



VOICE OF REASON

The Journal of Americans for Religious Liberty

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Alito Confirmed

Samuel Alito became the 110th Supreme Court justice on January 31 after the Senate voted 58 to 42 to confirm his nomination. The decision, just hours before he joined his colleagues at President Bush's State of the Union address, was one of the few second-term victories for the beleaguered president.

The vote was largely along party lines. Only one Republican, Lincoln Chafee of Rhode Island, opposed Alito, and only four Democrats, all from states that Bush carried twice, supported him: Robert Byrd of West Virginia, Kent Conrad of North Dakota, Ben Nelson of Nebraska, and Tim Johnson of South Dakota. The Senate's lone Independent, James Jeffords of Vermont, voted against confirmation. Three of the four Democratic supporters of Alito face reelection this fall. As it was, the Alito approval vote was by the lowest margin since Clarence Thomas squeaked through in 1991 on a 52-48 vote.

Regionally, the South and the Rocky Mountain States were most supportive of Alito, though the four remaining Southern Democrats voted no. Smaller majorities came from the Border States and the Midwest. About two-thirds of senators from the Northeast and the Pacific Coast states opposed Alito, including both senators from his home state of New Jersey.

Alito's fellow Catholics voted 14-11 against confirmation, as did nine of eleven Jewish senators. Mormons and Protestants were overwhelmingly supportive, with 80% of the former and 70% of the latter voting yes. The two Greek Orthodox senators split.

The confirmation vote was assured when the Senate voted 72-25 on January 30 to cut off debate, ending any filibuster strategy, which required 41 negative votes. Hearings in January failed to produce any bombshells, though Democrats pressed Alito on some of his appellate decisions affecting civil rights, civil liberties, expansive government power, prisoners rights and workers protections. Little was said about

The Alito Confirmation Vote

Party	For	Against	% For
Republican	54	1	98.2
Democrat	4	40	9.1
(One Independent, James Jeffords of Vermont, voted against)			
Region			
South	18	4	81.8
Rocky Mountains	12	4	75.0
Border South	7	5	58.3
Plains/Midwest	12	10	54.5
New England	4	8	33.3
MidAtlantic	2	4	33.3
Pacific Coast	3	7	30.0
Religion			
Mormon	4	1	80.0
Protestant	40	17	70.2
Eastern Orthodox	1	1	50.0
Roman Catholic	11	14	44.0
Jewish	2	9	18.2

his pro-accommodationist leanings on church-state issues, though abortion became a central issue of the hearings. (Alito has a mixed record on abortion, though his avid supporters anticipate his support for more restrictive legislation and even a possible overturning of *Roe v. Wade*.)

For many civil libertarians, the Alito confirmation was a bitter disappointment. "Unfortunately, the balance of the Court has been tilted dramatically to the right, placing our fundamental freedoms in jeopardy," said Nan Aron, president of the Alliance for Justice. ■

Creationism Dealt Blow by Federal Court

A federal judge in Harrisburg, Pennsylvania, ruled on December 20 that it is unconstitutional for the Dover School District to require "intelligent design" as an alternative to evolution in high school biology classes. Judge John E. Jones III, a Republican appointed by George W. Bush, concluded that ID advances "a particular version of Christianity" and therefore runs afoul of the Establishment Clause of the US Constitution's First Amendment.

Jones held that intelligent design was not science but religion. He said the evidence is conclusive that ID is "creationism relabeled."

"To be sure, Darwin's theory of evolution is imperfect. However, the fact that a scientific theory cannot yet render an explanation on every point should not be used as a pretext to thrust an untestable alternative
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Death with Dignity Law Survives Court Test

The US Supreme Court upheld Oregon's physician-assisted suicide law on January 17. The 6-3 decision held that the federal Justice Department exceeded its legal authority when it sought to prohibit doctors from prescribing federally-controlled drugs to end the suffering of terminally ill patients. Attorney General John Ashcroft had taken this position in 2001.

The majority opinion by Justice Anthony Kennedy fashioned the result as a federal/state relations question, not a right to die or freedom of conscience issue. Kennedy wrote that the Controlled Substances Act (CSA), passed by Congress in 1970, was meant to stop drug abuse and drug trafficking, not to overrule the traditional right of the states to regulate medical practice in their jurisdictions. "The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it."

The majority held that it was impossible "to defend the Attorney General's declaration that the statute impliedly criminalizes physician-assisted suicide. "[O]ur case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. . . . The structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the State's police powers."

The majority opinion was unpersuaded that Attorney General Ashcroft had the requisite authority to overrule Oregon law: "On November 9, 2001, without consulting Oregon or apparently anyone outside his Department, the Attorney General issued an Interpretive Rule announcing his intent to restrict the use of controlled substances for physician-assisted suicide." This action "would substantially disrupt" the law twice passed by Oregon voters.

Kennedy was joined by Justices Stephen Breyer, Ruth Bader Ginsburg, Sandra Day O'Connor, David Souter, and John Paul Stevens.

A dissent by Antonin Scalia was joined by Clarence Thomas and the new Chief Justice John Roberts, Jr. A separate dissent was also issued by Thomas. Scalia's dissent argued that banning physician-assisted suicide was a "legitimate medical purpose" and "the most natural" interpretation of the concept of "public health and safety." Thomas's dissent argued that the Court was being inconsistent because it interposes

People do not want a sectarian political party, including a lot of people who are traditional Republicans.

—John Danforth (US Senator from Missouri, 1977-1995, US Ambassador to the United Nations, 2004); The Washington Post, February 2, 2006.

federal authority to invalidate a California law legalizing the medical use of marijuana.

Oregon voters passed the Death with Dignity Act in 1994 to permit doctors to prescribe, but not personally administer, a lethal dose to terminally ill patients who request it, providing that the patients are mentally competent. Voters reaffirmed this decision by an even larger margin in 1997. From 1997 to 2004, 208 people ended their lives under the provisions of this act. After Ashcroft issued his "Interpretive Rule" threatening prosecution of doctors, the state of Oregon, joined by a physician, a pharmacist and several terminally ill patients challenged the federal government in federal court in Oregon. The federal district court entered a permanent injunction against enforcement of Ashcroft's rule, and the Ninth Circuit US Court of Appeals agreed with a lower court in *Oregon v. Ashcroft* (2004). The Bush Administration appealed to the US Supreme Court and *Gonzales v. Oregon*, No. 04-623, is the result.

It is uncertain whether other states will follow Oregon's lead. The American public is divided on this culture war issue. A Pew Research Center poll released January 5 found that 46% of Americans support a right to die while 45% oppose it. Assisting suicide is a crime in 44 states and the District of Columbia, and a civil offense in Virginia. Ohio law is murky, since the state supreme court decriminalized assisted suicide but state regulations still forbid it. Only North Carolina, Utah and Wyoming laws say nothing about the matter.

State referenda supporting an Oregon-type law have failed in California, Maine, Michigan and Washington in recent years. Little activity is anticipated in state legislatures. On the federal level, some Republicans in Congress may try to reinterpret the Controlled Substances Act by specifically banning assisted suicide, but there seems to be no groundswell of support for such a move. ■

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

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Excerpts from Judge John E. Jones III's ruling in *Kitzmiller v. Dover School District*

"The evidence at trial demonstrates that ID is nothing less than the progeny of creationism. What is likely the strongest evidence supporting the finding of ID's creationist nature is the history and historical pedigree of the book to which students in Dover's ninth grade biology class are referred [*Of Pandas and People*]. *Pandas* is published by an organization called FTE [the Foundation for Thought and Ethics], as noted, whose articles of incorporation and filings with the Internal Revenue Service describe it as a religious, Christian organization. *Pandas* was written by Dean Kenyon and Percival Davis, both acknowledged creationists, and Nancy Pearcey, a Young Earth Creationist, contributed to the work.

"As Plaintiffs meticulously and effectively presented to the Court, *Pandas* went through many drafts, several of which were completed prior to and some after the Supreme Court's decision in *Edwards*, which held that the Constitution forbids teaching creationism as science. By comparing the pre and post *Edwards* drafts of *Pandas*, three astonishing points emerge: (1) the definition for creation science in early drafts is identical to the definition of ID; (2) cognates of the word creation (creationism and creationist), which appeared approximately 150 times, were deliberately and systematically replaced with the phrase ID; and (3) the changes occurred shortly after the Supreme Court held that creation science is religious and cannot be taught in public school science classes in *Edwards*. This word substitution is telling, significant, and reveals that a purposeful change of words was effected without any corresponding change in content, which directly refutes FTE's argument that by merely disregarding the words 'creation' and 'creationism,' FTE expressly rejected creationism in *Pandas*. In early pre-*Edwards* drafts of *Pandas*, the term 'creation' was defined as 'various forms of life that began abruptly through an intelligent agency with their distinctive features intact—fish with fins and scales, birds with feathers, beaks, and wings, etc,' the very same way in which ID is defined in the subsequent published versions. . . .

"The weight of the evidence clearly demonstrates, as noted, that the systemic change from 'creation' to 'intelligent design' occurred sometime in 1987, after the Supreme Court's important *Edwards* decision. This compelling evidence strongly supports Plaintiffs' assertion that ID is creationism re-labeled. . . .

"After a searching review of the record and applicable case law, we find that while ID arguments may be true, a proposition on which the Court takes no position, ID is not science. We find that ID fails on three different levels, any one of which is sufficient to preclude a determination that ID is science. They are: (1) ID violates the centuries-old ground rules of science by invoking and permitting supernatural causation; (2) the argument of irreducible complexity, central to ID, employs the same flawed and illogical contrived dualism that doomed creation science in the 1980's; and (3) ID's negative attacks on evolution have been refuted by the scientific community. . . .

"Expert testimony reveals that since the scientific revolution of the 16th and 17th centuries, science has been limited to the search for natural causes to explain natural phenomena. This revolution entailed the rejection of the appeal to authority, and by extension, revelation, in favor of empirical evidence. Since that time period, science has been a discipline in which testability, rather than any ecclesiastical authority or philosophical coherence, has been the measure of a scientific idea's worth. . . .

"ID is at bottom premised upon a false dichotomy, namely, that to the extent evolutionary theory is discredited, ID is confirmed. This argument is not brought to this Court anew, and in fact, the same argument . . . was employed by creationists in the 1980's to support 'creation science.' . . . We do not find this false dichotomy any more availing to justify ID today than it was to justify creation science two decades ago.

"ID proponents primarily argue for design through negative arguments against evolution, as illustrated by Professor Behe's argument that 'irreducibly complex' systems cannot be produced through Darwinian, or any natural, mechanisms. However, we believe that arguments against evolution are not arguments for design. . . .

"Those who disagree with our holding will likely mark it as the product of an activist judge. If so, they will have erred as this is manifestly not an activist Court. Rather, this case came to us as the result of the activism of an ill-informed faction in a school board, aided by a national public interest law firm eager to find a constitutional test case on ID, who in combination drove the Board to adopt an imprudent and ultimately unconstitutional policy."

Creationism, *continued from page 1*

hypothesis grounded in religion into the science classroom or to misrepresent well-established scientific propositions."

Jones said that advocates of ID "have bona fide and deeply held beliefs which drive their scholarly endeavors" but the concept is a religious concept that fails to meet the requirements of scientific inquiry and endeavor. The board's actions "show religious favoritism or sponsorship."

Jones' 139-page opinion was contemptuous of the motivation of the Dover school board. "The citizens of the Dover area were poorly served by members of the Board who voted for the ID policy," he observed. He said they had "lied" to cover up their underlying religious convictions, made a decision of "breathhtaking inanity," and "dragged" their community into "the legal maelstrom with its resulting utter waste of monetary and personal resources." He observed, "It is ironic that several of these individuals, who so staunchly and proudly touted their religious convictions in public, would time and again lie to cover their tracks and disguise the real purpose behind the ID policy."

The case began when the majority of the Dover Area School District voted in the fall of 2004 that teachers would be required to present "Intelligent Design" as "an explanation of the origin of life that differs from Darwin's view." In January 2005 teachers were required to read a definition of ID to all students in ninth-grade biology classes. Eleven parents of Dover students filed suit in the US District Court for the Middle District of Pennsylvania. A six-week trial was held in October and November, 2005.

The controversy officially concluded on January 3, 2006, when the newly elected Dover Area School Board unanimously rescinded the policy. Voters ousted the former school board, which brought on the crisis, in November balloting.

The decision was praised by the National Science Teachers Association, whose executive director Jerry Wheeler said, "This is a great day for science education. Judge Jones' decision will echo far beyond Pennsylvania because not only does it maintain sound science for the students of Dover, but his comprehensive and detailed opinion also provides great clarity that ID is not science and has no place in science instruction."

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Creationism, *continued from page 3*

Wayne W. Carey, executive director of the National Association of Biology Teachers, also applauded the ruling. “This is an important day for our nation’s youth. By keeping intelligent design out of the science classroom, Dover’s students will receive a much better education. Judge Jones’ decision both reinforces the Establishment Clause of the First Amendment and protects the academic freedom of the Dover public schools.”

Selected Editorial Opinion

New York Times, December 22, 2005

“Judge Jones’s decision was a striking repudiation of intelligent design, given that Dover’s policy was minimally intrusive on classroom teaching. Administrators merely read a brief disclaimer at the beginning of a class asserting that evolution was a theory, not a fact; that there were gaps in the evidence for evolution; and that intelligent design provided an alternative explanation and could be further explored by consulting a book in the school library. Yet even that minimal statement amounted to an endorsement of religion, the judge concluded, because it caused students to doubt the theory of evolution without scientific justification and presented them with a religious alternative masquerading as a scientific theory.

“The case was most notable for its searching inquiry into whether intelligent design could be considered science. The answer, after a six-week trial that included hours of expert testimony, was a resounding no.

“The judge found that intelligent design violated the centuries-old ground rules of science by invoking supernatural causation and by making assertions that could not be tested or proved wrong. Moreover, intelligent design has not gained acceptance in the scientific community, has not been supported by peer-reviewed research, and has not generated a research and testing program of its own. The core argument for intelligent design – the supposedly irreducible complexity of key biological systems – has clear theological overtones. St. Thomas Aquinas argued that because nature is complex, it must have a designer.

“The religious thrust behind Dover’s policy was unmistakable. The board members who pushed the policy through had repeatedly expressed religious reasons for opposing evolution, though they tried to dissemble during the trial. Judge Jones charged that the two ringleaders lied in depositions to hide the fact that they had raised money at a church to buy copies of an intelligent design textbook for the school library. He also found that board members were strikingly ignorant about intelligent design and that several individuals had lied time and again to hide their religious motivations for backing the concept. Their contention that they had a secular purpose – to improve science education and encourage critical thinking – was declared a sham.

“No one believes that this thoroughgoing repudiation of intelligent design will end the incessant warfare over evolution. But any community that is worried about the ability of its students to compete in a global economy would be wise to keep supernatural explanations out of its science classes.”

Houston Chronicle, December 22, 2005

“The Dover case will not settle the philosophical argument, but it should stand as a landmark decision that, barring reversal of Supreme Court precedent, will make it difficult for intelligent design to be taught in public school science classes. There is a way that intelligent design might play a legally acceptable role in the science

curriculum: as an example of how the scientific method can test a hypothesis and, finding it invalid, discard it.”

Finally, Alan Leshner of the American Association for the Advancement of Science said, “We are heartened by Judge Jones’ decision, which recognizes that Intelligent Design was injected into Dover’s biology classes for religious reasons rather than scientific reasons.”

People For the American Way President Ralph Neas was jubilant: “Today’s ruling is a momentous affirmation of the Constitution’s prohibition of government endorsement of religion. This decision is a resounding victory for science education, for public school students, and for the Constitution.”

curriculum: as an example of how the scientific method can test a hypothesis and, finding it invalid, discard it.”

Dallas Morning News, December 21, 2005

“Yesterday’s ruling that the body of thought dubbed intelligent design should not be injected, by mandate, into science classrooms is correct.

“It is important to understand, however, what the ruling does not do. In drawing a line between science and other modes of thought, such as philosophy or religion, the judge did not elevate science above those other modes. Nor did the ruling suggest that any branch of science, including Darwin’s theory of evolution through natural selection, is fixed, immutable to scrutiny.

“Public schools can and should address important questions about the origin and meaning of life through the social sciences, literature and comparative religions. It would be wrong to preface those lessons with a warning that the ideas presented are unsupported by science. Each discipline has its own validity, and part of a student’s intellectual journey is to draw upon each of them in fashioning a worldview.

“Scientists, no less than philosophers or theologians, are fired not by what is known by what is unknown. It is merely that each discipline proceeds by its own rules of inquiry and that preserving those rules is vital to the integrity of their quest.”

York Dispatch, December 21, 2005

“Judge Jones in his 139-page ruling said the ‘citizens of the Dover area were poorly served by the members of the Board who voted for the ID policy.’ The judge was being too kind by several degrees. In violating the Establishment Clause of the US Constitution, the board members – especially those who lied on the witness stand in a pathetic attempt to defend their insistence on teaching creationism along with valid science – threw their oaths as public servants to uphold the law out the window. In demanding that ninth-grade biology students be informed that alternatives existed to the Darwinian theory of evolution, the purely religious motives of creationism supporters was more than obvious. They encouraged students to keep an open mind, while offering intelligent design as the only alternative. That’s a religious view and a clear violation of the Constitution.”

York Daily Record, December 21, 2005

“Judge Jones got it exactly right, eviscerating the pathetic case put forth by the defense.”

The Legal Intelligencer, December 21, 2005

“What Judge Jones did in his opinion, systematically and ruthlessly, was expose intelligent design as creationism, minus the biblical fig leaf, and advanced by those with a clear, unscientific agenda.”

Supreme Court's Catholic Majority: Will It Matter?

The ruling caused Pennsylvania junior senator Rick Santorum to withdraw his affiliation with the Christian Right law center that defended the Dover school district policy. Santorum has been a member of the advisory board of the Thomas More Law Center, based in Ann Arbor, Michigan. "I thought the Thomas More Center made a huge mistake in taking this case and in pushing this case to the extent they did," he told *The Philadelphia Inquirer*. Santorum, the third-ranking Republican in the US Senate, is trailing State Treasurer Robert P. Casey, Jr., in polls as he seeks a third term.

Other school districts which are toying with the idea of introducing ID into biology curricula may be deterred by the Dover ruling. For one thing, the Dover school district is now liable for at least \$1 million in legal fees incurred by the plaintiffs. This eventuality is expected to influence the Muscatine, Iowa, school board, which is presently evaluating the district's science curriculum. Two dozen states are still facing a similar movement to introduce challenges to evolution, according to the National Center for Science Education in Oakland, California, which monitors these efforts.

Science education remains weak in the United States, according to a report issued in December by the Thomas B. Fordham Institute. The group's "State of State Science Standards," released every five years, found that nearly half the states are doing a poor job of setting high academic standards for science education in public schools. Fordham Institute vice president Michael Petrilli warned, "Many states are not yet serious about teaching science. The first step is to set higher expectations, and too many states have low or a lack of expectations to respond to the new global competitiveness."

Overall, only seven states, including New York and California, received an A grade, while twelve received a B, and seven a C. Seven states received a D rating, while sixteen states got an F. Iowa was not included in the report because it does not set statewide standards for any subject.

The primary author of the report, Paul Gross, told *New York Times* reporter Michael Janofsky, that "religious and political pressures" over the last five years were undermining the teaching of evolution. Kansas received the lowest grade for any state, primarily because of its demotion of science standards and its anti-evolution orientation.

The executive summary of the report concludes that the treatment of evolution in state science standards was not much worse than in the 2000 report. But only 20 states in 2005, down from 24 in 2000, maintained "sound" instruction in evolution, while "marginal" or "failing" grades were given to 23 states, up from 19.

The entire report, "The State of State Science Standards," is available at www.edexcellence.net/foundation/publication/publication.cfm?id=352. ■

ARL Newsletter Becomes Journal

Twenty-four years ago, when Americans for Religious Liberty was founded, our main communication vehicle with members was a four-page newsletter called *Voice of Reason*. We have expanded over the last several issues to 24 pages of news, analysis, reviews and documentary material relating to the complex world of church-state relations. Therefore, the newsletter has become the journal. The name's the same, *Voice of Reason*, but the term journal is more appropriate as the range of reportage has increased.

As we enter our 25th year we will continue to inform our readers about the vast and fast-changing developments occurring in the intersections of religion, law and politics. As one can see from this issue, our 94th, the courts have become ever more prominent in resolving church-state disputes. And ARL has been involved in many of these rulings from our earliest days. Whatever the news source, *VOR* will be there to report it.

Newly-confirmed Justice Samuel Alito Jr. is only the eleventh Catholic of the 110 justices of the Supreme Court in over two centuries. What is unusual and, perhaps significant, is that five of the eleven are now serving.

The first Catholic on the Court was Roger Brooke Taney of Maryland, appointed by Andrew Jackson in 1836. For almost 50 years, there was no Catholic on the Court, though there were two from 1898 to 1921 and from 1923 to 1925. There were no Catholics at all before 1836, from 1864-1894 and from 1949 to 1956. Five of the first six Catholic justices were Democrats.

Another interesting fact is that seven of the eleven Catholics graduated from Ivy League law schools (four Harvard, two Yale, one Columbia). None were graduates of law schools at Catholic-affiliated universities.

All five Catholic justices on the present Court were appointed by Republican presidents and at least four of them adhere to a conservative judicial philosophy. This makes them decidedly out of the mainstream of US Catholic political thought and behavior. The majority of American Catholic voters are neither Republican nor conservative, though more of them vote Republican today than a generation ago. Thus, the present Catholic majority reflects the Republican dominance of recent US politics. Had more Democrats been elected to the White House, more of the Catholic justices might have been liberal or moderate in judicial philosophy. There are no Brennan-type Catholics on the present Court. But it is unlikely that Catholicism will influence their decisions in discernable ways. Justice Anthony Kennedy, a Catholic, wrote the majority opinion upholding Oregon's assisted suicide law, while three of his co-religionists dissented.

Dennis Hutchinson, a Supreme Court historian who teaches at the University of Chicago, told *Washington Post* reporter Alan Cooperman, "We've learned that Catholics can be conservative or liberal, and that in terms of judges, ideology trumps any sort of presumption about church doctrine – and that's true whether the justice is a Protestant, a Catholic or a Jew."

Most scholars agree that judicial philosophy will be more important than religious affiliation *per se*, as it generally has been in the past. "To say that all Catholics are ideologically identical and will vote in identical manners is inaccurate," commented Chester Gillis, a theology professor at Georgetown University, to Religion News Service.

But the reason or reasons for this intriguing historical majority have captured the attention of many Court-watchers. Franklin Foer, writing in *The New Republic* (November 14, 2005) said, "The emergence of the Court's Catholic bloc reflects the reality of social conservatism: Evangelicals supply the political energy, Catholics the intellectual heft."

Michael Novak, the conservative Catholic associated with the American Enterprise Institute, said the Catholic majority is "near certain proof that anti-Catholicism in politics is dead."

To be sure, some conservatives of all religious persuasions are hoping that the Catholic majority will push the Court to the right on church-state and other matters. Ironies abound. *Christianity Today*, which opposed Kennedy's election in 1960 and frequently criticized Catholic practices, now hails the new dispensation. In its January 2006 issue, columnist Ted Olsen wrote, "Thank God for conservative Catholics." ■

The Phony War on Christmas

by Albert J. Menendez

While it may seem preposterous in a world beset by terrorism, political unrest, natural disasters, poverty and medical crises, the use or non-use of the word “Christmas” became a contentious issue during the 2005 holiday season.

It started when some religious conservatives openly denounced their erstwhile hero George W. Bush for failing to include the word Christmas or any explicit religious message in his annual White House Christmas card sent to 1.4 million Americans (and paid for by the Republican National Committee). The trouble is, these zealots apparently failed to notice that Bush’s four previous cards also wished recipients a general happy holidays or season’s greetings. So did Bill Clinton on his eight holiday cards. The last president to wish “Merry Christmas” in his end of the year greeting was George H.W. Bush in 1992.

Fox News commentators John Gibson and Bill O’Reilly escalated the controversy by claiming there was a widespread conspiracy or plot to suppress Christmas in the United States. America’s right-of-center cable network, joined by the Catholic League and several evangelical pressure groups, denounced retailers and department stores for sending “holiday” catalogues instead of “Christmas” ones.

Researchers at stateline.org surveyed the greeting cards of the 50 governors and found that 37 of them chose the inclusive “Happy Holidays” formula, while nine opted for Christmas greetings and four governors sent no official cards (Minnesota, Nevada, New Mexico, Louisiana). Some of the more generic greetings included Christmas trees as artwork, including California Governor Arnold Schwarzenegger’s painting of a tree. Two Southern Baptist Republicans, Governor Bob Riley of Alabama and Governor Mike Huckabee of Arkansas, laid on the religious imagery, mentioning “our savior’s birth,” “the Messiah,” and “the risen Christ” on cards sent to constituents, friends and supporters.

A Pew Research Center poll found that Americans prefer “Merry Christmas” to “Happy Holidays” by 60% to 23%. But 45% also said it didn’t really matter. The poll also revealed that more Americans (52%) are disturbed by the “commercialization of Christmas” than are unhappy over (35%) “opposition to religious symbols in public places.” Ironically, evangelical Protestants, many of whose ancestors resolutely refused to even observe Christmas as a religious holy day, were the most likely to favor public Christmas observances.

While some conservatives lambasted the president and the culture generally, several conservative groups themselves sent out generic or secular holiday greetings. The Republican public relations firm Creative Response Concepts wished “Season’s Greetings and Best Wishes for a Joyous Holiday” to its supporters, while the conservative Hoover Institution sent secular greetings on a Christmas tree-less card bearing an ink and watercolor painting of a bare conifer tree.

President Bush may have redeemed himself in the eyes of religious conservatives with his “official” Christmas message, a custom dating back to Coolidge and Hoover. Among other things, Bush said, “We rejoice in the knowledge that the god who came to Earth that night in Bethlehem is with us still and will remain with us forever,” a remarkably personal statement for the chief executive of a secular democracy.

Not all evangelicals, however, buy the argument that Christmas is threatened. *Christianity Today* editorialized, “Our priority is not to make Christmas recognized in our society, but to make it religiously significant for the people who celebrate it.”

To be sure, there was a handful of disputes over religious symbols on public property in such places as Manhasset, New York, Neptune Beach,

‘War on Christmas’ Idea is Overblown

Religious fundamentalists are insisting that the American Civil Liberties Union and “liberal plotters” are seeking to do away with Christmas. They must be living in some imagined alternate universe. The ACLU and church-state separationists have nothing against Christmas or Christians. They seek only to keep the government’s hands off any religion’s sacred days.

These critics should be reminded that colonial New England Puritans, spiritual ancestors of today’s evangelical fundamentalists, disapproved so strongly of Christmas that they outlawed even its private celebration.

Also, Congress was officially in session on Christmas until 1856; businesses and schools remained open on Christmas until the late 1880s; Christmas was not a legal holiday in all states until near the end of the 19th century; and several mainstream Christian denominations declined to celebrate Christmas until the 20th century.

It should also be noted that a larger percentage of Americans celebrate Christmas today than at any time in our history.

— Louis Cable, Lufkin, Texas, in *The DC Examiner*, December 21, 2005

Florida and Dodgeville, Wisconsin. In Huntington, New York, a lawsuit was filed to remove a crèche and a menorah from the village green. A Religious Right legal group, the Orlando-based Liberty Counsel, set up a campaign to defend Christmas activities in municipalities and schools, threatening lawsuits if Christmas was not celebrated in some fashion.

But none of these events constituted a national campaign to suppress Christmas. Here are some facts:

- Polls show that over 90% of Americans celebrate Christmas in some fashion – secular, religious, or a combination of the two. That is more than the number of professed Christians (84%) and more than double the percentage who attend church weekly. Nearly 80% of Americans could name a favorite Christmas carol, according to a 1998 survey conducted by Ohio University and Scripps Howard News Service.

- The Christmas season accounted for total retail sales of \$439.5 billion, up 6% from last year.

- Publishers routinely issue about 50-75 adult books and 100-150 children’s titles devoted to some phase of Christmas, whether music, customs, traditions, or novels and anthologies of short stories with holiday themes. They would hardly publish this many if there were a concerted effort to suppress or downplay Christmas.

But politicians on the right, seeing another opportunity to widen the cultural war, raised tempers. Georgia’s legislature saw a number of bills filed that would ban state and local officials from restricting “verbal expressions” of Christmas. Its sponsor, Republican Rep. Sue Burmeister said, “As a group, Christians are feeling more and more persecuted in our country,” and then added, “Whether we like it or not, this country was founded by Christian pilgrims.”

Even the US House of Representatives saw the introduction of House Resolution 579, which “expressed the sense of the House that the symbols and traditions of Christmas should be protected.” Rep. John Dingell (D-MI) wrote a holiday jingle ridiculing the notion.

Hendrik Hertzberg summed up the controversy in a sparkling essay

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The Bible Goes to School

by Edd Doerr

Considerable attention has been drawn to a textbook produced by the Bible Literacy Project (BLP) in Fairfax, Virginia, for use in teaching about the Bible in public high schools. *The Bible and Its Influence* (BLP Publishing, 2006, 387 pp.) is a lavishly-illustrated, three-and-a-half pound, 9 x 12 inch page size textbook that the BLP reportedly spent five years and \$2 million to develop.

While Americans may be the most religious people in the industrialized world, they are also the most religiously illiterate and ignorant. Alleviating ignorance would be a good thing. In ruling unconstitutional school- or state-sponsored or mandated devotional Bible reading in public schools in 1963 in *Abingdon v. Schempp*, the US Supreme Court noted that "It might well be said that one's education is not complete without a study of . . . the history of religion and its relationship to the advancement of civilization. . . . Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment."

As a former teacher I can say without fear of contradiction that this is far easier said than done. There is no agreement among scholars, educators, or religious leaders as to precisely what should be taught about religion, how much, at which grade levels, whether it should be taught in social studies or language arts courses, whether mandatory or elective, and whether the instruction should be Pollyannishly bland and positive or historically accurate with warts and all. If the kids are going to learn about Dr. Martin Luther King Jr. or antebellum Quaker abolitionists, shouldn't they also learn about clergy who used the Bible to defend slavery and segregation? If the kids learn about the great cathedrals of Europe and the vast amount of religious art, music, and literature, shouldn't they also learn about the religious wars, pogroms, heresy trials, executions of Quakers in colonial Massachusetts?

The Bible and Its Influence appears at first glance to be a good-faith attempt to adhere to the requirement of both the First Amendment and the pluralistic nature of our society that teaching about religion be objective, balanced, and inclusive. The Jewish and Christian scriptures are undeniably significant, one of the most influential sets of writings in Western history, but there is more to alleviating ignorance about religion than simply learning superficially about the Bible.

To its credit the text replaces "BC" (Before Christ) and "AD" (Anno Domini) with the more neutral "BCE" (before the common era) and CE (the common era). The book also contains a comparison of the differences in the ordering of the books of the Hebrew scriptures and those of the Christian "Old Testament," and a list of the Apocrypha in the Catholic and Eastern Orthodox canons but not in the Protestant version, though the text does not attempt to explain why the orderings are different, not an unimportant matter.

Another odd omission: The copyright page indicates that "three translations of the Bible are used in the book," the King James (Protestant) version, the Jewish "Bible" (which Jews prefer to call the Scriptures), and the New Standard Revised Version produced by the National Council of Churches. There is no mention of the Catholic Bible, nor is the Catholic Church represented in the National Council.

The BLP textbook can be read with profit by students and adults of a wide religious spectrum, especially as it dwells largely on the Bible's significant influence on literature, art, rhetoric, and music.

However praiseworthy *The Bible and Its Influence* may be, it has serious shortcomings as a public school text. It does not place the Bible in historical context. It contains no hint that the "earliest" sections of the

Hebrew scriptures were written after the "Babylonian captivity"; no reference to the distinction between the Yahwist and Elohist strains in the Hebrew scriptures; no discussion of the contradictions in the Bible or of which parts may be historically more reliable and which are probably myths handed down through oral tradition; virtually no reference to the evolution of Hebrew religious thought or borrowings from other religions and cultures; no attention to "Q" or other sources of the Gospels; no mention of the controversies over what Jesus said or whether things like the utterances in the Sermon on the Mount were delivered in one speech or "assembled" from various sources by the Gospel writers.

Given that all too few students are anywhere near well-grounded in ancient or world history, I must conclude that a student finishing a course using this textbook will have a distorted, truncated, simplistic view of the subject matter. The book makes no reference to the abundant biblical scholarship of the last two centuries.

The Bible does not exist in isolation. The educated person must see how the Bible developed, how the official canon came to be developed, what was going on with real people in the real world during biblical times and during the long centuries after Christianity became the official religion of the Roman Empire, how Christianity won out over its competitors and how it borrowed from them, and what were the effects of the revival of ancient learning transmitted to Europe through Spain by the Arabs, the breakup of the Empire, the Crusades, the Inquisition, the Reformation, the Counter-Reformation, the rise of nation states, colonialism, anti-Semitism, religious wars, the development of religious toleration and freedom and church-state separation.

If public schools cannot present a comprehensive, balanced, fair, inclusive picture of religion in all its complexity, such instruction should not be offered until the student reaches college, though even there few students would likely sign up for an elective course, much less a major or minor. Of course, social studies and language arts as courses cannot avoid dealing with religion at appropriate points, within the restraints imposed by the First Amendment, basic fairness, and our pluralism.

Finally, it is curious that the two "general editors" of the book are a retired publishing executive, Cullen Schippe, and a venture capitalist, Chuck Stetson, whose qualifications to produce this sort of textbook are not to be found. What is to be found, according to one journalist, is that Stetson "has long been active in conservative religious and political causes"; that his father "supported far-right GOP candidates Alan Keyes and Gary Bauer"; that he "is the 'major organizing force' behind the National Bible Association, which . . . promotes the Bible as the path to salvation";

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that “Stetson is a disciple of Charles Colson” and that fundamentalist extremist and convicted Watergate conspirator Charles Colson is a strong supporter of the BLP textbook, referring to it “as helping open the door to another ‘great awakening’ of evangelical religious fervor.”

Odd also is the fact that while the book lists two “general editors,” nowhere does it name the actual authors, as does every other textbook I’ve seen. However, the fundamentalist Christian Communications Network revealed last November that among those involved with the BLP are Charles Haynes and Os Guinness, whose 1990 curriculum on religious liberty was analyzed by ARL and found to be seriously deficient as a public school text.

Competing with the BLP textbook is the curriculum produced by the North Carolina-based National Council on Bible Curriculum in Public Schools (NCBCPS), which is claimed to be used in elective courses in over 1,000 high schools in 36 states, though which schools seems to be a carefully guarded secret.

A scathing 42-page analysis of the NCBCPS curriculum by Southern Methodist University biblical scholar Mark A. Chancey, available from the Texas Freedom Network (tfn.org), concludes that “the curriculum advocates a narrow sectarian perspective taught with materials plagued by shoddy research, blatant errors and discredited or poorly cited sources.” Chancey concludes that the curriculum is “clearly inappropriate” for public school use. A similar conclusion was reached by Anti-Defamation League director Abraham Foxman, who said that “This wholly inappropriate curriculum crosses the line by teaching fundamentalist Protestant doctrine.”

Endorsers of the NCBCPS curriculum include actor Chuck Norris, church-state revisionist David Barton, Phyllis Schlafly’s Eagle Forum, Beverley LaHaye’s Concerned Women for America, extreme right Rabbi Daniel Lapin, former Senator Jesse Helms, former Representative J.C. Watts, and Pat Robertson’s American Center for Law and Justice. Need more be said?

Teaching about religion in public schools, however desirable or well-intentioned, is a very hot potato I have yet to see successfully juggled. Oxford University Press’s 17-volume Religion in American Life series is a worthy effort, but its more than 3,000 pages is too much for even four semesters in high school and even then covers only religion in America for the last 500 years and does not deal with the ancient world or the history of Europe, much less the development of religion in the rest of the world.

I believe that the BLP effort’s faults outweigh its good points and therefore it should be of higher priority for public schools to improve and expand the teaching of history, science, foreign languages, and world literature, and leave religious education to the university, the home, and the church, synagogue, mosque, or temple, at least until qualified scholars produce properly objective and balanced texts and teachers are adequately trained to deal with this important but extremely complex subject. ■

Christmas, continued from page 6

called “Bah Humbug” in *The New Yorker’s* Christmas issue. He observed, “Just as Christmas itself evolved as a way to synthesize a variety of winter festivals, so the War on Christmas fantasy is a way of grouping together a variety of enemies, where they can all be rhetorically machine-gunned at once. . . . In this war, the weapons of Christmas destruction have been found – just a few caches of linguistic over-sensitivity and commercial caution. Christmas remains robust.”

In America’s deepening culture wars, the phony war on Christmas is an unfortunate but predictable annual event. It should be seen for what it is. ■

High Court Upholds Religious Freedom, Slaps Down Bush

On February 21 a unanimous US Supreme Court held that the Bush administration had not shown a compelling interest in applying the Controlled Substances Act to a small religious group. The Brazilian-based church, with only 130 US members, uses a hallucinogenic tea as a sacramental act in its worship. O Centro Espirita Beneficiente Uniao Do Vegetal church has members in New Mexico, California and Colorado.

Chief Justice John Roberts, writing for the Court, said the government failed to prove that federal drug laws are more compelling than the Religious Freedom Restoration Act (RFRA) passed by Congress in 1993 to strengthen the free exercise of religion clause. Roberts wrote that religious freedom cases may be difficult to resolve, “but Congress has determined that courts should strike sensible balances.” Roberts said that federal drug agents should have been prevented from confiscating the hoasca tea, which was essential to “the sect’s sincere religious practice.” The tea is consumed twice a month at four-hour ritual ceremonies.

Justice Samuel Alito did not take part in the case, which was heard last November, making the vote 8-0.

Government officials confiscated the church’s records, computers and tea, and the church filed suit under RFRA. The High Court sent the case back to a federal appeals court to see if the church is entitled to additional relief. ARL joined the Baptist Joint Committee *amicus* brief in *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, No. 04-1084). ■

Teaching the Faith

“Father Neuhaus makes light of the controversy in the Golden State over the University of California’s refusal to accept certain evangelical high schools’ courses as meeting requirements for admission (While We’re At It, January).

“Two points to consider: The university is not telling the faith-based school what it must not teach, but, rather, what sort of courses are necessary for admission to this particular university; and Neuhaus might well side with the university if he saw the anti-Catholicism that pervades many of the texts and courses in many conservative evangelical schools. This anti-Catholicism is well documented in Frances Paterson’s book *Democracy and Intolerance* and Albert Menendez’ book *Visions of Reality: What Fundamentalists Schools Teach*.

“Menendez cites, for example, textbooks used in fundamentalist schools that call Catholicism ‘a perversion of biblical Christianity’; that say the papacy rests ‘upon a number of false assumptions’; that refer to ‘Romanist error,’ ‘pagan Catholicism’; that declare ‘The Southern states . . . saw themselves threatened by those holding . . . unbiblical beliefs, who were most numerous in the Northeast’; that hold the Mass is ‘unbiblical and idolatrous’ and monasticism ‘has no justification in Scripture but derives from pagan influences on apostate Christianity’; that insist the Reformation was ‘a divine instrument for propagating religious truth in Catholic Europe,’ and Jesuits are ‘a hellish conclave’; etc. Should such teaching prepare students for admission to a public university?”

-- Edd Doerr, *First Things* (March 2006)

Twelve Religious ‘Tribes’ Shape American Politics

One of the best articles on religion and politics that has appeared in recent years is “Tribal Relations,” by Steven Waldman and John C. Green in *The Atlantic Monthly’s* January/February 2006 issue. Waldman, editor in chief of Beliefnet.com, and Green, director of a think tank at the University of Akron, divide the nation into “the twelve tribes of American politics” based on “their values, behaviors and religious affiliation.” Based on survey data gathered by the Ray Bliss Institute at the University of Akron and the Pew Forum on Religion and Public Life, the analysis helps to untangle the web of misinformation surrounding the complex interactions of religion and politics. “Religion and values undoubtedly play a large role in our politics. But their impact is often misunderstood,” they observe.

Three tribes form the core of the Republican base. The religious right, the tradition-minded white evangelical Protestants, accounted for 12.6% of the 2004 electorate and voted almost 90% for Bush. They are conservative on all issues. “Contrary to popular belief, the religious right is not growing quickly, its size barely changed from 2000 to 2004.” Their allies are the “heartland culture warriors,” white nonevangelical Christians who hold conservative views on cultural issues. They are 11.4% of all voters, and 72% supported Bush. “Moderate evangelicals,” who represent 10.8% of the electorate, are white evangelical Protestants who are far less conservative than other evangelicals, but still gave Bush 64% of their votes. These voters, say Waldman and Green, “are influenced by personal religion. As much as anything they like Bush’s personal faith.” This may not transfer to future Republican candidates, however, who may not choose to emphasize personal connections to religion. While red tribes comprise about 35% of the electorate, they could not determine the outcome without some support from other groups, especially the swing groups.

There are six Democratic tribes, but their coalition is a bit shaky. “While the blue tribes are fairly well united on economic and foreign-policy issues, they’re all over the map on cultural issues. Because the Democratic coalition includes highly religious tribes, non-religious tribes, and everything in between, talking about values can be perilous. . . . So Democrats tend to elevate one particular moral value – tolerance – above all others. The merits of tolerance aside, it is part of what keeps the coalition together. But it leaves the Democrats open to attack for lacking a strong moral identity.”

The Democratic coalition includes the “religious left,” white Christians with liberal views on most issues, who gave 70% of their votes to Kerry, up from Gore’s 51%. They were “the largest and fastest-growing section of the Kerry coalition.” Black Protestants (9.6% of the electorate) are the most liberal on economic and foreign policy issues but are cultural conservatives. They gave 83% to Kerry. The “spiritual but not religious voters,” are an odd bunch at 5.3% of the electorate. They are liberal on economics and foreign policy but surprisingly conservative on cultural issues. Kerry won more than 60% of their votes. Jews are reliably Democratic, but are only 2% of the electorate. “Muslims and others” are nearly 3%, and vote primarily on economic and foreign policy issues. The large secular category (10.7% of the electorate) are the most liberal group on cultural issues.

The “swing” groups, or purple tribes, were “up for grabs in 2004 and are still on the move politically.” They include “white-bread Protestants,” mainline Protestants from the historic Republican coalition that survived from William McKinley in 1896 to Gerald Ford in 1976. They are “moderates” on all things, and gave Bush a majority in 2004, though under 60%, one of the lowest levels of support for a Republican presidential candidate. They are also pro-choice.

“Convertible Catholics are true moderates” who “feel that neither

party represents them well.” Conflicted on many issue, but in favor of helping the poor and endorsing a “multilateral foreign policy,” they nevertheless gave Bush 55%. At 7% of the electorate, they are moderately significant. However, “if Kerry who is Catholic had done as well with them as the Southern Baptist Al Gore did in 2000, he probably would have won Ohio and the national election,” say Waldman and Green.

Finally, a new category “Latino Christians,” combines Catholic and Protestant Hispanic ancestry voters. They gave Kerry 55%, a good deal lower than their 70% for Gore. But they were divided along religious lines. “Latino Catholics, although they tend to be pro-life, voted for Kerry by more than two to one, largely because of their liberal economic views.” But “Bush did best among Latino Protestants, many of whom come from a Pentecostal tradition that stresses conservative values.”

While the majority of Americans still lean toward the center of the spectrum, they define center in different ways. And the poles continue to dominate the party structures. “We believe that the culture wars will increase in intensity during the next few election campaigns, even as the government continues to serve the broad cultural center.”

They conclude, “Cultural conflict will remain a staple of American politics for the foreseeable future. . . . The gap between the rhetoric and the reality of America’s cultural division is unlikely to shrink anytime soon. And it’s that gap that is perhaps the most fundamental feature of our cultural politics today.” ■

Court Sends Abortion Law Back to New Hampshire

In a calculated attempt to avoid reopening the abortion rights issue, the Supreme Court sent a parental notification law back to the US Court of Appeals for the First Circuit, ordering it to devise a limited solution that would protect a minor woman’s health. The Court said that federal judges at the district and appellate levels should not have invalidated the entire 2003 New Hampshire law when only a portion of the act was deemed unconstitutional.

At issue was a law requiring parental notification of a pregnant teenager who wanted to have an abortion but lacking a health emergency provision. “We do not revisit our abortion precedent today, but rather address a question of remedy,” wrote Justice Sandra Day O’Connor for a unanimous court. In what was O’Connor’s last opinion, the acknowledged swing vote on the abortion issue wrote, “States unquestionably have the right to require parental involvement when a minor considers terminating her pregnancy.” Citing a 1990 Supreme Court decision, she said, “Accordingly, we have long upheld state parental involvement statutes like the at before us, and we cast no doubt on those holdings today.” But, in a footnote, the ever-practical O’Connor noted, “It is a sad reality that some young women lack a loving and supportive parent to whom they can turn.”

O’Connor, always sensitive to state prerogatives in medical matters, observed, “We try not to nullify more of a legislature’s work than necessary. To strike down a law as unconstitutional frustrates the intent of the elected representatives of the people.” But she said the New Hampshire law ignored those who faced “significant health risks.”

Both sides claimed victory. The case was *Ayotte v. Planned Parenthood of Northern New England*, No. 04-1144. ■

ARL Goes to Court: A Special Report

In its quarter century of activism in defense of church-state separation and freedom of conscience, Americans for Religious Liberty has been involved in over 60 actions in the courts. Following is a concise summary of that work.

This action has generally involved participating in or originating *amicus curiae* (friend of the court) briefs to the US Supreme Court and lower courts. Usually, in the interest of economy and because the Court prefers not to have to deal with duplicative briefs, where possible ARL has worked with other organizations in coalition briefs.

ARL is grateful to all of the mostly *pro bono* attorneys and organizations with which we have collaborated for so many years.

These briefs are divided into several types of cases (e.g., government aid to religious institutions, reproductive rights, etc.) The dates of the briefs refer to Supreme Court terms, which begin in October.

One of our most important cases, in which ARL played an important role, *Lamont v. Woods*, did not reach the Supreme Court but was settled in the US Second Circuit Court of Appeals in New York on September 26, 1991. Unfortunately, the case received almost no media attention. It involved a challenge to US government aid to faith-based schools in other countries. Between 1983 and 1989 the US Agency for International Development (USAID) distributed more than \$14 million to faith-based schools in the Philippines, Egypt, Israel, Jamaica, South Korea, and Micronesia.

The suit was a cooperative effort with the American Civil Liberties Union. ACLU provided the attorney, Professor Herman Schwartz of American University, while ARL provided the plaintiffs in New York: philosopher Corliss Lamont, writer Isaac Asimov, Rabbi Balfour Brickner, the Rev. Bruce Southworth, and church-state separation activists Florence Flast and Nina Untermyer.

Second Circuit Chief Judge James L. Oakes wrote in his opinion that, "Where the expenditure of federal tax money is concerned, there can be no distinction between foreign religious institutions and domestic religious institutions – particularly when the former are sponsored and supported by the latter. Religions such as Catholicism and Judaism know no national boundaries, and are strengthened domestically when promoted abroad. Given the primacy of the tax factor in the minds of the Framers, we cannot but conclude that Madison, Jefferson, or any of the supporters of the Establishment Clause would have abhorred – as much as a tax for the support of Christian teachers – the use of federal tax money for the support of foreign sectarian schools."

The ruling added that "recent history supports the view that the religion clauses do have extraterritorial application." Further, "The expenditure of tax dollars for the support of religious institutions or activities offends the 'no taxation' principle regardless of the physical situs of those institutions or activities. Likewise, the message communicated by direct government funding of religious institutions remains the same whether those institutions are located in the United States or abroad."

In rejecting a central argument put forth by the George H. W. Bush administration, that foreign policy matters are beyond constitutional scrutiny, the court held that "While we recognize the importance of foreign aid programs in promoting United States foreign policy, we do not believe that this warrants freeing all foreign aid programs from all constitutional constraints."

In a concurring opinion, Judge John M. Walker, Jr., observed that "The text of the First Amendment's limitation on Congress' competency to act in regard to religion bears no construction that confines its operation to the United States."

Lamont v. Woods never reached the Supreme Court because the Bush administration decided not to appeal. Nonetheless, the ruling stands as an important but little noticed precedent.

(Note: Before ARL was founded in 1982, ARL's Doerr and Menendez were involved in a number of important church-state cases while working for another organization. Among those cases were *Lemon v. Kurtzman*, the first successful Supreme Court challenge to tax aid to faith-based schools (1971); *Malnak v. Yogi*, a successful challenge to the promotion of Transcendental Meditation, with its hidden religious content, in New Jersey public schools; and a challenge to forced "deprogramming" of adults in Maryland.)

Free Exercise of Religion

2005. *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*. ("May the Government satisfy the 'compelling interest/least restrictive alternative' standard that Congress enacted in the Religious Freedom Restoration Act simply by asserting, without case-specific evidentiary support, a compelling interest in the uniform enforcement of the law, and then arguing, tautologically, that a policy of denying any religious exemptions is the least restrictive means of furthering that interest?")

2005. *Cutter v. Wilkinson*. (Free exercise rights of prisoners.)

Physician-Assisted Suicide

2005. *Gonzales v. State of Oregon*. (Defense of Oregon's physician-assisted suicide law.)

1996. *Vacco v. Quill* ("The right of a competent, terminally ill individual to end his or her life with the aid of a physician. . . .")

Religion in Public Schools

1997. *Bauchman v. West High School*. (Challenge to religious proselytizing in public school.)

1996. *Chaudhuri v. State of Tennessee*. (Graduation prayers at Tennessee State University.)

1994. *Ingebretsen v. Jackson Public School District*. (Prayer at school events.)

1990. *Lee v. Weisman*. (Challenge to religious exercises in public school.)

1989. *Board of Education of the Westside Community Schools v. Mergens*. (Challenge to the "Equal Access Act . . . requiring Westside High School to recognize and sponsor a Christian prayer club.")

1988. *Barry v. Slaughter*. (Challenge to graduation prayers at University of Maryland.)

1988. *Virgil v. School Board of Columbia County, Florida*. (Textbook censorship.)

1987. *Smith v. Commissioners of Mobile County*. (Prayer in public schools.)

1987. *Mozert v. Hawkins County Public Schools*. (Religious opposition to certain textbooks.)

1986. *Edwards v. Aguillard*. (Challenge to Louisiana law promoting "creationism" in science classes.)

1986. *Edwards v. Aguillard*. (Brief of 72 Nobel laureates and other scientists. Although ARL's name is not on the brief, it was ARL's idea to

have Nobel laureates sign a brief challenging the Louisiana “creationism” law.)

1985. *Bender v. Williamsport*. (Challenge to “equal access law.”)

Religious Displays in Government Buildings

2004. *Van Orden v. Perry*. (Challenge to Ten Commandments display at Texas state capitol building.)

2002. *Freethought Society v. Chester County*. (Ten Commandments display in courthouse.)

1994. *Capitol Square Review and Advisory Board v. Pinette*. (Challenge to placement of religious displays on Ohio State House grounds.)

1987. *American Jewish Congress v. City of Chicago*. (Challenge to city hall Nativity display.)

Reproductive Rights

2005. *Scheidler v. National Organization for Women*. (“Whether the Hobbs Act prohibits acts or threats of physical violence that obstruct, delay or affect interstate commerce; Whether RICO authorizes the district courts to grant injunctive relief in private lawsuits.”)

2005. *Ayotte v. Planned Parenthood of Northern New England*. (Challenging lack of health exception in a New Hampshire law restricting reproductive rights.)

2001. *Bost v. Low Income Women of Texas*. (Challenge to Texas restrictions on Medicaid funding for abortions.)

2000. *Stenberg v. Carhart*. (Challenge to Nebraska’s so-called “partial-birth” abortion ban.)

1993. *Madsen v. Women’s Health Center*. (“Whether, in the context of a pattern of illegal conduct and violations of previous injunctions, a court may constitutionally impose specific time, place and manner restrictions on individuals and organizations and those acting in concert with them to prohibit blocking access to a medical facility, harassing the facility’s patients and staff, engaging in activities that threaten patients’ health, and harassing and picketing staff members at their homes.”)

1990. *Rust v. Sullivan*. (Challenge to gag rule on discussing abortion in federally aided family planning facilities.)

1990. *In re: AC*. (Are fetal rights superior to those of persons already born?)

1989. *Turnock v. Ragsdale*. (Defense of rights of clinics and doctors.)

1989. *Hodgson v. Minnesota*. (Challenge to abortion rights restrictions.)

1989. *Ohio v. Akron Center for Reproductive Health*. (Challenge to abortion rights restrictions.)

1988. *Webster v. Reproductive Health Services*. (Though not formally listed on this brief, ARL originated the brief representing twelve Nobel laureates and 155 other distinguished scientists in defense of reproductive choice. The brief challenges the anti-choice position that human personhood begins as early as conception. NOW said that this brief might well be “the most powerful brief” submitted in this case.)

1988. *Webster v. Reproductive Health Services*. (Coalition brief challenging Missouri restrictions on abortion rights.)

1988. *Massachusetts v. Bowen*. (Challenge to federal restrictions on reproductive rights.)

1988. *Northeast Women’s Center v. McMonagle*. (Defense of women’s clinics for RICO Act violation.)

1985. *Thornburgh v. American College of Obstetricians and Gynecologists*. (Reproductive rights in Pennsylvania.)

1985. *Diamond v. Charles*. (Abortion rights in Illinois.)

Tax Aid to Faith-Based Schools

2004-2005. *Bush v. Holmes*. (Successful challenge to Florida school voucher plan. Florida Supreme Court ruled the plan unconstitutional on January 5, 2006.)

2001. *Zelman v. Simmons-Harris*. (Challenge to Ohio school voucher plan.)

1999. *Mitchell v. Helms*. (Challenge to tax aid to religious schools in Louisiana.)

1996. *Agostini v. Felton*. (Challenge to tax aid to faith-based schools in New York.)

1994. *Lipscomb University v. Steele; Americans for Religious Liberty*. (Challenge to municipal bonds to aid a pervasively sectarian university.)

1993. *Board of Education of the Kiryas Joel Village School District v. Grumet*. (Challenge to “the constitutionality of vesting the power to operate a public school district in a municipality that functions as a religious establishment.”)

1992. *Zobrest v. Catalina Foot Hills School District*. (“Whether [Federal Regulation] C.F.R. § 76.532(a) prohibits the government from paying for the sign language interpreter requested by the Petitioners.”)

1990. *Pulido v. Cavazos*. (Challenge to tax-paid services to faith-based schools.)

1990. *Southside Fair Housing Commission v. New York*. (Challenge to New York turning over city land to a faith-based school.)

1990. *Helms v. Cody*. (Challenge to public school teachers working in faith-based schools in Louisiana.)

1984. *Aguilar v. Felton*. (Challenge to tax aid to sectarian schools.)

1984. *Witters v. Washington Department of Services for the Blind*. (Defense of Washington State constitution prohibition of tax aid to a faith-based school.)

1983. *Grand Rapids v. Ball*. (Challenge to school district’s operating an extensive program of classes on the premises of faith-based schools.)

1983. *Mueller v. Allen*. (Challenge to tax deductions for faith-based schools.)

Miscellaneous

2004. *Elk Grove United School District v. Newdow*. (Challenge to Congress’ inclusion of the phrase “under God” in the Pledge of Allegiance in 1954.)

2002. *Kong v. Min de Parle*. (Challenge to government support of Christian Science sanatoria.)

1999. *Children’s Health is a Legal Duty v. Vladek*. (Do the 1997 Medicare and Medicaid Amendments violate the First Amendment by creating and defining “religious non-medical health care institutions”?)

1997. *Coles v. Cleveland Board of Education*. (Challenge to prayers at school board meetings.)

1990. *Welsh v. Boy Scouts of America*. (Challenge to religious discrimination by BSA.)

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Religious Freedom Worldwide Remains Precarious

The annual “International Religious Freedom Report” issued by the State Department shows that religious freedom is precarious in a great part of the world. Burma, China, Cuba, and North Korea were cited for “totalitarian actions to control religious belief or practice.” The State Department is blunt in its assessment of North Korea (“religious freedom does not exist”) and Saudi Arabia (“Freedom of religion does not exist. Islam is the official religion, and all citizens must be Muslims.”)

Eritrea, Iran, Laos, Saudi Arabia, Sudan, Uzbekistan and Vietnam were cited for “state hostility toward minority or nonapproved religions.” Even countries which have legislation discouraging official religious discrimination often fail to adhere to their laws. Bangladesh, Egypt, India and Sri Lanka fell into this category. In India “the government did not act quickly enough to counter societal attacks against religious minorities and attempts by some leaders of state and local governments to limit religious freedom.” In Sri Lanka “the status of religious freedom remains fragile” primarily because “there was an increase in attacks on Christian churches by Buddhist extremists.”

“Some governments have enacted legislation that favors majority religions and discriminates against minority religions.” These countries include Azerbaijan, Belarus, Brunei, Indonesia, Israel, Malaysia, Pakistan, Russia and Turkey. In Turkey, despite the nation’s attempt to enter the European Union, “there was some deterioration in respect for religious freedom, in contrast to previous positive trends.” Turkey ignored

“an increase in anti-Christian media coverage” and “the government’s Directorate of Religious Affairs initiated a campaign against Christian missionary activity.” Muslim countries were the most egregious in this regard, but predominantly Christian Belarus and Russia cracked down on all religions except the semi-established Orthodox Church. In Belarus the government signed a concordat in 2003, giving “privileged status to the Belarusian Orthodox Church.” In Brunei “the government uses municipal and planning laws to restrict the expansion of any religion other than Islam” and requires “all schools to give instruction in the Islamic faith to all students, including Christian schools.”

But even Belgium and Germany were criticized for “restrictive legislation and practices to brand minority religions as dangerous cults or sects.”

Some countries were applauded for “significant improvements in the promotion and protection of religious freedom”: Georgia, India, Turkmenistan, the United Arab Emirates and Vietnam. Several of those nations have a long way to go to insure protection of the laws to adherents of all religions.

The State Department’s 2005 report also highlighted US government actions to advance religious freedom in 24 nations. Part of this pressure was the labeling of eight nations “of particular concern” in their treatment of religious communities: Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan and Vietnam.

Sam Brownback of Kansas: 2008 Religious Right Choice?

Jeff Sharlet’s article in *Rolling Stone* (January 26, 2006) gives a frightening portrait of “God’s Senator,” Sam Brownback of Kansas, who is fast becoming the Religious Right’s preferred presidential candidate in 2008. “After little more than a decade in Washington, Brownback has managed to position himself at the very center of the Christian conservative uprising that is transforming American politics,” writes Sharlet.

Brownback and his supporters want to go far beyond George W. Bush’s bland piety. Continues Sharlet, “Now, Brownback seeks something far more radical: not faith-based politics but faith in place of politics. In his dream America, the one he believes both the Bible and the Constitution promise, the state will simply wither away. In its place will be a country so suffused with God and the free market that the social fabric of the last hundred years – schools, Social Security, welfare – will be privatized or simply done away with. There will be no abortions; sex will be confined to heterosexual marriage. Men will lead families, mothers will tend children, and big business and the church will take care of all.”

Sharlet adds, “Part holy warrior, part holy fool, he preaches an odd mix of theological naiveté and diplomatic savvy.”

Brownback has a penchant for secretive organizations. Since 1979, as a summer intern, he has been involved with “The Fellowship,” a shadowy evangelical group whose mission is to be a “Worldwide Spiritual Offensive.” Based in a Capitol Hill mansion, the group claims many members of Congress and sponsors “Prayer Breakfasts” for national and world leaders.

Brownback converted to Catholicism in 2002 under the aegis of an Opus Dei priest. Once again, his preference was for a militant, orthodox and secretive religious experience. But Brownback’s wife and children remain members of the Topeka Bible Church, a fundamentalist congregation, and Brownback attends two services every Sunday.

Sharlet says that “the source of much of his religious and political

thinking is Charles Colson, widely acknowledged as the Christian Right’s leading intellectual.”

Brownback hasn’t announced whether he will seek his party’s nomination for president but he is increasingly seen as the ideal candidate of those whom Sharlet describes as “God’s promise keepers, His defenders of marriage, His knights of the fetal citizen, the select few.” ■

ARL Goes to Court, *from page 11*

1987. *Bowen v. Kendrick*. (“Does the Establishment Clause permit the Government to pay religious organizations to promote government policies that such organizations teach as articles of religious faith?”)

1986. *American Baptist Churches in the USA. v. Reagan*. (Challenge to establishment of US diplomatic relations with the Holy See.)

1986. *Karcher v. May*. (“Whether a state legislature may enact a statute requiring state school employees, principals and teachers, to direct group meditation in their public school classrooms.”)

State Court Cases

1993. *American Academy of Pediatrics v. Lundgren*. (California abortion law restrictions.)

1990. *Davis v. Davis*. (Treatment of frozen embryos in Tennessee.)

1988. *In re: Unborn Child*. (Challenge to father’s veto of a woman’s abortion decision in Indiana.) ■



Church and State in the Courts

The US Supreme Court let stand an appeals court ruling allowing the use of federal funds in placing teachers in religious schools under the AmeriCorps program. The Court declined, without comment, to review the case from the US Court of Appeals for the District of Columbia. Chief Justice John Roberts did not participate in the case.

AmeriCorps places teachers in some of the nation's poorest and disadvantaged schools, giving beginning teachers grants of \$4,725 annually to encourage their work in impoverished areas. The grants are administered by 28 secular and six faith-based programs that train teachers, who are then placed in public or private schools. Most of the religious participants are Roman Catholic. Of the 19,000 grants in 2001, the most recent data year, about 2,000 chose faith-based sponsors and 565 worked in faith-based schools. This low percentage was one factor that the appeals court cited in upholding the program. The appellate ruling also concluded that the government was not using the grants to promote religion or as incentives for participants to teach religion, even though teachers are allowed to teach religious subjects and to participate in religious activities in church-related schools. Teachers must fulfill a service requirement of 1,700 hours of secular instruction and cannot count religious activities as part of the requirement. These were considered sufficient safeguards against religious indoctrination by the appeals court, which reversed a district court's finding that the program failed to monitor religion-related expenses. The case was *American Jewish Congress v. Corporation for National and Community Service*, No. 05-282.



Federal Judge Lee Rosenthal dismissed Pope Benedict XVI from a civil suit accusing him of conspiracy to cover up the sexual abuse of minors by a seminarian. Rosenthal held that the pope has immunity as a head of state and that allowing the lawsuit to proceed was "incompatible with the foreign policy interests of the United States."



New York City public schools must let religious groups rent space for meetings on the same basis as secular organizations, according to a November decision by federal court Judge Loretta Preska. She based her ruling on a 2001 Supreme Court precedent in *Good News Club v. Milford Central School*. The Justice Department had filed an *amicus* brief on behalf of the Bronx Household of Faith, which had sought to rent space for Sunday worship in Public School 15. The city may appeal.



The Sixth US Circuit Court of Appeals ruled just before Christmas that the Mercer County, Kentucky, courthouse may keep its display of the Ten Commandments. The court said the Commandments are displayed alongside nine other documents, including the Bill of Rights and the Declaration of Independence. Since there was no apparent desire to single out the religious document, the court reasoned, it was acceptable under the Supreme Court's decision last summer upholding a similar display at the Texas capitol. A similar case from Rutherford County, Tennessee, may soon be considered in the same court.



The US Supreme Court let stand a Fourth Circuit Court of Appeals ruling that allowed a North Carolina county government building to

retain the inscription "In God We Trust" on its exterior. (*Lambeth v. Board of Commissioners of Davidson County*.)



Judge Donald Smith of the Superior Court in Guilford County, North Carolina, dismissed an ACLU lawsuit challenging a state requirement that only Bibles can be used in courtroom oaths. The court held that ACLU had no legal standing to sue because no plaintiffs who wanted to use another religious text were presently challenging the law.



A high school football coach filed suit in Superior Court in Middlesex County, New Jersey, contending that his school district violated his right to free exercise of religion by prohibiting him from praying with his players before games. Marcus Borden has been coach for 23 years at East Brunswick High School. He resigned in protest of a school board decision that he could not participate in prayer with players, but rescinded his resignation and initiated legal action.



Two 16-year-old girls have filed suit in Riverside County, California, Superior Court after they were expelled by California Lutheran High School on suspicion of being lesbians. Their attorney is seeking to force the Wildomar, California, school to comply with state civil rights laws.



The New York Civil Liberties Union has gone to court on behalf of an unwed, pregnant teacher who was fired by a Catholic school, St. Rose of Lima in Rockaway Beach. The faith-based school in the Brooklyn Archdiocese claimed it was enforcing the church's moral standards. The suit charges that the school violated a federal law banning discrimination against pregnant women.



The Freedom from Religion Foundation (FFRF) filed suit in federal court in New Mexico on November 7 (*FFRF v. Richardson*), seeking to stop state funding for a faith-based prison ministry program at the women's correctional institution in Grants. The program is run by the private Corrections Corporation of America in partnership with Basic Life Principles, a fundamentalist Christian ministry run by Bill Gothard.

Gothard's Institute (IBLP) is established "for the purpose of introducing people to the Lord Jesus Christ," according to its handbook. Its operational principles include "moral purity," "proper submission and obedience," and provides "training on how to find success by following God's principles found in Scripture." Six taxpayers initiated the suit, which the Madison, Wisconsin-based FFRF supported. The complaint charges "faith-based programming provided by the New Mexico Corrections Department touts the alleged importance and power of Christian faith as being necessary to lead a crime-free life." FFRF copresident Annie Laurie Gaylor added, "We consider this an outrageous

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Church and State in the Courts, *continued from page 13*

misuse of taxpayer money to proselytize and indoctrinate the ultimate captive audience of women prisoners – not just in fundamentalist Christianity but in an antifeminist program predicated on women’s subjugation.”



The Kentucky Commission on Human Rights must determine whether a woman who broke with the Amish had her civil rights violated when an Amish store owner refused to serve her. Ruth Irene Garrett rejected the Amish faith a decade ago, joined the Lutheran Church, and wrote a book, *Crossing Over*, about her religious experiences. Garrett was refused service in 2003 at an Amish thrift shop, whose owner, Erma Troyer, said her religion requires shunning. Garrett is seeking a ruling that store owners must serve all customers.



The Rutherford Institute, a Religious Right legal group based in Charlottesville, Virginia, filed suit on January 11 challenging the Fredericksburg City Council decision requiring nondenominational prayers at meetings. The suit was filed in US District Court as a result of a November policy decision that sought to stop Council member Hashmel Turner, a Baptist minister, from invoking the name of Jesus at open meetings of the local government body.



On December 30 US Bankruptcy Judge Elizabeth Perris ruled that the Roman Catholic Archdiocese of Portland owns all parish buildings and must be held liable for the claims related to sex abuse by priests. The Oregon archdiocese, which filed for bankruptcy in 2004 after paying \$53 million of the \$130 million owed to victims, claimed that each parish owned its own buildings, land, and schools. Archbishop John Vlazny told the *Catholic Sentinel* newspaper that he would defy the court’s ruling.

ARL in Action

Edd Doerr’s “Is Government in America Becoming Faith-Based?” is our newest pamphlet. It is the text of Doerr’s address before the New York Society for Ethical culture on May 8, 2005. It is available on our website, arlinc.org, or as a pamphlet (10 copies, \$5) from ARL, PO Box 6656, Silver Spring, MD 20916.

Doerr also addressed an audience of the Panim el Panim high school students in Washington, DC, on February 20. Participants come to the nation’s capital each year, and Doerr has been a frequent guest speaker. The conference is sponsored by the Institute for Jewish Leadership and Values.

Al Menendez’s book review article, “Ruling on Religion,” appeared in *Conscience* magazine’s Spring 2006 issue.

ARL joined an amicus brief to the Missouri Supreme Court by religious and civil liberties groups challenging a Missouri statute known as the Teen Assistance Ban (TAB). The law would prohibit clergy and health workers from providing counseling and information to pregnant teens. The primary claim is that TAB violates the free speech provisions of both the US and Missouri constitutions.

Doerr’s book review, “Who’s Who in the Religious Right,” will appear in the April/May issue of *Free Inquiry*.

A similar ruling by a bankruptcy court in Spokane, Washington, is being appealed by that diocese. For two centuries in US law, Catholic church property has been held to belong to the diocese under the doctrine of “corporation sole.” A movement by American Catholic laymen in the early 1800s, called “trusteeism” by historians, sought to place property under the control of a board of laymen in each parish, rather than the bishop, but the bishops and the Vatican quashed the movement.



A panel of the Seventh US Circuit Court of Appeals ruled that taxpayers have a right to sue over a possible violation of the No Establishment Clause even if Congress had not appropriated funds for the challenged program. The 2-1 decision on January 13 came in reference to a lawsuit filed by the Freedom from Religion Foundation (FFRF) against the White House Office of Faith-Based Initiatives. This decision reinstates the FFRF case originally thrown out by a federal district court in Wisconsin 2004.

The underlying question was one of standing. Can taxpayers sue the executive branch? In this case FFRF objected to the use of money appropriated by Congress under Article I, Section 8, of the Constitution to fund conferences that executive branch agencies held to promote President Bush’s “Faith-Based and Community Initiatives.” Bush created the program by a series of executive orders. Judge Richard Posner, for the majority, said, “By forbidding Congress to establish a national church, the Establishment Clause places a specific limitation on Congressional appropriations, since the essence of an established religion is government financial support.” He added, “. . . since the program itself is challenged as unconstitutional, the fact that it was funded out of general rather than earmarked appropriations – that it was an executive rather than a congressional program – does not deprive taxpayers of standing to challenge it.” Posner observed that judges had the right to decide whether the Bush directives amounted to “propaganda vehicles for religion.”

Posner and colleague Diane Wood said, “Taxpayers have standing to challenge an executive branch program, alleged to promote religion, that is financed by a congressional appropriation, even if the program was created entirely within the executive branch, as by presidential executive order.”

Even dissenting Judge Kenneth Ripple referred to the Bush program as “an arguably illegal executive expenditure,” but did not think taxpayers could challenge executive actions.



Parents of a ninth grade student expelled for alleged “sexual immorality” at a Christian academy filed suit on January 4 seeking damages and alleging invasion of privacy and breach of contract. Jessica Bradley was expelled last April by Covenant Christian Academy in Loganville, Georgia, for kissing another girl at an off-campus party. The school claims that it has a constitutional right to control its students’ behavior. The case is in Gwinnett County Superior Court.



The US Justice Department asked a federal court in Albuquerque, New Mexico, to dismiss a suit filed by critics of religious discrimination at the US Air Force Academy. Former Reagan administration official, Mikey Weinstein, and a group of present and former Academy students charged that systematic religious discrimination against non-evangelical Protestants was widespread and protected by official silence at the Colorado Springs military academy. The Bush administration, in a

Catholics for a Free Choice: A Force for Change

Two adjectives immediately come to mind when thinking about CFFC: courageous and feisty. This organization, with which ARL collaborates on many issues, was founded in 1973 “to serve as a voice for Catholics who believe that the Catholic tradition supports a woman’s moral and legal right to follow her conscience in matters of sexuality and reproductive health,” according to an official statement. In standing up for an alternative vision of Catholic social ethics, CFFC has elicited the loathing of the Catholic Right and the contempt of Catholic officialdom, which have tried to read the group out of the Catholic community.

Based in Washington, DC, with a staff of 20 and an annual budget of \$4 million, CFFC is “active in support of social justice and human rights in both church and society.”

Its activities are far flung. It works with pro-choice organizations in Latin America, a region still deficient in terms of women’s rights. It is an accredited Non-Governmental Organization (NGO) at the United Nations and has participated in many UN conferences. It has been critical of Vatican positions on many issues and has opposed the preferential status accorded to the Holy See at the UN. It

supports economic justice and full legal rights for all people, regardless of sexual preference or gender.

On church-state issues, CFFC comes down strongly on the pro-separation side. Two of its foundational principles are relevant. CFFC supports “the right of faith groups to participate in public policy formation and the responsibility of legislators to legislate without privileging sectarian religious beliefs.” And it endorses “scientific and public policies that are determined by evidence-based research, democratic structures and the common good.”

As an organization that concentrates on influencing public opinion, CFFC has published an elegant quarterly magazine, *Conscience*, since 1980. It is one of the best resources in the church-state field, and is ably edited by David J. Nolan.

CFFC’s president is Frances Kissling, who is internationally known and respected. She is both outspoken and persuasive.

CFFC is located at 1436 U Street NW, Suite 301, Washington, DC 20009-3997, phone 202-986-6093. Website: www.CatholicsForChoice.org.

motion filed in late January, claimed that Weinstein, an Academy graduate, has no legal standing to sue the Air Force. The motion also tried to claim that there is a substantive difference between “proselytizing” and “evangelizing.”



A federal judge ruled that the Indiana legislature’s 188-year-old tradition of explicitly Christian prayers before legislative sessions violates the Constitution. In a November 30 ruling, US District Judge David Hamilton cited numerous precedents and held that “one religious denomination cannot be officially preferred over another.” He cited the 2005 legislative history of showing that most of the prayers were “explicitly Christian in content” and constituted “a clear endorsement of Christianity, sending the message to others that they are outsiders and the message to Christians that they are favored insiders.” Of the 53 prayers delivered, all but two were delivered by Christian clergy or by Christian legislators.

Hamilton, an appointee of President Bill Clinton, is the son and grandson of Methodist ministers. An evangelistic prayer and hymn service at the April 5, 2005, opening of the Indiana House was the last straw for several legislators. The Indiana Civil Liberties Union filed suit in the name of four plaintiffs – a Quaker, a Methodist and two Catholics – who saw the daily invocations as increasingly sectarian.

Hamilton offended some legislators when he also ruled that “any form of legislative prayer must be nonsectarian and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief. . . .” and “must refrain from using Christ’s name or title or any other denominational appeal.”

Indiana House Speaker Brian Bosma, who coordinates the prayers and picks the clergy, was outraged by the ruling and met the state’s attorney general to contemplate an appeal to the US Court of Appeals for the Seventh Circuit. A number of Democrats, including House minority leader Patrick Bauer, also joined Republican Bosma in denouncing the court ruling.



Six students at a Christian fundamentalist school have charged the University of California with religious bias in a case filed in federal court in Los Angeles last year. Calvary Chapel Christian School in Murrieta, along with six students at the school, and its parent association, Christian Schools International, accused the 10-campus university system of “viewpoint discrimination” and unfair admission standards that violate religious freedom and freedom of speech of the school’s evangelical Christians.

At issue is the university’s refusal to accept some of the schools’ courses, which did not meet required academic criteria. Some school courses reflected a pervasive sectarian bias, in such classes as “Christianity’s Influence in American History, A Special Provenance,” “Christianity and the American Republic,” and “Morality in American Literature.” Most of the textbooks used are published by Bob Jones University Press and the A Beka Books series from Pensacola Christian College Press. The books reflect often biased and novel views of history, literature, geography and science. The Bob Jones “Biology for Christian Schools,” for example, tells students, “The people who have prepared this book have tried consistently to put the Word of God first and science second.” A Bob Jones University (BJU) American History text judges presidents and other figures in US history solely on their personal religious views. A 2001 BJU literature text condemns Emily Dickinson and Mark Twain for their alleged rejection of Christianity and an “innerrant Bible.” (These textbooks were examined critically by Frances Paterson’s *Democracy and Intolerance* [Phi Delta Kappa Educational Foundation, 2003] and Albert Menendez’ *Visions of Reality: What Fundamentalist Schools Teach* [Prometheus Books, 1993]).

University attorney Christopher Patti dismissed the charges as baseless. He indicated that UC had admitted 24 of 32 applicants from Calvary Chapel in the last four years, and had certified 43 of the school’s courses as acceptable for UC admission. “The university has a right to set its own admission standards. The idea that the university wants to exclude students from religious schools is just not true. It accepts hundreds if not thousands of students from these schools every year and values the diversity of views these students bring to the campuses,” he told *Los Angeles Times* reporter Rebecca Trounson.

Under the state constitution, the Board of Admissions and Rel-

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tions with Schools is a faculty committee with authority to set academic standards for admissions. These standards require that matriculating students be well prepared for college.

Wendell Bird, attorney for the 4,000-member Association of Christian Schools, maintains that evangelical schools receive greater state scrutiny and are victims of discrimination.

US District Judge James Otero canceled a hearing scheduled for December 13 and said he would decide the issue on briefs filed by the two litigants.

The case is attracting nationwide attention. John Green, senior fellow in religion and politics at the Pew Forum, told the *Los Angeles Times*, "This is potentially an extremely important case. It gets at the issue of admissions criteria for public universities but has ramifications beyond that, and not just for conservative Christians."

Steven Goodman, an education consultant, told the Associated Press, "The stakes are very high here because other colleges and universities across the nation look to the University of California system for guidance and trends."



Two federal appeals courts ruled that the 2003 Partial Birth Abortion Act is unconstitutional because it does include an exception when the health of a woman is at risk. On January 31 both the US Court of Appeals for the Second Circuit based in New York and the Ninth Circuit, based in San Francisco, reached the same conclusion. The appellate courts followed a US Supreme Court ruling in 2000 that invalidated a Nebraska law (*Stenberg v. Carhart*).

The Eighth Circuit appeals court in St. Louis reached a similar conclusion in July 2005. The US Supreme Court decided on February 21 to hear the issue again. The replacement of Sandra Day O'Connor by Samuel Alito could prove decisive. Erwin Chemerinsky, a law professor at Duke University, told Adam Liptak of *The New York Times*, "Here, the difference between O'Connor and Alito is widely expected to be decisive. We could get a read very soon on the difference between them on abortion."



The Second Circuit US Court of Appeals has upheld a New York City school board policy banning nativity scenes but allowing secular Christmas symbols and Jewish and Islamic holiday symbols. The 2-1 ruling in *Skoros v. City of New York* on February 2 upheld a district court decision that reached the same conclusion. The court said, however,

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that the education department erred in characterizing a menorah and the Islamic star and crescent as secular symbols.



A Georgia-based federal court struck down a state law granting state sales tax exemptions for purchases of the Bible and "other works pertaining to the Holy Scriptures." The February 6 decision found the sales tax exemption violated the Establishment Clause of the First Amendment. The decades-old law also exempted "religious papers owned and operated by religious institutions and denominations." The law was challenged by the owner of a metaphysical bookshop and the former president of the Georgia Library Association. Similar laws have been ruled unconstitutional in Texas, Pennsylvania, Rhode Island and the Carolinas. A case is pending in Florida.



The Pennsylvania Court of Appeals ruled on February 6 that a government agency cannot seize a person's home under the eminent domain laws for the purpose of building a church. In a 4-3 ruling, the court said the Philadelphia Redevelopment Authority violated the separation of church and state when it seized a woman's home in 2003 to help the Hope partnership build a religious school in a "blighted" neighborhood. Judge Doris Smith-Ribner wrote for the majority that "this effort demonstrates the entanglement between church and state."



The Voucher Watch

Florida Vouchers Ruled Unconstitutional

On January 5 the Florida Supreme Court struck down a statewide voucher program that allows taxpayer money to help children attend private schools. By a 5-2 margin, the state's high court held that the program violated a state constitutional requirement for a uniform system of free public schools. "The diversion of money not only reduces public funds for a public education but also uses public funds to provide an alternative education in private schools that are not subject to the uniformity requirements for public schools."

Florida's constitution is precise: "Adequate provision shall be made by law for a uniform, efficient, safe, secure and high-quality system of free public schools."

The court majority concluded that the Florida Opportunity Scholarship Program, passed in 1999 and enthusiastically championed by Governor Jeb Bush, "diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the constitution for the state to provide for the education of Florida's children." The decision was written by Chief Justice Barbara Pariente.

The Florida court did not address the issue of tax support for religious education, which is also forbidden by the state constitution.

While the ruling is limited to the Sunshine State, it may serve as a warning to other states that have similar constitutional requirements. Since there was no federal issue involved, the ruling cannot be appealed to the US Supreme Court. Voucher proponents were angry but promised to continue their efforts nationally. Their only remaining option in Florida is to amend the state constitution. About 700 students attend private schools under the program just held unconstitutional. ■

Update

Public Schools Outperform Others, Report Shows

A national study of 340,000 student test scores in fourth and eighth grade math shows that public school students outperform their private school and charter counterparts. This was true when adjustments were made for parental income and education, which researchers said was necessary to measure comparability.

The test scores were part of the 2003 National Assessment of Educational Progress and involved more students than any previous test. The wealth of new data lent more credibility to the analysis of results. Student test scores in 13,000 public, private and charter schools were compared by two researchers at the University of Illinois.

Students at conservative Christian schools fared poorest, while students attending Lutheran schools did better than other private schools. Charter schools did significantly worse than public schools. The authors, Christopher Lubienski and Sarah Lubienski, wrote, "Over all, demographic differences between students in public and private schools more than account for the relatively high raw scores of private schools. Indeed, after controlling for their differences, the presumably advantageous private school effect disappears, and even reserves in most cases."

Anti-Evolution Legislation Introduced in Five States

The legislatures of Indiana, Michigan, Missouri, Oklahoma and Utah will consider legislation aimed at downplaying or denying evolution. Indiana House Bill 1388 mandates that textbooks shall not be adopted if "the state board of education knows the textbook contains information, descriptions, conclusions or pictures that are false." Evolution is singled out in the bill proposed by Rep. Bruce Borders. Republican House Speaker Brian Busma, a Republican from Indianapolis, supports the legislation but GOP Governor Mitch Davis has expressed reservations about signing such a bill. Missouri House Bill 1266 would require public school science teachers to include "a critical analysis" of evolution. Oklahoma House Bill 2107 provides that teachers have the right "to present scientific information pertaining to the full range of scientific views in any curricula or course of learning." It is designed to protect teachers who want to introduce creationism in the classrooms. Finally, Utah Senate bill 96 would require that "instruction on any theory regarding the origins of life must stress that not all scientists agree on which theory is correct." All of the bills have been introduced by Republican legislators.

A Michigan House bill would require a statewide high school curriculum to include a critical evaluation of evolution and global warming. Another bill sponsored by the Republican chair of the House education committee includes a vague reference that requires "using the scientific method to critically evaluate scientific theories." Critics say the bills are designed to sneak "intelligent design" into high school biology classes.

Meanwhile, in Ohio, more than two-thirds of the scientists and educators who advised the state Board of Education on statewide science standards have urged the standards to be scrapped. In a February 8, 2006 report by the *Columbus Dispatch*, the scientists sent a letter to Governor Bob Taft, saying that lesson plans for 10th grade biology classes "undermine Darwin's theory of evolution by singling it out for critical analysis and open the door to teaching religion in the public school classroom." The 23 signatories told the governor that the state board had ignored their concerns in 2002 and 2004. The critics charged that the lesson plans and guidelines come partly from literature advo-

The Establishment Clause was placed in the Constitution so private piety would never be the source of public policy.

— Rev. Dr. Wallace Charles Smith, president of Palmer Theological Seminary and senior Minister of Shiloh Baptist Church, Washington, DC. *Report from the Capital*, October 2005.

ating intelligent design. "The lesson plan embodies intelligent design creationism poorly concealed in scientific sounding jargon." In January the state board of education voted nine to eight to reject deletions to the guidelines, thereby causing the critics to seek the governor's support. Taft said he is opposed to teaching intelligent design in science classes and has urged the state board to seek a legal opinion about the state's present standards and guidelines for school instruction. On February 14 the Ohio state board of education voted 11 to 4 to eliminate the passage in the state's science standards that encouraged criticism of evolution and implied support for intelligent design. It was a major victory for the critics.

Air Force Waters Down Religion Guidelines

Under pressure from evangelicals, conservative Republicans in Congress and the White House, the Air Force modified its recently announced guidelines on religion to allow more personal expression. Superior officers may discuss their religious faith with subordinates and chaplains will not be required to offer nonsectarian prayers. The new guidelines, issued February 9, backpedaled the August ruling that sought to limit expressions of religious fervor in public ceremonies and the aggressive proselytizing engaged in by evangelical officers and objected to by many cadets of other faith traditions.

The new guidelines invoke the free exercise clause of the Constitution four times, while mentioning the constitutional ban on religious establishment twice. Major General Charles Baldwin, the Air Force Chief of Chaplains, said the new statement affirms the "free exercise of religion, and that means sharing your faith." The new rules still warn superior officers to be "sensitive to the potential" that personal statements of faith could appear to be official statements. Religious discussions must be "reasonably clear" that they are personal and "reasonably free of the potential for, or appearance of, coercion." Mikey Weinstein, a 1977 Air Force Academy graduate and instigator of a lawsuit against religious discrimination, criticized the guidelines for tilting in the direction of coercion.

The rules still require "nondenominational, inclusive prayer or a moment of silence" at formal, official military ceremonies. "We will respect the rights of chaplains to adhere to the tenets of their religious faiths and they will not be required to participate in religious activities, including public prayer, inconsistent with their faiths," the guidelines conclude.

Family Planning Funds Cut Sharply

President Bush's new budget proposal cuts international family planning programs by 18%, projecting a cut from \$436 million to \$357 million. Many Democrats and nonprofit groups denounced the reductions. "It's ironic that an administration outwardly committed to reducing the incidence of abortion would take away valuable tools for preventing unwanted pregnancies," observed Rep. Nita Lowey (D-NY).

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Edwards, Alley Win Awards

Rep. Chet Edwards (D-TX) and Robert S. Alley, professor emeritus of humanities at the University of Richmond, received the 2006 First Freedom Awards for their contributions to religious liberty. Edwards has been an outspoken advocate of church-state separation in Congress and Alley has written many books defending the principle. The awards were given January 18 in Richmond, where the Council for America's First Freedom, the donor of the awards, is located. The awards also celebrated the 220th anniversary of the Virginia Statute of Religious Freedom, authored by Thomas Jefferson and considered a landmark in US religious and legal history. The Council promotes deeper understanding of the First Amendment's religious clauses.

Former Czech president Vaclav Havel received the international religious freedom award from the Council on the same day.

California School Drops ID

Under threat of a federal lawsuit (*Hurst v. Newman*) the El Tejon school district in California dropped an elective course called "Philosophy of Design." The course was slated to begin at Frazier Mountain High School in Lebec, deep in rural California. The teacher, Sharon Lemburg, the wife of an Assemblies of God minister, had relied almost exclusively on videos and books from fundamentalist organizations that espoused creationism and young earth theories of the origins of life. Lemburg, a special education teacher and soccer coach, told the *Mountain Enterprise*, "I believe this is the class that the Lord wanted me to teach." A group of parents, backed by Americans United, brought suit in federal court but pursued an out of court settlement, which was reached on January 17. The school district agreed that "No school over which the school district has authority, shall offer, presently or in the future, the course entitled 'Philosophy of Design' or 'Philosophy of Intelligent Design,' or any other course that promotes or endorses creationism, creation science or intelligent design."

Republicans Dominate Judiciary

More than 55% of all sitting federal judges, including Supreme Court justices, appellate judges, and district court judges, have been appointed by Republican presidents, according to the Alliance for Justice. Republicans have large majorities in the third, fourth, fifth, and tenth judicial circuits, and smaller majorities in the first, sixth, seventh, eighth, ninth, and eleventh circuits. The DC circuit is evenly divided, and Democrats have a majority only in the second circuit.

Bible Classes Roil Texas Schools

Two Texas school districts have adopted different Bible course curricula for public school classes. Ector County trustees on December 20

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Personalities

Planned Parenthood Federation of America announced in January that Cecile Richards, who has more than 20 years of experience in support of reproductive freedom and social justice, will become its next president. Richards is a founding member of America Coming Together and president of America Votes. She was also founder of the Texas Freedom Network, a group started to counteract the influence of the Religious Right in Texas.

adopted the fundamentalist-oriented course designed by the National Council on Bible Curriculum in Public Schools (NCBCPS).

The NCBCPS, based in Greensboro, NC, has the backing of Focus on the Family and the Eagle Forum, and uses only the King James Version of the Bible. The 4-2 vote reflected the conservative, evangelical flavor of the West Texas community of Odessa, where religious conservatives rallied to support the course. (The board was besieged by members of the Life Challenge Pentecostal Church, chanting "Give Us the Bible.") School board president Randy Rivers especially wanted the NCBCPS course because it used the King James Version of the Bible. "If you're going to teach something, it's better to use the source," he replied, apparently unaware that other versions and translations of the Bible were made a thousand years earlier than the King James Version. David Newman, an English professor at Odessa College, said he planned to sue the school district because the curriculum advocated only a fundamentalist Protestant interpretation of the Bible, promoted creationism and taught that the US Constitution was based on Scripture.

Across the state, the New Braunfels School Board voted on January 16 to adopt as a high school elective the somewhat better course called *The Bible and Its Influence*, which has won praise from several Jewish, Catholic and mainline Protestant leaders and educators. "The goal of the course is to teach religion in a way that is purely academic and not devotional," said trustee Jorge Maldonado. Lutherans and Catholics are the strongest religious groups in this German-American community.

TFN Supporter Wins in Texas

Democrat Donna Howard, a supporter of the Texas Freedom Network (see *VOR* 93), a pro-separation, anti-voucher group, won a seat in the Texas legislature on February 14. Howard won handily, 58% to 42%, in District 48, which had been held by a Republican. Howard won the special election in the Texas House seat which includes the western part of the capital city of Austin and western Travis County. She will face the same Republican opponent in the November election.

Public Prayer Bill Filed

As if Congress did not have enough pressing issues to tackle, South Carolina Republican Rep. J. Gresham Barrett has introduced the "Public Prayer Protection Act" (HR 4364), which seeks to remove all cases involving prayer by public officials from federal courts. The act is aiming at a 2004 case in which the US Fourth Circuit Court of Appeals banned sectarian prayers from city council meetings (*Wynne v. Town of Great Falls*). Barrett wants all such cases to be sent to state courts, where, presumably, less restrictive interpretations of the First Amendment would be likely.

Tar Heel Republicans Go After Churches

In a controversial move that provoked criticism even from conservatives, the North Carolina Republican Party asked its members to send their church directories to party headquarters. The February 15 request was sent by e-mail to registered Republicans in the state by Chris Mears, the state party's political director. Mears told the *Washington Post* that "people who regularly attend church usually vote Republican and it is imperative that we register, educate and get these potential voters from the pew to the ballot box." The plan was denounced by Rev. Richard Land, head of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, who said, "Such a request is completely beyond the pale of what is acceptable." The *Greensboro News & Record* reported opposition from clergy. One Baptist pastor in Greensboro, the Rev. Richard Byrd, Jr., said anyone complying with the request "would be betraying the trust of the membership."

Massachusetts Churches Win One

The Massachusetts House overwhelmingly rejected legislation that would have required religious organizations to file annual reports with the state. Intense lobbying against the proposal from the Massachusetts Council of Churches and Catholic dioceses was a factor in the 147-3 vote. The bill would have required all religious organizations to file financial reports annually with the attorney general's charity division.

Pataki Proposes Tax Credits

New York Governor George Pataki, who is not seeking reelection but may join the Republican nomination battle for president in 2008, proposed an education tax credit in his January 17 budget address. Pataki proposed that parents be given a \$500 tax credit to reimburse them for private school tuition, after-school programs and tutoring. While aimed at the private school clientele, the credit would also be available to public school parents for educational expenses or "enrichment activities." The American Federation of Teachers announced its opposition immediately.

Democrats Promote Bible Classes

Democratic legislators in Alabama and Georgia have introduced bills authorizing school districts to teach Bible courses modeled after the Bible Literacy Project's new textbook, *The Bible and Its Influence*. Kasim Reed, a Georgia state senator from Atlanta, frankly admitted his proposal had political ramifications. "We are not going to give away the South any more because we are unwilling to talk about our faith," he told *The New York Times*. Republican and Christian conservatives, who favor a more fundamentalist approach to school Bible courses, scoffed at the proposals. Republican leader Eric Johnson of Savannah, called it "election-year pandering using voters' deepest beliefs as a tool."

However, the Georgia Senate approved a bill on February 3 by a 50-1 vote that allows the state board of education to adopt a curriculum for "an objective and non-devotional" Bible course at public high schools.

Some argue that the government ought to be able to subsidize the religious activities of nongovernmental organizations on the same basis that it subsidizes the nonreligious activities of such groups. This ignores the fact that the First Amendment singles out religion for special treatment. The limits the Establishment Clause places on government's relationship with faith are balanced by the special accommodations for religion that flow from the Free Exercise Clause. For example, though the government must not fund religious activities, even though it may subsidize nonreligious activities, it must offer special protection for religious autonomy. These limits work together to ensure that religion can pursue its mission as it sees fit, rather than as the government sees fit.

—Melissa Rogers, visiting professor of religion and public policy at Wake Forest University Divinity School. Excerpted from her article "Judging Alito," in *Christian Century*, January 10, 2006.

Religious Groups Receive Share of AIDS Money

Associated Press reported on January 30 that religious organizations received almost a fourth of US HIV/AIDS grants last year. Major faith-based recipients include Catholic Relief Services, World Vision, HOPE, World Relief, and Samaritan's Purse, which is run by Billy Graham's son, Franklin. Most of the money is given for treatment programs in countries ravished by HIV/AIDS. Disputes over preventive strategies have caused friction between some secular and some faith-based organizations. The AP report noted, "Conservative Christian allies of the president are pressing the US foreign aid agency to give fewer dollars to groups that distribute condoms or work with prostitutes."

Ehrlich Ups Aid

Maryland Republican Governor Robert Ehrlich added \$1 million in his 2006 budget for the Nonpublic Schools Textbook/Technology Program, bringing the program's funding up to \$4 million yearly. Previous legislatures had cut the annual allocation from \$6 million to \$3 million. The General Assembly must approve the increase during the 2006 legislative session.

Clergy Denounced to IRS

A group of 31 Ohio religious leaders from nine denominations asked the IRS on January 15 to investigate the tax exempt status of two large evangelical churches that have engaged in partisan political activities. The complaint alleges that the Rev. Rod Parsley of the World Harvest Church in Columbus and the Rev. Russell Johnson of Fairfield Christian Church in Lancaster improperly used their churches for partisan politics. Both clergy supported President Bush and are actively involved in the campaign of Secretary of State J. Kenneth Blackwell, who is seeking the Republican nomination for governor.

Religious Right Funds Anti-Gay Campaign

The Arlington Group, a national group of conservative Christians such as Focus on the Family and the Family Research Council, gave \$2

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Moving?

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million to groups trying to ban same-sex marriage. A report by the Institute on Money in State Politics found that more than \$1 million found its way to Ohio in 2004. In 13 states that faced gay marriage referenda, \$13.3 million were spent by both sides. The group's executive director, Edwin Bender, said, "The proliferation of these marriage-definition ballot measures in a quarter of the states during the same election cycle shows how easily political organizers can manipulate the electoral debate with hot-button issues." One key member of the Arlington Group is Ohio Secretary of State Ken Blackwell, now the Religious Right's preferred candidate for Ohio governor.

International

Baghdad: Religious and ethnic parties won the vast majority of seats in Iraq's parliament. The election commission released final results of the December 15 balloting on January 20. A Shiite coalition, including the Supreme Council for the Islamic Revolution in Iraq, placed first with 128 seats, enough to form a government but not enough to rule alone. Two secular Kurdish parties secured 53 seats, and a Sunni coalition, including the Iraqi Islamic Party, won 44 seats. A secular Arab coalition led by former prime minister Ayad Allawi won 25 seats. Smaller parties shared an additional 25 seats in the 275-member body. Religious parties won 172 seats to only 78 for secular ones. (The other parties are also mostly secular.) A coalition government is expected to be fashioned, though both Shiite and Sunni extremists are claiming the election was fraudulent.

Brussels: *The International Herald Tribune* reported on December 4 that "Poland is on a collision course with Brussels," where the 732-member European Parliament meets. Right-wing Catholic delegates from Poland, the Czech Republic, Slovakia and Latvia are forming a conservative religious bloc that is challenging longstanding European Union policies on women's reproductive rights, gay rights and civil liberties. Issues once thought settled have been reopened. British European Parliament member Michael Cashman told the *Herald Tribune*, "On women's rights and gay equality, we are fighting battles we thought we had won years ago." The cultural clash worsened after Poland elected an ultraconservative Catholic, Lech Kaczynski, president on October 23. One of ten European Parliament members from Poland, Marceij Giertych, said, "We want to see Europe based on a Christian ethic. We accept the teaching of the Catholic Church on all moral issues."

Jerusalem: Israel's Foreign Ministry ordered the chief rabbinate to stop the conversion process of a group known as Bnei Menashes, who live mostly in Burma and India. India complained formally, and the Israeli government said the conversion process was straining relations with India. Israel's chief Sephardic rabbi recognized the Bnei Menashes of Northeast India as one of the 10 lost tribes of Israel and began the formal conversion process last fall. About 800 tribe members have immigrated to Israel, most living in Jewish settlements in the occupied West Bank. Reportedly, Christian and Hindu leaders in India initiated the protest to the Indian government. The Bnei Menashes were originally converted to Christianity when Western missionaries came to the Northeastern Indian provinces of Mizoram and Manipur.

Santiago: Chile elected its first female president on January 15. Michelle Bachelet, a pediatrician who has been Minister of Health and Defense in recent governments, won 53% of the vote to 47% for her opponent, Sebastián Pinera, a billionaire and center-right candidate. Bachelet is a Socialist, a self-proclaimed agnostic in a heavily Catholic

Sen Sense

Nobel laureate economist Amartya Sen makes eminent sense in his article on multiculturalism in the February 27 *New Republic*. With regard to "official British policies in recent years," Sen points out — listen up, American politicians — that:

"The state policy of actively promoting new 'faith schools', freshly devised for Muslim, Hindu, and Sikh children (in addition to pre-existing [tax supported] Christian schools), ... not only is educationally problematic, it also encourages a fragmentary perception of the demands of living in a desegregated Britain. Many of these new educational institutions are coming up precisely at a time when religious prioritization has been a major source of violence in the world (adding to the history of such violence in Britain itself, including Catholic-Protestant divisions in Northern Ireland — themselves not unconnected with segmented schooling). Prime Minister Tony Blair is certainly right to note that 'There is a very strong sense of ethos and values in those schools'. But education is not about getting children, even very young ones, immersed in an old inherited ethos. It is also about helping children to develop the ability to reason about new decisions any grown-up person will have to take. The important goal is not some formulaic parity in relation to old Brits with their old-faith schools, but what would best enhance the capability of the children to live 'examined lives' as they grow up in an integrated country."

country, and a single mother of three children. Her father was a general who died in prison during the 17-year-long dictatorship of General Augusto Pinochet. Bachelet left Chile for exile in Australia but returned in 1979. Her campaign received the strong support of outgoing President Ricardo Lagos. Bachelet benefited from the booming economy, which has made Chile the most prosperous Latin American country. She is expected to extend benefits to the less advantaged, and her support was strongest among younger and poorer voters. Her opponent was also a different kind of conservative, who denounced the Pinochet government and called himself a "Christian humanist." Pinera called for pensions for housewives, which may have resonated in a nation where only 36% of adult women work outside the home. Chile remains in some respects a conservative society, where divorce only became legal in 2004 and where abortion and gay marriages are banned. While Chile is staunchly Catholic, it has a large evangelical community. The extreme right candidate was eliminated in the first balloting weeks ago, and some of the hard line pro-Pinochet voters may have abstained in the runoff.

Stockholm: The Supreme Court acquitted a Pentecostal pastor of "hate speech" for referring to homosexuality as a "cancerous tumor" in a sermon. Sweden's highest court said Rev. Ake Green's remarks, however offensive, were protected by the freedom of expression provisions of the European Convention on Human Rights. Green had been sentenced to one month in prison by a lower court, but an appeals court overturned that ruling. The November 29 decision came out at the same time Sweden's security police released a report documenting an increase in hate crime, especially against gays, in a nation often considered a bastion of liberalism and tolerance.

Strasbourg: The European Court of Justice upheld Turkey's ban on head scarves for female students. The Court said the ban was not a violation of religious freedom but was consistent with the values expressed in the European Convention on Human Rights.

Vaduz: Voters in the tiny Alpine principality of Liechtenstein rejected an initiative supported by the country's Roman Catholic archbishop that would have banned or restricted abortion, birth control, assisted suicide and living wills. The 80% Catholic electorate opposed the referendum by 80% to 20%. They instead supported a counterproposal that brings the diminutive state (population: 32,000) in line with most other European nations on social issues.

Vatican City: Jim Towey, who heads the Bush administration's Faith-Based Initiative office, told a Vatican audience on January 17 that separation of church and state, strictly applied, deprives state-funded social programs of a "spiritual dimension." Towey denounced "the ruthless secularization" of public life in the US and claimed that opponents of Bush's social policies have falsely libeled the president as a "chaplain in chief." Ironically, Towey addressed a conference commemorating the 40th anniversary of the Vatican declaration *Dignitatis Humanae*, which endorsed religious liberty and recognized the validity of church-state separation.

The official Vatican newspaper, *L'Osservatore Romano*, published an article in its January 16-17 issue defending the decision by a Pennsylvania judge that intelligent design is not an acceptable scientific alternative to evolution. Fiorenzo Facchini, a biology professor at the University of Bologna, wrote, "It is not correct from a methodological point of view to stray from the field of science while pretending to do science. It

only creates confusion between the scientific plane and those that are philosophical or religious." The article was praised by Catholic biologist and professor Francisco J. Ayala (an ARL advisory board member), who said Facchini "is emphasizing that there is no need to see a contradiction between Catholic teaching and evolution."

Facchini also wrote that "God's project of creation can be carried out through secondary causes in the natural course of events, without having to think of miraculous interventions that point in this or that direction."

The newly-appointed US ambassador to the Holy See is wealthy Republican donor and Bush friend Francis Rooney. Rooney donated more than \$500,000 to the president's reelection campaign. Rooney is the seventh US ambassador to the Holy See and, like all his predecessors, is a Catholic. Rooney told *National Catholic Reporter* Rome correspondent John L. Allen Jr., "The president is a very values driven person, and he considers the Holy See the apex of articulating the values of human rights and human dignity. It's just natural for him to see it as an important point of reference."

At the same time, the United Kingdom appointed its first Catholic ambassador to the Holy See since 1534. Most of the previous ones had been Anglicans. Francis Campbell, a native of Northern Ireland, is, at 35, the youngest British diplomat at the ambassadorial level. He was once private secretary to Prime Minister Tony Blair. ■

Books and Culture

Book Talk

The Religious Right's overreach continues to produce an avalanche of books, many from evangelicals who oppose this questionable union of religion and politics. Look for these forthcoming titles: Randall Balmer, a professor at Columbia University and author of numerous books, tackles the long-range implications of the trend in *Thy Kingdom Come: How the Religious Right Distorts the Faith and Threatens America – an Evangelical's Lament* (Basic Books, July 2006); Gregory A. Boyd warns churches about too close an identification with any political party or political ideology in *The Myth of a Christian Nation* (Zondervan, May 2006); Peter Laarman edits a critique in *Getting on Message: Challenging the Christian Right from the Heart of the Gospel* (Beacon Press, April 2006); a similar message is delivered in Robin Meyers' *Why the Christian Right is Wrong: A Minister's Manifesto for Taking Back Your Faith, Your Flag, Your Future* (Jossey-Bass, May 2006); also from Jossey-Bass in April is Becky Garrison's look at mega-churches and their political activities, *Red and Blue God, Black and Blue Church*; Dan Wakefield, journalist, novelist and screenwriter skewers the Christian Right in *The Hijacking of Jesus: How the Religious Right Distorts Christianity and Promotes Prejudice and Hate* (Nation Books, April 2006); finally, another blockbuster is expected in March from former Nixon advisor turned liberal Kevin Phillips, in *American Theocracy*, from Viking.

Visit ARL's Web Site

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

With Liberty and Justice for All: A Life Spent Protecting the Right to Choose, by Kate Michelman, Hudson Street Press, New York, 2005, 278 pp, \$24.95.

Kate Michelman is one of the most heroic, courageous people I have ever known. As the head of NARAL, now NARAL Pro-Choice America, from 1985 to 2004 Michelman has been one of the very strongest leaders in the struggle to defend every woman's right not only to decide for herself how to deal with a problem pregnancy but also to have access to the full range of reproductive health care and education.

(By way of full disclosure, I served on the NARAL board around 1980, and was a founding board member of the Religious Coalition for Reproductive Choice and served on that board from 1973 through 2004.)

An indefatigable, brilliant, eloquent activist for choice for over 30 years, Michelman has written a book far too rich in detail to allow easy summary. Suffice it to say that she leaves few stones unturned.

This book should inspire and energize a new generation of women and men too young to remember the horrors that millions of women endured before *Roe v. Wade*, before women were liberated from the tyranny of Big Brotherism.

Let's make this book a best seller.

—Edd Doerr

The Founders on Religion: A Book of Quotations, edited and introduced by James H. Hutson, Princeton University Press, 244 pp., \$19.95.

Hutson, the chief of the Manuscript Division at the Library of Congress, has delved into primary source documents to compile this illuminating look at the religious views of the "founders" of the American Republic. Much of what he uncovers has been cited before, but much is new and unknown to previous scholars and biographers. He carefully describes his methodology: "I offer a quote book that is as objective as possible and that conforms to the canons of historical scholarship. My expectation is that readers of all religious persuasions – or of none – will find the book useful. Conservative and evangelical readers who consult the book will, I hope, be persuaded that sound scholarship

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is not their sworn enemy, as many have been led to believe.” He also claims that his use of “a wider variety of sources than is employed in (many other) quote books” led to “some surprising results.” “These new sources offer readers a richer and livelier selection of statements about the religion of the Founders than is now available.”

Hutson sees the Founders as more religious and observant than have many scholars. “With a few exceptions, Benjamin Franklin being the most conspicuous one, they were regular churchgoers, many active in the affairs of their local congregations. . . . Whatever the situation in society at large, the Founders were demonstrably regular churchgoers who knew their Bibles and incorporated scriptural texts into their working vocabularies. The Founders were also interested in theological issues . . . and many of the Founders were diligent students of theology. The reading of religious treatises was a principal avocation of some”

Hutson also says he presented “the mature, settled opinions of the Founders, insofar as I could ascertain them.” In that light, he argues that “the mature Jefferson grew friendlier to Christianity as he aged” while Madison’s “religious fervor did not persist” and he may have become “an outright skeptic.”

Admittedly his selection is limited to 17 of the “most influential political and military leaders of the new nation,” seven of whom were Episcopalians. The usual and expected leaders are here: Washington, Adams, Franklin, Jefferson, Madison, Henry, Hamilton and Jay. But so are Martha Washington and Abigail Adams, the first two First Ladies, whose influence on public policy in that patriarchal era was certainly slight. Washington’s views seem rather typical of Virginia Episcopalianism, while Adams seems to reflect moderate New England Congregationalism more than her husband’s Unitarianism.

Also included were Elias Boudinot, director of the US Mint and first president of the American Bible Society. “Boudinot is of particular importance because he was a born-again Presbyterian, whose evangelical views were probably closer to the majority of his countrymen than were those of his fellow Founders.” Charles Carroll of Carrollton is the only Roman Catholic in the group, and his views are a mixture of conservative and liberal Catholicism. John Witherspoon, a Presbyterian pastor and president of Princeton University, is included, as are some less well known figures: John Dickinson, Henry Laurens, Benjamin Rush, and Roger Sherman. Not a bad selection, but one would have thought that Thomas Paine and George Mason merited inclusion. There were no Baptists selected, either, though John Leland, Isaac Backus and Richard Furman all contributed to the intellectual foundations of the religious liberty movement.

The book is arranged alphabetically by topic, from “addiction” and the “afterlife” to “war and women,” 79 in all.

This journal has been critical of Hutson in the past (see VOR issues 64 and 90) for his apparent efforts toward accommodationism and lukewarmness toward separation of church and state. This volume, though, encompasses a wide range of religious views and sentiments, and while it should have included some additional figures who merit the term “Founders,” it is a useful reference volume for scholars of the period.

—Al Menendez

Ye Will Say I Am No Christian: The Thomas Jefferson/John Adams Correspondence on Religion, Morals, and Values, edited by Bruce Braden, Prometheus Books, 258 pp. Available from Amazon at \$17.16.

The timeliness of Bruce Braden’s collection of timeless wisdom penned by Jefferson and Adams is powerful. In America today there is a tremendous distortion being perpetuated by charlatans and shamanistic enthusiasts who are involved in a crusade to convince undereducated and gullible Americans their nation was completely created by zealous

Selections from Hutson’s *The Founders on Religion*

“I will not condescend to employ the word toleration. I assert that unlimited freedom of religion, consistent with morals and property, is essential to the progress of society and the amelioration of the condition of mankind.”

—John Adams, letter of October 2, 1818

“I think vital Religion has always suffered when Orthodoxy is more regarded than Virtue. And the Scripture assures me, that at the Last Day, we shall not be examined on what we thought but what we did.”

—Benjamin Franklin, letter of April 13, 1738

“Nothing is more dreaded than the National Government meddling with Religion.”

—John Adams, letter to Benjamin Rush, June 12, 1812

“Christianity disdains to receive support from human governments.”

—Benjamin Rush, letter to Thomas Jefferson, October 6, 1800

Christians. As documented by their correspondence, some readers will learn, perhaps to their surprise, Jefferson and Adams were Unitarians.

Even though Jefferson and Adams were not among the fifty-five “Founding Fathers” who gathered at the 1787 Constitutional Convention in Philadelphia, the significance of their contribution to the early and continuing history of religion in America is undoubted. It was Jefferson’s 1786 Statute for Religious Freedom which put an end to efforts in Virginia to fund “teachers of the Christian religion” with coerced tax money. It was President Adams who signed the 1797 Treaty with Tripoli which declared that “the government of the United States of America is not in any sense founded on the Christian religion.”

Braden’s scholarly compilation will be of immense value to every reader as it obviously provides not only the exact words of Jefferson and Adams, as they discussed issues of religion, philosophy, and morals, but it also provides a wealth of notable information which gives readers much additional insight as to the depth of knowledge residing in the minds of both writers. In developing their thought, Jefferson and Adams drew on past history on personal life experience, but also on time spent in reading the written word of the world’s most enlightened thinkers.

Readers, please, relax, absorb, and enjoy the minds of two of America’s foremost spokespersons, especially as they journey through the intellectual landscape of religion and philosophy from a truly American perspective of freedom, particularly in relation to matters of religion and government. Thomas Jefferson and John Adams are going to take you on a splendid trip.

—Gene Garman, *M. Div., lives in Pittsburg, Kansas, and is author of America’s Real Religion.*

The Faiths of Our Fathers: What America’s Founders Really Believed, by Alf J. Mapp, Jr., Rowman & Littlefield Publishers, Inc., 183 pp., \$14.95 paperback.

Mapp, author of a two-volume life of Jefferson, tackles the difficult subject of religious beliefs of the US Founders. He has selected eleven of them for this study. As he notes, “There was no monolithic national faith acknowledged by all Founding Fathers. Their religious attitudes were as varied as their political opinions.”

He chooses the major Founders (Jefferson, Franklin, Madison, Adams, Washington) and adds John Marshall, who is never considered in books

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of this nature, Patrick Henry, Alexander Hamilton and George Mason. One Catholic, Charles Carroll, the Maryland aristocrat and signer of the Declaration of Independence, and Jewish financier Haym Salomon are inspired choices.

Mapp says his book "is mostly concerned with the thoughts on religion of intelligent political leaders prominent in the founding of the United States," which make his choices defensible, though not comprehensive.

Mapp reveals some facts that are not widely known. Patrick Henry, for example, was not very devoted to religion in his youth but became more devout as he aged. He favored government financial support for religion, which he held to be indispensable to statecraft, and favored retaining the Episcopal Church's Establishment. When that failed, he proposed that four churches, Episcopalians, Presbyterians, Methodists and Baptists, share Establishment status. But when none of them assented, that plan failed, too.

Mapp calls Jefferson a "closet theologian" because "he pursued most of his theological ruminations in secrecy." He says Madison, Carroll and Adams were theologically literate and steeped in the classics of religion and philosophy. Six of these Founders were Episcopalians, but they did not all agree on religious issues, and certainly not on political ones.

Mason's Virginia Declaration of Rights was one of the great documents of civil and religious liberty, though it did not go quite as far as Jefferson and Madison preferred. But "Mason was a vital part of all the legislation defining relations between church and state."

Mapp's subtext is that belief in religious freedom was a defining characteristic of the enlightened religion of the American colonies at the time of the Revolution. George Mason, for example, retired from public life but came out fighting for religious freedom in his later years. "The question of religious freedom was sometimes the only thing that brought him out of retirement from public life, the only thing that brought him back to the arena despite pains, illness and flagging spirits. . . . Perhaps his second marriage, in 1780, to Sarah Brent, member of a prominent Catholic family, intensified his sensitivity to the rights of religious minorities."

Haym Salomon, born into the Jewish community of Poland, became a Pennsylvania businessman who helped the Patriot cause financially. But his own deep concept of charity knew no boundaries. "At his own expense, he also helped to feed British soldiers in American prisons." On January 21, 1784, Salomon was one of five Jewish signers of a petition pleading for full civil rights, and abolition of religious tests, in Pennsylvania. "The justice of the petition was officially acknowledged." Adds Mapp, "As a dedicated Jew operating within the context of a new

nation's struggle for independence, he served well both the rights of Judaism and the cause of universal freedom."

Mapp also argues that evangelicals transformed by the Great Awakening worked closely with Establishment figures to fashion a system guaranteeing religious liberty through the separation of church and state. Allies they were then, unlike in the America of 2006.

Mapp emphasizes that Americans of all religious persuasions shared many common bonds. "Whether Protestant, Catholic or Jewish in faith, liberal or conservative in politics, they perpetually reexamined their lives in the light of ancient wisdom, religious and philosophical. They weighed their actions on a scale of ethics."

Mapp's writing is crisp and clear, and his bibliography is outstanding.

—Al Menendez

The Left Hand of God: Taking Back Our Country from the Religious Right, by Rabbi Michael Lerner, Harper San Francisco, 408 pp, \$24.95.

Rabbi Lerner, editor of *Tikkun* (healing) magazine, proposes a "Spiritual Covenant with America," uniting all kinds of "progressives" to challenge the 1994 Republican Contract with America, and a Spiritual Left to confront the Religious Right. His lengthy examination of today's "spiritual crisis" in politics has much to commend it, but it also raises serious concerns.

This Spiritual Covenant seeks to strengthen families, emphasizes personal and social responsibility, supports affordable health care for all, demands environmental stewardship, values safety, security and world peace, supports "values-based education" and endorses "the separation of church, state and science." This last, and rather unusual, concept is defined by Lerner: "We seek to keep religion out of government and government out of religion, and both out of science. We will not allow anyone to use government to impose a particular religious worldview on the rest of us. . . . We will protect religion from government interference, and we will protect the sanctity of religion from those who try to turn God into private property. We will foster respect and tolerance for all religious communities and paths, as well as for nonreligious orientations. We will curb government-funded efforts that directly or indirectly support recruitment to any particular religious community."

He says that "a spiritual politics based on these eight covenants will provide a new vision and a powerful message, the message of the Left Hand of God." (Hence, the book's title.)

Lerner argues that Americans face a spiritual crisis, one rooted in growing social inequality, fear of change, rootlessness, loss of commu-

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Books and Culture, *continued from page 23*

nity and shared values. The Religious Right, for a quarter century, has attempted to fill the moral vacuum with its own flawed values, the failures of which should be obvious to millions of politically disconnected citizens.

Lerner is a visionary and an idealist who hopes to influence the Democratic Party. If the Democrats would only adopt his spiritual covenant, they “can start winning elections in a way that will give them a mandate for real change.” Otherwise, “Democrats and their allies will continue to lose elections until they become open to understanding the inherent values of a spiritual vision of the world and can present a spiritual vision that validates love and kindness instead of domination and war. The Democratic Party and others on the Left will need to develop a politics that has a coherent and proudly articulated spiritual foundation.”

But is that really the historic ethos of the party of Thomas Jefferson and Andrew Jackson, of Franklin Roosevelt and John F. Kennedy? Therein lies the problem. Should both US parties be exponents of a religion-based politics, one of the right and one of the left? Lerner ignores the fact that many Americans of diverse religious traditions do not see the governmental realm as the appropriate place for the translation of religious values. Many Christians, Jews, Muslims and others believe that the private sector is the appropriate venue for charitable endeavors reflective of religious impulses. A secular political system is not inherently hostile to religiously-based values; it is a political system based on a search for the common good, justice, fairness and inclusivity. Such principles do not require a religious left or a religious right for validation.

— *Al Menendez*

The Baptizing of America: The Religious Right's Plan for the Rest of Us, by Rabbi James Rudin, Thunder's Mouth Press, 328 pp., \$25.00.

It is one of the vagaries of the publishing world that two books on the Religious Right written by American rabbis would appear in the same month and year. This one, by Rabbi James Rudin, who has spent more than three decades at the American Jewish Committee as an interreligious affairs specialist, is hard-hitting.

Rudin writes, “A committed group of Christian conservative leaders and their followers is intent on imposing their values, beliefs, and practices upon the entire American society. . . . The campaign to permanently transform America into a faith-based nation where one particular form of Christianity is legally dominant over all other religious communities constitutes a clear and present danger.”

Rudin defines these forces as “Christocrats” bent on creating a “Christocracy.” He claims that the term was used first in a positive sense by Dr. Benjamin Rush, one of the signers of the Declaration of Independence and a friend and supporter of Jefferson. Rush used the term to

define himself as a moral and independent person, rather than a political partisan. Rudin focuses on the Religious Right, particularly on its extreme Reconstructionist-Dominionist wing. Rudin shows how the Christocrats seek control over the nation's schools, libraries, legal system, medicine, media, military and even workplaces. While noting that the Religious Right is pro-Israel, he says, “The ardent evangelical support of Israel . . . sometimes blinds Jewish perceptions about the Christocratic attempt to dominate America.” And he adds pointedly, “Jews remain highly skeptical that a ‘Christian America’ would be that different from the grim realities their ancestors faced in a Europe saturated with a religious anti-Semitism that was the result of an unholy embrace between church and state that trampled on religious liberty and freedom of conscience.”

Rudin should be commended for sounding the alarm, as have many other authors over the last 25 years. But his exaggerations detract from his case. He claims that the Christocrats support a constitutional amendment to allow a president to serve more than two terms, and advocate a national identification card for every American that would include each person's religious identity. Also, “all government employees – federal, state and local – would be required to participate in weekly Bible classes in the workplace, as well as compulsory daily prayer sessions.” Since the book has no citations of any kind, there is no way to check the accuracy of such claims. I, for one, have never seen these issues raised in Congress or in the context of proposed constitutional changes. To say that “abortion is the most fevered issue in American life, surpassing even national defense and the war on international terrorism” does not comport with reality, either. Polls consistently show the abortion issue near the bottom of issues on which voters cast their presidential vote.

The lack of a bibliography and any endnotes is a major disappointment. A summary chapter, which ties together the author's points, would have been helpful, since the book ends abruptly.

— *Al Menendez*

When Christians – liberal or conservative – invoke a biblical theocracy as a handy guide to contemporary politics, they threaten our democratic discourse. . . . Christians are right to argue that the Bible is a priceless source of moral and spiritual insight. But they're wrong to treat it as a substitute for a coherent political philosophy.

— Joseph Loconte, *The New York Times*, January 2, 2006.