



VOICE OF REASON

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Supreme Court OKs Arizona Tax Credits

By 5 to 4, the Supreme Court ruled on April 4 that taxpayers lack standing to challenge an Arizona tax credit program that primarily aids religious private schools. The ruling gives a green light to those who wish to circumvent state constitutional prohibitions on tax aid to sectarian institutions.

Justice Anthony Kennedy, writing for the majority, said that “standing cannot be based on a plaintiff’s mere status as a taxpayer.” Even the “narrow exception” allowed by the 1968 *Flast v. Cohen* ruling, which allowed some taxpayer challenges to legislative expenditures under the Establishment Clause, was denied. The Court held that the Arizona plaintiffs failed to satisfy *Flast* requirements. Tax credits “do not implicate individual taxpayers in sectarian activities” because “Arizona taxpayers spend their own money, not money the state has collected from respondents or from other taxpayers.”

Arizona provides tax credits for individual or corporate contributions to School Tuition Organizations (STO) that provide scholarships to students attending private, mostly sectarian, schools. Last year the program provided \$60 million. Church-related schools, which often apply doctrinal standards to hiring, admissions and curricular decisions, benefit substantially (92% of all funds) from the program. But the majority insisted that: “Tax credits are not owed to the state and, in fact, pass directly from taxpayers to private organizations.” The Court thus accepted a primary argument of the voucher movement.

There were some kernels of hope even in this decision. One is that the *Flast* ruling is not directly overturned, as Justices Scalia and Thomas had encouraged in a separate concurring opinion. Kennedy wrote that “money extracted from a citizen and handed to a religious institution is still a violation of a citizen’s conscience.” Taxpayers retain the right to allege “direct injury” in Establishment Clause cases.

However, the Court majority has apparently accepted a long-standing claim of voucher advocates that state aid to private schools will save taxpayers’ money. Kennedy wrote: “By helping students obtain scholarships to private schools, both religious and secular, the STO program might relieve the burden placed on Arizona’s public schools. The result could be an immediate and permanent cost savings for the State.”

Justice Elena Kagan’s dissent, joined by Ginsburg, Breyer and Sotomayor, was blistering: “Today’s decision devastates taxpayer standing in Establishment Clause cases.... The Court’s opinion thus offers a roadmap—more truly, just a one-step instruction—to any government that wishes to insulate its financing of religious activity from legal challenge. Structure the funding as a tax expenditure, and *Flast* will not stand in the way. No taxpayer will have standing to object. However blatantly the government may violate the Establishment Clause, taxpayers cannot gain access to the federal courts.”

Citing four decades of allowing “taxpayer-initiated challenges... to contest the government’s financing of religious activity,” she added, “Today, the Court breaks from this precedent by refusing to hear tax-

payers’ claims that the government has unconstitutionally subsidized religion through its tax system. These litigants lack standing, the majority holds, because the funding of religion they challenge comes from a tax credit, rather than an appropriation.... This novel distinction in standing law between appropriations and tax expenditures has as little basis in principle as it has in our precedent.”

Taxpayer challenges to government funding of religion have been dealt a serious setback. “Taxpayers who oppose state aid of religion have equal reason to protest whether that aid flows from the one form of subsidy or the other. Either way, the government has financed the religious activity. And so either way, taxpayers should be able to challenge the subsidy.” She noted: “Still worse, the Court’s arbitrary distinction threatens to eliminate *all* occasions for a taxpayer to contest the government’s monetary support of religion. Precisely because appropriations and tax breaks can achieve identical objectives, the government can easily substitute one for the other. Today’s opinion thus enables the government to end-run *Flast*’s guarantee of access to the Judiciary.”

The dissent concluded that the majority decision “will diminish the Establishment Clause’s force and meaning” and will do irreparable harm to religious liberty. “Today’s holding therefore will prevent federal courts from determining whether some subsidies to sectarian organizations comport with our Constitution’s guarantee of religious neutrality.”

The case, *Arizona Christian School Tuition Organization v. Winn*, can be accessed on the U.S. Supreme Court web site. ■

Inside:

House Passes D.C. School Voucher Bill	2
Appeals Court Dismisses Prayer Day Challenge	2
GOP Hopefuls on Church and State	3
Abortion Restrictions Approved	5

Regular Features

Church and State in the Courts	6
The Voucher Watch	9
ARL in Action	11
Updates	11
International Updates	13
Books and Culture	15
Commentary	19

House Passes D.C. School Voucher Bill

Despite strong opposition from a coalition of 50 national educational, religious, civil liberties and civil rights groups, the U.S. House of Representatives voted to restore the D.C. school voucher program. Now renamed the SOAR act, it would cost \$100 million over the next five years. Since there was no “offset” provision, the bill (H.R. 471) would increase spending by \$300 million, according to an estimate by the Congressional Budget Office.

The vote on March 30 was 225 to 195, with overwhelming differences along party lines. Republicans voted 224-9 in favor, while Democrats were opposed 186-1. (The lone Democratic supporter was Dan Lipinski of Illinois). Staunch Democratic opposition was crystallized by Democratic Whip Steny Hoyer, whose office urged a no vote and accused the Republicans of “continuing to use the District of Columbia as a testing ground for their own agenda.” Hoyer said, “The majority pushes its own education priorities through this misguided legislation.”

President Obama issued a statement on the eve of the vote, reiterating that he “strongly opposes” expanding the voucher program. The president, however, stopped short of promising to veto the legislation if it passes the Senate. *The Washington Post*, which churned out a nonstop series of editorials supporting the voucher scheme, admitted that “the controversial school-choice measure faces an uncertain future.” Opposition is much stronger in the Senate, according to many observers.

Nine Republicans opposed vouchers. There was no particular pattern to this small band, except that three were from Illinois. The always unpredictable Ron Paul voted no, even though he has introduced a universal voucher proposal of his own (see “Voucher Watch”).

Political party affiliation trumped all other factors, including region and religion on this vote, with 96% of Republicans and almost no

Democrats in favor. This shows the change in coalitions on this issue since the 1978 vote on tax credits for religious schools, when Democrats and Republicans were internally divided. In that vote most Catholic Democrats favored tax credits while most Baptist Republicans were opposed. In 2011, every Catholic Democrat but one opposed vouchers while every Baptist Republican except Sam Graves of Missouri was in favor of the proposal.

(For more on vouchers, see “The Voucher Watch” column.) ■

Appeals Court Dismisses Prayer Day Challenge

A three-judge panel of the U.S. Court of Appeals for the Seventh Circuit ruled unanimously on April 14 that private citizens had no standing to challenge the National Day of Prayer. The law establishing an annual prayer observance relates solely to the duties of the presidency and imposes no injury on the general public, the appeals court held. Chief Judge Frank Easterbrook wrote, “A feeling of alienation cannot suffice as injury,” adding “If anyone suffers injury...that person is the president, who is not complaining.”

Elsewhere the court observed, “Those who do not agree with a president’s statement may speak in opposition to it; they are not entitled to silence the speech of which they disapprove.”

The court overturned a 2010 lower court ruling that found the 1952 law unconstitutional. Noting that “presidential proclamations for both Memorial Day and Thanksgiving Day commonly include an invitation to pray,” the court emphasized the voluntary nature of the action. Furthermore, the court held that the law primarily addresses presidential action. “The President has made a request; he has not issued a command. No one is injured by a request that can be declined.”

Since there was no identifiable personal injury, there was no standing. “No one has standing to object to a statute that imposes duties on strangers.”

The case was *Freedom From Religion Foundation v. Barack Obama and Robert Gibbs* (No. 10-1973). ■

Nine Republicans Who Opposed Vouchers

Judy Biggert (IL)
Robert Dold (IL)
Sam Graves (MO)
Morgan Griffith (VA)
Timothy Johnson (IL)
Frank LoBiondo (NJ)
Ron Paul (TX)
Dave Reichert (WA)
Mike Simpson (ID)

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Albert J. Menendez, *Research Director*

GOP Hopefuls on Church and State

The ever-expanding field of possible Republican presidential candidates makes this a good time to review their records and/or positions on church-state issues. Here is a quick rundown:

Mitt Romney, former governor of Massachusetts (2003-2007), ran second in the popular vote and third in delegates during the 2008 nomination process. Expected to run again and leading in most polls among Republicans and Republican-leaning Independents (until Donald Trump appeared suddenly on the scene), Romney has strong economic assets. A favorite of the party's country-club wing, he is fuzzy on many issues. Originally a supporter of abortion rights and gay rights, he has moved to accommodate the party's opposition to both. Romney's Mormon faith caused him trouble in the 2008 primaries, especially among evangelicals, among whom he drew only 20% support.

During his last campaign Romney opposed stem cell research, supported the faith-based initiatives program and favored retaining the phrase "under God" in the pledge of allegiance. Once in favor of abortion rights when he won the Massachusetts governorship, he changed his position and opposed the procedure except in cases of rape, incest, or grave threat to the woman's life. Initially in favor of civil unions, he announced opposition to same-sex marriage or for any legal recognition of same-sex unions. In this election cycle he has said nothing new about church-state issues, but that may change when he announces his candidacy.

Ex-Alaska Gov. **Sarah Palin**, the party's last vice presidential nominee, continues to appeal to segments of the Tea Party movement and anti-establishment, populist Republicans. But her negatives are the highest of any of the potential candidates, despite (or because of) her visibility. She is anti-abortion and anti-same sex marriage. She routinely calls liberals anti-religious and absurdly suggested in a recent book that President John F. Kennedy "ran away from religion" in 1960, highlighting how little she knows about history. Kennedy confronted religious intolerance directly during his 1960 campaign and emphasized his independence from church authority as well as invoking the Constitution's ban on religious tests for public office. If anything, Palin and others seem to want to reinstate religious tests, restricting public office to their fellow evangelicals.

Tim Pawlenty, recently retired after two terms as Minnesota governor, announced his candidacy and made numerous forays into neighboring Iowa. In a recent speech at Dordt College, affiliated with the conservative Christian Reformed Church, he stressed his opposition to abortion and same-sex marriage and called for government to be based on "the foundations of biblical teaching." As governor, Pawlenty "approved tough new abortion restrictions and gave local school boards the freedom to teach intelligent design as an alternative to evolution," wrote *Time's* Michael Crowley.

In his political memoir, *Courage to Stand*, Pawlenty stresses his belief that "the founders of our country were deeply committed to God" and relied on divine wisdom to create "the documents that form the pillars of our nation." He claims that his fellow evangelical Christians "do not desire to dominate the political process." As governor he made a point to proclaim a day of prayer, implicitly criticizing former governor Jesse Ventura for failing to do so. Thus far, Pawlenty is appealing to the party's social conservative wing.

Former House Speaker **Newt Gingrich** has been circling the country, promoting his shopworn vision of a revitalized religious America and accusing the Obama administration of promoting a "secular socialist agenda for America."

Gingrich, whose books were called "deranged" by the usually sober-sided *Economist*, is very much a wild card. He generally avoided church-state issues during his two decades in Congress, and he hasn't been elected to any office since the 1990s. However, he is expected to adopt the usual Republican positions on abortion, vouchers and gay marriage. His three marriages and two divorces, as well as a religious switch from Baptist to Catholic (his third wife's religion) have provoked considerable criticism in Religious Right circles. And he has no political base, having long ago left Georgia for the posh neighborhoods of Northern Virginia.

Gingrich's announcement of his candidacy struck several notes that he has championed, including American exceptionalism, the belief that the United States has a unique destiny and is fundamentally different from and superior to other nations.

The *Seattle Times* said, "He is expected to lay out a political vision that intertwines fiscal and social conservatism, drawing from a newfound interest in religion." The Seattle paper's Matea Gold and Tom Hamburger wrote that Gingrich has mobilized an "extensive outreach to pastors" and has appointed evangelical "historian" David Barton to the board of his Renewing American Leadership organization. They reminded readers, "He helped secure seed money last year for a successful campaign to oust three Iowa Supreme Court judges who approved same-sex marriage in the state."

Gingrich is hoping that his network will win support among evangelical voters, who dominate early primaries and caucuses in Iowa and South Carolina. But Gingrich's marital history and his resignation from Congress after critical reprimands from the House ethics committee may retard his appeal to evangelical voters. And his recent adoption of Catholicism may or may not appeal to Catholic Republican voters.

Gingrich has a large ego. *New York Times* reporter Matt Bai wrote that the 68-year-old former Congressman "sees himself as a consequential character in the grand American narrative." In less than a year GOP primary voters will have something to say about that grandiose self-designation.

Another long shot is Minnesota Rep. **Michele Bachmann**, seen as a sentimental favorite among elements of the Tea Party and Religious Right, which overlap. Her in-your-face demeanor appeals to true believers on the Far Right.

Bachmann has represented Minnesota's Sixth Congressional District (the suburbs and exurbs north of St. Paul and Minneapolis), since winning in 2006. She received a law degree from Coburn Law School at fundamentalist Oral Roberts University in Tulsa in 1986. Once a Democrat who met her husband while working in Jimmy Carter's 1976 campaign, she moved to the Right and became a Reagan Republican.

She is adamantly opposed to abortion rights and gay rights. In the 110th Congress she opposed a law that would have barred employment discrimination against gays and lesbians. She supported a ban on foreign aid that included abortion, the so-called "Mexico City" doctrine.

Bachmann is a fan of bogus historian David Barton and has enlisted

continued on page 4

GOP Hopefuls, *continued from page 3*

him to teach classes on constitutional issues for her Tea Party caucus in Congress. Bachmann called Barton, a fellow Oral Roberts University graduate, “a treasure for our nation.” She supports his distorted and grossly inaccurate “Christian Nation” interpretation of U.S. history. She is not alone among Republicans in this regard. Newt Gingrich and Mike Huckabee have expressed admiration for Barton.

If she runs, Bachmann may do well in the first caucus state, Iowa, where she was born in 1956. Bachmann appeals to a wide swath of the evangelical world far beyond her membership in the fundamentalist Wisconsin Evangelical Lutheran Synod.

Utah’s former governor **Jon Huntsman**, who recently resigned after a stint as U.S. Ambassador to China, may also become a candidate. He is a Mormon who might split the Mormon vote with Mitt Romney, causing both to lose. He is considered somewhat “moderate” by Mormon Republican standards. Early in 2009 he endorsed same-sex unions after having previously supported a state constitutional amendment banning gay marriage that was passed by Utah voters in 2004.

In his 2004 campaign for governor, Huntsman endorsed school vouchers and tuition tax credits. He was governor when Utah voters decisively rejected a school voucher scheme in 2007.

Ron Paul, who has represented a South Texas district since 1995, is making a second try for the nomination. Though he received less than 6% of the total primary vote in 2008, he has a hard-core group of dedicated followers who like his out-of-the-mainstream views on the Federal Reserve and his isolationist stance on foreign policy. Paul continues to win straw polls at national conservative conferences.

While church-state issues are not his forte, he has taken strong anti-abortion positions. In an attempt to win support from Iowa’s dominant religious right wing, Paul denounced abortion and chided his fellow libertarians for citing privacy as a justification for abortion. Paul voted to defund Planned Parenthood and has favored restrictions on foreign aid that includes abortion services. Paul voted against restoration of the District of Columbia voucher program but introduced a massive voucher program that would affect the entire nation. (Consistency is not his strong suit.) Paul voted in 1999 to allow the posting of the Ten Commandments on public property.

While he generally opposes same-sex marriage, he voted against a constitutional ban on same-sex marriage in Congress, saying it was none of the federal government’s business. He also opposed banning human cloning but supported a ban on late-term abortions. Paul turns 76 in August, making him one of the oldest candidates to seek the presidency.

Rick Santorum, former two-term U.S. Senator from Pennsylvania, would seem to have little chance at the Republican nomination. He is a Religious Right purist, whose anti-abortion, pro-voucher positions reflect the social conservative wing of the party. He could inherit some of Mike Huckabee’s four million primary votes, but other, more viable, candidates also appeal to this constituency. One of Santorum’s problems is that Pennsylvania voters, who are close to the national norm, bounced him out of office 59% to 41% in 2006.

In his last term in the Senate, Santorum voted to ban “partial birth abortion,” opposed broadening the definition of hate crimes to include sexual orientation, and opposed funding hate crime prosecutions. He supported efforts to bar gays from serving in the Boy Scouts and voted to confirm John Ashcroft as attorney general. Santorum supported “chari-

table choice” and block grants to aid faith-based organizations and even backed a provision exempting faith-based organizations from state anti-discrimination laws. (His ally in this effort was Connecticut Democrat Joe Lieberman.)

Gov. **Chris Christie** of New Jersey has insisted that he is not a presidential contender, but his admirers, particularly in the Tea Party movement, keep pushing his name forward. When his name is included in polls, he scores relatively well.

He ran and won the New Jersey governorship in 2009 as an economic conservative, but has since revealed a strong anti-abortion position and an enthusiasm for school vouchers. As governor he has emphasized budget cutting and has clashed with teacher unions and public service employees, a trait he holds in common with fellow Republican governors in Ohio, Michigan and Wisconsin.

Rick Perry has been governor of Texas since George W. Bush became president and is the longest serving current U.S. governor. Like many white Southerners, he switched from the Democrats to the Republicans, doing so in 1989. He has proved to be a strong vote getter, easily dispatching Sen. Kay Bailey Hutchison in the 2010 Republican primary and winning comfortably in the general election over Democrat Bill White, a former Houston mayor.

Perry has been closer to organized right-wing clergy than perhaps any other potential Republican nominee, working closely with and frequently attending events with fundamentalist religious leaders.

In 2005 Perry signed a bill that limited late-term abortions and required parental notification for girls under age 18 who seek abortions. He signed the bill in the gymnasium of an evangelical Christian school in Fort Worth. He opposes same-sex marriage and condemned the U.S. Supreme Court for striking down the Texas sodomy law in *Lawrence v. Texas*.

Perry endorsed the teaching of “intelligent design” in public schools during his 2006 campaign. A spokesperson called intelligent design “a valid scientific theory.” Perry is far more conservative than his fellow Methodists, having endorsed some of the exclusivist religious views of Rev. John Hagee, a San Antonio pastor known for his hard-line theology. Perry also said that Israel’s present status as a nation was “ordained by God a long time ago.”

Perry’s outspoken views on Texas state sovereignty and his flirtation with secession in a 2009 speech raise questions that he might become the preferred candidate of the small but vocal neo-Confederate wing of the GOP, now that Mississippi Gov. Haley Barbour has taken himself out of the race.

Perry had expressed no interest in seeking his party’s nomination, even going so far as to remove his name from a straw poll at the Values Voter Summit in 2009. But he has recently indicated that he is having serious second thoughts about a race.

There are three long-shots vying for the GOP nomination. **Herman Cain** is a former CEO of Godfather’s Pizza, a radio host, and a former chairman of the civilian board of directors to the Federal Reserve Bank of Kansas City. He was once a mathematician for the U.S. Navy and has been a newspaper columnist. A resident of an Atlanta suburb, he ran unsuccessfully for the Republican nomination for a U.S. Senate seat from Georgia in 2004, his only foray into elective politics. During that campaign Cain said abortion should never be legal, even in cases of rape or incest. He supports defunding of Planned Parenthood.

Cain favors vouchers and charter schools, as well as the Defense of Marriage Act. He is opposed to legalizing same-sex marriage. He is

staunchly pro-Israel and criticizes President Obama for “throwing Israel under the bus.” He has praised Supreme Court Justices Antonin Scalia and Clarence Thomas, a fellow Georgian.

A Southern Baptist, Cain told *thinkprogress.org* that he would not appoint an individual of the Muslim faith to his cabinet or to any federal court position because “there is an attempt to ease Sharia law and the Muslim faith into our government.”

Former Louisiana Gov. **Buddy Roemer** is best known for his erratic political switches. Elected to Congress as a Democrat from 1981 to 1988, he was a blue-dog supporter of Ronald Reagan on many issues. Elected governor in a 1987 upset, Roemer was seen as pro-public education and as a reformer. In 1990 he vetoed a bill that would have banned abortion in cases of incest, saying that it conflicted with *Roe v. Wade*. Though the bill was passed over his veto, a federal court sided with Roemer. Though his Methodist church opposed gambling, he supported legalization of floating casinos and video poker gambling. Wikipedia said he “ushered in the modern era of gambling in Louisiana.”

About the same time as his second marriage ended in divorce, Roemer switched to the Republican Party, but ran third in an open primary in 1991 that eventually pitted former Gov. Ed Edwards against Ku Klux

Klan favorite David Duke. Roemer endorsed Edwards in the runoff, in which the former governor crushed Duke. Roemer ran a poor fourth in the 1995 election for governor.

Since then, he has pursued business interests, campaigned for John McCain in 2008 and taken more conservative positions on national issues.

Former two-term New Mexico Gov. **Gary Johnson** was called “the next Ron Paul” by Chris Good in *The Atlantic Monthly*. The trouble with that description is that the real Ron Paul is also running. Johnson is a libertarian conservative who favors “lower taxes, government efficiency and ending the war on drugs.” His support for legalization of drugs has won the endorsement of singer Willie Nelson. His views on church-state issues are fuzzy, though most libertarians (except Ron Paul) tend to be pro-choice on abortion and pro-vouchers. While virtually unknown outside of New Mexico, Johnson tied Chris Christie for third place in a 2011 poll at the Conservative Political Action Conference. He grew up in a Scandinavian Lutheran family in North Dakota before moving to New Mexico.

(Other serious candidates may soon emerge, and some of the above have been mentioned as possible vice presidential nominees. In a future issue, we will evaluate the church-state record of President Obama.) ■

Abortion Restrictions Approved

State legislatures have seen an unprecedented number of proposals aimed at restricting access to abortion. The *Los Angeles Times* reported that 916 measures related to reproductive issues had been introduced in 49 state legislatures during the first quarter of 2011. The Guttmacher Institute said that 56% of these proposals were aimed at restricting abortion access. Fifteen passed and were enacted into law while 120 other bills were approved by only one legislative chamber.

Some of the laws will have a major effect on reproductive health. Indiana Gov. Mitch Daniels signed a measure on May 10 that cuts off all funds to Planned Parenthood, making the Hoosier state the first to do so. A federal judge refused to stop the law the next day. The removal of funding may affect 22,000 patients in the state. Indiana Planned Parenthood president Betty Cockrum lamented, “Decreased birth control means more unintended pregnancies. The lawmakers have outdone themselves in contributing further to the cycle of poverty here in Indiana.” Most of the organization’s funds are spent on contraception, treatment for sexually transmitted diseases, and cancer screening.

In Texas lawmakers passed a bill that requires doctors to perform a sonogram before abortion. The doctor must describe the sonogram’s results except in cases of rape or incest.

South Dakota enacted legislation that requires women who are seeking abortions to attend a consultation at a “pregnancy help center,” which will attempt to dissuade them from obtaining an abortion. The state also established the nation’s longest waiting period – three days – after an initial visit with an abortion provider and before the procedure. It makes an exception for medical emergencies but not for rape or incest. Critics say the South Dakota law, signed by Gov. Dennis Daugaard on March 22, is intrusive and may be unconstitutional. It takes effect on July 1. The abortion rate in South Dakota is among the lowest in the nation, and there is only one provider in the state.

Virginia lawmakers banned private insurance plans from covering abortions if they participate in a state health care exchange that will be established when the new national health care reform law goes into

effect. Exceptions are allowed for cases of rape, incest and danger to the woman’s life. Virginia becomes the eighth state to ban coverage of abortions in state health care exchanges. The change was proposed by Gov. Robert McDonnell, apparently in an attempt to improve his reputation among social conservatives as a potential GOP vice presidential nominee, according to Larry Sabato, director of the Center for Politics at the University of Virginia.

Florida and Arizona have imposed new restrictions on abortion. In Florida the state senate approved ultrasound legislation and a bill to make it more difficult for minors to get a court waiver from a state parental notification law.

An analysis by NARAL Pro-Choice America found that 22 states are considering bills that would ban abortion coverage by insurance plans sold on exchanges. Several states, including Idaho, Kentucky, Missouri, North Dakota, and Oklahoma, already ban private insurers from including abortion coverage.

On the federal level the U.S. House of Representatives passed the “No Taxpayer Funding for Abortion Act” (HR3) on May 4 by 251 to 175. All 235 Republicans voted for it, as did 16 of 191 Democrats. The bill prohibits federal funds from being used for insurance plans that cover abortions. The bill also removes tax breaks for private employers who provide coverage if their plans offer abortion. Individuals would not even be able to use their own funds for abortions under a plan that separates abortion funding from other procedures. The bill is not expected to win approval from the Senate. Federal legislators also imposed similar rules on the District of Columbia, forbidding the federal city from funding abortions for the indigent even with local funds. ■

Moving?

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Church and State in the Courts

Stem cell research received a boost when a federal appeals court lifted a preliminary injunction that had blocked federal funding of human embryonic stem cell research. The two to one decision by the U.S. Court of Appeals for the D.C. Circuit on April 29 sent the case back to the trial court, with the strong implication that federal funding should resume. “This is a momentous day—not only for science, but for the hopes of thousands of patients and their families who are relying on NIH-funded scientists to pursue life-saving discoveries and therapies,” said Francis S. Collins, director of National Institutes of Health.

Obama administration officials expressed pleasure that the appellate court had endorsed its 2009 decision broadening federal support to experiment on many more existing colonies of stem cells.



Prisoners whose religious freedom rights are violated are unable to sue for financial damages, the Supreme Court ruled on April 20. In a case involving an inmate in the Texas prison system (*Sossamon v. Texas*), the High Court, ruled 6-2 that Congress provided for “appropriate claims” in suits but did not require monetary damage claims. The inmate had sued under the Religious Land Use and Institutionalized Persons Act (RLUIPA), which protects religious freedom in prisons and in land use. Justice Clarence Thomas wrote the majority opinion, joined by fellow conservatives and, surprisingly, Ruth Bader Ginsburg.

Justice Sonia Sotomayor, joined by Stephen Breyer, blasted the majority, saying the decision “severely undermines Congress’ unmistakably stated intent in passing the statute; to afford ‘broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution.’” She warned: “By depriving prisoners of a damages remedy for violations of their statutory rights, the majority ensures that plaintiffs suing state defendants under RLUIPA will be forced to seek enforcement of those rights with one hand tied behind their backs.”

Observers see this as one more setback for the Free Exercise Clause. Justice Elena Kagan did not participate in the decision.



Florida Circuit Court Judge Richard A. Nielsen, of the Thirteenth Judicial Circuit, ruled on March 3 that Muslim disputes in a case involving four trustees at the Islamic Education Center of Tampa may defer to “Ecclesiastical Islamic Law,” or sharia. Nielsen decided that the parties had agreed to arbitration. Nielsen held, “Under Ecclesiastical Islamic Law, pursuant to the Qur’an, Islamic brothers should try to resolve a dispute amongst themselves. When the brothers are unable to do so, they can agree to present the dispute to the greater community of brothers within the mosque or the Muslim community for resolution. If that is not done or does not result in a resolution of the dispute, the dispute is to be presented to an Islamic judge for determination.”

The decision provoked the ire of Republicans, right-wing bloggers and conservative media. Two Republican lawmakers, Sen. Alan Hays and Rep. Larry Metz, introduced companion bills in the Florida legislature to “prevent the encroachment of foreign laws and legal systems and to preserve the sovereignty of the U.S. and Florida Constitutions.”

Myfoxorlando.com railed against “the infiltration and incursion of foreign laws and foreign legal doctrines into the American legal system.” Hays and Metz based their bills on model legislation published by the American Public Policy Alliance, a Nativist group which says that “Sharia mandates violent Jihad as a religious obligation and seeks to establish Islam’s rule worldwide.”

Nielsen’s ruling, while controversial, does not represent a major departure from precedent. Arbitration is allowed in certain circumstances, as in cases involving divorce among Orthodox Jews and in disputes among such conservative Christian groups as Mennonites, Brethren and Amish. Cases involving adoption and child custody between American citizens and citizens of other nations often include recognition of laws extrinsic to the U.S. Prenuptial agreements often supersede civil laws. Furthermore, the U.S. Supreme Court has ruled on numerous occasions, going back to 1892 in *Church of the Holy Trinity v. United States*, that intra-church property disputes should be settled in accordance with the rules and regulations established by the individual religious communities themselves.

The case is *Mansour et. al. v. Islamic Education Center of Tampa, Inc.* (Case No. 08-03497 in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida).



The Justice Department filed suit in federal court on March 15 against the state of California, charging the state and its Department of Corrections and Rehabilitation of violating a Sikh inmate’s freedom of religion. The Office of Public Affairs announced, “By filing the complaint, the department seeks to resolve its investigation and participate in a lawsuit filed recently on behalf of the inmate, who has been subjected to punishment for maintaining an unshorn beard in accordance with the dictates of his religion. By requiring the inmate, Sukhjinder S. Basra, to cut his beard, California compels him to violate his religious beliefs in contravention of the Religious Land Use and Institutionalized Persons Act (RLUIPA).”

Thomas E. Perez, Assistant Attorney General for the Civil Rights Division, added, “The freedom to practice one’s faith in peace is among our most cherished rights. RLUIPA has proven to be a powerful tool in combating religious discrimination and ensuring religious freedom. The Department of Justice is committed to vigorously enforcing RLUIPA to ensure that religious liberty for all remains protected.”

André Birotte Jr., U.S. Attorney General for the Central District of California, argued that religious liberty is a primary concern of government. “The rights guaranteed by the Constitution extend to all people in the United States. By protecting those rights—even for those incarcerated—we strengthen those rights for all.”



The ACLU of Southern California has filed suit in federal court in Los Angeles, alleging that the FBI violated the religious freedom of Muslims by targeting them for surveillance solely because of their religion. The suit, filed on February 22, on behalf of three Muslim plaintiffs, sought class action status. “The FBI should be spending its time

and resources investigating actual threats, not spying on every American who happens to worship at a mosque,” said ACLU attorney Peter Bibring. The suit was joined by the Los Angeles branch of the Council on American-Islamic Relations.

The case has wide-ranging implications. Jerry Markon, staff writer for *The Washington Post*, explained, “Legal experts said that there have been a number of legal challenges to FBI surveillance practices since the 1970s but that the current lawsuit is among the first to accuse the agency of targeting people based on religion.”

Congressional hearings conducted by House Homeland Security Committee chairman Peter King (R-NY) in March highlighted the potential clash between civil liberties, religious freedom and national security. King’s actions were widely criticized by a coalition of American religious leaders as a potential violation of religious liberty.

To counteract King’s hearing, Sen. Richard Durbin (D-Ill) convened a Senate Judiciary subcommittee session on March 29 that dealt with Muslim civil rights. The session “made history as the first congressional hearing on the civil rights of American Muslims,” observed *The Washington Post*. Durbin’s session focused on data showing an increase in religious discrimination cases involving Muslims. Assistant Attorney General for Civil Rights Thomas Perez cited statistics showing a 163% increase in workplace complaints filed by Muslim employees with the EEOC since 2001.

Only six of the eleven members of the newly established Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights came to the inaugural session.



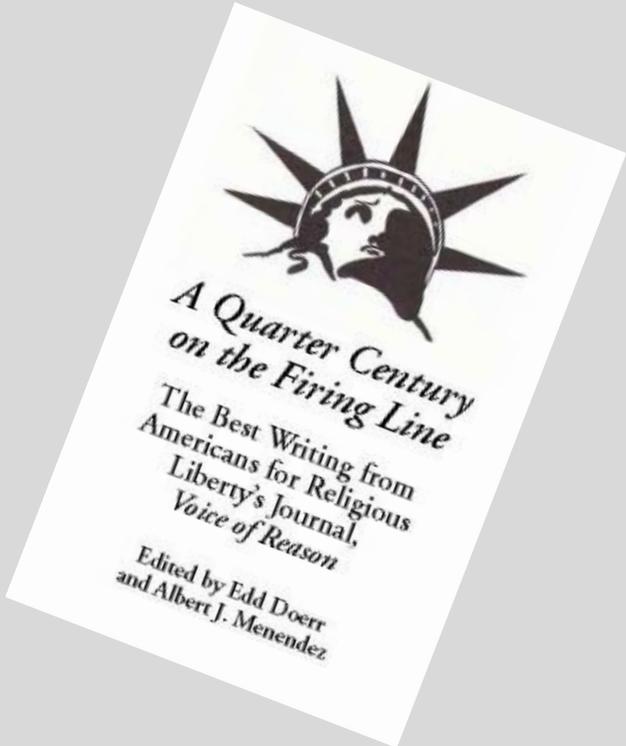
A Mexico City man can proceed with a clergy abuse lawsuit filed in a United States court even though the alleged abuse occurred in Mexico. U.S. District Judge Josephine Staton Tucker invoked the rarely used Alien Tort Claims Act, enacted by the first U.S. Congress in 1789, to reach her decision on February 25.

Both plaintiff and defendant are Mexican citizens. The plaintiff alleges that the defendant, a priest, fled U.S. authorities in 1988 and was protected by Los Angeles Cardinal Roger Mahony and Mexican Bishop Norberto Rivera, now Cardinal of Mexico City. The Los Angeles Archdiocese sought to have the case dismissed by arguing that U.S. courts lack jurisdiction.



A lawsuit claiming that the new health care law violated religious freedom was dismissed by a federal court. Five conservative Christians, backed by the American Center for Law and Justice, a Religious Right legal group founded by Rev. Pat Robertson, argued that requiring them to purchase health insurance forced them to demonstrate a lack of faith. U.S. District Judge Gladys Kessler of Washington, D.C., concluded, however, “It is unclear how (the new health care law) puts substantial pressure on plaintiffs to modify their behavior and to violate their beliefs, as it permits them to pay a shared responsibility payment in lieu of actually obtaining health insurance.”

The ruling in *Mead v. Holder* was handed down on February 22. It was one of 25 lawsuits filed in various courts challenging the constitutionality of the Patient Protection and Affordable Care Act.



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The New Hampshire Supreme Court has upheld a lower court’s 2009 decision that a child must attend a public school rather than remaining home-schooled. The case arose from a dispute between divorced custodial parents over the educational upbringing of their daughter. The Supreme Court sidestepped the issue of religion. The home-schooling parent insisted on a Christian curriculum while her divorced spouse claimed that his daughter was not receiving “adequate socialization” or being exposed to different points of view in homeschooling.

The state’s highest court ruled on March 16: “While this case has religious overtones, it is not about religion. While it involves home schooling, it is not about the merits of home versus public schooling. This case is only about resolving a dispute between two parents, with equal constitutional parenting rights and joint decision-making responsibility, who have been unable to agree how to best educate [their] daughter.”

The court noted that homeschooling “has become a widely used alternative to more traditional public or private schools as the vehicle for educating children” in recent years, which resulted in praise from the Home School Legal Defense Association, a special-interest group that filed an amicus brief on the side of the mother, the home-schooling parent. A Religious Right group, the Alliance Defense Fund, however, criticized the court for upholding a lower court decision that allegedly resulted in an “underlying threat to religious liberty.” The lower court had held that the student needed to be exposed to different points of view, including religious ones.

continued on page 8



An Orthodox Jewish request to extend voting hours in a District of Columbia special election held on April 26, the final day of Passover, was denied. Rabbi Shmuel Herzfeld of Ohev Shalom sued the city because, he said, observant Jews could not use writing or use electronic devices until 8:40 p.m., when Passover officially ends. Polls close in the District at 8:00 p.m. But U.S. District Judge Emmet Sullivan held that the city's policy "imposes only a limited burden" on Orthodox Jewish voters because the Board of Elections and Ethics allowed absentee ballots and offered several days of early voting from April 11 through Easter Sunday, April 24. Sullivan also said the rabbi's request came too late to change the rules and would have cost the cash-strapped federal city an additional \$150,000 to extend voting hours until 10:00 p.m. Sullivan indicated that the election board "got the message" and would never schedule special elections on a religious holiday in the future. District of Columbia law requires special elections to be held on the first Tuesday 114 days after a vacancy is certified.



The U.S. Supreme Court may soon resolve a long-standing dispute over the so-called "ministerial exception" which has exempted religious organizations from anti-discrimination laws when they make employment decisions about clergy. In March the High Court accepted for review a U.S. Sixth Circuit Court of Appeals case decided a year ago, *EEOC v. Hosanna-Tabor Evangelical Lutheran Church and School*. In that case the appeals court held that a teacher in a Lutheran elementary school in Michigan did not have "ministerial status" for purposes of a claim arising under the Americans with Disabilities Act.

The church school fired the teacher because of her illness and argued that it could treat her as a minister rather than a teacher. The Sixth Circuit, however, ruled that most previous "ministerial exception" cases had concluded that parochial school employees are not to be considered ministers, since they teach primarily secular subjects. However, seminary faculties are considered ministerial employees because they teach exclusively religious subjects.

This complicated case may resolve one type of case involving the legal status of religious organizations in civil lawsuits, but it is unlikely to challenge a primary principle in church-state law. As the Pew Forum noted, "The government must not regulate religious entities in any way that would require a judge or other government official to interpret religious doctrine or rule on theological matters."

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 arline@verizon.net, as well as your name and postal address. Thank you.



The U.S. Supreme Court declined without comment a request by Michael Newdow to rehear the *Newdow v. Lefevre* challenge to "In God We Trust" on U.S. coins and currency. An appeals court had dismissed the suit. Utah Attorney General Mark Shurtleff asked the Supreme Court to review a Tenth Circuit Court of Appeals ruling which held that crosses on a highway violated the Constitution's ban on religious establishment.



The Vatican was ordered to provide documents for discovery in a case involving sexual abuse by a priest. U.S. District Judge Michael Mosman of Portland, Oregon, ruled on April 21 that the plaintiff "has proffered evidence that tends to show the Holy See knew of [the priest's] propensities and that in some cases, the Holy See exercised direct control over the conduct, placement, and removal of individual priests accused of similar sexual misconduct."



Oklahoma's voter-approved constitutional ban on considering Islamic law in court decisions has reached the Tenth U.S. Circuit Court of Appeals. Oklahoma City resident Muneer Awad, a Muslim, told the court in a written argument May 9 that "Oklahoma stigmatizes Islam and its adherents" and makes them "a disfavored minority faith." Awad's brief, supported by ACLU and the Council on American-Islamic Relations, argues that his will could be invalidated because it is based in part on Islamic law. Oklahoma voters overwhelmingly approved an amendment to the state constitution that bars state courts from considering Islamic law or international law in its decisions, even though Oklahoma courts do not use Islamic law. Singling out a particular religion for disfavored treatment may violate the Oklahoma Religious Freedom Act, says ACLU.



The U.S. Supreme Court on May 16 declined to hear another challenge from Michael Newdow, who tried to prohibit President Obama and Chief Justice Roberts from adding the words "So help me God" to the presidential oath. Newdow's case was thrown out by both a federal district court and an appeals court for lack of standing. The case, *Newdow v. Roberts*, was amended to seek an injunction against religious references in future inaugurations. The Obama administration, through its Acting Solicitor General Neal Katyal, urged the court to refuse to hear the challenge. Katyal wrote, "Because the content of the inaugural ceremony is entirely dependent on the president or president-elect's wishes, only a judicial order running against the president or president-elect would result in the relief that [the atheists] seek. But [they] have not filed suit against the president or president-elect."

Courts have held that a president or president-elect generally has discretion over the content of inaugural ceremonies, including references that fall under the free exercise of religion clause. ■



The Voucher Watch

- Indiana has adopted the nation's broadest private school voucher program, which was signed into law by Gov. Mitch Daniels in April. There was some opposition from Republicans and from all Democrats but the program passed the state senate 28-22 and the state house 55-43.

The bill will allow middle-income families to use taxpayer money to send their children to private schools. In most states vouchers have been touted as primarily aid to low income families. Families making up to \$60,000 a year will qualify, though the number of students who are eligible for the program will be limited to 7,500 in the first year and 15,000 in the second.

Nate Schnellenberger, president of the state's largest teachers' union, criticized the governor. "He says that his motivation is to improve student achievement, but so many of these reform measures are not aimed at improving student achievement. He wouldn't be siphoning public money from public schools if he was concerned about those students who remain at public schools."

The **Indiana** constitution (Article 1, Section 6), says clearly, "No money shall be drawn from the treasury for the benefit of any religious or theological institution."

Tennessee's school voucher proposal passed the state senate 18-10 on April 21, but a House Education Subcommittee sent it to a study committee for further review over the summer. This effectively kills the bill for a year. The Tennessee proposal would only affect the state's four largest counties. The bill would divert public funds to four categories of schools, including church-related schools that are "exempt from regulation regarding faculty, textbooks and curriculum," according to state law. The Tennessee Education Association said this "blatant bill will drain much needed funds from public education to private and parochial schools."

The **Pennsylvania** legislature is still considering a proposed voucher program that would divert hundreds of millions of dollars to nonpublic, mostly faith-based, schools.

While the bill has been given a good chance of passing the Republican-dominated legislature (and with the support of a Republican governor), opposition to vouchers has been mounting. The nonpartisan Keystone Research Center exposed the massive right-wing corporate involvement in and funding of the voucher movement, "who provide millions for orchestrated campaigns" to "target Pennsylvania public schools" in their "privatization" crusade. Keystone executive director Stephen Herzenberg said Pennsylvania's existing voucher program, "which has cost a third of a billion dollars since 2001, lacks even basic accountability measures." A 2005 law even forbids the state from judging whether the voucher program is a good investment. "This law might stem from religious schools' opposition to public reporting or a desire to limit scrutiny of vouchers' educational outcomes. Whatever the rationale, it is unacceptable," he wrote.

Herzenberg warned, "Lack of accountability undermines the basic way vouchers are supposed to work—through parental choice. It makes it impossible for parents to make an informed decision about where to send their child. The lack of accountability in our current EITC [Educational Improvement Tax Credit] voucher program should give us pause before we go down the road of a much larger voucher program." The proposed expansion of voucher schools "would cost hundreds of

"Mixing politics and religion is like mixing manure and ice cream. It doesn't do much to the manure, but it sure ruins the ice cream!"

—Will Rogers

millions of dollars and will deepen the cuts faced by Pennsylvania's public schools." Herzenberg noted that 22 rural counties had no voucher organization and 16 have only one, meaning that voucher schools are concentrated in a few urban and suburban counties.

Pennsylvania's constitution contains an explicit prohibition on public money for faith-based schools in Article III, Section 15, which states, "No money raised for the support of the public schools for this commonwealth shall be appropriated to or used for the support of any sectarian school."

At least 51 voucher proposals were filed in 35 state legislatures this year, mostly in states with Republican legislative majorities. Katherine Shek, legislative analyst for the National School Boards Association, noted the changing political landscape. "The proposals put forward this year are notable both for the diversity of strategies they use in attempting to channel more public funding for nonpublic school options, and for their ambitious reach."

- Voucher students do not outperform public school students in Cleveland, according to data compiled by the Ohio Department of Education and based on 2009-2010 state proficiency tests. Last year was the first time Cleveland voucher students were required to take the tests in reading, mathematics and science since the voucher program began in 1995.

Cleveland public school students outperformed their voucher counterparts in reading and math in third and fourth grades, and exceeded voucher school students in science and mathematics from the fifth through eighth grades. Only in reading did voucher students do better in the fifth through eighth grades. As Thomas Ott, education writer for the Cleveland *Plain Dealer*, noted, "School-choice proponents are pushing to expand Ohio's voucher programs, but state data show public school students often do as well or better than voucher students on tests."

Ott added that other voucher plans in such cities as Akron, Canton, Columbus and Dayton also did not produce exceptional results. "Comparisons of 2009-10 data for other large cities show that their public school students also scored better than voucher students in many cases."

Piet van Lier, of Policy Matters Ohio, a nonprofit research group, called for greater oversight of the voucher schools. "If you're significantly dependent on public money you should really be subject to stricter public accountability," van Lier said.

The Cleveland program cost \$20.6 million last year and significantly aided Cleveland's Catholic schools. Wrote Ott, "Statistics show that vouchers are used by 4,845 or 52% of the 9,361 students enrolled this year in the 29 diocesan schools."

continued on page 10

Voucher Watch, *continued from page 9*

The other state program, called Ed Choice, costs \$45 million annually, and sends 13,000 students to 300 private schools in 28 districts across the Buckeye State.

The new data confirm previously existing studies. An Indiana University study of 4,000 voucher students from 1998 to 2004 found no significant variation in school achievement between voucher-supported schools and public schools. When those data were revealed, the state ended the study.

Despite the evidence, Ohio's new Republican Gov. John Kasich said, "I'm going to extend vouchers in this state."

- Enrollment in Milwaukee's private school voucher program declined this year for the first time since 1998, according to data compiled by the Public Policy Forum. Currently, 20,996 private school students each received \$6,442 of taxpayer-funded vouchers. Last year, 21,062 students were enrolled. The total cost of the voucher program is \$130 million, based on full-time voucher students.

The number of participating schools has declined from 128 in the 2005-2006 school year to 103 in the 2010-2011 school year. Twelve schools closed or left the program last year compared to four schools that joined. Stricter accountability requirements are a considerable factor in the diminishing number of participating schools. The Public Policy Forum's *Research Brief* of February 2011 concluded, "Last year, we found the new, more stringent accreditation requirements for participating schools were having an impact on the number of schools in the program. This year, we find the reduction in participating schools has resulted in a slight decrease in overall enrollment and voucher use."

Religious schools dominate the program. About a third of all voucher students (33.2%) attend Catholic schools and a fourth (25.5%) are enrolled in Lutheran schools. Another 12.9% attend nondenominational Christian schools and 12.8% attend schools of "other religions." Only 15.6% of students attend secular schools (compared to 84.4% in faith-based schools). Nearly \$110 million in public funds flow to faith-based schools annually under the program as a result of court rulings upholding its constitutionality. Since 1990 the voucher program has cost taxpayers \$1.1 billion.

Demographically, the students are 56% African-American, 23% Hispanic, 15% white, and 6% other racial groups. Nearly 75% of faculty members are white.

Another blow to the voucher program (called officially the Milwaukee Parental Choice Program, or MPCP) came on March 29 when results of statewide achievement tests were released. They showed a lower academic performance in the voucher schools than the admittedly troubled Milwaukee Public Schools (MPS). State Superintendent Tony Evers observed: "Our statewide assessment data shows, with very few exceptions, that the choice program provides similar or worse academic results than MPS."

The results were unambiguous. While 47.8% of public school students in Milwaukee scored "proficient or advanced" in mathematics, only 34.4% of voucher students scored that well. In reading 59% of public school students and 55% of voucher students scored at the proficient or advanced levels. Even when only economically disadvantaged student scores were compared, the public sector did better, especially in mathematics.

Superintendent Evers chided legislators for uncritical support of the voucher program: "Given results from our statewide assessments, I question plans in the 2011-13 state budget for expanding the choice pro-

gram in Milwaukee or anywhere else in Wisconsin. The proposed budget directs more than \$22 million to expand vouchers for more students, including those from higher wealth families, which will have an impact on Milwaukee property taxpayers. Wisconsin should not prioritize more funding for vouchers in Milwaukee while 870,000 public school children across the state will get \$834 million less in state support for their education."

All schools are now required to administer the Wisconsin Knowledge and Concepts Exam (WKCE), the same achievement test administered by all public and charter schools in the state.

Despite the failures of the Wisconsin voucher program, the state's controversial Gov. Scott Walker said he planned to extend the program to Green Bay, Racine and Beloit. The State Assembly approved elimination of the cap on the number of students who can participate in voucher schools and expanded its reach to the suburbs in Milwaukee County.

- Just after the Supreme Court upheld Arizona tax credits, the state's Republican governor Jan Brewer vetoed an increase in the program. The legislature voted to increase the maximum income tax credits that individuals and corporations can donate to private school tuition organizations. The credits totaled \$43.2 million last year, and the new bill would have raised that to \$60.4 million, which would have "unbalanced the budget," the governor said. The bill would also have repealed the "cap" on how much all corporations could take in tax credits.

At the same time, the governor signed into law a measure that would allow vouchers for special education students. Called "Arizona Empowerment Accounts," the measure could also appropriate money for tutoring, private online instruction, testing fees and textbooks. It would also cover college classes for high school students.

All 17,000 special education students are eligible to transfer to private schools, with grants ranging from \$5,000 to \$30,000 a year.

The Arizona Education Association (AEA) is considering a legal challenge to the law, citing the Arizona Constitution's ban on state funding of religious institutions. In 2009 the state Supreme Court struck down two similar programs for violating the constitution. AEA President Andrew Morrill said "a voucher spun any way you want is still a voucher."

Florida, Georgia, and Utah allow public funds to be used on private school tuition for students with disabilities, as does Ohio for autism.

Oklahoma approved an Arizona-like program that gives tax incentives to businesses and individuals that donate to private school scholarships. The grants will be worth up to 80% of the average per child expenditure on public schools.

- Texas Rep. Ron Paul, the libertarian maverick and presidential hopeful, introduced a universal voucher proposal on March 8. Called "The Family Education Freedom Act," H.R. 954 would provide American parents "a tax credit of up to \$5,000 for the expenses incurred in sending their child to private, public, parochial, other religious school, or for home schooling their children."

Paul claimed that American education was increasingly dominated by the federal government, thereby eroding "consumer sovereignty and destroying parental control of education." Paul cited no evidence to support his claim. Most education funding in the U.S. comes from state and local government sources, and from a variety of income-generating mechanisms.

Paul, who wants to slash federal spending, did not estimate what his proposal would cost. ■

ARL in Action

- “The wall of separation, which once stood as a warning to government not to enter religious precincts, is crumbling,” said ARL Board Chair Burton Caine to an audience of church-state activists in Philadelphia on April 9. Caine, a professor of constitutional law at Temple University School of Law, traced the demise of the wall to a series of misguided decisions from the U.S. Supreme Court over the past few decades.

Caine reminded listeners that “separation is the guarantee of safety and liberty” and is the reason “religion has thrived and prospered in the United States.” He called for a renewed commitment and activism to “repair and maintain the wall” and to energize public opinion by invoking state constitutions and public policy arguments. “Losing in the courts does not mean losing in the legislature and in the court of public opinion,” he said.

He concluded, “The First Amendment is America’s unique contribution to liberty in a democratic society. The wall of separation is for the people to rebuild and maintain. As the Supreme Court said

in *Everson*, the wall must be high and impregnable. It is up to us, We the People, to keep it so.”

Caine addressed the Church/State Issues Symposium held by the Delaware Valley Chapter of Americans United at the National Constitution Center in Philadelphia.

- Also on April 9, ARL President Edd Doerr conducted a workshop on the importance of letter-writing in the influencing and formation of public opinion. Doerr spoke to an annual gathering of progressive Catholics in Washington, D.C.

- In May ARL joined with its allies on the National Coalition for Public Education in urging the House to reject a voucher plan for the military introduced by Rep. Duncan Hunter (R-CA). Hunter’s amendment was defeated 34-26 in the House Armed Services Committee on May 12. Amazingly, 10 Republicans voted against it.

Updates

Kentucky Gives Tax Incentives to Creationists

The Kentucky Tourism Development Finance Authority voted on May 19 to grant tax incentives worth at least \$37 million over ten years to a proposed creationist theme park. “Ark Encounter,” which will include replicas of Noah’s Ark and the Tower of Babel, will be built in Grant County off Interstate 75. The tax breaks allow the park’s fundamentalist sponsors to recoup 25% of its development costs by retaining the sales tax generated by the project. Critics say the decision amounts to government subsidy for religion.

Antievolution Bills Die

Most of the nine antievolution bills introduced in seven state legislatures have died or are bottled up in committees. This was true in Missouri, Florida, Kentucky, New Mexico and Oklahoma. A Tennessee bill is on hold until 2012. A Texas bill is still in committee, but it is expected that no action will be taken this session.

'Editorial on target'

Your Dec. 2 "Creationist tourism" editorial was right on target. The state has no business whatsoever helping promote what is clearly a sectarian religious propaganda operation. Gov. Beshear should read Section 5 of the Kentucky constitution's Bill of Rights. It clearly bars the state from involvement in the creationist theme park project.

— Edd Doerr

Letter published in the *Louisville Courier-Journal* on December 6, 2010.

Feds Challenge Indiana on Abortion Funding

A clash between the Obama administration and the state of Indiana over a new law that cuts off state and federal funding for Planned Parenthood is looming. The Indiana law, passed by the legislature and signed by Gov. Mitch Daniels, prohibits state agencies from entering into contracts with or making grants to “any entity that performs abortions or maintains or operates a facility where abortions are performed.” The Indiana law took effect on May 10, even though federal officials have 90 days to review the statute. *The New York Times* reported, “Administration officials have made it clear they will not approve the changes in the form adopted by the state.”

The sticking point is state Medicaid, which must be in compliance with federal laws and regulations. *New York Times* reporter Robert Pear explained, “Administration officials said the Indiana law imposed impermissible restrictions on the freedom of Medicaid recipients to choose health care providers.”

Planned Parenthood of Indiana provided reproductive health services last year to 85,000 patients, including 9,300 under Medicaid. The group has filed suit in federal court challenging the new law as “a blatant violation of freedom of choice.”

Religion Gap Persists

Political demographers John Green and Mark Silk have concluded that the religion gap in elections—the preference of weekly churchgoers for Republicans and for the less observant to favor the Democrats—persists. The religion gap continued in the 2010 congressional elections, even though economic issues overshadowed those thought to have religious connotations.

They cite exit polls showing that 59% of frequent worshipers chose Republican candidates while only 44% of the less observant supported the GOP—a 15 point gap that has occurred for at least a decade. The religion gap was double the gender gap. (57% of men supported Re-

continued on page 12

Updates, *continued from page 9*

publicans compared to 49% of women).

This religion-attendance gap “persists by gender, income level and religious affiliation,” they write in the spring 2011 issue of *Religion in the News*. “Statistical analysis shows that worship attendance is one of the most powerful demographic predictors of American voting, typically exceeded only by race.” As a result, “Religion has become deeply embedded in contemporary party coalitions.”

This religion gap shows “remarkable stability over a series of quite different elections,” they conclude, adding, “Indications are that once the votes are counted and the exit polls tabulated in November 2012, it will prove to be as robust as ever.”

Green is professor of political science at the University of Akron. Silk is editor of *Religion in the News*, published by the Greenberg Center for the Study of Religion in Public Life at Trinity College in Hartford, Connecticut.

Creationism Stalled in Tennessee

Tennessee’s so-called “monkey bill,” which would encourage teachers to raise questions about “scientific controversies” such as evolution and global warming, did not make it through the state Senate before the legislature adjourned. The House companion bill, HB 368, passed on a 70-23 vote on April 7 but a Senate education subcommittee did not hold hearings. The *Knoxville News Sentinel* called the proposal “at best unnecessary and at worst a deceptive attempt to undermine science education in Tennessee.” The April 18 editorial concluded, “The Senate should reject this needless bill and let science teachers teach science.” The bill is likely to come up again next year.

Louisiana, which enacted a similar bill in 2008, faces renewed criticism and an attempt to repeal the so-called “Science Education Act.” The author of the repeal, Sen. Karen Carter Peterson, said, “Louisiana’s job killing creationism law undermines our education system and drives science and technology-based companies away from Louisiana. Louisiana public school students deserve to be taught accurate and evidence-based science which will prepare them to take competitive jobs.”

TSA Faces Religious Discrimination Charges

The federal Transportation Security Administration (TSA) has come under fire from several religious civil rights groups for incidents involving religious minorities. On March 13 TSA agents removed a Muslim woman in a headscarf from a Southwest Airlines flight because airline personnel thought she seemed suspicious. On the same day a group of Orthodox Jews on an Alaska Airlines flight caused a security alert because of their prayer and ritual customs. Jeffrey MacDonald, a Religion News Service reporter, noted, “Such incidents highlight an ongoing challenge for airlines and the TSA to allow for religious expression while also taking prudent security measures.”

Groups representing Muslims and Sikhs say their adherents are frequently singled out for additional body searches, which are seen as intrusive or immodest. They have accused TSA of religious profiling. The federal agency has denied these charges and says it is committed to the principles of religious freedom. One observer, Michael Broyde, a staffer at the Center for the Study of Law and Religion at Emory University, took an opposing position. “There’s no notion in our society that religion entitles you to opt out of reasonable security measures,” he said.

'Voters Would Derail States' Voucher Plans'

The four states discussed in the article "GOP Lawmakers Press Voucher Expansion in States" (4/27/11) are among the 39 states whose constitutions prohibit tax aid to religious institutions, but, tellingly, are not among the 14 states (including the District of Columbia) where voters decisively rejected vouchers or their variants by landslide margins in over two dozen statewide referenda.

If voters in Arizona, Florida, Indiana and Pennsylvania were allowed to vote on these voucher plans, they would surely knock them down. We can assume that GOP legislators and governors understand this and are reluctant to follow the honorable course and propose state constitutional amendments that would allow voters a voice on these radical attacks on their public schools and their fundamental rights.

— Edd Doerr

Letter published in *Education Week*, May 11, 2011

Tea Party Reflects Religious Conservatism

While the Tea Party movement is often thought of as a coalition of economic conservatives concerned with spending, taxation, and the size of government, its members also support bans on abortion and same-sex marriage.

The Pew Research Center’s Forum on Religion and Public Life combined polling results over several months and reported: “In addition to adopting a conservative approach to the economy, Tea Party supporters also tend to take socially conservative positions on abortion and same-sex marriage. While registered voters as a whole are closely divided on same-sex marriage (42% in favor, 49% opposed), Tea Party supporters oppose it by more than 2-to-1 (64% opposed, 26% in favor). Similarly, almost six-in-ten (59%) of those who agree with the Tea Party say abortion should be illegal in all or most cases, 17 percentage points higher than among all registered voters. Tea Party supporters closely resemble Republican voters as a whole on these issues.”

Tea Partiers also cited religion as the most important influence on their opinions relating to same-sex marriage and abortion. Nearly 53% of Tea Party supporters said religion affected their opinion on same-sex marriage, compared to 37% of all registered voters. On abortion rights 47% of Tea Party supporters referenced religion as the deciding factor in their views compared to 28% of all voters.

Pew found that 31% of all voters agreed with the Tea Party. This included 44% of white evangelicals, 30% of white mainline Protestants, 29% of Catholics, 15% of Jews and the religiously unaffiliated and 7% of black Protestants.

Floridians Face Constitutional Change

Florida voters will choose to repeal or retain the state constitution’s century-old ban on aid to religion. Article 1, Section 3, provides that “no revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

An amendment to repeal the no-aid provision passed the state Senate 26-10 and state House 81-35 and will appear on the November, 2012, ballot. Florida law requires a two-thirds approval in both houses of the legislature to place a constitutional amendment on the ballot, which must then receive approval from 60% of voters.

Proponents claimed that faith-based hospitals and social welfare agencies are threatened by the existing law—though no proof exists to substantiate this charge. The real reason is the campaign to aid church-related schools since a state appeals court cited the no-aid ban in striking down former Gov. Jeb Bush's school voucher program. In 2006 the Florida Supreme Court sidestepped the issue and ruled that vouchers violated another constitutional provision requiring a uniform system of public schools. The state's highest court is considering a challenge to two faith-based prison programs.

Meanwhile, Missouri voters will face a proposed constitutional amendment in the November, 2012, election guaranteeing the right to pray "privately in public places." Critics of the proposal say it is "meaningless" since private prayer is already protected by the federal and state constitutions.

Charter Schools Lambasted

District of Columbia public charter schools have been charged with discrimination against students with disabilities. The Bazelon Center, a nonprofit legal advocacy group, filed a complaint on May 12 with the U.S. Justice Department that charged that the "charter school system is not open on an equal basis to all students, particularly those with special educational needs." The District's 52 charter schools enroll 29,000 students, which represents a higher percentage of the total school population than in any state.

District officials said 18% of public school students receive special education services compared to 11% of charter school students. Another report by federal court monitors shows public schools serve students with "especially significant needs" three times more than charter schools.

This may become a national issue. The Southern Poverty Law Center filed a discrimination suit against the Louisiana Department of Education, alleging that special education students are being denied access to New Orleans charter schools. A federal judge refused to dismiss this suit in April.

Religious Right Dominates GOP

A leading conservative magazine has concluded that religious conservatives dominate the Republican Party and cannot be ignored in any political equation. *The American Conservative*, which reflects the Pat Buchanan isolationist-nativist wing of the party, concludes in its June issue, "The Tea Party, confusedly hailed by the media as a grassroots libertarian spasm, turns out on inspection to be the religious right wearing a tricorne hat and talking about Obamacare.... In economics and military matters, no less than in social issues, conservative evangelicals are more Republican than Republicans."

Article author Michael Brendan Dougherty observed that, "Even when the religious right is out of step with the public mood, it can still set the tone—and limits—of discourse within the GOP.... The overwhelming fact of evangelical engagement remains their unbridled enthusiasm for Republican policies."

Dougherty concluded, "For all the ideological examination that

neoconservatives and the Tea Party have received, neither would have the clout to add a jot or tittle to America's policy debates without the manpower, enthusiasm, and the leadership of the religious right. Christian conservatives haven't abandoned their social issues—they've unfolded foreign and fiscal policy into their ongoing culture war."

International Updates

Cairo: The burning of several Coptic Christian churches in the poor neighborhood of Imbaba on May 7, and the resulting death of 12 people, reflect the rise of a Muslim extremist group known as Salafists. The Salafists, whom *The Economist* labeled "Muslims inspired by Saudi-style Puritanism," thrive on rumors and are prone to attacking Christian churches and property. *The Economist* reported, "Sectarian clashes, a dismal feature of Egyptian life for more than a decade, have risen alarmingly. Egypt's Christians feel increasingly besieged, fearful that the revolution, which inspired scenes of cross-sectarian harmony, may end up empowering bigots."

The Salafist movement is also gaining strength in the Gaza region and in the North Caucasus republics of Russia. All five predominantly Muslim republics are experiencing Salafist extremism. *The Economist* reported, "Chechnya is virtually a separate state where women must wear headscarves in public and the sale of alcohol is restricted."

Geneva: The United Nations Human Rights Council unanimously adopted a "Resolution on Freedom of Religion or Belief" that focused on individual freedom and rejected the concept of "defamation of religion." The March 24 decision by the 47 member nations rejected a Muslim campaign to prohibit criticism of religion. The Organization of the Islamic Conference gave up its campaign and supported the final resolution. The U.S. Commission on International Religious Freedom praised the Council's decision.

Kuala Lumpur: Malaysia's Muslim-oriented government decided in March to release 35,000 Bibles destined for Christian groups that have been held at two Malaysian ports since 2009. The government seized the Malay-language Bibles because they use the word "Allah" for God. The government maintains that only Muslims are allowed to use that term, while Malaysian Christians say the Arabic word "Allah" is a common reference for God that predates Islam. The government said it would stamp the shipment with serial numbers and government seals indicating sale "for Christians only." A compromise agreed that the Bibles were to be stamped "For Christianity." The Christian Federation of Malaysia has not formally ratified the agreement however. The government has appealed a December 2009 court ruling that religious minorities in the mostly Muslim nation have a legal right to use the term Allah.

Ottawa: Canada's 41st general election, which resulted in a conservative sweep and a strong second-place finish for the left-of-center New Democratic Party (NDP), reflected the nation's ethnic and religious diversity. The most visible minority group is the Sikh community, which has had a number of members of Parliament since Gurbax Malhi was elected as a Liberal in 1993. (He lost this year to another Sikh.)

The total number of Sikh members declined, partly as a result of the crushing defeat of the Liberal Party, which saw its parliamentary delegation shrink from 77 to 34. Several Sikh Conservative candidates were elected or reelected, including Tim Uppal of Edmonton, in Prime Min-

continued on page 14

International Updates, *continued from page 13*

ister Stephen Harper's home province of Alberta. The Sikh vote was most influential in British Columbia and in the Brampton area of Ontario.

Sikh members were criticized for wearing ceremonial headgear by members of the Bloc Quebecois, Quebec's separatist party, which was nearly wiped out in this election, falling from 49 seats to four. Sikh members have also sought passage of a "Genocide Resolution," which calls on Canada to denounce India for alleged government responsibility for the killing of thousands of Sikhs in November, 1984, in retaliation for the assassination of Prime Minister Indira Gandhi by her Sikh bodyguards.

The Christian Heritage Party, a fundamentalist group which ran candidates in 46 of Canada's 308 districts (called ridings), received only 19,218 votes, about one tenth of one percent. Its candidates reflected Dutch Calvinism, with such names as Groenendijk, Vande Stroet and Vanden Broek.

Strasbourg: The European Court of Human Rights ruled on March 18 that public schools in Italy can continue to display crucifixes in public school classrooms. The 15-2 ruling by the court's Grand Chamber decided that, "There is no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils." The ruling reversed a 2009 decision that concluded that the presence of the crucifixes could be "emotionally disturbing" to non-Catholic pupils. Italy appealed the decision and was joined by twenty nations, including three predominantly Eastern Orthodox countries, Greece, Romania and Russia.

The decision in *Lautsi et al v. Italy* is binding on 47 countries that are members of the Council of Europe. The decision was praised by the Vatican press office, whose director, Rev. Federico Lombardi, said the

ruling recognizes "that the culture of the rights of man must not be in opposition to the religious foundations of European civilization, to which Christianity has made an essential contribution."

However, William Oddie, a British Catholic journalist, argued that the ruling is hardly a victory for Christianity when the Court said the crucifix was "an essentially passive symbol whose influence on pupils was not comparable to that of didactic speech or participation in religious activities." Writing in England's *Catholic Herald*, Oddie wondered whether the Court got it right when it ruled that "Christianity and its older brother Judaism have placed tolerance towards others and protection of human dignity at the center of their faith."

Valletta, Malta: Voters in this heavily Catholic island nation voted 53% to 47% to legalize divorce. The tiny country was the last European Union member to ban divorce. The May 28 referendum was non-binding, but parliament is likely to enact a law allowing for dissolution of marriage after four years of separation. Turnout was heavy, 72%, and the outcome was a major defeat for Catholic Church authorities, who urged a no vote. Jeffrey Pullicino Orlando, leader of the pro-divorce movement, told EFE news agency, "It brings Malta into a new era where the state and the church are separate." The British newspaper, *The Guardian*, commented, "The decision of the voters of the conservative and deeply traditional Mediterranean island is further evidence of the waning influence of the church." The final vote was 122,547 to 107,971. Voters snubbed Prime Minister Lawrence Gonzi and Archbishop Paul Cremona, who both urged rejection of the divorce proposal.

Malta became an independent nation in 1964. Pope Benedict XVI praised the nation's ban on divorce and abortion during a visit last year. If parliament approves divorce legislation, it will leave the Philippines as the only country in the world where divorce is forbidden. ■

By the Numbers

- **120** — Since 1980, there has been a 120% increase in references to God in major presidential speeches, in comparison with the previous half-century.

Source: *The God Strategy: How Religion Became a Political Weapon in America*, by David Domke and Kevin Coe (Oxford University Press, 2008)

- **1** is the ranking of Connecticut in a Social Science Research Council ranking of the quality of life in each American state and congressional district. Detailed statistics measure the health, education, and income of all Americans based on accurate and up-to-date data.
- **50** is the ranking of West Virginia, the lowest-rated state for overall well-being.
- **3** — If the District of Columbia were a state, it would rank 3rd overall, and 1st in income and education.
- Massachusetts ranks **1st** in education: **38.1%** of adult residents have a college degree. Connecticut and Colorado are tied for **2nd** place.
- **50th** place, the least well educated state, is West Virginia, and the poorest state is Arkansas.

- Ranking **1st** as the healthiest state is Hawaii, followed by Minnesota in **2nd** place.
- Ranking **50th**, the least healthy state is Mississippi.
- Barack Obama carried **18** of the top 20 states in overall ranking on the American Human Development Index. Only two states voted Republican — the home states of the Republican nominees, Alaska and Arizona. Most of the high-ranking states are in the Northeast and the West.
- John McCain carried all **10** of the lowest-ranking states. Most are in the South. Only Montana at 42nd place in overall ranking was non-Southern.
- Ranking **1st** in public high school graduation rate (88.6%) was Vermont, followed by Wisconsin (88.5%).
- In last place (**50th**) was Nevada, where only 52.0% of high school students graduated. The national figure was 73.9%.
- Per-pupil spending on public schools was highest in New Jersey (**\$16,762**) and lowest in Utah (**\$5,918**).

Source: *The Measure of America 2010-2011*, by Kristen Lewis and Sarah Burd-Sharps (New York University Press, 2010).

Books and Culture



The Same Thing Over and Over: How School Reformers Get Stuck in Yesterday's Ideas, by Frederick M. Hess. Harvard University Press, 2010, 286 pp., \$27.95.

Customized Schooling: Beyond Whole-School Reform, edited by Frederick M. Hess and Bruno V. Manno. Harvard Education Press, 2011, 236 pp., \$29.95.

Hess and Manno hate public education, as their writings over the years have clearly shown. They are committed school voucher fanatics who have no use whatever for our constitutional heritage of church-state separation and are about as honest as a three-dollar bill.

The Hess solo volume is a revisionist history of education in America that treats public education like some disgusting fungus. The Hess/Manno book is a compendium of essays by people, few of whom ever had hands-on public school teaching experience, that reads like a stack of sleazy sales brochures or really bad science fiction. Taken together they represent a sustained attack on our public schools and a slick push for allowing corporate corsairs to plunder the \$500 billion spent annually for K-12 public education.

Readers will find nothing in these two volumes about the poverty that grips a large and growing portion of our children and families; nothing about the nationwide slashing of public school budgets; nothing about the new Republican drives to divert tax dollars to unregulated, unaccountable private and religious schools; not a shred of understanding or sympathy for the dedicated, under-appreciated men and women teaching in and running our public schools; not a word about the teacher unions and collective bargaining that make the teaching profession workable; not a word about the complexity of educating 50 million very individual kids in over 14,000 separate school districts; not a hint of why or how the overwhelming majority of nonpublic schools differ from our publicly accountable, religiously neutral public schools; not a whiff of the federal and state constitutional provisions and laws designed to protect the fundamental liberties of American kids and taxpayers; not a mention of the more than two dozen state-wide referenda from coast to coast in which tens of millions of voters have rejected school vouchers by landslide margins and all other gimmicks to divert public funds to private schools.

The final insult is that this dreck bears the label of a reputable university, Harvard. Shame.

— Edd Doerr

The Religious Factor in the 1960 Presidential Election: An Analysis of the Kennedy Victory Over Anti-Catholic Bigotry, by Albert J. Menendez. McFarland & Co., 2011, 261 pp., \$45.00.

A half century after the squeaker election of America's first Catholic president, politico-religious demographer and *Voice of Reason* editor Al Menendez has produced the definitive book on the 1960 Kennedy/Nixon White House contest. Based on actual voting data from every county in the United States, and even precincts in a dozen states, Menendez' book shows the widespread extent of anti-Catholic voting. This factor caused the Massachusetts senator to lose about 100 of the counties that Adlai Stevenson had won in 1956 and to receive a lower percentage of the vote than Stevenson in about 1,000 counties, a third of the nation's 3,000 counties. No other scholar has looked at the 1960 campaign in such detail.

Voting in 1960 was more influenced by religion than previous scholars or journalists estimated. And this election was held before exit

polling was invented.

Menendez analyses in depth the distribution of anti-Catholic and anti-Kennedy literature disseminated by much the same religious fundamentalist outfits now dominant in the Republican Party and anti-Obama groups.

Menendez includes in the book the complete texts of Kennedy's April 21, 1960, address to the American Society of Newspaper Editors and his September 21, 1960, address to the Greater Houston Ministerial Association, in which he faced the religious and church-state issues head-on.

Kennedy firmly opposed tax aid to religious private schools (in 1960 about 90% were Catholic schools) and U.S. diplomatic recognition of the Holy See (Vatican). Nixon favored tax aid for religious schools after he was elected president in 1968, while Reagan extended diplomatic recognition to the Vatican in 1984. After the Supreme Court's 1962 ruling against government-mandated prayer in public schools, Kennedy stood with the Court.

My late colleague Paul Blanshard, author of the 1948 best-seller *American Freedom and Catholic Power* and co-author with me of a magazine column, met with Kennedy and Ted Sorensen in the White House after the election. Blanshard assured me that Kennedy was sincere in his support for church-state separation.

Menendez' book is an important contribution to historical research and can be read with profit in today's tangled political mess.

— Edd Doerr

The Myth of American Religious Freedom, by David Sehat. Oxford University Press, 2011, 356 pp., \$29.95.

An example of revisionist history at its best, this book will challenge many existing ideas and preconceptions about religious freedom in America. Sehat's basic thesis is that evangelical Protestantism created a "moral establishment" for more than a century that excluded all other religions, especially Catholics, Mormons and freethinkers. "The moral establishment of the past was an active program that maintained religious control over U.S. society through law."

The moral establishmentarians "claimed to support religious liberty while in fact promoting religious control." They dominated the institutions of education and culture. "Moral establishmentarians had long dismissed the assertion that religious liberty entailed freedom from religion in public life. They asserted instead that it required the freedom of believers to bring their religion into public life to establish an ordered society."

Control of public schooling was central to their agenda. "State governments saw no contradiction in promoting Christianity in public schools while simultaneously claiming to uphold religious freedom. But the question was whose Christianity? The evangelical awakening in the first part of the nineteenth century overlapped with the states' creation of public schools, and evangelicals mustered the political muscle to control school curriculum and administration." There was no pretense of religious objectivity or neutrality, Sehat argues. "The common-school movement unapologetically embraced what it considered non-sectarian Christianity, which presumed the broad moral consensus that arose out of the Second Great Awakening. It thus excluded Catholicism, Judaism, Mormonism, Chinese Buddhism, and free-thought...Because Bible-reading and recitation remained at the center

continued on page 16

Books and Culture, *continued from page 15*

of the American common-school curriculum for much of the nineteenth century, so did the Protestant doctrine of Sola Scriptura, or scripture alone. There was nothing nonsectarian about it.”

This explains the rise of the Religious Right. “Evangelicals wanted nothing less than a return to the moral establishment, working to maintain the conservative Protestant control that they had held in the past.”

Sehat blasts the increasingly conservative Supreme Court. “The conservative members of the Court had adopted the same duplicity as the moral establishment, claiming religious freedom and religious heritage while trivializing religious belief and doctrine by secularizing it to support government action.” Americans, both liberal and conservative, are too often given to self-congratulation, he says. “In actual practice Christian moral and religious ideas pervaded American law and society and formed critical boundaries circumscribing that freedom. Religious partisans assumed control of law and governance and used those tools to coerce dissenters based on their religiously derived moral convictions. . . . Protestant Christianity quite clearly received preferential support from the government, which in turn enforced its moral norms.”

In his history, the author might have acknowledged that American Catholics, including its political leaders, largely ignored Vatican condemnations of church-state separation. Many churchmen, including Bishop John England, Cardinal James Gibbons and Cardinal Richard Cushing issued strong declarations of support for the American principle of church-state separation. And even though the bishops “commanded” support for parochial schools, no more than half of Catholic parents ever sent their children to church-run schools. Today that number is probably about one in five.

The use of the term “myth” might confuse some readers. Just because it has taken two centuries to implement religious liberty guarantees in this country does not mean that it is a myth but rather a work-in-progress that is arguably stronger today than at any time in our nation’s history.

— *Al Menendez*

Religious Liberty. Volume 2: The Free Exercise Clause, by Douglas Laycock. William B. Eerdmans Publishing Company, 2011, 853 pp., \$35.00 paper.

This second volume in Professor Laycock’s writings on religious liberty and the law is devoted to the Free Exercise Clause. He includes such broad subject areas as the following: religious exemptions from state regulation, church autonomy, the rights of religious employers, religious counseling, sexual abuse, and “the rights of non-mainstream religions.”

One interesting brief defends the Ethical Culture Society after it was denied a religious exemption by the Texas State Comptroller. Laycock explains that “religious liberty protects believers and nonbelievers alike and that what matters is that the Ethical Society addresses religious questions. The Comptroller cannot discriminate against the Ethical Society because of its answers to those questions.” Both the trial court and the Texas court of appeals held that the Comptroller unconstitutionally discriminated against it, and the Texas Supreme Court denied a review, upholding the prior rulings. Laycock makes clear in this case and others that the government cannot “discriminate on the basis of religious belief” and “must give equal treatment to all answers to religious questions, including doubtful, skeptical and negative answers.”

All law libraries should add this volume to their collection, and those who specialize in writing about religious freedom can profit from it as well.

— *Al Menendez*

From Bible Belt to Sun Belt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism, by Darren Dochuk. W.W. Norton & Company, 2011, 520 pp., \$35.00.

The rise of the Religious Right and its merger with elements of the Old Secular Right are the subjects of this comprehensive history. The author describes how Southern Evangelicals moved west to the promised land of California in the 1930s and transformed the region religiously and politically. The roots of the Nixon-Goldwater-Reagan era of Republicanism began with this transformation, which later had a national impact. This is the “story of how transplanted southern evangelicalism, itself revitalized and recreated in the Golden State, moved from the margins of the southern Bible Belt to the mainstream of America’s first Sunbelt society.”

This “grand experiment in religious restructuring,” was accomplished by charismatic preachers and business entrepreneurs who were “dedicated to building a conservative counterrevolution against an ascendant New Deal state.” Parachurch groups and evangelical colleges like Pepperdine University were instrumental in this merging of religion, economics and politics. Secular movements that paralleled these efforts, like anti-Communism and American nationalism, also merged with the “gospel of wealth and prosperity.”

Denominational differences were downplayed, as Baptists, Pentecostals and independent evangelicals united behind conservative politicians. Many were active in the 1964 presidential campaign of Barry Goldwater and were also enthusiastically for Richard Nixon. A few of the more extreme sort backed Alabama Gov. George Wallace’s 1968 bid.

They were also enthusiastic supporters of Ronald Reagan’s 1966 campaign for governor but Reagan was more of a pragmatist than many realized. “Reagan welcomed counsel from evangelical statesmen like [Pat] Boone and [Billy] Graham, but he was determined to keep harder-driving religious activists—those who had helped cast a darker light on Goldwater—at a healthy distance.”

These groups continued their “grassroots mobilization in the escalating culture wars” in the 1970s and 1980s, but their influence waned as a result of changing demographics, particularly in their bastion of southern California. The epicenter of evangelical conservatism moved back toward the South in the 1990s and has remained there.

— *Al Menendez*

To Serve God and Wal-Mart: The Making of Christian Free Enterprise, by Bethany Moreton. Harvard University Press, 2010, 372 pp., \$17.95 paper.

“More than 90% of Americans live within twenty miles of a Wal-Mart store,” the author of this important book tells us. This fact has obvious economic implications but it has political and religious ones as well.

This meticulously researched study tells why “Wal-Mart Country,” roughly Arkansas, Missouri and Oklahoma, has fueled a political and cultural revolution that has reshaped American politics.

The result of this political transformation can be seen in Wal-Mart’s home base, Arkansas, once a Democratic stronghold that became one of John McCain’s top ten states in 2008. Next-door Oklahoma was McCain’s top state, where he received nearly two thirds of the vote and carried every county. Missouri, usually a closely contested bellwether state, also went for McCain, who was only the second losing presidential candidate in the last century to carry Missouri.

This GOP trend has intensified in the last decade. According to Moreton, “In 2004 George W. Bush won the votes of 85% of frequent Wal-Mart shoppers,” despite their relatively low incomes.

Uniting remnants of old-style Populism, which began in the 1890s,

with a resurgent fundamentalism and a rigorous version of free-market capitalism “provided the raw material for a new corporate populism, a distinctly Ozarks version of capitalism with broad appeal across the Sun Belt,” notes Moreton, a professor at the University of Georgia.

It was no surprise that the Walton empire is based in the Ozark Mountains subregion of northwest Arkansas, with significant enterprises in southern Missouri and eastern Oklahoma. This area is a bastion of religious fundamentalism, cultural isolation, xenophobia and is almost entirely white. It lacks immigrants, Catholics, Jews, Episcopalians, Lutherans, and religious liberals of any kind, not to mention Muslims, Mormons, and Buddhists.

The Wal-Mart brand of economic paternalism, aimed at lower income groups, soon adopted fundamentalist lifestyles and “family values,” transforming itself into “a national Christian icon.”

“The evangelical revival associated with the Bible Belt became a significant national phenomenon in the later years of the twentieth century, and its growth paralleled that of Wal-Mart itself into deindustrialized areas of the country.”

To build up its management base, it recruited almost exclusively from Christian colleges associated with various fundamentalist Protestant churches, such as Harding University, Oklahoma Christian University, the University of the Ozarks, John Brown University, and the Baptist Bible College, generously endowing their business schools and economics departments and hiring their graduates. “Entrepreneurial education and pro-capitalist student movements became common features of Sun Belt Christian campuses. It was among these small-town Protestant students that Christian free enterprise took root with particular success.”

This book explores another facet of the Religious Right: its links to conservative business enterprises. This helps to explain the changing voting habits of America’s working classes.

— Al Menendez

Am I a Monkey? Six Big Questions About Evolution, by Francisco J. Ayala. The Johns Hopkins University Press, 2010, 104 pp., \$12.95.

About three years before Watson and Crick (with both of whom I have shared a meal) proposed the molecular structure of DNA, I had the privilege of hearing Julian Huxley explain evolution. My age at the time was about that of H.G. Wells when he learned about evolution from Huxley’s grandfather, T.H. Huxley, around 65 years earlier. It is mind-boggling that at this late date nearly half of Americans polled cannot accept evolution, a great many of them regarding the cosmos as less than ten thousand years old.

Comes now eminent biologist Francisco Ayala, a recipient of the National Medal of Science and the 2010 Templeton Prize, with a short, readable introduction to evolution for the busy, non-scientist lay reader. Ayala explains what scientists mean with the word “theory,” what DNA is all about, shows that “The theory of biological evolution is the central organizing principle of modern biology,” and touches on what we have yet to learn about how life began.

In a final chapter Ayala writes that “evolution and religious beliefs need not be a contradiction.” With Stephen Jay Gould, Ayala holds that science and religion operate in different realms. He notes that mainstream religion in the United States has no problem with evolutionary science. He does note such problems as that the human eye contains a defect of design not found in those of squids and octopuses, and the human jaw, being too small for our 32 teeth, often needs the aid of orthodontists, but concludes that, evolution being “a well-corroborated scientific theory,” Christians and other people of faith should see evolution as “not the enemy of religion but, rather, its friend.”

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Am I a Monkey? is a fine gift book.

— Edd Doerr

Clarence Darrow: American Iconoclast, by Andrew E. Kersten. Hill and Wang, a division of Farrar, Straus and Giroux, 2011, 306 pp., \$30.00.

Darrow’s newest biographer sees the dynamic lawyer as a great iconoclast who challenged powerful institutions that sought to control the lives and personal choices of ordinary American citizens. “America’s most famous and long-lived public crusader” will always be remembered for his battle with creationism at the 1925 Scopes trial.

Kersten retells the story of that dramatic trial, and includes numerous interesting anecdotes. William Jennings Bryan, the primary defender of Tennessee’s anti-evolution statute, was greeted by “a torch-light parade” that “transformed the town [Dayton] into an evangelical bazaar,” even though the area was a Republican stronghold that had never supported Bryan in his three presidential campaigns. The judge in the case, John Raulston, was an “unfriendly magistrate” who carried the King James Bible into the courtroom. While Darwin lost the case, he won in the court of public opinion.

Darrow was always his own man and his views were highly individualistic. Pro-labor and pro-common man, he was lukewarm on the Roosevelt New Deal, fearing that a large central government would restrict civil liberties. He wrote a friend that “states’ rights is most important for the preservation of any sort of individual liberty,” despite evidence to the contrary in the South’s opposition to civil rights. He opposed the League of Nations and disapproved of the 19th Amendment, granting women the right to vote (after originally supporting women’s suffrage). Kersten says Darrow was “a curmudgeon who was aging with ill grace and worse health,” which might explain his dyspeptic attitude toward many progressive causes that his fellow reformers championed. However, he remained a supporter of liberal divorce laws, an opponent of Prohibition and an agnostic in religious matters to the end of his days.

This first-rate biography brings the justifiably esteemed defense lawyer to life for a new generation of readers.

— Al Menendez

Courage to Stand: An American Story, by Tim Pawlenty. Tyndale House

continued on page 18

Books and Culture, *continued from page 17*

Publishers, Inc., 2010, 301 pp., \$26.99.

Former Minnesota governor Tim Pawlenty mixes autobiography with political reflection in this lightweight book timed for his presidential campaign. Actually, he has little to say. His political philosophy, such as it is, consists of limited government, low taxes and a reverence for Ronald Reagan.

Cliché ridden (“Limited government leads to unlimited opportunities”) and supportive of American exceptionalism (“Our values are different, our people are different.”), Pawlenty’s book also calls for a policy to “confront and defeat radical Islamic terrorism.”

The book is suffused with religious piety, which is not surprising since it is published by a prominent evangelical publisher. Pawlenty skirts around his reasons for rejecting his family’s Catholicism and adopting his wife’s evangelical Protestantism. An active member of a large megachurch, Wooddale Church, whose pastor, Leith Anderson, heads the National Association of Evangelicals, Pawlenty is likely to tap into this resource as he seeks the GOP nomination. He writes, “Wooddale Church is a biblically based Christian church and interdenominational. My decision to join was not about rejecting Catholicism,” an odd explanation at best.

This book is more likely to put the reader to sleep than to set the political world on fire.

— Al Menendez

A History of the Popes: From Peter to the Present, by John W. O’Malley, S.J. Rowman & Littlefield Publishers, Inc., 2010, 351 pp., \$26.95.

It is certainly a challenge to write a history of a 2,000 year old institution in 300 pages, but the author, a historian and professor at Georgetown University, has done so with clarity and objectivity.

As he notes, this ancient body, “the oldest, still functioning institution in the Western world,” has undergone considerable changes in internal self-conception and external influence. The early papacy had a limited role in shaping church history and state policy. “The history of the papacy, let it be said again, is not the history of Catholicism. Constantine dominated the history of the church in the early fourth century, alongside whom Pope Silvester was no more than a shadow in the wings.” Furthermore, “The vast majority of the popes, however, were men of lesser stature, usually no match for the political and intellectual leaders of their age.”

This ability to redefine itself is a touchstone. “In the sphere of practical politics popes sometimes had to make concessions regarding their Petrine prerogatives and bow to pressure. Over the course of the centuries they exercised their leadership prerogatives in different styles and defined them in different ways.”

Through the centuries papal influence has waned and waxed. Ironically, as its political power diminished, its centrality within Catholicism increased. “It is no coincidence that as the political fortunes of the papacy foundered, popes assumed more and more responsibilities for the well-being of their flock worldwide.”

This did not lead to more democracy within the church. O’Malley laments the usurpation of the role of the papacy in naming bishops. “No third-century pope ever entertained the idea that he was infallible or thought he had the right to appoint other bishops.... Now, for the first time in history the popes have not only gained control, but they exercise it through a process of their own devising that gives them untrammelled freedom in establishing criteria for the appointments.”

The role of the papacy, for good or ill, needs assessment from time to time. O’Malley concludes, “Explain it as you will, the papacy has proved

to be a remarkably resilient institution. Often seemingly at death’s door, it has invariably risen again to striking vitality.”

— Al Menendez

Dissent into Treason: Unitarians, King-Killers and the Society of United Irishmen, by Fergus Whelan. Brandon (Ireland), 2010, 282 pp., \$26.95.

Our American Revolution succeeded. Ireland’s similar revolution a few years later failed. It would be more than a century before Ireland won its independence. Irish writer and labor organizer Fergus Whelan relates this fascinating story from the age of Charles I and Oliver Cromwell in the early 17th century through the failure of the Irish revolution at the end of the 18th. This is the story of the Society of United Irishmen, “the first avowedly non-sectarian democratic organization in the country’s history,” led largely by Unitarian ministers and encompassing Catholics, Presbyterian dissenters, and Anglicans, influenced by the ideas of John Locke, Thomas Paine and Thomas Jefferson, and inspired by the success of the American Revolution. Whelan notes approvingly that “the separation of church and state achieved in the new American republic was regarded by the Dissenters as being much to their advantage.” This book rates five stars.

— Edd Doerr

City of Man: Religion and Politics in a New Era, by Michael Gerson and Peter Wehner. Moody Publishers, 2010, 140 pp., \$19.99.

This book is a mixed bag. It doesn’t say anything new or insightful about religion and politics. But because both authors are former George W. Bush administration staffers, political conservatives and evangelicals, its encouragement of a more moderate political stance for evangelicals deserves some praise. It is encouraging that they write that “religion should never be used as the means to some narrow political ends” and that “the pursuit and exercise of political power poses special challenges and dangers to religious believers.”

They are off-base, however, when they claim, “The passing of the religious right is less a value judgment than a fact of life.” This is clearly premature, even naïve. They are also wrong when they argue, “The political theology that arose among politically conservative Christians in the 1970s was largely a defensive reaction to the aggressions of modern secular elites against traditional norms.” Many would argue that the cultural and legal changes in the 1960s and 1970s represented net gains for religious liberty and freedom of conscience and strengthened religious pluralism and tolerance, making the nation more welcome to segments of the population that had been ignored or marginalized.

— Al Menendez

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Commentary

The Top Five Myths of the Separation of Church and State

By J. Brent Walker

Myth #1: We don't have separation of church and state in America because those words are not in the Constitution.

The words are not there, but the principle surely is. It is much too glib an argument to say that constitutional principles depend on the use of certain words. Who would deny that "federalism," "separation of powers" and the "right to a fair trial" are constitutional principles? But those words do not appear in the Constitution either. The separation of church and state, or the "wall of separation," is simply a metaphor, a shorthand way of expressing a deeper truth that religious liberty is best protected when church and state are institutionally separated and neither tries to perform or interfere with the essential mission and work of the other.

Myth #2: We do not need or want separation of church and state because the United States is a Christian nation.

Depending upon the poll, a little more than half the American people agree with this statement. But it is not true. The United States of America is not a Christian nation, legally and constitutionally.

Yes, most of our founders were religious folk of some ilk, but they did not want to impose their own religion by law on others. And they certainly thought that a religious citizenry was important to good government; but they did not intend to set up a Christian regime under our founding documents. Our civil compact, the Constitution, is a decidedly secular document. It never mentions "Christianity." Even the word "religious" is used only once in Article VI to ban religious tests for public office. And then two years later the Bill of Rights starts off "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This language dispelled any lingering doubt whether America was intended to be a Christian nation when it prevented the federal government from advancing or inhibiting any religious tradition.

Myth #3: We have freedom of religion but not freedom from religion.

This is not true. We have freedom of and from. If we don't have both, then we have neither. Forced religion is simply a violation of

conscience, not a voluntary response to God.

That's what the First Amendment is all about. Freedom from religion and freedom of religion parallel the two religion clauses: no establishment (freedom from religion), and free exercise (freedom of religion). It also parallels the coming together in history of Enlightenment thought and religious piety conspiring in colonial times to ensconce protections for religious liberty in the Constitution.

Myth #4: Church-state separation only keeps the government from setting up a single national church or showing preference among faith groups, but not from aiding all religions equally.

If all the founders wanted to do was simply to ban a single, official national church, they did not do a very good job of saying so in the First Amendment. An early draft of the Amendment read in part: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established..." This draft was passed over. And the founders had ample opportunity to state that the government should be allowed to promote all religion on an evenhanded, non-preferential basis.

But the Congress repeatedly rejected versions of the First Amendment that would have explicitly permitted such non-preferential aid. For example, the Senate rejected this proposed language. "Congress shall make no law establishing one religious sect or society in preference to others..." It rejected two more proposals with provisions embodying similar language.

The Founders approved much more expansive language to keep the new federal government from making laws even "respecting an establishment of religion." Religion generally—not a religion or a national religion, but no religion at all, period. They did not merely want to keep the federal government from setting up an official national church or to ban denominational discrimination.

Myth #5: The separation of church and state has resulted in God being kicked out of the public schools and banished from the public square.

continued on page 20



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Commentary, *continued from page 19*

To say God has been banished from the public square is also a huge misconception. The institutional separation of church and state does not mean the segregation of religion from politics or God from government or strip the right of people of faith to speak forcefully in the public square. It only means government cannot pass laws that have the primary purpose or effect that advances religion.

Voluntary student religious expression is not only NOT prohibited, it is protected – as long as it does not disrupt the educational process and respects other students' rights not to participate.

"Civil religion" in public places is alive and well. In a culture as religious as ours, we should not be surprised that references to God pop up in our pledge, our mottos, our songs and our civil ceremonies and public rituals. These brief governmental expressions of religion (sometimes called "ceremonial deism") will usually pass constitutional muster as long as they do not mandate religious worship, single out a particular

religion for favored treatment or compel religious conformity. Some of us may have theological concerns about civil religion because it can be abused for political gain, morph into an idolatry of nationalism or result in the trivialization of religion. But the constitutional doctrine of church-state separation does not prohibit various expressions of civil religion.

This is excerpted from an article in Report from the Capital (November/December 2010) by J. Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty. Walker made these remarks on November 10, 2010, at the dedication of the Flynn T. Harrell church-state archives at the University of South Carolina. The Flynn T. Harrell Collection on the Separation of Church and State is housed in the University Libraries' Political Collections. It includes the Americans for Religious Liberty archives of our books and monographs as well as the entire collection of our quarterly journal/newsletter, Voice of Reason. Reprinted by permission. The entire article is available at www.bjconline.org. ■

School Prayer

Education Week (May 12) had an interesting article reminding us of the importance of the Supreme Court's school prayer rulings of 1962 and 1963, *Engel v. Vitale* and *Abington School District v. Schempp*. These rulings are important because they reaffirmed the church-state separation principle in the First Amendment and confirmed that public schools are required by the Constitution and our society's pluralism to be religiously neutral. Many conservatives launched repeated campaigns to amend the Constitution to authorize government to impose religious exercises on all kids. These campaigns all failed, not because of efforts by humanists but because sensible mainstream people and groups supported the rulings.

There is much still to be said about these rulings. First of all, at the time of the rulings only about half of the school districts in the US had school prayer and Bible reading, virtually all in the original east coast states and the states of the former Confederacy. Next, the rulings came at about the same time as the Civil Rights movement and massive resistance to desegregation. The rulings and the massive resistance combined to trigger the rise of the conservative Christian school movement. Previously about 90% of all nonpublic schools were run by the Catholic Church. That figure has slipped to under half while Protestant enrollment has surged.

Engel and *Schempp*, by rendering public schools religiously neutral, removed the reason for the 19th century founding of Catholic schools in the US. In the wake of *Engel* and *Schempp*, Catholic schools began to decline in enrollment from 5.5 million students in 1965 to about 2.1 million today. Catholic school enrollment decline was further related to the election of a Catholic President in 1960, the Second Vatican Council of 1962-1965, and the Vatican's 1968 denunciation of contraception, against the wishes of its own advisers and angering the majority of Catholics worldwide. When President Nixon sought to initiate school vouchers, studies by Catholic universities showed that the enrollment decline had nothing to do with economics but with "changing parental preferences."

Between 1966 and 2007 there have been 27 state referenda on various plans to divert public funds to religious schools, including in heavily Catholic states like New York and Massachusetts. In every case Catholic voters joined others in defeating vouchers heavily.

Catholic Democrats in Congress are among the strongest supporters of public education and church-state separation and opponents of diverting public funds to religious private schools.

—Edd Doerr

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