



# VOICE OF REASON

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## The Referendum Elections: Separation Wins Three of Four

The pro-separation side on church school aid and abortion rights was victorious in three of the four most prominent referendum elections held during the midterms. Hawaii voters rejected a constitutional amendment that would have allowed public funds for early education in private and religious schools. Voters in North Dakota and Colorado resoundingly rejected attempts to add "personhood" language to their state constitutions, though voters in Tennessee narrowly approved a similar measure.

### Hawaii

Hawaii voters were asked to approve Constitutional Amendment 4, which said, "Shall the appropriation of public funds be permitted for the support or benefit of private early childhood education programs that shall not discriminate on the basis of race, religion, sex or ancestry, as provided by law?"

ARL president Edd Doerr warned about the consequences of this innocuously-phrased proposal in a letter published in the *Honolulu Star-Advertiser* on October 14: "Amendment 4 on the November ballot in Hawaii would authorize tax support for 'private early childhood education programs' in both secular and faith-based private schools. While the proposed law and Article IX, Section 1 of the Hawaii constitution both prohibit tax support for any form of discrimination (by race, religion, sex or ancestry), Amendment 4 would not seem to prohibit sectarian indoctrination in the tax-aided faith-based private schools. So Hawaii taxpayers could be taxed to support sectarian indoctrination that they would not choose to support voluntarily, and this would violate Article 1, Section 3 of the state

constitution that protects religious freedom and separation of religion and government. Amendment 4 would also allow public funds to be diverted to private schools not under public control."

The state's public school teachers opposed the proposal, as did 55% of voters. The vote was 192,947 to 160,238 .

### Colorado

For the third time in the past decade, Colorado voters faced a "personhood" amendment to the state constitution which would "protect pregnant women and unborn children by defining person and the child in the Colorado criminal code and the Colorado wrongful death act to include unborn human beings." It would have added a Section 17 to the constitution's Article 18. Voters rejected the proposal 64% to 36% (1,185,155 to 654,053). It was defeated in almost all areas of the state.

*The New York Times* blasted the proposal on October 14, warning that it is "preposterous to confer on fertilized eggs legal rights and protections that apply to living individuals, criminalizing abortion even in cases of rape or incest or to protect a woman's health." The *Times* added, "And it would curtail access to some commonly used methods of contraception and fertility treatments, while subjecting women who suffer a miscarriage and their doctors to investigation and possible prosecution because of suspicions that deliberate or negligent actions led to the miscarriage. The wording advertises the initiative as protecting women, when, in fact, it would do the opposite."

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## The Midterm Elections

The lopsided Republican victory, resulting in the highest number of House seats since Harry Truman's first postwar midterm in 1946 (or even of the Hoover days, depending on the outcome of a few undecided races) augurs major changes in policies affecting the economy, health care, environment, and immigration (so does the large Republican takeover of the Senate). All of this came from a paltry voter turnout of 36.4%, the lowest since 1942.

Issues relating to education, abortion and other reproductive concerns are likely to be relegated to the back burner, though many, if not most, Republican newcomers, tend to favor tax credits or vouchers and additional restrictions on access to abortion. Many seem indifferent to climate change and science education in the schools.

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# Religious Affiliations in the New Congress: More of the Same

The religious affiliations of members of Congress appear to be less meaningful than in previous years or decades. They primarily reflect demographic and geographic realities but rarely act as independent variables in determining the outcome of voting on legislation. They may reflect the political leaning of certain groups or denominations, such as the Republican orientation of Mormons and Southern Baptists or the Jewish preference for the Democrats. Nevertheless, affiliation remains interesting as a method of comparison, and results reflect overall trends in religious change.

The 114<sup>th</sup> Congress will have at least 165 Catholics – 25 in the Senate and 140 in the House. Democrats outnumber Republicans 87-78, which is the lowest Democratic percentage (52.7%) ever recorded among this large group. Republicans have a clear majority among Southern Catholics (18-7), and among non-Hispanic Catholics.

Baptists increased their membership since 2012, now numbering 78 members. This is primarily due to the fact that Baptists do well in the gerrymandered Congressional districts that are sharply divided by race and political party preference. In African American “safe” Democratic districts, many of the members are Baptist, including three newly elected women. But in the white Republican South, Baptists are strongly represented among the new crop of Republicans.

Overall, there are now 51 Republicans and 27 Democrats in the Baptist ranks, the highest GOP ratio ever.

Congress will also have 43 Methodists, 36 Episcopalians, 34 Presbyterians and 28 Jews, including a new Jewish Republican, Lee Zeldin, who won a seat on Long Island.

An unusual number of the newly elected members call themselves nondenominational Christians, a rather vague term that suggests less than active involvement in religious life. In some areas, and not just in the South, it may reflect the rise of Independent, conservative Protestant churches that are unrelated to any specific denomination. Alto-

gether, 27 members (17 Republicans and 10 Democrats) list this as their religious preference.

Lutherans number 27, nondenominational Protestants 21 and Mormons 15. Nine members are unaffiliated with any religious group, while five are Eastern Orthodox. There are two Muslims, two Buddhists and one Hindu. Finally, there are 36 members who belong to a variety of smaller Protestant denominations.

(This analysis is based on 530 seats, since five are still undecided as of the VOR deadline. Three run-offs in Louisiana on December 6 are expected to be won by Republicans, all of whom are Baptists or nondenominational Christians. A final compilation will appear in our next issue.)

### *A word about geography:*

Congressional delegations usually, but not always, reflect their state’s religious orientation. Catholics are a majority in Alaska, Arizona, Massachusetts, New York, North Dakota, Pennsylvania and Vermont. They are half of the members from New Jersey, Ohio and Rhode Island.

Baptists are a majority in Arkansas (five of six), Mississippi, and Oklahoma, and are half of the members in Georgia. Mormons are a majority in Utah (all six) and Idaho, and are half of the Nevada delegation. Methodists are a majority in Kansas and Presbyterians in Delaware and Wyoming.

Episcopalians, Lutherans and Jews do not have a majority in any state, but Episcopalians are strong in Florida and Virginia, and Lutherans in Minnesota, Nebraska and Wisconsin. Jews are a significant number in California, Florida and New York.

For a short while, between the 2012 and 2014 elections, Hawaii was the only state to have no Christians in its congressional delegation. (There were two Buddhists, one Hindu and one Jew). But in 2014 a nondenominational Christian, Mark Takai, replaced one of the Buddhists, Colleen Hanabusa, who ran unsuccessfully for the Senate. ■



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## The Referendum Elections, *continued from page 1*

### North Dakota

Conservative, Republican and Lutheran North Dakota overwhelmingly rejected constitutional measure No. 1, which would have added the phrase, “The inalienable right to life of every human being at any stage of development must be recognized and protected,” to Article 1 of the state constitution. The measure would almost certainly have ended all legal abortion in the state and would have led to litigation.

The vote was 64% - 36% against (160,728 to 89,888). It failed in all but five rural counties. Fargo residents voted 71% No, as did rural Lutheran counties. And despite strong church support, rural Catholic counties voted 54% against it.

### Tennessee

The only anti-choice victory came in the Volunteer State, where *The Wall Street Journal* on October 30 said, “The fight over abortion dominates the Tennessee election,” overshadowing races for governor and Congress.

This conservative Southern state, heavily Baptist and evangelical and increasingly Republican, approved Amendment 1, which amended the Tennessee constitution. “Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.”

“The new amendment would make it easier to enact new measures tightening access to abortion,” commented *Time* magazine.

The vote was close, with 52.6% in favor and 47.4% against (728,751 to 656,427).

The Southern Baptist Convention, which is headquartered in Nashville, endorsed Amendment 1, and that may have affected the outcome, especially in rural areas. The anti-abortion proposal carried 88 of the state’s 95 counties.

However, opposition was strong in the cities and metropolitan areas. Nashville’s Davidson County voted 2 to 1 against it, and opposition was nearly as high in Memphis (Shelby County). Even Republican metros around Knoxville and Chattanooga narrowly opposed it. But rural, small town, and suburban areas supported the amendment. It received strong backing in areas where the Church of Christ and the Church of God have many followers. Here is a demographic breakdown:

Area	% Yes on Amendment 1
Urban	40.5
Suburban	57.8
Rural	60.5
<b>State</b>	<b>52.6</b>

### Other Races

In **California** the state school superintendent’s race “overshadowed the race for governor and generated \$30 million in spending,” observed *The Washington Post* on Election Day. The incumbent Tom Torlakson, elected in 2010, was reelected with strong teacher union support by 52% to 48%. His opponent, also a Democrat in a supposedly nonpartisan race, was Marshall Tuck, a former owner of a chain of charter schools and recipient of financial backing from Wal-Mart

founder Sam Walton and former New York City Mayor Michael Bloomberg. The candidates differed sharply on almost all issues affecting public education.

**Colorado** voters approved, 71% to 29%, a measure to legalize casino gambling at horse racing tracks, with a percentage of the revenue directed to public schools.

**Missouri** voters rejected by 3 to 1 a standards-based performance evaluation system for teachers.

**Nevada** voters rejected a proposal to increase taxes on businesses in order to enhance education funding.

**Alabama** voters, by a wide margin of 72% to 28%, approved an amendment to the state constitution that “prohibits foreign law” from being used to decide cases in Alabama courts. The controversial proposal is similar to a law passed in Oklahoma but struck down as unconstitutional. A Republican legislator, Sen. Gerald Allen, was the chief sponsor.

Surprisingly, the conservative Alabama Christian Coalition opposed Amendment One. Its leader, Dr. Randy Brinson, called it “a tremendous waste of effort and time that creates a whole new headache for people involved in foreign adoptions or who get married in another country.” An African American religious leader, Scott Douglas, said the amendment “could incite religious intolerance.”

One provision in the new amendment outlaws dependence on laws from other states that “violate public policy in Alabama,” which could be aimed at same-sex marriage.

**Illinois** voters approved a “non-binding advisory” referendum that “health insurance plans that provide prescription drug coverage must be required to include prescription birth control as part of that coverage.” The vote was 66% to 34%.

**New York State** voters approved, by 62% to 38%, Proposal 3, The Smart Schools Bond Act (Bonds for School Technology Act). The measure authorized the state comptroller to issue and sell bonds up to \$2 billion for new educational technology, modernizing facilities, and installing high-tech security features in school buildings. Public, nonpublic and faith-based schools will participate. ■

### To Safeguard the Future

Religious liberty and church-state separation will never be completely secure. But you can help provide the means for their defense in the future in two ways.

Include a bequest to Americans for Religious Liberty in your Will, or include ARL as a beneficiary in a life insurance policy. Bequests and insurance proceeds to ARL are tax deductible.

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# The Religious Right: New Members Fill Ranks

Several Southern Baptist clergy elected to Congress as Republicans in 2014 are active supporters of the Religious Right. Jody Hice, pastor of a church in Bethlehem, Georgia, and radio talk-show host who follows Glenn Beck, won Georgia's 10<sup>th</sup> Congressional District. Hice told the *Atlanta Constitution-Journal* that "Islam does not deserve First Amendment protection" because it is an evil political system rather than a religion.

According to the *National Journal*, Hice's 2012 book, *It's Now or Never*, called abortion rights supporters "worse than Hitler." In 2003 he fought to keep a Ten Commandments display at the Barrow County Courthouse. The next year he remarked that



women candidates should consult their husbands before running for office.

The winner in Georgia's 11<sup>th</sup> District was Barry Loudermilk, who was endorsed by ersatz historian David Barton. Loudermilk is founder of Barley Loaf ministries and a graduate of Wayland Baptist University. Both candidates called for the impeachment of President Obama.

North Carolina's 6<sup>th</sup> District elected Rev. Mark Walker, a Baptist preacher and leader of his state's Religious Right. Walker told his Charlotte congregation in October that Democratic positions in favor of abortion rights and gay marriage are "deeds of darkness." ■

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## Midterm Elections, *continued from page 1*

Here is a roundup of election news.

*How the vote went:*

### Exit Poll

The national exit poll showed a repetition of the divisions in the electorate that have shown up in recent years, though Republicans did better in most groups in comparison with their 2012 and 2010 showings. There was a ten-point gender gap, as women voted Democratic 51% to 47%, while men favored the GOP 57% to 41%. Democrats did better among younger voters, winning the 18-29 age group 54% to 43%, but relatively few showed up. Voters over 65 went Republican 57% to 41%. Republicans did somewhat better among higher income groups, but the differences were minor. Independents went Republican 54% to 42%, but Moderates favored the Democrats 53% to 40%, showing that the center is still pretty divided.

The biggest Republican gains came from Asian ancestry voters (50% compared to Romney's 25%) and Latinos (36% compared to Romney's 27%). Whites, who comprised 75% of voters, preferred the GOP 60% to 38%, while black voters remained the most Democratic 89% to 10%.

### State Races

Perhaps even more far-reaching in terms of social legislation was the Republican triumph in state houses and state legislatures. The GOP took 11 legislative chambers previously held by Democrats and made a net gain of three governorships, giving them 31 governors to 18 for the Democrats. (One Independent is the apparent winner in Alaska). The Republicans control 68 legislative chambers, while the Democrats control 30. The Republicans are the majority in 30 state legislatures, the Democrats in 11, and eight are split. (Nebraska has a unicameral, nonpartisan legislature.)

The nonpartisan National Conference of State Legislatures called 2014 "a banner year for the GOP." It noted that Republicans gained 300-350 seats in state legislative races, giving them at least 4,100 of the 7,383 seats, the highest number since the 1920s.

The number of women elected in the states declined, slipping to

1,750 from 1,784, a loss of about a half percentage point. Women legislators comprise 23.7% of all, which is still higher than in the federal Congress. Colorado ranks first with 43% of its legislators being women, while Oklahoma is last with 12%.

The states were the locale for an increase in restrictive abortion legislation and in proposals for school vouchers and tax credits during the past few years.

### The Religious Vote

Pew Research concluded, "In the 2014 midterm elections, the Republican Party enlarged its majority in the U.S. House of Representatives with continued strong support from white evangelicals and people who attend religious services regularly. In addition the GOP appears to have made inroads among some religious constituencies that traditionally have not been as supportive of Republican candidates."

There were small GOP gains across the board among religious groups when comparing 2014 to 2010, the previous midterm. There were substantial Republican gains among Jewish voters and those belonging to "other religions." There was virtually no change at the two ends of the religious spectrum: white evangelicals favored the GOP 78% to 20%, while those who said they had no religious affiliation went for the Democrats 69% to 29%. (However, the "nones" were only 12% of the electorate, a good deal lower than their claimed share of the total population.)

Church attendance still correlated with Republican voting, with weekly attenders voting 58% for the GOP, the occasional attenders 52%, while those who never attend services gave the GOP 36%. However, there was a 13-point gain among occasional churchgoers compared to previous midterms, reflecting Republican gains among the center. ■

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## Is Support for Separation Weakening?

A new Pew Forum survey on public attitudes toward the role of religion in politics shows some disturbing trends. Pew researchers concluded: “The survey finds a growing appetite for belief in the ballot box, and politics in the pulpit. These shifts are largely happening on the Republican side of the aisle. And among Republicans, the changes are driven by white evangelical concern that the country is becoming less favorable to religion and, inexplicably, more hostile toward white evangelicals.” The report continues, “The share of Americans who say churches and other houses of worship should express their views on social and political issues is up 6 points since the 2010 midterm elections (from 43% to 49%)... The share of Americans saying churches should endorse political candidates is now the largest it’s been in more than 10 years.”

About half of all Americans want churches to express their views on political matters, and a third think churches should endorse candidates in elections. Over 40% think politicians are not talking enough about religious faith and 60% want members of Congress to have strong religious beliefs.

This support for more direct church involvement in the political process flies in the face of IRS regulations, which prohibit such activity and could result in the loss of tax exemption, if the IRS ever chose to enforce the law. Some argue that the price of tax exemption in noninvolvement is partisan electioneering.

The new poll reveals some constants. One is that Republicans are far more sympathetic to church involvement with politics than Democrats: 59% of Republicans and 42% of Democrats want churches to express political views; 72% of Republicans and 50% of Democrats want members of Congress to have strong religious views; 53% of Republicans and 32% of Democrats support more religious talk from politicians; and 38% of Republicans and 28% of Democrats want churches to endorse candidates.

Secondly, white evangelicals are decidedly more conservative on issues and favorable to church engagement in politics. Pew researchers wrote, “White evangelicals are a core coalition of the GOP base. Their belief that they are a persecuted minority in a country where it is difficult to be religious explains many of the Republican trends above—a desire for a stronger church role in politics, a perception that politicians aren’t talking about faith enough, and the necessity for politicians to talk about their faith.”

Thirdly, Catholics are less favorable to religion-in-politics than Protestants, when all Catholics are compared to all Protestants. The differences are generally 10-15 percentage points.

Finally, black Protestants are generally favorable to church political involvement, second to white evangelicals, even though their partisan preferences differ sharply. ■

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## Abortion Rights Remain Contentious

• A **Texas** law that would have closed all but eight of the state’s 40 abortion clinics was blocked by an unsigned U.S. Supreme Court order on October 14. The justices suspended an October 2 ruling by a panel of the U.S. Court of Appeals for the Fifth Circuit which upheld the restrictive law. (That decision had led to the abrupt closure of 13 clinics across the state.) The Fifth Circuit ruled that it was not an “undue burden” for women to travel 150 miles or more for the procedure and that there was no proof that a “large fraction” of women would be adversely affected.

The Fifth Circuit is still considering the overall constitutionality of the measure. The Supreme Court’s intervention was praised by Cecile Richards, president of Planned Parenthood, who said: “We’re seeing the terrible impact these restrictions have on thousands of Texas women who effectively no longer have access to safe and legal abortion. We’re relieved that the court stepped in to stop this, and we hope this dangerous law is ultimately overturned completely.”

Most legal observers think the issues raised in Texas will eventually be resolved by the Supreme Court. Jeffrey Toobin, legal analyst for CNN, wrote in *The New Yorker* (September 19, 2014) that the Fifth Circuit “is renowned for its conservatism and its particular hostility toward abortion rights.” He warned, “The members of the Fifth Circuit panel seem to believe that anything short of a nationwide ban on abortion does not amount to an undue burden on women’s rights. This is the argument that will soon be heading to the Supreme Court. Will the Court’s conservatives—who appear to have, with the addition of Anthony Kennedy, a one-vote majority on this issue—define the ‘undue burden’ test into meaninglessness? Or will they junk the test altogether and give states an even freer hand to restrict

abortion rights?”

• A U.S. federal judge blocked enforcement of a **Louisiana** law that required doctors who perform abortions to have admitting privileges at nearby hospitals. The August 31 decision by Judge John de Gravelles of the Middle District of Louisiana said the state’s five abortion clinics “will be allowed to operate lawfully while continuing their efforts to obtain privileges.”

• The **Missouri** legislature overwhelmingly rejected (140-51) Gov. Jay Nixon’s veto of a bill enacting a 72-hour waiting period for women seeking abortions. There is no exception for cases of rape or incest. The override vote on September 10 allowed the restriction to take effect on October 10.

• **California’s** Catholic bishops filed a civil rights complaint with the U.S. Department of Health and Human Services over a state requirement that health insurance cover abortions. The California Catholic Conference claimed that the state’s Department of Managed Health Care discriminated against two Catholic colleges, Santa Clara University and Loyola Marymount University. The department’s director, Michelle Rouillard, said, “Abortion is a basic health care service. The exclusions [granted to the colleges previously] violate a 1975 state law that requires group health plans to cover all basic services that are medically necessary.” She added, “The California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.”

Associated Press reported on October 1: “The schools notified employees last fall that they planned to stop paying for elective abor-

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# Religious Liberty in Prisons Reaches High Court

An issue involving the religious liberty of prisoners came before the U.S. Supreme Court on October 7. In that case the Court will decide whether prison officials may prohibit or limit a Muslim inmate's beard.

Arkansas inmate Gregory Holt, a convert to Islam, asked state prison officials for permission to grow a half-inch beard in accordance with requirements of his faith. The prison denied his request in 2009, citing regulations that prohibit prisoners from growing beards because they can be used to hide weapons or drugs. Holt grew a beard anyway and filed suit, alleging that the state violated a 2000 federal law, the Religious Land Use and Institutionalized Persons Act (RLUIPA). This law had been passed to protect the religious liberty rights of inmates and others in state institutions. Since 2012, both a federal district court and the U.S. Court of Appeals for the Eighth Circuit ruled in favor of the state, holding that the beard is a security risk.

A number of religious and civil liberty organizations sided with Holt, in *Holt v. Hobbs*. The Baptist Joint Committee for Religious Liberty (BJC) and the American Jewish Committee filed an amicus brief supporting the prisoner and the RLUIPA law. In its press release, BJC affirmed, "The law provides that government may substantially burden the exercise of religion only if it demonstrates that it has used the least restrictive means to further a compelling interest." BJC general counsel K. Hollyn Hollman added, "The government has a responsibility to ensure incarcerated individuals can freely exercise their religion if there is no contrary compelling governmental interest at state. This case demonstrates the need for RLUIPA to make sure religious rights are protected and taken seriously."

Hollman noted that the law is clear. "Part of RLUIPA's purpose is to elevate religious needs to a similar level as other considerations. In light of the high degree of protection that RLUIPA gives to inmates' religious rights, it is illogical for the same institution to provide an almost identical accommodation for medical reasons, while denying that same accommodation for religious purposes."

The federal prison system, and that of 40 other states, allows prisoners to grow beards for religious reasons.

David Masci, senior researcher at the Pew Research Center, said the outcome of the case could be far-reaching. "While a plain reading of the federal law seems to support Holt's argument that state officials must back up their claims with evidence, the legislative history of the statute indicates that its drafters recognized the need for giving deference to prison officials. How the high court ultimately reconciles these two notions will probably determine how it decides the case. If the court sides with the state and agrees that prison officials should be given deference when questions of security arise, it will make it very difficult for other inmates to prevail in future religious liberty claims. If, however, the court decides on a more direct reading of the statute, prison officials will need to meet the statute's tough test in order to convince judges to deny an inmate's valid religious liberty claim."

The arguments at the High Court took an unusual twist. Chief Justice John Roberts thought the case was "too easy" and suggested that full beards or turbans would present a stronger clash between religious liberty and prison security. Nearly all the justices thought the prisoner's case was reasonable. Deputy Arkansas attorney general David Curran argued that escaped prisoners could change their appearances and that even short beards could hide contraband. But he could cite no cases where that had happened. Holt's attorney, Douglas Laycock, a free exercise specialist, said prisoners should prevail until prison officials can demonstrate a "material effect" on prison security. ■

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## Abortion Rights, *continued from page 5*

tions, but said faculty and staff members could pay for supplemental coverage that would be provided through a third party." But the bishops have taken a harder line.

- Two **Oklahoma** laws reducing access to abortion were temporarily blocked by the state supreme court on November 4. The unanimous decision prevented enforcement until lawsuits challenging their constitutionality are settled by a lower court. ■



## Church and State in the Courts

A New Hampshire tax credit program was upheld by the state supreme court on August 28. The program provides tax-funded "scholarships" to send students to private schools, most of which are religious. The court reversed a June 2013 ruling by the Strafford County Superior Court, which held that the program violated a state constitutional provision barring state tax bonds from being appropriated for "the use of schools or institutions of any sect or denomination" (Part II, Article 83).

The program offers businesses a tax credit of 85% in exchange for donations to private school tuition. Pro-voucher and Religious Right groups said they were "delighted" by the ruling.

The state's highest court held that eight taxpayer plaintiffs lacked the necessary personal injury to challenge the program. The unanimous ruling in *Duncan v. New Hampshire* relied almost solely on the issue of

"standing" and "the requirement of a concrete personal injury."

"Our decision in this case does not mean that a taxpayer can never have standing to challenge governmental actions. When a taxpayer has a sufficiently personal and concrete interest to confer standing, the taxpayer may seek judicial relief."

ARL president Edd Doerr criticized the justices for ignoring two clear constitutional provisions (Articles 6 and 83).

The case attracted a good deal of national interest. *Amicus curiae* briefs supporting the program were filed by: The Institute for Justice, The Becket Fund, Alliance Defending Freedom, The Cato Institute, Pacific Legal Foundation, and Liberty Institute, all Religious Right or libertarian groups. The Concord Christian Academy and the Roman Catholic Bishop of Manchester filed supportive briefs, and both are likely to benefit from tax credits. Opponents included: The New Hamp-

shire School Board Association, New Hampshire School Administrators Association, Anti-Defamation League, AFL-CIO, AFT, NEA, educational organizations, ACLU Foundation Program on Freedom of Religion and Belief, and Americans United.



The U.S. Supreme Court will hear a religious discrimination case involving noted clothing retailer Abercrombie & Fitch. The suit was originally filed by a Muslim who claimed she was not hired because she wore a black headscarf to the job interview. The company said the applicant had not specifically asked for a religious accommodation. The U.S. Court of Appeals for the Tenth Circuit supported the Ohio-based company, but the Equal Employment Opportunity Commission asked for a Supreme Court review, saying that federal law does not place the burden of religious practice solely on the job applicant. The High Court accepted the case, *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, on October 2, and the case will be heard early in 2015.



The long-running case of an Ohio public school science teacher fired for promoting creationism came to an end in October. The U.S. Supreme Court rejected his appeal and let stand an Ohio Supreme Court ruling that the Mount Vernon school district was within its authority to discharge the teacher in 2011. The teacher, John Freshwater, was fired for insubordination after he refused to stop teaching creationism in his classroom. He also espoused fundamentalism in various ways.



The New Mexico Court of Appeals held that the state's policy of providing secular textbooks to private and parochial schools does not violate the state constitution. The October 27 decision in *Moses v. Skandera* concluded that the state's Instructional Material Law was constitutional because the state "purchases and distributes instructional material, controls the process, and owns the textbooks." The law also provides that "no funds shall be expended for religious, sectarian or nonsecular materials," which the court felt was protection against church-state collusion.

Plaintiffs Cathy Moses and Paul Weinbaum had maintained that Article 12, Section 3, of the state constitution, which "prohibits funds in support of sectarian, denominational, or private schools," should invalidate the program. They also cited Article 4, Section 31, which "prohibits any educational appropriations to any association not under the absolute control of the state."

But the state's second highest court cited several recent U.S. Supreme Court decisions to justify its ruling.



The "parsonage allowance," which exempts clergy from federal taxation on a part of their income, was theoretically upheld by the U.S. Court of Appeals for the Seventh Circuit on November 13. The appellate court rejected the claim from the Freedom From Religion Foundation (FFRF) that the provision, enacted by Congress in 1954, constituted an establishment of religion. The Seventh Circuit reversed a ruling in FFRF's favor from a federal district court in Wisconsin.

The issue was standing. FFRF never asked for the parsonage exemption, leading the court to conclude, "Without a request, there can be no denial. And absent any personal denial of a benefit, the plaintiff's claim amounts to nothing more than a generalized grievance about [the parsonage allowance's] unconstitutionality, which does not support standing."



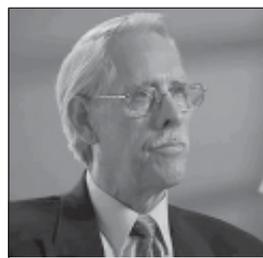
Jason Heap, who has applied to become the first Humanist chaplain in the military, filed suit in federal district court in Alexandria, Virginia, on November 5, charging that his rejection by the U.S. Navy "impairs the religious exercise of Humanists in the Navy."

Religion News Service writer Adelle M. Banks explained, "The legal case for Heap, the coordinator of the United Coalition of Reason, comes at a time when other nonbelievers have sought recognition inside and outside the military. His chaplaincy application was rejected not long after the Army permitted 'humanist' to be listed as a religious preference."



The Obama administration won a court battle over the contraceptive mandate compromise when the U.S. Court of Appeals for the District of Columbia Circuit rejected a challenge from several Catholic groups on November 14. Lawrence Hurley wrote in Reuters, "The court ruled that the compromise on contraception coverage, issued in 2013 and amended in August, did not impose a substantial burden on the plaintiffs' religious beliefs, which would be a violation of the Religious Freedom Restoration Act. Judge Nina Pillard wrote in the decision that the compromise helps the plaintiffs wash 'their hands of any involvement in providing insurance for contraceptive services.'" ■

## Lee Boothby



One of America's most prominent church-state litigators and religious liberty advocates, Lee Boothby died on November 4 at age 81. Boothby was a Seventh-day Adventist who represented clients of many faith traditions in free-exercise and religious accommodation cases. He was a staunch advocate of separation of church and state who argued

a number of cases before the U.S. Supreme Court. In *Capitol Square v. Pinette* (1994), Boothby represented Americans for Religious Liberty and other organizations.

Boothby maintained a law office in Washington, D.C., for four decades. He was also keenly interested in international religious liberty cases, particularly in Russia and Eastern Europe. At the time of his death, he was vice president of the Council on Religious Freedom, and was former general counsel of the International Commission of Freedom of Conscience.

His death on Election Day was perhaps fitting since he ran for congress twice, losing the Republican nomination for a district in southwest Michigan in 1964 and 1976.



## The Voucher Watch

• The North Carolina Court of Appeals ordered the state to disburse school vouchers to 1,878 students even though the program was held unconstitutional. The September 19 ruling allowed the \$4,200 annual vouchers to be used for private school tuition. The state school voucher law was ruled unconstitutional in August by Superior Court Judge Robert Hobgood, who concluded that the program “appropriates taxpayer funds to educational institutions that have no standards, curriculum and requirements for teachers and principals to be certified.”

The Court of Appeals’ decision forbade the state from awarding any additional vouchers until the program’s fate is finally decided by the state supreme court.

The late August decision by Judge Hobgood led to some last-minute educational decisions. Lindsay Wagner of North Carolina Policy Watch wrote, “As a result, voucher recipients either returned to public schools or paid the full cost of attendance at private schools. Some private schools also indicated they would temporarily subsidize voucher students with the hope that the final court ruling would turn out in their favor.”

About 70% of the recipient private schools are associated with religious groups. The largest grants went to the Islamic Center of Greensboro Academy and to the fundamentalist Word of God Christian Academy. The Muslim school has received more than \$90,000 in public funds and the World of God Academy in Raleigh has pocketed \$54,600. Another fundamentalist school, Trinity Christian School in Fayetteville, raked in \$37,800.

The Islamic Academy has run a deficit of \$150,000 annually in recent years and the school voucher largesse has helped to increase student applications from 130 last year to 170 this year.

• Wisconsin taxpayers have paid \$139 million to voucher schools that were later removed from the state voucher program for failures related to finances, accreditation and student safety. This 10-year survey was reported in the *Wisconsin State Journal* on October 12. About

50 schools have been removed from the voucher system since 2004.

The school voucher program presently includes 146 schools and costs \$210 million per year. Wrote Molly Beck in the Madison-based *Wisconsin State Journal*, “The data highlight the challenges the state faces in requiring accountability from private schools in the voucher program, which expanded from just Milwaukee and Racine to a state-wide program last school year. The issue has emerged as a key area of disagreement between Republican Gov. Scott Walker and Democratic challenger Mary Burke, a Madison School Board member, in this year’s gubernatorial campaign.”

Burke promised to scale back the program and said she was “shocked that the program has continued to be expanded without the type of accountability that really needs to be there.”

Lawmakers have tightened eligibility, and laws now require academic accreditation, open budgets, staff training and notification of governing bodies. Private voucher and independent charter schools must provide test results to the state education department by the beginning of the next school year.

Of the voucher schools that were removed from the program, a number have not repaid overpayments from the state. These schools still owe \$253,000 to the state Department of Revenue.

• The D.C. school voucher program primarily aids church-related schools. This is the major conclusion of a U.S. Department of Education report released in October. The federal agency found that 64% of private schools participating in the voucher program have a religious affiliation compared to 29% of nonparticipating private schools. Statistics gathered by the Education Department also show a decline in the number of applicants. Baptist Joint Committee newsletter writer Don Byrd wrote that “these findings indicate what many church-state advocates warn about voucher schemes: they are primarily vehicles for sending taxpayer money to schools with religious affiliation.” ■

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## Updates

### Air Force Withdraws Religious Oath

The Air Force withdrew a requirement that all airmen who take the oath of enlistment conclude with “so help me God.” The September 17 announcement came as a result of a dispute with Senior Airman Brett Clashman at Creech Air Force Base in Nevada. Clashman had been denied reenlistment after he refused to endorse the phrase. The Air Force previously allowed airmen to omit those words but removed that option last October. However, after a legal review by the Department of Defense, the option was reinstated. Air Force Secretary Deborah Lee James said the service was “making the appropriate adjustments to ensure our Airmen’s rights are protected. We take any instance in which Airmen report concerns regarding religious freedom seriously.”

The Navy, Army and Marine Corps allow their service members to omit the phrase.

### Charter Schools Under Fire

America’s growing charter school movement is increasingly under fire for academic deficiencies and questionable business practices. A number of Ohio newspapers have revealed that some charter schools may actually be religious schools disguised as “secular” charter schools. The *Columbus Dispatch* revealed that the FCI Academy was founded by Bishop Edgar Allen Posey of the Living Faith Apostolic Church. His wife, Tracey, is the board president of this charter school, which is housed on church property. Ohio law clearly states that a charter school “will be nonsectarian in its programs, admission policies, employ-

ment practices, and all other operations, and will not be operated by a sectarian school or religious institution.”

Then there’s the growing scandal of the Gulen charter schools, founded by exiled Turkish imam Fethullah Gulen. Gulen is at odds with the present Turkish government and resides at a compound in the mountains of eastern Pennsylvania. About 150 Gulen charter schools exist throughout the U.S. They have 60,000 students and have received \$539 million in tax money, according to research compiled by Oakland, California-based artist and concerned parent Sharon Higgins. Higgins wrote recently, “This group’s stealth strategy is brilliant and dangerous.” There has been no investigation of whether religion is taught in Gulen schools, but all teachers are Turkish citizens (99% of whom are Muslim). The FBI has raided Gulen schools in Cleveland, Columbus, and in suburban Chicago. Other investigations are ongoing in Indiana, Louisiana, and Texas.

## Voters Still Endorse Public Schools

A September survey of 1,202 voters found widespread support for public education and endorsement of programs for improvement favored by Democrats and progressives. Fully 61% of voters believe that state funding for public schools should be increased. This includes 79% of Democrats, 57% of Independents and 45% of Republicans.

Voters think highly of public school teachers and of the schools their children attend: 84% give their children’s schools an A or B grade and 82% rate their local public school teachers as excellent or good; and 56% support higher teacher salaries.

As for identifying reasons for problems in schools, 40% cite lack of parental involvement while 29% single out inadequate funding and resources. Another 18% cite effects of family poverty. Only 3% blame poor teachers.

The survey, conducted by Harstad Strategic Research, Inc. on behalf of “Democrats for Public Education,” also tested 15 specific proposals for improving public schools. Paul Harstad reported, “Without exception, all eight of improvements aligned with Democratic or progressive principles test higher than the seven aligned with Republican or conservative principles. Even voters who identify themselves as Republicans or conservatives rate the Democratic-aligned solutions higher than the conservative solutions.” Some of these proposals include smaller classroom sizes, more teacher training and professional development, programs to help disadvantaged students, and a curriculum that stresses critical thinking and problem solving.

Only 29% of voters favored “creating vouchers for parents to send their children to private schools at taxpayer expense.” The survey also found that: “While charter schools are nominally popular, there is confusion about them and a mixed verdict on the performance of for-profit charters.” Only 46% of voters knew that charter schools are technically public schools.

## Noah’s Ark Runs Into Trouble

The Noah’s Ark-based theme park in Kentucky has been warned by state officials that the \$18 million in tax credits granted by the state tourism authority could be jeopardized by the group’s hiring practices. The developer, Ark Encounter, and its parent company, Answers in Genesis, are asking potential employees to sign a statement of faith that includes a belief in creationism and in the literal truth of the flood story. State officials warned the groups that religiously-discriminatory hiring practices are not allowed and could cause the state

to withdraw a tourism tax credit that is potentially worth \$18 million over a 10-year period. The project has been financed mostly through donations and bonds.

The fundamentalist organizations that are sponsoring the project claim they have a First Amendment and Kentucky state constitutional right to hire whomever they wish. Ark Encounter has also received preliminary approval to collect a rebate from a portion of sales tax revenues generated at the site.

## Parochial Busing Plan Discussed

A large Maryland suburban county is expected to implement a pilot program that will use public school busses to transport students to private schools. Montgomery County officials have signed up two Catholic and two Jewish schools to participate in a program ostensibly designed to reduce traffic during rush hours. “The pilot program is expected to cost between \$400,000 and \$600,000 in county funds, and a full program would probably cost far more,” wrote *Washington Post* education reporter Bill Turque. Turque added that local government leaders were working quietly on the issue and had not informed the public. “County officials have had a working group studying the idea since January, but they had not disclosed that a pilot program was underway.”

County Executive Isiah Leggett ignored the issue of separation of church and state and said the experience in his native Louisiana was positive. So far, no nonsectarian private schools have expressed interest in the plan. Leggett is expected to ask for a supplemental appropriation to fund the pilot program.

Two-thirds of Montgomery County voters opposed plans to aid faith-based schools with public funds in referendum elections in 1972 and 1974. ■

## *ARL in Action*

ARL joined about 50 allied members of the Coalition for Liberty and Justice in urging government agencies to adopt policies that would preserve access to contraceptive coverage for women workers and their dependents.

The groups, which represent many civil liberties, religious, union and medical interests, proclaimed: “We are a pluralistic coalition, and we live in a pluralistic society. The beauty of true religious liberty, a reflection of our democratic ideals, is that it protects freedom of religion and freedom from religion.” The Coalition also affirmed, “We therefore support the right of workers and their dependents to follow their own consciences, moral codes and beliefs when making decisions about contraception.”

Letters expressing these concerns were sent to the Center for Medicare and Medicaid Services at the Department of Health and Human Services and the Office of Health Plan Standards and Compliance Assistance at the Department of Labor. The Coalition urged the Departments “to ensure that coercion and interference are prevented when administering the accommodation for non-profit employers,” and concluded, “How the Departments respond will be a critical determinant of the extent of that ruling’s damage to workers and dependents, and to our core American value of religious liberty and justice for all.”

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## International Updates

**Berlin:** A change in Germany's capital gains tax law is apparently prompting more church members to cancel their church membership. "Beginning in 2015 banks will withhold the 8 or 9% church tax on capital gains and pass it on to tax authorities for distribution to the churches," wrote Reuters correspondent Tom Heneghan on August 29. Heneghan added, "The church tax system assures large annual sums for the churches but the steady stream of departing members and declining religious practice are slowly eroding its base." This year alone, departures from the Lutheran diocese of Berlin and the Catholic diocese of Stuttgart increased by 50%. Despite the escalating exodus, reports Heneghan, "the Catholics got 5.5 billion euros compared to 4.8 billion euros for the Protestants in 2013." This translates to more than \$13 billion for Germany's churches last year.

**Dublin:** Ireland's government announced that a referendum will be held, probably next year, to remove the crime of blasphemy from the Constitution. "Blasphemous matter" was considered an offense by Ireland's 1937 Constitution, influenced strongly by Catholic Church teachings. Government minister Aodhán Ó Riordáin told parliament on October 2, "In practice, there have been no prosecutions under the 2009 Act and the last public prosecution for blasphemy in Ireland

appears to have been brought in 1855." The law was changed in 2009 to allow for fines rather than jail time. Reuters correspondent Padraic Halpin reported October 3, "In further signs of the Catholic Church's declining influence in Ireland, limited access to abortion was allowed for the first time last year, while a referendum on same-sex marriage will also be held in 2015."

**Geneva:** "United Nations human rights chief Navi Pillay condemned 'appalling, widespread' crimes being committed by Islamic State forces in Iraq, including mass executions of prisoners and 'ethnic and religious cleansing,'" according to a report in Reuters on August 25. She added, "They are systematically targeting men, women and children based on their ethnic, religious or sectarian affiliation and are ruthlessly carrying out widespread ethnic and religious cleansing in the areas under their control." The U.N. Committee for the Elimination of Racial Discrimination warned that there is now a "risk of genocide" in the Middle East. Islamic State militants may be prosecuted for crimes against humanity, say several observers.

These views were endorsed by the Grand Mufti of Egypt, Shawki Allam, who said "the extremists violate all Islamic principles and laws." The top Islamic authority in Egypt, Dar el-Ifta, has also condemned the Islamic State, as has Egypt's president.

**Mumbai:** India's High Court ruled on September 23 that the state cannot compel individuals to declare or specify a religious preference on government forms. The *Hindustan Times* reported, "The right of freedom of conscience conferred on a citizen includes a right to openly say that he does not believe in any religion and, therefore, he does not want to practice, profess or propagate any religion," the bench observed, referring to the right to freedom of conscience guaranteed under Article 25 of the Constitution of India. The judges added that "India is a secular democratic republic and the state, or any of its agencies or instruments, cannot infringe on the fundamental right to freedom of conscience."

**Peshawar:** Pakistan's 40,000-member Sikh community, who live mostly in this city along the Afghanistan border, is increasingly under threat from Islamic extremists, according to an October 3 report in Reuters. Reuters' correspondent Syed Raza Hassan reported, "Peshawar, a sprawling and chaotic city of 3.8 million lies in a conservative region awash with radical Islamist ideology. Pamphlets praising Islamic State, a group fighting to set up a global Islamic caliphate, have recently appeared. According to police, at least eight Sikhs have been killed in the past year and a half—the first ever recorded sectarian killings of Sikhs in Pakistani history." Hassan added, "Their plight highlights a growing atmosphere of intolerance in a country long plagued by sectarian violence. Like Shiite Muslims, Christians and other minorities, Sikhs live in a paranoid and hostile world where every stranger is assumed to be an attacker."

**Slovyansk, Ukraine:** *New York Times* reporter Andrew Higgins has revealed growing evidence that Russian Orthodox clergy are aiding pro-Russian separatists in eastern Ukraine. His September 6 report was blunt: "The Russian Orthodox Church, like the Kremlin, has strenuously denied any role in stirring up or aiding separatist turmoil in Ukraine. But as Slovyansk and other towns seized by pro-Russian rebels have fallen over the summer to a since-stalled Ukrainian government offensive in the east, evidence has begun to accumulate of close ties between the church, or at least individual Orthodox priests, and the pro-Russian cause."

### Jeb Bush vs. Public Education

On November 20 Jeb Bush, former governor of Florida and a possible 2016 presidential aspirant, delivered a speech in Washington, D.C., at a meeting of the Foundation for Excellence in Education, a group he founded in 2007 to promote his education agenda nationally.

Bush's speech, accessible online, was a sustained attack on American public schools, on our 13,000 diverse school boards responsible to local voters and taxpayers, and on teachers and teacher unions. His prescription for improving schools includes vouchers for private schools, charter schools, home schooling, and schooling by computer ("virtual schools," an idea that is widely regarded as a failure.)

Bush said not a word about what real educators know is needed to improve our schools: more adequate and more equitably distributed funding, smaller classes (which is why exclusive private schools are attractive to people with lots of money), enriched curricula, wraparound medical and social services, and serious efforts to reduce economic inequality and the poverty that afflicts a quarter of our kids.

The former Florida chief executive uttered not a word about the fact that Florida voters in 2012 rejected his signature school voucher plan by 55% to 45%. Not a word about the fact that millions of voters from coast to coast have rejected vouchers or their variants in 28 state referenda (including on November 4 in Hawaii) by an average 2 to 1 margin, a fact bolstered by the 2014 Gallup/PDK poll showing the very same level of opposition. Not a word about religious liberty, which includes the right of every taxpayer not to be compelled by government to support religious institutions not of their own choosing.

— Edd Doerr

He added that Russian Orthodox zealots are opposed to religious pluralism and freedom. “Embracing Orthodox Christianity as a force to unite these now divided Slavic lands and also their own fractured movement, the rebels, fortified recently by an influx of weapons and soldiers from Russia, used their period in power here purging Slovyansk of rival Christian denominations. They seized the Good News Church, a large evangelical complex, moving in Russian icons and replacing Protestant services with Orthodox ones.” A Ukrainian Orthodox church was seized by Russian Cossacks and turned over to Russian Orthodox authorities. Recent turmoil in the region has destabilized religious life, Higgins concluded.

**Tehran:** The divorce rate is soaring in the Islamic Republic of Iran, reports Reuters, despite official opposition from the clerical establishment. About 20% of marriages now end in divorce. Reuters reported on October 22: “The rise in the number of couples choosing to split up has angered conservatives in Iran who see the increase in divorce as an affront to the values of the Islamic Republic. Last month, Mustafa Pour Mohammadi, the current justice minister who is also a cleric, said that having 14 million divorce cases within the judiciary is ‘not befitting of an Islamic system,’ according to the Iranian Students News Agency.”

Most divorces had been initiated by the husband, but the improving economic, social and educational status of women has led to more divorces sought by wives. Still, laws are slow to change. Reuters’ reporter Babak Dehghanpisheh explained, “The marriage law in Iran traditionally favors the husband, who has the right to ask for a divorce. But in most cases being brought to court now, the husband and wife have generally come to a mutual agreement to separate, Iranian lawyers say. In the cases where the husband is unwilling to divorce, the wife must legally prove that the husband is abusive, has psychological problems or is somehow unable to uphold his marriage responsibilities in order to separate.”

**Toronto:** The controversy over whether Catholic schools should allow students to opt out of religious courses and worship services continues. Despite an Ontario Superior Court ruling in April that Catholic schools must grant exemptions, “Catholic school officials

## Church Taxes, European Style

Germany is not the only European country in which the government collects taxes for church groups, though its tax rate percentage is the highest. Church taxes are also collected in Sweden, Finland, Austria, Hungary, Portugal and San Marino. Italy’s tax is the smallest (eight tenths of one percent) and may be given to Catholic, Protestant, and Jewish groups. Iceland collects church taxes for “registered” religions and humanist groups.

Switzerland’s taxes are collected on the canton level (equivalent to U.S. states). In some cantons, private companies must pay a church tax. Some cantons collect taxes “on behalf of the Jewish community,” according to the Pew Research Center, but Islamic groups are not eligible. Spain collects a church tax only for the Catholic Church, while Denmark provides a church tax only for the Evangelical Lutheran Church.

have been denying student requests for exemptions based on school boundaries and property tax statements,” reported *The Globe and Mail* on September 2. In another instance, a long-time teacher at St. Peter’s Catholic Secondary School in Peterborough was let go because he told students they did not have to participate in religious studies.

*The Globe and Mail*, Canada’s leading newspaper, explained, “Students attending Catholic schools are asked to take one religion credit each year of their high school career—70 minutes of religious instruction every day for four full semesters. A right to exemption from religious studies was inserted in the Education Act in the late 1980s, when public funding was extended to Catholic secondary schools and enrolment was opened to non-Catholic students.” In an August 12 editorial, the paper added, “Forcing religious classes on any student amounts to a violation of the Education Act and willful ignorance of the recent Ontario Superior Court ruling. Catholic schools should follow the rules if they continue to rely on public funds to operate.” ■

## Books and Culture



**Conservative Hurricane: How Jeb Bush Remade Florida**, by Matthew T. Corrigan. University Press of Florida, 2014, 230 pp., \$26.95.

There couldn’t be better timing for the appearance of this exceptional study of Jeb Bush’s eight-year reign (and that’s probably the right word) as Florida’s governor. After apparently receiving his family’s blessing, Bush may likely enter the 2016 presidential sweepstakes in the coming months, making a survey of his record essential to the political dialogue.

The author, chair of the political science department at the University of North Florida, advances several points. One is that Bush may portray himself as a moderate within Republican ranks, but he was no moderate governor. He was a thoroughgoing conservative who sought to remake his state through an activist executive role, even while paying obeisance to the Republican mantra of limited government. “Even though Bush talked repeatedly about limiting the power of government, he did not believe in limiting the power of the executive.... Bush also believed that executive power was needed to

implement conservative policy changes throughout state government.”

Bush was clearly a conservative culture warrior, as his actions during the Terri Schiavo end-of-life case demonstrated. “Besides the Terri Schiavo case, Bush’s legislative agenda attempted to limit abortions, use faith-based rehabilitation programs in Florida prisons, and ask Florida public schools to adopt religious materials.” Bush’s actions also showed a “thinly veiled contempt” and a “distrust” of the judiciary.

There is no reason why Bush should not win over the Religious Right. “Bush believed that religion was being pushed out of the public square, and during his time as governor he did more to integrate religion and religious organizations into Florida politics and administration than any governor in Florida history.”

But Bush’s main claim to fame was his advocacy of school vouchers and other so-called “reforms.”

“School choice became Governor Bush’s Holy Grail of educational  
*continued on page 12*

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## Books and Culture, *continued from page 11*

reform.” All in all, “Bush made Florida into a laboratory of conservative governance, and the effects are still being felt today in the state and around the nation.”

As for the future, Corrigan wonders whether Bush can satisfy the Tea Party ideologues who form such a large part of Republican primary voters. Still, as he summarizes, “Agree with him or not, as governor and former governor, Jeb Bush changed Florida. The state surged to the forefront of the conservative educational reform movement. Social issues that most politicians had shied away from became normal parts of the legislative process under Jeb Bush. Bush also implemented record tax cuts, privatized a good portion of state government, and gave large incentives to private businesses. The question now becomes: Will Jeb Bush try to change America?”

This is an excellent book which should be on every serious citizen’s reading list for the new year.

—*Al Menendez*

***Losing Our Way: An Intimate Portrait of a Troubled America***, by Bob Herbert. Doubleday, 2014, 283 pp., \$27.95.

This is a book that I wish I had written. In it, former long-time *New York Times* opinion columnist Bob Herbert explores some of the serious problems facing our country today: our crumbling infrastructure (bridges, roads, dams, electric power grid, outdated air traffic control system, water and sewer systems), the concentration of wealth and political power in the top 1 or 2%, the ultra-high costs of our unnecessary wars in terms of dollars and the wreckage of human lives.

Fully a quarter of the book is devoted to our public schools, how they have been savaged for years by conservatives, privatizers, over-testing enthusiasts, and pseudo-reformers like William Bennett, Michelle Rhee, Joel Klein and Jeb Bush. Herbert’s critiques of these destructive forces jibe with what ARL has been saying for many years and with the experts whose work we have reviewed favorably such as Diane Ravitch, Mercedes Schneider, David Berliner, John Kuhn, Chris and Sarah Lubienski, and others.

Herbert winds up with a wake-up call: “America needs to rein in its raging inequality. In an era of global warming, it needs creative new approaches to safeguarding the environment. Workers need protection from the tyranny of employers. Students need easier, more affordable access to higher education. The nation’s physical plant needs to be rebuilt, the economy revived, and the banking system reformed. And the overwhelming influence of big money in politics needs to be drastically curtailed.”

This moving, clear-eyed book needs, demands a wide circulation in our hurting nation. It easily rates five stars.

—*Edd Doerr*

### Back Issues of *Voice of Reason*

Since 1982 Americans for Religious Liberty has published 129 issues of its journal, the *Voice of Reason*. All of these issues are now available in downloadable PDF format at our website, [www.arlinc.org](http://www.arlinc.org).

If for any reason you should need an original printed version, these are also available from Americans for Religious Liberty at:

ARL, PO Box 6656, Silver Spring, MD 20916

***Separation of Church and State: Founding Principle of Religious Liberty***, by Frank Lambert. Mercer University Press, 2014, 227 pp., \$24.00.

This cogent analysis of the separation principle does two things, and does them well. First, it challenges the pseudo-historians of the Religious Right, “who are not educated in the discipline and do not adhere to the standards of historical scholarship.” In fact, “Through selective quotations taken out of context and, in some instances, fabricated quotations, these ‘historians’ rewrite the nation’s founding.” Lambert, a history professor at Purdue University and author of several volumes on U.S. religious history, refutes these “revisionist” historians. “The aim of this book is to separate propaganda and myth from history.”

Secondly, he argues that separation of church and state is “a cherished bulwark of freedom” that was championed by the nation’s founders. “This book argues that the testimony of revolutionary evangelicals as well as enlightened statesmen makes a convincing case that the separation of church and state was indeed a vital constitutional principle of 1776.” He adds, “To James Madison, separation of church and state was no myth, but an expression of the broader principle of separation that he deemed essential for freedom.”

The result of this wise policy is clear. “By putting religion on a voluntary, instead of a state-supported, basis, the founders created a free marketplace of religion, a competitive place whereby the various churches could check any single group from imposing its will on the whole nation, and an innovative place whereby new religions are spawned and old ones adapt and change to increase their appeal to more people.”

Lambert notes that the Massachusetts Bay Colony “represents a model for the kind of state that the Christian Right advocates.” It was a totalitarian society that “privileged orthodoxy over freedom, uniformity over diversity, and conformity over dissent.”

Lambert also reviews the deliberations of the federal Constitutional Convention and the state conventions on ratification and discovers that “the delegates seldom mentioned religion at the convention and at the state ratifying conventions.” So much for the myths of a Christian nation.

This outstanding book deserves a wide reading audience.

—*Al Menendez*

***Pro: Reclaiming Abortion Rights***, by Katha Pollitt. Picador, 2014, 272 pp., \$25.00.

Katha Pollitt’s new book, published in October, is one of the most important to see print this year. Eminently readable yet encyclopedic in scope, not too technical and not too light, it covers the abortion rights issue with an astonishing thoroughness, exploring in precise detail every possible reason why every woman’s fundamental right to complete reproductive freedom of choice and conscience should be honored by every level of government, and completely demolishing every imaginable argument, religious or social, for weakening that right.

Pollitt shows that the 1973 *Roe v. Wade* ruling acknowledging, not inventing, a woman’s right to terminate a problem pregnancy was more centrist than liberal and yet has been steadily trimmed back on both the federal and state levels by conservative and Republican legislators, especially in the last four years, blindly following the wishes of anti-choice misogynist theocrats and Religious Right activists. She warns that while leaving *Roe v. Wade* theoretically intact it could nonetheless become a quaint relic in a legal museum, thanks to the organi-

zation and vehemence of anti-choice conservatives and the inadequate drive of the pro-choice political center and left.

Not content with simply defending the right to choose, Pollitt offers concrete suggestions for public policy advances: adequate sexuality education for all teenagers; universal access to comprehensive reproductive health care, contraception and safe abortion; and serious efforts to alleviate the poverty that afflicts far too many women in America, especially minorities, putting far too many women and girls in the position of needing to terminate problem pregnancies.

Pollitt and Americans for Religious Liberty are on the same page. In May of 1987 ARL put on a conference in Washington on abortion rights featuring scientists and theologians. The papers presented were published in ARL's book, *Abortion Rights and Fetal "Personhood"*, the science material of which was presented to the Supreme Court in an *amicus curiae* brief signed by 12 Nobel laureates, including DNA co-discoverer Francis Crick, and 155 other distinguished scientists in the case of *Webster v. Reproductive Health Services*. In 1999 ARL published civil liberties expert and ARL president John Swomley's book, *Compulsory Pregnancy: The War Against American Women*.

Pollitt's book should be bought, read and circulated by every woman or man who has even the slightest interest in women's fundamental rights and welfare.

—Edd Doerr

**Secular Government, Religious People**, by Ira C. Lupu & Robert W. Tuttle. William B. Eerdmans Publishing Company, 2014, 271 pp., \$25.00.

This book gives a closely reasoned defense of secular government. "The idea of secular government is not hostile or even indifferent to religion. Instead, it simply reflects the limited authority of civil government."

This concept is mandated by the First Amendment. "The nonestablishment principle defines a government that receives its authority from the people, not from revealed or transcendent sources, and that recognizes the limited scope of its authority over the people. . . . Under the nonestablishment principle, the state may not invoke religion as a source of civil authority." They add, "The nonestablishment principle also bars the government from using religious means to achieve secular ends."

The authors, both law professors at George Washington University, apply these principles to such contentious questions as government funding of religion, religious expression in public schools, and the nature of religious liberty. They look closely at decades of Supreme Court decisions and conclude with a case study of the military chaplaincy, which "is neither a prohibited nor a mandatory institution."

The U.S. Supreme Court's recent *Town of Greece v. Galloway* ruling drew this criticism from the authors: "The Establishment Clause forbids any and all units of government from asserting a religious character. By permitting the town to maintain a prayer practice that manifests such a character, the Court has invited other governmental bodies to do likewise."

This is a valuable corrective to the many misinterpretations that surround the meaning of the First Amendment.

—Al Menendez

**The Teacher Wars: A History of America's Most Embattled Profession**, by Dana Goldstein. Doubleday, 2014, 349 pp., \$26.95.

## Attacks on Public Schools

The *Nation's* October 13 special issue on the attacks on our public schools was excellent. Unmentioned, however, was the decades long Republican/conservative push to divert public funds to faith-based and other special interest private schools through vouchers and other gimmicks. In 27 state referenda from Florida to Alaska and Massachusetts to California millions of voters have rejected this push by an average 2 to 1 margin. And the annual Gallup/PDK education polls have reflected this strong voter support for public schools.

The pseudo-reformers and "Rheereformers" must be stopped or public education and a decent democracy will die.

—Edd Doerr, *The Nation*, November 10, 2014

Teachers, like comedian Rodney Dangerfield, "don't get no respect." The how and why of this emerges from Dana Goldstein's informative new history of the 200 year old American public school teaching profession: racism; sexism; persistent under- and uneven funding of public schools, especially those serving the neediest kids; too large classes; teacher churn; the recent mania for endless testing; the poverty that affects a large percentage of families; the pernicious influence of pseudo-reformers who have enormous political clout and money but very little actual experience teaching; and the "blame the teachers and unions for all problems" mantra, even though the home lives of students are more significant.

Goldstein offers some suggestions for improving our public schools and the teaching profession, but her book falls short of such more important recent books as Diane Ravitch's *Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools*, Mercedes Schneider's *A Chronicle of Echoes: Who's Who in the Implosion of American Public Education*, David Berliner and Gene Glass's *50 Myths & Lies that Threaten America's Public Schools*, and Michael Fabricant and Michelle Fine's *Charter Schools and the Corporate Makeover of Public Education*. (All were reviewed in recent issues of *VOR*.)

Goldstein's book, oddly, does not discuss the decades long campaign to divert public funds to faith-based private schools through vouchers and/or tax credits. As this review was being written (October 8) the news came through from the North Carolina Justice Center that that state's new \$10.8 million school voucher plan, upheld by a state court recently, has provided more public funds, over \$90,000, to the Greensboro Islamic Academy, more than to the next largest recipient of taxpayer largesse, the Word of God Christian Academy in Raleigh.

—Edd Doerr

**Hope on Earth: A Conversation**, by Paul R. Ehrlich and Michael Charles Tobias. University of Chicago Press, 2014, 188 pp., \$20.00.

**Philosophy for a Better World**, by Floris van den Berg. Prometheus Books, 2014, 293 pp., \$23.00.

**The Family Planning Fiasco: How the Vatican Subverted Family Planning in the Developing World**, by Dieter Ehrhardt. Copydruck Roth Würzburg, 2014, 219 pp.

Climate change is real and threatens us all. It is linked to atmospheric carbon dioxide buildup, fossil fuel overuse, environmental deg-

*continued on page 14*

## Books and Culture, *continued from page 13*

radation, resource depletion, toxic waste accumulation, deforestation, desertification, soil erosion and nutrient loss, biodiversity shrinkage, and increasing sociopolitical instability and violence. All this, in turn, is linked to human overpopulation, tripled since 1945 to well over 7 billion. The overpopulation problem was spelled out in the U.S. government's 1975 National Security Study Memorandum 200 report, signed by President Gerald Ford and National Security Adviser Brent Scowcroft. The NSSM 200 report, mysteriously classified and buried until 1989, recommended universal access to contraception and noted that overpopulation could not be reined in without widespread legalization of abortion. The report noted that about 30 million abortions were performed each year worldwide, most of them illegal and dangerous. Alan Weisman's 2013 book *Countdown* (reviewed in VOR No.126) reported that the annual world abortion figure is now 40 million. For details on the NSSM 200 report see VOR issues No. 41 (Spring 1992) and 50 (Summer 1994), accessible online at arlinc.org.

All three of these books deal with the overpopulation issue. Environmental scientists Paul Ehrlich, author of the important 1968 book *The Population Bomb*, and Michael Charles Tobias put much of the blame for inaction on the Vatican. Ehrlich writes that the main source of opposition to contraception "is that of the Vatican and its bishops. Yet Catholics use contraception as much as non-Catholics."

A great many Catholics and others are hoping that Pope Francis will do the right thing for our planet, rescind Pope Paul VI's 1968 ban on contraception that was promulgated in defiance of the advice of the overwhelming majority of his own advisers.

Dutch philosopher and ethicist Floris van den Berg agrees with Ehrlich and Tobias on the importance of dealing with the overpopulation issue. But beyond that he proposes an ethical system, called "universal subjectivism," that "can be adopted by anyone regardless of religious or philosophical orientation." He is concerned with the sustainability of our environment and offers practical advice. "Eating lower on the food chain, by eating cereal and vegetables, instead of feeding these to animals as feed and eating the animals, is much more efficient in the use of water, food and energy. . . . Voluntary reduction of the ecological footprint (voluntary simplicity) is a moral duty, not just a nonobligatory choice."

Dieter Ehrhardt, a retired official of the German Ministry for Economic Cooperation and later the UN Fund for Population Activities, with years of experience in the West Indies and Africa, brings his

informed perspective to this issue. He praises Catholic theologian Hans Küng and Catholic officials, such as Vatican demographer Rev. Arthur McCormack, who defied the Vatican on contraception, but hits the Vatican hard for its obstinate opposition to progress in slowing population growth. He cites Carl Bernstein's report that with regard to the 1984 UN Mexico City conference, "In response to concerns of the Vatican, the Reagan Administration agreed to alter its foreign aid program to comply with the church's teaching on birth control." Bernstein reported in *Time* magazine on February 24, 1992, that Reagan's top advisers, such as Secretary of State Alexander Haig, "regarded the U.S.-Vatican relationship as a holy alliance: the moral force of the Pope and the teachings of their church combined with the American notion of democracy."

Ehrhardt's book so far has been published in only a limited printing in Germany and awaits an American publisher. It was reviewed favorably in the No. 3 issue of *Conscience*, the quite excellent journal of Catholics for Choice.

Overpopulation and climate change are top priority issues that will not go away.

—Edd Doerr

***Rough Country: How Texas Became America's Most Powerful Bible-Belt State***, by Robert Wuthnow. Princeton University Press, 654 pp., \$39.50.

Those who are curious about why Texas has become the most Republican and conservative large state would do well to consult this exhaustive sociological study.

While there are many economic, cultural and social factors influencing the political transformation of the Lone Star State over the past few decades, religion - specifically conservative Protestant religion - is the best explanation.

Once a Democratic stronghold (It was the only Southern state for Humphrey in 1968), Texas last backed a Democratic presidential candidate in 1976, and that was because Jimmy Carter drew heavy support from fellow Baptists.

Texas makes a good case study in religion's ability to reshape politics. "Texas is a particularly interesting location" to study these profound changes, the author writes, and explains, "It was part of the Democratic South, the state that Kennedy had to win in order to become president in 1960, and the state from which Johnson succeeded to the presidency in 1963, and yet it would be a strong ally of Reagan and the home of two subsequent Republican presidents. It was a bastion of Southern Baptist influences and yet was rife with religious disagreements. It was the location of tense relationships between Protestants and Catholics and between Anglos and Hispanics as well as conflicts over racial segregation and civil rights."

Wuthnow looks at the various influences that created a powerful fundamentalism that surfaced as early as the 1920s, when anti-evolution sentiment, Prohibitionism and the use of dispensational theology made the state so reactionary that Herbert Hoover defeated Al Smith there in 1928. These trends intensified so that polls in the 1960s found church attendance was 17% higher in Texas than in the nation and belief in an infallible Bible was 15% higher. The Southern Baptist factor was preeminent.

This provocative analysis shows why Texas has become an unshakably Republican state and is likely to remain so for the foreseeable future.

—Al Menendez

### The Clock Is Ticking

Diane Ackerman, whose *The Human Age* was critically reviewed by Rob Nixon (September 7), has a far too rosy picture of our planet's future. She needs to read Paul Ehrlich and Michael Tobias's 2014 book *Hope on Earth*, Alan Weisman's 2013 *Countdown*, and John Englander's 2012 *High Tide on Main Street*.

Daydreaming and wishful thinking will not head off climate change, resource depletion, soil erosion and nutrient loss, biodiversity shrinkage, desertification, deforestation, and the assorted consequences of human overpopulation, tripled to over 7 billion since 1945. The clock is ticking.

—Edd Doerr, *New York Times Book Review*, September 21, 2014

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***Epicurus & Apikorsim: The Influence of the Greek Epicurus and Jewish Apikorsim on Judaism***, by Yaakov Malkin. Milan Press, 173 pp., \$16.80.

Apikorsim is the Hebrew word for heretics (apikorsut = heresy). The word is evidently derived from the name of the Greek philosopher Epicurus (341-270 BCE), whose ideas spread throughout the Hellenic world, including what we call the Middle East, after the conquests of Alexander the Great (356-323 BCE). Epicurus rejected the idea of divine providence and personal immortality. Malkin writes that Epicurus may well have influenced the book of Ecclesiastes in the Bible, one reason why many early Jewish religious authorities did not want it included in the canon. Epicureanism, not to be confused with hedonism, was passed along by the great Roman writer Lucretius (95-55 BCE) and influenced secular Jewish thought, and even liberal Muslim thought, for centuries, extending all the way to the Dutch/Jewish philosopher Baruch Spinoza (1632-1677), a precursor of modern liberal thought, and such influential thinkers as John Locke and David Hume.

Israeli scholar Yaakov Malkin makes the point that “an individual or society can improve its quality of life by adopting the principle that happiness as its ultimate goal, as did the founders of the United States of America – the only state in the world to establish the Epicurean principle of ‘pursuit of happiness’ as a bedrock of all legislation and public policy. The inclusion of this idea in the American Declaration of Independence can be traced to Thomas Jefferson, who was a declared Epicurean.” Malkin writes that the Deism of Jefferson and his generation was essentially an Epicureanism in which the word “God” was largely code for “Nature.”

Among Malkin’s insights is this: “Capitalism driven by hedonism, consumerism and globalization is generally not restrained by the principles of social justice and legislation based upon them. One of the exceptions to this rule is the state of affairs in Scandinavia, where there is no uncontrolled population growth, and where egalitarian (between men and women) democracy has succeeded in implementing policies based on a free-market economy and social legislation. In countries and regions suffering from population explosion, the suffering of the masses simply increases, while their ‘kleptocracies’ (as termed by Saul Bellow), are the main beneficiaries of financial aid from the world’s rich countries.”

Malkin’s book was published in 2007, but, regrettably, my library is so full that I just got around to reading it. The book, incidentally, is dedicated to my late good friend Rabbi Sherwin Wine, founder of the modern Humanistic Judaism movement and co-founder of Americans for Religious Liberty.

Malkin’s views on the importance and influence of Epicurus and Epicureans are very close to those of Matthew Stewart, whose excellent 2014 book *Nature’s God: The Heretical Origins of the American Republic* was reviewed in *Voice of Reason* No. 128.

—Edd Doerr

***Inside the Jesuits: How Pope Francis Is Changing the Church and the World***, by Robert Blair Kaiser. Rowman & Littlefield, 2014, 209 pp., \$32.00 paper.

This lively book argues that the now mostly liberal Jesuit Order has shaped Pope Francis and has laid the groundwork for a reforming papacy. “His Jesuit DNA has driven him to rediscover, redefine, and set out on new frontiers and new boundaries with a holy boldness.” Kaiser thinks Francis will “maintain a clear course in the direction of renewal, ecumenism and openness to new ideas.”

Kaiser, a journalist and Vatican expert, clearly aims his book at Catholic liberals, who, he says, “should cut Pope Francis some slack.” He explains, “Liberals should grow up and find ways to support Francis in the Church’s most pressing piece of unfinished business – reversing more than a thousand years of male chauvinism by giving women a voice, a vote, and first-class citizenship in the Church.”

The outside world is hoping for changes in church-state relations and in policies that affect the rest of humanity. Only time will tell if optimism is justified. Kaiser himself admits, “Francis is also a man who has missed the mark many times in the past, and he may well do so again.”

—Al Menendez



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## Commentary

# Scalia Obeys His Doctrine of Interpretation Religiously

by **Burton Caine**

Two recent books on the U.S. Supreme Court have taken different paths. *Uncertain Justice, The Roberts Court and the Constitution*, by Laurence Tribe and Joshua Matz, emphasizes the wobbly path the Court has taken in the conservatives' largely successful campaign against liberals.

*Scalia - A Court of One*, by Bruce Allen Murphy, focuses more on religion although both were published before *Town of Greece* - permitting municipal government to begin sessions with prayer, and *Hobby Lobby* - extending First Amendment freedom of religion to corporations to deny their employees contraception and abortion services mandated by the Affordable Care Act.

Murphy reports that Scalia learned at Georgetown University, a Catholic institution, that his mission was to follow "the beacon guiding them ...their Catholic faith." Fifty years later when he was a justice on the U.S. Supreme Court, he reiterated this commitment and "the teachings of the pope."

Murphy praises Sister Helen Prejean, the Catholic nun who advocated against the death penalty and Scalia's interpretation of scripture justifying it. She said, "I cannot recognize Scalia's God, much less worship such a God."

In *Salazar v. Buono* (2009), Scalia denied that a Christian cross atop a veterans' cemetery was a religious symbol but "is erected to honor all of the war dead." To which the ACLU lawyer replied, "There is never a cross on a tombstone of a Jew."

This is not the first time that the question of majoritarian religious prejudice exists in Supreme Court decisions. Sunday closing laws have been challenged by Jews to no avail. But a Seventh-day Adventist was protected by the Constitution in her refusal to work on Saturdays. An Orthodox Jewish psychologist was expelled from the armed forces for wearing a skullcap in violation of an army prohibition against hats indoors. Obviously, the ban derived from church practice. In response to the decision, Congress repealed the regulation.

In *Town of Greece*, the Supreme Court permitted a municipality to begin official business with prayer, virtually all of which was Christian, and offensive to other religions. Scalia joined the majority.

Other minority religions have fared poorly at Scalia's hand or with his endorsement. In *Employment Division v. Smith* (1990), Native American church members were denied the right to smoke peyote as required by their religion because the state banned drugs. Scalia ruled that laws of general application do not violate the free exercise clause no matter how injurious to any religion. This decision was devastating to minority religions unlikely to have the power to escape what Tocqueville termed "the tyranny of the majority." In response, Congress enacted the Religious Freedom Restoration Act, requiring that such restrictions must be reasonable, basically the rule that Scalia trashed.

One must compare the harm that Scalia caused the powerless in the peyote case to the benefit heaped upon the powerful in joining rulings in two recent cases in favor of the powerful. In *Hobby Lobby*, the Court ruled for the first time that corporations for profit have rights under the freedom of religion clause of the First Amendment to deny employees basic medical care mandated under the Affordable Care Act. In the peyote case, religious rights were denied to Native American church members. Both of Scalia's actions were wrong.

As to Scalia's trademark of "originalism," he violates it by making exceptions where the First Amendment has none. ■

*Burton Caine is professor of law at Temple University School of Law and chairman of the board of Americans for Religious Liberty.*

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