



VOICE OF REASON

The Newsletter of Americans for Religious Liberty

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Elections 2005

Supporters of church-state separation and religious liberty cheered the results in four of the five major races in this off-year election. California voters rejected a proposal to require parental notification for minors seeking an abortion. Maine voters rejected an attempt to eliminate a law protecting gays and lesbians from discrimination. In Dover Township, Pennsylvania, the school board that had mandated the teaching of "Intelligent Design" in public school classes was thrown out of office. In Virginia the gubernatorial candidate identified with the state's powerful Religious Right, Republican Jerry Kilgore, was soundly defeated by progressive Democrat Tim Kaine. Only in Texas did religious conservatives score a resounding victory by successfully adding a ban on same-sex marriage to the state constitution. Here is the state-by-state roundup:

California

Californians rejected an amendment to the state constitution that would have required notification of a parent or legal guardian of a minor at least 48 hours before having an abortion. The vote was 3,465,629 (52.6%) to 3,130,062 (47.4%). Some of the state's largest religious groups, including the Roman Catholic and Mormon leadership, as well as evangelicals, endorsed Proposition 73, but California voters turned it down.

Maine

Voters rejected an effort to repeal the state's gay rights law. By 57% to 43% voters turned back an attempt by conservative Christian religious groups to repeal a law enacted earlier this year to add sexual orientation to the Maine Human Rights Act. Discrimination in housing, employment, credit, public accommodations and education are

prohibited on the basis of race, color, sex, disability, religion, ancestry, national origin, and – now – sexual orientation. The law exempts religious organizations that do not receive public funds. Maine is the last New England state to guarantee nondiscrimination against gays and lesbians. Twice before, in 1998 and 2000, voters refused to support a gay rights bill.

Pennsylvania

Voters in conservative Dover Township ousted the school board that mandated "Intelligent Design" in school classes and provoked a federal lawsuit that ended its six-week trial on November 4. This provoked an outburst from Pat Robertson, who told his television audience that Dover "had voted out God."

The outcome at the polls in Dover does not mean a cessation of the controversy by any means. The National Conference of State Legislatures said eleven legislatures have debated intelligent design this year, though most bills died in committee. Indiana's Republican House majority plans to introduce an ID bill in the 2006 legislative session. House Speaker Brian Bosma of Indianapolis met privately with Carl Baugh, host of the evangelical Trinity Broadcasting Network's "Creationism in the Twenty-First Century" program and founder of the Creation Evidence Museum in Glen Rose, Texas.

Texas

Texans voted 3-1 in favor of a constitutional amendment banning same-sex marriage, becoming the 19th state to do so. The unofficial vote was 1,718,513 to 536,052, or 76% to 24%.

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Alito Nomination Polarizes Congress

President Bush's Halloween surprise – the appointment of Third Circuit Appeals Court Judge Samuel A. Alito Jr. to the Supreme Court – is likely to provoke the long expected battle over the future of the judicial branch. The fiasco of the Harriet Miers nomination, mired in questions of competence, cronyism and religious antagonisms, was but a prelude to the real drama.

Alito has served for 15 years as a judge on the Philadelphia-based U.S. Third Circuit Court of Appeals, which handles cases from New Jersey, Pennsylvania, Delaware and the Virgin Islands. A graduate of Princeton University and Yale Law School, he held two positions in the Reagan Administration.

His rulings on church-state cases are cause for concern from those who believe that religious liberty is the first principle of a free society.

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A strange twist to the Texas campaign occurred at a voting precinct in Dallas. The fellowship hall of Northway Baptist Church is a polling place, which is supposed to be governed by laws regulating election activities. But a pastor prohibited the placement of signs opposing Proposition 2 and ordered a campaign worker to remove his car from the church parking lot because it displayed a sign indicating opposition to a proposal that the church's leaders favored. Americans United asked the Dallas County Elections Administrator to assure that a voting place is a neutral location not subject to the dictates of clergy.

Virginia

The hard-fought Virginia governor's race was embroiled in several religious issues. Democratic nominee Tim Kaine, the state's lieutenant governor, did not shy from discussing the influences of his Catholic faith on the issues of capital punishment and abortion rights. Kaine has long opposed capital punishment, citing Catholicism as an influence, and once proposed a moratorium on the application of the death penalty in Virginia, which executes more people than any state except Texas. Responding to hard-hitting ads touting Republican nominee Jerry Kilgore, a former attorney general, Kaine said he would enforce the death penalty if it was mandated by Virginia juries and judges. Kilgore proposed adding more crimes subject to the death penalty. Kilgore's ads featured families of victims of murderers presently on death row, adding an emotional tone to the debate. In one ad, the father of a man murdered a decade ago said Kaine would not have executed Adolph Hitler. The use of the Hitler analogy provoked criticism from several Jewish groups.

Kaine, once a missionary to Honduras, took a pro-immigration stance, while Kilgore threatened to shut down local job centers that hired illegal immigrants and promised to cut off medical and educational assistance to the children of illegal immigrants, even if they had lived most of their lives in the U.S. Kilgore's posture was labeled "nativism" by the *Washington Post*.

Kaine favored some limitations on abortion, while Kilgore took an across-the-board anti-choice position. Kaine said he would veto any attempt to outlaw all abortions in Virginia.

Kilgore, a Southern Baptist, played the evangelical card late in the campaign. His ads on Christian radio stations stressed his conservative religious upbringing in Virginia's mountainous Scott County. On the Sunday before the election, he attended the McLean Bible Church, a fundamentalist megachurch whose pastor has targeted the area's Jewish

"Separation of church and state has been a fundamental American value that both protects us from the government imposing a particular religion while also guaranteeing our freedom from that government in our place of worship. The Christian Right seeks to institutionalize and impose their beliefs on all Americans when our country's political and religious traditions honor precisely the opposite values."

— Patrick Mrotek, founder of the Christian Alliance for Progress, in OpEd News.com, August 22, 2005.

community for its conversion efforts. Kilgore was mobbed by well wishers.

Despite (or because of) an election-eve appearance by President Bush at a Kilgore rally at Richmond's airport, Democrat Kaine won decisively, 52% to 46%, and piled up a 100,000 vote majority. Kaine not only received huge majorities in traditionally Democratic cities like Richmond and Norfolk, and in Northern Virginia's multicultural areas like Alexandria, Arlington and Falls Church, but he won 60% in pivotal Fairfax County, and ran ahead of his Republican opponent in the Republican outer suburbs of Loudon and Prince William Counties. Kaine also carried some of the normally Republican Richmond suburbs.

Kaine becomes Virginia's first Catholic governor, and he attributed his concerns for the poor and disadvantaged to the social justice traditions of his faith. He joins North Carolina and Tennessee, two neighboring states which also elected their first Catholic governors recently. All are Democrats. In Virginia House races, one of the Religious Right's most powerful members, Del. Richard Black of Loudon County, lost his seat. Black, a Republican neo-Confederate who once opposed an Abraham Lincoln monument in Richmond, was a fierce opponent of abortion rights and fair treatment for gays and lesbians. Fundamentalist youth minister Chris Craddock, who ousted a moderate Republican delegate in a primary, lost to a Democrat.

In the Virginia attorney general's race, Republican Robert McDonnell, an ally of Pat Robertson and a graduate of Robertson's law school, apparently won a cliffhanger over State Senator Creigh Deeds. ■

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

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

Americans for Religious Liberty is a nonprofit public interest educational organization dedicated to preserving the American tradition of religious, intellectual, and personal freedom in a secular democratic state. Membership is open to all who share its purposes. Annual dues are \$25 for individuals, \$35 for families, \$15 for students and limited income.

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Scientists and Their Critics Duke It Out in Harrisburg

The federal court house in Pennsylvania's capital city is the latest venue for what journalist Chris Mooney called "easily the most significant evolution trial in nearly two decades, and [one that] will likely lead to a definitive ruling on the legality of teaching Intelligent Design, a vague philosophical speculation about how biological complexity requires a supernatural, intelligent originator." (*The New Republic*, October 17, 2005).

The case being fought by the leading sluggers in Judge John E. Janes III's courtroom involves a tiny school district 50 miles down the road in Dover Township, York County, in the heart of the Pennsylvania Dutch Country. The Dover School Board now requires the theory of Intelligent Design (ID) to be considered in high school biology classes. The board requires teachers or school administrators to read to students four paragraphs that cast doubt on Darwin's evolutionary concepts, claiming instead that ID offers a valid, scientifically acceptable alternative view of the origin and development of life. Eleven parents, backed by the ACLU, sued the school board, claiming that their children are being taught a religious view of creationism repackaged to resemble science.

For six weeks, the *Kitzmiller v. Dover Area School District* trial resembled a college biology lecture hall. Expert witnesses were called by both sides, and the media were out in force. The *Chicago Tribune* called it *Scopes II*. This case also resembles the *McLean v. Arkansas* case of 1981-82, which ended in a decisive victory for Darwinian evolution.

The central question that will determine how the court resolves the controversy is whether ID fits the definition of science or is in fact more of a religious concept disguised as science. Defenders of the school board are claiming that ID is a scientific alternative and that their clients had a legitimate secular purpose of introducing students to an alternative point of view. Attorneys for the plaintiff-parents marshalled a cadre of leading scientists, philosophers and theologians who testified that ID did not meet the definition of science because it cannot be tested. They also presented evidence that evolution has become standard for scientists and accepted for a century and a half, despite repeated challenges and criticisms.

The Christian Science Monitor, in an October 20 editorial, seems to have grasped the underlying significance of the case: "Let's remind ourselves why such a whiff of religion, even an unnamed cosmic designer, is best left out of public schools. A school board with power to teach one person's religion also has power to deny it, and teach someone else's."

Regardless of the outcome of this, and possibly subsequent, cases, a majority of Americans say they want "creationism," however defined, taught alongside evolution in public schools. The most recent Pew Forum on Religion and Public Life poll showed 64% in favor of teaching both creationism and evolution, and 38% favored teaching "only creationism instead of evolution." Several recent polls show that 57% to 65% of people favored this dual approach.

In other evolution-related news:

- As expected, the Kansas State Board of Education voted 6-4 on November 8 to require students to study criticisms of evolution. While not endorsing specific types of "alternatives" to evolution, such as creationism and Intelligent Design, the Board decision dropped significant areas of knowledge as requirements for students and removed the phrase, "Science is a search for natural explanations of observable phenomena," from the accepted standards.

The issue has become a political football. Four of the six anti-evolutionists will face reelection next year. Francisco Ayala, past-president of

the American Association for the Advancement of Science, said the new Kansas standards "are an insult to science, an insult to education and an insult to the American Constitution."

- The board's approval of guidelines that downgrade evolution are harming the state's image. John Staver, director of the Center for Science Education at Kansas State University, told the Kansas board on September 13 that natural science groups are "deeply concerned about the changes that have been made in the Kansas Science Education Standards that encourage students to distrust science." The same day, Boog Highberger, the mayor of Lawrence, home of the University of Kansas, warned of "the national damage they are doing to our reputation." Kansas University provost David Shulenberg told the *Lawrence Journal-World* that the debate over evolution was damaging the university's national reputation and retarding its ability to attract top-flight faculty and students. The *Kansas City Star* on October 9 reported that Kansas's reputation as a state hostile to science is having discernible effects on recruitment efforts at universities and in the biotechnology industry. Reporters Jason Gertzen and Diana Stafford wrote, "Some business leaders and economic development recruiters in the region say the region has acquired an anti-science label."

- Two national science organizations denied the Kansas Board of Education permission to use their copyrighted materials as part of the state's proposed science standards. In a joint statement on October 2, the presidents of the National Academy of Sciences and the National Science Teachers Association said, "Kansas students will not be well prepared for the rigors of higher education or the demands of an increasingly complex and technologically driven world if their science education is based on these standards. Instead, they will put the students of Kansas at a competitive disadvantage as they take their place in the world."

- Museums are becoming battlegrounds in several states. The Colorado-based Biblically Correct Tours (BC) sponsors visits to science and natural history museums by religious conservatives in order to ridicule generally accepted scientific precepts. Founded in 1988 by Rusty Carter, BC takes schoolchildren to museums, where they confront tour guides and challenge the exhibits as "inaccurate." BC has visited Denver's Museum of Nature and Science, the University of Nebraska State Museum in Lincoln and the Museum of the Earth in Ithaca, New York. On the other hand, the National Science Foundation is sponsoring a three-year "Explore Evolution" exhibit to teach awareness of evolutionary concepts. The \$2.8 million project has sponsored exhibits this year at the Universities of Oklahoma, Nebraska, and Kansas. Next year exhibits will open at the Universities of Michigan and Texas and at the Minnesota Science Museum in Minneapolis.

- On September 2 the Utah Board of Education unanimously approved a position statement supporting the teaching of evolution in public school classes.

- Florida's number two official in the state Department of Education, Cheri Pierson Yecke, is a strong supporter of creationism. Yecke was formerly Minnesota's education commissioner until her ouster in 2004. The year before, she urged alternatives to evolution in state education standards. Upon taking office, she told newspapers that she would not promote ID in Florida. ■

Moving?

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Military Tackles Religious Conflicts

The U.S. Air Force issued new guidelines on August 29 that discourage public prayer at official functions and urge commanders to be sensitive to personal expressions of religious faith. The guidelines apply to the entire Air Force, not just to the Air Force Academy in Colorado Springs, which has come under heavy fire for allowing the promotion of evangelical Christianity at the expense of other faith traditions. An earlier Task Force report found some evidence of discrimination and harassment against non-evangelicals at the Academy, though critics saw it as an ineffective response to a pervasive problem.

The draft says that members of the Air Force “will not officially endorse or establish religion, either one specific religion or the idea of religion over non-religion.” It also says that “abuse or disrespect” based on religious belief is unacceptable.

The guidelines allow “a brief nonsectarian prayer” at special ceremonies or in “extraordinary circumstances” such as “mass casualties, preparation for imminent combat and natural disasters.” Rabbi Arnold Resnicoff, a Navy veteran who was hired as a special assistant to the Air Force and who helped write the guidelines, said, “We support free exercise of religion, but we do not push religion.”

Lt. Gen. Roger Brady, Air Force deputy chief of staff for personnel, noted that religious diversity is a hallmark of the U.S. military, especially “at a time when many nations are torn apart by religious strife.”

Air Force chaplains must “respect the rights of others to their own religious beliefs, including the right to hold no beliefs.”

Individual discussions of religion between commanders and subordinates are still allowed, though members must be “sensitive to the potential that personal expressions may appear to be official expressions.”

On October 11 the Air Force announced that it had “withdrawn for further review” an “ethics code” that gave its chaplains permission to evangelize or attempt to convert military members who are “not affiliated” with any faith. The change apparently came in response to the federal lawsuit filed by Air Force graduate and former Reagan Administration official Mikey Weinstein. The Air Force claimed that the code was issued in January 2005, but former chaplain McLinda Morton told the *New York Times* that she had received a similar statement while attending chaplain training school at Maxwell Air Force Base in Alabama several years ago. Morton is a Lutheran minister who recently left the Air Force chaplaincy after complaining of evangelical domination and discrimination.

The guidelines received cautious praise from two congressional critics, Steve Israel (D-NY) and Lois Capps (D-CA), but Weinstein charged that the guidelines meant little because no officers who engaged in discriminatory activities were disciplined. In October, alleging that the Academy coerced attendance at evangelical services, Weinstein filed suit. His two sons are or have been students there.

The Washington Post expressed a tepid endorsement in a September 3 editorial. The guidelines, the paper said, “sound like a sensible balancing of interests” and “say all the right things,” but “it’s important that

We are often told that the reason we spend more than any other country on our armed forces is because our military exists to ‘protect our freedoms.’ If the allegations about the Air Force Academy are true, then the Air Force must immediately move to protect its own future officers’ constitutional right to freedom of religion. These brave and talented young men and women, who have committed to risk their lives to defend their country, deserve the ability to practice their religion, or no religion at all, free from government pressure and coercion, and free from the government’s supporting one religion over other religions.

— Brian J. Foley, professor at Florida Coastal School of Law, in OpEdNews.com, August 22, 2005.

the public prayer exceptions don’t end up swallowing the general rule.”

The Air Force statement may just be the tip of the iceberg. *Washington Post* writer Alan Cooperman noted, “The growing influence of evangelical Protestants is roiling the military chaplain corps, where their desire to preach their faith more openly is colliding with long-held military traditions of pluralism and diversity.”

Evangelical chaplains, who are becoming more and more dominant as mainstream military clergy are in decline, are pressing their demands, often in federal courts. At the Chaplain Training Schools, evangelicals and “pluralists” frequently clash over the styles of public prayer and the requirements of pluralism in public ceremonies.

Evangelicals are mounting a counterattack against these guidelines. Air Force Chief of Chaplains Maj. Gen. Charles C. Baldwin, sent a videotaped message to all active duty and reserve chaplains, saying the guidelines should recognize and support those with “belief systems that require us to tell others of our faith.” Baldwin, a Southern Baptist, said the rules should prevent coercion but should allow proselytizing, prayers at staff meetings, and discussion of religion between senior officers and subordinates.

Seventy U.S. House members asked President Bush to issue an executive order protecting “the constitutional right of military chaplains to pray according to their faith” and 35 members signed a similar letter to the Air Force acting secretary. An orchestrated campaign is coming from religious conservatives. Cooperman reported in *The Washington Post*: “The Christian Coalition, Focus on the Family and other Christian advocacy groups have deluged the White House and Pentagon with thousands of phone calls, letters and e-mails denouncing the Air Force guidelines as an infringement of religious freedom.”

According to the Pentagon’s Defense Manpower Data center, Catholic chaplains have declined to only 355 for 295,324 Catholic service members, a ratio of 832 personnel per chaplain. The 2,344 Protestant chaplains serve 652,529 members, a ratio of only 278 to one. The 22 Jewish chaplains have a 181 to one ratio, serving as they do 3,990 Jewish service personnel. There are also 20 Eastern Orthodox chaplains, 41 Mormons and 11 Muslims serving as chaplains. There are more Southern Baptist chaplains (451) than Roman Catholics. Of the 1,373,868 active duty personnel, only 112,166 (8%) claim no religious affiliation. ■

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House Bill Allows Religious Discrimination

The U.S. House of Representatives passed an amendment on September 22 that would allow Head Start centers to consider an applicant's religion. Faith-based preschool centers may now hire only people who share their religion and still receive federal tax dollars. Rep. John Boehner Jr. (R-OH) proposed the amendment, and it passed by a vote of 220 to 196. Republicans supported the amendment allowing religious discrimination by 210 to 9, while Democrats opposed it 186-10. (Vermont Independent Bernie Sanders also voted no.) On this vital amendment, 95.9% of Republicans and 5.1% of Democrats were supportive. Republican dissenters were from the Northeast and Midwest, while Democratic dissenters were from the South or Border States.

Launched during the Great Society social legislation of the 1960s, the \$6.8 billion program provides comprehensive education to more than 900,000 poor children. It is universally regarded as a success, though questions about finances and academic quality have been raised from time to time. The program was last reauthorized in 1998. The House reauthorization (H.R. 2123) now includes language allowing religious discrimination in hiring. The companion bill in the Senate (S. 1107) does not include the religious discrimination language.

The final bill, including the Boehner amendment, passed 231 to 184 on September 22. Republicans voted 208-10 (95.4%) in favor, while only 23 of the 196 Democrats voting (11.7%) supported the measure.

The Interfaith Alliance, joined by more than 50 organizations, including ARL, opposed the bill's passage. The National Head Start Asso-

ciation, representing staff and volunteers, urged defeat of the entire bill if the Boehner Amendment passed.

Alliance president Welton Gaddy spoke for the organization: "This amendment will subsidize religious discrimination with tax dollars, turning back civil rights protections that currently apply to nearly 200,000 Head Start teachers and over 1.4 million parent volunteers.

"In the aftermath of Hurricane Katrina, the levees protecting religious liberty are being breached, and the wall between church and state is cracking. If those in Congress who seek to repeal religious liberty safeguards are successful, thousands of children, teachers and parent volunteers who have dedicated themselves to this program could find themselves no longer welcome at religiously-affiliated Head Start programs because they are of a different faith than the sponsoring organization." ■

Congress should reauthorize Head Start, a cornerstone of the nation's anti-poverty efforts. The Senate should strip Boehner's ill-conceived and imprudent amendment from an otherwise significant piece of legislation.

— San Antonio Express-News, September 27, 2005

Discrimination in Head Start

"House Republicans have an alarming plan for Head Start, the early childhood program for some of the nation's most impoverished children and their families: They want to give religious groups that sponsor local Head Start programs license to discriminate by not hiring otherwise qualified individuals who do not share a particular religion.

"Last week, the House voted 220 to 196, mostly along party lines, for this smashing of constitutional and civil rights protections by tagging it onto an otherwise positive Head Start bill that unanimously cleared the House education committee last May. Sponsored by Representative John Boehner, Republican of Ohio, and backed strongly by the White House, the amendment would allow for the purging of caring and effective teachers on the basis of their religion. Parents who subscribed to a different faith than the religiously affiliated sponsor could be disqualified as classroom volunteers.

"This move seems solely designed to placate the Republicans' right-wing base. Many religiously affiliated groups participate in Head Start programs, but they are not among those clamoring for a religious exclusion from the antidiscrimination requirements, which have been part of the program for decades.

"In recent years, the Senate has blocked similar attempts by House Republicans to make discrimination based on religion an official feature of publicly financed programs. In the name of preserving the Constitution, and the successful Head Start program, it must do so again. The program serves fewer than half of all eligible children, so what it needs is more money, not religious discrimination."

— *New York Times*, September 28, 2005

Roberts Confirmed

The Vote

Judge John Roberts Jr. was confirmed as the nation's 17th Chief Justice by the U.S. Senate on September 29. The vote was 78 to 22. Fully half (22 of 44) of the Democrats joined all 55 Republicans and one Independent to confirm Roberts as the successor of the late William Rehnquist.

The overwhelming yes vote carried almost all groups and regions of the country. Even liberal New England's senators voted 9-3 in favor, and the liberal Pacific Coast was divided 5-5. Every Southern senator voted yes, as did virtually all senators from the Rocky Mountain states, the Midwest and the Border region.

Of the 22 Democrats who supported Roberts, 13 came from states that were carried by Bush last November. Only 3 of the 22 Democrats opposing Roberts represented states the president won. This blue state/red state dichotomy is now clearly affecting congressional voting decisions.

Roberts won the approval of a majority of all religious groups. He won 50-8 among Protestants, and 12-8 among Protestant Democrats. He won 16-8 among Catholics, though Catholic Democrats were the only subgroup to oppose Roberts 8-5. Jewish senators voted 7 to 4 in Roberts' favor, as did 5 of 7 Mormons and Greek Orthodox Christians. Unitarian Democrat Byron Dorgan of North Dakota voted yes.

Many liberal Democrats supported Roberts, including Dodd (CT), Feingold (WI), Levin (MI), Murray (WA), Rockefeller (WV), Kohl (WI), and Wyden (OR). But three potential Democratic 2008 presidential candidates, Evan Bayh (IN), Joseph Biden (DE), and Hillary Rodham Clinton (NY) voted no.

States with both senators opposing Roberts were Hawaii, California, New York, New Jersey, Illinois, Maryland and Massachusetts – all Kerry states in 2004.

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Roberts, *continued from page 5*

The liberal disarray was symbolized by the division between *The Washington Post*, which endorsed Roberts' confirmation and then ridiculed the Democrats who voted no, while *The New York Times* made no recommendation. Roberts also got a boost from Justice Ruth Bader Ginsburg, who told an audience shortly before the vote that Roberts was "absolutely right" to refuse to discuss how he would vote on issues likely to come before the Court.

The Hearings

Judge Roberts said, "I have no agenda and I am not an ideologue." He also said that when religion-based questions come before the Court he would "consult the law books, not the Bible." He added that he saw no area in which his personal views would trump the precedents of the law. Repeatedly, he cited the legal principle of *stare decisis*, which generally allows previous decisions to stand unless there is a compelling need to reverse them in light of new circumstances. Roberts said the 19th century decisions upholding slavery and segregation were wrong and should have been overruled, as they eventually were.

But Roberts would not be pinned down on abortion. While acknowledging that a right to privacy was imbedded in the Constitution (he cited the 1965 *Griswold* case affirming birth control for married couples), he did not explicitly affirm support for *Roe v. Wade*, saying that potential future cases would have to be decided on their merits. He did include *Roe v. Wade* and *Planned Parenthood v. Casey* (which upheld *Roe*) as "worthy of respect" under the *stare decisis* rubric. The lack of specificity frustrated some of the Democratic senators on the Judiciary Committee. Senator Joseph Biden (D-DE) said, "We are rolling the dice with you, Judge." Roberts retorted, "I think I should stay away from discussions of particular issues that are likely to come before the court again."

Many abortion rights activists and some pro-choice senators were not satisfied with Roberts' reticence, but conservative "pro-lifers" were also unable to elicit any signals from Roberts that he might prejudice right to life and death issues.

On the all-important question of religion and law, Roberts responded, "My faith and my religious beliefs do not play a role in judging. When it comes to judging, I look to the law books and always have. I don't look to the Bible or any other religious source."

During the confirmation hearings, Roberts repeatedly denied that his Reagan-era memos were necessarily reflective of his views now or even then. ■

The Separation of Church and State

Edited by Forrest Church

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

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One of the most disturbing was Alito's support for a spousal notification requirement in a restrictive Pennsylvania abortion law supported by then-Governor Robert Casey. The U.S. Supreme Court in *Planned Parenthood v. Casey* (1992) struck down this provision. Justice Sandra Day O'Connor joined a 5-4 majority in holding that spousal notification constituted an undue burden.

On a free exercise case, Alito sided with governmental authorities against a religious minority. A local zoning board imposed land-use restrictions on a Hindu temple. The court ruled that the restrictions were arbitrary and thus unconstitutional, but Alito held that they were legitimate.

Alito wrote for the court majority that a holiday display in front of City Hall in Jersey City did not violate the Establishment Clause because it included religious and secular symbols of the Christmas-Hanukkah season. Alito gave local officials the benefit of the doubt because "The Supreme Court's decisions regarding holiday displays have been marked by fine line-drawing, and therefore it is not easy to determine whether the particular displays satisfy the Court's standards." Originally, only a Nativity scene was included, but Hanukkah, Kwanzaa and secular Christmas symbols were added. (*ACLU v. Schundler*, 1999.) Alito also wrote an opinion in which he dismissed a similar suit against the Township of Wall's "holiday" display at a municipal office building. In *ACLU v. Township of Wall*, 2001, Alito found no substantial expenditures of tax funds on the religious portions of the display, but ignored the endorsement of religion.

In 2004 Alito wrote the court's ruling upholding the right of Child Evangelism Fellowship (CEF), a national evangelical Christian group which targets elementary school students for conversion efforts, to distribute its materials in school. Alito concluded that the Stafford Township School District had engaged in viewpoint discrimination by disallowing CEF's distribution efforts and by claiming that the school did not maintain an open forum policy.

Alito wrote the court's ruling that upheld the right of Muslim police officers in Newark to wear beards as part of their religious duties. While no specific religious exemptions were included in departmental policies, the prohibition on wearing beards was held to be a violation of the First Amendment.

Judge Alito's record on church-state issues is mixed, though he shows a predisposition toward accommodationism. People for the American Way's "preliminary review" of his judicial opinions concluded: "Alito's opinions on issues of religion raise real questions about his commitment to the fundamental principle of the separation of church and state. While Alito appears to defend the asserted rights of individuals to freely exercise their faith, he does not appear to be as vigilant when it comes to ensuring that government does not unconstitutionally endorse religion."

On abortion rights, PFAW was adamant: "He has demonstrated hostility toward the principles undergirding a woman's constitutionally protected right to govern her own reproductive choices."

Conservatives and Religious Right groups are enthusiastic in their support for Alito, though his decisions do not indicate agreement with them on every issue. They hope that he will vote to overrule *Roe v. Wade* in some future decision. Charles Lane, writing in the *Washington Post*, said that Alito's "legal reasoning" suggests that he might not find abortion choice to be a constitutionally protected right.

Hearings before the Senate Judiciary Committee are scheduled to begin in January. ■

Religion in the Schools: Updates

The Bible Literacy Project of Fairfax, Virginia, released its new textbook, *The Bible and Its Influence*, in September. The \$2 million project has been five years in development. The massive \$50 book, covering both the Old and New Testaments, can be used for a semester or for a full year course in public schools starting next year. The content was written by 41 contributors who cover the spectrum of Christian, Jewish and secular religious scholarship.

The textbook has received kudos from literary, religious and church-state scholars. Marc Stern, longtime counsel for the American Jewish Congress, said the book “is proof that it is possible to acknowledge and respect deep religious differences and still find common ground.” Evangelical scholar Leland Ryken of Wheaton College called it “a triumph of scholarship and a major publishing event.”

The textbook’s sponsors claim they have followed a 1999 accord, “The Bible and the Public Schools,” a statement of do’s and don’ts prepared by the First Amendment Center and the Bible Literacy Project. That accord was endorsed by seven major educational organizations, as well as by Christian, Jewish and Muslim groups, though many other groups were not consulted.

Co-editor Chuck Stetson said, “The important thing was not to compromise on peoples’ beliefs. Co-editor Cullen Shippe, a retired editor at Macmillan/McGraw Hill, stressed that the new book respected the biblical text, constitutional law, and religious scholarship, and sought to respect divergent faith traditions. (ARL’s Edd Doerr will have a critique of the text in our next issue.)

In Alabama the state education association distributed 50,000 pamphlets to all teachers, stressing an academic, not devotional, approach to religious issues in the classroom. The “Teachers Guide to Religion in Public Schools” and “The Bible and Public Schools” were prepared by the First Amendment Center.

In a few other states, the issue of religion in the school is more contentious. In McCullough County, Texas, Brady High School has offered a year-long course sponsored by the evangelical-oriented National Council on Bible Curriculum in Public Schools. Brady teacher Tracey Kiesling was the nation’s first teacher to offer the program at Brady High a decade ago. The curriculum recently came under fire from the Texas Freedom Network for its serious scholarship lapses and its conservative Protestant bias. Brady School District superintendent Steven McCain dismissed the critique. “We don’t have a problem. There’s nothing to correct,” he told the *San Antonio Express News*. Brady is a small town in the Texas Hill Country, with 37 churches for a population of 5,500. McCulloch County Judge Randy Young called the serious criticism of the curriculum (see VOR 92) the work of “anti-religious outsiders, bent on imposing their views on a God-fearing public.”

In Charles County, Maryland, a conservative school board has moved to ban books deemed offensive to conservative Christians and to impose creationist views in biology classes. A new conservative majority has sought changes in school policies in the fast-growing Southern Maryland county that has become an exurb of Washington, D.C. during the past two decades. The “chairwoman” of the Charles County Board of Education withdrew her own children from the county’s public schools and now homeschools them, using a Christian-based curriculum. Board member Collins Bailey is a homeschooler and a member of the Gideons International missionary group, known for placing Bibles in hotel rooms and schools. A third member, Mark Crawford, is a former teacher in evangelical schools and a one-time host of an evangelical radio program. Last fall the school issued a list of goals, including eliminating science books that are “biased toward evolution,” teaching abstinence-only in sex education classes, and inviting the Gideons to

offer Bibles to students. (The Gideons have run afoul of the law in several states for their aggressive Bible distribution program.)

Many parents and a minority of school board members are opposing these moves. A former board member, Sharon Caniglia, principal of a local Catholic school, expressed her disapproval of the new board’s policies. She told *The Washington Post*, “It is disappointing to see board members promote their personal agendas.”

Finally, Muslim students are seeking greater accommodation for their religious needs in a number of school districts. In Cliffside Park, New Jersey, a Muslim student, Yasmeeen Elsamra, was denied permission to pray quietly at lunch time in 2003. Eventually, school authorities relented and allowed her to pray in an unused room. Paterson, New Jersey, schools allow some students to leave class early on Friday to attend prayers. Paterson also closes schools for the Muslim religious holiday, Eid al-Fitr. Paterson is home to New Jersey’s largest Arab American community. But the Baltimore, Maryland, school board voted unanimously against recognizing Eid as a school holiday early this year.

ARL Joins Brief in New Hampshire Abortion Case

Americans for Religious Liberty has joined the *amicus curiae* brief of the Religious Coalition for Reproductive Choice (RCRC) that seeks U.S. Supreme Court affirmation of the First Circuit Court of Appeals decision involving parental notification in New Hampshire. The New Hampshire Parental Notification Prior to Abortion Act lacks a health exception and an adequate life exception and was declared unconstitutional by the First Circuit. The case, *Ayotte v. Planned Parenthood of Northern New England*, is to be heard by the Supreme Court on November 30.

The RCRC brief stresses both religious freedom and reproductive choice. “All women whose health is at risk should be free to seek the best available medical advice, without governmental coercion or constraint, in making the difficult decision whether and how to terminate a pregnancy. . . . the State of New Hampshire has failed to offer any sufficient justification for legislation that unduly threatens both the physical well-being and the religious convictions of young women.”

The brief stresses the diversity of opinions regarding abortion that are held in many different religions. “Some faiths believe that a woman’s life and health are of paramount importance and that, in some cases an abortion is a religious necessity. . . . Women must be permitted to reflect upon the importance of their own health and lives when they make highly personal, religious decisions about their pregnancies.”

Citing Lutheran, Methodist, Presbyterian and Episcopal resolutions, the brief says, “The New Hampshire Act at issue here is an unconstitutional restriction of the right of women to preserve their own health and life in accordance with the dictates of their faith.”

In summary, “For young women belonging to faiths holding that the availability of abortion is a moral necessity when their health or lives are jeopardized, the Act’s restriction on access to abortion forces them to violate the teachings of their religions. For young women belonging to faiths that encourage consideration of health and life in making a decision in accordance with their religious values, the Act’s elimination of the abortion option in certain circumstances preempts the searching moral reflection by many faith traditions. New Hampshire’s stated interests in support of the Act have no force when a minor’s health or life is at risk. Accordingly, the Act’s restrictions cannot be sustained.” ■

New Poll Claims Democrats Hostile to Religion

An increasing number of voters see the Democratic Party as unfriendly toward religion, according to a national survey released by Pew in September. Several questions elicited an increasingly negative perception of the Democrats. By 44% to 42%, voters said “non-religious liberals hold too much control over the Democratic Party.” On the question of whether the Democratic Party is “generally friendly toward religion,” only 29% agreed, down from 40% a year ago. Those who say the party is “generally unfriendly toward religion” increased from 13% to 20% over the past year. Disturbingly, Independents who thought the Democrats were friendly toward religion declined from 43% to 24%. The poll also found, “People who are the most religious themselves are the most critical of the Democratic Party.”

The Republicans were seen as “generally friendly toward religion” by 55% of voters, almost the same as a year ago.

When asked which party is “more concerned with protecting religious values,” the Republicans won 51% to 28%, with 21% unsure. A higher percentage of young voters (18-29) agreed with this perception than any other age group. Democrats were seen as “more concerned with protecting personal freedom” than Republicans by 52% to 30%.

The Republicans have not escaped hostile scrutiny. By 46% to 43%, voters said “religious conservatives have too much control over the Republican Party,” virtually the same percentage as those who lamented nonreligious liberal influence among Democrats. Needless to say, Democrats and Republicans were more critical of the other party in this regard. Republicans were twice as likely (60% to 30%) to see too much secular influence among Democrats, while Democrats by 57% to 34% were more critical of the influence of religious conservatives in the GOP. Significantly, Independents were more critical of religious conservatives in the GOP than seculars among the Democrats, 54% to 43%.

Religion, education and region were important predictors of attitudes on these questions. For example, Americans are equally divided over whether “conservative Christians have gone too far in trying to impose their religious values on the country,” 45% to 45%. But 60% of college graduates agree compared to only 35% of those whose education ended at high school. Majorities in the West (55% to 35%) and

Whatever one's religion in his private life may be, for the officeholder, nothing takes precedence over his oath to uphold the Constitution and all its parts -- including the First Amendment and the strict separation of church and state.

-- John F. Kennedy, *Look Magazine*, March 3, 1959.

pluralities in the Northeast (48% to 38%) agreed, while a majority of Southerners (52% to 39%) and a plurality of Midwesterners (47% to 41%) disagreed. Not surprisingly, Democrats agreed 57% to 35% while Republicans rejected this view by 65% to 26%. Independents were much closer to Democrats, agreeing 55% to 35%. Liberal Democrats were 83% in agreement, as were only 16% of conservative Republicans. Moderate Democrats and Republicans were also equally divided.

White Catholics were far more likely to endorse this view, 47% to 42%, than white Protestants, who rejected it 58% to 33%. However, mainline Protestants feared conservative Christian influence 50% to 41% while evangelicals, by 70% to 21%, rejected the charge. Black voters were 48% to 40% in agreement that conservative Christians had gone too far, as were secular voters, who agreed 61% to 27%.

But a large majority of those polled, 67% to 28%, endorsed the view that “liberals have gone too far in trying to keep religion out of schools and government.” An enormous 75% of African Americans responded favorably to this statement, as did an equal number of voters with only a high school education or less. Voters across the board, including 57% of college graduates and 56% of Democrats, endorsed this view. Not surprisingly, 87% of white evangelical Protestants and conservative Republicans were critical of liberal positions on church-state issues affecting the role of religion in education and government.

In some related questions, voters were divided on church involvement in politics and in expressions of faith by politicians. About half of voters (51%) think churches should express their views on social and political matters, while 44% believe that religious organizations should stay out of politics. This is roughly the same percentage as recorded in 1996 and 2000. White evangelicals and black Protestants were most favorable of church involvement in politics, while white Catholics, political liberals and voters older than age 65 are most opposed. Those who attend church weekly are far more in favor of church political involvement than those who are rarely or never in attendance.

Only 31% favor the clergy's use of the pulpit to endorse candidates or discuss political issues, while 63% are adamantly opposed. Even 56% of evangelicals say clergy should abstain from political endorsements. “Opinion on this issue has been largely stable over time,” the Pew Poll found.

The percentage of Americans who say that politicians “express faith and prayer” too much has risen from 12% in 2001 to 26% today. But more voters think they do it too little (39%) or about right (27%). President Bush “mentions faith and prayer too much,” say 28% of voters today compared to 14% in 2003. But a majority (52%) feel the chief executive spends the “right amount” of time on public expressions of faith. A majority or plurality of liberals, seculars, and Democrats feel the president emphasizes his personal religious beliefs too much or too often. A growing number of mainline Protestants, political moderates, and women are uncomfortable with Bush's public religiosity. ■

Bill Moyers on ARL Co-Founder Ed Ericson

“A pioneering leader of the American Ethical Union, Edward L. Ericson, whose essays have informed my own journey, once described society as a web of cooperation joining individuals to family, friends, communities, and country, creating in the individual a sense of reliance on the whole, producing the ‘habits of the heart,’ in Robert Bellah's term, that are the bedrock of our social contract. . . . Ericson, among others, insists that social cooperation provides the resilient environment in which American enterprise flourished. . . . Nonetheless, over time, in the making of America individual ‘initiative’ succeeded only when it led to strong systems of mutual support and we learned to move, in Ericson's description, beyond the laissez-faire philosophy of ‘live and let live’ to an active commitment of ‘live and help live’.”

— from *Moyers in America: A Journalist and His Times*, by Bill Moyers (The New Press, 2004)

Abortion Rights: Upheld by Courts, Weakened by Legislatures

Judges in Missouri, Michigan and Arizona recently blocked restrictions on abortion. A federal judge in Missouri halted enforcement of a new state law requiring doctors performing abortions to have clinical privileges at a hospital within a 30-mile radius. It also lets parents sue those who “intentionally cause, aid, or assist” minors in obtaining abortions without parental consent. U.S. District Judge Nanette Laughey ruled on September 16 that the act “threatens an immediate chilling effect on all abortion counseling within Missouri and nearby states.”

On September 12 a federal judge declared Michigan’s “partial-birth” abortion ban unconstitutional because it placed an “undue burden” on a woman’s right to choose and was also confusing and vague.

The Maricopa County (Arizona) Superior Court ruled that it is illegal for Sheriff Joe Arpaio to refuse to take women inmates to medical facilities for elective abortions without first getting a court order. The sheriff said he would appeal the August decision. The ACLU brought the suit and vows to defend it.

But on the state legislative level, the situation is different. South Dakota passed five restrictive laws this year alone, including a “trigger” law that would impose an immediate ban on all abortions if the U.S. Supreme Court overturns *Roe v. Wade*. Georgia, Oklahoma and South Dakota now require women to receive state produced information about abortion before the procedure. Critics charge that much of this information is purposely misleading. South Dakota requires doctors to tell women that “all abortions terminate the life of a whole, separate, unique living human being.” Arkansas, Georgia and Minnesota require women seeking abortions to be informed that a fetus might be able to feel pain during the procedure, though neurobiologists generally agree that a fetus cannot feel pain until after 28 weeks. Kansas requires physicians performing abortions on minors under 14 to retain fetal tissue and send it to the Kansas Bureau of Investigation. Parental notification rules have been expanded in Arkansas and Texas.

Another trend is that many judges in the 18 states that require parental consent for a minor to obtain an abortion are refusing to hear petitions. In Memphis, Tennessee, Judge John McCarroll of the Shelby County Circuit Court told a teenager who was seeking a judicial bypass, “Taking the life of an innocent human being is contrary to the moral order. I could not in good conscience make a finding that would allow the minor to proceed with the abortion.” He recused himself, forcing the girl to seek another judge. McCarroll’s decision prompted a dozen professors of legal ethics to write to the Tennessee Supreme Court in August. “Unwillingness to follow the law is not a legitimate ground for recusal,” wrote signer Helena Silverstein of Lafayette College. Judges in Alabama and Pennsylvania are recusing themselves from abortion bypass petitions. Professor Susan Koniak, a legal ethicist at Boston University said that judges were free to express their disagreement with the law but were not free to decline to enforce it.

On October 17 the U.S. Supreme Court cleared the way for a Missouri prison inmate to have the abortion she requested. A new Missouri policy forbids prisons from “assisting” in abortions, which effectively prohibits transportation to a hospital or clinic. A lower federal court held that the Missouri Department of Corrections must provide transportation for the woman. The state made an emergency appeal to the Supreme Court, and Justice Clarence Thomas, who handles emergency appeals from Missouri, stopped the abortion. He referred the case to his colleagues, who overruled him without a published opinion or recorded vote. The prisoner received the abortion at a Planned Parenthood clinic in St. Louis a few days later.



Church and State in the Courts

U.S. courts are awash with church-state controversies. First, some decisions:

A federal judge in California ruled September 14 that a law requiring recitation of the Pledge of Allegiance in public schools is unconstitutional. Three school districts are affected by the ruling in a case brought by Sacramento resident Michael Newdow on behalf of three families. U.S. District Judge Lawrence Karlton said the words “one nation under God” violate children’s right to be “free from a coercive requirement to affirm God.” He also called the case “a cause celebre in the ongoing struggle as to the role of religion in the civil life of this nation,” though he admitted that his ruling will “satisfy no one involved” in the debate. Karlton said he was bound by precedent since the Ninth Circuit Court of Appeals ruled the pledge unconstitutional in 2002. The U.S. Supreme Court dismissed the case last year on procedural grounds related to Newdow’s lack of standing. The present case involved three parents and their children.

The California ruling conflicts with a Fourth Circuit Court of Appeals ruling in August. That court upheld a Virginia law requiring daily recitation of the Pledge, concluding that the ritual is a patriotic exercise, not a religious affirmation. The Virginia law had been challenged by a Mennonite engineer and father of three whose children attend school in Sterling, Virginia.

When two appellate courts come to different conclusions, a U.S. Supreme Court review is likely.

The New York Times, a strong proponent of church-state separation, criticized the Ninth Circuit ruling. A September 19 editorial concluded: “The phrase ‘under God’ was inserted into the pledge in 1954 in an absurd attempt to link patriotism with religious piety at the height of the anti-Communist mania. It should never have happened.

“But in the half-century since, the phrase has become part of the backdrop of life. It hardly amounts to a prayer and is no more a constitutional violation than the singing of ‘God Bless America’ at the Army-Navy football game. No child is required to say ‘under God’ when reciting the pledge – or even to recite it at all. The court cases trivialize the critical constitutional issue of separation of church and state, and undermine important battles to be fought over prayer in school and the use of public money to support religious activities.”



A federal judge in New York ruled on September 30 that the Salvation Army has the right to prefer employees of its own faith even when the charitable group receives government funding. The decision by U.S. District Judge Sidney Stein dismissed parts of a case filed by former Salvation Army employees who said they were victims of religious discrimination. The case was filed in 2004 against the Salvation Army, the City of New York and the commissioners of several state and local government entities. Stein wrote, “The notion that the Constitution would compel a religious organization contracting with the state to secularize its ranks is untenable in light of the Supreme Court’s recognition that the government may contract with religious organizations for the provision of social services.”

The ruling is widely seen as a victory for the Bush Administration’s faith-based initiatives. An appeal is possible.

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The Eighth U.S. Circuit Court of Appeals invoked the June 27 U.S. Supreme Court rulings in the Ten Commandments case to allow a Commandments display in a Plattsmouth, Nebraska, city park. The monument had been donated to the city in 1966 by the Fraternal Order of Eagles. The ACLU Nebraska Foundation brought suit on behalf of a city resident, and a lower federal court and a panel of the Eighth Circuit agreed that the display was an unconstitutional endorsement of religion. But the full court cited the *Van Orden v. Perry* decision from Texas and concluded that “the Plattsmouth monument makes passive – and permissible – use of the text of the Ten Commandments to acknowledge the role of religion in our nation’s heritage.” Judge Pasco Bowman added that such displays “are replete throughout our country.” Two dissenting judges said the decision “diminishes the sanctity of the Commandments to believers and belies the words themselves.”



A federal appeals court upheld the Mormon Church’s domain over a downtown plaza in Salt Lake City. The ACLU had argued that it was unconstitutional to grant a church police power in a public area. The city bought the disputed area in 1999 and retained some control. The church leaders set speech and behavior guidelines. The appellate court said that public fora could be sold to private groups and denied that the agreement between city and church advanced religion.



The Seventh U.S. Circuit Court of Appeals ruled that Wisconsin prison officials violated the First Amendment by refusing an inmate permission to form a group for atheists and humanists. Judge Diane Wood said on August 19 that the Establishment Clause was violated because the clause “prohibits the government from favoring one religion over another without a legitimate secular reason.”



The U.S. Supreme Court heard oral testimony on the assisted suicide case from Oregon on its first day of deliberations for the fall 2005 term. The case, *Gonzales v. Oregon*, No. 04-623, is the Bush

Commentary on *Gonzales v. Oregon*: “The impact of today’s case will be felt beyond Oregon. The Bush administration’s position has discouraged other states from enacting assisted suicide laws. But the Supreme Court should make clear that Oregon, and all states, have the right to allow terminally ill people to end their lives with a maximum of dignity and a minimum of pain.” (“The Right to Die,” *The New York Times*, October 5, 2005)
“Whatever one thinks of Oregon’s law, it does not violate anyone’s federal constitutional or civil rights; nor does it conflict with federal law unless that law is twisted beyond reasonable recognition. Under such circumstances, the people of Oregon should be entitled to govern themselves.” (“Autonomy for Oregon,” *Washington Post*, October 7, 2005)

Administration’s appeal of a federal appellate decision last year that held Congress did not give the Attorney General the authority to penalize doctors who follow state law in prescribing federally regulated medications. The federal versus state authority question complicates somewhat the underlying issues of the right to die. Oregon law, twice approved by voters, allows terminally ill people to take lethal drugs to end their lives. But then-Attorney General John Ashcroft intervened in 2001 to deny doctors federal prescription privileges if they prescribed lethal doses of lawful medications to terminally ill patients who requested them. Ashcroft ordered the Drug Enforcement Agency to use a federal anti-drug law to prosecute doctors who participated in Oregon’s Death with Dignity Act, which took effect in 1997.

Eight years ago the Supreme Court found that the dying have no constitutional right to doctor-assisted suicide but left room for state experimentation. Justice Sandra Day O’Connor, who was the swing vote in the 5-4 ruling, participated in the *Gonzales* hearing. She tends to support more rights for states in cases of this nature, but she may be replaced before the ruling is handed down. Several justices seemed conflicted. Chief Justice Roberts questioned both lawyers but seemed to indicate a preference for a federal solution. Adding to the difficulty is that the Controlled Substances Act passed by Congress is not directly relevant to the question of doctor-assisted suicide for the gravely ill. And Congress has refused to ban assisted suicide, even after 11 years of Republican control. The practice of medicine has always been a state prerogative.

During its first week, the Supreme Court declined to hear the appeal of a Wiccan priestess who was not allowed to deliver a prayer at government meetings in Chesterfield County, Virginia. (Fourth U.S. Circuit Court of Appeals, *Simpson v. Chesterfield County Board of Supervisors*, No. 05-195). The Court also denied cert in a case in which the Eleventh Circuit Court of Appeals held that the principal of a Florida school had editorial control over school-sponsored speech that was curriculum-based and had the appearance of school endorsement. A parent objected when the principal of Boca Raton Community High School removed her daughter’s religious mural from a school exhibit. (*Bannon v. School District of Palm Beach County*, No. 04-1207.)



On September 28 the Seventh U.S. Court of Appeals held a hearing in a case originating in 2002 in which a woman was removed from a Milwaukee bus after distributing the Bible to fellow passengers. Transit Authority policy forbids the distribution of literature on public buses.



On All Saints Day (November 1) the U.S. Supreme Court heard arguments in a Free Exercise case involving the right of a New Mexico congregation to use hallucinogenic tea in religious ceremonies. The tiny 130-member American branch of a Brazilian church known by its initial U.D.V. considers the consumption of the tea to be a sacred act. Members of the church, which blends Christian beliefs and South American folk religion, consume the tea twice a month at four-hour ceremonies. Since 1999 they have been harassed by federal agents, though two lower federal courts have barred the government from seizing the hoasca tea.

As Thomas Berg explained in the November 1 *Christian Century*, “The case of *Gonzales v. UDV* raises a long-standing question: when a general law enacted for a legitimate purpose, like the drug law, conflicts in a particular case with a religious practice, should the law give way and exempt the practice? The Supreme Court has vacillated on this issue.” Now the Court will have another chance to refine its Free Exercise doctrine, which many legal and religious scholars say has been eroded in recent decisions.

As a consequence, three major religious groups, the American Jewish Committee, the National Conference of Catholic Bishops, and the National Association of Evangelicals, have filed amicus briefs on the church's side. So has Americans for Religious Liberty and a number of civil liberties groups. Ironically, the professedly religion-loving Bush Administration urged the Court to rule against the church, arguing that federal narcotics policy is more important than religious freedom.

Several justices, including O'Connor, Roberts and Breyer, raised questions suggesting that they did not share the administration's views. (The case is *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, No. 04-1084.)



The Second Circuit U.S. Court of Appeals held on October 18 in *Peck v. Baldwinville School District* that a public school erred in 1999 when it prohibited a student from drawing a poster that included a

picture of Jesus. Deposition testimony in the district court trial in 2001 found that school officials censored the poster because of the religious content, a standard they did not apply to secular subjects.



The Child Evangelism Fellowship (CEF) filed an appeal with the Fourth Circuit Court of Appeals on October 19, accusing the Montgomery County, Maryland, school system of refusing to send to parents its advertisements for after-school Bible classes. CEF won a suit in 2004 in the same court, which returned the case to a district court. The school system had prohibited CEF flyers because of their explicit religious nature. Since 2001, when the suit was first filed, Montgomery school officials have refined their policy, allowing only material from schools, public agencies, sports leagues and day care groups to be included in materials sent to parents. Political and religious messages are prohibited. ■



The Voucher Watch

On November 3 the Senate passed by voice vote a \$1.66 billion aid package for public and private schools across the nation that have accepted students displaced by Hurricane Katrina. The bill was added to a larger budget bill after senators rejected, by 68 to 31, a proposal by Senator John Ensign (R-NV) that would have created a school voucher program to channel federal money directly to Gulf Coast private schools.

On October 27 the Education and Workplace Committee of the U.S. House of Representatives rejected, 26-21, a full-scale voucher plan introduced by Rep. John Boehner (R-OH). Four Republicans joined the Democratic minority to defeat the bill.

The Senate-endorsed plan would give the money to public school districts, which would then pay private and parochial schools up to \$6,000 per student for one year (\$7,500 for special education students).

The watered-down version was still criticized by many groups that feared the emergency measure could become a permanent back-door voucher program. Said Joan Schmidt, president of the National School Boards Association, "School board members are disappointed and angered by the U.S. Senate's vote to create what amounts to a national private school voucher program under the guise of emergency hurricane relief for schools."

The Bush administration had originally proposed a massive government subsidy for private and faith-based schools in the Hurricane Katrina relief package. Nearly one-fifth of the total — \$488 million of \$2.6 billion — in education reconstruction funding is earmarked for private, mostly faith-based schools.

Administration officials defended the proposed giveaway because nearly a third (61,000 of 187,000) of student evacuees from Louisiana and Mississippi had been students at religious schools, most of them in the Roman Catholic Archdiocese of New Orleans. The officials, however, have apparently never contemplated the reassignment of these students. The affected area had the highest private school enrollment in the country. There are few private schools in North Louisiana, Texas, or Arkansas, where a majority of evacuees have resettled.

Some Republicans saw the tragedy as a further opening for their voucher advocacy. Rep. Jeff Flake (R-AZ) said, "If we make the decision that federal money will follow the child, we should make it a voucher. That's a Republican principle."

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"It is absolutely proper for the federal government to assist U.S. public schools that take in hurricane Katrina and Rita evacuees. President Bush has proposed spending \$2.6 billion to help educate the estimated 375,000 children whose families fled from their homes just as the new school year started.

"Although the spirit is right, a major provision of the aid plan is questionable. The Bush administration wants \$488 million of the aid package for private school vouchers of about \$7,500 per student. That makes it appear that the administration is using this crisis to advance an idea it could not get through Congress under normal circumstances.

"This is no time to sneak in a major policy change; the president and his majority party should not take advantage of a natural disaster to rush through such a plan. Though there are limited voucher experiments underway in a handful of U.S. cities, including Washington, both Congress and many public opinion polls reject the idea of a national voucher program. Any attempt to direct nearly a half-billion federal dollars to private and religious schools deserves full debate and discussion.

"An estimated 60,000 Katrina kids were private school students before the hurricane hit. But that doesn't mean they should now receive taxpayer dollars for educations they had financed themselves or through scholarships before. Nor should public money be used for students and families who now want to give private school a try.

"Channeling millions to private programs would take much-needed federal help from many already financially strapped public schools. They are the schools equipped and required to accept all students. Private schools, on the other hand, can pick and choose students based on their ability, background or religion. . . .

"Congress should not rush to pass a plan that lacks appropriate funding. Nor should it hurry to approve a program that could lay the groundwork for a full-blown national voucher program. America doesn't need an 'emergency' bill that could evolve into a permanent federal subsidy for nonpublic schools."

— excerpts from an editorial in the *Minneapolis Star Tribune*, October 7, 2005.

Opposition is mounting to the private-school giveaway. Rep. George Miller (D-CA) said, "To launch a new private-school voucher program in the midst of a disaster response creates a quagmire that could hinder rather than expedite the return to school for tens of thousands of students."

The American Association of University Women sent an urgent letter to all U.S. senators, accusing President Bush of "using this tragedy as a platform for advancing a divisive political agenda." The 100,000-member organization added, "AAUW opposes the creation and use of school vouchers in all forms and believes public funds should only be used for public education."

In an investigative report, the *Palm Beach Post* (October 9, 2005) found that at least 43% of Florida religious schools that are funded by vouchers are teaching creationism and are using textbooks produced by two fundamentalist publishing companies, A Beka Books and Bob Jones University. Wrote reporter S.V. Date: "Even though Florida's public school standards require the teaching of evolution and not creationism, millions of dollars in state money goes to teach the story of biblical creation, thanks to the state's voucher programs."

"Schools taking money from any of the state's three voucher programs are not bound by the Sunshine State Standards, which all public schools must follow."

About 75% of the 1,100 participating voucher schools are faith-based. The *Post* found that a widely used eighth grade science text from A Beka refers to "the false philosophy of evolution." A seventh grade Bob Jones science book, *Life Science for Christian Schools*, says, "The Bible contradicts the theory of evolution. In doing so it does not contradict true science, since evolution is not science."

(For an analysis of these textbooks, see *Visions of Reality: What Fundamentalist Schools Teach* by ARL's Al Menendez. Available from ARL for \$10.)

Supporters of vouchers gathered in Charleston, South Carolina, September 28-29, to map strategies for their states. The State Policy Network, based in Richmond, California, coordinates conservative policy objectives in state legislatures. Missouri, South Carolina, Arizona and Utah appear to be the target states for new voucher legislation in 2006.

Brian McGrath, director of programs and state relations at the pro-voucher Freedom Foundation, told *Education Week* that Missouri is the most likely state to pass vouchers. Supported by Republican Gov. Matt Blunt, and with a GOP legislative majority, voucher "scholarship" plans at an initial cost of \$40 million failed this year and will be pushed in 2006. In South Carolina GOP Gov. Mark Sanford will propose a \$4,000 per child reduction in state income taxes for each child enrolled in private schools. Sanford also wants unlimited corporate tax credit scholarships, in which corporations get tax breaks for donations to nonprofit organizations that in turn aid private schools. In Arizona a similar corporate tax credit scholarship plan is given a good chance of passage in the Republican-controlled legislature. Democratic Gov. Janet Napolitano vetoed a similar plan in 2005 but may give in and sign a new bill, according to some observers. In Utah a \$1.4 million scholarship program enabling students with disabilities to transfer to private schools is now law. Voucher advocates want to broaden the program into an open-ended tax-credit scholarship program next year. ■

Visit ARL's Web Site

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

Editorials

William H. Rehnquist

It's not considered nice to speak ill of the dead, but in the case of the late Chief Justice a few comments need to be added to the generally positive obituaries.

An examination of three dozen important Supreme Court cases dealing with religious liberty, church-state and reproductive rights issues in which Mr. Rehnquist wrote either a majority or minority opinion shows that 90% of the time the Chief Justice came down on the side opposed to church-state separation and freedom of conscience. Worse still, Rehnquist went out of his way to sharply attack the line of precedents interpreting the First Amendment handed down by the Court since the *Everson* decision in 1947.

Religious liberty and freedom of conscience are in greater danger now than at any time in our history, especially in the wake of the Court's great precedents in *Everson*, *McCullum*, *Engel*, *Schempp*, *Griswold*, *Roe* and *Doe*, *Lemon*, *Nyquist*, *Meek*, *Grand Rapids*, *Kiryas Joel*, *Epperson*, *Stone v. Graham*, *Williams v. Jaffree*, *Edwards v. Aguillard*, and *Weisman*.

We hope that the new Chief Justice, John Roberts, will help move the Court back in the direction of *Everson*.

—Edd Doerr

New Thinking on Cooperation

Far too many people have been accustomed to visualizing religions and lifescapes in terms of vertical columns: Catholic, Protestant, Mormon, Jew, Muslim, Hindu, Buddhist, humanist, freethinker, pagan, etc. Such simplistic thinking provides serious impediments to social harmony and political clear thinking. It is a roadmap that leads nowhere or in useless circles. Maps are often in error, as Alfred Korzybski noted in his dictum, "the map is not the territory."

For years I have pushed the view that it is more productive to think of these various religions or lifescapes not in terms of monolithic columns but, rather, in terms of complex lateral strata, like geological strata. Strata toward one pole would represent the moderate to liberal to progressive people in all of the "columns," while the strata toward the other pole would represent various conservative, ultraconservative, and fundamentalist people in those columns.

Supporters of church-state separation and religious liberty need to bridge these "columns" if our basic freedoms are to be preserved.

Perhaps the best recent example of the kind of broad cooperation I favor is the statement released in mid-September, "Religious Reflections on the Millennium Development Goals," sponsored by the International Interfaith Network for Development and Reproductive Health (1436 U Street, NW, Washington, DC 20009). The sponsor of the statement is Catholics for a Free Choice.

The statement expressed commitment to inclusion in the Millennium Development Goals at the 2005 UN World Summit in New York, September 14-16, of "universal access to freely chosen reproductive health care services and the human rights noted so eloquently at the 1968 International Conference on Human Rights in Tehran and echoed at the 1994 International conference on Population and Development in Cairo: the right to determine freely and responsibly the number and spacing of children." The statement adds that "promoting reproductive health and rights upholds freedom of thought, conscience, and religion for all members of the human family."

This statement promotes eight specific goals. What is especially interesting is that the signers of the statement represent people from 37

countries on all six continents and at least 17 different religious or life stance traditions. The largest group of signers is from the US, with The Netherlands in second place and 43 from ten Latin American countries and Spain. Catholics make up the largest religious contingent, followed by five dozen assorted mainstream Protestants, two dozen Jews, nine Unitarian Universalists and a sprinkling of Muslims and Hindus.

These eight goals are worth summarizing:

1. *“Eradicate extreme poverty and hunger.”* It decries “great disparities of wealth” and declares, “It is the role of community leaders and policy makers to ensure that women and men have access to information and services to voluntarily, without coercion, choose the size of their families and timing of their births, not only for the economic stability of families and individuals, but also for the health, well-being and spiritual development of their family members.

2. *“Achieve universal primary education.”* Children and youth are the hope for our future and primary education programs should include lessons in peace-building, tolerance and living healthy lives . . . Individuals and communities should learn non-violent approaches to conflict resolution, acceptance of the diversity of family structures and compositions and age-appropriate and comprehensive sexuality education. Early marriage and childbearing can impede girls’ access to education.

3. *“Promote gender equality and empower women.”* For women, it is critical that they have the information and services necessary to plan the timing and number of births so that they have greater opportunities for employment, education, social and political participation and . . . leadership within their religious traditions. All members of society should work to eliminate all forms of violence and discrimination against women and girls.

4. *“Reduce child mortality.”* The health of children often depends on the health and well-being of their mothers. Prenatal care, especially assistance in high-risk pregnancy helps prevent infant and child deaths. Access to adequate nutrition, medicines, education and clean water for both mother and child is essential to reduce both maternal and child mortality. Measures should be taken to eliminate attitudes and practices that are harmful to girls, in particular son preference, which can lead to

prenatal sex selection, female infanticide and the neglect of girls.

5. *“Improve maternal health.”* The world lacks balance and harmony when some 500,000 women die each year from complications of pregnancy, and 99% of these deaths occur in developing countries. Approximately 70,000 women die from complications from unsafe abortion each year, almost all in developing countries. Women must have access to comprehensive reproductive health services and information to prevent unplanned and high-risk pregnancies . . . Unsafe abortion is a public health concern and where abortion is illegal governments and health systems should work together to change their country’s abortion laws and make safe abortion legal and accessible to those women who voluntarily choose to have one.

6. *“Combat HIV/AIDS, malaria, and other diseases.”* Approximately 40 million people are living with HIV/AIDS, almost half of whom are women and girls. . . . HIV, malaria and other diseases increase the risk of complications during pregnancy and childbirth. . . .

7. *“Ensure environmental stewardship.”* There are significant links between ill health – including reproductive ill health – and environmental degradation. . . .

8. *“Develop a global partnership for development.”* An unjust global trade system has resulted in unjust wages and environmental degradation. The world community must demand accountability and livable wages for all. . . . Through global partnerships, high quality commodities such as contraceptives, male and female condoms and antiretroviral drugs can be affordable and made available to those who need them. . . .

“Addressing the Millennium Development Goals [MDGs] through the lens of women’s rights and reproductive health will lead the global community toward building a world that promotes justice, freedom, equality and respect.”

Could there be a more pro-liberty and ecumenical platform than this? It should dispel the notion that fundamentalists like Jerry Falwell, Pat Robertson, James Dobson, D. James Kennedy, Pope Benedict XVI, Rabbi Daniel Lapin, ultraconservative imams, and hordes of likeminded pundits and broadcasters represent the whole religious spectrum.

—Edd Doerr

Update

School Satisfaction Remains High

The 37th consecutive Phi Delta Kappa/Gallup Poll found relatively high satisfaction with U.S. public schools. In the new poll, 24% rate the nation’s schools an A or B, while 48% gave those high marks to schools in their community. The high approval rating rises to 57% when public school parents grade the schools in their community and to 69% when parents grade the school their oldest child attends.

Public opposition to the voucher concept has intensified. On the question, “Do you favor or oppose allowing students and parents to choose a private school to attend at public expense,” responders were opposed 57% to 38%. Last year, opposition was 54% to 42%. The average opposition over the past eight years is 56% to 40%.

Voters endorse reforming the existing public school system over funding alternative schools by 68% to 23%. Support for charter schools has increased slightly from 44% to 49%, but 85% of the public think that charter schools “should be accountable to the state in the way regular public schools are accountable.”

Dr. Lowell C. Rose, PDK poll director, commented on the results: “Another important contribution of the poll results is that they should help to destroy one of the myths surrounding the public schools: that the public schools are losing public support. The trend lines in this poll

suggest the exact opposite. The grades the public assigns the schools remain as high as ever and are truly impressive when public school parents give their evaluation; the public continues to express a strong preference for change through the existing public schools; support for choice shows no sign of increasing and could be said to be lagging; and it is the public schools to which the public turns for closing the achievement gap.”

FEMA to Aid Faith Groups

The Federal Emergency Management Agency (FEMA) announced on September 26 that it will use taxpayer money to reimburse churches and other religious organizations that have aided in the Hurricane relief effort in the Gulf states. This is thought to be the first time the federal government has made large amounts of federal dollars available for faith-based relief efforts in a natural disaster.

FEMA officials said faith-based groups would be eligible for payments only if they operated emergency shelters, food distribution centers or medical facilities at the request of state or local governments in Louisiana, Mississippi, and Alabama. Labor cost, rent and delivery operations would be reimbursed by the federal government.

Not all churches want the aid. Rev. Robert Record, president of the

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Southern Baptist Convention's Mission Board, said, "We would never ask the government to pay for volunteer labor."

FEMA's September 9 memorandum on eligible costs said religious groups would have to document their costs and file for reimbursement from state and local FEMA branches.

On October 18 FEMA announced that it will help rebuild church-related schools, nursing homes and other religious institutions damaged by Hurricane Katrina, but will not pay for reconstruction of buildings used primarily for worship. The announcement came from James Towey, who runs Bush's faith-based initiative office. Towey said disaster aid for religious institutions had changed in 2002 when Bush changed FEMA rules to allow a \$550,000 grant to rebuild a Jewish school in Seattle that had been destroyed by an earthquake. Church-state separationists oppose this policy. Brent Walker, executive director of the Baptist Joint Committee, said, "The government cannot pay to build religious schools and it should not pay to rebuild them. Religious schools at the K-12 level are almost always pervasively religious in the same way that houses of worship are, and for purposes of government funding should be treated the same."

In a Wisconsin appearance on October 20, Towey chided Wisconsin for not having a faith-based state office as do 29 other states.

On October 26 FEMA announced that it intends to give a \$66 million grant to a religious charity, the United Methodist Committee on Relief, to aid families displaced by Hurricane Katrina. The funds come from foreign governments, which donated \$120 million in cash directly to the U.S. government. The United Methodist group intends to hire 600 case managers and a network of 3,000 relief workers. The group's spokesperson, Linda Beher, said there would be no religious orientation in the program. "We don't proselytize," she said.

HHS Suspends Abstinence Group Grant

On August 22, the Bush Administration suspended a \$75,000 federal grant to the Silver Ring Thing, an evangelical group promoting abstinence. The group had been accused of using tax funds to promote religious activities. The ACLU filed suit in federal court in Boston, charging that Silver Ring Thing programs were "permeated with religion" and

that "taxpayer dollars were used to promote religious content, instruction and indoctrination."

Teenagers who graduate from the program sign religious covenants to "keep clear of sexual sin" and pledge "before God Almighty" to remain virgins until marriage. Many of its events are held in evangelical churches.

Apparently, HHS agreed with the plaintiffs, because funds granted this year were revoked. The group had received grants in the past. HHS officials ordered the group to submit a "corrective action plan" if it wanted to receive funds in the future.

Silver Thing's defenders, the Alliance Defense Fund, claimed that religious and secular activities were separate, though its web site indicated that "a secular program is in development." ACLU attorney Julie Sternberg was pleased with the HHS decision. "We're really pleased the government has recognized Silver Ring Thing was misusing public dollars to promote its own faith over all others. It's improper for the federal government to underwrite a national roadshow designed to convert teenagers to a particular faith."

In a related development, researchers at Case Western Reserve University found that an abstinence-only program among 2,000 Ohio middle students had only limited influence on sexual behavior. It did not prevent adolescents from engaging in sexual activity, but it may have reduced the number of sexual partners that sexually active students have in later years. The study was published in the September-October issue of the *American Journal of Health Behavior*.

Robertson Rakes in Cash, Despite Outrageous Comments

Televangelist Pat Robertson's relief organization, Operation Blessing, has received millions of dollars in donations for hurricane relief since it was included on the Federal Emergency Management Agency's list of "charitable" groups. FEMA showed a distinct preference for faith-based relief efforts. Only two non faith-based organizations were included on its website.

This additional largesse to an organization that already had \$66 million came despite Robertson's August comment on his "700 Club" television show that the U.S. should consider assassinating Venezuelan President Hugo Chavez. Robertson suggested that Chavez was a Marxist terrorist and an avowed enemy of the U.S., and said his execution would be desirable for U.S. interests. The comment provoked furor and outrage throughout Latin America, and evangelical missionaries warned of a backlash against evangelicals. One missionary, Kenneth MacHarg of the Latin American Mission in Costa Rica, wrote in the *Christian Science Monitor* on August 25, 2005, "For most evangelical Latin Americans, Robertson isn't their spokesman, nor do his sometimes radical positions represent those of local churches, pastors, or leaders. Latin American churches are raising up their own pastors and leaders who speak strongly about politics and social conditions in their countries, addressing concerns from their own experience and knowledge of their culture with biblical understanding and the support of their church leaders. They don't need a foreign TV evangelist calling for the assassination of their own leaders. How embarrassing!"

Even though Bush distanced himself from Robertson's assassination call, Max Blumenthal reported in *The Nation* (September 19, 2005), "The Bush Administration has studiously overlooked Robertson's misdeeds." In return, "Robertson has served as a willing surrogate for the Administration."

In a related story, Lee Bandy, South Carolina's leading political reporter, wrote in *The State* (Columbia) on September 18, 2005, that Pat Robertson's Christian Coalition is fading fast. "Rocked by financial debt, lawsuits, and the loss of experienced political leaders, the Christian Coalition has become a pale imitation of its once powerful self."

Democracy Under Assault: Theopolitics, Incivility and Violence on the Right

by Michele Swenson

This important, compact, quite readable book could easily have been titled "Everything you might ever want to know about the theopolitical right: personalities, ideologies, agendas, connections, goals, catch phrases, propaganda gimmicks, and methods of operating."

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Bandy's survey said the Coalition "wields influence in only a handful of states – Iowa, Alabama, Texas, Michigan and Florida."

Grand Jury Criticizes Philadelphia Archdiocese

The results of a 3½-year grand jury investigation into cover-ups by diocesan officials of sexual abuse by priests in Philadelphia were released in September. The 671-page report detailed thousands of alleged abuses by 63 priests against young boys and girls.

The grand jury report is based on 40,000 pages of documents turned over by the archdiocese since the grand jury investigation began in May, 2002. The report charges a cover-up by Cardinal John Krol, archbishop of Philadelphia from 1961 to 1988, and his successor, Cardinal Anthony Bevilacqua, who retired in 2003.

Grand jury members expressed disappointment that Pennsylvania's statute of limitations prevented indictments and prosecutions for most of the named offenders. The grand jury considered bringing charges against the archdiocese but could not do so because the church entity is an incorporated association rather than a corporation.

Among the report's findings: "Archdiocese leaders have endangered and harmed children in parishes and schools by keeping known abusers in ministry and transferring discovered abusers to assignments where parents and potential victims are unaware of the priests' sexual behavior."

At a September 21 press conference, District Attorney Lynne Abraham said, "The evidence is clear. This reaches the top – the very top of our archdiocese. . . . Regrettably, the perpetrators of these crimes and the people they protected will never face the penalties they deserve."

Archbishop Justin Rigali issued a 3-page response saying the grand jury's "conclusion is unfounded and does a great disservice to us all." It accused the district attorney's office of "lopsided analysis that reflects a destructive process of colossal proportions aimed not at seeking answers but culminating in a vile, mean-spirited tirade against the Church and the archdiocese." Never answering the charges made in the massive grand jury report, Rigali claimed that the probe "was used as a sword to attack the church and its leaders." He also neglected to mention that there were Catholics on the grand jury.

The Wanderer, a conservative Catholic weekly, said, "The grand jury's report was devastating and humiliating, provoking a deep sense of shame in the face of so much documented evil."

Stem Cell Research Divides State Legislatures

The fiercely anti-abortion and Republican-dominated Missouri legislature cannot make up its mind on Stem Cell Research (SCR) policy. Conservatives, led by Republican state senator Matt Bartle, are trying to block even private funding for research laboratories. The Stowers Institute for medical research in Kansas City has built a \$300 million laboratory and recruited 200 scientists. Some Republicans are trying to block all efforts in that direction.

But Republican moderates and state business leaders have joined Democrats and Independents to support SCR. Even conservative Republican Governor Matt Blunt has indicated his support for some types of research. Polls found that two-thirds of Missourians support SCR, including 52% of Republicans.

Other states are more favorable. Governor Rod Blagojevich (D-IL), set aside \$10 million in his state budget for SCR. The Illinois Catholic Conference denounced the governor, saying he "betrayed his own office, both morally and politically." The New Jersey legislature became the first state to appropriate funds for SCR, in January 2004. In Connecticut the legislature in May created a fund providing \$100 million

Excerpts from an editorial in *The National Catholic Reporter* (October 7, 2005):

The deeply disturbing grand jury report on sexual abuse of children by priests in the Philadelphia archdiocese delves into a prolonged and shocking crisis. It reveals the flaws of the system established to protect children and the related extent of the corruption that has seeped into the church's hierarchical structures.

The Philadelphia report, in an unprecedented way, details the level of deception and misuse of law employed to protect known repeat abusers, including rapists, within the Catholic clergy. The district attorney's office in Philadelphia, with the benefit of more than 45,000 pages of subpoenaed documents and testimony from more than 100 witnesses gathered over a three-year investigation, fashioned a narrative showing a clergy and hierarchical culture so intent on protecting itself that it placed hundreds of children at risk of cruel exploitation.

If this watershed moment in this awful chapter of modern church history passes without dramatic action on the part of church authorities, then we have to wonder how we can continue to call ourselves Christian, or a church. . . .

Clergy sex abuse crisis. The phrase has become part of the language. We have almost become inured to what the words signify.

The Philadelphia grand jury report jars us from numbness. What it makes sickeningly clear is that men entrusted with the highest levels of responsibility in the church, the chief servants of the community, used the institution, its station in society and the state's natural reluctance to interfere in church affairs, to protect criminals who brutalized children. Beginning with the late Cardinal John Krol, the tone was set. "Sexually abusive priests were either left quietly in place or "recycled" to unsuspecting new parishes – vastly expanding the number of children who were abused. "It didn't have to be this way," says the report. The institution could serve no more evil purpose.

The clergy sex abuse scandal required a rarified environment in order to thrive and develop over two decades to its current dimensions within the church. It required that bishops see themselves as princes, autonomous rulers of the realms bequeathed them by Rome, above any rebuke from those under them and entirely free of any requirement for accountability to the larger community.

over ten years for research. California voters passed a \$3 billion bond issue in November 2004 but the distribution has been blocked by lawsuits and legislative opposition.

Navy to Continue Lunch Prayers

The U.S. Naval Academy, the only U.S. military institution that holds formal prayer at lunch, has no intention of halting the practice. Commander Rod Gibbons said on August 31, "We're going to continue our existing practices." The ACLU Foundation of Maryland and the Anti-Defamation League have asked the Navy to discontinue the practice, but have not been able to find plaintiffs for a lawsuit.

Prayers are "nondenominational" or generic, and Protestant, Catholic, and Jewish chaplains say grace at the mandatory lunch for 4,100 students.

At the same time, a Jewish chapel was dedicated at the Academy. The

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\$8 million Commodore Uriah P. Levy Center and Jewish Chapel was financed by two private groups, Friends of the Jewish Chapel and the US. Naval Academy Foundation. The Naval Academy is the last of the major U.S. military academies to provide a separate worship space for its 120 Jewish students. Commander Irving Elson, the Jewish chaplain and one of seven Navy rabbis, said the Navy had come a long way in recognizing religious diversity. Until 1938 Jewish midshipmen had to choose between Catholic and Protestant services. From 1938 until 2005, Jewish services were held at All Faiths Chapel on the Academy grounds. The chapel and fellowship hall were named for Uriah P. Levy, a Jewish naval officer during the War of 1812.

DOE Suspends Bible College Grants

The federal Department of Education suspended \$435,000 in federal funds earmarked for Alaska Christian College. The October 7 decision was prompted by a federal lawsuit filed by the Freedom from Religion Foundation in April. More than \$1 million in federal aid had been appropriated for the tiny (31 students), unaccredited school operated by the Evangelical Covenant Church of Alaska. Remaining unused funds from 2004 are also being suspended.

U.S. Department of Education spokesperson Sally Stroup notified the college that its programs were viewed as pervasively sectarian. "Our review of the College's activities indicated that (1) the College does not have adequate safeguards to separate clearly in time or location inherently religious activities from the secular activities that could properly be supported by the federal funds, and (2) participation by students in the College's religious activities is not voluntary. Moreover, we have concluded that the College has used federal funds for religious purposes. Thus, we do not believe that the College's use of federal funds complies with applicable legal requirements."

Carter Raps Fundamentalism

Former President Jimmy Carter criticized worldwide fundamentalist movements that have infiltrated the world's major religions. Speaking to the assembly of the 100th annual gathering of the Baptist World Alliance in Birmingham, England, in July, the 39th president defined fundamentalism as follows: "I would describe fundamentalism as, first of all, a movement led almost invariably by authoritarian males who consider themselves to be superior to others and who have an overwhelming commitment to subjugate women and to dominate their fellow believers. Second, fundamentalists draw clear distinctions between themselves, the true believers, and others. They are convinced that they are right and that anyone who contradicts them is inferior and beyond the purview of God's full blessing."

"Third, fundamentalists are militant in fighting against any challenge to their beliefs, are often angry and sometimes resort to verbal or even physical abuse against those who oppose the implementation of their agenda. Finally, they tend to make their self-definition narrow, to isolate themselves, to demagogue social and emotional issues and to view change, cooperation, negotiation or other efforts to resolve differences as signs of weakness."



Justice Department Shows Favor to Religions

The U.S. Justice Department has adopted a more aggressive posture on behalf of institutional religion. The Department is investigating Rockaway Township, New Jersey, for alleged mistreatment of Christ Church, which wants to expand its complex despite town restrictions. Land use and zoning questions now occupy 25 investigations mounted by Justice in the last four years. Many of the churches are represented by the Becket Fund in their disputes with local municipalities. In three cases, Justice filed civil rights lawsuits against local governments in Florida, New York and Hawaii. Justice created a special position in 2002 to oversee religious discrimination issues.

At the same time, Justice intervened in a Texas court on September 20 to defend the "sovereign immunity of the Holy See." A lawsuit relating to clergy child abuse was filed in federal court in Houston, naming Pope Benedict XVI as a co-defendant. Assistant U.S. Attorney Peter Keisler, in a filing with U.S. District Court Judge Lee Rosenthal, said allowing the lawsuit to proceed would be "incompatible with the United States' foreign policy interests" and would "invite court intrusion into the internal affairs of the Roman Catholic Church." A lawyer for one of the plaintiffs, Daniel Shea, said that he planned to challenge the constitutionality of U.S. diplomatic recognition of the Holy See.

Religion Affects Foreign Policy Views

Church attendance plays a major role in shaping the attitudes of Americans to foreign policy, according to a Public Agenda survey. Writing in the September/October issue of *Foreign Affairs*, Public Agenda chairman Daniel Yankelovich said: "People who regularly attend religious services are confident about the success of U.S. policies in Iraq and express low levels of worry about casualties or costs, they are optimistic about Washington's commitment to helping other nations democratize, they are comfortable with the United States' diplomatic relations, they are satisfied that the United States is fully living up to its moral ideals and is conducting its foreign policy in a humanitarian spirit, and they are largely unconcerned about threats to their civil liberties. The convergence of opinions is so clear, in fact, that on some issues, frequent attendance at religious services has become a proxy for support of U.S. foreign policy."

People who attend church "frequently" are 20-25% more supportive of U.S. foreign policy under Bush than are those who never attend religious services.

Senate to Take Up Hiring Discrimination

In the wake of a favorable federal court decision upholding the right of the Salvation Army to hire only religiously compatible employees, a Senate Republican is seeking to apply this to Head Start reauthorization. Sen. Mike Enzi (R-WY) said in October that he will add an amendment allowing all faith-based organizations to employ a religiously homogeneous staff when the Head Start bill reaches the Senate. Enzi is chairman of the Senate Health Committee and sponsor of the Head Start bill. The House has approved legislation allowing faith-based organizations to hire only their own co-religionists while receiving public money but the Senate has refused to do so. Stanley Carlson-Thies, a director of the Center for Public Justice, said the Salvation Army ruling may be appealed. "The story isn't over yet," he added. (*See article on page 5.*)

Christian Coalition Still Favors GOP

The Christian Coalition of Maryland issued its 2005 scorecard on the General Assembly. Lawmakers were rated on “homosexual or traditional marriage issues, pro-life and religious freedom issues.” It’s no surprise that 44 Democrats received a 0 and 34 Republicans a 100 rating, indicating whether they agreed with the Coalition’s positions. Republicans averaged 92% in the House and 93% in the Senate, while Democratic legislators scored 22% in the House and 18% in the Senate.

Conservatives Launch Campaign to Save Christmas

The Liberty Counsel, a Florida-based Religious Right legal group, and the Christian Education Association International (CEAI) announced a new campaign to preserve Christmas activities in public schools, including those of a religious nature. The groups are careful to say that they want religious themes included along with secular celebrations, not in place of them. For the past three years Liberty Counsel has challenged school districts that censor or ban Christmas activities. Finn Laursen, executive director of CEAI, said, “Christmas is not constitutionally taboo in public schools or in public places.” Liberty Counsel president Mathew Staver said, “We intend to stop the Grinch from stealing Christmas.”

International

Baghdad: The October 15 referendum approval of Iraq’s new constitution leaves many religious liberty and women’s rights groups worried. Article 2 states that “Islam is the official religion of the state” and “is a fundamental source of legislation.” Some observers felt that inclusion of the word “fundamental” could lead to more Islamic influence on legislative matters. Furthermore, Article 2 requires that “no law may be enacted that contradicts the established provisions of Islam.”

Article 39 implies that marriage, child custody, alimony and inheritance disputes could be resolved by religious courts. Paul Marshall, senior fellow at the Freedom House Center for Religious Freedom in Washington, DC, observed, “People could be forced into a legal status dictated by a religious group whether they wanted to or not, and their individual religious freedom could be undercut, especially since many interpretations of *Sharia* give one set of rights for Muslim men, another for Muslim women, and quite another for non-Muslims.”

Another provision in Article 2 says, “This constitution shall guarantee the Islamic identity of the majority of the Iraqi people and shall guarantee the full religious rights of all individuals in the freedom of belief and religious practice to the followers of the Christian, Yazidis and Mandi Sabean religions.” Nothing is said about Jews or Bahais. Writes Marshall in *Christianity Today* (October 2005): “These provisions can further reinforce the second-class status of Iraq’s already beleaguered Christian community, now roughly 3% of the population and rapidly shrinking.”

Dublin: In October the Irish government released the 271-page Ferns Inquiry Report, an in-depth study of Catholic clergy sexual abuse of minors (boys and girls) in the southeast diocese of Ferns (one of the country’s 26 dioceses) and the calculated cover-up by police, health officials, and bishops. The entire report may be accessed on the Internet at bishopaccountability.org. The web site also includes a veritable treasure trove of reports of Attorneys General, grand juries, and organizations, together with church documents, databases, articles, and print media articles on the subject.

ARL in Action

The University of Nebraska at Kearney College of Education has included Edd Doerr’s article “Religion and Public Education” (published originally in the *Phi Delta Kappan* in November 1998) in the new textbook for its introductory teacher education course.

The University of Minnesota has published a new book of readings for an anthropology course. The chapter “When Does Life Begin? A Cross-Cultural Perspective on the Personhood of Fetuses and Young Children,” by anthropologist Lynn M. Morgan, is from ARL’s 1990 book, *Abortion Rights and Fetal Personhood*, edited by Edd Doerr and James W. Prescott.

Doerr has recently addressed audiences in Virginia and Maryland.

London: The *London Sunday Telegraph* reported in August that the government is planning to create 150 state-funded Muslim schools, partly to prevent extremist groups from co-opting the education of Muslim children. At present there are only five Muslim schools within the state sector. Of the 14,000 state primary and secondary schools in England and Wales, nearly half are faith-based. About 4,600 are maintained by the Church of England, while 2,100 are Roman Catholic, 31 are Jewish, two are Sikh and a handful are under Methodist or other Protestant Christian auspices.

Oslo: Moves are afoot to revise Section 12 of the Norwegian Constitution, which requires that a majority of Cabinet ministers be members of the Evangelical Lutheran Church, the State Church. The Helsinki Committee urged the change, according to the *Rationalist International* (October 12, 2005).

Paris: France’s Interior Minister and probable 2007 presidential candidate, Nicholas Sarkozy, has urged “reform” of the nation’s 100-year-old separation of church and state law. He urged the government to pay for mosque construction, hoping to minimize foreign Islamic influence. But French law strictly forbids state payment for the building of houses of worship (except in Alsace-Lorraine, where the 1802 Concordat between Napoleon and the Vatican remains in effect). President Jacques Chirac opposes any tampering with separation, which he has called “one of the pillars of the temple.”

The Hague: The chief prosecutor of the UN War Crimes Tribunal accused the Vatican of hindering the search for a Croatian general wanted for alleged war crimes in Yugoslavia during the 1991-95 war. Carla Del Ponte told the *London Daily Telegraph* in September that Croatian general Ante Gotovina, a wanted fugitive, was hiding in a Croatian monastery. “The Vatican refuses totally to cooperate with us,” she said. Gotovina has been in hiding since 2001. Vatican press officer Joaquin Navarro-Valls said Del Ponte had provided insufficient information to enable the church to locate the man accused of overseeing the murder of 150 Serbs in Croatia during the Balkan conflict. He is the top-ranking Croat being sought by the International Criminal Tribunal for the former Yugoslavia for crimes committed in the Krajina region of present-day Croatia. This refusal to cooperate is hindering Croatia’s request for membership in the European Union. Talks on Croatia’s admission have been suspended, though Gotovina is considered a war hero in Croatia.

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Tokyo: The Osaka High Court ruled on September 30 that Prime Minister Junichiro Koizumi's visit to a Shinto shrine violated Japan's constitutionally mandated separation of religion and state. Koizumi has visited the Yasukuni Shrine, which honors Japan's war dead, including those hanged for war crimes in World War II. But the Tokyo High Court dismissed a similar suit a few days before. The Osaka case was brought by 188 plaintiffs, a majority of them from Taiwan, a former Japanese colony.

Toronto: Ontario's provincial government announced in September that Muslim Sharia law would not be introduced to settle family disputes. Premier Dalton McGuinty also said his government would move to ban existing religious tribunals that were in effect for some Christians and Jews. Divorce and inheritance disputes had been settled in religious arbitration courts. "There will be one law for all Ontarians," the premier told the Canadian Press news agency on September 11.

The militant rhetoric of holy war echoes around the globe and, sadly, from the precincts and pews of our own country. . . . Make no mistake about it. The language of religion has been placed at the service of a partisan agenda. God is being invoked to undermine safeguards for public health and the environment, to demonize political opponents, to censor textbooks, to ostracize 'the other,' to end public funding for the arts, to cut taxes on the rich, to misinform and mislead voters.

— Bill Moyers, address prepared for July 2, 2005, at the American Baptist Biennial Conference, at which Moyers received the Lifetime Achievement Award. Because of illness, Moyers's acceptance speech was read by his friend, James M. Dunn, former director of the Baptist Joint Committee.

Books and Culture

Franklin, Jefferson & Madison: On Religion and the State, by Gregory Schaaf, CIAC Press, Santa Fe, 232 pp., 2004, \$27.95.

For three decades Religious Right extremists have been attacking church-state separation and freedom of conscience in torrents of books, on well over a thousand church-owned radio and television stations, through ultraconservative talk show hosts and syndicated columnists, well-heeled think tanks and foundations, fundamentalist colleges and periodicals, ultraconservative pulpits, the courts, and "secular" political allies from 1600 Pennsylvania Avenue down to school boards. One of their strategies is to spread the notions that the U.S. is a "Christian" nation and that the Founders never intended to separate religion and government.

Historian Gregory Schaaf's new book provides a needed antidote to this poisonous brew. Franklin, Jefferson and Madison were the three most important intellectual leaders in the founding of the American republic.

As for personal religious views, Franklin and Jefferson were Deists, though as politicians they knew how far this could go in revealing their innermost thoughts, unlike Thomas Paine. Madison was a lifelong Episcopalian, though he kept his religious views to himself. All three had early family members who had personally been affected by religious persecution. Jefferson, like Franklin, believed that Jesus was a great teacher, believing in uniting humanity, "gathering all in one family under the bonds of love, charity, peace, common wants and common aids." Jefferson, then, was more of a follower of the Jesus of the Sermon on the Mount than such latter day religious extremists as Pat (let's rub out Hugo Chavez) Robertson or Jerry Falwell.

Franklin and Jefferson had little regard for the clergy of their time, though Franklin respected people of all religious persuasions. Early on Franklin declared that a "virtuous heretic shall be saved before a wicked Christian."

Franklin, the least well known as a church-state separationist of the great triumvirate, came out strongly against public funds going to religious groups. He believed, as Schaaf puts it, that "the fleecing of the people's pockets under the auspices of public charity would be an act of hypocrisy." As early as 1754, in *Poor Richard's Almanack*, Franklin wrote, "When a religion is good, I conceive it will support itself; and when it does not support itself, and God does not care to support it, so that its

professors are obliged to call for the help of the civil power, 'tis a sign, I apprehend, of its being a bad one." Hark well, politicians of today.

Franklin, readily acknowledging the bloody history of intolerance and persecution, offered this sound advice: "We should . . . cease to reproach each other with what was done by our ancestors, but judge of the present character of sects or churches by their present conduct only."

Schaaf details the well known views of Jefferson and Madison on religious freedom and church-state separation, which we need not summarize here, but concludes that the Supreme Court got it exactly right in the 1947 *Everson* ruling that the men who designed our form of government were strict separationists, not "accommodationists" like Justices Rehnquist, Scalia, and Thomas.

— Edd Doerr

The Making of the Pope 2005, by Andrew M. Greeley, Little, Brown and Company, 254 pp., \$23.95.

Andrew Greeley, the priest-sociologist and novelist, relishes his role as an *enfant terrible*. He is in rare form in this assessment of the conclave which elected Benedict XVI and the events leading up to it. It is written in the style of his earlier *The Making of the Popes 1978*.

His basic argument, repeated often, is that the leadership of the church he loves and has served as a priest for 50 years is corrupt and out of touch with the real world. A supporter of the reforms initiated by the Second Vatican Council (1962-65), Greeley is "angry because the Church has blown one of the best chances it's had in a millennium. . . . The Church had suddenly become open, vibrant and alive — far from perfect, but closer to what it ought to be and could have been for a long time if it weren't for the narrowness, fear, and timidity of its leadership."

The sexual abuse scandal does not escape his notice. "American Catholics will have to pick up the tab (perhaps eventually \$1 billion) one way or another for the episcopal incompetence and malfeasance in office. It is not fair, it is not right. In the Catholic Church, as it is now constituted, that's simply the way it is. Just as at one time we could not replace abusing priests, so now we cannot replace the bishops who created the abuse crisis."

He also bluntly says, "By the end of John Paul's papacy, the Institutional Church in the U.S. was in chaos and close to collapse."

While Greeley is not enthusiastic about Benedict XVI, he sees the

election as inevitable given the forces now in control of the church's leadership. But he thinks the new pope should be given a chance to define his papacy.

—Al Menendez

The Republican War on Science, by Chris Mooney, Basic Books, 342 pp, \$24.95.

This exhaustive and comprehensive overview of a little-discussed topic is an eye-opener. Based on hundreds of interviews, thorough research and buttressed with over 60 pages of end notes, this study demonstrates "how cultural conservatives have disregarded, distorted, and abused science on the issues of evolution, embryonic stem cell research, the relation of abortion to health risks for women, and sex education."

That's not all. "Today's pseudo-conservatives have captured at least a major portion, if not the central mechanism, of the Republican Party and largely control the Bush Administration." The result has been detrimental to the importance of sound scientific thinking in the formulation of public policy. Science has become "politicized" by these forces, says the author, a journalist who specializes in the often troubled relation between science and politics. No wonder that 48 Nobel laureates in the sciences endorsed the Kerry-Edwards ticket last November. While the entire Republican Party is not guilty of all of the excesses, it is noteworthy that Richard Nixon fired his scientific advisers and that the Reagan and both Bush Administrations have ignored the consensus opinion of the scientific community on a host of vital issues.

It is not only religious conservatism that comes into play, says Mooney. "The Right has a strong track record of deliberately attempting to undermine scientific work that might threaten the economic interests of private industry."

Mooney praises the Union of Concerned Scientists and the National Center for Science Education. He also calls for the restoration of the Congressional Office of Technology Assessment and "safeguarding scientific advisory committees" as ways to counter the anti-science trends in U.S. public life. His conclusions should be heeded:

"The advent of the modern conservative movement, its takeover of the Republican Party, and its ultimate triumph under the administration of George W. Bush have brought us to a point where a true divorce between democratic government and technocratic expertise seems conceivable. In this context and considering its track record, we have no choice but to politically oppose the anti-science right wing of the Republican Party. This does not necessarily entail an outright partisan agenda. Encouraging the electoral success of Republican moderates with good credentials on science could potentially have just as constructive an effect as backing Democrats. But if we care about science and believe that it should play a crucial role in decisions about our future, we must steadfastly oppose further political gains by the modern Right. This political movement has patently demonstrated that it will not defend the integrity of science in any case in which science runs afoul of its core political constituencies. In so doing, it has ceded any right to govern a technologically advanced and sophisticated nation."

This is a provocative, indeed excellent, book.

—Al Menendez

Religion and Public Life in the Pacific Region, edited by Wade Clark Roof and Mark Silk, AltaMira Press, 202 pp., \$19.95.

California, Nevada, and Hawaii, the three states in the "Pacific Region," are noted for substantial numbers of religiously unaffiliated persons, individuals belonging to New Age religious movements and to faith traditions outside the Judeo-Christian axis, and to many traditional ethnic Catholic communities. Buddhism is strong in Hawaii, as

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are Filipino and Portuguese Catholic communities. California is multi-ethnic, though the Hispanic/Latino sector is fast becoming dominant. Mormons are influential in California and Nevada. Basque Catholics are strong in Nevada. (Former senator and governor Paul Laxalt hailed from this background.) Jews and mainline Protestants have pockets of strength. Congregationalist missionaries influenced the development of Hawaiian history.

An indisputable feature of life in this region is, says Wade Clark Roof, "a fluid environment." Population growth has been enormous since World War II, and change is constant. Religious innovations and new religious movements are widespread.

Editor Roof, professor at the University of California at Santa Barbara, summarizes the dynamics of politics and religion this way: "There are more religious denominations, sectarian groups split off from world religions, and new spiritual and therapeutic movements here than anywhere else in the United States. And yet, the region has a distinctively secular ethos. It has a lasting legacy shaped by a frontier heritage with its individualism, free thinking, and religious indifference. And religion has had no option but to adapt to this pervasive secular ethos. . . . For this reason, Christianity has simply not had the influence here that it enjoyed in most other regions of the country. Its lack of imprint on the culture is evident in its weak hold upon major social institutions. Bible reading in the public schools, for example, was never as pronounced on the West Coast as elsewhere in the United States. Religion in the Pacific region – as for the West Coast generally – continues to have far less of a constraining public presence."

—Al Menendez

A Defining Moment: The Presidential Election of 2004, edited by William Crotty, M.E. Sharpe, Inc., 268 pp., \$15.95.

This anthology of eleven essays by prominent political scientists covers every aspect of the 2004 election. John Kenneth White argues that it was "the Armageddon election" because both parties mobilized their respective bases and because activists and even two-thirds of the voters saw this as a crucial, critical and consequential election that might chart the country's future. Because of this polarization, "The result is a form of political entrapment in which the presidency becomes a partisan office once more."

Both parties expanded their bases and virtually ignored the center. Writes Jerome Mileur, "Republican success since the 1960s was achieved

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Books and Culture, *continued from page 19*

by displacing the economic and class-based electoral cleavage of the liberal New Deal party system and replacing it with one centered in social and cultural issues.”

Most of these specialists agree that religion was an important factor shaping the votes of millions, but was not decisive.

— Al Menendez

Using Terri: The Religious Right's Conspiracy to Take Away Our Rights, by Jon B. Eisenberg, Harper San Francisco, 275 pp., \$24.95.

This is an angry book by an insider who observed the Religious Right juggernaut in action. California attorney Eisenberg, one of Michael Schiavo's legal advisers, tells the whole sad and sordid tale of that prolonged case, culminating in its capture for propaganda purposes by the far right.

More importantly, the author reflects on the tragic case's meaning for religious liberty and medical ethics in America. The right of personal autonomy in medical, ethical and moral decision-making is under threat from well-financed theocrats who will stop at nothing to impose their will on American law. The Schiavo case is “a wake-up call for America” because it reveals “how far the culture warriors would go” in their relentless and arrogant desire to make certain that only their values will shape U.S. law. “They took America to the edge of constitutional crisis.”

He criticizes the “hypocrisy of Republican politicians” and the “collusion and cowardice by Democrats in Congress who did nothing to stop the national debacle that the Schiavo case became.”

The only heroes were “twenty judges from the US. District Court, the U.S. Court of Appeals, and the U.S. Supreme Court who saved America's judicial branch of government from efforts to make it subservient to the legislative and executive branches.”

— Al Menendez

A Place for Peace, by Colin Murphy and Lynne Adair, Liffey Press (Dublin), 198 pp. Available in the U.S. from Dufour Editions, 1-800-869-5677 at \$24.95.

Seventy Irish and British citizens, from politicians to ex-paramilitaries to church leaders, tell the remarkable story of the Glentree Centre for Reconciliation. Since 1974 the Centre has resisted sectarianism, segregated schooling, and religiously-inspired violence to bring the peace process to fruition.

— Al Menendez

It Takes a Family: Conservatism and the Common Good, by Rick Santorum, ISI Books, 448 pp., \$25.00.

Pennsylvania's junior senator has fashioned a predictable screed, decrying “the rule of judges” and “the coarsening of society” but hailing “faith-based transformations of society.” Like many classical conservatives, he argues that “virtue” is essential to liberty, and that religion and government should work in partnership to create a virtuous society.

While Santorum tries to appear balanced, he is unconvincing. On abortion, he sees no ambiguity. Nor does he recognize the legitimacy of the pro-choice position. “No discussion of moral capital and its effect on our moral ecology and the family is complete without addressing directly the great moral issue of our time. Abortion is a toxin methodically polluting our fragile moral ecosystems. It poisons everyone it touches.”

He also calls public schools “a values-free zone” and endorses “Intelligent Design,” claiming without any proof that “many scientists aren't buying full-blown Darwinism anymore.”

He sees nothing good about modern society. “Our welfare system was successful at nothing except maintaining poverty.” If so, why did the Great Society reforms of LBJ greatly reduce the percentage of Americans living in poverty? (The poverty rate has increased during each of the last four years while George W. Bush has been president.)

Santorum claims that “religious liberty here in the U.S. and around the world is a passion of mine.” His views, though, on charitable choice, bioethics, abortion law, religious neutrality by the state and religious activities in public schools suggest that he really does not understand the nature of religious freedom.

— Al Menendez

Jesus is Not a Republican: The Religious Right's War on America, edited by Clint Willis and Nate Hardcastle, Thunder's Mouth Press, 335 pp., \$15.95.

This anthology includes 33 essays and articles, some of them appearing here for the first time. Most are well written and hard-hitting, and almost all deal with the George W. Bush presidency. There is not much historical perspective, except for Rob Boston's eloquent essay on James Madison. Among the authors included are Jim Wallis, Frank Rich and Bill Moyers. The book is as much a celebration of the Religious Left as it is a defense of the constitutional principles of church-state separation and religious neutrality by government. “By most accounts, Jesus was in favor of social justice, peace and compassion. Right-wing radicals, including the social conservatives allied with the Republican Party, exploit the name of Jesus to support policies that lead to injustice, war and cruelty.”

— Al Menendez

America and the Challenges of Religious Diversity, by Robert Wuthnow, Princeton University Press, 391 pp., \$29.95.

Robert Wuthnow, director of the Center for the Study of Religion at Princeton University, argues that Americans are ambivalent about religious pluralism and diversity. Drawing on a new national survey, as well as numerous interviews, he classifies most Americans into three large categories: “Christian exclusivists,” who emphasize the primacy of their faith and believe it to be superior to all others; “Christian inclusivists,” whose loyalty to Christianity is modified by contact with the growing religious diversity in which they live; and “Spiritual Shoppers” who celebrate pluralism and often borrow from different religious traditions in formulating their own lifestyles. These categories are “three ways of responding to the new religious and cultural diversity that now characterizes our society.” These categories include individuals from all Christian denominations. Not surprisingly, though, evangelicals are most

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likely to be exclusivists, while Roman Catholics are mostly inclusivists or spiritual shoppers. Exclusivists attend church far more often than the other groups, are slightly older, and slightly below average in education. They are more likely to live in the South, in small towns or rural areas, and to be women. Spiritual Shoppers are the youngest, best educated group, more urban-suburban, more likely to live in the Northeast or West, and more likely to have traveled or lived outside the U.S. (Interestingly, the least well-educated are the Inclusivists.)

Of the 2,910 respondents in the Religion and Diversity Survey, almost 35% were Christian Exclusivists, 31% were Spiritual Shoppers, 23% were Christian Inclusivists, and 11% didn't fit in anywhere (some were adherents of other religious traditions and some were thoroughly secular or had no interest in any religion). Christian Exclusivists were most likely to agree that "The U.S. was founded on Christian principles," "America has been strong because of its faith in God," and "The public schools should teach children the Ten Commandments."

The Exclusivists also thought "the American way of life" was superior to all others, and were less likely than the others to agree that "religious diversity has been good for America." Wuthnow concludes that "Pluralism and religious practices are intertwined" because "how people think about pluralism is influenced by their religious convictions." Contact with others also shapes attitudes. Awareness of religious differences "is probably greater among rank-and-file Americans now than in the past because of mass communications, immigration, and our nation's role in the global economy."

Wuthnow points out a dilemma, "Putting tolerance into practice is more difficult than ascribing to it as an ideal." He cites data that "32% of American Hindus and 27% of American Muslims said they had experienced discrimination or were personally acquainted with someone who had."

Wuthnow, who calls himself "a humanistically-oriented social scientist," is the dean of U.S. religious sociologists, and his challenging new book confirms that position.

— Al Menendez

How the Republicans Stole Christmas, by Bill Press, Doubleday, 276 pp., \$23.95.

Media personality Bill Press is a partisan Democrat. He is also a religious person who is adamant in his belief that the Republicans have co-opted moral and social issues for political gain, and the Democrats have largely ceded the high moral ground to the GOP. He laments this course of events. As a practicing Catholic and former seminarian, he is able to address religious issues because he knows the language and the context in which religious formulations are made.

His basic posture is relatively simple: "Faith and politics are not incompatible . . . but they can never be one and the same." Press is a great believer in the separation of church and state and its importance to the preservation of democracy.

Press elaborates: "The separation of church and state is responsible for the vibrant health of religion in this country. To mix the two – either by letting one religion or sect dictate political decision making, or by letting government dictate religious decision making – would be disastrous for both sides of the equation, and would undermine the very foundations of this great nation."

He argues, "Without the separation of church and state, churches could not have had such a major impact on American political reform . . . which is why today's African-American ministers should reflect on their proud past before rushing to pocket George W. Bush's 'faith-based' dollars. They could be kissing good-bye their freedom to protest and work for prophetic change."

Press says that religious people could use a little more humility and reflection. "Religion is a means of understanding the world, not the end

Pledge Ruling Could Have Shredded First Amendment

Your October 12 editorial, "Underwhelmed Over Pledge Debate," was pretty much on target. Shortly before Michael Newdow argued his Pledge challenge before the Supreme Court in 2004, he and I were involved in an ACLU-sponsored debate at the University of Maryland. I made the point that he was probably right that insertion of "Under God" in the Pledge of Allegiance in 1954 was unconstitutional.

However, I hastened to add that if Newdow won his case there would surely be an unstoppable amendment to the Constitution that would shred the First Amendment and set church-state separation and religious freedom back centuries. And if he lost, the ruling would have been written by either Chief Justice William Rehnquist or Justice Clarence Thomas and the result would have been just as bad.

Fortunately, the Court dismissed the case for Newdow's lack of standing.

As you wisely point out, such quixotic tilting at windmills can only distract attention from really serious threats to religious freedom and church-state separation, such as the effort to introduce religious doctrine in science classes, the endless campaign to have government force all taxpayers to support discriminatory faith-based schools through school vouchers, and the equally endless drive to restrict the freedom of conscience of women in dealing with problem pregnancies.

— Edd Doerr, President, Americans for Religious Liberty, *DC Examiner*, October 17, 2005.

of understanding. Religion is always processed through a human filter. In other words, not all people of faith will come to the same political conclusions. Not even all members of the same church will come to the same political conclusions. Beware, indeed, the politician who professes to know God's position on any issue. There is nothing more dangerous, and no one less trustworthy."

Press urges his fellow Democrats "to reclaim the moral high ground that is rightfully ours" without being phony or obstreperous. Democrats must also recognize that "for many voters spiritual or cultural concerns are more important than material concerns." But Democrats should emphasize the broad-based values that transcend religious divisions, like responsibility for the disadvantaged, fairness and equality, expanding vistas of opportunity for all citizens, cooperation and honesty in government. Health care, poverty and war are the issues that great visionaries have addressed through the centuries, not insular, sectarian concerns like school prayer, abortion and gay rights.

Press oversimplifies a bit when he says, "The true battle is between religious conservatives and religious liberals." Not all voters fit into such neat categories, and secular voters certainly have a right to communicate their views of a just society without religious packaging. Some categories overlap. Some religious conservatives are political liberals. But the thrust of Press's argument is valid. The Republicans have packaged themselves as the only acceptable religious party when, in fact, they represent only one school of thought in religious matters. On abortion, for example, Press affirms: "Religion dictates no one position on abortion. In the end, abortion is one issue on which Christians, Jews, Muslims, believers and nonbelievers can and will disagree. It is a woman's decision to make. It is not a decision that should be dictated by government."

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Press is a little hard on John Kerry, suggesting that the last Democratic nominee should have discussed his religious values more openly. “Whatever the reasons, Kerry’s reluctance to acknowledge his faith, or flavor his speeches with a touch of religion, certainly hurt him in the 2004 election.”

As a result, “George W. Bush, the man who talked about God all the time, won even though his policies on war, taxes, health care, poverty and the environment contradict everything Jesus teaches us in the New Testament.”

Press summarizes his views succinctly: “1. Let one’s faith guide and inspire political decisions. . . . 2. Religion and politics must still remain two separate realms. 3. Politics can’t be used to force religion on anybody else.”

This book will, or should, stimulate discussion on these vitally important issues. If it does that, it will have succeeded as a contribution to healthy political debate in this sharply divided country.

—*Al Menendez*

The War on Christmas, by John Gibson, Sentinel, 186 pp., \$24.95.

This may be the silliest, most shallow and superficial book I have ever reviewed in more than three decades of book reviewing. Anyone who seriously believes that there is a dastardly plot to ban Christmas in the United States either lives in an alternate universe or doesn’t go to shopping malls or listen to music during the last eight weeks of each year.

In the interest of full disclosure, I must admit that Gibson, a Fox News Channel personality, interviewed me last summer and, in this book, praised my 1996 book *The December Wars* as a “fine book of Christmas scholarship.” I wish I could return the favor, but in all conscience I cannot.

Basically, Gibson describes seven incidents from last year in which overzealous bureaucrats or school administrators tried to ban Christmas music or trees or even the term “Christmas holidays” from public places. This hardly constitutes a massive plot by secularists bent on destroying

a popular holiday. Admittedly, some of these trivial cases were embarrassing. Christmas is, after all, a national legal holiday in the U.S. and all 50 states, as it is in more than 150 countries, many of them non-Christian. U.S. courts have taken a middleground position on government involvement in or sponsorship of Christmas activities, trying to balance the free exercise/no establishment requirements of the First Amendment. Religious symbols should not stand alone but can be part of an overall cultural context.

Religious music is allowed, but should not dominate school programs. Learning about Christmas customs, traditions, or influences on art, music and literature is acceptable if it is part of the educational process. Attempts to use schools or public buildings as areas of worship, or devotional Christmas activities apart from education, are not acceptable. It doesn’t take an army of lawyers to adjudicate these minor difficulties.

But Gibson is convinced that “millions and millions of Americans feel that Christmas is under attack in a sustained and strategized manner” from the ACLU and other secularists he places in the catch-all category of “liberals.” And the attacks on Christmas are coming mostly in the red states that backed George Bush. “If Christmas is to be banned, then an overwhelming majority of Americans are denied Christmas in public places.” Apparently, the White House and Rockefeller Center are not public places, nor is the Capitol and most state houses, where Christmas symbols appear each and every year.

The ACLU is the primary villain. The heroes are the “onward, Christian lawyers” from Religious Right law firms that now litigate to preserve the public Christmas. Gibson seems to think that the only Christians in the legal world are right-leaning evangelicals. Doesn’t he think that there have been Christian lawyers of various persuasions, theological and political, since the advent of the Republic? Gibson argues that “the war on Christmas is a war on Christians.” What nonsense.

Gibson’s book has the feel of a thrown-together overnight job, lacking an index and bibliography, a kind of sound-bite journalism that overshoots its target.

—*Al Menendez*

Sacré Blues: An Unsentimental Journey Through Quebec, by Taras Grescoe, Macfarlane, Walter & Ross (Toronto), 315 pp. \$18.95, available in the U.S. from Amazon.com.

This award-winning portrait of Quebec resembles the area studies of the late John Gunther. It is fact-filled, colorfully written and endlessly informative. The author, a young Canadian journalist in Montreal, says, “Quebec is a modern, dynamic society, unscarred in this century by warfare or famine, sharing a high standard of living with the other peoples of the richest continent in the world.”

A generation ago, Quebec was a largely rural, conservative Catholic society whose primary social and educational institutions were managed by the Catholic Church. A rebellion against the church, which began in the 1960s, has led to empty pews, the lowest birth rate in the Western Hemisphere, and the possibility of a declining population. Quebecois now compose only one-fourth of Canada’s populace, down from a third a generation ago.

Family life has changed dramatically. More people cohabit than marry, and 55% of the province’s children are born to unmarried couples. Of those who bother to get married, about half will divorce.

Quebec’s impending population decline may be arrested by the immigrant communities, so-called “Allophones” who speak neither French nor English as a first language. But only 8% of Quebec’s population was born abroad compared to 26% in Ontario and 24% in British Columbia. And only 15% of Canada’s immigrants choose to settle in Quebec. The rise of the separatist Parti Quebecois government since 1976 has caused a half million English speakers, mainly British or

It has become fashionable to say that the court is demonstrating hostility toward faith when it prevents the government from promoting faith to us. But those who make this argument are either ignorant of or willfully blind to the rationales expressed in Supreme Court precedent in this area. The court traditionally has refused to promote or to interfere with religion not because it is anti-religious, but because it wants to leave people free to make choices in matters of faith and to ensure that religious people and organizations may worship as they see fit, rather than as the government sees fit. Further, anyone who suggests that the court has scrubbed religion from the public square is inexplicably missing the rich religious landscape all around us – a landscape that has thrived in the midst of the Supreme Court’s so-called ‘hostility’ toward religion.

—Melissa Rogers in TomPaine.commonsense, August 8, 2005. Rogers is visiting professor of religion and public policy at Wake Forest University Divinity School.

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Jewish, to leave Quebec. Only 11% of the population are Anglos, whom Grescoe calls “a sad, remnant population.”

Grescoe depicts Quebec as a land of sharp contrasts. “Quebec has transformed itself from one of the most morally oppressive, ethnically homogenous and backward corners of the continent into a modern and relatively diversified society. It’s among the most liberal and tolerant parts of North America.” But, “The suicide rate is the highest of any Canadian province, salaries are among the lowest in North America, more people live below the poverty line than anywhere else in Canada. Quebec has the highest illiteracy rate in the country, the worst high school drop out levels (21% of Quebecois have only an eighth-grade education), the lowest percentage of personal computer ownership and Internet use and the lowest life expectancy in the country.” Library circulation is also the lowest in Canada, and 43% of the population rarely or never reads books. Still, there are writers galore, and 450 magazines are published in the province, as well as three daily newspapers in Montreal.

This is an extraordinary look at an extraordinary society.

— *Al Menendez*

American Catholics, American Culture: Tradition and Resistance, edited by Margaret O’Brien Steinfels, Rowman-Littlefield Publishers, Inc., 203 pp. \$19.95.

More than two dozen academics and journalists focus their observations on American Catholics in the public square. Several argue that Catholicism’s historical social teachings do not fit easily in the American notion of conservative and liberal, in which camps most people are placed. Peter Steinfels and Robert Royal note that such Catholic principles as common good, solidarity and personalism “find little or no place in American thought.” Also, during the past forty years, “The Church lowered the walls of the Catholic subculture and contributed, intentionally or not, to the assimilation of Catholics into mainstream American culture.”

Part of the book consists of papers delivered at Fordham University in 2002 at a conference on anti-Catholicism. History professor John McGreevy says that there exists “a cultural anti-Catholicism with enduring, if intermittent, strength in American society.” Andrew Greeley, sociologist and novelist, argues that “anti-Catholicism simmers just below the surface of American culture, relatively unchanged since the nineteenth century.” *Newsweek’s* Kenneth Woodward says that prejudice against Catholics “is not as virulent as it has been in the past” and

jokes that sometimes it is “not only acceptable but welcome to be disliked for all the right reasons.” Mark Silk of Trinity College says that anti-Catholicism is not as intense as anti-Semitism, racism, or prejudice against gays and Muslims, and does not constitute a serious problem in political life or in the media.

Perhaps the best essay is Brian Doyle’s analysis of the two Oregon referenda (in 1994 and 1997) on physician-assisted suicide, which had major religious dimensions to both the campaign and the structure of the vote.

— *Al Menendez*

America’s Constitution: A Biography, by Akhil Reed Anar, Random House, 655 pp., \$29.95.

Anar, a member of the Yale Law School faculty since 1985, has fashioned a terrific book, essential to constitutional scholars and accessible to all interested readers. His “biography” of our basic governing document includes brief discussions of the relevant religious sections. He argues that “Article VI banned Old World religious hierarchies from formally entrenching themselves in the federal government or excluding adherents of competitor religions from federal service. This formal openness to men of all religions or no religion ran well head of contemporary Anglo-American practice. As of 1787, eleven American states – nine in their state constitutions — imposed religious qualifications on government officials, and no state constitution explicitly banned religious tests for public servants. Article VI thus broke new ground.”

This religious enlightenment, he says, “was made explicit in the First Amendment’s Establishment Clause.”

Two other constitutional provisions protect religious liberty. “By promising to ‘defend the Constitution,’ a president was pledging to oppose any attempted federal statutory religious establishment.” He also says, “The impeachment clauses confirmed the document’s general religious openness by permitting Senators to sit either by oath or by affirmation when hearing impeachment cases.”

— *Al Menendez*

David Trimble: The Price of Peace, by Frank Millar, Liffey Press (Dublin), 240 pp. Available in the U.S. from Dufour Editions, 1-800-869-5677 at \$29.95.

David Trimble is a Presbyterian lawyer who tried to steer his Ulster
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Protestant Unionist community away from the sterile negativities and stodgy conservatism of the past to a political compromise that would end the stalemate and violence in Northern Ireland. While hardly a liberal, he used his position as Unionist Party leader during the delicate “peace process” negotiations of the late 1990s to effect a kind of settlement, resulting in the Good Friday agreement of 1998 and a joint

Protestant/Catholic government in the embattled province. For his efforts, he shared a Nobel Peace Prize with his Catholic counterpart John Hume. However, no good deed goes unpunished, and Trimble lost his seat in Parliament in last May’s general election. The cost of peace is sometimes high.

Frank Millar is an award-winning journalist at the *Irish Times*.

-- Al Menendez

Commentary

‘In God We Trust’

Fifty years ago Congress began considering adding the motto “In God We Trust” to our currency. There appeared to be some urgency to the matter a hundred-and-sixty-eight years after the “godless” constitution was written by Madison and the other Founders.

As a young church-state separation activist, I felt compelled to do something about it. So I hastily organized a petition to Senators Henings of the Senate Banking committee and Homer Capehart (R-IN), one of my own senators who served on the committee. (Senator Wayne Morse of Oregon thought it appropriate to refer to Capehart on the Senate floor as “a tub of rancid ignorance.”) Within a couple of hours we had 35 signatures on the petition, which we wired to the senators and which urged the committee to hold hearings on the measure and to reject it on First Amendment grounds. Ours and others’ efforts were to no avail. The next morning all 35 of us were smeared on the front page of an Indianapolis newspaper and subsequently I was blackballed from teaching in Indianapolis public schools.

Fast forward to 2005. Michael Newdow, whose effort to get the Supreme Court to remove the phrase “Under God” from the Pledge of Allegiance fizzled last year, is now in court attempting to remove the motto from our coinage and currency.

Flashback. “In God We Trust” was first placed on one U.S. coin by Treasury Secretary Salmon P. Chase during the Civil War and without the approval of Congress. The motto did not appear on all coinage until the eve of World War I.

Incidentally, very few countries’ coins contain religious mottoes.

One case I remember clearly is that of Franco’s Spain, which read “Francisco Franco, Caudillo [leader, Führer, Duce] by the Grace of God.” (And here I thought that Franco became dictator of Spain by the grace of Hitler’s and Mussolini’s military aid.)

Back to Michael Newdow’s case. While he may be right about the constitutionality of Congress’ addition of the motto (What was wrong with the original one, “E pluribus unum?”), I am convinced that his suit is ill-advised and ill-timed. Why? For several reasons.

First, it will distract attention from dealing with far more serious church-state problems, such as the well-funded campaigns to get tax support for faith-based schools, to allow tax-supported faith-based charities to discriminate in hiring and to proselytize, to intrude conservative religion into public school science classes, to weaken or restrict women’s reproductive rights of conscience in every way possible, to replace democracy with theocracy.

Second, it will be a wonderful recruiting and fundraising tool for the theocratic right.

Third, as with his “Under God” lawsuit, Newdow’s new effort cannot succeed. If the Supreme Court rules in his favor, which is unlikely, the massive backlash will result in an unstoppable constitutional amendment that would shred the First Amendment. If he loses, which is probable, the ruling by Scalia, Thomas, or someone new on the Court would also inflict serious damage on church-state separation.

If I have learned anything in 50 years of activism, it is that strategic thinking is far more important than mere zeal. One may admire Michael Newdow’s zeal and his abilities as an attorney while deploring his lack of a strategic sense, his failure to see the “big picture,” and his indifference to the certain results of his impetuosity.

-- Edd Doerr