



# VOICE OF REASON

The Newsletter of Americans for Religious Liberty

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## High Court Gives Nod to Vouchers

As many had long feared, the U.S. Supreme Court blithely ignored a half century of jurisprudence limiting public aid to religious private schools and gave its seal of approval to the long controversial Cleveland voucher program.

By a 5-4 margin on June 27, the same justices who gave the presidency to George W. Bush have now advanced one of his primary political objectives, tax aid to sectarian schools.

To be sure, the majority decision, written by Chief Justice William Rehnquist, took pains in its labored language to say that it was merely following precedents established in such cases as *Mueller v. Allen* and *Aguilar v. Felton* — which are borderline cases at best — while ignoring the *PEARL v. Nyquist* ruling in 1973 which was more directly on target.

Basically, the court's conservatives concluded that the Ohio voucher program (officially the Ohio Pilot Project Scholarship Program) was not unconstitutional because "it is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice."

Rehnquist took pains to claim that the recipients were offered a wide variety of educational options and the fact that 96% of them ended up in parochial schools had no constitutional consequence. In so doing, Rehnquist ignored the discriminatory nature of church school hiring and admissions practices, as well as the longstanding principle that no taxpayers should be compelled to support religious education — their own or anyone else's. To claim, as Rehnquist did, that the ruling in *Zelman v. Simmons-Harris*, No. 00-1751, was "in keeping with an unbroken line of decisions rejecting challenges to similar programs," is simply untrue.

Justice Sandra Day O'Connor, the crucial swing vote, filed a concurring opinion which suggested that she must have read and digested the now classic fifty-year-old book called *How to Lie with Statistics*. She denied that 96% of participating students were enrolled in religious schools by ingeniously including public community schools and public magnet schools as "reasonable educational alternatives to

religious schools" and — presto! — the percentage of voucher students attending parochial schools drops to 16.5%. By using this novel statistical method, O'Connor denied that this decision "marks a dramatic break from the past." She added insult to injury when saying that even though "most of \$8.2 million in public funds flowed to religious schools under the voucher program . . . it pales in comparison to the amount of funds that federal, state and local governments already provide religious institutions." This odd argument seems to say that because American religious groups are feeding generously from government coffers, they might as well be given a little additional largesse at the voucher trough.

Ignoring all available evidence about tuition costs and availability of alternatives, O'Connor insisted that "genuine non-religious options" were available to "parents of eligible children" and that "non-religious schools were able to compete effectively with Catholic and other religious schools."

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## The Bishops' Dilemma

By Albert J. Menendez

The Catholic Church sex abuse scandal is likely to have a far ranging effect on law enforcement, criminal justice and financial matters. State legislatures will tighten laws requiring churches to report suspected abusers to local authorities, and states that presently exempt the clergy from this requirement will move to repeal the exemptions. Definitions of sexual abuse or harassment of minors vary from state to state but loopholes allowing perpetrators to escape justice are likely to be closed in light of the widespread publicity. This includes extending statute of limitation laws in many states.

The financial costs to the Catholic Church are immense and growing. Estimates range from \$600 million to \$1.3 billion in pay-off costs to victims and their families, as the various dioceses have tried to settle with outraged victims. Since many of the settlements are sealed by the courts, and recipients of funds are required to remain silent in many instances, the full extent of the financial drain may never be known. The country's 194 dioceses are in reality somewhat autonomous in their relationships to each other, though all are directly controlled by the Vatican. Neighboring dioceses may have different policies regarding sex abuse of minors, and differing standards for reporting claims to authorities or of settling with litigants. Bishops are theoretically equal to each other and are absolute authorities in their dioceses, so there may be little coordination between or among dioceses. The national bishops conferences, which meet twice yearly,

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## Dilemma, *continued from page 1*

have debated these issues since the mid-1980s, but the present scandals suggest that their policies have not been effective.

Insurance companies are likely to evaluate their policies toward churches and clergy, and rates covering such potential abuses may become so prohibitively high that no religious group can afford them. (This has become a grave problem in the medical profession in relation to medical malpractice insurance.)

All of these financial difficulties lead to another tantalizing question: Will churches seek more public funds for church schools and charities to make up for the financial drain of the lawsuits and for the declining revenue from angry and disillusioned parishioners? Without wanting to seem to be piling on an institution facing its worst U.S. crisis in decades, the question almost has to be asked. Will the U.S. Catholic Church's financial crisis spill over into the public realm, affecting legislative coffers? Or will state legislators and Congress become more wary of giving economic carte blanche to church-run and managed institutions that are increasingly relying on taxpayer support? Who knows? But the fallout could affect American society in many ways that are at present unforeseen and unpredictable.

It should be noted that the clerical sex abuse controversy affects other religious and secular groups, not just the Catholic Church. Two rabbis and cantors in New York and New Jersey face trial on sex abuse charges. A Southern Baptist preacher in South Carolina was sentenced to a lengthy prison sentence for multiple abuses, and a Lutheran pastor in Texas is likely to be arraigned on harassment charges. One of the first cases to establish a precedent in this area of law was settled in 1992 when the Episcopal diocese of Colorado was successfully sued by a woman who was a victim of sexual abuse by a priest at the cathedral in Denver. In that case the diocese was held responsible for the misdoings of one of its clergy.

And a forthcoming book from Professor Charol Shakeshaft at Hofstra University claims that 15% of U.S. school children are sexually harassed or abused at some time during their childhood, and that 5% of teachers have been guilty of such offenses. Previous books have exposed widespread sexual shenanigans among Boy Scout leaders.

One difference may be that teachers found guilty of sex abuse of minors are usually removed from their teaching positions and are turned over to the criminal justice system, rather than quietly transferred to another school or district.

The Catholic Church crisis changes daily, and its eventual outcome can not be discerned or predicted at this time. But a new and rather

sinister strategy seems to be apparent. Many of the 194 dioceses that face criminal and civil actions from plaintiffs have decided to fight the charges with high-power legal ammunition. The sense of shame and an appeal to public forgiveness, based on the hierarchy's admission of serious errors of judgment, is now being replaced by a hard-hitting legal strategy designed to bolster the church's defenses and its finances.

Since the church has already shelled out an estimated \$1 billion in claims (some settled out of court, some based on court judgments against the dioceses), a fear of bankruptcy has called forth a kind of circling-the-wagons mentality. A desire to protect the church's officials at all costs has begun to supplant the admission of culpability and a sense of contrition that emanated from some clerical sources a few weeks ago.

Some diocesan attorneys are advising Catholic schools and charities to divide assets among shell corporations to protect against claimants. Cardinal Edward Egan of the once-powerful and feared New York Archdiocese has even claimed that priests are "self-employed contractors working for autonomous parishes." (Tell that to the Vatican!) Avoidance of responsibility has created a massive crisis of unparalleled proportions in a church claiming the allegiance of one billion people worldwide.

Every national study shows that top-heavy majorities of American Catholics blame the church leaders for a cover-up of transgressions and for a refusal to face the realities of human sexuality. Support for abolition of mandatory clerical celibacy and for the ordination of married men and women to the priesthood has never been higher. A widespread disillusionment with the way the Vatican relates to national hierarchies and with the way in which hierarchies relate to the men and women who choose to remain in the church is undeniable.

The call for representative democracy in the church and for a massive overhaul of its structures may be impossible to repel, even by clerical reactionaries and stand-patters. The loss of moral authority by church leaders also calls into question whether Catholics in particular, and all Americans for that matter, will pay much attention to pronouncements on social and political matters by the bishops.

Historian Garry Wills, a practicing Catholic and a severe critic of its hierarchy, writes in a forthcoming book, *Why I Am a Catholic*, "The Church cannot be identified with its leadership, since its leadership has often been morally deficient. In fact, the hierarchy is corrupt, misguided and misleading."

The effects of this tragedy will have a major impact on church-state relationships throughout the world for years to come.

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## Vouchers, *continued from page 1*

Justice Clarence Thomas filed a separate concurring opinion which inexplicably quoted the 19<sup>th</sup> century black patriot Frederick Douglass and then claimed that “many of our inner-city public schools deny emancipation to urban minority students.” Without citing credible evidence, Thomas wrote, “Religious schools, like other private schools, achieve far better educational results than their public counterparts.” There is a wide body of evidence refuting this finding, especially when parental income and educational level are considered as explanatory influences.

There were three eloquent dissenting opinions. Justice John Paul Stevens said the majority decision “is profoundly misguided” and rests on the shaky argument that “the mere fact that a family that cannot afford a private education wants its children educated in a parochial school is a sufficient justification for this use of public funds.” Stevens said that the “voluntary character of private choice to prefer a parochial school education” is “quite irrelevant to the question whether the government’s choice to pay for religious indoctrination is constitutionally permissible.” Stevens warned, “Whenever we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy.”

Justice David Souter frankly accused his colleagues in the majority of repudiating the classic *Everson* decision of 1947 which held, “No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion.” (*Everson v. Board of Education*, 330 U.S. 1 at 16.) “How,” Souter asked, “can a Court consistently leave *Everson* on the books and approve the Ohio vouchers? The answer is that it cannot. It is only by ignoring *Everson* that the majority can claim to rest on traditional law in its invocation of neutral aid provisions and private choice to sanction the Ohio law. It is, moreover, only by ignoring the meaning of neutrality and private choice themselves that the majority can even pretend to rest today’s decision on those criteria.”

Souter pointed out that the program was carefully designed and limited so that in practice only parochial schools were affordable to potential users of the voucher scheme. Furthermore, he noted, “At each level, the religious schools have a comparative cost advantage due to church subsidies, donations of the faithful, and the like.” Souter analyzed two flaws inherent in the program: The value of the vouchers limits availability almost solely to Catholic religious schools, since most private nonreligious and other religious schools are far more expensive; and any increase in the program to expand availability “would be even more egregiously unconstitutional than the cur-

### **ARL in Action**

Since our last report, associate director Al Menendez’ article, “Crisis in the Catholic Church,” appeared in the July-August issue of *The Humanist*.

ARL president Edd Doerr presented workshops on church-state issues at the Unitarian Universalist General Assembly in Quebec in June and at the American Humanist Association conference in Houston in May. He addressed the Women’s National Democratic Club and the Institute for Educational Leadership in Washington, and spoke before student and church audiences in Ohio, Michigan, Virginia, and Washington. He was also a guest on a radio talk show in Las Vegas and attended a meeting on religion in international affairs at the United Nations in New York.

### **Ken Gjemre**

Ken Gjemre, Americans for Religious Liberty’s treasurer from 1984 to 1999, died at his home in California on May 28.

Ken cofounded Half Price Books in 1972 and built it into the nation’s largest chain of used book stores. An Army captain in World War II, Ken was one of the first Americans to meet his Soviet counterparts at the Elbe River in Germany in 1945. Years later he was active in an organization of U.S. and Russian veterans who had met at the Elbe. A resident of Texas until 1998, he was an active supporter of some 90 cause organizations devoted to civil liberties, human rights, peace, church-state separation, and environmentalism.

— Edd Doerr

rent scheme due to the substantial amount of aid to religious teaching that would be required.”

Souter angrily observed, “The scale of the aid to religious schools approved today is unprecedented, both in the number of dollars and in the proportion of systemic school expenditure supported.”

Souter said that “every objective underlying the prohibition of religious establishment is betrayed by this scheme.” Souter argued that “respect for freedom of conscience” and a desire “to save religion from its own corruption” were the two primary objectives of the Establishment Clause, both of which will suffer irreparable damage from this decision. He chided the majority, saying, “The majority makes no pretense that substantial amounts of tax money are not systematically underwriting religious practice and indoctrination.”

Souter warned that “the third concern behind the ban on establishment, its inextricable link with social conflict,” is also compromised because “as appropriations for religious subsidy rise, competition for the money will tap sectarian religion’s capacity for discord.” He added, “With the arrival of vouchers in religious schools, . . . will go confidence that religious disagreements will stay moderate.”

Souter’s dissent, joined by Justices Stevens, Breyer, and Ginsburg, was one of the most spirited rejoinders ever issued at the High Court. The fact that all four dissenters read their opinion from the bench underscored the intensity of the feeling.

In a highly unusual epilogue, Justice Souter urged the “political branches,” i.e. the legislatures [to] “save us from the consequences of the majority’s decision.” He added sadly, “In the matter of educational aid the Establishment Clause has been largely read away.” Now, “a federal court will not save them from it,” he said in referring to the political thrust for parochial school aid. “I hope,” he concluded, “that a future Court will reconsider today’s dramatic departure from basic Establishment Clause principle.”

In a separate dissent Justice Stephen Breyer pointedly warned of “the risk that publicly financed voucher programs pose in terms of religiously based social conflict.” Breyer said Ohio’s voucher plan allowed “direct financing to a core function of the church: the teaching of religious truths to young children,” and involved “a considerable shift in taxpayer dollars from public secular schools to private religious schools.”

Breyer accused the Court of “turning the clock back “on fundamental constitutional principles and adopting “an interpretation of the Establishment Clause that the Court rejected more than half a century ago.” He added, “In a society composed of many different religious creeds, I fear that this present departure from the Court’s earlier understanding risks creating a form of religiously based conflict potentially harmful to the nation’s social fabric.”

This case is surely one of the most important church-state decisions in many decades and sets the stage for years of intense conflict.

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# Pledge of Allegiance Ruled Unconstitutional

A federal appeals court in San Francisco ruled on June 26 that the phrase “one nation under God” constitutes an unconstitutional “endorsement of religion.” The 1954 addition to the Pledge of Allegiance mandated by Congress represented “a profession of a religious belief, namely, a belief in monotheism,” according to a 2-1 majority of the Ninth U.S. Circuit Court of Appeals.

Circuit Judge Alfred T. Goodwin, in his majority decision, said, “We hold that the 1954 act adding the words ‘under God’ to the Pledge, and the policy and practice of teacher-led recitation of the Pledge, with the added words included, violate the Establishment Clause.” Judge Goodwin was appointed to the court by President Nixon in 1971, and is a Presbyterian. He was joined by Judge Stephen Reinhardt, a Carter appointee.

Judge Goodwin held that “the government must pursue a course of complete neutrality toward religion.” The Pledge’s religious passage departs from that required neutrality. He added, “Furthermore, the school district’s practice of teacher-led recitation of the pledge aims to inculcate in students a respect for the ideals set forth in the pledge, and thus amounts to state endorsements of these ideals. Although students cannot be forced to participate in recitation of the pledge, the school district is nonetheless conveying a message of state endorsement of a religious belief when it requires public school teachers to recite, and lead the recitation, of the current form of the pledge. . . .

“The pledge, as currently codified, is an impermissible government endorsement of religion because it sends a message to unbelievers ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’”

The dissenting judge, Ferdinand Fernandez, appointed by George H.W. Bush, claimed that the phrase “under God” constituted only a “miniscule, de minimis and picayune” danger to First Amendment freedoms. Ironically, defenders of the provision claimed that the phrase had lost religious significance.

The case was brought by Michael A. Newdow, a physician and lawyer in Sacramento, on behalf of his second-grade daughter, who he said was coerced by the actions of “state-employed teachers in state-run schools.”

The ruling is not politically palatable, however, and ignited a furor of anger in Congress. The Senate voted unanimously just hours after the ruling to express disagreement with the decision and to authorize their legal counsel to seek an appeal, either with the full 11-member Ninth Circuit or with the U.S. Supreme Court. Senate Majority leader Tom Daschle called the ruling “just nuts” and President Bush labeled it “ridiculous.” Possible Democratic presidential candidate John Edwards of North Carolina, a leader of the Senate Prayer Breakfast group, predicted a reversal of the decision, as did liberal Harvard law professor Laurence Tribe.

The Ninth Circuit ruling applies only to the Pacific Coast and Western states.

*The New York Times* called it “a well-meaning ruling” but one that “lacks common sense.” While saying that the original 1954 move was “a petty attempt to link patriotism with religious piety,” the *Times* noted, “In the pantheon of real First Amendment concerns, this one is off the radar screen.” It warned in a June 27 editorial, “Most important, the ruling trivializes the critical constitutional issue of separation of church and state. There are important battles to be fought virtually every year over issues of prayer in school and use of government funds to support religious activities. Yesterday’s decision is

almost certain to be overturned on appeal. But the sort of rigid overreaction that characterized it will not make genuine defense of the First Amendment any easier.”

*The Washington Post* concurred, invoking a phrase once used by Justice William Brennan, a staunch separationist, who argued that “forms of ceremonial deism are protected from Establishment Clause scrutiny chiefly because they have lost through rote any significant religious context.”

The *Post* editors also worried that opposition to the ruling could “establish a precedent that sanctions a broader range of official religious expression than the pledge itself.”

Judge Goodwin stayed his order until his colleagues decide whether to review the decision.

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# The Religious Right Remains a Force in GOP State Parties

The Religious Right – organized Christian conservatives who take partisan politics seriously – is not going away. The Christian Right is stronger in 15 state Republican parties and weaker in only eight, according to a state-by-state report published in *Campaigns & Elections* magazine in February.

Eight years ago this journal of political professionals, campaign managers and public relations people involved in elections reported on the extent of Religious Right influence in the Republican Party apparatus in each state. The report was widely circulated and revealed a pervasive penetration in many states and at least a moderate influence in most states.

The 2002 survey reveals that the Religious Right, “is spreading out across the states, especially in the South, Midwest and West,” according to the report’s authors, Kimberly H. Conger and John C. Green. “Thus,” they add, “Christian conservatives have become a staple of politics nearly everywhere.”

On the other hand, its national impact is still limited. Conger and Green write, “However, the Christian right did not become more strongly implanted within the state Republican parties between 1994 and 2000. Indeed, it lost ground in key Southern states and in the far West. In some conservative areas, such as Kansas, it has gained and then lost ground in a short period of time. Meanwhile, its success in other states may be only temporary, tied to the fortunes of particular candidates and causes.”

The authors note that Christian rightists “have helped produce successful candidates and big wins at the polls, but have also proven disastrous for all concerned in some cases.” Because the Religious Right has become so cozy with the GOP establishment, “the influence of Christian conservatives within the GOP has made them less visible, distinctive and independent, but it has also made them a critical component of the Republican coalition.”

The report was based on an assessment of Christian right political influence in the Republican state committees from 395 “key informants and well-placed political observers in all 50 states and the District of Columbia.”

The Religious Right holds a strong position in 18 states today, the same as in 1994. It has a moderate influence in 26 states, up from 13 eight years ago. And it is weak in only 7 states compared to 20.

In the evangelical Protestant South, the Religious Right is “digging in” and becoming a commonplace part of the Republican coalition. It made its biggest gains, from weak in 1994 to strong in 2000, in Tennessee and West Virginia, two culturally conservative, Baptist/Methodist states with a historic Democratic bias and Democratic registration majority. Both states unexpectedly rejected Al Gore in 2000 and became major players in the outcome of that tightly contested race. But the Christian Right influence declined in Florida, Georgia, Louisiana and North Carolina.

In the Midwest Christian conservatives remain most influential in Iowa and Minnesota, though both states stuck narrowly with Gore. They have increased their influence in Missouri, South Dakota, Michigan and North Dakota. “These gains appear to be limited to pro-life activism” and “reflect the pockets of evangelical Protestants and ‘traditional mainline’ Protestants and Catholics” in the region.

In the West activist Christian conservatives remain strong in Alaska, Idaho and Oregon, even though the West’s secular and libertarian tendencies make it somewhat difficult for the Religious Right to dominate the culture. The biggest increase in influence and power came in Colorado, which moved from weak to strong in the survey’s assessment of influence. “The Colorado change may reflect the arrival in Colorado Springs of Focus on the Family, a major evangelical ministry,” say the authors, who add, “In most of these states, Latter-Day Saints have been an important force as well.” The Christian right was perceived to have lost ground in California, Arizona, Hawaii and Washington, which are significantly Asian and Hispanic and Catholic.

In the Catholic, Jewish and liberal Protestant Northeast, the Religious Right is weakest in influence and remains weak, except perhaps in New Hampshire, the only state in the region to support Bush in 2000. The authors explain, “Christian conservatives have always had the least influence in the Northeast. The small number of evangelicals plus the strength of moderate and liberal religious groups in the major metropolitan areas has sharply limited the impact of the Christian right, even in Republican circles.” In fact, all seven cases in the weak category are in the Northeast: Connecticut, the District of Columbia, Massachusetts, New Jersey, New York, Rhode Island and Vermont. These include the four most heavily Catholic states in the nation. At the other extreme, nine of the 18 strongholds of the Religious Right are states with a significant Baptist influence.

Finally, 14 of the 18 states where the Christian conservatives are strongest supported George W. Bush in the last election, while all seven states (including D.C.) where they are weakest went for Gore.

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**Table 1: Religious Right Influence on State Republican Parties, 2002**

<i>Strong</i>	<i>Moderate</i>	<i>Weak</i>
Alabama	Arizona	Connecticut
Alaska	California	District of Columbia
Arkansas	Delaware	Massachusetts
Colorado	Florida	New Jersey
Idaho	Georgia	New York
Iowa	Hawaii	Rhode Island
Michigan	Illinois	Vermont
Minnesota	Indiana	
Mississippi	Kansas	
Missouri	Kentucky	
Montana	Louisiana	
Oklahoma	Maine	
Oregon	Maryland	
South Carolina	Nebraska	
South Dakota	Nevada	
Texas	New Hampshire	
Virginia	New Mexico	
West Virginia	North Carolina	
	North Dakota	
	Ohio	
	Pennsylvania	
	Tennessee	
	Utah	
	Washington	
	Wisconsin	

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## ARL Brief Slams Christian Science/Government Connection

In a friend of the court brief filed before a federal appeals court, Americans for Religious Liberty and allied groups charge that amendments passed by Congress in 1997 to Medicare and Medicaid are unconstitutional violations of the ban on religious establishment. Congress created and defined so-called “religious non-medical health care institutions” for the sole benefit of subsidizing sanatoria under the control of the Christian Science Church. Such an action preferential to one religious denomination constitutes an establishment of religion forbidden by the U.S. Constitution’s First Amendment, according to the *amicus* brief submitted to the Ninth Circuit Court of Appeals.

The brief represents the American Humanist Association, the Council for Secular Humanism, the American Ethical Union and the Society for Humanistic Judaism, in addition to Americans for Religious Liberty. The case, *Kong v. Min de Parle*, is on appeal from the U.S. District Court for the Northern District of California.

The ARL brief emphasizes that a refusal to provide government funds to Christian Science healthcare “in no way burdens Christian Scientists in the exercise of their religious rights” because Christian Scientists are eligible for Medicare and Medicaid payments in the same manner as other citizens. Furthermore, “Christian Scientists have been providing religiously-based healthcare to their adherents for over a century and did so long before Congress enacted Medicare or Medicaid.” There are at present 17 Christian Science sanatoria operat-

ing in the United States, and they are now subsidized by federal funds. Since only Christian Science facilities are recognized as religious non-medical healthcare institutions, “providing federal subsidy to Christian Science Sanatoria alone creates a denominational preference and is a per se establishment of religion,” according to the ARL brief. The brief, prepared by attorney Randall D.B. Tighe of Minneapolis, also says “the statute clearly has a religious legislative purpose and has the principal effect of advancing religion.”

In addition, “the extent of the expenditure of governmental funds is made exclusively by religious authorities for exclusively religious reasons,” a type of “religious veto over governmental programs” that is forbidden by two previous U.S. Supreme Court decisions (*Larkin v. Grendel’s Den*, 459 U.S. 116 (1982) and *Kiryas Joel v. Grumet*, 512 U.S. 687 (1994)).

The brief argues that there is no compelling state interest in making a special accommodation of the Christian Science religion in the absence of any burden to its practice of that religion. The brief says that Christian Scientists “want a religious equivalent to a secular government benefit.” However, “accommodation of religion is a legitimate government purpose only when governmental action in fact burdens the exercise of religion.”

This case is something of a long shot, since the California District Court and the Eighth Circuit appeals court have previously ruled in favor of the Christian Science subsidy.

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## Reproductive Rights Still Face Challenges

Conflicts continue around the issues of reproductive health and abortion rights. Here is a roundup of events in recent weeks:

- Anti-abortion activists who published posters targeting doctors who perform abortions and who set up websites accusing them of “crimes against humanity” were guilty of illegal intimidation. So ruled the U.S. Court of Appeals for the Ninth Circuit on May 16. By a 6-5 vote the San Francisco-based court upheld a 1999 ruling of a federal jury in Oregon that such attacks on physicians and other abortion providers was not constitutionally protected free speech. Writing for the majority, Judge Pamela Ann Ryder said, “There is substantial evidence that the posters were prepared and disseminated to intimidate physicians from providing reproductive health services. Holding [the anti-abortion group] accountable for this conduct does not impinge on legitimate protest or advocacy.”

This en banc ruling overturned a decision last year by a three-judge panel of the Ninth Circuit. The ruling was hailed by abortion rights groups. “Our Constitution has never protected violence, nor has it protected speech used to place someone in fear of violence,” said Gloria Feldt, president of the Planned Parenthood Federation of America.

The decision, which applies to California, Oregon, Washington, Hawaii and Alaska, is certain to be appealed to the U.S. Supreme Court.

- In the first legal challenge to federally funded programs that teach sexual abstinence only in school sex education classes, ACLU

filed suit in a Louisiana federal court on May 9. ACLU’s Reproductive Freedom Project director Catherine Weiss said, “We are asking the Court to stop the promotion of religion in this government-funded program.”

The suit, filed in the U.S. District Court for the Eastern District of Louisiana, contends that Louisiana authorities spent some of the \$4.8 million it received in federal funds on “Christ-centered skits, religious youth revivals and biblical instruction on purity.” One group used the Virgin Mary as an example to promote abstinence, while the Catholic Diocese of Lafayette spent grant money on prayer sessions outside of abortion clinics, according to state documents included in the lawsuit. The state’s conservative Republican governor Mike Foster defended the program and ridiculed the ACLU suit, but his aide Dan Richey admitted that a few religious programs slipped through, saying “those things happen.” Under federal guidelines sectarian programs are not supposed to be eligible for such grants.

- New York’s public hospital system will now require abortion training as a compulsory part of its curriculum for medical residents, despite protests from national and state anti-choice groups. Nationally, fewer medical schools require knowledge of abortion procedures, and more than half of physicians who perform abortions are over the age of 50. Planned Parenthood noted that 85% of U.S. counties have no abortion providers. Medical students in New York who refuse abortion instruction for reasons of conscience may opt out of the program, but their numbers are estimated to be 15% or less.

- A congressional bill that would overhaul the nation’s bankruptcy laws has been stalled by an abortion rights provision introduced by Senator Charles Schumer of New York. Schumer’s bill would stop anti-abortion groups from using existing bankruptcy laws to avoid paying court-imposed fines for their protests at abortion clinics.

### Moving?

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## Editorials

### Strange Alliance

On March 28 religious right leader James Dobson (Focus on the Family) advised California parents on his syndicated radio show to remove their children from public schools. On April 9 advice maven Laura Schlessinger (“Dr. Laura”) told her radio audience, “I stand with Dr. James Dobson. Take your kids out of public school.” On the same day fundamentalist talk show host Marlon Maddoux threw his support behind Dobson.

What’s going on? This: A California-based outfit called the Alliance for the Separation of School and State is gathering signatures on a petition that states, “I proclaim publicly that I favor ending government involvement in education.” The Alliance says it wants to gather 25 million signatures on the “proclamation” as part of its campaign to abolish public education. As of early May they had gathered about 16,000, including those of ultraconservative moneybags Tom Monaghan (founder of Dominos Pizza and Ave Maria Law School), Moral Majority co-founder and U.S. Taxpayers Party presidential candidate Howard Phillips, and fundamentalist leader and “Left Behind” novels co-author Tim LaHaye.

So far the proclamation signers appear to be mainly Libertarians, homeschoolers, and religious right activists.

Libertarian signers include David Boaz and Ed Crane of the Cato Institute, Representative Ron Paul, and Doris Gordon, founder of a Libertarian anti-choice group.

Ultraconservative journalists and writers include Dinesh D’Souza, M. Stanton Evans, William Murchison, and Joseph Sobran.

Among religious right signers are Joel Belz (*World* magazine), televangelist D. James Kennedy, Bush adviser Marvin Olasky (originator of the term “compassionate conservatism”), Gary North, Rev. R.J. Rushdoony (leading “Christian Reconstructionist” and reportedly dead), R.C. Sproul, Jr., Herb Titus (former head of Pat Robertson’s law school), Rev. John Hardon, S.J. (also dead), William Marshner of Christendom College, Notre Dame law professor Charles Rice, Rabbi Daniel Lapin (Toward Tradition), and Muslim anti-population planning activist Imad-ad-Dean Ahmad.

Anti-choice activists include Wojciek Pawlowski of Human Life International, Fr. Paul Marx, founder of Human Life International, Randall Terry, and Steven Mosher.

Other signers are Colorado State Senator John K. Andrews, Peg Luksik, two-time Pennsylvania gubernatorial candidate on the Constitution Party ticket, and Alan Snyder, professor of government at Pat Robertson’s Regent University.

According to the Alliance, public schools were okay for a hundred years or so, when “they imparted the Protestant majority’s values to mostly Protestant kids.” But, the Alliance claims, “modernists” began to control “much of society” and the schools “over the last 50 years.”

With public schools abolished, education would be entirely privatized. The 15 million kids from poor and low income families would have to depend on charity for education.

Several years ago the Alliance had me debate one of the movement’s leaders (Fr. John Hardon) at a convention in Washington, broadcast live on C-Span. I pointed out the sheer unworkability of their scheme, noting that it would fragment society along religious, class, ethnic, and ideological lines while devastating education for all but the most affluent.

The bottom line is that the Alliance’s efforts will never amount to more than a goofy sideshow. The real threats are the movement to get tax support for nonpublic schools through vouchers or tax credits and the failure of our political system to provide adequate and equitably distributed support for democratic, religiously neutral public education.

— Edd Doerr

### Religious Right, *continued from page 5*

Bush carried 16 of the 26 states where Religious Right influence is in the moderate range.

Bush also carried 11 of the 15 states where the Religious Right has increased its influence since 1994.

**Table 2: Changes in Religious Right Influence, 1994-2002**

<i>Increased</i>	<i>Stayed the Same</i>	<i>Decreased</i>
Arkansas	Alabama	Arizona
Colorado	Alaska	California
Illinois	Connecticut	Florida
Maryland	Delaware	Georgia
Michigan	District of Columbia	Hawaii
Mississippi	Idaho	Louisiana
Missouri	Indiana	North Carolina
Montana	Iowa	Washington
New Hampshire	Kansas	
New Mexico	Kentucky	
North Dakota	Maine	
South Dakota	Massachusetts	
Tennessee	Minnesota	
West Virginia	Nebraska	
Wyoming	Nevada	
	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	Oregon	
	Pennsylvania	
	Rhode Island	
	South Carolina	
	Texas	
	Utah	
	Vermont	
	Virginia	
	Wisconsin	

### Pandora’s Box

The 5-4 Supreme Court ruling in favor of school vouchers is a serious setback for religious liberty, public education and our American constitutional principle of separation of church and state.

This Court majority set aside more than 50 years of its own precedents and thumbed its nose at the vast majority of Americans who, in 25 statewide referendum elections from coast to coast over the last 35 years, have registered 68% to 32% opposition to school vouchers or their analogs.

The Court has blithely ignored the pervasively sectarian and discriminatory nature of most nonpublic education and has shown contempt for the basic right of all Americans who wish not to be compelled through taxation to contribute involuntarily to religious institutions, their own or someone else’s.

This Court has opened a Pandora’s box. From this day forward every session of Congress and every state legislature will be torn by demands of sectarian special interests for direct or indirect support of what is, frankly, denominational indoctrination. Vouchers or their analogs will greatly weaken public education, fragment our school population along religious, ethnic, class, ideological, and other lines, while greatly increasing school costs and reducing quality.

# Update

## Religious Freedom Panel Criticizes U.S. Allies and Bush Administration

A panel created by Congress to monitor State Department enforcement of religious liberty evaluations in other nations found that many U.S. allies discriminate against their religious minorities. However, the present administration has done little or nothing to pressure its allies in this area.

The U.S. Commission on International Religious Freedom's annual report released on May 6 concluded, "The United States should not compromise its commitment to promoting human rights — including religious freedom — during the campaign against terrorism, and should not 'trade off' that commitment for the cooperation of foreign governments in that campaign."

The report also chastised the Bush administration. "Actions taken by the executive branch in response to serious violations of religious freedom have been sporadic." The nine-member commission, whose mandate is to force the State Department to implement the International Religious Freedom Act (IRFA), also said pointedly, "The State Department has been less than helpful in assisting the Commission in meeting with representatives of foreign governments during their visit to Washington." The Commission added that the State Department seems to be "without a plan" to implement IRFA. No sanctions have been taken by this administration against nations which violate their citizens' religious rights, according to the Commission's report, which is issued every May.

The Commission singled out 22 nations for poor records on religious liberty matters. For the third consecutive year, the panel labeled Burma (Myanmar), China, Iran, Iraq and Sudan "countries of particular concern." Sudan was said to be "the world's most violent abuser of the right to freedom of religion and belief."

The Commission had harsh words for U.S. ally Saudi Arabia. "The government of Saudi Arabia denies religious freedom and vigorously enforces its prohibition against all forms of public religious expression other than that of those who follow the government's interpretation and presentation of the Wahabi school of Sunni Islam. . . . Numerous Christians and Shi'a Muslims continue to be detained, imprisoned, and deported."

The panel also criticized Uzbekistan, India, Pakistan, Vietnam and Turkmenistan.

Finally, the group lamented that it took 18 months to appoint a new Ambassador for Religious Freedom, which caused efforts to promote religious freedom globally to "suffer significantly."

## Arizona: Two Reports on Education

A study by an Arizona State University research group has concluded that the state's four-year-old program of education tax credits has benefited the well-to-do at the expense of the poor. The Arizona program offers up to \$625 in state tax credits to individual taxpayers for their donations to nonprofit organizations that give scholarships to private schools.

The plan was trumpeted as a way of helping poor children attend private schools. But the study by the Education Policy Studies Laboratory concluded that the plan has mainly benefited middle-class families whose children already attend private schools. Furthermore, the program has drained millions of dollars from the state treasury.

Even that portion of the plan which allows parents of public school students to deduct extracurricular activities, student fees and field trips from their taxes has benefited wealthy public schools. The wealthiest quarter of public schools receives more than five times as much money from the programs as the poorest quarter of schools, according to the analysis.

## Stephen Jay Gould

Stephen Jay Gould, a long time member of Americans for Religious Liberty's National Advisory Board, died on May 20.

Gould, whose writing style was much admired by fellow scientist and writer Isaac Asimov, became one of the world's leading paleontologists and evolutionary biologists. His last book, *The Structure of Evolutionary Theory*, published shortly before he died, is a 1,433-page magnum opus.

No shrinking violet, Gould plunged into the struggle to block the intrusion of fundamentalist "creationism" into public school science classes. When the Kansas Board of Education voted in 1999 to remove evolution from the science curriculum, Gould made speeches in the Midwest, pointing out that "to teach biology without evolution is like teaching English without grammar." Gould was also involved in the successful Supreme Court challenge to a Louisiana creationism law in the 1980s.

— Edd Doerr

The two tax credit programs have drained \$115 million from the state budget, which currently faces a serious shortfall. One of the researchers, Glen Wilson commented, "The tax credit here was billed as a way of helping low-income kids, and as best as we can determine, it is spectacularly ineffective in doing that."

The average scholarships amounted to \$856 per child, only about one-fourth of the average private elementary school tuition.

Meanwhile, Arizona's charter schools, which are flourishing, have come under intense fire and scrutiny for various kinds of mismanagement and educational deficiencies. One school, Northwest Charter Academy in Glendale, may lose its state contract because it promotes religious activities, which are prohibited under state law. The 300 student academy received \$1.1 million in taxpayer money this year.

Complaints to the state board of education were leveled at religious proselytization by staff. State officials discovered that the principal led a prayer and quoted from the Bible at a mandatory school assembly. Teachers and students used religiously-oriented and slanted textbooks. If the school does not desist from violating state laws banning promotion of religion by school officials, it will be defunded. A public hearing is also required.

## Bush Pleads for His Diminished Charitable Choice Bill

In a White House gathering of religious leaders on April 11, President Bush urged the Senate to pass his Charity Aid, Recovery and Empowerment Act. Bush claimed, "Some of the greatest welfare programs in America are on the street corners of inner-city America in a house of worship." Bush added that only religious charities are effective in the long run, an assertion without much empirical support. The president said, "Government can write checks, but it can't put hope in people's hearts, or a sense of purpose in people's lives. That is done by people who have heard a call and who act on faith and are willing to share that faith."

The Senate, however, is balking at the Bush proposal. The scaled-down charitable choice act calls for an annual \$800 charitable tax deduction for married couples who do not itemize, and makes it easier for smaller religious groups to apply for federal funds. The proposed legislation also reiterates a Bush campaign pledge that organizations cannot be disqualified from receiving federal money because of their religious nature.



But many Democrats see the proposal as too costly, since budget estimates place the cost of the tax change at \$11 billion to \$13 billion over the first decade.

A Senate committee rejected the plan on a 5 to 3 vote in mid-April but observers expect the Republicans to press for a full floor vote.

## South Pushes Ten Commandments in Public Places

The American South, the most religiously homogeneous region in the nation, is living up to its reputation as a bastion of conservative Protestantism. State legislatures and county councils are moving to display the Ten Commandments in public buildings. Court houses and public schools seem to be the main targets of the campaign. The Alabama legislature is considering a constitutional amendment to allow public schools to display them. The North Carolina legislature approved a law last year allowing school districts to include the Commandments with other historical documents on plaques.

But Tennessee, which pioneered anti-evolution statutes in the 1920s, has become the center of the storm. A group called Ten Commandments-Tennessee has vowed to place the Commandments in all 95 county courthouses. Its leader, Charles Wysong, says that his group will pay all legal expenses resulting from challenges to the posting, beginning with Hamilton County, where an ACLU suit has resulted in an ongoing court trial that began on April 29. Wysong said, "We cannot run this county without a moral code from God."

In Sumner County, near Nashville, authorities voted in March to post the biblical code in the county administration building. Sumner County Commissioner Frank Freels said, "All laws that we have in one form or another can be traced back to the Ten Commandments."

Advocates may run into a legal wall, however. Tennessee Attorney General Paul Summers issued an opinion in April that religious displays on government property are unconstitutional promotions of religion.

Some church leaders agree that the movement is misguided. The Rev. Roland Johnson, Jr., pastor of Philips Temple C.M.E. Church in Chattanooga, is a plaintiff in the ACLU lawsuit against Hamilton County. "It's a dangerous thing when politicians attempt to co-opt religion for their own selfish agenda," he said.

The U.S. Supreme Court ruled in 1980 that posting the Ten Commandments in schools was unconstitutional. Most observers believe it unlikely that the present Court wishes to reopen that controversy, especially since it rejected an appeal from the state of Indiana to do so in February.

## Evangelicals Arrested in Salt Lake City

Two evangelical Christians were arrested on April 7 for distributing religious literature on a plaza in Salt Lake City. The public space was purchased by the Mormon Church for \$8.1 million. Though the public still has the right to walk on the property, the church gained exclusive rights to distribute literature and hold open-air religious events.

Two men were charged with trespassing by police. A Mormon Church spokesman claimed the men were disruptive. Three other evangelical protestors received police citations.

Stephen Clark, ACLU director for Utah, protested the actions and argued that the evangelicals were "engaging in core free speech activities." The ACLU has called the Mormon control of a public plaza unconstitutional because the city retains an easement for pedestrian access.

In 1999 the powerful Mormon establishment won City Council approval to ban smoking, sunbathing, bicycling or "any illegal, offensive, indecent, obscene, vulgar, lewd or disorderly speech, dress or conduct" on the plaza. One lawsuit challenging the church-imposed rule is pending in the courts, while another is on appeal.

## Scientologists Lose

After a lawsuit that dragged on for 22 years, the Church of Scientology threw in the towel and paid \$8.7 million to a former member who accused the church of mental abuse that pushed him to the brink of suicide. The U.S. Supreme Court upheld the judgment in favor of Lawrence Wollersheim in 1994, but church authorities had successfully stalled until May 9 when the church sent the funds to Los Angeles Superior Court.

## Creationist College Denied Accreditation

Patrick Henry College in Purcellville, Virginia, set up two years ago primarily for home-schooled fundamentalist Christians, was denied accreditation by the American Academy for Liberal Education (AALE) because it requires professors to teach that God created the world in six 24-hour days. This required statement of faith that must be signed by all faculty "conflicts with liberty of thought and freedom of speech," said AALE president Jeffrey D. Wallin.

Religious right activist and Republican party bigwig, Michael Farris, the school's president, said the college would apply for accreditation elsewhere, since AALE is only one of several groups approved by the U.S. Department of Education to accredit liberal arts colleges. The college, which accepts no federal funds, is pursuing accreditation with the Southern Association of Colleges and Schools. A Virginia state agency, which licenses colleges, approved Patrick Henry in November, 2001. The tiny college of 150 students graduated its first class in May, and several of its graduates have been accepted at law schools and graduate schools. Federal financial aid cannot be given to students at non-accredited colleges.

## Five U.S. States File Suit Against Vatican

Insurance commissioners in Arkansas, Mississippi, Missouri, Oklahoma and Tennessee filed a lawsuit in federal court on May 9 accusing the Vatican and Monsignor Emilio Colagiovanni of fraud and racketeering. The Vatican's spokesman, Joaquin Navarro-Valls, denied involvement in a scheme of conspiracy that bilked more than \$200 million from insurance companies. The Holy See allegedly purchased the companies through charitable foundations and gave direct funding to a fraudulent St. Francis of Assisi Foundation. Colagiovanni, a retired judge of a Vatican court, was arrested in Cleveland last year on charges of wire fraud and is awaiting trial.

### ***The Case Against Charitable Choice: Why President Bush's Faith-Based Initiative is Bad Public Policy***

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## Clergy Tax Break Retained

The U.S. Congress rushed through, and unanimously approved, a bill preserving a 1921 provision granting members of the clergy a tax break for the cost of their housing. The exemption permits a clergy member to deduct from taxable income the portion of salary that covers housing costs. The so-called “parsonage exemption” has been challenged in a case before the Ninth U.S. Circuit Court of Appeals in San Francisco. Loss of the exemption would have cost clergy \$2.3 billion over the next five years, according to Republican Rep. Jim Ramstad of Minnesota, sponsor of the legislation. (Though, of course, the government will lose the same amount since the exemption has been retained.) President Bush signed the bill in May.

## Catholic Charities Under Fire

As if the Catholic Church in the archdiocese of Boston did not have enough problems, now comes a state agency to investigate alleged mismanagement of funds in the local Catholic Charities office. The State of Massachusetts’ Executive Office of Administration and Finance has asked the group to explain millions of dollars in missing revenue, high overhead, a failure to list four grants totaling \$1.5 million, discrepancies in Medicaid subcontractor payments and the misreporting of funds. Auditors found at least 14 areas of revenue discrepancies, violations of state and federal filing laws and questionable expenditures for administration and management, according to a May 9 report in the *Boston Herald*. Catholic Charities has already announced a cut in programs because of allegedly declining revenues, though the nonprofit social service agency receives 54% of its budget from state agencies and 16% from the federal government.

## Zoning and Churches: New Lawsuits Proliferate

The passage two years ago of the Religious Land Use and Institutionalized Persons Act (RLUIPA) by Congress has led to numerous cases nationwide. Alan Weinstein, a professor at Cleveland State University, calls it “a torrent of litigation,” citing 40 cases now filed and another 30 or 40 cases expected. The law prohibits zoning regulations that impose a “substantial burden” on religious exercise and prohibits government interference unless there is a compelling state interest in restricting church buildings in a particular area. The law was recently upheld by a federal court in Philadelphia, but critics question whether a challenge to the U.S. Supreme Court might declare the act unconstitutional at some future date. Law professor Marci Hamilton suggested that the law might fail the federalism test since “the question is whether the federal government can micromanage local land use decisions.”

## Episcopal Conflict Ends

The conservative Fourth U.S. Circuit Court of Appeals in Richmond ruled on May 22 in favor of the liberal acting bishop of Washington in a dispute with a parish of conservative Episcopalians in Accokeek, Maryland. The court ruled that in a hierarchical church, “A civil court should defer to the final authority within its hierarchy. In the Episcopal Church, the priests and laity of a diocese are subject to the authority of their bishop,” Judge Robert B. King wrote.

The dispute began nearly two years ago when the vestry (the ruling group of lay men and women in a parish) selected a conservative priest, the Rev. Samuel Edwards, as their rector. The diocese’s acting bishop, Jane Holmes Dixon, refused to approve their decision to hire the controversial pastor, who regards the national Episcopal Church as “corrupt and hellbound.” Bishop Dixon brought suit as an individual, asking the civil courts to affirm the authority given to her by church law.

She subsequently removed Rev. Edwards from Christ Church, a

historic parish in southern Maryland, and replaced him with an interim pastor. Church law is somewhat contradictory since it vests the authority to name clergy persons in a democratically-selected vestry, while recognizing the bishop’s authority in other areas of church life.

While Bishop Dixon emerged victorious, she resigned as acting bishop on May 31, which means that the appeals court ruling may not apply to her successor.

Meanwhile, Rev. Edwards announced in late June that he was changing his ecclesiastical allegiance to the Anglican Province of Christ the King, an alliance of breakaway Episcopal churches.

## Louisiana Approves Moment of Silence in Schools

Louisiana Governor Mike Foster signed legislation in May which allows a brief time for silent prayer or meditation at the beginning of each school day. The measure specifically denied that it was intended to endorse religion and said the schools must “remain neutral toward religion.” The governor had vetoed a Bossier Parish school board decision allowing “voluntary prayer.”

The Fifth Circuit Court of Appeals struck down an older Louisiana law promoting “prayer or meditation” last year. Joe Cook, executive director of Louisiana’s ACLU chapter, commended the governor for vetoing the Bossier Parish bill but said the new state law was “constitutionally questionable.”

## Congressional Republicans Push Tax Credits

A group of House and Senate Republicans proposed in May to change the U.S. tax code to allow tax-exempt donations to organizations providing scholarships to private or religious schools. Half of the donations would be tax-refundable, up to \$250 per individual, or \$500 per couple, or \$50,000 for corporations. The proposal would cost \$3.5 billion for the first five years. Colorado Republican Bob Schaffer is the House sponsor while Arizona Republican Jon Kyl has introduced a similar proposal in the Senate. The bill is given a better chance of passage in the GOP-controlled House, where it is already on schedule for a mark-up in the Ways and Means Committee.

While the bill also applies to public school donations, critics say the plan’s ultimate goal is to encourage a public school flight to the nonpublic sector. House Democrat Dale Kildee said, “They’re trying to achieve by a tax credit what they could not achieve by vouchers. They’re trying to move kids from public schools to private ones.”

## House Passes Mormon Land Deal

The U.S. House quietly passed legislation on June that allowed the Mormon Church to buy more than 900 acres of federal land in Wyoming to commemorate the death of 150 Mormon settlers in 1856. The bill, sponsored by a fellow Mormon, Republican Rep. Jim Hansen of Utah (Chairman of the House Resources Committee), angered environmentalists and religious liberty groups, which saw the move as a giveaway to one religious sect. Lloyd Larsen, a Mormon stake president in Wyoming, claimed that the public will be given access to the site, but a similar case in Utah raises questions about that guarantee. Opposition is expected when the bill reaches the Senate. Both of Wyoming’s senators oppose it.

## Utah Loses at High Court

After rejecting Utah’s claim that the Census Bureau should have included overseas Mormon missionaries in 2001, the U.S. Supreme Court finally ended the state’s second claim that it, not North Carolina, should have gained an additional U.S. House seat. In June, by a 5-4 margin, an unusual coalition of Chief Justice Rehnquist and four liberals ruled that the Census Bureau’s use of an “imputation” technique to estimate missing household population was not the same

as the “statistical sampling” technique banned by the Court in 1999. The practical effect is to deny another House seat to the fast-growing Republican state. The present Utah delegation is dominated by right-wing Republicans, all of them members of the state’s powerful Mormon Church.

## Falwell Wins Suit

A federal judge in Virginia ruled in April that a colonial-era law limiting the number of acres a church can own is unconstitutional. The ban on “church incorporation” stems from 1787 and was included in the first Virginia constitution. The Rev. Jerry Falwell wants to expand his Lynchburg church and therefore brought suit against the state law. He was supported by the ACLU and by liberal University of Virginia law professor A.E. Dick Howard, a former counsel to the General Assembly. This leaves West Virginia, which was once part of Virginia, as the only state with a law limiting religious group property ownership.

## Supreme Court Supports Jehovah’s Witnesses

In a nearly unanimous (8-1) decision, the Supreme Court ruled on June 17 that an Ohio ordinance limiting door-to-door solicitation without a permit violates the right of Jehovah’s Witnesses to religious expression. The free exercise ruling overruled two lower courts, which had upheld the village of Stratton, Ohio’s, requirement that the religious sect’s members obtain a government permit before canvassing. The town authorities claimed that they merely wanted to prevent scam artists from taking advantage of the local elderly population. But the Court majority, led by Justice Stephen Breyer, saw it as an attempt to limit the First Amendment’s guarantee of free exercise of religion. Even conservative Justices Antonin Scalia and Clarence Thomas concurred in a separate opinion. The only dissenter was Chief Justice William Rehnquist, who has a 35-year record of hostility to religious minorities. The decision may affect three larger U.S. cities — Grand Rapids, Michigan; Oshkosh, Wisconsin; and Plano, Texas — which have similar laws.

## International

**Berne:** On June 2 voters in Switzerland, by 72% to 28%, approved sweeping changes in the country’s 1942-era abortion law. The measure allows abortion in the first 12 weeks of pregnancy with no restrictions except counseling and medical advice. After the 12<sup>th</sup> week, abortion can be obtained for reasons of “endangered physical health” or “profound distress.”

The 1942 law allowed pregnancies to be terminated only for rape or serious health problems. Doctors faced a five year prison sentence while a woman who obtained an abortion for other reasons could be jailed for three years. However, the law was almost never enforced. The last conviction under the law was in 1988. An estimated 12,000 to 13,000 abortions are performed annually. Swiss voters apparently decided to bring their nation closer to the European norm. (Only Ireland, Poland and Portugal retain more restrictive abortion laws.) The government supported the change, and data show that most abortions in Switzerland are performed between the sixth and tenth week of pregnancy. The new law takes effect in October. Three previous attempts to liberalize abortion laws had failed but Swiss public opinion has changed dramatically. Justice Minister Ruth Metzler called the vote “a historic victory for women,” even though her own Christian Democratic Party opposed the change.

The country’s Roman Catholic bishops denounced the vote but most Catholic voters ignored them, even in the three predominantly Catholic cantons which had strictly enforced the old law.

The 72% to 28% vote swept almost the entire country. Cosmopolitan Geneva voted 88% yes, and more than 75% voted yes in

Zurich, Berne and Basel. But 60% of voters in heavily Catholic Lucerne also voted yes, as did 71% in Fribourg, noted for its Catholic university; and 63% supported the measure in Italian Catholic Ticino. A French Protestant canton, Neuchatel, voted 85% in favor of the change. Only two of Switzerland’s 26 cantons voted no, one of them a tiny rural area with fewer voters than a New York apartment building (Appenzell-Inner Rhodes).

Nearly 1.4 million Swiss voters approved the change while only 537,000 opposed it. The turnout was 41%. Switzerland is roughly half Protestant and half Catholic, though in reality church attendance rates are low, and the world’s oldest pure democracy is largely secular.

**Montreal:** The right of a Sikh boy to wear a ceremonial curved dagger called a kirpan is testing the limits of religious freedom in the province of Quebec. Twelve-year-old Gurbaj Singh, an immigrant from the Punjab region of India, was forced to remove his kirpan by school authorities last November. He refused to attend school until permitted to carry the ancient symbol of the Sikh faith. A local court ruled that he could wear the blade if it was securely enclosed but the provincial government of Quebec is appealing the decision, which could reach the Supreme Court.

Canada’s Sikh population is 500,000, and school boards in Ontario and British Columbia allow Sikh children to carry kirpans to school. But only 12,000 Sikhs live in Quebec, a province which frowns on multiculturalism and has sought to enforce a more uniformly French culture. Young Gurbaj attends Ste. Catherine Labouré primary school.

**Vatican City:** Vatican officials have begun to criticize the American hierarchy for being too accommodating toward victims of priestly child abuse. This stance was revealed on April 24 when Archbishop Julian Herranz told an audience at the Catholic University of Milan that the U.S. church’s large financial settlements to sexual abuse victims were “unwarranted” and the result of “an emotional wave of public clamor.” He criticized the U.S. news media for seeking to “sully the image of the church and the Catholic priesthood.” Archbishop Herranz is a top Vatican legal official and president of one of its councils. He also suggested that church leaders should not report abuse accusations to civil authorities.

On May 18 the Vatican-endorsed Jesuit journal *Civiltà Cattolica* published a 12-page article by the Rev. Gianfranco Ghirlanda, dean of the canon law faculty at the Vatican’s Gregorian University. In the weighty article, reviewed by the Vatican’s secretary of state, Ghirlanda wrote, “From a canonical point of view, the bishop or religious superior is neither morally nor legally responsible for a criminal act committed by one of his clerics.” Ghirlanda argued that a priest who is reassigned to a different parish after a history of sexual abuse “should not have his good reputation ruined by having his background revealed to the new parish superior.” Ghirlanda said that priests should be removed from the ministry if psychological treatment failed to remedy the tendencies toward pedophilia. Ghirlanda, an appeals court judge and consultant to several Vatican agencies, stressed the privacy rights of accused priests and also claimed that the church leaders are not responsible for the misdeeds of their “employees.”

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# Books

**What Evolution Is**, by Ernst Mayr, Basic Books, 318 pp., \$26.00.

Ernst Mayr, long a member of ARL's National Advisory Board, has been described by Stephen Jay Gould as "the world's greatest living evolutionary biologist and a writer of extraordinary insight and clarity" and by Edward O. Wilson as "one of the grand masters of twentieth century biology." A student of evolution since the 1920s, Mayr has been contributing to the literature of biology and evolution for over 60 years and is still going strong at 97 years young. The remarkable *What Evolution Is* could well be subtitled, "Everything you might ever want to know about evolution and then some." Beautifully and lucidly written and illustrated, it is the one indispensable book on the subject if the reader has time for only one. Rates at least five stars.

— Edd Doerr

**The Spy Who Stayed Out in the Cold**, by Adrian Havill, St. Martin's Press, 262 pp., \$25.95; **The Bureau and the Mole**, by David A. Vise, Atlantic Monthly Press, 272 pp., \$25.00; **The Spy Next Door**, by Elaine Shannon and Ann Blackman, Little, Brown and Co., 247 pp., \$25.95.

FBI agent Robert Hanssen was arrested in February 2001 for spying for the old USSR and then for Russia. Having pled guilty, he will spend the rest of his life in a federal slammer. These three books summarize the extensive media coverage of the affair. All three mention the close connection of Hanssen, his wife, and six children to Opus Dei, the secretive, conservative, cult-like Catholic organization whose founder, Spaniard Msgr. Josemaría Escrivá, is on the fast track to sainthood canonization this fall.

The accounts mention that early in his spying career Hanssen discussed this activity with Fr. Robert Bucciarelli, an Opus Dei priest who headed the U.S. branch of Opus for several years. None of the authors tries to explain how far the information on Hanssen went within Opus Dei or what was done with it. Given all we know about the control that Opus exercises over its members, this is an important question.

Havill's is the best of the three in dealing with Opus Dei. Among the nuggets in his book: An Opus slate came close to winning the presidency of Chile in 1999. Lourdes Flores, believed to be an Opus member, came close to winning the presidency of Bolivia in 2001. In Peru Opus backed Alberto Fujimori and got one of its number, Archbishop Cipriani Thorne, named a cardinal. Pope John Paul II's press secretary is an Opus member. Former FBI director Freeh is reputedly a member. French president Chirac's wife is "an Opus Dei enthusiast who has attempted to install Opus Dei members throughout her husband's cabinet." In January 2001 President Bush "quoted Opus Dei's founder and called him a saint." Supreme Court Justice Scalia, who attended the same Opus Dei church as Hanssen, and Justice Thomas are both rumored (credibly) to be Opus members, though neither will comment, and Scalia's son, Fr. Paul Scalia, "converted Thomas to Catholicism in 1997."

Clearly, Opus Dei needs a lot more scrutiny.

— Edd Doerr

**The Next Christendom: The Coming of Global Christianity**, by Philip Jenkins, Oxford University Press, 270 pp., \$28.00.

Historian Philip Jenkins argues forcefully and with a commanding sense of history and demography that Christianity will soon be a Southern Hemisphere, largely Third World phenomenon. This demographic shift, now underway and accelerating, will have a major impact on world politics and on the internal dynamics of all Christian churches.

Even now, about 65% of the world's Roman Catholics live in Latin America, Africa and Asia, and over 40% of the cardinals who

will choose the next pope reside in the Third World. By 2020, over 72% of Catholics will be Third World residents. While this change could lead to more political emphasis on social justice issues, it might lead to wholly unexpected developments. Jenkins says, "Traditional mappings of left and right are ill fitted to comprehend present and future religious changes."

Jenkins warns Western and U.S. liberals that the future may well not be to their liking. "The liberal issues dear to American or West European Catholics are irrelevant or worse to the socially traditional societies of the south. While the ordination of women may seem an essential point of justice to Westerners, it is anathema for much of the emerging world." Jenkins adds, "For the foreseeable future, the characteristic religious forms of Southern Christianity, enthusiastic and spontaneous, fundamentalist and supernatural-oriented, look massively different from those of the older centers of Christianity in Europe and North America. This difference becomes critically important in light of current demographic trends. In the coming decades, the religious life characteristic of the regions may well become the Christian norm."

Other data, cited by Jenkins, support these interpretations. At present, in the Anglican Communion, conservative African and Asian bishops outnumber those from Europe and the United States. In a quarter century, the differences will be even greater.

Among American Roman Catholics, "One sixth of the priests currently serving American parishes have been imported from other countries," and "of the seminarians about to be ordained in the United States, 28% have been born outside the country." The ancient Christian nation of Great Britain "today plays host to some 1,500 missionaries from fifty nations" bent on reconverting England.

These trends affect Protestantism as well, and conservative immigrants from Latin America and Korea will strengthen the evangelical wings of American Protestant Christianity. Eastern Orthodoxy will decline, because it is almost entirely a European-based faith.

Muslims will continue to expand, and clashes between Christians and Muslims may intensify. Jenkins writes, "At the turn of the third millennium, religious loyalties are at the root of many of the world's ongoing civil wars and political violence, and in most cases, the critical division is the age-old battle between Christianity and Islam."

This is a sobering assessment of religion's future impact.

-- Al Menendez

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