits. But the state Supreme Court "unfroze" the

program in May. State Attorney General Roy Cooper defended the state law and supported the early distribution of funds. The Raleigh *News Observer* reported July 17: "But distributing the money before a court hearing late next month would cause needless chaos," said Burton Craig, an attorney for plaintiffs who are challenging the voucher program. "It's taxpayer money. It makes sense to have a ruling on whether it's constitutional before we release that money to private schools. Once money is paid out, it's hard to get it back."

Judge Hobgood had ruled on July 30 that the state can disburse school voucher funds in advance of a final court decision.

- New York State legislators did not pass a tax credit bill this year that would have benefitted private, mostly church-related, schools. The so-called "Education Investment Tax Credit" failed to make it to a floor vote before the legislature adjourned on June 19. Cardinal Timothy Dolan was furious, telling *New York Post* readers that "this year's state budget was the best opportunity ever" to adopt the tax credit scheme. He warned, "Rest assured, this issue will be kept front and center by me and my brother bishops." ■

Updates

Religious Groups Bombard Obama on Executive Order

President Obama's executive order banning discrimination against gay and lesbian workers in companies that contract with the federal government was issued on July 21. It included no sweeping exemption for religious groups, which was the focus of considerable debate before the order was announced.

A June 25 letter signed by 150 conservative religious groups and leaders asked for a religious exemption and warned, "Any executive order that does not fully protect religious freedom will face widespread opposition and will further fragment our nation."

They were joined by a July 1 letter from generally moderate and pro-Obama religious leaders who called for a "robust religious exemption." Rick Warren, a prominent evangelical who delivered the invocation at Obama's first inauguration, signed this appeal, along with Catholic Charities and groups affiliated with the National Association of Evangelicals.

Religious liberals fought back. On July 9 about 100 liberal faith leaders urged the president to issue the anti-bias order without religious exemptions. So did 50 constitutional law professors led by Katherine M. Franke of Columbia University Law School.

On July 16, 98 national organizations urged the president not to allow "taxpayer-funded discrimination in any guise" and reminding him that "exempting religiously affiliated organizations that contract with the federal government from prohibitions on discrimination by federal contractors would do just that." ARL is part of this coalition.

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Updates, continued from page 9

(See ARL in Action).

Obama's order added "sexual orientation" and "gender identity" to a 1965 order banning discrimination because of race, color, religion, sex, or national origin. It does not affect "grants," which are usually regulated by Congress.

Abortion Rights

Louisiana has imposed new restrictions on abortion. Gov. Bobby Jindal signed legislation on June 12 that might force three of the state's five abortion clinics to close. The bill requires physicians to have admitting privileges within 30 miles of an abortion clinic. Reuters correspondent Jonathan Kaminsky wrote: "Oklahoma's governor signed such a measure last month. Similar laws have taken effect in five states: Kansas, North Dakota, Tennessee, Utah and Texas, where about a third of abortion clinics have closed since that state's law took effect late last year after legal battles. Laws have been blocked in Alabama, Mississippi and Wisconsin pending the outcomes of court challenges." A second measure signed by Jindal forbids abortion providers from giving health instruction in public or charter schools.

Missouri Gov. Jay Nixon vetoed legislation requiring a 72-hour waiting period for abortion, saying the bill showed a "callous disregard for women" by including no exceptions for rape and incest victims. Republican legislators vowed to override the veto when they return in September.

A **Mississippi** law that would close the state's only remaining abortion clinic was held unconstitutional on July 29 by the U.S. Court of Appeals for the Fifth Circuit. Writing for the 2-1 majority, Judge E. Grady Jolly said, "Mississippi may not shift its obligation to respect the established constitutional rights of its citizens to another state. Such a proposal would not only place an undue burden on the exercise of the constitutional right, but would also disregard a state's obligation under the principle of federalism – applicable to all fifty states – to accept the burden of the non-delegable duty of protecting the established federal constitutional rights of its own citizens."

Alabama's 2013 law requiring doctors at abortion clinics to have hospital admitting privileges was declared unconstitutional by U.S. District Judge Myron Thompson on August 4. Thompson wrote, "The evidence compellingly demonstrates that the requirement would have the striking result of closing three of Alabama's five abortion clinics, clinics which perform only early abortions, long before viability. Indeed, the court is convinced that, if this requirement would not, in the face of all the evidence in the record, constitute an impermissible undue burden, then almost no regulation, short of those imposing an outright prohibition on abortion, would."

The court allowed a temporary restraining order to remain in effect until a final ruling on the law is issued.

The U.S. Senate Judiciary Committee held hearings in July on the "Women's Health Protection Act," sponsored by Sen. Richard Blumenthal (D-CT). Blumenthal told *The Atlantic*, "The reason for this bill is the cascading avalanche of restrictions on reproductive health care around the country. More than half the states now have these unwarranted and unconstitutional restrictions."

A West Palm Beach, **Florida**, ordinance that bans amplified sound within 100 feet of health-care facilities is not unconstitutional. Anti-choice groups challenged the law, claiming their right to protest outside clinics was protected by the First Amendment. A three-judge panel of

the U.S. Court of Appeals for the Eleventh Circuit, in a unanimous ruling August 6, upheld a lower court decision, and said, "Instead of casting a wide net that captures innocent speech, the sound ordinance targets only actions near health care facilities that produce types of noise that can endanger patients... Construed narrowly to avoid constitutional concerns, the sound ordinance prohibition on loud, raucous, or other unreasonably disturbing amplified noise is a valid time, place, or manner restriction because it is content neutral, is narrowly tailored to advance a substantial government interest, and leaves open alternative channels of communication."

Republicans Solidify Evangelical Base

While evangelicals have been the most reliable GOP voting bloc for decades, giving over 80% support for candidates Bush, McCain and Romney, party leaders are aiming straight at them for the 2014 election cycle. On June 27 the Republican National Committee launched its *GOPFaith.com* website to rally conservative Christians. Party chairman Reince Priebus set up the RNC Faith Engagement group last year and appointed South Carolina conservative Christian Chad Connelly as "director of faith engagement."

Writes David Gibson in Religion News Service on June 27, "The plan is to identify 100,000 believers who will spread the word at the grass roots, especially in churches. Central to the effort are pastors, who Connelly said have been too reticent to preach about political issues." Gibson added, "The new effort is also a signal that despite the internal feuds over whether the GOP should downplay divisive issues like abortion and gay marriage, the party's leadership knows it needs religious conservatives if it hopes to capitalize on Democratic weaknesses in November." The website says the group will emphasize "pro-life legislation, religious liberties, and getting rid of Obamacare."

Kentucky Approves Pastoral Counselors

Beginning in July, Kentucky now allows religious mental health counselors to serve in the state mental health care program. They are called licensed pastoral counselors. About 30 clergy who have professional mental and behavioral health backgrounds will join the state-financed program. All counselors, secular or religious, must hold a master's degree in counseling and have extensive clinical experience. Kentucky becomes the sixth state to allow faith-based mental health services. The others are Arkansas, Maine, New Hampshire, North Carolina and Tennessee.

Turkmenistan Makes "Worst Nations" List

For the first time the Central Asian nation of Turkmenistan was named a "country of particular concern" for its poor record on religious liberty by the U.S. State Department. The annual ranking released July 28 criticized the Sunni Muslim nation for discrimination against religious minorities, particularly Shiite Muslims and Protestant Christians. Turkmenistan forbids private worship and restricts pilgrimages and religious education.

Eight other nations that have remained on the list of particular concern since 2006 include Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan and Uzbekistan. Eight additional countries were sighted for failing to protect religious minorities: Syria, Sri Lanka, Egypt,

Iraq, Bangladesh, Indonesia, India and Nigeria.

This year's report singled out the displacement of religious minorities in trouble spots throughout the world. "In 2013, the world witnessed the largest displacement of religious communities in recent memory," the report said. "In almost every corner of the globe, millions of Christians, Muslims, Hindus, and others representing a range of faiths were forced from their homes on account of their religious beliefs. . . . Communities are disappearing from their traditional and historic homes and dispersing across the geographic map. In conflict zones, in particular, this mass displacement has become a pernicious norm."

This report, officially called the "2013 International Religious Freedom Report," also concluded, "Around the world, individuals were subjected to discrimination, violence and abuse, perpetrated and sanctioned violence for simply exercising their faith, identifying with a certain religion, or choosing not to believe in a higher deity at all. . . . The failure of many governments to combat religiously motivated discrimination creates an environment that emboldens violent and discriminatory actions by some in the society. In many instances, governments increasingly failed to investigate or prosecute crimes targeting member of religious minority groups, creating a climate of impunity."

Secretary of State John Kerry submitted the annual review to Congress and noted that it "highlights areas for change, action and accountability."

Prekindergarten Hits Church-State Wall

New York City Mayor Bill de Blasio's expansion of government-funded prekindergarten education has raised church-state concerns. His administration has urged religious schools to take more pupils, claiming that public schools lack the space. Public funds of \$10,000 per student are available, and *The New York Times* estimated that "15% of the roughly 1,200 private providers accepted into the prekindergarten programs as of July 30 appear to be faith-based schools."

The church-state controversy is largely concerned with how much religion may be included and whether religious schools can give preference to applicants of the same religion when hiring teachers. *New York Times* columnist Sharon Otterman explained, "The city guidelines say that religious texts may be taught if they are 'presented objectively as part of a secular program of instruction.'" However, most religious symbols are disallowed.

"Religious-School Vouchers, Tax Credits Don't Have or Merit Public Support"

Sister Carol Cimino, the superintendent of schools for the Catholic Diocese of Buffalo, N.Y., rightly notes in a letter to the editor: "The purpose and underlying philosophy of Catholic schools is the transmission of Catholic doctrine and values throughout the day, in the curricular and extracurricular life of students" ("Catholic Schools Cannot 'Convert' to Charter School Status," May 21, 2014).

A similar generalization would apply to most other religion-related (Protestant, Jewish, Islamic) private schools, and that is the main reason why taxpayers should not be compelled to support such schools through vouchers or tax credits. Most Americans agree, as evidenced by a review my organization conducted of 27 referendums and most opinion polls between 1966 and 2012.

-- Edd Doerr, *Education Week*, June 11, 2014.

International Updates

Bujumbura, Burundi: Burundi's lower house of parliament unanimously passed a bill in July intended to limit new churches in the Central African nation. New regulations would require churches to have at least 500 members and a building. The bill was allegedly designed to curb the "proliferation of churches," especially makeshift tents. BBC News Africa reported that "a government survey last year found 557 denominations" among the nine million, mostly Christian, inhabitants. Churches must register with the government, and foreign-based churches must have 1,000 members. The bill is expected to pass the Senate and go to President Pierre Nkurunziza for signature within 30 days. The president is a conservative Christian whose wife is a preacher at an evangelical church. Burundi is about 80% Catholic.

Canberra: Australia's High Court ruled on June 20 that a federal government program funding chaplains in schools violates the constitution. Each year since 2007, chaplains provided by the government serve in 2,700 schools. The program costs the federal government \$60 million annually (\$57 million in U.S. dollars). The main plaintiff and critic of the program, Roy Williams of Queensland, won a 2012 ruling that the government had exceeded its constitutional authority. The government then amended legislation to keep the chaplaincy going, but the High Court unanimously held the program unconstitutional. It has been administered by the Scripture Union, a Protestant group.

Williams told the Australian Broadcasting Corporation, "It always seemed totally inappropriate that a program could be put into public schools on no other basis than the largely unqualified people that were going in – with the only proviso being that they be religious." The national teachers union and the Green Party supported the challenge, saying that the schools should be provided with counselors, psychologists, and welfare workers rather than chaplains. The program may survive, however, if funds are provided by the states, which run the schools, rather than the federal government. The National School Chaplaincy Association said the funding should be provided by the individual state governments.

London: The government announced in June that all schools in the United Kingdom that receive public funding must not teach "creationism as scientific fact." The "Funding Agreement" prohibits "any doctrine or theory which holds that natural biological processes cannot account for the history, diversity, and complexity of life on earth and therefore rejects the scientific theory of evolution." Discussion of beliefs about the origin of the earth is allowed in religious education classes. The decision was praised by the British Humanist Association.

London: The Labour Party endorsed continued public funding for faith-based schools, despite a poll in *The Observer* that found nearly two-thirds of voters are opposed to state funding of religious private schools. Many voters thought religious schools should be abolished. A Labour spokesman told *The Tablet*, a Catholic weekly magazine, on June 26, that "The Labour Party believes faith schools make a hugely valuable contribution and a future Labour government would support them."

Labour leader Ed Miliband, who will become prime minister if his party defeats the Conservatives in next May's election, reiterated this support at a National Prayer Breakfast attended by Archbishop of Canterbury Justin Welby. In his address Welby claimed that church schools "promoted tolerance," though there is little or no proof to the claim.

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Both major British parties support financing of faith-based schools.

State support of religious schools received a jolt in a July 15 report charging an elite Catholic all-boys state school, the London Oratory, with discriminating against non-Catholics in its admission policy. The Office of the Schools Adjudicator (OSA) found the school's policy "in breach of the School Admission Code." This included preference for active Catholics and "refusing admission of children of no faith." OSA also found that "the arrangements unfairly disadvantage Catholic families who are less well off." The school, whose past pupils include the sons of former Prime Minister Tony Blair and Deputy Prime Minister Nick Clegg, said it would appeal to Judicial Review.

Luxembourg: Predominantly Catholic Luxembourg's parliament (the Chamber of Deputies) approved same-sex marriage on June 18 by a whopping 56-4 vote. The bill, which also allows same-sex couples to adopt children, will go into effect next year. The Grand Duchy becomes the 16th nation to approve same-sex marriage nationwide. Parts of the United States and Mexico also allow same-sex marriage, as does the United Kingdom (except in Northern Ireland).

ARL in Action

Obama's Executive Order: To Exempt or Not Exempt

Americans for Religious Liberty joined 97 other civil rights, civil liberty and religious freedom groups in urging President Obama not to exempt religious organizations from his forthcoming executive order barring discrimination by federal contractors on the basis of sexual orientation and gender identity.

These organizations urged the president not to accede to demands from some religious groups that they be exempt from the nondiscrimination rules. In a July 16 letter they said: "Religious freedom is one of our most cherished values, a fundamental and defining feature of our national character. It guarantees us the freedom to hold any belief we choose and the right to act on our religious beliefs within certain limits. It does not, however, provide organizations the right to discriminate using taxpayer dollars. When a religiously affiliated organization makes the decision to request a taxpayer-funded contract with the federal government, it must play by the same rules as every other federal contractor."

Organizations joining this effort include civil rights (NAACP), civil liberties (ACLU, Anti-Defamation League, People for the American Way) ecumenical (Interfaith Alliance) and religious (Baptist Joint Committee for Religious Liberty, Catholics for Choice, American Jewish Committee, Hindu American Foundation, The Sikh Coalition, Union for Reform Judaism, Unitarian Universalist Association, and several branches of the United Church of Christ and the United Methodist Church). Numerous other secular and progressive groups signed the letter.

The president agreed.

New Delhi: Islamic courts have no legal authority in India, according to a July 7 Supreme Court decision. India's highest court said individual Muslims may abide by Sharia court rulings but cannot be legally forced to do so. "No religion is allowed to curb anyone's fundamental rights," Judge C.K. Prasad said. The case was filed in 2005 by attorney Vishwa Madan, who charged that India was allowing a parallel judicial system that often conflicted with Indian civil law. The Supreme Court rejected a complete ban on Sharia courts but allowed a voluntary consultation for arbitration in certain areas. Muslim leaders denounced the ruling and urged the nation's 150 million Muslims to consult Sharia courts in matters of marriage, divorce and inheritance.

Paris: A French court's acquittal of a doctor who ended the suffering of seven dying patients has reopened end-of-life issues. Tom Heneghan wrote in *Reuters*, "Three European courts stepped carefully around delicate end-of-life issues on Wednesday [June 25], with one rejecting assisted suicide, another delaying it and a third acquitting a doctor from charges he murdered dying patients. The varied rulings by Britain's Supreme Court, the European Court of Human Rights and a regional French court reflected the difficulty of drawing a clear legal line between aiding terminal patients to die in peace and committing murder."

At present Belgium, Luxembourg, the Netherlands and Switzerland allow assisted suicide. "But opposition – especially from religious groups – is strong and countries such as France considering legalization often find the issue to be a political minefield," noted Heneghan. Britain's Supreme Court seems unlikely to support euthanasia.

Paris: France offered asylum on July 28 to thousands of Christians driven from their homes by the fanatical extremist group calling itself the Islamic State of Iraq and Syria (ISIS). ISIS has destroyed numerous Christian churches and has warned Christians that they must convert to Islam, pay a tax, or face death. French government officials said, "France is outraged by these abuses that it condemns with utmost firmness. The ultimatum given to these communities in Mosul is the latest example of the terrible plight that Jihadist groups in Iraq, Syria, and elsewhere pose to these populations." Richard Spencer, Middle East correspondent for the British newspaper, *The Telegraph*, wrote, "In 2003, before the allied invasion, there were about a million Christians, if not more, in Iraq. About three quarters have left since amid the civil war and targeted attacks by jihadists."

ISIS has also destroyed dozens of historic religious shrines and graves sacred to Jews, Christians and Shiite Muslims in Mosul, which UNESCO denounced as "deliberate and systematic destruction."

Strasbourg: The European Court of Human Rights (ECHR) upheld France's ban on wearing burqas in public places. The July 1 decision concluded that France encouraged its citizens to "live together" and "helped everyone to integrate." Previous ECHR decisions had upheld French bans on headscarves in educational institutions and its regulation requiring the removal of scarves, veils and turbans at security checks. The case was brought by a French citizen of Pakistani origin who claimed the ban violated her freedom of thought, conscience, religion and speech.

Vatican City: The Vatican admitted on June 26 that "a vast majority" of ordinary, practicing Catholics reject the church's ban on birth control as "an intrusion in the intimate life of the couple and an encroachment on the autonomy of conscience." The message was contained in a working document for a synod in October that will discuss deeply controversial issues, including sexuality, contraception, abor-

tion, marriage and divorce. The Vatican, under prodding from Pope Francis, sent out a 39-point questionnaire asking for opinions of the laity. Associated Press writer Nicole Winfield wrote, "Thousands of ordinary Catholics, clergy and academics responded, providing the Vatican with an unprecedented compilation of grass-root data to guide the discussion. Usually, such working papers are compiled by bishops alone. The responses, which were summarized in the working document, were brutally honest." Winfield quoted a central finding of the survey: "Responses from almost every part of the world frequently refer to the sexual scandals within the church (pedophilia in particular) and in general, to a negative experience with the clergy and other persons. Sex scandals significantly weaken the church's moral credibility."

Vatican City: The Vatican's financial watchdog signed a bilateral agreement with the U.S. Treasury Department in June. Josephine McKenna, who covers the Vatican for Religion News Service, explained the significance of the unusual move. "On Monday (June 30), officials with the Financial Information Authority announced it endorsed the agreement with the Office of the Controller of the Currency, an independent body in the U.S. Treasury Department responsible for regulating and supervising domestic and foreign banks. This is the latest example of the authority's efforts to build international cooperation and prevent a repeat of the corruption scandals that have engulfed the Vatican bank, known as the Institute for Religious Works." ■



Books and Culture

James Madison: A Life Reconsidered, by Lynne Cheney. Viking, 564 pp., 2014, \$36.00.

George Washington, Thomas Jefferson and James Madison were the three most important leaders in the launching of the United States, though Madison has unfortunately not been lionized to the same degree as the other two. Madison was the principal architect of the Constitution, the Bill of Rights, and the church-state separation principle imbedded in the Virginia and U.S. constitutions. He served this country admirably as a Virginia legislator, as a member of Congress and the Constitutional Convention, as Secretary of State, as President, and as a key adviser to Presidents Washington, Jefferson and Monroe.

Lynne Cheney's masterful, beautifully written biography of Madison thoroughly covers his six decade career as America's most important political thinker and actor, leaving little out regarding the political complexities and squabbles that plagued our country then as much as they do now. As a former public school history teacher I cannot praise it highly enough.

As early as page six Cheney writes of Madison's lifelong devotion to protecting religious liberty. She cites his 1785 Memorial and Remonstrance Against Religious Assessments, which led to the defeat of Patrick Henry's bill in Virginia to provide tax aid to churches, after which Madison "seized the moment to pass the Bill for Establishing Religious Freedom that Jefferson had authored half a dozen years before." She makes clear that Madison, like Jefferson, was a strong supporter of church-state separation, something today's political and religious conservatives dislike intensely.

Cheney says little about Madison's religious beliefs, other than his declining to be confirmed in the Anglican Church. Madison carefully avoided discussing his personal views on religion, though from early on he was apparently as much an Enlightenment Deist as Jefferson.

This book merits five stars and demands a wide readership.

—Edd Doerr

Nature's God: The Heretical Origins of the American Republic, by Matthew Stewart. W.W. Norton & Co., 2014, 566 pp., \$28.95.

A majority of Americans are distressingly ignorant of American history and thus not prepared to deal with the Religious Right's myths about the role of religion in the founding of our government. I attribute this to the fact that too many of our history teachers are coaches

whose interests lie elsewhere and that teaching the intricacies of our history too often exposes teachers to unwanted pressures.

Author Matthew Stewart puts our history straight with this in-depth examination of the thinking about religion of our key founders, Jefferson, Madison, Adams, Washington, Paine, and Franklin, plus such less well-known figures as Ethan Allen, Joel Barlow and Thomas Young. All were Deists (or deists) of one sort or another and were influenced by the work of such philosophers as Locke, Spinoza and other Enlightenment figures, who were in turn influenced by Epicurus (341-270 BCE) and Lucretius (95-55 BCE). The founders were neither "irreligious" nor like today's evangelicals, and they did their best not to stir up religious controversy. In addition, Deism was never an organized body or movement like a church.

The "Nature's God" of the book's title is the "Nature's God" of the Declaration of Independence, not the deity of the mid-18th century "Great Awakening" or of today's conservative evangelicals, but, rather, the somewhat generalized "First Cause" of Jefferson and the Deists, who often used the words God and Nature interchangeably.

Stewart neglects to note that Madison and Jefferson's efforts in laying the groundwork for religious liberty and church-state separation in Virginia would not have been successful without the support of Baptists and Presbyterians.

Stewart's book is a valuable contribution to our understanding of our nation's founding.

—Edd Doerr

A Chronicle of Echoes: Who's Who in the Implosion of American Public Education, by Mercedes K. Schneider. Information Age Publishing, 2014, 493 pp., \$25.00 paperback, \$50.00 hardback.

Swarms of school "reformers," or pseudo-reformers, like locusts at feeding time, are descending on our community public schools, our 13,000-plus local districts supposedly responsible to local parents and voters, with visions of fabulous profits dancing before their eyes. Charter schools, vouchers, tax credits (neo-vouchers), and cyber schools are the chosen vehicles for accessing the \$500 billion or so spent annually on the K-12 public schools serving nearly 90% of our 50 million students. Tsunamis of cash from billionaires and fat cat foundations are drowning the meager resources of teacher and educator organizations in the inadequately re-

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ported war on public schools.

Mercedes Schneider, an experienced teacher with a Ph.D. in applied statistics and research methods, enters the fray with a dynamite book that exposes the individuals and organizations involved in the incestuous campaigns to remake, or unmake, our schools, campaigns far too often out of sight and out of mind of the parents and voters who stand to lose their schools to outsiders. Prominent among them are Jeb Bush, Michelle Rhee, Joel Klein, Eva Moskowitz, Wendy Kopp, Paul Vallas, Arne Duncan, Chester Finn, Frederick Hess, to name but a few. She lists and discusses the corporations that pour money into organizations, think tanks and foundations backing the pseudo-reformers, a mind-numbing list, and analyzes at length the major foundation funders of the “reform” movement, Gates, Walton and Broad. She exposes to sunlight the alphabet soup of organizations of fake “reformers,” such as Rhee’s Students First, the National Council on Teacher Quality, Jeb Bush’s Foundation for Excellence in Education (FEE) and Chiefs for Change, among many others.

Schneider makes very clear that few of the “reformers” have actually had any experience teaching. One of the few is the ubiquitous Michelle Rhee, whose experience in the classroom was not extensive and was hardly exemplary. What we have is inexperienced “reformers” who want to run or profit from American education without getting their hands dirty in the real world of complicated kids, vast numbers of them from poor and minority families. She also shows that the charter and voucher schools are able to avoid serving the same children as the regular public schools that exist to serve all of them, regardless of SES (socioeconomic status) or degree of special needs.

Schneider’s richly detailed, comprehensive, well documented (with 88 pages of endnotes) book rates five stars. It is must reading for all who care about American public education.

—Edd Doerr

The Great and Holy War: How World War I Became a Religious Crusade, by Philip Jenkins. HarperOne, an imprint of HarperCollins Publishers, 2014, 438 pp., \$29.99.

Who would have thought it? A war that is usually seen today as a clash of competing nationalisms that resulted in the senseless slaughter of millions had strong religious underpinnings. Distinguished historian Philip Jenkins argues effectively and convincingly that religious ideologies stoked the war effort and gave it a peculiar zeal that has been ignored by previous historians.

He explains, “The First World War was a thoroughly religious event, in the sense that overwhelmingly Christian nations fought each other in what many viewed as a holy war, a spiritual conflict. Religion is essential to understanding the war, to understanding why people went to war, what they hoped to achieve through war, and why they stayed at war. . . . The majority of the world’s Christians were indeed engaged in a holy war that claimed more than ten million lives.”

As a result, “the war ignited a global religious revolution.” It did more than that. “It transformed not just the Christianity of the main combatant nations but also other great faiths, especially Judaism and Islam. It destroyed a global religious order that had prevailed for the previous half millennium and dominated much of the globe. The Great War drew the world’s religious map as we know it today.”

All the warring nations had religious communities that celebrated the war. This was especially true in countries with strong church-state ties, or established religions, such as Orthodox Russia, Protestant Germany, and the Ottoman Empire, with its Islamic caliphate.

Germany was a classic example. “Lutheran theologians became strident voices for expansionist militarism” and “Luther became a wonderful figurehead for aggressive nationalism at its most ruthless.”

In addition, apocalyptic and messianic movements and fringe groups such as Spiritualism grew as a result of wartime upheavals. “The First World War was a golden age for the fringe, for the esoteric, mystical, and occult.”

Finally, the Vatican under Pope Benedict XV became “the most significant center of Christian antiwar activism.” The pope’s peace plan would have led to “disarmament, social reconstruction and ending military conscription.” It made little headway, of course, and the pope was accused by German Protestants of favoring the Allies and by English Protestants of supporting Germany and the Central Powers.

Readers and history buffs who thought they knew all there was to know about the Great War will be challenged to think of it in different terms after reading this absorbing and well-documented study.

—Al Menendez

What They Wished For: American Catholics & American Presidents, 1960-2004, by Lawrence J. McAndrews. The University of Georgia Press, 2014, 503 pp., \$49.95.

McAndrews defines his book’s premise early on: “This book is the first study to examine the political ascendancy of American Catholics between Kennedy’s victory and Kerry’s defeat.” He continues, “Overall, American Catholics, though often fractious and at times feeble, contributed mightily to the nation’s political history as the twentieth century gave way to the twenty-first.”

Ironies abound in this interpretation of political history. While Kennedy, received 78% of the Catholic vote, the next Catholic candidate, John Kerry, could only draw 47%. McAndrews explains, “In a little over four decades, most American Catholics had gone from celebrating to repudiating one of their own.” He adds, “Kennedy’s triumph in a campaign that had much to do with his religion helped to ensure that Kerry’s loss would have little to do with his religion. . . . More affluent and less aggrieved than the Catholics of 1960, Kennedy’s offspring became Kerry’s orphans.” Finally, he says, “For many American Catholics, if the Kennedy victory seemed the fulfillment of what they wished for, the Kerry defeat seemed the confirmation of the admonition to be careful.”

He argues that Catholic support for civil rights and economic justice for the marginalized poor helped advance these issues to the forefront of national policy.

All of the major church-state issues are thoroughly examined as well. One example is “whether population control assistance should become part of the foreign aid program of the United States.” President Dwight Eisenhower rejected his own commission’s conclusion (the Draper Report) that the U.S. should support birth control programs abroad, saying “it is not a proper political or governmental activity or function or responsibility.” Ike added that “as long as I’m here,” the U.S. will have nothing to do “with this problem of birth control.”

But change was coming. McAndrews says, “The first Catholic in the White House thus became the first president to place the federal government firmly on the side of birth control. On this volatile issue, Kennedy recognized that the nation and the world were changing even if his church was not.” Kennedy moved slowly and carefully through the Agency for International Development, the National Institutes for Health, and the United Nations. “The United States endorsed an elevation proposal to inaugurate birth control assistance to other nations through the UN. . . . The Kennedy administration contributed \$500,000 to the World Health Organization for research on human

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McAndrews concludes, “From 1960 to 2004, American Catholics did not always win the debates surrounding the policies of their presidents. But whether espousing the just-war doctrine, Catholic social teaching, or the consistent ethic of life, American Catholics often certified that those debates ensued. Catholics put thoughts into the minds of the American people and words into the mouths of American presidents. Though at times crippled by dissent and crushed by scandal, the Church somehow remained resourceful and resilient. The U.S. presidents at times disregarded and defied it. But they dared not ignore it.”

This detailed and impressive study is ably documented with 100 pages of endnotes, strengthening the book’s credibility.

—Al Menendez

Good Catholics: The Battle over Abortion in the Catholic Church, by Patricia Miller. University of California Press, 2014, 332 pp., \$34.95.

Women’s rights of conscience, religious freedom and the right to decide for themselves with regard to contraception and abortion are inextricably intertwined. But women have been emerging from many centuries of patriarchalism and misogyny only in the last hundred years or so and then only slowly and unevenly, even in such advanced societies as ours, in which women still make up only a fifth of Congress and still have a lot of catching up to do.

A large part of the problem is religion, specifically in its most conservative forms. In America the biggest stumbling blocks for women’s rights of conscience on reproductive matters are the Catholic bishops and the leaders of the various Protestant fundamentalist camps. Patricia Miller’s excellent new book deals primarily with the top-down leadership of the Vatican and the bishops, who, it should be very clear, do not represent the views of most Catholics but are able to spook many politicians into thinking otherwise. The fact is that well over 90% of Catholic women have used contraception of one sort or another, most Catholics are pro-choice to one degree or another, and Catholic women have abortions at about the same rate as non-Catholic women. Separately, it might be noted that most Catholics disagree with the Vatican, referred to by some wags as the Old Boys Club on the Tiber, on divorce and remarriage, ordination of women, clerical marriage, and the need to send their kids to church schools, especially since the last traces of Protestant hegemony in U.S. public schools vanished half a century ago.

Miller carefully, meticulously (with 43 pages of endnotes and bibliography) traces how the American bishops created and poured resources

into the anti-choice movement for nearly a half century, how this movement tried unsuccessfully to amend the Constitution to reverse *Roe v. Wade*, how it acquired the aid of Protestant fundamentalists, how it then turned to a strategy of piecemeal chippings away at reproductive choice and access, mainly at the state level. She winds up with a discussion of the bishops’ efforts to thwart the contraceptive insurance mandate in the Affordable Care Act (Obamacare). She names names and provides abundant documentation.

Miller writes, “Catholics had fought for some hundred-plus years for an equal role in society by showing they could play by the same rules as everyone else. Now the bishops were telling them to thrust that aside and ask the government to give religious beliefs that emanated directly from the Vatican special preference under the law”

Importantly, Miller highlights the courageous Catholic theologians, clergy and activists who from the start have worked publicly and with limited resources to counteract the bishops’ all-out efforts to impose their patriarchalist misogynist theology on all women, Catholic and non-Catholic: Rosemary Radford Ruether, Robert Drinan, Daniel Maguire, Frances Kissling, Jon O’Brien, to name but a few. Much of the book is dedicated to the work of Catholics for Choice, originally Catholics for a Free Choice, founded in 1973, and publisher of the quarterly journal *Conscience*, of which Miller is a past editor.

Miller concluded that the success of prochoice Catholics “has important implications not just for Catholics and not just for women, but for anyone interested in religious pluralism in our democracy.”

Good Catholics rates five stars.

—Edd Doerr

Nation Building in Islamic Societies: King Abdullah the 1st and the Founding of Jordan, by Michael Nimier. Pen Press (Brighton, UK), 2014, 284 pp., \$23.25 paper.

Ottoman Empire rule over the Arab Middle East (Arabia, Jordan, Palestine, Syria, Iraq) ended nearly a century ago, to be replaced by British and French mandates until after World War II, and the creation of Israel and the current states. The reasonably informed reader can be excused for being bewildered by the complexity of matters in that area where so many political, religious, economic, and international interests have clashed and competed. British historian Michael Nimier helps sort things out in this study of the life and activities of Abdullah (1882 – 1951), a Hashemite descendant of the Prophet, whose complicated

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political career from just before World War I until his assassination, as king of Jordan, in 1951, marked him as one of the most important figures in Arab politics of the period.

Abdullah “established a functioning state in a tribal society but failed to create a nation.” Jordan “evolved into a satrapy in the service of the Hashemite ruling family. . . . The *raison d’être* of all the Arab states that came into existence after the First World War was to promote the aggrandizement and ambitions of the individual rulers and their families.”

Nimier continues, “Nation building in the Arab world has always been a contradiction in terms. . . . In the Middle East, a mosaic of heterogeneous populations, loyalty was never seriously channeled towards a common allegiance to the nation. (Kemal Ataturk’s experience in Turkey was the exception, but his Islamist-minded followers, in power today, are working hard to return to the status quo ante by surreptitiously doing all in their power to re-Islamize the state.) Allegiance in all Arab and Islamic states continues to lie in the family, the sect, the tribe and above all in the Sharia as it is interpreted in ‘your group.’”

“Nationhood in its secular meaning presupposes a separation between state and religion where the state applies one set of laws equally to all citizens regardless of their tribal, religious, ethnic, gender and sexual affiliations. This ideal is alien to the Muslim psyche as Islam considers itself to be both a religion and a state in one, and the two cannot be separated.”

Democracy in the Muslim world has a different character. “Democracy is not to be confused with rituals such as periodic voting at elections. . . . Syria, in the throes of a destructive civil war, appears to be the next candidate to join the Islamic fundamentalist camp.”

“True democracy is the end result of a lengthy historical process culminating in the emergence of viable institutions, an independent judiciary, a free press, a neutral civil service, emancipation and protection of minorities, freedom of all religions and most importantly freedom FROM religion, and the unconditional respect for the rule of law.”

“To all Muslims of the fundamentalist and literalist schools (well over half of the total population) their undisputed constitution already exists: it is the Quran which in their view addresses and regulates all aspects of their life and as such there is no need to update it.”

“The mind of the Islamists, literalists and their sympathisers is rooted

in the sixth century. . . . Nation building is the ultimate endeavour in a lengthy road map beginning with ‘Man Building.’ Here the West has succeeded in vanquishing the scourge of patriarchy and the medieval culture of machismo. It established equality between men and women, a far cry from today’s reality in the Islamic world where the culture of shame, honour (mostly related to females’ sexual life), and HARAM (forbidden by Allah), reigns supreme.”

He predicts, “The region, in its current Islamic year of 1434 AH Hijri, is on the eve of the very same convulsions and seismic changes that began to sweep the West in and before the same year of 1434 AD.”

This scholarly book could have benefited from a glossary, an explanatory listing of the *dramatis personae*, and the addition of more historical context, but it is a valuable contribution to understanding this crucial area.

—Edd Doerr

The Labyrinth: God, Darwin, and the Meaning of Life, by Philip Appleman. Quantuck Lane Press, 2014, 72 pp., \$17.95.

Perhaps the best way to review this new book by ARL national adviser Philip Appleman is to quote my jacket blurb on the book: “In *The Labyrinth*, poet, novelist and science writer Philip Appleman distills into one short, delightful, beautifully written book vast libraries of wisdom, history, science, ethics, and philosophy. *The Labyrinth* puts Appleman in the distinguished company of fellow Midwesterners Mark Twain and Ambrose Bierce.

—Edd Doerr

(This review calls to mind the fact that ARL’s board members, advisory board members [living and deceased], and staff have published a total of well over a thousand books. How many other organizations could say this?)