VOICE OF REASON

The Journal of Americans for Religious Liberty 2010, No. 2 [111]

National Day of Prayer Ruled Unconstitutional

A federal judge in Wisconsin ruled that the creation of a National Day of Prayer by Congress in 1952 violates the Establishment Clause of the Constitution. On April 15 U.S. District Judge Barbara Crabb of the Western District of Wisconsin held that the "sole purpose of the act," now codified as 36 U.S.C. § 119, "is to encourage all citizens to engage in prayer, an inherently religious exercise that serves no secular function in this context. In this instance, the government has taken sides on a matter that must be left to individual conscience." Judge Crabb rejected the contention of the Obama Administration that the statute is simply "an acknowledgment of the role of religion in American life." She said the statute "goes beyond mere acknowledgment."

Crabb dismissed previous decisions upholding some forms of "ceremonial deism." "Government involvement in prayer may be consistent with the establishent clause when the government's conduct serves a significant secular purpose and is not a 'call for religious action on the part of citizens'." In this case, however, the government has intruded into an intensely personal realm.

"In fact," she added, "it is because the nature of prayer is so personal and can have such a powerful effect on a community that the government may not use its authority to try to influence an individual's decision whether and when to pray."

Crabb also ruled that the plaintiff, the Freedom From Religion Foundation, did not have standing to challenge "presidential prayer proclamations generally." She concluded that the Congressional action of April 17, 1952, mandating "a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals," violates the Establishment Clause. A Congressional revision, passed on May 5, 1988, declared that the first Thursday in May shall be "set aside as the date on which the National Day of Prayer is celebrated."

Crabb rejected the historicity argument, which claims that if a practice has a long history, it must be accepted. "Neither the Supreme Court nor the court of appeals has ever held that religious conduct that would otherwise violate the establishment clause may be upheld for the sole reason that the practice has a long history." She noted that "No tradition existed in 1789 of Congress requiring an annual National Day of Prayer on a particular date." There is "no other instance in which Congress has endorsed a particular religious practice in a statute," she added.

continued on page 3

Maryland Says No to Private School Tax Credit

As the 2010 session of the Maryland legislature came to a close at midnight on April 13, an ambitious scheme to divert up to $37 million annually to private faith-based schools under a corporate income tax scheme failed. After passing the state Senate on March 17, the so-called BOAST bill failed to reach a last-minute vote in the House Ways and Means Committee, where it has been bottled up twice before. This year, however, supporters of the plan to give corporate income-tax credits to businesses that contribute to private schools (usually through tuition transmission entities, a third party) were more hopeful of passage because of the support of Democratic Gov. Martin O'Malley. Additional impetus came from Baltimore's Roman Catholic Archbishop Edwin O'Brien, who appeared before the House Ways and Means Committee, which handles appropriations, on March 17, urging support for a plan that would be a "critically important tool" to help save the archdiocese's schools, thirteen of whch are slated for closing. Orthodox Jewish groups also endorsed the bill.

ARL went immediately into action. President Edd Doerr urged the committee, whose chairperson Sheila Hixson represents a district in the county where ARL is headquartered, to reject the bill. Doerr wrote,

"The BOAST bill, $37 million per year in state tax credits to aid failing faith-based private schools, should be allowed to die quietly in committee. It is just plain wrong to shrink the state treasury at a time

continued on page 2

Inside:

Court Allows Cross but Avoids Final Resolution 3
Texas Textbook Battles: Round Two 4
D.C. Vouchers Lose in Senate 5
Supreme Court Hears Campus Religion Case 5
An Appreciation: John Paul Stevens 6
Newdow Loses Twice; Fails to Block "Under God" in Pledge and on Coinage 7
New Education Data: Home Schoolers and Religious Schools Gain 8
Faith-Based Council Urges Adherence to Constitution 9
Bible Courses in Public Schools: Second Thoughts.. 9
Young Adults: Less Religious But Are They More Liberal? 10

Regular Features
Editorial: Should Foreign Policy Get Religion?...... 11
Church and State in the Courts 12
The Voucher Watch 14
Updates 14
International Updates 16
Books and Culture 17

Maryland Says No, *continued from page 1*

when school and other public budgets are strained. (It would be wrong in times of prosperity as well.)

"The BOAST tax credit scheme would penalize all Maryland citizens to aid private institutions that are not required to play by the same rules as public institutions. It would attack religion by making religious institutions dependent on government and politics. It would seriously weaken religious freedom by draining the public treasury in a way that is tantamount to taxing all citizens for the support of religious institutions against their will. Our country's founders saw this clearly and that's why they put the concept of church-state separation into the Constitution's First Amendment.

"Faith-based institutions should be dependent solely on the voluntary contributions of their adherents. The BOAST tax-credit voucher scam should NOT see the light of day."

The state ACLU warned that the bill "does not include provisions requiring the schools that receive the funds to have nondiscrimination policies." Passage of BOAST would "negatively impact a public school's ability to provide children with an adequate education," especially low-income children, said Cindy Boersma, legislative director for ACLU of Maryland.

The bill would have given tax credits worth 75% of donations up to $200,000 to organizations that provided money for scholarships to private schools. Schools receiving the funds could not charge tuition above the statewide average per pupil expenditure, about $12,500. Businesses could also donate money to organizations that provide grants and specialized programs to public schools, though critics noted that there are few of them. The lion's share of the proposed aid would go to private schools that lack nondiscrimination policies relating to race, religion, gender or sexual orientation. Critics of the proposal tried to add amendments to the bill. A last-minute attempt to provide direct state aid to nonpublic schools led Delegate Hixson to withdraw the bill until an opinion as to constitutionality could be provided by Attorney General Doug Gansler.

The bill had other flaws as well. Clara Floyd, president of the Maryland State Education Association, noted, "There is no provision in the bill to ensure that funding will go to low income families." She noted that Maryland public schools had just been cited as the best public schools in the nation by *Education Week* and *Newsweek*. Writing on *Baltimore Sun.com*, she argued, "To take hard-won monies away from public schools and divert those funds to private schools will jeopardize the gains Maryland public schools are making. The Maryland State Education Association is proud of Maryland's national recognition and the educators who remain committed to excellence and to the students who work hard to meet the goals set for them. Maryland's track record is a reason to boast. Shifting public money to private schools is not."

Maryland Politics Watch also warned legislators that similar tax credit vouchers in other states had not only proved costly but had failed to help disadvantaged children. In Arizona, which instituted corporate tax credits in 1997, most of the money went to middle- and upper-middle income families that already sent children to private schools. The schools that benefited were overwhelmingly white and "tax credits have failed to increase minority students' access to Arizona private schools at a time when the state's Hispanic population boomed." The state treasury has lost $350 million in tax dollars diverted to private schools. In Pennsylvania the program "ballooned from $30 million to $75 million per year" while "Florida's program costs went from $50 million in 2004 to $118 million in 2009," the blog reported.

In an unusually sharp criticism of the Maryland House of Delegates, Archbishop Edwin O'Brien and two fellow bishops called the Committee's action "a heartless disservice to Maryland's Catholic schools, their teachers and their families" as well as "a sign of disrespect to the nonpublic school community." O'Brien obviously expected to win this new source of funding, and he castigated two prominent Democrats, Sheila Hixson and Anne Kaiser, who, he said, "blocked attempts to work on BOAST at every possible opportunity." The Committee voted 14 to 7 against the BOAST bill.

The public school and civil liberties communities had nothing but praise for the Committee's action in the face of renewed pressure to channel tax aid to nonpublic schools. ■

Attention ARL Supporters

Would you prefer to receive ARL's *Voice of Reason* journal by email in PDF format? It would get the journal to you more quickly and would save ARL money.

Of course, those who prefer to continue to receive the journal in paper form through the Postal Service are free to do so.

If you would like to receive the journal by email, please send ARL your email address at arlinc@verizon.net, as well as your name and postal address. Thank you.

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

Senior Editor: Edd Doerr
Editor: Albert J. Menendez
Production Editor: Teri Grimwood

Americans for Religious Liberty is a nonprofit public interest educational 501(c)(3) organization dedicated to preserving the American tradition of religious, intellectual, and personal freedom in a secular democratic state. Membership is open to all who share its purposes. Annual dues are $25 for individuals, $35 for families, $15 for students and limited income. Our IRS ID number is 36-3118921.

Board of Directors: Burton Caine, *Chair;* Herb Blinder; Joanne Goldsmith; T. Jeremy Gunn; William R. Murry; Susan Nogan; David J. Nolan; John Nugent; Amanda Poppei; Michael Prival; V.K. Sandin.

National Advisory Board: M. David Alexander; Philip Appleman; Francisco Ayala; Rev. Charles Bergstrom; Walter Breuggeman; Rev. John Buehrens; Bette Chambers; Bob Chase; Joseph Chuman; Dr. Catherine Cohen; Denise Davidoff; Norman Dorsen; Niles Eldredge; Edward L. Ericson; Joseph Fahey; Rev. Carl Flemister; Keith Geiger; Laurie Godfrey; Morris Goodman; Rev. Donald S. Harrington; Frances Kissling; Paul Kurtz; Rev. James Lawson; Anne W. Lindsay; Rev. Barry Lynn; James T. McCollum; Rev. Jack Mendelsohn; Rev. O. Eugene Pickett; Alan Powell; Howard Radest; Rosemary Ruether; Rev. William F. Schulz; Eugenie Scott; Lynn Silverberg-Master; Rev Bruce Southworth; Rev. A. Knighton Stanley; Nadine Strossen; Philippa Strum; Ruti Teitel; Sister Margaret Traxler; Rev. David D. Van Strien; Edward O. Wilson; Walter Wink.

Edd Doerr, *President*
Albert J. Menendez, *Research Director*

Court Allows Cross but Avoids Final Resolution

The U.S. Supreme Court on April 28 allowed a cross to remain on a California war memorial but bypassed the central issue of whether a religious symbol on federal land is constitutional. By a 5 to 4 vote the Court sent the case back to the district court, ruling that the "district court did not engage in the appropriate inquiry" when it rejected the transfer of land by Congress to protect the cross. The case was narrowly decided, and six separate opinions were issued, making the majority a shaky one. Both the district court and the Ninth Circuit Court of Appeals had dismissed the transfer of land by Congress as a subterfuge to circumvent the First Amendment. The cross was erected at the Mojave National Preserve in California as a memorial to World War I dead by the Veterans of Foreign Wars in 1934. It was challenged by former park ranger Frank Buono, a practicing Catholic, a decade ago.

Justice Anthony Kennedy said the cross "evokes far more than religion" and memorializes "the graves of Americans who fell in battles." Retiring Justice John Paul Stevens dissented. He said that the soldiers who died deserved a memorial to be remembered by, but that the government "cannot lawfully do so by continued endorsement of a starkly sectarian message."

Justice Kennedy fashioned a narrow majority with language that suggests a growing judicial trend toward accommodation in matters regarding religious symbols on public property. He wrote, "The Constitution does not oblige government to avoid any public acknowledgment of religion's role in society." He continued, "The goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm." Kennedy, joined by Chief Justice John Roberts and Samuel Alito, also wrote that the cross "is not merely a reaffirmation of Christian beliefs" but "has complex meaning beyond the expression of religious views."

Kennedy refrained from making a definitive ruling that might affect future cases, writing: "To date, the court's jurisprudence in this area has refrained from making sweeping pronouncements, and this case is ill suited for announcing categorical rules."

Justice Alito thought the case should not have been sent back to the district court to determine whether the transfer of property from federal to private ownership comports with the Establishment Clause. He reasoned that the monument's origin and history are well known and agreed that the monument was designed to commemorate the nation's war dead, not to convey a religious message. Alito implied that the case really wasn't all that important anyway, quipping, "It is likely that the cross was seen by more rattlesnakes than humans."

Justices Antonin Scalia and Clarence Thomas thought the plaintiff, Frank Buono, lacked standing to challenge the cross, and voted to allow its appearance at the national preserve.

John Paul Stevens, joined by Ruth Bader Ginsburg and Sonia Sotomayor, thought the lower courts were right to conclude that the congressional action in setting aside some "private" land "was engineered to leave the cross intact and that did not alter its basic meaning." Stevens argued, "A Latin cross necessarily symbolizes one of the most important tenets upon which believers in a benevolent Creator, as well as nonbelievers, are known to differ." Stevens was convinced that congressional action was aimed at preserving the religious significance of the cross. "A reasonable observer, considering the nature of this symbol, the timing and the substance of Congress' efforts, and the history of the Sunrise Rock site, could conclude that Congress chose to preserve the cross primarily because of its salience as a cross." He continued, "Congressional action, taken after due deliberation, that honors our fallen soldiers merits our highest respect. As far as I can tell, however, it is unprecedented in the Nation's history to designate a bare, unadorned cross as the national war memorial for a particular group of veterans. Neither the Korean War Memorial, the Vietnam War Memorial, nor the World War II Memorial commemorates our veterans' sacrifice in sectarian or predominantly religious ways. Each of these impressive structures pays equal respect to all members of the Armed Forces who perished in the service of our Country in those conflicts….The Mojave Desert is a remote location, far from the seat of our Government. But the Government's interest in honoring all those who have rendered heroic public service regardless of creed, as well as its constitutional responsibility to avoid endorsement of a particular religious view, should control wherever national memorials speak on behalf of our entire country."

Justice Stephen Breyer filed a separate dissent, which denied that this was an Establishment Clause issue. He thought the land transfer violated "the law of injunctions," which "forbids the government to permit the display of the cross on Sunrise Rock."

As a result, *Salazar v. Buono* (No. 08-472) was returned to the district court with the strong implication that the cross should remain on that portion of federal land that is now considered "private." ■

National Day of Prayer, *continued from page 1*

Returning to the issue of presidential proclamations, usually of Thanksgiving, Crabb concluded that "thanksgiving proclamations serve an obvious secular purpose of giving thanks" and "…were more about taking notice of particular events rather than prayer." Furthermore, "a President's statements of his own beliefs about prayer are less likely to be viewed as an official endorsement than a permanent statement from the government in the form of a statute encouraging all citizens to pray."

Finally, Judge Crabb stressed the religious divisions that the Day of Prayer has caused many communities. "At least in recent years, the National Day of Prayer has sparked a number of controversies around the country, demonstrating the sense of exclusion that religious endorsement by the government can create."

Judge Crabb stayed enforcement of the ruling until the appeals process is complete. On April 22 the U.S. Department of Justice appealed the decision to the Seventh Circuit. President Obama issued a proclamation for the May 6 observance.

Interest groups immediately began separate campaigns to support or oppose the ruling. The Freedom From Religion Foundation asked all 50 state governors and large city mayors to refrain from recognizing the observance but they were rebuffed. The Interfaith Alliance asked the president to issue a proclamation that "promotes inclusive observances" that recognize the religious pluralism of the United States. About 20 House members, mostly Republicans and Southern Democrats, denounced the decision and urged an aggressive appeal by the attorney general. Rep. Todd Tiahrt (R-Kansas) called the ruling "nefarious" and added, "America is and always has been a nation of Christian values." The National Day of Prayer Task Force, an evangelical group based in Colorado Springs, launched a "Save the National Day of Prayer" campaign. Task Force leader Shirley Dobson denounced what she called "The unrelenting assault on the nation's heritage of prayer." The South Carolina legislature appeared ready to adopt a State Day of Prayer. ■

Texas Textbook Battles: Round Two

There is good news and bad news about the Texas textbook imbroglio, which has national implications because of the Lone Star State's outsized influence on textbook selection. The good news started with the defeat of Don McLeroy, a creationist and outspoken critic of church-state separation, in the March 2 Republican primary. His closest ally, Cynthia Dunbar, did not seek reelection. Her endorsed candidate, homeschooler Brian Russell, lost a Republican runoff primary on April 13 by a landslide to moderate conservative educator Marsha Farney.

The Texas Freedom Network expressed cautious optimism. "How significant is Farney's victory? At first glance, Russell's defeat coupled with Don McLeroy's loss in the March 2 Republican primary would appear to drop the state board's far-right faction from seven to just five members. Moreover, San Antonio Democrat Rick Agosto, who had often voted with the far-right faction over the past three years, is not seeking re-election this year. And Dallas Republican Geraldine "Tincy" Miller, a swing vote who has sometimes sided with the faction (more recently in the social studies debate but not on science last year), lost her bid for re-election on March 2. Clearly, a significant number of voters are sending a message at the polls this year: stop politicizing the education of Texas schoolchildren with creationist attacks on science and efforts to rewrite history to conform to board members' personal and ideological agendas."

Some of these Republicans could lose to Democrats in November, reducing the power of the Religious Right even more.

The bad news is that the Texas State Board of Education (TSBOE) approved changes in the social studies curriculum that demoted Thomas Jefferson, elevated Phyllis Schlafly, the National Rifle Association, Newt Gingrich, and Jefferson Davis, and generally made a mockery of history. By a 10 to 5 party-line vote, Republicans on the board, all of whom are white, outvoted the five Democrats, all Hispanic or African American. They insisted on portraying recent political conservatives favorably, insisted on emphasizing the role of Christianity in the nation's founding and including Republican-flavored ideas about history, sociology, government and economics. Students will now study the inaugural address of Confederate President Jefferson Davis and compare it to Abraham Lincoln's speeches. Confederate General Stonewall Jackson is to be listed as a role model for effective leadership. American "exceptionalism" is extolled, and the term "free enterprise" replaces "capitalism."

Eric Foner wrote in *The Nation* April 5: "More interesting is what the new standards tell us about conservatives' overall vision of American history and society and how they hope to instill that vision in the young. The standards run from kindergarten through high school, and certain themes obsessively recur. Judging from the updated social studies curriculum, conservatives want students to come away from a Texas education with a favorable impression of: women who adhere to traditional gender roles, the Confederacy, some parts of the Constitution, capitalism, the military and religion. They do not think students should learn about women who demanded greater equality; other parts of the Constitution; slavery, Reconstruction and the unequal treatment of nonwhites generally; environmentalists; labor unions; federal economic regulation; or foreigners."

Foner concluded: "Clearly, the Texas Board of Education seeks to inculcate children with a history that celebrates the achievements of our past while ignoring its shortcomings, and that largely ignores those who have struggled to make this a fairer, more equal society."

These changes, which are likely to receive a final stamp of approval in May, have already outraged educators in other states. Richard Fausset wrote in the March 22 *Los Angeles Times,* "Concerned observers have warned that those ideas could seep into textbooks throughout the country, because Texas is one of the nation's largest textbook buyers. In California last week, State Sen. Leland Yee (D-San Francisco) announced that he was working out the details of legislation that would inoculate California students from the Texas version of history." Yee's bill was approved by a California Senate committee on April 21. He said, "While some Texas politicians may want to set their educational standards back 50 years, California should not be subject to their backward curriculum changes. The alterations and fallacies made by these extremist conservatives are offensive to our communties and inaccurate of our nation's diverse history. Today, California spoke with a bipartisan voice that our kids should be provided an education based on facts and that embraces our multicultural nation."

This failure to include a proper history of religious freedom prompted a criticism from the Baptist General Convention of Texas. Its Christian Life Commission general counsel Stephen Reeves said, "It's unfortunate that such a basic understanding of the First Amendment was victim to the hyper-politicization of the State Board of Education."

Concerns about the downplaying of religious liberty were also expressed. While the new social studies curriculum mentions "revivals" as one of the twelve allegedly most important events in 19th century America, it says nothing about religious freedom. When Mavis Knight, a Dallas Democrat, introduced an amendment that students should study the reasons "the founding fathers protected religious freedom in America by barring the government from promoting or disfavoring any particular religion above all others," it was defeated by Republicans. After the vote, Knight told *The New York Times* "It was defeated on a party-line vote. The social conservatives have perverted accurate history to fulfill their own agenda." ■

> *"But it is only proposed that I should recommend, not prescribe a day of fasting & prayer. That is, that I should indirectly assume to the U.S. an authority over religious exercises which the Constitution has directly precluded them from...*
>
> *I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting & prayer are religious exercises. The enjoining them an act of discipline. Every religious society has a right to determine for itself the times for these exercises, and the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, where the constitution has deposited it."*
>
> —Thomas Jefferson, Letter to Samuel Miller, January 23, 1808.

D.C. Vouchers Lose in Senate

Senator Joe Lieberman's pet project, the reauthorization of the D.C. school voucher program, went down to a stinging defeat on March 16 by a vote of 55 to 42. This all but effectively ends the controversial program. The present year funding for remaining students is $13.2 million. Lieberman proposed a five-year renewal at a total cost of $100 million.

The vote was largely along party lines: Democrats were opposed 53-3, while Republicans were in favor 38-1. The two Independents split, Lieberman of Connecticut for and Sanders of Vermont against. Two Republicans, Bennett of Utah and Shelby of Alabama, and one Democrat, Byrd of West Virginia, did not vote even though Byrd was a co-sponsor of the Lieberman Amendment.

The vote by religious affiliation largely followed party affiliation. All Catholic Democrats voted against vouchers, and the main speaker against the amendment was Tom Harkin of Iowa. (Back in the late 1970s many Catholic Democrats favored tax credits and many Protestant Republicans were opposed. Today, party affiliation has trumped religion as a factor in voting on this, and most other issues.) The three Democrats backing vouchers include one Jewish senator (Feinstein of California) and two Protestants (Nelson of Florida and Warner of Virginia). The lone Republican to oppose vouchers, the often-Independent minded Olympia Snowe of Maine, is a member of the Greek Orthodox Church.

'A Breach in the Church-State Wall'

Contrary to the view of Kelly Amis and Joseph E. Robert Jr ["A betrayal of D.C. students," op ed, March 8], it is not Del. Eleanor Holmes Norton (D-D.C.) and Sens. Harry M. Reid (D-Nev.) and Richard J. Durbin (D-Ill.) who are betraying D.C. students but such politicians as Sens. Joseph I. Lieberman (I-Conn.) and Dianne Feinstein (D-Calif.) who would undermine our public schools by diverting public funds to private, church-run schools not answerable to the taxpayers.

As a retired seminary president, I have always valued the wisdom and foresight of Jefferson and Madison, who cut the Gordian knot that had long held government and religion together to the detriment of the religious freedom of all.

The voucher plan imposed on the District by President George W. Bush and his colleagues in Congress could hardly be viewed as anything other than an attempt to pull our country back to the pre-Constitution days when citizens could be compelled by government to support religious institutions not of their own choosing.

— *The Rev. William R. Murry, Annapolis.* Letter published in the *Washington Post* on March 15. Murry is a member of the ARL board of directors.

Supreme Court Hears Campus Religion Case

In what may be one of the most important church-state cases in years, the U.S. Supreme Court heard oral arguments on April 19 in a case pitting college nondiscrimination rules against claims of free exercise of religion. The case, *Christian Legal Society v. Martinez*, has provoked great interest from many sectors of society, and those intense divisions were reflected by the questions the justices asked.

At issue is the policy of the University of California's Hastings College of Law, which requires all officially recognized student groups to admit any student who wishes to join. The Christian Legal Society (CLS), one of 70 student groups, however, requires its members to sign a "Statement of Faith" signifying doctrinal orthodoxy and a lifestyle commitment that specifically bans "fornication, adultery, and homosexual conduct." CLS contends that its freedom of religion is at stake.

Justices Scalia, Roberts and Alito questioned whether all groups would be required to admit members who disagree with their fundamental policies. But Justices Sotomayor, Stevens and Ginsburg questioned whether groups that practice exclusion based on race, gender or other factors had to be recognized and given space on campus. The question of membership and leadership of the student groups also came up. Scalia said it was "weird to require the campus Republican Club to admit Democrats, not just to membership but to officership."

Sotomayor asked whether "a group that wanted to exclude all black people, or women, all handicapped persons," should be "recognized, given funds and space."

Both sides brought in heavy hitters, former federal judge Michael McConnell for CLS and former solicitor general (under George W. Bush no less) Gregory Garre for the University.

While important legal principles are at stake, the case, on a practical level, represents another cultural clash between gays and evangelical Christians, since it is the sexual orientation part of California's nondiscrimination law that has caused the most controversy.

Eminent George Washington University law professor Jonathan Turley summed up the importance of the case in a *Washington Post Outlook* piece, "The case, *Christian Legal Society v. Martinez,* has the potential to resolve a long-standing conflict between two of the most cherished American traditions: equality and nondiscrimination on one hand and the free exercise of religion on the other. The United States has taken great strides in recent years to protect people from discrimination—including hate speech, unfair hiring practices and unequal treatment under the law. But to some, such gains in equality have come at a price. Religious groups that discriminate—confining their membership to the faithful and those who share their views—say they are being penalized."

He says the case is a close call because of conflicting claims that both have merit and constitutional support. "*CLS v. Martinez* is a close and difficult case. The court has to weigh fostering diversity of views vs. combating discrimination. The nation benefits when citizens form groups and advance their ideas. Tax-exempt status is even given to groups to encourage association and free speech—important pillars of our society. We cannot pick and choose between groups if we are to allow for pluralism."

Leo P. Martinez, acting chancellor and dean of Hastings, the oldest law school in the West, told *Washington Post* staff writer Robert Barnes that "more California judges are graduates of Hastings than of any other law school."

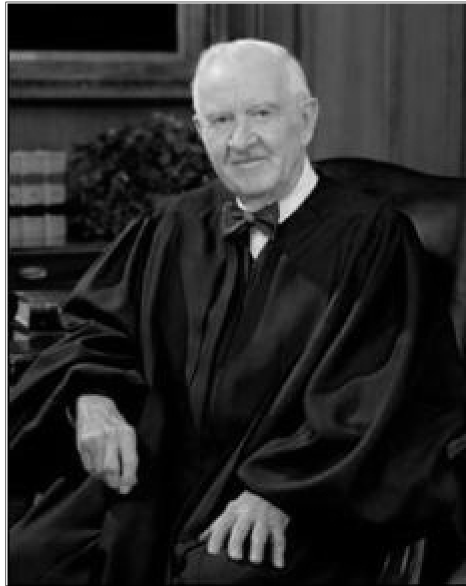
The University's policy was upheld by the Ninth U.S. Circuit Court of Appeals, but the Seventh Circuit in Chicago upheld CLS's claims in a case involving Southern Illinois University.

At least 37 briefs have been filed with the Court in this highly visible case, including those from several state governments. The Obama administration declined to take a position.

The Court could decide to seek a compromise, such as allowing CLS to become a campus group without recognition or funding, or make a distinction between members and officers. It could use as a precedent the 1995 *Rosenberger* case from the University of Virginia requiring the college to fund all student groups or none. A ruling is expected soon. ■

An Appreciation: John Paul Stevens and the Wall of Separation

Justice John Paul Stevens, one of the longest-serving Supreme Court justices in history, was a staunch advocate of preserving the constitutionally-mandated wall of separation between church and state. Appointed by President Gerald Ford and confirmed by the Senate in December 1975, Stevens announced in April that he will retire when the present court term ends on June 30.



Stevens was a facilitator who sought consensus when possible and often wrote, or assigned, opinions that encompass broad principles. He wrote the majority opinion in *Wallace v. Jaffree* (1985), which struck down Alabama's requirement that every public school observe a moment of silence for "prayer or meditation." In that case he wrote: "Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom of mind, so also the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority. At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all. This conclusion derives support not only from the interest in respecting the individual's freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful, and from recognition of the fact that the political interest in forestalling intolerance extends beyond intolerance among Christian sects—or even intolerance among 'religions'—to encompass intolerance of the disbeliever and the uncertain."

In another case involving school prayer in Texas, his majority opinion again expresses with eloquence the importance of religious neutrality in public schools. "High school home football games are traditional gatherings of a school community; they bring together students and faculty as well as friends and family from years present and past to root for a common cause. Undoubtedly, the games are not important to some students, and they voluntarily choose not to attend. For many others, however, the choice between whether to attend these games or to risk facing a personally offensive religious ritual is in no practical sense an easy one. The Constitution, moreover, demands that the school may not force this difficult choice upon these students for '[i]t is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.' … [N]othing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer." (*Santa Fe Independent School District v. Doe*, 2000)

Stevens also wrote the majority opinion in *Stenberg v. Carhart* in 2000, which struck down a Nebraska statute banning late term abortions because it lacked adequate protection for the health of the woman.

Stevens' dissents reveal his staunch conviction that faith-based schools are not constitutionally permitted to receive public tax benefits. He invoked the "wall" metaphor on two occasions. In a stinging dissent in *Zelman v. Simmons-Harris* in 2002, he 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 foundations of our democracy."

In an earlier case (*PEARL v. Regan*, 1980), Stevens wrote, "The entire enterprise of trying to justify various types of subsidies to nonpublic schools should be abandoned." He added that he would prefer to "resurrect the 'high and impregnable' wall between church and state constructed by the Framers of the First Amendment."

As the High Court moved further Right and allowed more types of aid to church-run schools, Stevens remained firmly attached to the rulings of prior decades, which he saw as more in line with the original intent of the Founders.

In two early dissents from the 1970s, Stevens signaled that he would support no attempts at shifting the educational costs of nonpublic schools to the taxpayers. He was firmly convinced that such aid substantially furthered the religious mission of the schools. In a 1977 dissent in *Wolman v. Walter*, he observed: "[A] state subsidy of sectarian schools is invalid regardless of the form it takes. The financing of buildings, field trips, instructional materials, educational tests, and school books, are all equally invalid. For all give aid to the school's educational mission, which at heart is religious."

Finally, Stevens warned nonpublic schools that their own religious identity could be altered or weakened by acceptance of public subsidies. In a dissent in *Roemer v. Board of Public Works*, a 1976 case involving church-related colleges in Maryland (in which ARL president Edd Doerr was a plaintiff), he wrote: "I would add emphasis to the pernicious tendency of a state subsidy to tempt religious schools to compromise their religious mission without wholly abandoning it. The disease of entanglement may infect a law discouraging wholesome religious activity as well as a law encouraging the propagation of a given faith."

An amiable bow-tied Chicagoan and a Republican, Stevens, who will have been the third-longest serving member of the Court at the end of his tenure, proved to be deeply committed to the overarching First Principle of freedom of conscience in religious matters. He will be long remembered, and he will be sorely missed. ■

Need a Speaker?

Americans for Religious Liberty can provide expert speakers for:

Conferences • Meetings • Debates • Universities
Churches • Synagogues • Radio and TV talk shows
Student Groups • Etc.

Write or phone: Americans for Religious Liberty
PO Box 6656, Silver Spring, MD 20916, (301) 260-2988

Newdow Loses Twice; Fails to Block “Under God” in Pledge and on Coinage

Sacramento gadfly Michael Newdow’s challenge to the “under God” phrase in the Pledge of Allegiance failed in the Ninth Circuit Court of Appeals. By 2-1 a panel of the liberal San Francisco-based circuit concluded that the Pledge, even as amended, was a patriotic document and not a religious exercise. The Court wrote: “We hold that the Pledge of Allegiance does not violate the Establishment Clause because Congress’ ostensible and predominant purpose was to inspire patriotism and that the context of the Pledge – its wording as a whole, the preamble to the state, and this nation’s history – demonstrate that it is a predominantly patriotic exercise. For these reasons, the phrase ‘one Nation under God’ does not turn this patriotic exercise into a religious activity.”

The Court majority held that none of the three prongs of the *Lemon* test applies in this case, including secular purpose, excessive entanglement of government and religion, and promotion or restraint of religion: “Not every mention of God or religion by our government or at the government’s direction is a violation of the Establishment Clause,” they asserted. The decision, written by Justice Carlos Bea and joined by Justice Dorothy Nelson, spent considerable time looking at the intent of Congress in 1954 which added the phrase to the Pledge, concluding that “Congress’ ostensible and predominant purpose “was patriotic and “predominantly secular.” “The phrase ‘under God,’ when read in context with the whole of the Pledge, has the predominant purpose and effect of adding a solemn and inspiring note to what should be a solemn and inspiring promise – a promise of allegiance to our Republic.”

Another factor in their decision was that California does not require students to recite the Pledge. Therefore, “We hold that California Education Code § 52720 and the School District’s Policy of having teachers lead students in the daily recitation of the Pledge, and allowing those who do not wish to participate to refuse to do so with impunity, do not violate the Establishment Clause. Therefore, we reverse the decision of the district court holding the School District’s Policy unconstitutional and vacate the permanent injunction prohibiting the recitation of the Pledge by willing students.”

Judge Stephen Reinhardt dissented vigorously. “The undeniably religious purpose of the ‘under God’ amendment to the Pledge and the inherently coercive nature of its teacher-led daily recitation in public schools ought to be sufficient under any Establishment Clause analysis to vindicate Jan Roe and her child’s constitutional claim, and to require that the Pledge of Allegiance, when recited as part of a daily state-directed, teacher-led program, be performed in its original, pre-amendment secular incarnation that served us so well for generations. Surely our original Pledge, without the McCarthy-era effort to indoctrinate our nation’s children with a state-held religious belief, was no less patriotic.” He continued, “To put it bluntly, no judge familiar with the history of the Pledge could in good conscience believe, as today’s majority purports to do, that the words ‘under God’ were inserted into the Pledge for any purpose other than an explicitly and predominantly religious one….Nor could any judge familiar with controlling Supreme Court precedent seriously deny that carrying out such an indoctrination in a public school classroom unconstitutionally forces many young children either to profess a religious belief antithetical to their personal views or to declare themselves through their silence or nonparticipation to be protesting nonbelievers, thereby subjecting themselves to hostility and ridicule.”

He accused the majority of misreading the Constitution. “History leaves no doubt that Congress inserted the words ‘under God’ in the Pledge of Allegiance in order to inculcate in America’s youth a belief in religion, and specifically a belief in God.”

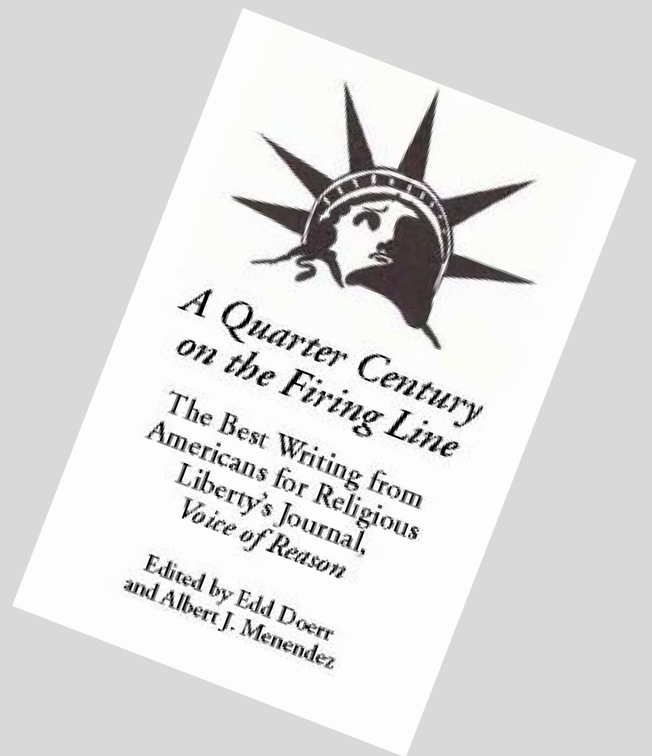
He suggested that the majority appealed to popular sentiment. “Today’s majority opinion will undoubtedly be celebrated, at least publicly, by almost all political figures, and by many citizens as well, without regard for the constitutional principles it violates and without regard for the judicial precedents it defies and distorts, just as this court’s decision in *Newdow I* was condemned by so many who did not even bother to read it and simply rushed to join the political bandwagon. As before, there will be little attention paid to the constitutional rights of the minority or to the fundamental tenets of the Establishment Clause.”

Newdow v. Rio Linda Union School District may be appealed to the U.S. Supreme Court.

In a companion case, also decided on March 11, all three judges rejected Newdow’s contention that “the national motto of the United States and its inscription on the Nation’s coins and currency violates the Establishment Clause of the First Amendment or the Religious Freedom Restoration Act of 1993.” Their primary finding was that Newdow “lacks standing” to challenge the law. This “lack of jurisdiction” results in a “failure to state a claim upon which relief can be granted.” The Court invoked its own ruling from 1970 in *Aronow v. United States* that the national motto “is of a ‘patriotic or ceremonial character,’ has no

continued on page 11

NEW!



Limited Edition
Order Yours Now

$18.00 (includes postage & handling)

Americans for Religious Liberty
PO Box 6656 • Silver Spring, MD 20916

New Education Data:
Home Schoolers and Religious Schools Gain

About 3% of American students are now homeschooled and 9% attend religious private schools, according to the latest data (2007) compiled by the National Center for Education Statistics. The report by the federal agency, a branch of the Department of Education, compared educational enrollment trends from 1993 to 2007, the most recent year for which data are available.

The homeschooled have increased by a percentage point since 1993 and now include 3% of all students. More live in rural areas, where 5% of all students are homeschooled, than the suburbs (3%), or cities (2%). Nearly 4% of children living in two-parent households are homeschooled compared to 1% in one-parent households.

About 2% of students attend public charter schools in the District of Columbia and the 39 states that allow them. The number of charter schools has increased from 2,575 in 1993 to 4,132 in 2007, and the percentage of all students attending these schools is up from 1.4% to 2.0%. Most charter school students live in cities rather than in suburbs or rural areas. They are also more likely to be Black or Hispanic and to have parents with less than a high school diploma.

Demography of School Students, 2007

	% Home	*% Charter*	*% Religious Private*	*% Nonsectarian Private*	*% Regular Public*
Male	2	2	8	3	85
Female	3	2	9	2	84
White	4	1	11	3	81
Black	1	3	6	2	88
Hispanic	2	3	6	1	88
Asian	2	1	7	5	85
Northeast	2	2	11	3	82
South	4	0	8	2	86
Midwest	2	2	10	1	85
West	3	3	6	3	85
City	2	4	10	4	80
Suburb	3	1	11	2	83
Town	3	1	5	1	90
Rural	5	1	5	1	88
Parental Education					
Less than High School	0	5	2	1	92
High School	2	1	4	1	92
Some College	4	2	7	1	86
Bachelor's Degree	4	1	12	2	81
Graduate Degree	3	2	15	7	73

Note: The full report, published in April, is "Trends in the Use of School Choice: 1993 to 2007" by Sarah Grady and Stacey Bielick and is available from the U.S. Department of Education, www.edpubs.gov, or at P.O. Box 22207, Alexandria, VA 22304. The data are derived from "The National Household Education Surveys Program, a telephone survey conducted for the U.S. Department of Education's National Center for Education Statistics." The data may not be exactly comparable to official statistics provided by educational institutions.

One surprise is the increase in the percentage of all students who attend religious private schools, up from 8% in 1993 to 9% in 2007. While white students are more likely than nonwhites to attend them (11% of all whites), Black students have increased the most, from 3% to 6% of all African Americans who attend these faith-based schools. About 7% of Asian Americans (down from 9%) and 6% of Hispanic (no change) attend religious private schools. The Northeast (11%) and Midwest (10%) have the highest shares of all students in these schools, but the South has increased the most (5% to 8%) while the West has declined from 7% to 6%. Private religious schools draw their student bodies more from suburbs (11% of all) and cities (10% of all) compared to only 5% of all rural and small town residents.

This report did not differentiate among religious schools, but the gains must reflect an increase in evangelical Protestant schools, since the National Catholic Educational Association reported in April a 3.3% loss in enrollment for Catholic schools. Catholic schools lost 73,190 students during the past school year.

Education of parents is a major factor since 15% of the children of parents who have a graduate or professional degree attend private religious schools as do 12% of students whose parents have a bachelor's degree. The percentage is only 4% among parents whose education ended with high school. Ten percent of two-parent households send their children to religious private schools compared to 5% of one-parent households.

The number of students who attend private nonsectarian schools has also increased from 2% to 3%. A disproportionate number of Asian-American children (5%) and children of parents with advanced college degrees (7%), as well as city dwellers (4%), attend these elite academies. Hispanics, the poor, Midwesterners and residents of small towns and rural communities are the least likely to attend private nonsectarian schools.

Therefore, the number of private school attendees has grown from 10% to 12% from 1993 to 2007. ■

Faith-Based Council Urges Adherence to Constitution

At its first annual report to the Obama Administration, the 25-member Council on Faith-Based and Neighborhood Partnerships urged participants to adhere to Constitutional requirements for religious neutrality and political noninterference in religious social service programs. The Council declared: "The Council recommends that the Administration amend Executive Order 1327912 to make it clear that fidelity to constitutional principles is an objective that is as important as the goal of distributing Federal financial assistance in the most effective and efficient manner possible." They continued, "Likewise, governmental officials should instruct participants in the grant-making process to refrain from taking religious affiliations or lack thereof into account in this process."

The Council, whose members represent diverse religious and secular organizations, also recommended that federal officials "should require houses of worship that wish to receive direct federal social service funds to establish separate corporations as a necessary means for achieving church-state separation and protecting religious autonomy, while also urging states to reduce any unnecessary administrative costs and burdens associated with attaining this status." This latter recommendation passed on a 13-12 vote, indicating the group's diversity of opinion.

The Council called for more assurance that "the religious liberty rights of the clients and beneficiaries of federally funded programs should be assured by strengthening appropriate protection." There should also be "other means of protecting religious liberty in the delivery of government funding social services."

Most participants wanted the government to clarify existing regulations and improve communications with all groups and to "clarify prohibited uses of direct Federal financial assistance." There should also be a plan to "improve monitoring of constitutional, statutory, and regulatory requirements that accompany Federal social service funds." ■

Francisco Ayala Wins Templeton Prize

World-renowned biologist and professor of biological sciences and philosophy at the University of California, Irvine, Francisco Ayala received the 2010 Templeton Prize on April 1. The prize is given annually to an individual who has "affirmed spirituality." Dr. John M. Templeton, Jr., president of the Templeton Foundation, praised Ayala's research on evolutionary genetics. "Ayala's clear voice in matters of science and faith echoes the foundation's belief that evolution of the mind and truly open-minded inquiry can lead to real spiritual progress in the world."

Ayala received the National Medal for Science in 2002. The native of Spain and former Dominican priest testified for the plaintiffs in a landmark Supreme Court case in 1981, *McLean v. Arkansas*, which upheld the integrity of science teaching regarding evolution in Arkansas public schools. He has long advocated greater understanding between science and religion. On the day he received the award in Washington, D.C., Ayala told the *Los Angeles Times* that he received the award for the "very important consequence of making people accept science, and making people accept evolution in particular."

Ayala is author of *Darwin's Gift to Science and Religion* and primary author of the National Academy of Science's 2008 book, *Science, Evolution and Creationism* (available from ARL for $8, postpaid). He is a member of the National Advisory Board for Americans for Religious Liberty, which extends its congratulations to Dr. Ayala.

Bible Courses in Public Schools: Second Thoughts

The probable passage of new laws in Oklahoma and Kentucky that will allow elective courses on the Bible has provoked some criticism.

In Oklahoma the *Tulsa World* warned editorially on March 8 that requiring schools that offer the course to use fundamentalist-inspired materials from the National Council on Bible Curriculum in Public Schools raises serious questions about "religious neutrality and accommodating diverse religious views, traditions and perspectives of students." The *World* warned that "The National Council promotes a fundamentalist Protestant interpretation of the Bible, often ignoring other beliefs such as those of Catholics, Jews and even mainline Protestants." The legislature should take "a closer look at alternative sources." The paper concluded, "Teaching the Bible as literature and history is an important part of a well-rounded education. Our culture is laced with biblical references in literature and the Bible's place in history is undeniable….The Bible is an important book and its place in literature and history is important. The teaching of religion, however, still belongs in Sunday school, not public school."

In Kentucky a Baptist professor of biblical studies, Dalen Jackson, warned Kentucky legislators to consider carefully their expected approval of a so-called "Bible literacy" bill. Writing in the Lexington *Herald-Leader* February 26, he observed, "Studies of Bible courses in Texas and Florida show that most courses end up promoting particular religious views over others. Even when teachers mean well, many suffer from a lack of training." Mainline and conservative Christians differ widely in their approach to the Bible. "While some mainline churches accept scholarly study of the Bible and adapt their faith understandings to its insights, many Christian traditions explicitly reject this approach to understanding the Bible."

Shaping a bill that is constitutional and acceptable to all will be difficult. "Two harmful consequences seem likely: If the constitutional safeguards provided by the language of the bill are taken seriously in its implementation, many Christians will be deeply disappointed, even offended, when they find out what the academic study of the Bible entails. On the other hand, absent the constant vigilance of constitutional watchdogs in every corner of the state, it is even more likely that this bill will become a license for majorities of conservative Christians in some communities, even well-intentioned ones, to impose sectarian interpretations of the Bible on courses in their schools." It might be "the better part of wisdom not to pass this bill at all," Jackson concluded.

The Oklahoma House Education Committee approved a bill authorizing public school Bible classes on a 10 to 3 vote on April 7. Members removed a provision from the Senate bill requiring that the course materials used must be provided by a North Carolina-based

continued on page 10

Young Adults: Less Religious But Are They More Liberal?

A new Pew poll finds that Americans ages 18 to 29 are "considerably less religious than older Americans," are less likely to belong to any particular faith, less likely to attend religious services and less likely to say religion is "very important" in their lives. But their views on some religious issues that have political connotations are not far from the mainstream. These younger Americans, called Millennials by pollsters, are, surprisingly, more supportive of government efforts to protect morality and more likely to support church involvement in politics than their elders. And those young people who are church members are slightly more conservative than older church members on some issues. (For example, 29% of young church members believe "their own religion is the one true faith that leads to eternal life" compared to 24% of all church members.) Members of evangelical and Black Protestant churches are more than twice as likely to agree with this statement than are Catholics and mainline Protestants. On abortion young adults are only 5% more pro-choice than all adults. On evolution they are 7% more supportive of the statement "evolution is the best explanation for human life."

On some "culture war issues" younger adults are decidedly more liberal, as on "acceptance of homosexuality by society," endorsed by 63% of Millennials, 50% of all and only 35% of senior citizens. Catholics are the most liberal on this issue, followed by mainline Protestants, while Black Protestants and evangelicals are the least liberal. On abortion mainline Protestants are the most liberal. Evangelicals are the most conservative on all issues surveyed.

The gap between the religiously unaffiliated and affiliated is wide on cultural issues, 28 points on abortion and 25 points on gay issues. There is a 17 point gap on whether "Hollywood threatens values," with evangelicals being the only group with a majority endorsing this view. Black Protestants are the least likely to believe that Hollywood threatens values, perhaps reflecting the widespread popularity of cinema among African Americans.

On broad economic issues, however, there is no difference by religion: 48% of the religiously unaffiliated and 46% of church members endorse more government services to help the disadvantaged. Black Protestants are more supportive (72%) followed by Catholics (51%). The least supportive are mainline Protestants (37%), even lower than evangelicals (41%). This may reflect income differentials among the major religious groups surveyed. (There were too few Jewish or "other" religious groups in this survey to render credible data.)

Surprisingly, Millennials were more likely to endorse the view (45%) that "government should do more to protect morality" than older voters (34%). About half of Evangelicals and Black Protestants supported this view compared to a third of mainline Protestants. Church members were 19% more supportive than non-members. Also, 55% of Millennials said "houses of worship should express views on social and political issues," compared to 49% of older Americans.

The bottom line is that a decline in religious practice and belief does not necessarily lead to what are considered liberal or progressive political views.

There are two other significant findings in this survey. One is that 13% of all Americans have switched from "affiliated to unaffiliated" while 4% have switched from unaffiliated to affiliated, a net loss of 9% for formal religious group membership.

The other is that some religious groups have a younger profile than others: 31% of the unaffiliated, 29% of Muslims, 24% of Mormons and Black Protestants and 23% of Buddhists are under age 30. Only 14% of mainline Protestants and 17% of evangelical Protestants are Millennials. In the average (18-20% category) are Catholics, Jews, Hindus and Eastern Orthodox Christians. Two groups, in particular, are aging fast: mainline Protestants and Jews, who have a much higher percentage of senior citizens among their members than the nation as a whole. Evangelicals, who were once considered the most dynamic of religious groups, may also be facing long-term demographic changes: Only 17% of evangelicals are ages 18-29, compared to 20% of all, while 19% of evangelicals are over age 65, compared to 16% of all.

The survey "Religion Among the Millennials" is available from the Pew Forum on Religion & Public Life or online at www.pewforum.org. ■

By the Numbers: The States of Marriage and Divorce

- The median age for first marriage is **28** for men and **26** for women. It is highest in Rhode Island, New York, New Jersey and Massachusetts and lowest in Idaho.
- **52%** of men and **48%** of women are currently married, the lowest percentage in a half century or more.
- The highest percentage of married adults (**58%** for men and **56%** for women) is found in Idaho, followed by Utah and Iowa. The lowest percentage (**47%**) is in Alaska, followed by Rhode Island, New Mexico and New York.
- The highest divorce rates are in Oklahoma and Arkansas, where **10%** of residents have been married three times or more. The lowest percentage of third marriages is in New York and Massachusetts.
- The youngest median age for first marriages (**24** for women, **26** for men) is in Utah.

There is an interesting political dimension to these data. The Pew Research Center's D'Vera Cohn noted, "For this analysis, correlation also was tested between a state's marriage or divorce statistics and the share of its 2008 presidential election vote that went Democratic. States with high shares of Democratic votes tended to have lower shares of currently married residents, lower shares of adults married at least three times and low rates of marriages within the previous year. Residents of states with high shares of Democratic votes tend to marry at older ages than residents of states with low shares of Democratic votes."

There was, however, "no strong association between a state's religiosity and its marriage or divorce patterns," says Cohn.

Source: Pew Research Center report, "2008 American Community Survey," based on recent U.S. Census Bureau data.

Bible Courses, *continued from page 9*

fundamentalist organization whose curriculum has been widely criticized for religious bias and insufficient academic content. House sponsor Todd Russ, a Republican from Cordell, raised eyebrows when he said, "If we do not do something, we will not have any Protestants in government." Observers wondered why Cordell would make such a charge in a state whose legislators and Congressional delegation are almost entirely Protestant. The most recent estimate of Oklahoma's religious demography is that 93% of church members are Protestant and 7% are Catholic, with a tiny fraction belonging to other faiths. ■

Editorial

Should Foreign Policy Get Religion?

A respected think tank, the Chicago Council on Global Affairs, on whose board First Lady Michelle Obama sits, recently completed a two-year study of religion and foreign policy. Among the conclusions, reached by a 32-member task force, is this: "Despite a world abuzz with religious fervor, the U.S. government has been slow to respond effectively to situations where religion plays a global role." The report slams "uncompromising Western secularism." The Council's conclusions are worth pondering, espectially if they eventually lead to changes in the direction of U.S. foreign policy.

Some of the report's findings and recommendations make sense. It is certainly true that ignorance of religion on the part of U.S. policymakers failed to anticipate the Islamic revolution in Iran in 1979 and its consequences. Failure to understand religious history led to repeated American mistakes in the Balkan conflicts of the 1990s, in which two versions of Christianity and Islam fought each other in fractricidal and debilitating strife which destroyed an entire nation and destablized an entire region. Conflicts in the Middle East and the Indian subcontinent have significant religious dimensions that have often seemed to baffle American government policymakers.

Knox Thames, director of policy and research for the U.S. Commission on Intrernational Religious Freedom, explained the importance of religious liberty for U.S. foreign policy: "Religious freedom increasingly matters from a national security perspective, as we have seen a direct correlation between the repression of religious rights and the expansion of violent extremism. A case in point is Pakistan. Over the past 40 years, as religious freedom protections receded through changes in Pakistani law and policies, we have observed a concurrent rise in violent extremism. In Pakistan, the lack of religious freedom fosters extremism and instability, which result in a range of human rights violations and limitations on the growth of a democratic society. Protecting religious freedom can therefore be an effective counter-extremism tool and should be a central component of our 'smart power' approach to foreign policy."

Certainly, greater emphasis on religion, particularly its influences on history, government and culture, would be welcome in the training of foreign service officers. A more pronounced emphasis on the importance of religious freedom as part of a renewed thrust for greater respect for human rights would be acceptable.

But more caution should be applied to the recommendations that U.S. government agencies "engage" local religious communities, particularly in areas such as the delivery of health care. The U.S. should be careful not to be seen as preferring some groups over others, or to be preferring religious community groups over secular ones. The First Amendment's Establishment Clause should apply to the conduct of U.S. foreign policy, (as the ARL-ACLU victory in the Second U.S. Circuit in 1989 in *Lamond v. Wood* recommended). Well-meaning policies can often be construed or misconstrued as a form of imperialism. The U.S. must always recognize that it has a limited role in promoting values that may be seen as intrinsic to religion.

The U.S. should properly emphasize the importance of religious freedom to the well being of all societies, a universal principle that has been recognized as central to the vitality and stability of societies for decades. This is why Congressional passage of the International Religious Freedom Act in 1998, signed by President Bill Clinton, was a step forward in clarifying how the U.S. should respond to religion-based conflicts abroad.

We agree with our friend and colleague Brent Walker, executive director of the Baptist Joint Committee, who wrote recently, "In a world that has become increasingly more religious—where sectarian strife is commomplace and terrorism often motivated by religion—it is absolutely critical that policymakers and those who implement foreign policy learn more about religion. They must be able and willing to take religion into account in their decision-making and, in appropriate cases, even accommodate religious groups and activities that are consistent with U.S. foreign policy aims."

It is a bit simplistic to suggest, as the Chicago Council says, that religion should become "an integral part of our foreign policy," without defining precisely what that means in practice and how it would affect other nations and how it would reflect U.S. policy. Advancement of religious freedom and its corollaries, religious concord, tolerance and respect for diversity, should be central ingredients of our foreign policy.

Note: The 100-page report, "Engaging Religious Communities Abroad: A New Imperative for U.S. Foreign Policy," is available at www.TheChicagoCouncil.org ■

—Al Menendez

Eugenie Scott Honored

Anthropologist Dr. Eugenie Scott, executive director of the National Center for Science Education, was awarded the National Academy of Sciences Public Welfare Medal on April 25.

The NCSE is a leading defender of the teaching of evolution. Scott is a long-time member of the Americans for Religious Liberty National Advisory Board.

Sample Copy

We will be happy to send a sample issue of this newsletter to people you consider likely subscribers. Please send names and addresses to Americans for Religious Liberty, PO Box 6656, Silver Spring, MD 20916, or email to arlinc@verizon.net. They can obtain a subscription form at www.arlinc.org.

Newdow Loses, *continued from page 7*

'theological or ritualistic impact,' and does not constitute 'governmental sponsorship of a religious exercise'."

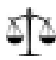
The three-judge panel held that "Newdow has standing to challenge the statutes that require the inscription of the motto on coins and currency," but that his claims represent an "abstract stigmatic injury" that is "partly hypothetical and insufficient to show injury in fact."

The ruling in this case, *Newdow v. Roberts*, was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit on May 7. ■

Church and State in the Courts

Will the Vatican be dragged in as a key witness or even defendant in U.S. civil courts? Two cases involving civil prosecution for sexual abuse by clergy have cleared the Ninth and Sixth Circuit Courts of Appeal recently. The Vatican (Holy See) has long claimed immunity to lawsuits as a sovereign nation. The cases originated in Oregon and Kentucky. Previous challenges to Vatican immunity have been thrown out of court, but the two appeals courts appear to have found the Vatican a liable party. Both the U.S. government and U.S. Supreme Court may be involved, particularly in the Oregon case. Writes *Washington Post* reporter Michelle Boorstein: "If the Supreme Court declines to take up the case this summer and lets the federal appeals ruling stand, attorneys could begin subpoenaing decades of documents and calling Vatican officials under oath."

In March attorneys for the Vatican argued before U.S. government officials that the Holy See, as a sovereign entity in international law, could not be held liable in an American court case. But attorneys for the plaintiffs argued that there are legal grounds to grant an exemption from immunity. Critics say if documents emerge that Vatican officials concealed a cover-up of crimes by U.S. bishops, there would be grounds for the cases to proceed. Adds Boorstein, "Attorneys on both sides note the complexity of the cases, which at this point center on whether there are legal grounds to grant an exception to the Vatican's immunity from lawsuits. In the Oregon case, lawyers are arguing that priests around the world are 'employees' of the pope for whom he is responsible. The alleged sexual abuse and what is subject to legal discovery could take years to sort out."



Should "Ave Maria" be played at high school graduation ceremonies? Two federal courts, including the Ninth U.S. Circuit Court of Appeals, decided in the negative, upholding a school superintendent's decision in Everett, Washington, who decided it was too religious to be appropriate. The U.S. Supreme Court on March 21 declined to hear an appeal, thus leaving the appellate court decision intact. The High Court rejected the appeal over an unusual public dissent by Justice Samuel Alito, who said the ruling could provide "wide-ranging censorship of student speech that expresses controversial ideas."

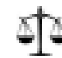
The case began in 2006, when wind ensemble seniors at Henry Jackson High School decided to play an instrumental version of Franz Biebl's 1964 version of an ancient Catholic prayer-motet that has been rendered by dozens of composers, among them Franz Schubert, and J.S. Bach. The Latin words relate to the Annunciation recorded in the Gospel of St. Luke.

School officials were immediately concerned that the music would provoke controversy because the 2005 commencement had included a choral performance of a religious song, "Up Above My Head." That event drew complaints and protest letters. While banning the piece, school officials explained that their action was not meant to be anti-religious or anti-aesthetic. "The school district is not seeking to deprive students of learning opportunities, nor is it seeking to purge altogether religious-inspired works from public education. It simply sought to provide an atmosphere in which all graduates could celebrate their academic achievements, free from controversial messages, and free from the controversy that plagued its past graduation ceremony," wrote school district attorney Michael Patterson.

The students were disappointed by the decision because they had performed the same piece in a school concert earlier that year. One of them, Kathryn Nurre, filed suit claiming school district censorship and hostility toward religion.

The Ninth Circuit ruling was 2-1, with a vigorous dissent from a judge who said the decision will "hasten the retrogression of our young into a nation of Philistines who have little or no understanding of our civic and cultural heritage." The decision, implicitly upheld by the Supreme Court, affects 10 million students living in the states under the jurisdiction of the Ninth Circuit. The case was *Nurre v. Whitehead*.

ARL president Edd Doerr, a long-time church and synagogue choir member, agreed with the ruling and added, "Public school students may study religious music, and public school concerts may include religious music, as long as it is selected for its musical rather than its religious merit."



A federal court has dismissed a First Amendment challenge to a housing project above a church in Arlington County, Virginia. On April 12 U.S. District Judge Claude Hilton ruled that Peter Glassman's complaint against a partnership between a development firm and First Baptist Church of Clarendon to build affordable housing for low-income residents lacked merit. The partnership did not violate the Establishment Clause of the First Amendment because "The actions of the county board…had a secular purpose of providing affordable housing to the citizens of Arlington County." The county had asked the court to dismiss the case. Glassman, a financial adviser who lives near the church, said he would appeal to the Fourth U.S. Circuit Court of Appeals in Richmond.

The ruling is the latest in a six-year legal battle over a redevelopment plan that would provide affordable housing and help the church renovate its aging sanctuary.

The Separation of Church and State

Edited by Forrest Church

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

Available from ARL for $16.00 plus $2.00 shipping and handling. Send your check or money order to:

Americans for Religious Liberty
PO Box 6656
Silver Spring, MD 20916

Judge Hilton ruled that Glassman "lacks factual allegations" to prove his claims that the county's loan was excessive, that the church's goal was indoctrinating residents of the planned apartment complex, or that the church was "fraudently" paid more than the property was worth. The apartments are scheduled to open at the end of 2011. Supporters of the project said Glassman and his allies were opposed to affordable housing for low-income individuals.

The Roman Catholic archdiocese of Baltimore filed suit in federal court on March 30, charging the city of Baltimore with violating freedom of speech and religion in its pregnancy counseling ordinance. In January a law, reportedly the first in the nation, took effect which requires pregnancy counseling centers run by or associated with religious bodies to post signs stating that they do not provide abortion or birth control information nor do they refer women to centers that do. Planned Parenthood endorsed the measure, saying that many faith-based counseling centers provided misleading and unscientific information to clients. Four Baltimore-area centers are affected by the law, which provides fines of up to $150 a day for centers failing to comply. Three of the four centers are operated by the Center for Pregnancy Concerns, which works closely with the Catholic church and has posted the required signs. City Solicitor George Nilson said he thought the law would be upheld in court because it merely requires the notification of a statement of fact.

New Jersey may yet have to issue "Choose Life" license plates after the Third U.S. Circuit Court of Appeals sent a case back to the district court on April 9. A three-judge panel rejected a lower federal court ruling in 2004 which ruled that "New Jersey has a legitimate interest in communicating that it does not approve or disapprove of any particular political cause, belief, or message."

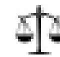
The Third Circuit held that this ruling may have amounted to viewpoint discrimination. "The Court should have focused on whether the prohibition of certain advocacy messages and the permission of others based solely on the viewpoints expressed constituted such a violation," Judge Theodore McKee wrote for the panel in *Children First Foundation v. Legreide*."

The case was sent back to U.S. District Judge Joel Pisano, who originally dismissed it. Assistant New Jersey Attorney General Andrea Silkowitz insisted that "the relevant law limits designs to group names and logos, and does not permit slogans."

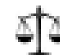
Decisions on message-based license plates have varied in other appellate courts. The Seventh Circuit ruled that state officials can prohibit them while the Eighth Circuit said they cannot .

Christian Family Coalition director Anthony Verdugo filed suit in February against the Volusia County, Florida, public library system for refusing his request to conduct a seminar "Is Religion Alive in America?" Volusia officials bar meeting rooms for any religious programs. Verdugo filed a similar lawsuit against the Osceola County public library system last year. Verdugo said his seminars would include prayer and singing of religious songs, which violate Volusia County library policy against "religious services." Osceola County allows only "nonprofit, noncommercial and nonreligious functions." Alliance Defense Fund, a Christian Right advocacy group, is representing Verdugo. *American Libraries*, the trade journal of the American Library Association, noted, "Public libraries across the country have been named in similar lawsuits for more than a decade."

> *Arguments about the connection between religion and politics, church and state, have surely been perpetual. The civil and legal cases against religious coercion are well known: human freedom extends to one's conscience, and by abolishing religious tests for office or mandated observances, Americans have successfully created a climate—a free market, if you will—in which religion can take its stand in the culture and in the country without particular help or harm from the government….A Christian nation, then, is a theological impossibility, and faith coerced is no faith at all, only tyranny.*
>
> — Jon Meacham, *Newsweek* May 3, 2010



A federal judge has blocked a student-led prayer at an Indiana high school graduation ceremony. On April 30 U.S. District Judge Sarah Evans Barker ruled that "the process in place permitting a student-led prayer at Greenwood High School represents a clear violation of the Establishment Clause of the First Amendment, as does the delivery of a specific prayer set to occur as the result of that process during the upcoming 2010 graduation ceremony." Barker concluded that a U.S. Supreme Court decision a decade ago banning a similar activity in Texas was operative in this case. Her injunction blocked the scheduled prayer at the May 28 graduation exercises.



On April 27 a Florida appeals court asked the state supreme court to decide whether state contracts with two faith-based organizations that provide substance-abuse programs in prisons violate Florida's Constitution. The state has a strict "no aid" provision barring state funds for religious organizations, a provision that religious conservatives have been unsuccessful in challenging or repealing. The First District Court of Appeal asked the state's highest court to rule on a "question of great public importance" because a panel of that court reversed a trial judge's ruling upholding the state program. District Judge William A. Van Nortwick Jr. wrote that the justices should decide the matter because the appeals court's ruling is "the first instance in which the Florida no-aid provision has been applied outside of the school context and because our decision could affect the manner in which the state contracts for social services."

The case is *Council for Secular Humanism v. McNeil.* The Florida legislature adjourned on April 30 before taking final committee votes or a final floor vote among legislators in both houses that would have placed a repeal of the no-aid provision on the November ballot. ■

The Voucher Watch

• A renewed push for different kinds of voucher programs has been seen this spring in several state legislatures. A so-called tax credit voucher, which gives businesses state tax credits for their "contributions" to private schools, exists in Arizona, Florida, Georgia, Indiana, Pennsylvania and Rhode Island. Florida's tax-credit vouchers are worth $3,950. Presently, 40% of the 25,000 students enrolled in the voucher program are African American and 25% are Latino, factors that have reduced Democratic opposition. Bills to expand the amount are said to be gaining strength in both the state house and senate.

In New Jersey GOP Gov. Chris Christie appointed voucher proponent Bret Schundler as education commissioner. Schundler, former mayor of Jersey City, is expected to promote voucher experiments in eight cities, if his nomination is confirmed by the state senate.

Christie was the keynote speaker at a Washington, D.C., conference on May 3 organized by the pro-school voucher American Federation for Children. Christie told the group that he plans to expand public charter schools and will support a "scholarship" bill to enable 24,000 children to attend private, mostly faith-based schools. He called this proposal the "final solution" to New Jersey's education problems. He also ordered deep budget cuts for public schools.

Finally, Illinois is also considering adoption of a tuition voucher program for low-performing public schools in Chicago. Democratic Sen. James Meeks, who chairs the education committee, is the sponsor.

Despite consistent and strong voter rejection of similar proposals over nearly four decades, these voucher programs "are beginning to win bipartisan support in a number of states," said *Education Week* on March 3.

• Students attending private schools as part of a voucher process in Milwaukee and Washington, D.C. have not made the academic progress promised by voucher promoters. This is the general finding of an assessment of their educational progress by researchers at the School Choice Demonstration Project at the University of Arkansas. Professor Patrick Wolf concluded, "At this point the voucher students are showing average rates of achievement gain similar to their public school peers."

These findings led one conservative columnist, Steve Chapman of the *Washington Examiner* to lament, "This type of school choice, whatever its merits, has not accomplished what it was supposed to do." ■

Updates

Nebraska Challenges *Roe v. Wade*

Two new laws enacted in Nebraska are likely to end up in federal court, possibly even the U.S. Supreme Court. Nebraska lawmakers banned abortions after 20 weeks of pregnancy, claiming that the fetus could feel pain. This replaces the viability rule that has traditionally been a factor in abortion law cases. The other law requires women to be screened for mental health problems before having abortions. Both are firsts of their kind in the nation and are thought to have been designed to reopen the *Roe v. Wade* debate at the Supreme Court. Gov. Dave Heineman, a Republican, signed both bills into law in April. Pro-choice groups are expected to challenge their constitutionality, and the controversies could take years to resolve.

In other abortion-related news, Virginia Republican Gov. Robert McDonnell proposed withholding state money for abortions, except in cases of rape, incest or potential risk to the life of the mother. The state would not pay for elective abortions or for those involving deformity or the health of the woman. The legislature agreed. McDonnell accepted a new pro-choice license plate "Trust Women/Respect Choice," but suggested an amendment ensuring that money generated from sales would not be used to "provide abortion services." After the first thousand plates are sold, proceeds from the plate will go to Planned Parenthood. The already existing "Choose Life" plate sends its proceeds to pregnancy centers that do not provide abortion services.

In Mississippi voters will be asked to grant fetuses human rights in the state constitution in a referendum scheduled for 2011.

Oklahoma's Republican legislature passed several bills, including stringent ultrasound and reporting requirements "that are among the strictest anti-abortion measures in the country," according to the Center for Reproductive Rights (CFRR). Both houses overrode vetoes by Democratic Gov. Brad Henry. Similar bills were enacted two years ago but were struck down on technicalities by state courts. CFRR immediately challenged the ultrasound law in state court. *The New York Times* commented that the new laws "taken together would make Oklahoma one of the most prohibitive environments in the United States for women seeking to end a pregnancy."

Faith-Based Group Hit for Hiring Practices

World Relief, an international evangelical charity that receives federal funds to resettle refugees, has come under fire for implementing Christians-only hiring practices. Its Chicago office director Candace Embling was fired in January after disagreeing with the policy, according to the *Chicago Tribune*, which exposed widespread staff departures and the dismantling of some of its services for refugees. Several staffers said the policy was discriminatory and unjust. Delia Seeburg, director of immigrant legal services, called the policy "ridiculously wrong and un-Christian."

More than 65% of World Relief's budget comes from federal funds under the faith-based initiative program. That may be in jeopardy if the Obama Administration follows through on its promise to stop discriminatory practices in the program.

World Relief, headquartered in Baltimore, is an arm of the National Association of Evangelicals. The organization handles 40% of refugee resettlement in the United States. Language training, job placement, counseling and legal aid services are provided by the Chicago branch, where its mental health unit recently closed because of staff departures.

Private foundations also provide some funding to World Relief. Some of that may cease. Nikki Will Stein, director of Polk Bros. Founda-

tion, told the *Chicago Tribune* that they will no longer consider applications for aid. "We live in a multicultural, multireligious world. We were very surprised with the specificity of the document….People should be free to believe what they believe as long as they're doing their job."

The Illinois attorney general's office is investigating complaints that World Relief may be in violation of the state's Human Rights Act.

World Relief officials said they are merely clarifying what has been their general policy since 1945.

$ Flow to Churches

Church-related nonprofits continue to rake in federal funds. The Iowa Family Policy Center (IFPC), a Religious Right group, has received over $3 million in federal funds for marriage counseling and other programs since 2004. Much of the funding comes from the Administration of Children and Families, an agency within the Department of Health and Human Services. The grants were part of the federal government's "Healthy Marriage Program." IFPC sponsors a "Marriage Matters" program, which offers marriage and pre-marital mentoring, though no one has apparently monitored whether the program is permeated by a particular religious viewpoint.

IFPC maintains a political action committee which has lobbied for an amendment to the Iowa Constitution banning same-sex marriage, which was upheld a year ago by the state supreme court. IFPC has endorsed the candidacy of Bob Vander Plaats, an arch-conservative, in the upcoming Republican primary for governor.

Vander Plaats has promised to bring the same-sex marriage ruling to a referendum. IFPC's statement on the marriage ruling said that "gay marriage is more dangerous than smoking, and all homosexual behavior is inherently sinful."

The Iowa group is not the only one to receive federal support. Numerous recent congressional "earmarks" have gone to faith-based schools and ministries. At least $5 million has been earmarked to nine Protestant Christian colleges and youth ministries in several states and one Orthodox Jewish rabbinical school in Lakewood, New Jersey. Recipients include Grace College and Theological Seminary in Winona Lake, Indiana; Atlanta Christian College in East Point, Georgia; Wesley Biblical Seminary in Jackson, Mississippi; and the Tacoma Rescue Mission in Tacoma, Washington.

Child Expelled from Faith-Based School

A Catholic school in Boulder, Colorado, expelled a pre-school child because her parents are lesbians. "Parents living in open discord with Catholic teaching in areas of faith and morals unfortunately choose by their actions to disqualify their children from enrollment. To allow children in these circumstances to continue in our school would be a cause of confusion for the student in that what they are being taught in school conflicts with what they experience in the home," said a statement from the Archdiocese of Denver. Many area Catholics, including parents at the school, are outraged by the decision and have openly criticized church leaders.

Sacred Heart of Jesus Catholic School said the girl, who had been enrolled this year, could not return next fall. The parents probably have no legal grounds to challenge the decision. A Fourth Circuit Court of Appeals ruling last year upheld a California Lutheran school's decision to expel two students for having "a bond of intimacy that was characteristic of a lesbian relationship."

Home School Texts Ignore Evolution

Two major textbook publishers for the home schooling market downplay and criticize evolution in their high school biology texts, according to analyses conducted by two scientists, Jerry Coyne of the University of Chicago and Duncan Porter of Virginia Tech. They were asked by the Associated Press to review ninth and tenth grade biology texts published by Apologia Educational Ministries and Bob Jones University Press. After reading them, Coyne was blunt, "These books are promulgating lies to kids," he said. He continued, "If this is the way kids are home-schooled then they're being shortchanged, both rationally and in terms of biology." He argued that the books may steer students away from careers in biology or the study of the history of the earth.

According to AP reporter Dylan Lovan, "Christian-based materials dominate a growing home-school education market that encompasses more than 1.5 million students in the U.S. And for most home-school parents, a Bible-based version of the Earth's creation is exactly what they want."

Opposition to Belief in Global Warming, Evolution Linked

Several state legislatures are encouraging students to question the scientific evidence for global warming and evolution. In South Dakota the legislature adopted a resolution which urges schools to take "a balanced and objective approach" to learning about climate change, asserting that science is "unresolved" and has been "complicated and prejudiced by political and philosophical viewpoints." While the Senate revised House Concurrent Resolution 1009 to remove obvious scientific errors from the final version, National Center for Science Education staffer Steven Newton told the *Huffington Post* that the scientific errors in the resolution only mask the greater problem. "Even more disturbing than these errors is the underlying premise of HCR 1009: the assumption that political bodies, rather than scientists, should have the final say over scientific issues….This political interference in science education is a problem that extends beyond merely getting the facts wrong. Students deserve better than to be pawns of science denialists."

Several other states have either adopted similar requirements – often linking skepticism about climate change to skepticism about evolution —or are considering them.

The *New Scientist* journal observed, "Schools in three U.S. states—Louisiana, Texas and South Dakota—have been told to teach alternatives to the scientific consensus on global warming. The moves appear to be allied to efforts to teach creationism in public schools. Such efforts have in the past been thwarted when courts ruled them unconstitutional, but those advocating the teaching of sound science may find it harder to fight misrepresentations concerning climate change." Michigan rejected a similar bill five years ago, but Kentucky is now debating one.

Some of these moves are apparently influenced by an anti-scientific bias, leading the *New Scientist* to conclude, "Moves against climate science and in favour of creationism are linked in other ways too: some see warming, like evolution, as the product of a hostile scientific establishment."

Religious Right Zealot Defeated in Texas

A diehard advocate of Religious Right causes, Rick Green, lost the Republican nomination for a seat on the Texas Supreme Court in the

continued on page 16

Updates, *continued from page 15*

April 13 primary. He was defeated 52% to 48% by family law judge Debra Lehrmann. While the margin was slender, this was, after all, a Republican primary in Texas, whose electorate is one of the most conservative in the nation. Green is a speaker for WallBuilders, a Texas-based group that denies that separation of church and state is mandated by the U.S. Constitution and extols the theocracies that existed in several of the colonies prior to the adoption of the Constitution and the Bill of Rights. Green, a resident of Dripping Springs, was also a favorite of home-schooler events and Tea Party rallies.

Abstinence Redux

The controversial abstinence-only program inaugurated by the Bush Administration received a new lease on life under the health care reform law signed by President Obama. Initially scheduled to end, the program was given $250 million funding for five years. The health care law also provides $375 million to promote "comprehensive sexuality education" programs. The overall package is supposed to be "evidence-based, medically accurate and age appropriate." Nearly $115 million has been appropriated for a new teenage pregnancy prevention program called Personal Responsibility Education.

Obama Names Envoy to Muslim World

President Obama named an Indian-American Muslim as special envoy to the Organization of Islamic Conference (OIC) in February. This first appointment, of Rashad Hussain, to the 57-member OIC, which supports Muslim majority nations, was praised by *The Times of India*. The White House said the appointment will "deepen and expand the partnership that the U.S. has pursued with Muslims around the world."

New Cell Lines Released

The National Institutes of Health (NIH) announced on April 27 that 13 additional lines of human embryonic stem cells are now available for federal funding. Nine lines had never been eligible for federal support before, while four were long-used lines derived by researchers at the University of Wisconsin. Scientific and research groups applauded the decision. NIH Director Francis Collins said, "With these lines, research can now go forward," and added that these lines met strict ethical criteria approved by the Obama administration and NIH. Collins said that stem cell lines responsible for 89% of scientific publications from 1999 to 2008 are now approved.

Kentucky Lets Anti-Evolution Bill Die

The Kentucky legislature adjourned on April 15, allowing an anti-evolution bill to die in a House Committee. The so-called "Kentucky Science Education and Intellectual Freedom Act" was modeled on the Louisiana Science Education Act, which mandates critical viewpoints on "evolution, the origins of life, global warming, and human cloning." The bill was widely seen as an attempt to insinuate creationism into public school science classes.

Moving?

Please send a change of address form to: Americans for Religious Liberty, PO Box 6656, Silver Spring, MD 20916.

Virginia Governor Reverses Prayer Policy

Virginia Republican Gov. Robert McDonnell has granted state police chaplains the right to pray in the name of Jesus at public events. The decision, announced on April 29, reversed former Democratic Gov. Tim Kaine's directive that only inclusive or nonsectarian prayers should be delivered at public functions. That policy caused six of the 17 chaplains at the Virginia State Police to resign. The police established a chaplaincy program in 1979, and the government-paid chaplains spoke at police academy graduations and funerals. Kaine and Police Supt. Steven Flaherty tried to address the issues of inclusiveness in 2008 after a federal appeals court upheld a Fredericksburg city council policy requiring nonsectarian prayers at open meetings. McDonnell's reversal was praised by the Family Foundation of Virginia, a Religious Right lobby, and criticized by the Jewish Federation, which warned that the decision "would ultimately lead to litigation costly to our commonwealth."

International Updates

Belgrade: Religious education classes in Serbian schools will now use materials produced by World Vision, an evangelical ministry based in the United States. The "Youth Bible Curriculum" will be aimed at primary schools, particularly in rural areas and has the endorsement of Bishop Atanasije and the Serbian Orthodox Church. In Serbia the Orthodox Church claims the allegiance of 84% of the population. Its schools were secular for generations under the former Yugoslavia, but religious education has made a comeback. World Vision provides supplemental textbooks for Orthodox Christians in Albania, Armenia, Bosnia, Romania, Georgia and Lebanon in an unusual ecumenical engagement between Protestants and Orthodox.

Geneva: The Human Rights Council, an agency of the United Nations, narrowly approved a resolution that calls "defamation of religion" an infringement on liberty. Backed by the 56-member Organization of the Islamic Conference (OIC), the resolution could make it a crime to criticize religion. Opponents of the campaign include many Christians, secularists and liberal Muslims who see the campaign as an attempt to stifle discussion about the role of religion in public life. Noted *The Economist:* "Far from protecting human rights, it emboldens countries that use blasphemy laws to criminalize dissent. In some places it is not the 'defamation' of faith that threatens rights, but measures that supposedly defend it."

The narrowness of the vote, 20 to 17 with eight abstentions, makes it likely that the resolution will not garner a sufficient vote in the entire general assembly. Mexico, Uruguay, Argentina, Zambia and South Korea voted against it, and Brazil abstained.

The OIC, which is based in Jeddah, Saudi Arabia, but wants to move its offices to Jerusalem, insists that Islam is being demonized in Europe, particularly in Switzerland, where voters added a ban on minarets to the Constitution last year. The OIC wants to "invite everybody to respect Islam," says its secretary general, Egyptian-born Ekmeleddin Ihsanoglu.

Jakarta: Indonesia's blasphemy law was upheld by an 8 to 1 vote of the nation's Constitutional Court on April 19. The law, passed in 1965,

allows the attorney general to ban religious groups that "distort" or "misrepresent" one of the six "official" faiths: Islam, Protestantism, Catholicism, Buddhism, Hinduism and Confucianism. Individuals found guilty of "heresy" can also be imprisoned for up to five years. Chief Justice Mohammad Mahfud said the law did not conflict with or limit the constitutional guarantee of religious freedom. A coalition of human rights groups had sought the judicial review, and one of its spokespersons called the ruling "a setback for Indonesian democracy." The law has been applied mostly against Islamic dissidents in a nation that is nominally 90% Muslim.

Jerusalem: Two religious issues are boiling in Israel and threaten the coalition government of Prime Minister Binyamin Netanyahu. The first is a bill easing conversion to Judaism that is backed by foreign minister Avigdor Lieberman, a Moldovan immigrant who heads a key coalition party representing mostly immigrants from the former Soviet Union. Of the one million Israelis who are Soviet-born, about 300,000 are not considered Jewish by the Orthodox rabbinate and thus cannot marry in Israel, where civil marriage does not exist. Nor can they be buried in Jewish cemeteries. Only Orthodox rabbinical courts can recognize conversion, and most Soviet immigrants do not practice Orthodoxy (nor do most Israelis). The proposed legislation would take conversion away from the exclusive control of rabbinical courts. The proposal has provoked fierce opposition from the United Torah Judaism party, a part of the governing coalition.

Another untra-Orthodox party, Shas, which primarily represents Sephardic Orthodox, has wavered in its support for the change, under pressure from religious conservatives. Netanyahu has asked for a compromise from legal advisers.

In another incident Gavriel Avital, the chief scientist at the Israeli ministry of education, has openly denied evolution and global warming. Scientists and leading newspapers have called upon the minister of education to fire Avital, who said he wanted "to examine textbooks and curricula" to root out references to evolution. Avital told the daily newspaper *Haaretz*, "If textbooks state explicitly that human beings' origins are to be found with monkeys, I would want students to pursue and grapple with other opinions. There are many people who don't believe the evolutionary account is correct."

The newspaper then called for his dismissal, calling him "an obscurantist Orthodox zealot who casts doubt on the validity of scientific research and rejects both evolution and global warming."

Israeli minister of education Gideon Sa'ar told the Knesset on March 3, "Avital's statements regarding evolution and the environment are not consistent with the Education Ministry's policy and are not acceptable to me." As a result, Avital promised to abide by the ministry's policy on evolution and the environment.

Madrid: The Spanish parliament finalized its new abortion law on February 24. AP reported: "Spain approved a sweeping new law that eases restrictions on abortion, declaring the practice a woman's right and doing away with the threat of imprisonment, in part of a drive toward liberal policies that has angered conservatives and the Catholic Church. The new law allows the procedure without restrictions up to 14 weeks and gives 16- and 17-year olds the right to have abortions without parental consent."

The law, replacing a more restrictive one enacted in 1985, brings Spain closer to northern European practices. Parliamentarians rejected 88 amendments to weaken the law, which goes into effect in July. The new legislation says that minors (ages 16 or 17) must inform their parents or legal guardians if they plan to have an abortion but do not need their permission.

Moscow: The Russian prosecutor general's office announced on April 21 that 28 books and recordings of Scientology church founder L. Ron Hubbard would be banned as "extremist." Russian prosecutors claimed that Hubbard's writings contained calls "to commit crimes motivated by ideological and religious hatred" and "ideas justifying violence in general and in particular any methods of resistance against critics of Scientology." The Church of Scientology denied the charges. Russian authorities have also banned some materials from Islamic extremists, Jehovah's Witnesses, and Russian nationalists. The European Court of Human Rights has twice fined Russia for refusing to recognize Scientology as a legitimate religious organization. Scientology has also run afoul of the laws in Belgium, France, Germany and Greece.

Paris: On April 21 President Nicolas Sarkozy ordered his administration to submit a draft law in May to make the wearing of veils by Muslim women illegal in public places. Sarkozy has called the garment "a sign of subservience," but critics say his move amounts to an overreaction since only about 2,000 women in a nation of 65 million wear some version of the veil. Some see the possible ban as a violation of religious or personal liberty. Belgium's parliament unanimously approved a ban on full-faced veils on April 29, while neighboring Holland rejected a similar proposal in 2006. Anti-immigrant parties in Denmark, Austria, and Switzerland are supporting a ban. Swiss voters approved a constitutional change last December that banned minarets. All of these proposals symbolize what *Time* magazine called "the uneasy relationship" between Europe's burgeoning Muslim communities and the general population. ■

Books and Culture

The Death and Life of the Great American School System: How Testing and Choice are Undermining Education, by Diane Ravitch. Basic Books, 2010, 283 pp., $26.95.

This may well be the most important book on education published this year. Noted education expert Diane Ravitch, in a book hard to put down, analyzes what has been going wrong with American education in recent years and what can be done about it.

In brief, Ravitch shows how the school choice movement (charter schools and vouchers), promoted by market-worshipping economists, "Billionaire Boys' Club" foundations, enemies of teacher unions, and politicians, few of whom ever presided over a K-12 classroom, has sold the American people a bill of goods. They have spread the illusion that testing in the limited areas of math and simple literacy will somehow bring us to an educational paradise.

Instead, it has led to the dumbing-down of standards, the mania for multiple-choice testing, and the rapid diminution of content in social studies, literature, science, the arts, and foreign languages. Leading the charge toward mediocrity was George W. Bush's signature education plan, the disastrous No Child Left Behind (NCLB) program that, "bereft of any educational ideas, . . . was a technocratic approach to school reform that measured 'success' only in relation to standardized test scores on two skill-based subjects, with the expectation that this limited training would strengthen our nation's competitiveness with other nations."

"Under NCLB," Ravitch writes, "the federal government was dictating ineffectual remedies, which had no track record of success." Scores

continued on page 18

Books and Culture, *continued from page 17*

of public schools in major cities were closed "because they were unable to meet the unreasonable demands of NCLB."

Charter schools, Ravitch writes, "became increasingly hostile to [teacher] unions," essential for keeping teaching a reasonably attractive profession.

"Our schools will not improve if we value only what tests measure," she concludes. They "will not improve if we entrust them to the magical powers of the market."

Our schools cannot be improved if we ignore the disadvantages associated with poverty that affect children's ability to learn. Children who have grown up in poverty need extra resources, including pre-school and medical care, . . . small classes . . . extra teacher time . . . extra learning time . . . [and] additional supports, such as coordinated social services. . . ."

Ravitch concludes: "Our nation's commitment to provide universal free public education has been a crucial element in the successful assimilation of millions of immigrants and in the ability of generations of Americans to improve their lives. . . . As a nation, we need a strong and vibrant public education system. As we seek to reform our schools, we must take care to do no harm. . . . [P]ublic education is in peril. Efforts to reform public education are, ironically, diminishing its quality and endangering its very survival."

As a former public school teacher and parent and grandparent, I heartily endorse Ravitch's indispensable book and give it five stars.

— *Edd Doerr*

The Disappearing God Gap?: Religion in the 2008 Presidential Election, by Corwin E. Smidt, Kevin R. Den Dulk, Bryan T. Froehle, James M. Penning, Stephen V. Monsma, and Douglas L. Koopman. Oxford University Press, 2010, 278 pp., paper $24.95.

This is a report of a national survey conducted by the Paul Henry Institute for the Study of Christianity and Politics at Calvin College. While all surveys have some validity, if they are conducted properly with properly constituted sampling techniques, this one has some eye openers that conflict with all other national surveys in 2008, including Pew and the Exit Polls.

A couple of glaring examples: The Henry Survey claims that three quarters of young Catholics age 18-29 voted for McCain. Only 26% chose Obama. Other national surveys put the figure at closer to 60% for Obama among young Catholics. It also shows that 27% of Jews call themselves Republicans – two or three times the findings in other surveys. It claims that 61% of the wealthiest voters (income over $125,000) voted for Obama, even higher than the poorest voters. While Obama did remarkably well among upper and upper middle income voters for a Democrat, he did not do this well among the rich in any comparable survey. A footnote indicated that the young Catholics' response totaled 24. That should set off a red flag among statisticians. You simply cannot generalize about millions of voters on the basis of 24 responses to a survey.

The authors, mostly political scientists, present their interpretation of the data, which overall seems on target. "The 2008 presidential election reveals little evidence of any fundamental shift in religious voting. Overall, the religious structure of the Democratic and Republican coalition of voters remained virtually the same from the 2004 election to the 2008 election. Rather than the 2008 presidential election representing some fundamental shift in allegiances, the story was more one of variation within the basic structure of that vote. In other words, Obama won by improving marginally the proportion of votes he captured within many, though not all, religious groups. Of course, the net result of these marginal shifts was sufficient to enable him to capture the White House in a rather convincing fashion. This was the case in spite of concerted efforts by the Obama campaign to appeal to religious voters and difficulties of the McCain campaign in appealing to them."

One factor affecting voter turnout may have hurt McCain: the decline of the Religious Right in fundraising and voter mobilization efforts. "Without the accustomed aid of robust Christian right groups, the Republican Party was unable to use religion for a full-scale, precinct-by-precinct, voter mobilization effort. In contract to previous Democratic nominees and to the McCain campaign, the Obama campaign used significant resources to court religious voters both in the primaries and the general election." This could have made the difference in Obama's narrow wins in North Carolina and Indiana. The authors continue, "In addition to voter mobilization and demobilization, there were some subtle yet important differences in vote choice and voting coalitions. First, Obama and the Democratic Party enjoyed double-digit gains in voting among modernist evangelicals, centrist mainline Protestants, and black Protestants." They also cite "the intriguing emergence of ethnoreligious groupings as key blocs in presidential elections," singling out African-American Protestants and Latino Catholics as mainstays in the new coalition.

There is a cautionary note for the future, however. "With Obama's election, the political playing field has been permanently changed….It is likely that subsequent candidates of the Democratic Party, and even Obama himself in his reelection campaign, will find it more difficult to attain this swelling of voter turnout among religious minorities in future presidential contests." Everything depends, of course, on the success or failure of Obama's policies and his ability to connect to voters.

The future influence of religion on politics is not likely to be dramatically different from the present. "Both religious traditions and religious traditionalism will continue to shape electoral cleavages." Obama's campaign "helped to narrow the 'God gap,' even if only modestly." Incidentally, religious tradition is defined as the "politics of religious

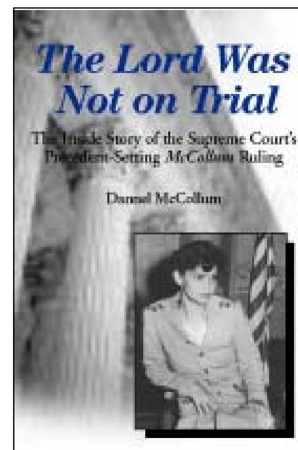
The Lord Was Not on Trial

The Inside Story of the Supreme Court's Precedent-Setting *McCollum* Ruling

by Dannel McCollum

"McCollum *was a major step towards helping to ensure that public schools are not in the business of deciding which religious beliefs should be favored in public schools."*
—T. Jeremy Gunn

"Dan McCollum's book tells the inside story of the Supreme Court's first ruling to find unconstitutional a practice involving religion and public education."
—Edd Doerr



245 pages / $18.00
Order from Americans for Religious Liberty
PO Box 6656, Silver Spring, MD 20916

Join Americans for Religious Liberty!

PO Box 6656, Silver Spring, MD 20916

I want to do my part to help Americans for Religious Liberty halt the threats to religious, intellectual and personal freedom.

This is a: ❏ Renewal ❏ New Membership ❏ Extra Donation

❏ $25 Individual ❏ $50 Sustaining ❏ $500 Sponsoring
❏ $35 Family ❏ $100 Supporting ❏ $1000 Patron
❏ $15 Student and Low Income

If you would prefer your journal to be sent via email, please include your email address:
____ .

❏ Enclosed is my/our check for $____________.

Name: ____

Address: ____

City, State, Zip: ____________________________________

Contributions to ARL are tax-deductible. The ARL journal is sent to all contributors.

belonging," as in Catholic, Protestant, Jewish or Muslim, while religious traditionalism encompasses "the new politics of religious behaving and believing," which reflects attendance or belief in certain dogmas that have political consequences.

Despite its flaws, the book is worth adding to the growing shelf of titles dealing with the connection between religion and voting.

—Al Menendez

Religious Liberty, Volume One: Overviews & History, by Douglas Laycock. William B. Eerdmans Publishing Company, 2010, 864 pp., paper $35.00.

This first of a planned four-volume collection of Professor Laycock's writings on religious liberty is a must for academic and law-school libraries. Most of the essays originally appeared in law reviews, making their collection in one volume very welcome.

He covers so many issues that it is impossible in this review to do justice to so comprehensive an account. But here are a few excerpts:

"When the Constitution's Framers wrote the Religion Clauses they hoped to end the history of religious persecution and civil war that had plagued humankind for so long. Their effort has largely, but not perfectly, succeeded. That success is partly a direct result of the rules established by the Religion Clauses. It is partly the result of the strong societal commitment to tolerance symbolized by those clauses and now shared by most of the major religions in this country."

"So every generation must nurture and pass on the commitment to religious liberty. Grappling with the difficult and controversial issues of religious liberty is part of that responsibility."

"One lesson often drawn from the wars of religion is that religions persecuted. And certainly the religious groups were not innocent. But then as now, it was the state that had the power to persecute, and the state acted for its own motives. The threat to religious liberty is from the government, not from unregulated religions."

"The right wing claims the government can openly support religion as long as it doesn't prefer one religion over others – and that that's what the framers of the Bill of Rights intended. But the legislative record tells a very different tale….A conference committee produced the version ultimately ratified as the First Amendment: 'Congress shall make no law respecting an establishment of religion.' This is the broadest version considered by either house. It speaks generically of 'religion,' not 'a religion,' 'a national religion,' or 'any particular denomination of religion.' It forbids any law 'respecting' establishment of religion- that is, any law that relates to an establishment in any way. In light of the alternatives Congress considered and rejected, it is best understood as requiring the government to be entirely neutral towards religion."

This book is a treasure trove of information for those who teach or practice church-state law. Laycock has been a law professor for decades at the Universities of Chicago, Texas and Michigan.

—Al Menendez

America and the Pill: A History of Promise, Peril, and Liberation, by Elaine Tyler May. Basic Books, 2010, 214 pp., $25.95.

This year marks the 50th anniversary of FDA approval of the contraceptive pill. In this important book historian Elaine Tyler May details the development of the pill and concludes: The feminist movement liberated women and used the pill as an important tool to gain control over their lives; there is no evidence that the pill caused a boom in premarital sex; the pill has had little impact on world fertility rates or overpopulation.

May shows that the pill simply enlarged the repertory of methods available to women to reduce the power gap between men and women. "The pill has been at the center of the major transformations in women's lives over the last half-century." And she shows "how much has changed and how much has remained the same."

May traces the legal battles over contraception and also focuses on the Vatican "old boys' club" 1968 rejection of its own theological advisers' 73 to 10 recommendation that it relax its opposition to contraception, a rejection ignored by the overwhelming majority of Catholics.

This book rates five stars.

— Edd Doerr

Taming the Gods: Religion and Democracy on Three Continents, by Ian Buruma. Princeton University Press, 2010, 132 pp., $19.95.

Educated in the Netherlands and Japan, writer Ian Buruma, recipient of the 2008 Erasmus Prize for making "an especially important contribution to culture, society or social science in Europe," is well prepared to offer this thoughtful examination of church/state, or religion/government/politics, matters in the United States and Europe, China and Japan, and the complex situation of Islam in Europe.

He writes that "Relations between church and state, or religious and secular authority, cannot be explained as abstractions. They can only be understood in the context of history." He contrasts the United States' church-state separation model with the Dutch system of "pillarizing" society along religious lines introduced by statesman Abraham Kuyper (1837-1920), cites Voltaire's dictum that "Fanaticism is to superstition what delirium is to fever and rage to anger," and concludes that "It is

continued on page 20

Americans for Religious Liberty
PO Box 6656
Silver Spring, MD 20916

NONPROFIT ORG.
U.S. POSTAGE
PAID
SOUTHERN, MD
PERMIT NO. 4004

RETURN SERVICE REQUESTED

Books and Culture, *continued from page 19*

not the task of the liberal democratic state to provide answers to the deeper questions about life, let alone impose metaphysical beliefs on its citizens. Japan, as well as Asian countries occupied by imperial Japanese soldiers, was devastated because the Japanese state tried to do just that."

Studying the growth of Islam in Europe, Buruma writes that "To be tolerant of the views and customs of religious minorities that go against the mainstream of modern opinion (on sexuality, the role of women, etc.) is an example of tolerating intolerance, of letting people stew in their own juice without caring about their well-being, or indeed the well-being of Western liberal democracy."

Buruma has a bit of a problem explaining the difference between secularism (laïcité in French) and church-state separation, but his small book is very much worth reading He concludes, "Europeans found a way to reconcile Catholics, Protestants, Jews and non-believers by democratic means, but only after centuries of murder and oppression."

— *Edd Doerr*

The Conservatives: Ideas & Personalities Throughout American History, by Patrick Allitt. Yale University Press, 2009, 325 pp., paper $22.00.

This history of political conservatism in American history is much superior to Sam Tanenbaum's *Death of Conservatism* (VOR 109) and others. As Emory University historian Allitt observes, "The word itself has meant different things at different times and there is no consistency in conservatives' beliefs about what should be conserved." He includes the Federalists, the Whigs, Northern Capitalists, Southern agrarians and certain kinds of isolationists and populists in his far-reaching portrait of a political movement that has been involved in many crucial events in the nation's history.

Unlike some observers, Allitt recognizes the growing religious element in modern conservatism, writing, "The movement was also becoming more explicitly religious, a trend personified in the work of Richard Neuhaus and the *First Things* group." These "theoconservatives" differed in significant ways from "neoconservatives," who emphasized free-market economics and an aggressive foreign policy, and "paleoconservatives," who venerated the past and often veered into Nativism and neo-Confederate apologias. He notes that Roman Catholics have had a profound effect on intellectual conservatism since the Cold War era.

—*Al Menendez*

To Serve God and Mammon: Church-State Relations in American Politics, by Ted G. Jelen. Georgetown University Press, 2010, 188 pp., paper $26.95.

Professor Jelen emphasizes that the political culture of the U.S. affects the legal context of church-state relations. "The decentralized nature of American government provides incentive for various political leaders to raise issues of faith and politics persistently."

Jelen reviews the general contours of church and state, concentrating on the public role of religion and the direction of Supreme Court jurisprudence in the church-state area. "The coexistence of the Establishment and the Free Exercise clauses as the 'First Freedoms' guaranteed by the Bill of Rights suggests a continuing tension between freedom *from* religion and freedom *of* religion."

He is keenly aware that "the realignment of evangelical Protestants [toward the Republican Party] "poses a different set of problems for candidates of executive offices" as well as the legislative branch. This is a certainty "given the power of the symbol of religious liberty and the growing importance of evangelical Protestants in the Republican Party."

His predictions for future developments are illuminating. Jelen is a strong separationist. "I believe that our system of church-state separation plays an important role in containing religious conflict." Therefore, he argues that "the practical meaning of the Establishment Clause must become broader as the population becomes more religiously diverse."

He continues, "A system based on Christian preferentialism would thus do serious damage to the notion that religious liberty is a constitutionally guaranteed right, which lies (or should lie) beyond the reach of a popular majority." But he also believes that "religious freedom must apply to the public sphere" and that "religious free exercise often requires government support," positions which make many separationists uncomfortable.

It is unlikely that the future of church-state interaction will change. "It is thus difficult to imagine how issues of religious freedom and church-state separation can ever be resolved under our current constitutional format. I would have it no other way. We are, as Justice William O. Douglas asserted, 'a religious people,' with a natural desire to see our most sacred beliefs and values enacted in public policy. We are also a people that values personal and spiritual autonomy, as well as freedom from government interference. These distinct yet complementary aspects of our national character will continue to fuel conflicts over church-state relations for a long time to come."

Appendices include a list of relevant Supreme Court decisions, a glossary of terms and interest groups active in influencing church-state relations, and an excellent bibliography.

—*Al Menendez*