



# VOICE OF REASON

The Journal of Americans for Religious Liberty

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## Sotomayor Nomination Approved

On August 6 the U.S. Senate confirmed the nomination of Sonia Sotomayor as the first Hispanic Justice of the U.S. Supreme Court. The vote was 68 to 31. Both Independents and all 57 Democrats, but only 9 of 40 Republicans, voted for confirmation (Sen. Ted Kennedy, who was battling terminal brain cancer, was unable to be present for the historic vote.) Sotomayor, a New York native, has spent the past 17 years on the federal bench, the longest service of any justice in the Court's 220-year history. She becomes the Court's 111<sup>th</sup> justice, and its third woman. For the past 11 years she has been a judge on the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit.

Of the nine Republicans supporting Sotomayor, three were from the South where opposition to her nomination was strong (Alexander of Tennessee, Graham of South Carolina, and Martinez of Florida). Four Republican supporters are not running for reelection next year (Bond of Missouri, Gregg of New Hampshire, Martinez of Florida, and Voinovich of Ohio).

The usual geographical divisions were apparent. Every New Englander supported Sotomayor, including the three Republicans from the region (Collins of Maine, Gregg of New Hampshire, and Snowe of Maine). Senators from the South voted 12-10 against confirmation. Both senators from Kentucky and Oklahoma also voted no. The Rocky Mountain West lined up against confirmation 9-6. The Pacific Coast region backed her 9-1, the Midwest 11-1, and the Mid-Atlantic 10-0. The vote was close in the Plains states and the Border South.

Former Republican presidential candidate John McCain voted no, as did his Arizona colleague John Kyl. Speculation is mounting that solid Republican opposition to the nomination in heavily Hispanic states like Arizona and Texas will thwart any attempted Republican breakthrough into the Hispanic community, which backed Obama and the Democrats by nearly 70% to 30% last year.

Judge Sotomayor's opinions on religious liberty cases indicate a pro-separation position, especially with regard to the Free Exercise Clause. She has frequently ruled in favor of the individual against the state in Free Exercise cases, almost opposite to those of Justice Antonin Scalia, who tends to favor the state.

She seems sensitive to the concern that the state should not dictate how religious groups order their affairs. In 2006 she was in the minority in a case in which a 70-year-old Methodist minister sued his church for enforcing mandatory retirement. His claim that he was a victim of age discrimination was sustained. In her dissent in *Hankins v. Lyght* (2006), Sotomayor argued that "The Age Discrimination in Employment Act does not apply to employment suits brought against religious institutions by their spiritual leaders." She said the government risks "an unconstitutional trespass" if it attempts to dictate to religious groups whom they can hire or dismiss as spiritual leaders.

Dan Gilgoff, in his "God & Country" column for *usnews.com* observed, "It's the kind of church-state separation opinion – protecting the church from the state, as opposed to the other way around – that will please religious conservatives."

In two cases dealing with prisoners' religious rights, she ruled in favor of the Free Exercise claims of plaintiffs. In *Campos v. Coughlin* (1994), she held that Santería prisoners could wear strands of beads under their clothes as required by their faith tradition. In *Ford v. McGinnis* (2003) she upheld a Muslim inmate's desire to participate in a religious feast. She said prison authorities erred in their denial. Overruling a lower court decision, she wrote that "[C]ourts have not aptitude to pass upon the question of whether particular religious beliefs are wrong or right." Dan Gilgoff noted that Sotomayor was concerned about "whether the prisoner sincerely held the belief." Gilgoff said

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## Health Care Entangled in Abortion and Religion

Health care reform is expected to dominate Congress in the coming months. Two subsidiary issues that might affect the outcome are abortion and religious exemptions. Abortion is not explicitly mentioned in the major health-care bills under consideration, but House and Senate committees have already endorsed the possibility that some abortions will be covered. This has already led to massive lobbying efforts by anti-choice groups. A web site, StopTheAbortionMandate.com, has been organized. Anti-choice groups have enlisted former Arkansas Gov. Mike Huckabee, now a Fox TV personality, Focus on the Family founder James Dobson, and Southern Baptist leader Richard Land to coordinate the campaign.

A group of moderate Democrats led by Reps. Tim Ryan of Ohio and Rosa DeLauro of Connecticut, have proposed a pregnancy prevention

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# Ten Commandments' Monument Declared Unconstitutional

An Oklahoma County's erection of a Ten Commandments' monument at a courthouse was declared unconstitutional by a federal appeals court on June 8. The U.S. Tenth Circuit Court of Appeals held that the display violated the Establishment Clause "because the reasonable observer would view the Monument as having the impermissible principal or primary effect of endorsing religion."

The case arose in October 2005 when ACLU and an individual taxpayer, James W. Green, challenged a 2004 decision by the Haskell County Board of Commissioners to build the monument on the front lawn of the county courthouse. A dedication ceremony was held that included numerous prayers from local pastors. In August 2006 a federal district court upheld the monument's constitutionality, and plaintiffs appealed to the Tenth Circuit, which overruled the lower court. The case, *Green v. Haskell County Board of Commissioners*, attracted national attention. ACLU was joined by amicus briefs from the Mainstream Baptist Network and Americans United.

Supporting the monument defendants were Rev. Pat Robertson's American Center for Law & Justice, the American Legion, the right-wing National Legal Foundation, and the Foundation for Moral Law, a Montgomery, Alabama-based group founded by Roy Moore, a former Alabama Supreme Court Chief Justice who recently announced his candidacy for the Republican nomination for governor.

From the start the monument had presented complex religious questions that were ignored by the county board. Which version would be used? Who would finance it? The primary instigator was Michael Bush, a construction worker and part-time minister who told the board that "the Lord had burdened his heart" to create the monument. Bush "raised the necessary funds through religious groups in the community" and also "condensed and paraphrased the Commandments from the King James Version of the Bible," according to the decision. The final product is so short it could be called a Readers Digest Condensed Version. The word "adultery" is spelled "adultry." The Mayflower Compact was added to the monument. A dedication ceremony held on Sunday, November 7, 2004, primarily consisted of members of churches that had participated in the fundraising effort.

The appeals court emphasized the "reasonable observer" rule enunciated by the U.S. Supreme Court in previous Establishment cases:

"Thus, the reasonable observer in this case would be aware of the nature and history of the Haskell County community, the circumstances surrounding the Monument's placement on the courthouse lawn, its precise location on the lawn and its spatial relationship to the other courthouse monuments, and also the Haskell County community's response to the Monument. In particular, the reasonable observer would be aware of Mr. Bush's religious motivation for seeking the erection of the Monument."

Bush's "unalloyed religious motivation" was evident when he "organized a religiously themed rally to support the Monument," the Court observed, and added, "We conclude, in the unique factual setting of a small community like Haskell County, that the reasonable observer would find that these facts tended to strongly reflect a government endorsement of religion."

The decision was unanimous: "In the context of the small community of Haskell County, we hold that the Board's actions in authorizing and maintaining the Monument—inscribed with the Ten Commandments—on the courthouse lawn had the impermissible principal or primary effect of endorsing religion in violation of the Establishment Clause."

Joann Bell, executive director of ACLU of Oklahoma, was pleased with the ruling: "This is a significant ruling for the citizens of Oklahoma. Religion should not be something that should be allowed to divide the citizens of this state, which is what happens when the government endorses one particular set of religious beliefs. All Oklahomans, of all creeds—and not just the beliefs of those in power—should feel welcome at the county courthouse."

Haskell County commissioners announced that they will defy the court order. The three-judge panel of the 10<sup>th</sup> Circuit remanded the case to U.S. District Judge Ronald White, who originally upheld it, and told him to issue a new ruling consistent with their findings. Commissioner Mitch Worsham was defiant: "Whoever was the judge in this, I feel sorry for him on Judgment Day. We're not going to take it down." County attorneys may ask for an *en banc* rehearing by the entire Denver-based 10<sup>th</sup> Circuit or appeal the case directly to the U.S. Supreme Court. ■

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## Private School Enrollment Declines 6.5%

The number of students enrolled in private schools declined from 6,320,000 in 2001 to 5,910,000 in 2007, according to a report issued by the National Center for Education Statistics (NCES), a federal government research agency. This represents a decline of 6.5% and puts the private school sector back to where it was in 1995 (it rose between 1995 and 2001). About 11% of all students attend private schools. The high point for private school enrollment was 6.5 million in 1965.

The Roman Catholic “share” of the nonpublic sector continued to slide, from 45% in 1995 to 39% in 2007, the last year for which data are available. Only 2,311,000 students attend Catholic schools, compared to a peak of 5.5 million in 1965. Almost as many students (38.6%) attend all other religious schools, from Protestant to Muslim and everything in between.

The nonsectarian sector educates 22.3% of all private school students. Since 1995, the “Conservative Christian” school share has increased from 13% to 15%, while the nonsectarian share inched upward from 20% to 22%. “Other” religious schools, including Lutheran, Jewish, Episcopal, Muslim and others, also increased from 22% to nearly 24%. Within the “other” category, a striking change has occurred. The schools “affiliated” with a particular religion have dropped from about 12% to 9% while the “unaffiliated” category, defined as “those that have a more general religious orientation or purpose” has increased from 10% to nearly 15% and now equals the Conservative Christian category.

Within the Catholic school orbit, another change has occurred. “Parochial” schools, i.e. those run by a local parish, have declined from 25% of all private school students to 16%, while smaller increases have been recorded by “diocesan” schools and “private” Catholic academies, often run by religious orders such as the Jesuits. (The two last-mentioned groups are up collectively from 20% to 23%). Another way of looking at the data shows that truly parochial schools have declined

from 55% of Catholic enrollment to 41%. The vanishing Catholic school is really the vanishing parochial school. (At the high school level, 89% of those attending Catholic-affiliated schools attend diocesan or independent, privately-run schools with a Catholic identity.)

Figures for race and region also reveal changes in just a decade. About one fourth (25.5%) of all private school students come from non-white racial or ethnic minorities, and there is little difference among the broad school types (27% are minority in both Catholic and nonsectarian schools, as are 25% in Conservative Christian schools and 21% in “other” religious schools). African Americans outnumber Hispanics 9.8% to 9.6%, while 5.4% are Asian Americans, and the rest are American Indian. Black students are most represented in Conservative Christian, nonsectarian, and “private” Catholic schools, while Hispanics are strongest in all Catholic schools. Asian Americans are strongest in nonsectarian schools. While a quarter of private school students belong to minorities, 44% of public school students are minorities.

In terms of geography, there has been a continued shift of private education toward the South, reflecting, no doubt, that region’s large number of Conservative Christian schools and relatively fewer Catholic schools. Fully a third of private school students reside in the South, compared to 24% in the Northeast (once a private school stronghold), 23% in the Midwest and 20% in the West. Interestingly, Southern private school students are one fourth minority, the same percentage as nationwide and in the Northeast. Western private school students contain the largest percentage of minorities (38%, nearly half of them Hispanic), while the Midwest has the lowest percentage, 18%. Hispanic and Asian students are strongly represented in the private school population in the West.

Finally, 41% of private school pupils live in cities, 40% in suburbs and 19% in rural areas and small towns. ■

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### Sotomayor Approved, *continued from page 1*

Judge Sotomayor emphasized that “courts must be wary of evaluating claims about the content of particular religions or the importance of certain religious rites.”

In *Flamer v. City of White Plains* (1993) Sotomayor struck down a city council resolution barring all outdoor displays of religious or political symbols on public property, ruling that the resolution constituted content-based regulation of speech that discriminated against religious speech. In that case a rabbi had sought permission for a temporary display of a menorah in a city park.

Sotomayor’s decisions have never dealt directly with the abortion rights question but two of her rulings indirectly touched on this contentious issue. In a 2002 case she was part of a majority that held that the Bush administration’s “Mexico City” policy forbidding foreign organizations that perform or support abortions from receiving U.S. government funds was protected by Supreme Court precedent. In another case she said antiabortion protesters could sue municipal authorities in West Hartford, Connecticut, for “excessive use of force” by police in a demonstration, though that case had to do with municipal liability and could have applied to any group of demonstrators.

Jeffrey Rosen, law professor at George Washington University and author of *The Supreme Court: The Personalities and Rivalries That Defined America*, summarized Judge Sotomayor’s rulings in *Time* June 22: “In her 226 published majority opinions and 19 dissenting opinions, Sotomayor has tilted toward the left on immigration and gender cases

but sided with conservatives on criminal matters.” In matters of civil rights she leaned to the left, especially in cases involving sex discrimination and sexual harassment. All in all, hers has been “a record of moderation,” he concluded. ■

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## Editorial

# All in “The Family”

MSNBC’s Rachel Maddow, HBO’s Bill Maher, The Daily Show’s Jon Stewart, and Garry (“Doonesbury”) Trudeau are to be commended for shining a spotlight on The Family, aka The Fellowship, a shadowy fundamentalist outfit that provides a residence (reportedly for about \$950 per month) for several members of Congress, reportedly including Senators Tom Coburn (R-OK), Jim DeMint (R-SC), and John Ensign (R-NV), and Representatives Zach Wamp (R-TN), Bart Stupak (D-MI), Mike Doyle (D-PA), and Heath Shuler (D-NC). The Family is based in a rather ordinary townhouse located at 133 C Street SE in the nation’s capital, a very short walk from the House of Representatives office buildings. The house, with 12 bedrooms, three offices and a chapel, has a religious exemption from local property taxes. The Family, aka The Fellowship, reportedly had \$19 million in income in 2007, owns the C Street house valued at \$1.8 million, a headquarters, The Cedars, in Arlington, Virginia, valued at \$7.8 million, and a house in Annapolis, Maryland.

Bringing The Family to public attention were the extramarital affairs of Sen. John Ensign (R-NV), Gov. Mark Sanford (R-SC), and former Rep. Chip Pickering (R-MS), all closely associated with The Family. Pickering’s alleged “wrongful conduct” reportedly occurred in part in the C Street house.

Until exposed by Jeff Sharlet’s book, *The Family: The Secret Fundamentalism at the Heart of American Power*, reviewed in ARL’s journal No. 105 last fall, the organization was almost invisible, its only public manifestation being the annual National Prayer Breakfast, begun in 1953 under the Eisenhower administration.

Started in 1935 by a strange Norwegian immigrant and admirer of Hitler named Abraham Vereide, The Family is reported to have around 350 members and as many as 20,000 people associated with it around the world.

Among the current and former members of Congress reported to be involved with The Family are Senators John Ensign (R-NV), James Inhofe (R-OK), Sam Brownback (R-KS), Jim DeMint (R-SC), Chuck Grassley (R-IA), Tom Coburn (R-OK), John Thune (R-SD), Mike Enzi (R-WY), Mark Pryor (D-AR), Strom Thurmond (R-SC), Dan Coats



*The Family’s Fellowship House, 133 C Street SE, Washington, DC*

(R-IN), and Dan Quayle (R-IN). Representatives include Zach Wamp (R-TN), Frank Wolf (R-VA), Bart Stupak (D-MI), Mike McIntyre (D-NC), Todd Tiahrt (R-KS), and Jack Kemp (R-NY).

Prominent “religious right” figures present and past reportedly linked to The Family include James Dobson, Gary Bauer, former Senate chaplain Richard Halvorson, Lou Sheldon, the late Bill Bright, David Barton (recently appointed an advisor to the Texas State Board of Education), Rev. Rob Schenck (of the rabidly anti-choice Operation Rescue), Marvin Olasky (advisor to George W. Bush), Howard Phillips (a co-founder of Falwell’s Moral Majority), Reagan administration cabinet members Ed Meese and James Watt, Justice Clarence Thomas, and Charles Colson (advisor to President Nixon and convicted Watergater who was “converted” through The Family).

Women are conspicuously absent because The Family buys into a fundamentalist Christian patriarchalism. They do, however, serve as maids and cooks.

High on The Family’s domestic agenda are promoting school vouchers, “Christian” academies, homeschooling, and abstinence-only sex education, and opposing abortion rights and same-sex marriage.

According to Jeff Sharlet, whose book has just been released in paperback, The Family “espouses a religious philosophy that holds God-appointed leaders are necessary for Christ’s second coming.” It holds up Hitler, Stalin, and Mao as leaders who “got things done.” Its annual National Prayer Breakfasts, reportedly boring affairs that nonetheless attract hundreds of U.S. and foreign leaders, often of the unsavory kind (such as distators like Libya’s Qaddafi and the late Suharto of Indonesia and Somoza of Nicaragua), who are provided “access” to American big shots.

It is not possible to estimate just how influential The Family is, but investigator Sharlet quotes Family leader/guru Doug Coe as saying that “the more invisible you can make your organization, the more influence it will have.” The Family is not registered as a lobby group.

Any secret organization with a political agenda like The Family or Opus Dei that may have significant influence in our nation’s capital needs to be thoroughly investigated and exposed. Among the things we need to find out is what American officials are doing traveling abroad on Family business with U.S. tax dollars.

— Edd Doerr

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## Health Care, *continued from page 1*

act that would expand initiatives on family planning and increase access to contraception, maternity and prenatal care and additional financial assistance for adoptions. Anti-choice groups have pounced on Ryan's proposals since most are opposed to contraception and abortion. Ryan was dumped from the board of Democrats for Life of America. His bill, supported by Planned Parenthood and NARAL Pro-Choice America, might lower the heat on the health care debate. House Speaker Nancy Pelosi wants insurers to decide whether to cover abortions, rather than having Congress mandate payment. Congress approved the Hyde Amendment in 1976, barring use of federal funds for most abortions, and the Supreme Court upheld the restrictions in 1977. Medicaid pays for abortions in cases of rape, incest or danger to the woman's life. Some states pay for a wider range of procedures.

In what is expected to be a very close and divisive vote on health care reform, the abortion issue could tip the scales one way or the other. Bart Stupak (D-Mich.) is a key vote who vociferously opposes any funding of abortion in any health care overhaul. (Stupak, incidentally, has been linked to The Family. See article on page 4.)

Author Cristina Page has written that the powerful anti-choice lobby opposes family planning services as strongly as they reject abortion rights. Tony Perkins, head of the Family Research Council, echoed this view, warning on July 22 that the Ryan-DeLauro bill would "subsidize abortion providers by increasing funding for family-planning services and would further encourage promiscuous sex."

Another issue is whether Americans who have religious objections to federal health care coverage should be exempt from any mandated pro-

gram. "The emerging bills in both the House and Senate include language patterned on an existing 'religious conscience' exemption to laws requiring workers to pay taxes for Social Security and Medicare. What's not clear is whether the exemption, originally designed to apply only to the Old Order Amish, might be used by members of other religious groups—or those who just say they are—in order to evade the insurance mandate," wrote Maura Reynolds in *CQ Today Online News* August 3.

Old Order Amish and Old Order Mennonites, estimated at 200-250,000 members, and Christian Scientists, who provide no data on membership, are the groups most likely to be covered by any exemption provisions. The Amish groups are generally exempt from Social Security and Medicare. They believe in self insurance and taking care of their own community and are opposed to public or private commercial insurance.

No penalties are planned in the pending versions of health care overhaul. Maura Reynolds, staff writer for CQ, noted that the Massachusetts program is the only experience the nation has had. She writes, "In Massachusetts, where the Christian Science church is headquartered, the mandatory state health program offers a religious conscience exclusion, and about 9,700 people applied for it in 2007, the most recent year with complete data. The state program has penalties for those who apply for the exclusion and wind up visiting the doctor or the hospital anyway – and, two years ago, about 700 people who applied for the religious exemption were denied and fined, according to Robert Bliss of the Massachusetts Department of Revenue."

It is almost certain that some religious exemption will be included in the final bill. ■



## Church and State in the Courts

The Wisconsin Supreme Court ruled July 21 that teachers in religious schools cannot sue for age discrimination if they lose their jobs. In a 4-3 decision the state's highest court ruled that a faith-based school's claims of religious freedom outweighed a state nondiscrimination statute. The case began seven years ago when Wendy Ostlund sued St. Patrick's Catholic Elementary School in Onalaska for age discrimination when she lost her job in 2002 after teaching 28 years in the school. She had won a series of victories in lower courts. The LaCrosse Diocese claimed she was a victim of downsizing and was no longer qualified to teach first grade. Diocesan attorney James Birnbaum called the ruling a "victory for religious freedom," while Ostlund's attorney Dawn Harris said, "I don't think justice is served by this case. I don't think any religion should be above the law."

Dissenting Justice Patrick Crooks said the decision "extends a free pass to religious schools to discriminate against their lay employees." He also suggested that the ruling jeopardizes the legality of Milwaukee's school voucher program, which was held constitutional by this same court in 1998.

Justice Michael Gableman wrote for the majority that all employees important to a school's "religious mission" should be exempt from state employment laws. Of Ms. Ostlund, Gableman wrote, "It is obvious that Ostlund's role was of high importance and closely linked to the mission of the school—the inculcation of a Christ-centered concept of life. She was an important instrument in a faith-based organization's efforts to pass on its faith to the next generation." Gableman said the ruling did not, however, provide blanket exception for all religious schools in all circumstances.

Ostlund's attorney held that she was not directly involved in promoting the school's religious mission since she taught mostly secular subjects. Gableman concluded that she led students in prayer and "incorporated religious examples, symbols and values into the lessons."

ARL president Edd Doerr observed in the Milwaukee *Sentinel-Journal* July 27: "The Wisconsin Supreme Court's ruling that the state's Fair Employment Act does not apply to age discrimination at a faith-based private school is just another reason such schools should not receive tax support through vouchers or any other means. If only the state legislature had allowed the Milwaukee school voucher plan to be submitted to the voters of the state, it probably would never have been started, as voters in 25 statewide referendums from coast to coast consistently have shown."



A rural Missouri school district can no longer distribute Gideon Bibles to fifth graders on school property, the U.S. Court of Appeals for the 8<sup>th</sup> Circuit ruled July 16. The appeals court upheld a permanent injunction imposed in 2007. The school district appealed, arguing that its new policy banning literature distribution on school property but declaring "a limited public forum," which could lead to distribution after school or off campus, was acceptable. The 8<sup>th</sup> Circuit Court decision focused solely on the injunction to forbid Bible distribution in the classroom during school time in the presence of a teacher or school administrator. This practice clearly violated the Establishment Clause.

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## Church and State in the Courts, *continued from p. 5*

Invoking the 1987 *Edwards v. Aguillard* case, the 8<sup>th</sup> Court said that it must be “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.”

The case arose in February 2006 when parents of several elementary school students filed suit against a 30-year practice of distributing Gideon Bibles at South Iron Elementary School in Iron County, Missouri. The parents were supported by ACLU and joined by the American Jewish Congress and Americans United. Alabama’s ex-Supreme Court Chief Justice Roy Moore supported the school on behalf of his Foundation for Moral Law.



Native Americans lost an appeal regarding a conflict with the U.S. Forest Service over a mountain they hold sacred. The U.S. Supreme Court in June refused to review a Ninth Circuit Court of Appeals decision allowing the Forest Service to use recycled sewer water to make snow for a ski resort on a mountain held sacred by several tribes. The tribes hold religious ceremonies there and contend the water desecrates their place of worship. The case revolved around “practice versus belief.” Free Exercise decisions in recent years have tended to restrict practice of religion while upholding belief, though critics say the inability to translate beliefs into practice substantially burdens an individual or group’s exercise of religion.

Steven Jamar, professor at Howard University School of Law, told *Christianity Today*: “The Ninth [Circuit] said ‘substantial effect’ arises only when you are denied a benefit, like Medicare, or if you suffer a government sanction, like being put in jail, because of your beliefs.” Another legal specialist, Thomas Berg of the University of St. Thomas School of Law, warned that the decision could affect autopsy rulings, since autopsies do not involve denial of benefits and privileges.



Pharmacists must provide the Plan B “morning after” contraception pill even if they are opposed to it on religious grounds, a federal appeals court ruled July 8. A three-judge panel of the U.S. 9<sup>th</sup> Circuit Court of Appeals rejected a free exercise of religion claim advanced by a pharmacy in Olympia, Washington. The panel ruled unanimously that free exercise “does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability.” The court added, “Any refusal to dispense—regardless of whether it is motivated by religion, morals, conscience, ethics, discriminatory prejudices, or personal distaste for a patient—violates the rules.”

A federal district court in Seattle had issued a temporary injunction blocking a 2007 law that required all Washington State pharmacies to stock and dispense the pills. The lower court has several other pending

constitutional challenges. The 9<sup>th</sup> Circuit decision means that the Plan B regulation will take immediate effect.

Two of the three judges were appointed by President George W. Bush and one by President Bill Clinton, but all agreed that a free exercise argument did not apply in this case. The suit was filed by the Alliance Defense Fund, a Christian Right legal organization.



A young Quaker man filed suit in July, claiming the U.S. government is guilty of religious discrimination because it refuses to recognize his conscientious objector status. Tobin D. Jacobrown of Indianola, Washington, filed suit in federal court for the District of Columbia to force the government to recognize his religious objections to war on his military draft forms. ACLU filed suit on his behalf. The Selective Service System collects information from men ages 18 to 25 even though Congress abolished the draft in 1973. There is no space on the forms for those who are conscientious objectors, and Jacobrown said he could not sign without a provision recognizing his beliefs.

Jacobrown, who said his religion requires non-submission to injustice, could face civil or criminal penalties for failing to complete Selective Service forms. He is also ineligible for federal student loans or for employment with the federal government.

ACLU attorney Arthur Spitzer said the 1993 Religious Freedom Restoration Act applies in this case. Before 1980 Selective Service used to record conscientious objector claims, he noted.



Maine’s highest court, the Supreme Judicial Court, ruled in July that Portland’s Roman Catholic diocese cannot be protected by charitable immunity if church leaders acted intentionally in clergy sex abuse cases. The court ruling came in response to a case filed in 2005 by William Picher, who alleged abuse by a priest, Raymond Melville, in the 1980s, which church officials allegedly failed to prevent. Picher was awarded \$4.2 million last year. Charitable immunity law protects institutions from civil damages for employee negligence, but does not apply in this case.



A Philadelphia-area public school district was correct in refusing to allow a kindergarten student’s mother to read a Bible passage in class. The June 1 decision by the U.S. Court of Appeals for the 3<sup>rd</sup> Circuit concluded that the Marple Newtown School District in suburban Philadelphia had a right to bar speech that promotes a particular religious viewpoint. “[T]he school’s actions do not appear to have been motivated by discrimination against Wesley’s religion,” Chief Judge Scirica wrote. “Rather, the school identified a significant difference between the identification of a religious belief and certain holiday-oriented religious materials, on the one hand, and a parent’s reading of holy scripture, on the other hand, which it considered a form of proselytizing.”

The child’s mother, Donna Kay Busch, wanted to read passages from Psalm 118 but the school’s principal refused permission. She filed suit, charging a violation of First Amendment rights. One judge on the three-judge panel dissented, feeling that the school’s decision constituted viewpoint discrimination.



Evangelical law students have appealed a federal court decision upholding the University of Montana’s (UM) refusal to recognize their on-campus group. The Christian Legal Society (CLS), which prohibits

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gays as members, sued UM Law School in December 2007 for refusing to fund the group and recognize it as a registered student organization. The Student Bar Association said CLS policy clashes with nondiscrimination laws.

U.S. District Judge Richard Cebull ruled in May that UM Law School was within its rights to refuse recognition to the Christian group. On June 19 CLS filed notice that it would appeal the district court decision to the 9<sup>th</sup> U.S. Circuit Court of Appeals in San Francisco. CLS is invoking both Free Exercise of Religion and free speech principles to challenge the ruling.



A suit has been filed that challenges the granting of academic credits for off-campus religion classes in South Carolina. Two parents, Robert Moss and Ellen Tillett, charge that a religious education course offered to Spartanburg High School students is unconstitutional. The parents object to allowing credit for a course on the Bible offered by "Spartanburg County Bible Education in School Time." The course, which claims to offer "historical background, archaeology, original languages and other major scholarly discussions" on the Bible takes place at St. Christopher's Episcopal Church, which is adjacent to the Spartanburg High School campus.

The parents, backed by the Freedom From Religion Foundation, also claim that the course includes devotional content and crosses the line between education and indoctrination. Three years ago the state legislature approved elective credit courses in released-time religion as long as academic evaluations are based on secular criteria and the course work is educational or academic in purpose and tone. Public funds are not involved in the program, and the school is not supposed to encourage attendance. The suit was filed in federal district court June 17.



Virginia's ban on late-term abortions received a narrow six to five endorsement from the entire U.S. Court of Appeals for the 4<sup>th</sup> Circuit. The June 24 decision overruled a three-judge panel of the same court, which held in 2005 that the Virginia ban did not allow exceptions to safeguard a woman's health. The Virginia law makes it a crime for doctors to perform a rare late-term procedure called "Partial Birth Abortion," similar to that which Congress banned and the U.S. Supreme Court upheld in 2007.

Judge Paul Niemeyer, writing for the majority, said that situations in which physicians would face criminal liability are so rare that it should not invalidate the law. He also wrote that other Virginia laws protect doctors who must make difficult medical decisions. But Judge Blane Michael, in a dissent, wrote that the law "creates a real fear of criminal liability" that could inhibit other types of abortions. "This result places an undue burden on a woman's right to obtain a pre-viability second trimester abortion – a constitutional right repeatedly reaffirmed by the Supreme Court," he wrote.



A federal appeals court has upheld an abortion notification law in Illinois. In a July ruling the court called the law, passed in 1984, amended in 1995, and unenforced since 2007, "a permissible attempt to help a young woman make an informed choice." The Illinois law does not require parental consent, only notification, and it also provides for notification to a judge.



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ACLU filed suit on August 6 challenging Georgia's kosher laws, which require that all kosher foods adhere to "orthodox Hebrew religious rules and requirements." ACLU contends that the statute discriminates against Reform and other branches of Judaism. The plaintiff in the case is Rabbi Shalom Lewis of Congregation Etz Chaim in suburban Atlanta's Cobb County. He says he has been forced "to risk legal prosecution in order to fulfill rabbinical duties."



A high school principal and the school athletic director face possible jail time for violating a federal court injunction against faculty-led prayer. They are scheduled to appear September 17 at the federal courthouse in Pensacola, Florida, for actions that occurred at Pace High School in Santa Rosa County last January. U.S. District Judge Casey Rodgers had issued a temporary injunction prohibiting Santa Rosa County School District officials from "promoting, endorsing or leading prayers during

*continued on page 8*

## Church and State in the Courts, *continued from p. 7*

school-sponsored events.” They apparently defied that order. ACLU, which initiated the successful suit in 2008, has also filed civil contempt charges against other school employees. The school district, which is not part of the contempt hearings, claimed that the three employees acted without authorization. The school employees, who were accused of promoting their personal religious beliefs in school, are represented by a Religious Right legal group, Liberty Counsel.



A religious group that claimed it would prevent a gay civil union ceremony in one of its facilities lost its appeal to the U.S. Court of Appeals for the 3<sup>rd</sup> Circuit. The July ruling held that the Ocean Grove Camp Meeting Association, a Methodist group, wrongly denied use of its Boardwalk Pavilion on the Jersey Shore for a civil union ceremony. New Jersey law forbids discrimination in public places and the Boardwalk was billed as a public place. The church-related group claimed the ceremony violated its religious beliefs. A lower federal court had already ruled against the religious group and the appeals court agreed. The appellate court panel returned the case to the district court to determine whether the church can bar civil union ceremonies from other parts of its property, such as the large “Tabernacle.”



Curses are legal in Michigan. A state appeals court overturned a ruling that sent a preacher to jail for threatening a judge with curses, or “imprecations” from the Bible. An African American minister, Rev. Edward Pinkney of Benton Harbor, warned a judge in 2007 that “the Lord would smite him with a fever” after convicting him on a minor offense. In June 2008 the judge sentenced Pinkney to three to 10 years in jail. The appeals court said the judge went too far in restricting a defendant’s First Amendment rights. Michael Steinberg, legal director for Michigan ACLU praised the ruling. “The Court of Appeals opinion reaffirms the basic American value that citizens cannot be imprisoned for criticizing government officials or expressing their religious beliefs. To our knowledge, this case marks the first time in modern history that a preacher has been thrown in prison for predicting what God might do.” ■

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## The Voucher Watch

### Voucher Reauthorization Filed

Just before the Senate adjourned for the August recess, Connecticut’s Joe Lieberman introduced a voucher reauthorization bill for the District of Columbia. The proposal would extend the program for five years and would increase grants from the present \$7,500 per student to \$9,000 for K-8 students and \$11,000 for high school students.

Lieberman hailed the program’s “success,” even though studies have shown its relative overall ineffectiveness. The Senate bill gives priority to siblings of students who currently participate in the program and requires students to take national achievement tests. It also requires teachers to have bachelor’s degrees. Since 2004 about 3,000 D.C. students have attended private schools under the program.

Among the co-sponsors of the Senate version are Susan Collins (R-ME) and, somewhat surprisingly, Diane Feinstein (D-CA), whose state overwhelmingly rejected vouchers twice, and Robert Byrd (D-WV).

A similar bill was introduced in the House in May by Republican Minority Leader John Boehner of Ohio.

### Military Voucher Study

Pro-voucher advocates have added a provision encouraging a “study” of vouchers in Section 535 of the Senate version of the Defense Authorization bill. The House bill (HR 2647) does not contain the study language. ARL joined with its partners in the National Coalition for Public Education urging the Senate to strike the language from the bill.

### Wisconsin Tightens Reins on Vouchers

Wisconsin legislators are expected to approve new mandates for voucher schools requiring standardized testing, minimum hours of instruction, more record keeping, and improved academic standards for teachers. Legislative finance committees approved the changes, which must still be okayed by the State Assembly and Senate.

By the 2010-2011 school year, all teachers and principals in voucher schools would be required to have a bachelor’s degree. A new screening process for non-accredited private schools wishing to join the program would be created. Schools in which more than 10% of students have limited proficiency in English would be required to offer bilingual programs.

For the first time since 1990, Democrats control both houses of the legislature and the governorship. They have introduced these changes in a program that includes 20,000 students in about 125 schools. The Democrats also cut the maximum voucher grant from \$6,607 to \$6,442.

While some voucher groups are opposed to these proposals, Wisconsin Education Association president Mary Bell told *Education Week*: “We believe that schools that receive public dollars need to be accountable to the people that pay those dollars.”

### Voucher Program Amendments Rejected

On July 7, the U.S. House Appropriations Committee rejected two Republican-sponsored amendments that would have expanded admissions to the D.C. school voucher program. One amendment would

have allowed funds to be used for scholarships to all eligible students. It was rejected 36-23. The other would have allowed the siblings of students currently receiving vouchers to participate in the program in the future. It was turned down 34-25. Both amendments were sponsored by New Jersey Republican Peter Frelinghuysen. The program is slated to end after the students in the program graduate.

Voucher advocates refuse to give up. Several members, most conspicuously Sen. Joe Lieberman (I-CT), have introduced legislation to reauthorize the program. Seven of the 13 D.C. Council members have asked Secretary of Education Arne Duncan to reverse his decision to limit voucher program admissions for fall 2009. Duncan rescinded 216 scholarships because of the program's uncertainty. The *Washington Post* blasted Duncan and called for the reauthorization of the program for the umpteenth time, reversing its historic stand against government funding of faith-based schools.

## Study Finds Vouchers Don't Make a Difference

Voucher students in Florida do no better than their public school counterparts, a study commissioned by the state legislature has tentatively concluded. Northwestern University economics professor David Figlio compared test scores of students in the voucher program to eli-

### “Milwaukee Voucher Rules ‘No Reason to Complain’”

The new requirements the Wisconsin legislature is considering for Milwaukee's voucher schools seem quite reasonable (“New Tethers Eyed for Milwaukee Vouchers,” June 17, 2009). After all, the state's taxpayers are financing the program, and their legislature has every right to regulate what it pays for. Voucher schools and parents have no reason to complain. Indeed, the legislature is to be commended for making up somewhat for its original error of initiating the Milwaukee voucher plan—a plan voters would not have supported in a referendum and which the state supreme court failed to find violative of the state constitution.

*Edd Doerr*

Letter published in the July 15, 2009, *Education Week*

gible public school students who opted not to participate and found no significant differences. Last year (2008-2009) 23,259 students received vouchers worth \$3,950, spent at participating private schools. ■

## ARL in Action

- In August ARL joined colleague organizations in the Coalition Against Religious Discrimination and the National Coalition for Public Education in urging Attorney General Eric Holder to repeal Bush-era policies that allow government-funded religious discrimination. The organizations urged the Attorney General to revoke a June 29, 2007, memo from the Bush Justice Department that erroneously claimed that the Religious Freedom Restoration Act provides blanket exemptions for religious groups to receive public funds and still discriminate on religious grounds in hiring.

- President Edd Doerr addressed an audience of Texas doctoral candidates in education in Washington, D.C., on July 8. The panel discussion was sponsored by the University of Mary Hardin-Baylor and its Center for Religious Liberty under the direction of Dr. Derek Davis.

- In July ARL joined with the National Coalition for Public Education (NCPE) and other groups, opposing any expansion or continuation of the D.C. private school voucher pilot program.

Thirty civil liberties, educational and religious organizations endorsed the following statement: “Despite proponents’ claims six years ago that the voucher program would permit students from ‘schools in need of improvement’ (SINI) to attain greater levels of academic achievement, all three of the congressionally mandated Department of Education studies have concluded that the voucher program has had no effect on the academic achievement of these students. Furthermore, the 2007 US Government Accountability Office (GAO) Report found that students from SINI schools are actually ‘underrepresented’ in the program. Having failed to improve the academic achievement of the students the program targeted, the voucher program should not be continued.

“These federal studies further found that the voucher program had no effect on student satisfaction, motivation, or engagement, or student views on school safety. And, they revealed that many of the students in the voucher program were actually *less* likely to have access to key services—such as ESL programs, learning support and special needs programs, and counselors—than students who were not part

of the program. Perhaps that is why students with physical or learning disabilities are underrepresented in the program compared to the public schools. The program's failure to improve the school experience of students in the voucher program further cuts against its continuation.

“In addition to the lack of academic evidence supporting the program, the GAO Report also documented several accountability shortcomings in the program. Examples include federal taxpayer dollars funding tuition at private schools that do not even charge tuition, schools that lacked city occupancy permits, and schools employing teachers without bachelor's degrees. Also some of the information provided to parents regarding the private schools, including information that ‘could have significantly affected parents’ choice of schools,’ was ‘misleading,’ ‘incorrect,’ and ‘incomplete.’

“NCPE believes that instead of sending federal money to private schools, money should instead be invested in the public schools. We also note that despite receiving public money, the participating private schools are not subject to all federal civil rights laws, and do not face the same public accountability standards, including those in the No Child Left Behind (NCLB) Act, that all public schools face. We also believe this program continues to raise significant religious liberty problems under the First Amendment of the Constitution.”

- ARL National Advisor Eugenie C. Scott recently received two awards. She was the first recipient of the Stephen Jay Gould Prize, awarded annually by the Society for the Study of Evolution “to recognize individuals whose sustained and exemplary efforts have advanced public understanding of evolutionary science and its importance in biology, education and everyday life in the spirit of Stephen Jay Gould.” The award was presented at the Evolution 2009 conference on June 12 at the University of Idaho.

Scott, executive director of the National Center for Science Education, was also named one of the Scientific American 10, described by the magazine in its June issue as “researchers, politicians, business executives and philanthropists who have recently demonstrated outstanding commitment to assuring that the benefits of new technologies and knowledge will accrue to humanity.”

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# Updates

## Church Lobbyists Clash with State Officials

In both New York and Connecticut, Catholic diocesan officials have confronted legislators over political issues. In New York legislators are debating a revision of the statute of limitations on child sex-abuse lawsuits. Under current law plaintiffs have five years after turning 18 to file suits. The pending legislation would increase the waiting period to 10 years. Bishop Nicholas DiMarzio of Brooklyn has repeatedly denounced the proposal, claiming that it would cause his diocese and others to go bankrupt, thus closing schools and churches. His power politics has offended many Catholics in the legislature and in Congress. "I respect the line between church and state, but I'm afraid Bishop DiMarzio does not," said Representative Nydia M. Velasquez.

Paul Vitello, writer for *The New York Times*, added: "But in the battle over the sex-abuse bill, which has been introduced for several years but never had a chance of passage until now, Bishop DiMarzio has mounted such an urgent and aggressive sally into the political realm that some elected officials and community leaders have questioned whether he has overstepped church-state boundaries."

In Connecticut the Diocese of Bridgeport has sued state officials in federal court to stop the Office of State Ethics from requiring it to register as a lobbyist, as state lobbying laws require. Bishop William Lori said the state is violating the diocese's free-speech rights.

The ethics office acted after the diocese sponsored a March 11 rally at the state capitol in Hartford against a church finances bill which would have given lay members more power over parish finances. (This issue, once called lay "Trusteeism," goes back to the 1820s, when many Catholic laymen sought to challenge bishops' absolute control of church funds.)

The Bridgeport diocese also lost a Connecticut Supreme Court decision in May, which called for the release of files that were sealed in 2001, after church officials settled sex abuse cases for undisclosed financial amounts. The state's highest court refused to reconsider the decision in July, and the diocese has appealed to the U.S. Supreme Court.

Marci Hamilton, a church-state specialist who teaches at the School of Law at Yeshiva University, told *National Catholic Reporter* (August 7), "The First Amendment was not intended to be a refuge for illegal or licentious behavior." The Catholic weekly opines that the nation's High Court will probably decline to review the ruling, and added, "If Catholic leaders hope to remain credible within the Catholic community, they need to tell the truth, embarrassing and damning as it may be. This crisis continues to be a drag on the church and its mission because so much has been and continues to be held in secret, and so many remain beyond any accountability."

## Texas Bible Course Sparks Debate

All Texas public school districts must offer an elective course on the history of literature of the Bible this fall. But major problems have already been uncovered. The legislature required teacher training from state-approved training materials and curriculum standards, but did not appropriate the \$750,000 that the requirements are estimated to cost. The Texas Education Agency said it could not provide the training and materials, leaving local school districts to scramble to find funds or to postpone the courses.

Enthusiasm for the classes mandated by the legislature in 2007 varies. Kate Alexander, a reporter for the *Austin American-Statesman*, wrote, "Many school districts, including Austin and most other Central Texas

districts, say their current high school curriculum already satisfies the requirement because it addresses world religions in history and geography courses. Many other school districts—there is no definitive count of how many—say they plan to launch a new elective on the Bible if there is enough student demand. The teachers say they are working hard to ensure the course is done right and within the legal constraints, even without the state's help."

The bill's sponsor, Rep. Warren Chisum, a Republican, blamed the education agency for not setting aside funds, even though he was chairman of the House Appropriations Committee at the time of the bill's passage.

Though no training courses had been authorized, the University of Texas and the Society of Biblical Literature sponsored a training course held in Austin in August. The sessions were oriented toward academic discipline and scholarship and were held at a synagogue, Congregation Agudas Achim, and at St. Elias Antiochian Orthodox Church.

Texas is also embroiled in a controversy over revising the state's social studies curriculum. Two Religious Right zealots, David Barton and Peter Marshall, were appointed by Gov. Rick Perry as "experts" to review the standards. A third appointee, Daniel Dreisbach of American University, is considered a respectable conservative who emphasizes the role of religion in early American history. No religious liberals or progressives were appointed to the review board.

## ACLU Probes Texas Schools

ACLU of Texas has asked six Texas public school districts to disclose information about the distribution of Gideon Bibles and other religious information on school grounds. "We have received numerous complaints about the Gideon (International) distributions from parents and students in school districts all over the state. This is the first step in a statewide investigation," said Lisa Graybill, legal director of ACLU of Texas. "We are very concerned that some school districts are knowingly flouting the law."

Graybill warned, "When public school officials endorse the distribution of religious materials, they risk violating the Constitution, no matter what the religion. School endorsement of the Bible is no more acceptable than endorsement of any other religious text, like the Quran or Torah."

## New Guidelines Issued for Stem-Cell Research

The Obama Administration announced new guidelines for embryonic stem-cell research July 6. They are likely to expand taxpayer-funded research significantly. The National Institutes of Health (NIH) will expand funding to study existing stem-cell lines, provided the embryos were freely donated. Other ethical requirements must be observed.

NIH has established a registry of qualified stem cell lines to help scientists determine whether they are using approved materials. Each stem cell line will be subject to an evaluation by a review committee of ten scientists and ethicists. New lines must be obtained from fertility clinic embryos that would have been discarded. These stem cells must have "informed consent" guarantees from the parents or mother.

Todd Finkelmeyer, staff writer for *The Capital Times* in Madison, Wisconsin, adds, "However, the final NIH guidelines also state that stem cell lines developed previously won't require this strict documentation of consent – and instead scientists must only show they meet the spirit of the new ethics standards. A review committee of about 10 science and ethics specialists will be charged with ruling whether or not couples gave the needed consent for the use of their embryos in these older stem cell lines."

Madison is a center of scientific research in this field. "We are pleased

with the NIH's new guidelines for human stem cell research," said Janet Kelly, a spokeswoman for WiCell, a nonprofit research institute and support organization of UW-Madison that advances stem cell science. "They are a vast improvement over the prior guidelines and will greatly expand the number and variety of stem cell lines available for federally funded research in the United States."

Scientists endorsed the new guidelines. "I definitely think there is a sense of relief among the scientific community because this officially sanctions what these scientists are doing and it removes a lot of uncertainty. I hope and expect that it will remove this cloud that has been in place throughout the Bush administration," said Robert Streiffer, a UW-Madison associate professor of bioethics.

The public seems to endorse the move. A Gallup Poll found support for federal government funding of such expanded research 52% to 41%. Only 19% wanted no funding at all. About one in five supported funding with restrictions.

## Opinions on Evolution Vary

An international survey conducted in April and May and released on June 30 by the British Council showed a fairly wide variance of views about evolution in ten countries: Argentina, China, Egypt, Great Britain, India, Mexico, Russia, South Africa, Spain, and the United States.

Strongest support for evolution came from India and China, followed by Mexico and Argentina. The United States ranked in the lower five, though close to Britain, Russia, and Spain. South Africa was a bit lower in its acceptance, while Egyptians were the least likely to agree that "scientific evidence exists to support Charles Darwin's theory of evolution."

Indians were the least consistent: 85% agreed that "human life evolved over time as a result of natural selection" but 43% also believed that "life on earth, including human life, evolved over time in a process guided by God." The Chinese were the least likely to believe in theistic evolution.

## Scientists, Public Far Apart on Evolution

Scientists are far more likely than the general public to believe that "Humans and other living things have evolved due to natural processes such as natural selection." This unsurprising finding comes in a Pew Research Center report based on polls conducted in April, May and June and released July 9.

Nearly 97% of scientists and 61% of the public agree with the above statement. While nearly all scientists agree on evolutionary principles, "views on evolution vary substantially within the general public." Acceptance of evolution is highest among the youngest and best-educated. It is lowest among white evangelical Protestants who attend religious services weekly. Even among this group, 49% endorse evolution.

## Kelley Appointment Questioned

President Obama's June appointment of Alexia Kelley to head the Center for Faith-Based and Neighborhood Partnerships at the Department of Health and Human Services has been widely criticized, especially by some of his leading supporters. Kelley is co-founder of Catholics in Alliance for the Common Good, a middle-road Catholic political lobby that supported the president in 2008. She is also a former staffer at the U.S. Catholic Conference. Kelley will oversee \$20 million in grants for family planning services.

One problem is that Kelley opposes not only access to abortion services but also comprehensive birth control programs. Former Catholics

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for Choice (CFC) president Frances Kissling noted in *salon.com*: "If one is really serious about making it possible for women to avoid abortion, contraception is the single most important component of any program." CFC president Jon O'Brien questioned the appointment and noted that a 2006 voter guide by Catholics in Alliance equated abortion with "poverty, torture and war."

Several writers argued that Kelley and her group have utilized flawed economic data in an attempt to link anti-poverty measures to abortion reduction while ignoring other factors. Kissling explains the concerns of Kelley's critics: "The charges relate to an August 2008 study by Penn State political science professor Joseph Wright commissioned by Catholics in Alliance. Called 'Reducing Abortion in America: The Effect of Socioeconomic Factors,' the study is a perfect example of advocacy research gone awry. It claims that analysis of state level data on abortion from 1982 to 2000 shows that spending money on programs for job creation, primary and prenatal healthcare, and the nutrition program known as WIC (Women, Infants, and Children) substantially reduced abortion rates in states where such measures were taken. Given Kelley's opposition to family planning, it's the only hope she has that a credible argument could be made that abortions can be significantly reduced without family planning."

*American Prospect* journalist Sarah Posner added her voice to the critiques: "Kelley's insistence that social and economic supports reduce abortions has several serious flaws. The link she draws between poverty alleviation and abortion reduction is questionable, both empirically and morally. Her public statements also strongly suggest that she favors restrictions on access to abortion services and make clear her refusal to challenge church prohibitions on birth control."

## PBS Compromises on Religious Programs

The Public Broadcasting System (PBS) decided on June 16 to ban its member stations from airing new religious programs but allowed a few stations to retain already existing shows. The decision by the PBS board was in response to a proposed ban on all religious programming since guidelines require "noncommercial, nonpartisan and nonsectarian" programming. The definition of nonsectarian has been loosely interpreted to allow five PBS stations to carry local religious programs. A ban would have forced the stations to give up their PBS connection. Three of the five stations have close ties to Catholic and Mormon organizations. Another, the Howard University station in Washington, D.C., has long broadcast Catholic services for "shut-ins."

## Obama Names Hispanic Theologian to Vatican Post

Miguel Díaz, President Obama's choice for U.S. Ambassador to the Holy See, is a theologian and Cuban immigrant raised in Miami. Departing from the usual tradition of naming diplomats or politicians to

*continued on page 12*

the once-controversial post, Obama raided the faculty at the College of St. Benedict in Minnesota. Díaz is author of two books exploring Latino theology and has been “celebrated by the Catholic left,” according to *Washington Times* religion writer Julia Duin.

A fellow theologian, Carmen Nanko-Fernández, told *National Catholic Reporter*: “The Díaz nomination reflects Obama’s interest in promoting individuals with compelling personal narratives and the ability to be intellectually engaged yet practically aware of the complexities of daily living on local and global levels.” John L. Allen Jr., who specializes in Vatican news for *National Catholic Reporter*, wrote: “Obama’s choice reflects a keen grasp of the Catholic future, offering Rome a resource to understand the contours of an increasingly diverse church.” Díaz was confirmed by the Senate in August.

Many Americans, including ARL, still believe this position lacks constitutional sanction and advances the objectives of one religion over others.

## Americans Want *Roe v. Wade* Upheld

A *Washington Post*/ABC News Poll found that a solid majority of Americans polled in June favor retaining the 1973 *Roe v. Wade* decision on abortion. The question was asked in reference to Judge Sonia Sotomayor’s confirmation hearings, in which voters supported her confirmation 62% to 25%.

Here is the question and the results: “The Supreme Court legalized abortion 36 years ago in the ruling known as *Roe v. Wade*. If that case came before the court again, would you want Sotomayor to vote to uphold *Roe v. Wade*, or vote to overturn it?” Uphold: 60%, Overturn 34%.

## Abortion Restrictions in Arizona

In June the Arizona State Senate approved new restrictions on abortion, including a mandated waiting period, a tougher parental approval provision for minors, and religious exemption for pharmacists and health care providers who refuse emergency contraception for religious reasons. The State House approved the bill in March and the governor, Jan Brewer, a Republican, is expected to sign it. Brewer became governor after Democrat Janet Napolitano, who probably would have vetoed the legislation, became Homeland Security Secretary in the Obama Administration.

## Virginia Offers Anti-Abortion License Plate

In July Virginia became the 24<sup>th</sup> state to allow motorists to feature “Choose Life” license plates on their cars. So far, only 538 applications have been received. Virginia’s Department of Motor Vehicles allows 225 specialty plates. After 1,000 applications have been processed, \$15 of the \$25 special fee will go to Heartbeat International, which describes itself as a “Christian network of pregnancy resource centers.” Governor Tim Kaine signed the bill authorizing the plates in March, after the state legislature passed it easily and said he would also sign bills for pro-choice plates if the legislature approved. While two dozen states allow these plates, lawsuits are pending in New York and New Jersey, whose legislatures banned them. Pro-choice groups in Montana and Hawaii have registered for pro-choice plates, but most of the activity is on the anti-choice side.

## Faith-Based Aid in Illinois

About \$11 million of government stimulus funds are going to religious organizations in Illinois, according to *Chicago Tribune* columnist Eric Zorn. Protestant, Catholic, Jewish and Muslim groups have received funds for day camps, renovations to buildings used for religious services and capital improvements at faith-based schools. Is it legal? Zorn writes, “While it’s true that religious organizations can and do get public money to sponsor non-sectarian social-service programs that serve the general public, building construction and repair risks commingling of funds.” The Illinois Constitution, however, clearly prohibits such aid. It says, “Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church of sectarian denomination whatever...”

Recipients of the aid apparently hope that federal funds are not considered subject to state constitutional prohibitions.

## Aid for Mosques?

Should U.S. taxpayers pay for repairing mosques in the Iraqi city of Fallujah? The government’s foreign aid distribution agency, the Agency for International Development (AID), granted \$325,000 last year to repair four mosques and adjoining buildings in the insurgency hub of Fallujah. AID claimed that most of the funds were expended on secular services, and that \$45,000 was withheld because the contractor was unable to demonstrate that the work was for secular purposes. *Washington Post* staff writer Colum Lynch explained the dilemma: “The role of religion in overseas assistance has long been highly sensitive for a country founded on the principle that state and religion should be separate. But as U.S. policymakers seek to curtail the influence of radical Islam, they are being increasingly hamstrung by legal barriers, some experts say.”

AID maintains that it refuses to fund any programs with a religious purpose. Gary Winter, AID legal counsel, told Lynch: “The legal test goes beyond that to [include] endorsement of religion, indoctrination of religion, excessive entanglement with religion. We have to try to accomplish our secular purpose while still not violating these legal principles.”

Some specialists say the First Amendment does not apply to overseas assistance programs. But most legal experts say it does. However, Christian groups have in the past received AID funds for various projects. Wrote Lynch, “Little U.S. AID funding has gone to Islamic groups in recent years. From 2001 to 2005, more than 98 percent of agency funds for faith-based organizations went to Christian groups, according to figures obtained through a Freedom of Information Act request by the *Boston Globe* in 2006.”

A case jointly sponsored by ARL and ACLU, *Lamont v. Woods*, successfully challenged U.S. government aid to faith-based schools overseas. The U.S. Second Circuit Court of Appeals ruled the practice unconstitutional on September 26, 1991. Chief Judge James L. Oakes wrote for the majority: “Where the expenditure of federal tax money is concerned, there can be no distinction between foreign religious institutions and domestic religious institutions—particularly when the former are sponsored and supported by the latter. Religions such as Catholicism and Judaism know no national boundaries, and are strengthened domestically when promoted abroad. Given the primacy of the tax factor in the minds of the Framers, we cannot but conclude that Madison, Jefferson, or any of the supporters of the Establishment Clause would have abhorred—as much as a tax for the support of Christian teachers—the use of federal tax money for the support of foreign sectarian schools.”

In a concurring opinion Judge John M. Walker Jr. observed, “The

text of the First Amendment's limitation on Congress' competency to act in regard to religion bears no construction that confines its operation to the United States."

The Bush administration did not appeal the decision and the ruling stands as an important but little noticed precedent.

## Home Schoolers Gain Ground

North Dakota and Idaho have amended their homeschool law at the last legislative sessions, which makes it easier for parents to pursue the option. In North Dakota, home-schooling parents will no longer have to hold a bachelor's degree, be a certified teacher or be monitored by a certified teacher. In Idaho the new law allows parents to use people outside the immediate family to teach in their programs. This brings to 38 the number of states that have removed restrictions on homeschooling since 1982, according to Michael Smith, president of the Home School Legal Defense Association.

## Virginia Home-Schoolers Eligible for Aid

The 30,000 home-schooled children in Virginia are eligible for state financial aid of up to \$3,671 per year. The aid is available for college-bound students who score at least 900 on SAT scores or 19 on ACT tests. The State Council of Higher Education for Virginia approved these changes in July after the legislature passed SB-1547, sponsored by conservative Republican state senator, Ken Cuccinelli, who is the GOP candidate for attorney general. The Virginia Guaranteed Assistance Program provides the grants for attendance at public colleges in Virginia, based on need and grade-point average. Home schoolers were previously ineligible.

## Parochial School Bus Service Challenged

A member of the Howard County (Maryland) Board of Education has challenged the county's expenditure of funds on "nonpublic school transportation." Allen R. Dyer of Ellicott City charges in a "petition for review" with the Maryland State Board of Education that Howard County's approval of \$520,260 to "operate nonpublic school transportation services" is "illegal" and "beyond the authority of the Howard County Board of Education." The Board approved the expenditures for fiscal year 2010 on June 1, 2009.

Dyer's complaint focuses on providing transportation funding for certain faith-based schools (Bethel Christian Academy, Our Lady of Perpetual Help, Resurrection, St. Augustine, and St. Louis) but not for non-parochial, nonpublic schools such as Glenelg Country School. Says Dyer's petition: "Howard County Board has discriminated on the basis of religion by adopting and maintaining a practice or policy under which Respondent Board provides some nonpublic students transportation to school... while not planning or providing for such transportation to other nonpublic students."

### Sample Copy

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## By the Numbers

4 states (Alaska, Idaho, Utah and Wyoming) remain Republican strongholds, according to a Gallup Poll on "self-identification" by voters.

1 state "leans" Republican (Alabama)

8 states are "competitive" between the parties (Montana, North Dakota, Nebraska, Kansas, Arizona, Texas, Mississippi, and South Carolina)

8 states "lean" Democratic: Nevada, Colorado and Florida, which went for Obama, and South Dakota, Oklahoma, Louisiana, Tennessee and Georgia, which backed McCain.

29 states are solidly Democratic

5 states have insurmountable Democratic preferences. In order, they are Massachusetts, Hawaii, Maryland, New York and California

27% of foreign-born residents of Maryland are scientists

43% of Maryland's immigrants are college graduates compared to 36% of Maryland residents who were born in the U.S.

Source: "A Blue Wash," in *The Economist* August 4, 2009 and Aaron C. Davis, "Maryland Notebook," *The Washington Post* Montgomery Extra, August 6, 2009.

This policy "neither serves a compelling interest nor is it narrowly tailored to serve any compelling interest." Thus, the policy violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. This policy has been in operation in Howard County since 1943.

## Supreme Court Moving Right

A study by *The New York Times* concludes that the U.S. Supreme Court inched ever so slightly to the right during its 2008-2009 term that ended in June and "appears poised to move to the right in the Obama era."

While the terms liberal and conservative do not always accurately explain the legal complexities of the decisions, they give a rough guide to the results.

Justice Anthony Kennedy remained the key swing vote. He was in the majority in 92% of the 74 signed decisions in the last term. In the 23 decisions in which the justices split five to four, Kennedy went with the winning side 78% of the time, far more than any other justice.

*New York Times* legal reporter Adam Liptak calls Kennedy "the most powerful jurist in America." But even Kennedy is moving toward the right, and, thus, causing the overall shift in that direction, writes Liptak. "He joined the liberals 5 times and the conservatives 11. That was a significant shift to the right: in the previous term, Justice Kennedy voted four times each with the liberals and the conservatives in cases divided along the traditional ideological fault line." Furthermore, "Justice Kennedy swung right in the cases that really mattered," Liptak adds.

Though Chief Justice John Roberts has indicated that he wants the Court to find a consensus on as many issues as possible and to base decisions on a narrow interpretation of law, that has not been the case. Liptak writes, "The court was remarkably polarized in the 74 signed decisions it issued this term, dividing 5-to-4 or 6-to-3 in almost half of them, up from roughly a third in the three previous years. The court

*continued on page 14*

## Updates, *continued from page 13*

reversed lower courts about three-quarters of the time, up from two-thirds in the last term.”

### Religious Right Bashes Obama, Liberals

While much of the media proclaims the Religious Right dead or dying, the movement's leaders are far from expiring gracefully. They are not silent, either.

A group of Oklahoma Republican lawmakers has issued a proclamation blaming gays and abortion rights supporters for the nation's economic ills. The proclamation, started by state Rep. Sally Kern says America's current economic troubles are “consequences of our greater national/moral crisis. “(T)his nation has become a world leader in promoting abortion, pornography, same sex marriage, sex trafficking, divorce, illegitimate births, child abuse, and many other forms of debauchery...,” the group proclaims. They also attacked President Obama for refusing to participate in public ceremonies at the National Day of Prayer.

The newsmag.com blog recommends three new books as “the only way to stop Obama and destroy liberalism forever.” They trumpet reprints of a trio of century-old tomes from the 19<sup>th</sup> Century Far Right, reissued by “The American Vision,” in Powder Springs, Georgia.

In an obvious yearning for the past, this publisher has dug through old attics and reprinted three musty tomes that “prove” America's government is based on Christian principles: The 1869 *Christian Life and Character of the Civil Institutions of the United States*, the 1849 *Establishment and Limits of Civil Government* and 1809's *Passing the Torch of Liberty to a New Generation*.

Finally, evangelical publishing heavyweight Thomas Nelson has gone back for a second printing of the *American Patriot's Bible*, a mishmash of facts and figures about “Godly” Founding Fathers, presidents and soldiers. Its editor, Robert G. Lee, a Southern Baptist pastor and founder of First Redeemer Church in Cumming, Georgia, says “This nation sprung (sic) from Judeo-Christian ethics.” Religion News Service Steve Rabey writes: “In his introduction, Lee writes that ‘America stands with-

out equal as a beacon of hope and freedom in a hurting world.’ The *Patriot's Bible*, he says, speaks to Americans who feel their conservative theology, politics and morals are under assault. . . . His goal was to create a ‘non-partisan’ Bible, but he quotes Republican Ronald Reagan more times than Democrats Jimmy Carter, Bill Clinton, Lyndon Johnson and John F. Kennedy combined.”

(For a corrective view see Edd Doerr's “The Founding Fathers,” a 28-page article reprinted from S.T. Joshi's 2008 book *Icons of Belief*, available from ARL for \$5.00 including postage and handling.)

### Charter Schools Given Low Grades

America's charter schools are not achieving what their proponents claim, according to a new study from Stanford University. The study of 2,403 charter schools in 15 states and cities found that the schools had not raised student achievement in reading and math when compared with regular public schools. Researchers at Stanford's Center for Research on Education Outcomes (CREDO) found that 46% of charter schools posted results that were “statistically indistinguishable” from traditional public schools, while 37% had academic results significantly lower than conventional schools. Only 17% of charter schools outperformed their public school counterparts.

African American and Hispanic students did worse than their peers in public schools. The report also found wide variations in achievement levels, suggesting that a few schools were good and many were bad. Some gains were achieved by the poorest students, by those whose first language is not English, and by those who have spent two or three years in charter schools.

Geographic differences were also apparent. In six states (Arizona, Florida, Minnesota, New Mexico, Ohio and Texas) charter school students performed less well than those in a traditional public school. In California, Georgia, North Carolina, and the District of Columbia (which has the highest overall percentage of students attending charter schools) there was no discernable difference in test scores. Charter school students did slightly better in Arkansas, Louisiana, and Missouri and in the cities of Denver and Chicago.

Forty states, as well as the District and Puerto Rico, allow charter schools. Nationally about 4,600 charter schools enroll 1.4 million students.

Presidents Clinton, Bush and Obama have all endorsed the charter school movement. The new Stimulus Plan includes \$650 million for states under the Department of Education's Innovation Fund. Another \$211 million will be provided to charter schools, according to the National Alliance for Public Charter Schools. Education Secretary Arne Duncan favors expanding aid to charters and has warned the ten states that do not allow charters that they may be last in line to receive discretionary grants to boost student achievement.

### Christian Schools Hit By Recession

The Association of Christian Schools International (ACSI) closed more than 200 schools in 2009, according to *Christianity Today*. Enrollment declined 5% in ACSI schools nationwide. In Southern California these conservative Christian schools lost 9% of their students this year, reaching their lowest enrollment since 1987. Florida, New England and the upper Midwest were also hit hard by the economic downturn, where “hundreds of private Christian schools nationwide fell casualty this summer to a struggling economy and dwindling enrollment,” said reporter C.L. Lopez.

Schools belonging to the Southern Baptist Association of Christian Schools and the Lutheran Church-Missouri Synod also shut their doors.

## *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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(See "Private Schools Decline" on page 1)

## Oklahoma Governor Approves Commandments Bill

Oklahoma's Democratic Gov. Brad Henry signed a bill May 18 that cleared the way for a privately funded Ten Commandments monument at the State Capitol in Oklahoma City. Both houses of the legislature, in Republican hands, approved the bill authorizing a monument recognizing that the Commandments are "an important component of the foundation of the laws and legal system of the United States of America and of the State of Oklahoma." The law takes effect November 1 and claims that the monument does not "favor any particular religion or denomination."

The bill was sponsored by House member Mike Ritze, whose family will pay for construction, placement and upkeep. The Baptist Joint Committee for Religious Liberty (BJC) appealed to the governor, a member of First Baptist Church in Shawnee, to veto the bill. BJC general counsel Holly Hollman commented tartly: "We should be more concerned with following the Ten Commandments rather than merely posting them on government property. Religion flourishes best when the separation of church and state is protected."

## House Mandates Religious Symbolism

In a little-noticed decision July 9, the U.S. House of Representatives voted 410-8 to direct the Architect of the Capitol to engrave the words "In God We Trust" and the Pledge of Allegiance onto the walls of the new Capitol Visitor Center. Conservatives were furious that the motto was inadvertently omitted. The eight members who voted no were: John Conyers (D-MI), Donna Edwards (D-MD), Mazie Hirono (D-HI), Mike Honda (D-Ca), Jim McDermott (D-WA), Ron Paul (R-TX), Bobby Scott (D-VA), Pete Stark (D-CA).

Of the dissenters, there were two Baptists, two Episcopalians, two nondenominational Protestants, one Buddhist and one Unitarian.

The Freedom From Religion Foundation filed suit in July in federal court in Wisconsin seeking to block the engraving.

## Prayer Causes Controversy in PA

Prayers said before the opening of the Pennsylvania legislature have caused controversy. House Speaker Keith McCall urged nondenominational and inclusive prayers after an incident in May where a clergyman denounced abortion. In July an evangelical minister, Rev. Gerry Stoltzfoos of Gettysburg, was asked not to use the name of Jesus in a prayer. He refused and declined to say any prayer. House guidelines call for "an interfaith, nondenominational prayer" that refrains from expressing views on pending legislation. The state Senate also asks prospective clergy to "be mindful of religious diversity" when addressing the chamber. Evangelicals claim that lawmakers want to muzzle them and regulate speech.

## Latino Evangelicals Up For Grabs

*The Economist* (July 18) says that "Latinos are changing the nature of American religion and are therefore the quintessential independents, up for grabs by either party." This is particularly true for evangelicals, estimated at 15% to 25% of the entire Latino community. Their views emphasize "community, public policy and social justice" while white evangelicals place new emphasis on "covenant, faith and righteousness." The Hispanic Catholic community, 68% of all Latinos, is increas-

## Visit ARL's Web Site

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ingly dominated by charismatics, making them an unpredictable voting bloc, though most have stayed with the Democrats. *Economist* editors concluded, "Latino charismatics see themselves as a renewal movement within Catholicism, as it converges with other churches. And in general all churchgoing Latinos tend to see themselves as renewing Christianity in America. That makes them a powerful force as demographic changes turn America ever more Hispanic, and increasingly different from secular Europe."

## Idaho May Face Bible Referendum

A campaign to allow school boards to offer elective classes in Bible history has begun in Idaho. A group calling itself "Our Godly American Heritage" initiated a campaign to gather 81,000 signatures by April, 2010 to force a referendum on the issue. The group's leader, Charles Seldon, told the Boise *Idaho Statesman*: "Our schools are falling apart. We need to get back on track with what the Founding Fathers intended for education to be biblically based."

The Idaho Constitution forbids teaching sectarian doctrines in public schools. Seldon claims his group favors only the teaching of the Bible as history or literature but critics say supporters have a hidden agenda. Idaho has many Mormon voters, and smaller numbers of evangelical, Catholic and secular voters.

## Idaho Charter School Problem

Idaho's Public Charter School Commission is considering whether or not to approve for tax support the Nampa Classical Academy charter school scheduled to open in Nampa in September with over 500 students. The school plans to base the curriculum on the Bible and to "explore several versions of creationism." From what is known at this writing, it seems that the school will not be sufficiently secular to qualify for tax support.

## International Updates

**Beirut:** While Christian voters are given the credit for electing a pro-Western, "moderate" government that defeated extremist Islamists in recent elections, their influence as a buffer in the region continues to decline. *National Geographic's* cover story for June explored the Christian "Exodus from the Holy Land," which has accelerated in the face of Muslim expansion and Israeli occupation.

The Levant, a geographical region encompassing present-day Syria, Lebanon, Jordan, Israel and the Palestinian territories, was the historic stronghold of Christianity, remaining so even after the Arab Muslims conquered the area in 638. Writes journalist Don Belt, "Today native Christians in the Levant are the envoys of a forgotten world, bearing the fierce and hunted spirit of the early church. Their communities, composed of various Orthodox, Catholic, and Protestant sects, have dwindled in the past century from a quarter to about 8% of the popu-

*continued on page 16*

lation as the current generation leaves for economic reasons, to escape the region's violence, or because they have relatives in the West who help them emigrate. Their departure, sadly, deprives the Levant of some of its best educated and most politically moderate citizens – the people these societies can least afford to lose.”

Belt, the magazine's senior editor for foreign affairs, argues that “Arab Christians are the go-betweens, a vital link between the Christian West and the Arab Muslim world.” The historically Christian towns, Bethlehem and Nazareth, where Jesus lived, are at least two-thirds Muslim. Christians have declined from 13% to 2% in the Palestinian territories.

United States policy under George W. Bush is to blame for the recent exodus, reports Belt. Razek Siriani of the Middle East Council of Churches in Aleppo, Syria, told Belt that Christians have suffered from “guilt by association” because of Bush policies in Iraq and elsewhere.

**Delhi:** The stinging rebuke by voters of the Hindu Nationalist Bharatiya Janata Party (BJP) in India's recent elections may lead to a decline in religious violence, according to *The Economist* and other observers. The BJP won only 116 seats, its lowest number in two decades, while the more secular Congress Party won 206 seats and formed a new government with moderate allies. *The Economist* said, “Indians showed little appetite for Hindu chauvinism and their crackpot, Hinduised version of history and enthusiasm for inciting religious violence.”

**Dublin:** A devastating 2,600-page report on child abuse in church-operated schools and reformatories has caused the Irish government to demand more compensation for victims. The report, which covered 60 years, from 1936 until the schools closed in the 1990s, is particularly harsh on the Christian Brothers order, which operated most of the insti-

tutions. Prime Minister Brian Cowen called the report “one of the most important documents of our time,” revealing “a shame that will live with us all.” The initial financial liability negotiated with the Christian Brothers in 2002 was \$179 million, with the government contributing the rest. However, claims by victims have already grown to \$1.42 billion. The government “will demand that congregations foot the bill for half of the total paid out,” reported the *Irish Independent*.

After a June meeting with Prime Minister Brian Cowen, 18 religious orders said they would establish a new compensation fund for victims and would allow external audits of their finances. Cowen was reportedly blunt in his criticisms of the orders and their refusal to accept the harm they did to abused children over six decades.

The Christian Brothers have come under renewed criticism because they successfully fought to keep the names of their members out of the report, provoking charges of a cover-up by “Survivors of Child Abuse” and other organizations. The *Irish Times* reported June 3 that the Christian Brothers continued to deny responsibility as recently as five days before the report was issued. Under the church-state model that prevailed in Ireland in those days, the government turned over most educational and welfare institutions to the Catholic Church, which claimed over 90% of the Irish people as members. Church and state have grown far apart during the past two decades, and Catholic Church membership and participation rates have fallen dramatically.

**Dublin:** Ireland has adopted a new law that makes “blasphemous libel” a crime, including anything “that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion; and he or she intends, by the publication of the matter concerned, to cause such outrage.” Offenders can be fined.

The action was included as a clause in Defamation Bill 2006, an intent to update the nation's libel laws. Little attention was given to the

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—T. Jeremy Gunn, Director, ACLU Program on Freedom of Religion and Belief

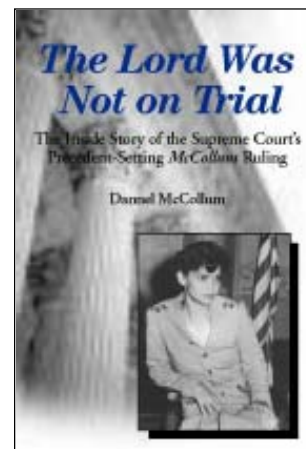
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—Edd Doerr, President, Americans for Religious Liberty

Dannel McCollum is the former three-term mayor of Champaign, Illinois and a former U.S. Army reserve officer. His books include *Your Life and Mine: Problems and Projects in Conservation*; *A Guide to the Big Vermilion River System*; and *Essays on the Historical Geography of Champaign County, Illinois*.

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blasphemy clause. Calling the blasphemy statute “an act of folly,” member of parliament Charlie Flanagan said it would be “challenged before the Supreme Court.”

Under Article 26 of the Constitution, Ireland’s president, Mary McAleese, could either sign the legislation or send it directly to the Supreme Court for review. She chose to sign it, under advice from the 22-member Council of States on July 22. She also signed into law a new Criminal Justice Act.

Breda O’Brien, in a July 24 essay in *The Irish Times* noted, “Even though the President has decided not to refer it to the Supreme Court, the blasphemy provision in the Defamation Act remains unpopular with religious believers and atheists alike. I know no religious person who is wildly enthusiastic about it, and most think it a bad idea.” She urged atheists and religious believers to join together to work for a better world. “Neither atheism nor religion has a monopoly on truth and morality. Ireland is facing enormous challenges in the years ahead. Perhaps the real division is not between atheists and religious people, but between those who would wish to see a culture of social justice, concern for the vulnerable and weak and a sustainable future, and those who are just out to grab everything they can for themselves.”

**Fiji:** Fiji’s military government banned an annual Methodist hymn-singing contest and church conference, fearing “destabilization in the strife-torn nation,” according to a report July 31 by Kim Cain in Religion News Service. A Fiji court on July 23 found two church leaders guilty of defying the Public Emergency Regulation. The South Pacific island nation of one million people faces further instability under its Interim Prime Minister, Commodore Frank Bainimarama. About one third of Fiji citizens belong to the Methodist Church. Ecumenical News International reported that “tension and anger” could result in violence since church members are expected to descend on the national capital, Suva, despite the ban.

**Gaza City:** Gaza’s Chief Justice ordered female lawyers to wear Muslim headscarves and cloaks when court reconvenes in September. Abdul-Raouf Halabi ruled July 26 that women must dress in accordance with Islamic law. The Hamas-appointed judge told AP, “Showing a woman’s hair is forbidden (in Islam). We will not allow people to corrupt morals. This (dress code) will improve work in the courts.”

**Gojra, Pakistan:** Anti-Christian mob violence that resulted in eight deaths and the destruction of more than 100 homes has caused outrage in Pakistan and raises hopes that the nation’s blasphemy laws will be repealed, or at least amended. The August 1 violence in Gojra, a town of 150,000 in eastern Pakistan’s Punjab region that is the headquarters of the Anglican Church of Pakistan, was sparked by rumors that a Christian wedding had included a desecration of the Koran, which is a criminal offense. The rumors were false and were denounced by Prime Minister Yousuf Raza Gilani, who visited the site and promised to review laws that are “detrimental to religious harmony.” Pakistan’s Parliament also condemned the attack.

Asma Jahangir, chairperson of the Human Rights Commission of Pakistan said, “The [blasphemy] law has to be repealed. It is clearly a tool in the hands of those who want to exploit religion to their advantage. The government needs to send a message that those who create violence in the name of religion are not above the law.”

The tiny Christian minority of three million in a nation of 175 million Muslims has suffered sporadic incidents of violence for years. Punjab province is the location of 30 attacks on Christians since 1997. Local authorities are accused of doing little or nothing to bring perpetrators to justice. This time Christians have joined liberal human rights groups to say “Enough is Enough.” Reporter Jeremy Weber wrote in *Christianity Today*: “Christian protests have been unusually strong as

## Patricia Jaworski

Patricia Jaworski, a long time supporter of ARL and recipient of ARL’s Distinguished Service Award, died in April of this year. Pat, writer and producer of the documentary “Thinking About ‘The Silent Scream’”, featuring scientists Isaac Asimov, Michael Bennett, Patricia Goldman-Rakic, Clifford Grobstein and Dominick Purpura, was key to ARL’s 1987 conference in Washington that explored the question of Abortion Rights and Fetal “Personhood”, the papers from which were published in a 1989 book by ARL with the same title. The conference led to an *amicus curiae* brief to the U.S. Supreme Court in 1989 in *Webster v. Reproductive Health Services*, a brief signed by twelve Nobel laureate scientists and 155 other distinguished scientists. (The script for Pat’s documentary, still quite relevant today, is available from ARL for \$5 to cover costs.)

—Edd Doerr

well. Gojra’s Christians refused to bury the dead quickly. Instead they used coffins containing the burned bodies to block the town’s railway track until police filed a report against the local residents and officials involved in the attack.”

**Moscow:** Russian President Dmitry Medvedev announced in July that a pilot program in religion and ethics will begin in 12,000 schools next year. Courses offered will include instruction in Russian Orthodox Christianity, Islam, Buddhism, Judaism, comparative religion and secular ethics. Clifford J. Levy wrote in *The New York Times* (July 22): “The issue of religious education in the public schools has been provocative, highlighting the growing influence of the Russian Orthodox church since the Soviet Union’s collapse. Some regions have taken the initiative on their own and required courses in Russian Orthodoxy, stirring protests that they were infringing on constitutional boundaries.” The new program will broaden the offerings and reduce Orthodoxy’s dominance.

**Rome:** Italy has approved the RU-486 drug used to induce abortions. The Italian Pharmaceutical Agency signaled its approval in August despite a Vatican threat to excommunicate doctors and patients. The drug can only be prescribed by physicians in hospitals. In its ruling the agency declared that “the well being of citizens supercedes personal convictions.”

**Tirana:** Albania’s governing party proposed a law in July allowing same-sex civil marriages in the predominantly Muslim nation in the Balkans. Once the most rigid Communist state in Europe, which sided with China during the Sino-Soviet split in the 1960s, Albania proclaimed itself an atheist state in 1966. The tiny country is the only Muslim majority nation in Europe (Bosnia has a Muslim plurality). It joined NATO in April and has applied for admission to the European Union, whose members generally ban sexual preference discrimination. Human rights groups applauded the move. Muslims, Eastern Orthodox Christians and Roman Catholics all maintain thriving communities in the now-democratic state. ■

## Moving?

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## Books and Culture

*The Future of Religion in American Politics*, Edited by Charles W. Dunn. University Press of Kentucky, 2009, 273 pp. \$30.00.

A dozen historians and political scientists look carefully at the never-ending issue of religion in American politics. In the introduction Charles W. Dunn probes the “dynamic complexity” surrounding the issues and writes, “From the courthouse to the White House, religion looms large on the landscape of legal controversy and campaign rhetoric, posing heatedly debated and often seemingly insoluble questions.”

Dunn adds that while “religion and politics are uncomfortable subjects for many, the issues are real, the emotions are intense and the solutions are problematic.” Today’s religious groups “play for high stakes.”

Most of the essays are well written and well documented, but most appear to have been completed before the 2008 election – a time gap that affects most scholarly publishing.

It should be noted that most of the essayists lean to the conservative side of politics and religion. Some are noted right-wingers, including Hadley Arkes, Daniel Dreisbach, Michael Novak, Marvin Olasky, and Michael Cromartie. Some are moderates. This does not mean the book should be ignored by liberals or moderates but the orientation might be kept in mind as context.

A couple of the conservatives make interesting points. Cromartie writes, “Being a sincere and devout religious person is not a guarantee of wisdom, especially of political wisdom.” D.G. Hart chides evangelicals for their uncritical embrace of Republican politics, reminding them that an early evangelical hero, J. Gresham Machen, opposed Prohibition, Bible reading and prayer in public schools, and supported Al Smith for president in 1928, even though most evangelicals saw Smith as the incarnation of the Devil.

The least ideological essays are those by John C. Green of the Pew Forum on “faith-based politics in American presidential elections” since 1960, and by the University of Oklahoma’s Allen Hertzke, who writes about religion and globalization. Hertzke says “transnational religion” and “the emergence of greater marketplace competition among faiths” will affect world politics for years to come. Hertzke notes pointedly that “those faiths still closely tied to state sponsorship remain less conducive to democratization.” This includes, for example, Orthodoxy in Russia and Islam in Arab nations.

—Al Menendez

*God Is Back: How the Global Revival of Faith Is Changing the World*, by John Micklethwait and Adrian Wooldridge. The Penguin Press, 2009, 405 pp., \$27.95.

Basically an investigation into how and why religious forces are impacting politics and culture, this book succeeds rather well. Written by two British editors for the distinguished weekly, *The Economist*, it is a mélange of history, sociology, economics and theology.

The authors focus mainly on Christianity and Islam and their competing audiences. They also contrast the American and European experiences. In their view the “friendly” American way of separating church and state is vastly preferable to, and has succeeded more, than the hostile European brand.

The reasons for this derive from the constitutional framework within which both religion and government exist. “The Founders understood the appeal of religion: they did not want to abolish or marginalize it. But they also understood how dangerous it is when mixed with political power.... With memories of religious persecution still alive in the collective consciousness, they were determined that the New World would not repeat the mistakes of the Old.”

They write, “The First Amendment keeps churches firmly apart from the state and, in turn, has also protected churches from the state. As a result, the country’s religious life is marvelously varied.”

The authors continue, “Nobody would claim the American system is perfect. But on the whole it has struck the right balance between secularism and religion, allowing the religious people to thrive but preventing them from imposing their views on other people.” They also think “There is thus a compelling argument for universalizing the American commitment to the separation between church and state.”

Chiding their fellow Europeans who think America is too “religious” they argue: “Secularists need to recognize that the enemy that ‘poisons everything’ is not religion but the union of religion and power – and believers need to recognize that religion flourishes best where it operates in a world of free choice.”

The book is not without errors, but it is cogently written and argued. It will serve as a warning to those on the left who want to marginalize or jettison all religion and seek to drive a wedge between people of good will who agree on many public policy issues but differ on matters of personal faith. And it should challenge those on the right who want to unite political power and religious faith, thus ignoring the lessons of centuries that such an alliance will only damage freedom and corrupt religion.

—Al Menendez

*Boundless Faith: The Global Outreach of American Churches*, by Robert Wuthnow. University of California Press, 2009, 345 pp., \$26.95.

Princeton sociologist and prolific author Robert Wuthnow looks at American Christianity and globalization, challenging the mistaken assumption that American Christians of all persuasions are insular and unconcerned about overseas events. Marshalling considerable evidence, he writes, “American Christianity is more engaged in the wider world than ever before,” and “Nearly all U.S. congregations are involved in some kind of international ministry.” The assumption that U.S. religious groups “encourage the nation’s leaders in imperialistic adventures involving free trade and unilateral military action” is untrue. Instead, “The organized activities of America’s faith communities focus much more on criticizing administration policies than supporting them. Religious advocacy networks have been outspoken critics of free trade agreements and U.S. military action, and they have been among the most engaged proponents of human rights, peacebuilding efforts, and foreign assistance.”

There are problems and challenges. One is that many faith-based relief agencies have “become partners with the U.S. government” and receive a major share of their budgets from Uncle Sam. Catholic Relief Services receives 72% of its overseas expenditures from government sources. But even groups that are historically wary of government involvement eagerly take the funds. The Seventh-day Adventist Development and Relief Agency gets 78% of its budget from the government, according to Wuthnow.

Should religious groups influence the direction of foreign policy? Wuthnow writes, “Religious leaders’ desire to be a voice in foreign policy while abiding by the constitutional principles of American democracy means that influence is generally attempted through the same mechanisms used by nongovernmental civic organizations to bring pressure on domestic policy debates.”

Religious groups have also joined human rights groups in advocating more action on behalf of religious freedom overseas, culminating in strong support from President Bill Clinton and Congress a decade ago.

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“Globalization has tempered American Christianity. It has exposed the most devout Christians to other religions and to other ways of being Christian,” he writes.

Wuthnow’s summary is excellent: “The skepticism one hears about American Christianity is often well-founded. There is good reason why Jews, Muslims, and people adhering to no faith are suspicious of the religious majority in a powerful nation that seems intent on launching crusades, securing government dollars for its enterprises, disbelieving in the counsels of science and of reason, and reproducing itself around the world. At the same time, it is important to recognize that this skepticism is sometimes one-sided. It fails to take account of the diversity within Christianity and the ways in which its humanitarian impulse has continued to be expressed through charitable giving that spans borders. It too easily assumes that people are driven by class interests or by superficial beliefs, instead of recognizing the intrinsic and energizing appeal of faith itself—a powerful, ambiguous, confusing, enduring, and seemingly boundless feature of social life.”

—Al Menendez

*A Kingdom At Any Cost: Right-Wing Visions of Apocalypse in America*, by Michael Wilson and Natalie Zimmerman, Parkhurst Brothers, 415 N. McKinley, Suite 510, Little Rock, AR 72205, 2009, 235 pp., \$44.95 hardback, \$24.95 paper.

*Silhouette City*, directed by Michael Wilson, produced by Natalie Zimmerman, Social Satisfaction Media, 352 N. Avenue 57, Los Angeles, CA 90042, 2009, 88 minutes, \$20.00 DVD.

Stephen King writes scary horror fiction, but Michael Wilson and Natalie Zimmerman give us something factual that is even more scary. Book and film, each is made more effective by the other.

Film first. Narrated largely by Kerry Noble, once an important person in an early 1980s apocalyptic fundamentalist group called The Covenant, the Sword and the Arm of the Lord, with the double-meaning acronym CSA, the film details the rise and fall of this “City on a Hill” militant community hidden away in the Ozarks. The film broadens out from the armed, dangerous and eventually quashed CSA to a survey of the many apocalyptic fundamentalist leaders and movements. As a picture, especially a talking and moving picture, is worth a thousand words, *Silhouette City* captures on film the utterances, or rants, of such religious right figures as Jerry Falwell, D. James Kennedy, Lt. Gen. William Boykin, John Hagee, Vonette Bright, Mike Huckabee, Tom DeLay, Lou Sheldon, Gary Bauer, Tim (“Left Behind”) LaHaye, Franklin (son of Billy) Graham, Ted Haggard, James Dobson, Pat Robertson,

Ann Coulter, Newt Gingrich, Rod Parsley, and Kathleen Harris. Little is left to the imagination.

In both the film and the book, Wilson and Zimmerman interview such experts on the religious right and their political involvements as Mark Juergensmeyer, Chip Berlet, Chris Hedges, Robert J. Lifton, Michelle Goldberg, and former Air force Academy chaplain Melinda Morton.

Morton’s comments, as a former active duty Air Force officer and an Academy chaplain (Lutheran), are particularly important as she highlights the apocalyptic fundamentalists’ well-in-motion drive to infiltrate and dominate the American military, starting with the Air Force (the guys with the nuclear weapons). As a former “nuclear missile launch officer,” Morton says, “one of the things that is important to understand is that the instrumentalization of warfare mythology for the advancement of religious ideology is, I feel, highly inappropriate. . . . because it has and can have incredibly terrible consequences.”

Michael Watson points out that “One can easily see why Homeland Security issued a report in early 2009 warning of a possible spike in right-wing hate crimes and violence. To the extreme right, Barack Obama is a minion of Satan.” (And the report came out before the May 31 assassination of Dr. George Tiller.)

Near the end of the book and film an interviewer addresses Chris Hedges: “You have talked about an influential professor who warned you in the early ‘80s of the dangers of religious nationalism. That was very prescient, considering the fact that the Christian Right has been treated as inconvenient clowns until very recently.”

Hedges’ response: “This was Dr. James Luther Adams, my ethics professor at Harvard Divinity School [and member of ARL’s National Advisory Board]. . . . He told us that when we were his age, we would all be fighting the Christian fascists. And this was in the early 1980s when Pat Robertson, among others, began articulating this political religion, this notion that Christians should band together and create a Christian America.”

Hedges adds: “Adams saw in this movement disturbing similarities with the so-called German Christian Church, which was pro-Nazi. And he did not throw around the word fascism lightly. He had been in Germany in 1935 and 1936, working with the Professing Church, which was the underground church that opposed the Nazi regime, led by Niemoller and Dietrich Bonhoeffer. He despaired of liberals, who he felt were willing to accept the intolerant in the name of tolerance. . . . He had seen and knew how that kind of tolerance on the part of liberals allowed movements that were intolerant to destroy not only the system

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## Books and Culture, *continued from page 19*

that allowed intolerance, the open system that allowed intolerance, but the tolerant as well.”

*A Kingdom At Any Cost* is the indispensable companion to *Silhouette City*, documenting and reinforcing in print what is seen on the screen. The film is being released in September and the book in October. They cannot be praised too highly.

— Edd Doerr

*Slaves to Faith: A Therapist Looks Inside the Fundamentalist Mind*, by Calvin Mercer, Praeger, 2009, 229 pp., \$44.95.

Psychologist and biblical scholar Calvin Mercer could easily and justifiably give this excellent, concise book a Philip Wylie-esque subtitle such as “All You Might Ever Want to Know About Christian Fundamentalism and Then Some, With Useful Hints About How to Effectively Communicate with Them.” The author explains the history of Protestant Christian fundamentalism in its varied forms, showing that it really began in the early twentieth century, with roots in the revivalist culture of the United States in the early nineteenth century, and how it differs from the Christianity of the first three or four centuries.

Mercer, a former fundamentalist himself, draws upon his years of experience as a professor of religion and a psychotherapist, both professions having brought him into contact with numerous fundamentalist college students. He explains the fundamentalist “backlash against modernity,” its antipathy to science, its patriarchalist position, and its threats to church-state separation. “The irony,” he writes, “is that fundamentalists are shooting themselves in the foot by wanting to marry Christianity and government. . . . It is curious to me that fundamentalists, who usually vote an antigovernment, right-wing agenda, actually want government involved in their faith.”

He cites as one of the “most influential court cases that would set a framework for later cases” the Supreme Court’s 1948 *McCollum* ruling, the subject of Dan McCollum’s 2008 ARL book *The Lord Was Not on Trial*.

Mercer’s book is important, devastating, and yet eminently fair. I would give it five stars.

— Edd Doerr

*Religion of Fear: The Politics of Horror in Conservative Evangelicalism*, by Jason C. Bivins. Oxford University Press, 2008, 336 pp., \$27.95.

This book doesn’t quite fit any category. A blend of social science analysis of popular cultures and politics, it is colorful, unsettling and downright scary at times. He argues that fear is at the heart of Religious Right politics and drives the movement. Bivins shows that fear-mongering and the ability to channel fear into the subcultures of popular religion can have a devastating impact on religion-based political movements.

— Al Menendez

## Senator Edward M. Kennedy 1932-2009

As with millions of other Americans, the ARL staff was saddened to learn of the passing of the “Lion of the Senate” on August 26, just as this issue of the journal was heading for the printer. His death represents an end of an era as well as a blow to the forces of progressive politics and human decency. For nearly 47 years he embodied the values of civil rights, civil liberties, women’s rights of conscience, individual freedom and the search for peace in a world fraught with violent conflict. On issues from universal health care to peace in Northern Ireland, Senator Kennedy worked tirelessly for causes that he believed were just.

Kennedy was a staunch supporter of religious liberty for all citizens and defended separation of church and state as the most appropriate vehicle to preserve both religious freedom and civil peace.

In an address at Liberty University on October 3, 1983, Kennedy said, “I hope for an America where no president, no public official, no individual will ever be deemed a greater or lesser American because of religious doubt—or religious belief.” He added, “Respect for conscience is most in jeopardy, and the harmony of our diverse society is most at risk, when we re-establish, directly or indirectly, a religious test for public office.”

Those principles are still needed in America today, and no one exemplified them more than the senior Senator from Massachusetts.

— Albert J. Menendez and Edd Doerr