



VOICE OF REASON

The Journal of Americans for Religious Liberty

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Colorado Voucher Program Ruled Unconstitutional



An ambitious voucher program in suburban Denver's Douglas County was struck down as unconstitutional on August 12. Judge Michael A. Martinez of the District Court of Denver County found that the so-called "Choice Scholarship Pilot Program" violated the Colorado Constitution's religious liberty provisions that ban the appropriation of public funds to religious schools, which are the vast majority of recipients. Martinez also held that the program violates Colorado's Constitution and statutes that require educational funds to

be spent on public education and under public control.

The Douglas County School Board set up the program, the first voucher scheme in Colorado, in March, granting up to \$4,575 per student to attend private schools. The pilot program allowed 500 students to participate. At the time of the ruling, payments had been distributed to 265 students at a cost of more than \$300,000. Most of the students were enrolled in faith-based schools that, Martinez wrote, "compelled attendance at religious services and mandatory religious instruction." These requirements clearly violated the Colorado Constitution, especially since the "Private School Partners" that agreed to participate in the voucher program were counted as public school students for purposes of obtaining state per-pupil educational funds. Martinez wrote, "Article IX, Section 8 of the Colorado Constitution forbids the use of religious qualifications or standards for admission into the public schools."

He added, "Since admission into the Choice Scholarship School rests on whether or not a student meets the sectarian and faith-based qualifications of the participating religious Private Partner Schools participating in the Scholarship Program, a student may not qualify under the Scholarship Program unless the student meets the faith-based qualifications of a participating private school." Therefore, the judge concluded, the program "imposes a religious test or qualification as a condition of admission into a public school in violation of Article IX, Section 8 of the Colorado Constitution."

Martinez concluded that the voucher program "not only allows for religious teaching, but that is precisely the mission of the religious Private School Partners participating in the program." The court also determined that "faith-based admission standards," which often included a preference for those who attended the same faith as the participating school, were violations of the Constitution.

Martinez held that the plaintiffs (mostly local parents and taxpayers) "presented sufficient evidence to establish a reasonable likelihood of success on the merits [and] have demonstrated a clear and certain right to mandatory or permanent injunctive relief."

The case, *La Rue v. Colorado Board of Education*, was filed on June 21 by parents, clergy and the Taxpayers for Public Education group and supported by the legal resources of ACLU Colorado, national ACLU, and Americans United. The suit was filed in Denver, where the defendants, the State Board of Education and the Colorado Department of

Education, are based.

This case has great significance for the national debate over school vouchers. Most importantly was the judge's willingness to look at the nature of the schools and the consequences of a program. Unlike some other recent court decisions that have ignored the overwhelmingly religious domination of private education, this decision focused on it. The judge noted that sixteen of the twenty-three schools approved to participate in the program are "sectarian or religious as those terms are used" in the state constitution. They "teach 'sectarian tenets or doctrines' as that term is used" in the constitution. In fact, "93% of the confirmed private school enrollment was attending religious schools," he wrote, and added, "For virtually all high school students participating in the Scholarship Program, the only options are religious schools."

Judge Martinez cited the record showing that most of the schools "are owned and controlled by private religious institutions" and "the governing entities reflect, and are often limited to, persons of the schools' particular faith." These schools "are funded primarily or predominantly by sources that promote and are affiliated with a particular religion." The schools "discriminate in enrollment or admissions on the basis of the religious belief or practices of students and their parents, and some even give preference to members of particular churches." The schools "subject students, parents, and faculty to religious tests and qualifications."

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Georgia Vouchers Receive Failing Grade

Georgia's Tax Credit Scholarship program, which has cost state taxpayers \$72 million over the past three years, was labeled "a failed experiment" by the non-partisan Southern Education Foundation (SEF). The law permits taxpayers to reduce annual state taxes by up to \$2,500 for joint returns if they divert funds to a Student Scholarship Organization (SSO) which sends the money to private schools. A corporation may reduce its Georgia state tax by up to 75% when it diverts money to SSOs for tuition grants for private schools.

Most of the private schools (70%) were "religious in their purpose and/or operations" and 60% "have a religious mission," according to the SEF report. The SEF study added, "Almost one in four requires parents and children to agree to a specific statement of religious doctrine as a requirement for admission." Nearly half of these faith-based schools (48%) have a religiously-infused curriculum, 21% hold required religious services, 35% question parents and students about their religious faith, and 17% say their schools are an essential part of the "ministry" of their church. As SEF concluded, "These practices openly violate the Georgia Constitution."

Georgia's constitution says unequivocally: "No money shall ever be taken from the public treasury, directly or indirectly in aid of any church, sect, cult, or religious denomination or of any sectarian institution."

The program aids segregation since about half of the state's private schools are nearly all white. This "virtual segregation" is endemic in private schools generally and in schools participating in the SSOs. The report says, "A student in an SSO-affiliated private school is nearly three times more likely than a public school student to attend a school virtually segregated by race or ethnicity."

Inaugurated in 2008, the Georgia program violates its own requirements. Instead of helping poor students "escape" from low-performing public schools, "the law has been carried out, in large part, as a means to publicly finance the attendance of relatively well-to-do students, many of whom are already in private schools."

The program is also wasteful. "Instead of saving tax funds, each of the private school scholarships financed by Georgia's tax credits has cost the state government more than twice what it would spend to send a child to public schools."

Some of the participating schools were not accredited. Some SSOs did not distribute the required amount of scholarship aid. One SSO

"limited scholarships to students based on national origin contrary to state and federal law."

The voucher program has a geographic bias. More than half of the 370 private schools affiliated with the program were located in just five counties that comprise Atlanta and its close-in suburbs, and Savannah. Only nine of the state's 159 counties had any of the affiliated tax-credit schools. All were high-income areas. One in five schools was based in zip codes where the average family income exceeded \$100,000, a rate four-and-a-half times greater than the state average.

The program also lacks accountability and provides no mechanism for comparing test scores between public and private schools.

SEF concluded: "Georgia's tax-credit program for private choice has failed the state's children and Georgia taxpayers. It is time to end—or vastly mend—Georgia's failed experiment in tax credit scholarships for private schools." ■

Private School Enrollment Falls

The number of students enrolled in private schools has declined sharply from 6.3 million in the 2001-2002 school year to 5.5 million in 2009-2010, according to the National Center for Education Statistics (NCES).

The NCES report found the steepest declines in Catholic schools, from 2.7 million to 2.2 million over the time period. Other religious schools, including the conservative Christian sector, also lost students, though at a lower rate, from 2.3 million to 2.1 million. Conservative Christian school enrollment declined by 146,000, while other faith-based schools, from mainline Protestant to Muslim, lost only 11,000 students. Private nonsectarian schools declined by 67,000 students, from 1.3 million to about 1.25 million students.

Sarah Sparks wrote in *Education Week* that "a combination of broad demographic changes, economic woes, and increasing competition from public charter schools may underlie the decrease."

These statistics came from NCES's annual "Condition of Education" report. Over the same period, public school enrollment increased by 2.1 million, from 47.2 million to 49.3 million. Thus, only 10% of

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The Obama Administration on Church and State: A Report Card

It is now time to review the Obama administration's record on church-state issues, as his third year in office draws to a close.

The president opposed school vouchers for private and faith-based schools, instead placing his emphasis on improving public education. He favored phasing out the controversial District of Columbia voucher program but he allowed students remaining in the program to complete their senior year. Studies have shown that vouchers did not improve student performance. But he was forced to accept a reinstatement of D.C. vouchers as part of a budget deal because House Speaker John Boehner made the issue a top priority.

The Obama administration has also favored expansion of charter schools, as did his predecessors George W. Bush and Bill Clinton. Evidence shows that the majority of charter schools are no better, and more often worse, than public schools.

The president disappointed his allies when his solicitor general supported Arizona's tuition tax credit scheme, which the U.S. Supreme Court ultimately upheld (See *VOR*, Issue 115). The program substantially aids faith-based schools. The solicitor general's office even argued that taxpayers lack standing to challenge a program that uses tax revenues instead of legislative appropriations to achieve the same result.

The administration also supported the retention of a cross on public property in California and urged a federal appeals court to uphold the National Day of Prayer. Admittedly, it would have been politically damaging to oppose the cross and the prayer day, but the administration could have chosen to stay out and submit no amicus briefs on either side.

Faith-Based Initiatives

President Obama has largely preserved President Bush's signature domestic program, the so-called faith-based initiative that allows church-related social welfare organizations greater access to government funding. The constitutional sticking point has been whether such organiza-

tions should be allowed to hire only those who share the organization's religious views and should be permitted to proselytize recipients of their aid (now government funded). During his campaign Obama strongly suggested that he would prevent discrimination in hiring by faith-based groups and would prohibit proselytizing. However, he has not moved firmly in that direction, causing disappointment among church-state separationists.

The administration did clarify church-state relationships in a 2010 Executive Order issued upon the advice of a year-long study by his Advisory Council on Faith-Based and Neighborhood Partnerships. The June issue of the Baptist Joint Committee's *Report from the Capital* explained the changes. "The notable changes to federal policy in the Executive Order sharpen distinctions about what is and is not allowed in a program that is directly funded by the government and strengthen compliance. Specifically, organizations are forbidden from engaging in 'explicitly religious' activities in the course of a program that receives direct federal financial assistance."

The recipients must offer secular alternatives in their programs. Any "explicitly religious activities" must take place at a separate time and location from the federally funded services. Close observers of the Office of Faith-Based and Neighborhood Partnerships, directed by Pentecostal preacher Joshua Dubois, are not impressed by its record so far. Georgetown University professor Jacques Berlinerblau told *Washington Post* readers that the office is "a never-ending source of confusion" because no one seems to know "what exactly that office is doing."

Dubois further irritated many separationists when he told a Denver conference on July 27: "If your focus is first and foremost serving people in need, then there's not a tremendous amount of time left to debate the finer points of the church-state relationship."

The president reiterated his middle-of-the-road position at a July 22 town hall meeting at the University of Maryland: "I think that the

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Private School Enrollment Falls, *cont. from page 2*

American elementary and secondary school students are enrolled in private schools, down from 12% a decade ago.

Public charter schools have fueled the overall growth of public schools. Charter school students increased from 571,000 in 2001-2002 to more than 1.4 million in 2008-2009, the most recent year for charter school data.

Another NCES report, "Characteristics of Private Schools in the United States" (NCES 2011-339) revealed that 80% of private school students attended schools that "had a religious orientation or purpose." Of all private school students, 43% attended Catholic schools, while 37% attended Protestant, Jewish, Muslim or Eastern Orthodox schools, and 20% were enrolled in nonsectarian schools. About 14% attended schools classified as "conservative Christian." More private school students live in the South (33%) than in other regions. About 24% live in the Northeast, 24% in the Midwest and 19% in the West. Private schoolers live mostly in cities (42%) or suburbs (38%) while 20% reside in small towns or rural areas.

There were many different kinds of church-related schools. Over 606,000 students were enrolled in non-denominational Christian

schools and 236,000 in Baptist schools, a denomination not known for separate schooling before the 1970s. Jewish schools enrolled 227,000 students, compared to 171,000 in Lutheran schools, 96,000 in Episcopal schools, and 30,000 in Muslim schools. The Amish and Mennonite faiths educated 78,000 pupils in separate schools.

There were more than 200,000 private school students in California, Florida, Illinois, New York, Ohio, Pennsylvania and Texas.

Private schools sent 64% of their 2009 graduates to four-year colleges. Catholic schools were the most college-oriented with 85% of their graduates enrolled in four-year colleges in the fall of 2009, compared to 79% of nonsectarian school graduates, 70% for other religious schools and 61% for conservative Christian schools. (For some reason this report did not include community colleges or other two-year colleges, which enroll a growing number of high school graduates.)

Almost three fourths (73%) of private school students were white, 9% were Hispanic, 9% African American, 5% Asian and 4% were of other races or of mixed ancestry. The minority population was a good deal lower than in public schools, where racial and ethnic minorities are a majority of the school population in many states.

These reports are available from NCES, 1990 K Street, NW, Washington, D.C. 20006-5651 or on their web site, nces.ed.gov/pubsearch.

balance we've tried to strike is to say that...if you have set up a non-profit that is disassociated from your core religious functions and is out there in the public doing all kinds of work, then you have to abide generally with the nondiscrimination hiring practices. If, on the other hand, it is closer to your core functions as a synagogue or a mosque or a church, then there may be more leeway for you to hire somebody who is a believer of that particular religious faith."

Abortion Rights and Stem Cell Research

Obama ran as a prochoice candidate and one of his first actions was to restore funding to organizations that include abortion or counseling about the procedure. This "global gag rule" has been a see-saw since the Reagan administration. Republican presidents routinely invoke prohibitions on such aid and Democrats restore it. Obama also reinstated U.S. support for the United Nations Population Fund.

At home the president has fought to retain funding for Planned Parenthood that a hostile Republican-controlled House tried to remove. A Democratic majority Senate will almost certainly block this proposal. But he allowed his massive overhaul of health care to get bogged down in a fight over federal funding of abortions. He signed an executive order banning such funding, or, more accurately, reaffirming the 1976 Hyde Amendment, which prohibits most funding. Apparently, he thought this was a necessary compromise in order to win approval for health-care reform.

The president has frequently stressed the importance of prevention of unintended pregnancy through effective family planning services as a way to reduce abortions and to improve women's health. But his opponents are only interested in eliminating access to abortion. His administration has also continued funding for abstinence-only sexuality education programs, despite their proven record of failure.

The administration has strengthened embryonic stem cell research and has expressed greater support for scientific endeavors in the field. In that area he deserves high grades.

Civil Religion

The concept of "civil religion" is an amorphous one and includes presidential proclamations that include religious references and other religion-infused comments in speeches that reflect a particular president's style. Supreme Court Justice Brennan once referred to those evocations as "ceremonial deism."

Obama has frequently hailed the American principle of religious liberty as an enduring national achievement and he has always expressed it in terms that are inclusive and all-embracing. In his 2011 proclamation for the National Day of Prayer the president said, "Let us be thankful for the liberty that allows people of all faiths to worship or not worship according to the dictates of their conscience." In these and other addresses Obama resembles President John F. Kennedy, who in a 1961 speech hailed "the principle of religious independence and religious freedom that like a silver thread has run through the warp and the woof of American history."

In his prayer breakfast address, and in his Thanksgiving and Christmas addresses, Obama has often expressed his own religious faith and traditions, as have most other chief executives, but few would find them threatening. He rarely attends religious services in Washington, preferring the nondenominational services at Camp David.

Overseas Religious Liberty

Obama has addressed religious conflict in other lands and has sought to appeal to enlightened forces that seek peace between religions, particularly in his references to the Muslim world. Unlike many American politicians, he has not singled out Islam as a religion with any unique impulse toward violence. Indeed, he has roundly denounced that view.

He has, however, been criticized for not emphasizing religious liberty overseas enough and for waiting for over a year to appoint an ambassador for international religious freedom, a position inaugurated in the second Clinton administration. On April 14, the U.S. Senate confirmed Rev. Suzan Johnson Cook, an African American Baptist minister from New York, as the nation's third ambassador to oversee international religious liberty concerns. In a statement issued after her confirmation, she said, "I am...persuaded in my mind, heart, and soul that religious freedom is the birthright of all people everywhere, a foundation of civil society, a key to international security, and it must always be a pillar of U.S. foreign policy."

Some members of Congress feel that the administration has not done enough to make international religious freedom a foreign policy priority. Rep. Frank Wolf (R-VA) introduced a bill on May 11 that would upgrade the ambassador for religious freedom to a high level post in the State Department, one that would report directly to the Secretary of State.

Wolf, who led the 1998 fight for the new post, also proposed reauthorizing the independent panel that monitors religious liberty problems overseas. The panel, due to expire September 30, has been critical of the religious liberty efforts of both Republican and Democratic administrations in the past. Wolf also wants the Treasury Department and the U.S. Agency for International Development (USAID) to report to Congress on how the U.S. can promote religious freedom internationally. His bill would also require religious freedom training for Foreign Service officers.

USAID has come under fire recently for adopting a rule that would allow federal funds to acquire, construct or rehabilitate structures that are used for religious activities. These relaxed standards would lead to the advancement of religion. Baptist Joint Committee general counsel K. Hollyn Hollman urged USAID to reject the proposal because it would "conflict with U.S. Supreme Court standards, as well as the position of the Obama Administration in its efforts to strengthen the legal basis for federal policy governing the relationship between the government and the nongovernmental entities that receive government funding and administer government programs."

History seems to be repeating itself. In August 1962 President John F. Kennedy rescinded a USAID policy that would have allowed the distribution of U.S. foreign aid funds through religious organizations abroad. (Americans for Religious Liberty successfully challenged a similar program in *Lamont v. Wood*, decided by a federal court in 1989.)

In the abstract the Obama administration gets fair to middling grades on church and state. In the real world his policies, however cautious, are seen by church-state separationists as vastly preferable to those advocated by his leading opponents. ■

Moving?

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Voucher Advocates Spread False Charges, Says ACLU

Florida's pro-school-voucher lottery is spreading false charges of anti-Catholicism in order to convince voters to repeal the historic no-aid provision of the state constitution. This is the conclusion of an ACLU study published in July.

In a carefully documented report, ACLU researchers conclude, "Florida's modern no-aid provision does not represent an affront to Catholics and the claims that it should be repealed on this basis are meritless." Looking at the legislative history surrounding the 1885 Constitution and its subsequent revisions in 1968, 1977 and 1997, ACLU warned that supporters of repealing the no-aid provision are deliberately misleading voters.

"We should call these charges of anti-Catholicism what they are: A myth perpetuated by those hoping to advance their policy agenda through distraction and misdirection. For 125 years, Florida's no-aid provision has served as a crucial bulwark against opportunistic politicians hoping to use the public treasury to advance private religious beliefs. It would be a grave mistake to jettison this constitutional safeguard against religious establishment to satisfy a vocal minority who insist on perpetuating unsubstantiated claims of prejudice against Catholics."

The report, "Exposing the Myth of Anti-Catholic Bias: The Fabrication of History to Repeal the Florida Constitution's No-Aid Provision," points out that there was no anti-Catholic bigotry evident in the debates of 1885 and that the no-aid provision was broadly written and applied to all religions. The relevant portion of Article 1, section 3, reads: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

Context is important. "The legislative history from the 19th and 20th centuries also yields no evidence that the no-aid provision was enacted or reenacted with the purpose of discriminating against any religious faith." Furthermore, "Based on the text of the no-aid provision, it clearly applies equally to all religious denominations, creeds, and belief systems. Nothing in the text could reasonably be construed to single out Catholics for disadvantageous treatment."

The debates in 1885 reveal no anti-Catholic animus. "To that end, no Catholic Church official spoke against the 'directly or indirectly' language, and during the debates at the 1885 Constitutional Convention, none of the delegates from the Catholic stronghold of St. Augustine stood up to protest or to propose any amendments.... Those who claim the no-aid provision was designed to impose special discriminatory burdens on Catholic education have been unable to explain why no prominent Catholic at the dawn of the 20th century was aware of this purported bias."

Pro-school-voucher supporters say they are fighting for religious freedom. Nothing could be further from the truth. The purpose of the original no-aid provision was to preserve religious neutrality and to prevent strife between religions. "While supporters have couched the proposed repeal in 'religious freedom' terms, for many proponents, the real goal is to promote a wide variety of government-funded religious entities and activities, including taxpayer-financed educational vouchers that would require Floridians to subsidize private religious schools."

Proponents have also tried to link the Florida provision to the federal "Blaine Amendment" campaign, which failed ten years earlier, but "there is no evidence that the Florida no-aid provision was based on the Blaine

Amendment." (For an extended discussion of the 19th century Blaine Amendment, see *VOR*, Issue 83, which is also accessible at arline.org)

Florida voters would be well served if they heed ACLU's conclusion. "No matter how often these manufactured claims of bias are repeated, voucher and repeal proponents cannot back them up with evidence."

This attempt to change the constitution has been designated Amendment 7 and will appear on the ballot in November, 2012. The Florida Education Association (FEA) filed suit in the state Circuit Court in Tallahassee on July 20, asking the court to invalidate the amendment. FEA, joined by the presidents of the Florida School Boards Association and the Florida Association of School Administrators, charged that Amendment 7 is an underhanded scheme to legalize public funding of private and faith-based schools through tuition vouchers. FEA President Andy Ford said the wording of the ballot title is deliberately misleading. ■

Americans Oppose Vouchers: Gallup

The annual Phi Delta Kappan/Gallup Poll on education showed that "vouchers received the lowest approval rating in the past ten years." Americans polled opposed vouchers 65% to 34%, compared to a 50% to 44% margin against in 2008. Gallup researchers added, "Politicians should be wary of sending public funds to private schools because Americans still do not support vouchers."

Colorado Voucher Program, *continued from page 1*

Martinez was concerned that "the primary missions of most of the schools and of the religious entities that own, operate, sponsor, or control them, is to provide students with a religious upbringing and to inculcate in them the particular religious beliefs and values of the school or sponsoring religious organization." The sixteen schools included nine that are affiliated with evangelical Protestants, three Catholic, three Lutheran and one Jewish.

Martinez continued, "The curricula at most participating schools is thoroughly infused with religion and religious doctrine, and includes required courses in religion or theology that tend to indoctrinate and proselytize." He saw the above evidence as violative of the state constitution because the program "provides no meaningful limitations on the use of taxpayer funds to support or promote religion, and no meaningful protections for the religious liberty of participating students." He added, "Scholarship students have no right to opt-out of religious instruction, even if the religious instruction would conflict with their own religious beliefs."

In reaching his decision, Judge Martinez rejected a central claim of the defendants and their allies that Colorado's no-aid provision was a product of nineteenth century anti-Catholic bigotry. He dismissed this charge as "unpersuasive" and said he had "no legal authority...to ignore the language of the Colorado Constitution or to disregard certain constitutional provisions."

Judge Martinez's clarity in rejecting the subterfuges of voucher advocates has resulted in a major victory for church-state separation, religious liberty, public education, and common sense. ■

Schools May Refuse Church Rentals

The U.S. Court of Appeals for the Second Circuit ruled that New York City's Board of Education can properly refuse to rent space in a public school to a religious group for a Sunday worship service. The 2-1 majority held that the city's rule prohibiting "religious worship services" and "using a school as a house of worship" does not violate the Free Speech clause or the Establishment of Religion clause of the First Amendment. "We conclude that the challenged rule does not constitute viewpoint discrimination because it does not seek to exclude expressions of religious points of view or of religious devotion, but rather excludes for valid non-discriminatory reasons only a type of activity – the conduct of worship services."

This was the fourth time this case has reached the Second Circuit since 1994. The school, P.S. 15 in the Bronx, is considered "a limited public forum." A local religious group, the Bronx Household of Faith, sought in 1994 to rent the school's facilities but was rejected. In 2001 it applied again, after the U.S. Supreme Court's decision in the *Good News Club* case, which was seen as favorable to requests of this nature. Its application was granted, but the question remained unsettled. The Board of Education, now renamed the New York City Department of Education, revised its rules slightly, but maintained that a ban on religious worship was legitimate.

The Second Circuit, in a case now referred to as "Bronx Household IV," drew a clear distinction between "free expression of a religious point of view," which is allowed and "worship services" which are prohibited. Student religious clubs are expressly allowed if they are "on the same basis as other clubs." The majority held that "the conduct of a religious worship service has the effect of placing centrally, and perhaps even of establishing, the religion in the school."

The majority also held that the city was not motivated by hostility to religion, but was "motivated by a desire to find the proper balance between the two clauses of the First Amendment, the interpretation of which by the Supreme Court has been in flux and uncertain."

The majority admitted that its opinion was not necessarily correct because of the increasing inconsistency of U.S. Supreme Court rulings in the church-state arena. "The Supreme Court's rulings have laid down

no principles that compel a decision one way or the other on these facts. Nor has the Supreme Court given any reliable indication of how it will rule if and when it confronts these facts."

Judge John Waller dissented and suggested that the majority opinion denied both Free Speech and Free Exercise of Religion. He said that renting a space on a temporary basis for religious services "raises no legitimate Establishment Clause concerns." "Unlike my colleagues in the majority and the Board, I am not prepared to shut out constitutionally-protected speech from a neutral forum on the sole basis that it is 'quintessentially religious.' I would hold that the actions of Bronx Household, a private party, cannot transform the government's neutral action into an Establishment Clause violation."

Waller invoked Justice Sandra Day O'Connor's "reasonable observer" test, saying that reasonable people would not perceive the rental of space as "state endorsement of organized religion in public schools." "Thus, the majority confuses its analysis when it emphasizes the private speaker's conduct, rather than the government's role, in establishing religion."

Both the majority and dissenting opinions suggested that the Supreme Court should review this case. The dissenting judge wrote, "This case also presents important doctrinal considerations worthy of the Supreme Court's attention." He noted that differences of opinion between "content discrimination" and "viewpoint discrimination" made the case difficult to decide, especially when "private speech is intertwined with their standard devotional practices and deeply-held religious beliefs."

The case, decided on June 2, is *The Bronx Household of Faith v. Board of Education of the City of New York*.

This decision, however, may have little national impact. *USA Today* reported in July that the five largest school districts (other than New York) and the five fastest growing school districts have granted permits for worship activities on school property. A 2007 survey by the Nashville-based LifeWay research agency found that 12% of newly founded Protestant churches met in schools. ■

New Abortion Restrictions May Face Court Scrutiny

Six states – Alabama, Idaho, Indiana, Kansas, Nebraska and Oklahoma – have passed laws making abortions illegal after 20 weeks. These laws "strike at the foundation of the abortion rules set out by the Supreme Court over the last four decades," wrote *New York Times* reporter Erik Eckholm. These laws clearly conflict with traditional definitions of viability, according to several medical and legal specialists. "These 20-week laws are absolutely unconstitutional," said Nancy Northrup, president of the Center for Reproductive Rights. Only about 18,000 of the 1.2 million abortions performed annually occur after the 20th week, many for medical emergencies, according to the Guttmacher Institute.

A new Texas law requiring doctors to perform a sonogram of the fetus at least 24 hours before an abortion can be performed is before a federal court. U.S. District Judge Sam Sparks said he would issue a decision concerning the law's constitutionality before it is scheduled to take effect in September. The New York-based Center for Reproductive Rights has filed suit for a preliminary injunction, claiming the new law "creates a profound unprecedented and unconstitutional intrusion into

the practice of medicine" and "undermines the informed consent process." The pro-choice group also argues that the law "violates the equal protection clause by subjecting women to paternalistic 'protections' not imposed on men and forces physicians to deliver politically-motivated communications" to patients.

These ultrasound laws are not popular with young voters. Younger voters, ages 18-29, endorse access to abortion, according to a poll released in June by the Public Religion Research Institute. Fully 68% of young voters (called "millennials") said that health care professionals in their community should provide legal abortions. This view was held by 72% of mainline Protestants, 71% of the religiously unaffiliated, 58% of white Catholics and 56% of black Protestants, compared to 38% of Latino Catholics and 37% of evangelical Protestants.

A Kansas law imposing strict new licensing rules for abortion providers was blocked by a federal judge in July until a lawsuit involving two of the state's three providers is resolved. The state's new licensing law has sparked a privacy debate since it gives the state health depart-

ment unprecedented access to patient medical records. Similar laws in South Carolina and Texas allow unfettered access to abortion records by state health department inspectors.

In South Dakota a law requiring anti-abortion counseling and a three-day waiting period was blocked in July by a federal judge who said the new law created “a substantial obstacle to a woman’s decision to obtain an abortion.”

New measures aimed at limiting access to abortion were enacted in more than a dozen states. However, Democratic governors in Montana, Minnesota and North Carolina vetoed anti-choice legislation.

Religious Freedom Restrictions Increase

Restrictions on the free exercise of religious beliefs and practices have increased in 23 of the world’s 198 countries since 2006, according to a report by the Pew Research Center. Only 12 countries showed improvement in religious freedom, while 163 countries “remained essentially unchanged.” Several large countries, however, have seen rising restrictions on religious liberty, resulting in one third of the world’s population living in nations where government restrictions or hostilities have risen substantially.

Among the world’s largest countries in population, China, Nigeria, Russia, Thailand, the United Kingdom (surprise!) and Vietnam experienced “rising levels of social hostilities involving religion,” while Egypt and France saw more government-imposed restrictions on religious minorities.


Government restrictions on religion increased significantly in the Middle East and North Africa, where 30% of countries imposed greater restrictions in 2009 than in 2006. Both Egypt and Indonesia experienced government restrictions and social hostility based on religion.

However, five of the 10 countries that had a substantial increase in social hostility based on religion were in Europe. They were Bulgaria, Denmark, Russia, Sweden and the United Kingdom. China, Thailand and Vietnam also saw rising hostilities based on religion.

Religion-based terror also increased globally. Pew reported: “During the three-year period covered by the study, the extent of violence and abuse related to religion increased in more places than it decreased. The number of countries in which governments used at least some measure of force against religious groups or individuals rose from 91 (46%) in the period ending in mid-2008 to 101 (51%) in the period ending in mid-2009. This violence was wide-ranging, including individuals being killed, physically abused, imprisoned, detained or displaced from their homes, as well as damage to or destruction of personal or religious properties. In nearly three-quarters of all countries, private citizens or groups committed crimes, malicious acts or violence motivated by religious hatred or bias. Such acts occurred in 142 countries (72%) in the period ending in mid-2009, about the same as in the previous reporting period. The number of countries that experienced mob violence related to religion rose from 38 (19%) as of mid-2008 to 52 (26%) as of mid-2009.”

All religions were victims of repression or hostility, depending on location. Christians were harassed in 130 countries, Muslims in 117, Hindus in 27 and Buddhists in 16.

Hostility to Jews was widespread. “Although Jews comprise less than 1% of the world’s population, government or social harassment of Jews



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was reported in 75 countries (38%). Other minority groups were frequent targets of harassment. Sikhs, Zoroastrians, Bahais and Rastafarians experienced incidents of harassment in 84 countries.

Blasphemy laws were blamed for some of the repression. “The study finds that restrictions on religion are particularly common in countries that prohibit blasphemy, apostasy or defamation of religion. While such laws are sometimes promoted as a way to protect religion, in practice they often serve to punish religious minorities whose beliefs are deemed unorthodox or heretical.”

Countries with established or preferred religions were among the most hostile. “Six of the 14 countries where government restrictions rose substantially were in the Middle East-North Africa region: Algeria, Egypt, Libya, Qatar, Syria and Yemen.” In France and Serbia the government put pressure on “religious groups considered to be cults.”

Another terrifying prospect: “Religion-related terrorist groups were active in 74 countries around the world in the period ending in mid-2009.”

The Pew report also looked at national constitutions, which often promise more than they deliver. For example, 72% of countries guarantee religious freedom in their constitutions that are in accordance with Article 18 of the United Nations’ Universal Declaration of Human Rights. But 76% of nations include “stipulations that appear to qualify or substantially contradict the concept of religious freedom” and 96% give “government support such as funding, official recognition or spe-

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Religious Freedom Restrictions, *cont. from page 7*

cial access to some religious groups.”

There were slight improvements in some areas. About 38% of countries, up from 27% a year before, “respect religious freedom in practice,” as well as constitutionally.

But restrictive policies are widespread: 25% of countries “prohibit worship or religious practices of one or more religious groups as a general policy” and another 41% do so in some instances; 32% restrict public preaching for some or all religious groups and 38% limit proselytizing; conversion from one religion to another is prohibited in 19% of countries, and 44% of nations limit religious literature or broadcasting; the wearing of religious symbols is regulated or prohibited in 27% of countries; 31% of national governments displayed “hostility involving physical violence” toward minority religions and 27% refused to intervene in cases of discrimination or abuse against religious minorities; 20% of governments formally ban certain religious groups and 13% “attempted to eliminate an entire religious group’s presence in the country.” Finally, 28% of countries “defer in some way to religious authorities, texts or doctrines on legal issues.”

Pew Forum researchers used 18 sources of information, including reports from the U.S. Commission on International Religious Freedom, the United Nations, the Council of the European Union, Human Rights Watch, Amnesty International, Freedom House, and the U.S. State Department, among others, to compile this 111-page report. It is available from www.pewforum.org. ■

Countries with Very High Government Restrictions on Religion

Burma
China
Egypt
Eritrea
Indonesia
Iran
Malaysia
Maldives
Saudi Arabia
Uzbekistan

Countries with Very High Social Hostilities Involving Religion

Afghanistan
Bangladesh
Egypt
India
Indonesia
Iraq
Israel
Nigeria
Pakistan
Somalia

Illinois Civil Unions Clash with Child Care

The new Illinois law recognizing civil unions for same-sex couples has led to conflict over child care. Catholic Charities stopped licensing new foster parents because they claimed the new law violates their principles that prohibit placing children with gay couples or unmarried cohabiting couples. State officials had also moved to sever foster care and adoption contracts with Catholic Charities across Illinois, causing uncertainty for 2,000 foster children and their caseworkers. The *Chicago Tribune* reported that “state officials have been investigating whether religious agencies that receive public funds to license foster care parents are breaking anti-discrimination laws if they turn away openly gay parents.”

State officials said no contracts exist, but Judge John Schmidt of the Sangamon County Circuit Court ruled that Catholic Charities could not be forced to shift children to other social service agencies until a full-scale hearing later in August. The judge thought immediate removal would do “irreparable injury” to the children.

Catholic Charities in three dioceses “sued the Illinois attorney general and DCFS [Department of Children and Family Services] last month for enforcing new policies that accommodate civil unions. In the lawsuit, the agencies sought the court’s permission to preserve their current policy of granting licenses to married couples and single non-cohabiting individuals and referring couples in civil unions to other child welfare agencies,” wrote *Chicago Tribune* reporter Manya Brachear on July 12. State officials responded by saying that other agencies complying with the civil union law will absorb Catholic Charities’ caseloads. Youth Service Bureau of Illinois Valley, for example, has agreed to take 330 children.

Civil liberties groups argue that the Illinois Human Rights Act, the Civil Union Act and the Illinois Constitution prohibit any social welfare agencies from practicing discrimination by sexual orientation. But Lutheran Child and Family Services and the Evangelical Child and Family Agency also maintain policies that exclude gay parents, making the future of foster care in Illinois uncertain. ■



Church and State in the Courts



Funding for stem cell research was upheld by a federal court on July 27. In a major victory for the Obama administration, U.S. District Judge Royce Lamberth ruled that new N.I.H. guidelines on stem cell research do not violate a 1996 federal law. The judge dismissed a legal challenge to funding brought by two scientists in 2009. Lamberth had originally halted funding a year ago but his decision was reversed by an appeals court in April. The new decision relies on the appeal court’s decision that the federal government had reasonably interpreted federal law to permit funding of human embryonic stem cell research. Most scientists consider such research vital to efforts to find treatments for a number of

diseases. White House adviser Stephanie Cutter praised the ruling. “President Obama is committed to supporting responsible stem cell research, and today’s ruling was another step in the right direction.”



Indiana cannot cut off all public funding to Planned Parenthood, according to a ruling June 24 by a federal judge. Republican governor Mitch Daniels signed a law in May that eliminated all Medicaid funding for Planned Parenthood because the group provides abortion services. Under the cut-off, even general health services such as breast exams and pap tests could not be funded under Medicaid. The state argued that federal funds “indirectly” paid for abortions by covering some of the

overhead costs for spaces where the procedures are performed.

But U.S. District Judge Tanya Walton Pratt ruled that the state cannot defund Planned Parenthood merely because they provide abortions. This would restrict the freedom of Medicaid recipients to choose their health care provider. She granted a preliminary injunction against the state's cancellation of \$1.4 million to the group. The Indiana attorney general's office indicated that the state will probably appeal the decision.



The constitutionality of Oklahoma's anti-Sharia law will be determined by the Tenth U.S. Circuit Court of Appeals. A constitutional amendment was approved by voters in 2010 that would deny any legal enforcement of principles based on "Islamic law" or any other foreign law. A federal judge found the amendment unconstitutional.

An amicus brief filed by several religious organizations, including the American Jewish Committee, the Anti-Defamation League, the Baptist Joint Committee for Religious Liberty and the Union for Reform Judaism, urged the appeals court to affirm the district court ruling. The brief argues, "The amendment's dual specific references to Sharia law—and to no other religious tradition—have the unambiguous effect of communicating official disapproval of Islam." It adds that the constitution requires "equal treatment of all religious faiths without discrimination or preference." The proposed Oklahoma law "threatens to give official recognition to fear and suspicion of a minority religion."



A former child care worker for Cook (Illinois) County Circuit Court sued the court in June, alleging anti-Muslim harassment from her supervisor, who allegedly said only "good Christians" should work in the children's advocacy division. According to the suit, first filed with the Equal Employment Opportunity Commission in 2010, Fozyia Huri, a Muslim immigrant from Saudi Arabia, claimed she was repeatedly harassed by her supervisor from 2002 to 2009. The U.S. Department of Justice granted her the right to sue, although her attorney said that no thorough investigation had yet been conducted.



Prayers at high school graduation exercises continue to provoke law suits. In May a family sued the Medina Valley Independent School District in Texas for allegedly forcing prayers at school-sponsored events. A federal court agreed with them and issued a temporary restraining order barring a high school in Castroville from allowing speakers to pray or encouraging the audience to pray. However, a three judge panel of the U.S. Court of Appeals for the Fifth Circuit overturned the order, saying that the family had not proved that the school district endorsed prayers at its events. In July both sides said they were open to mediation.



A federal court temporarily barred New York City from enforcing a new law that would require "crisis pregnancy centers" to disclose information about their services. A July 13 decision blocked a law intended

for consumer protection, claiming that the law violated free speech rights. The City Council determined that certain clinics used deceptive tactics and false claims to dissuade women from having abortions. But Judge William Pauley said the law was too broad. City officials will likely appeal the decision. A similar law in Baltimore was also struck down.



A polygamous family has challenged a Utah law banning polygamy. In July Kody Brown, who has four wives and 16 children, calls his family "spiritual" and says the state has no business criminalizing his personal choice. Utah is one of nine states that specifically ban polygamy. Almost all states ban bigamy. Much concern has been expressed about abuse of women and children in such relationships. George Washington University law professor Jonathan Turley is lead counsel for the plaintiff. He wrote in *The New York Times* that "there is nothing uniquely abusive about consenting polygamous relationships."



Kansas may not cut off aid to Planned Parenthood, a federal judge ruled on August 1. The state had denied funding under the federal Title X grant programs. U.S. District Judge Thomas Marten said the state cannot impose additional restrictions on a federally-funded program because of the Supremacy Clause of the Constitution. He also held that the state legislature's actions against Planned Parenthood violated the right of association guaranteed by the First and Fourteenth Amendments. He issued a temporary injunction blocking enforcement of the law, and Kansas Attorney General Derek Schmidt said the state would appeal the ruling. Legislatures in Indiana, New Hampshire, North Carolina, Tennessee, Texas and Wisconsin have partially or fully defunded the organization.



Yet another Ten Commandments' case is simmering in the courts. A federal judge ordered the removal of a granite monument displaying the Commandments and a religious message from the Dixie County, Florida, courthouse. Officials in the tiny, isolated rural county of 16,000 in the deeply conservative Panhandle region support the display and have appealed the ruling to the Eleventh U.S. Circuit Court of Appeals in Atlanta. U.S. District Judge Maurice Paul ruled on July 15 that the monument, challenged by Florida ACLU and a local citizen, should be removed because its location clearly indicated government approval of "the message being conveyed." The monument was bought and erected by businessman Joe Anderson, who lives in another county. Local officials and their Liberty Counsel backers claim that county policy allows "private displays of law and history" on public property.

Dixie County belongs to the Deep South culturally. Its economy is dependent on the timber industry, though it borders the Gulf of Mexico and once had a thriving fishing industry. Despite its poverty, it votes Republican for president, and gave John McCain 73% in the last election. The county is almost entirely white and conservative Protestant, with Southern Baptists constituting 70% of the religious population. ■



The Voucher Watch

- School vouchers do not improve student achievement. The Center on Education Policy (CEP) found “no clear positive impact on student academic achievement and mixed outcomes overall for students who attend private schools using vouchers.” The report, *Keeping Informed about School Vouchers: A Review of Major Developments and Research*, reviews a decade of voucher research and finds that vouchers have not proved to be the panacea for educational improvement and reform that their proponents claim.

The report’s authors noted that many of the 27 voucher studies have been sponsored or conducted by organizations that favor vouchers. CEP urged researchers to “ensure that voucher studies are designed, conducted and reported in an objective and rigorous way.” Nancy Kober, co-author of the CEP study, recommended “outside scrutiny of study methods and guidance from objective expert panels.”

The Center on Education Policy is a “national independent advocate for public education and for more effective public schools.” It seeks to “improve the academic quality of public schools.”

- As expected, Wisconsin Gov. Scott Walker signed a budget that expands Milwaukee’s school voucher program to suburban schools in Milwaukee County and to the city of Racine. This will add to the program’s costs, at the same time the governor slashed \$800 million from public school funding.

- The voucher issue has split the Tea Party movement in Pennsylvania and other states. Some of the disagreements were fueled by formal opposition to vouchers by the libertarian Cato Institute, which warned that public support for school vouchers could lead to financing of schools which individual taxpayers would find abhorrent. In Pennsylvania some Tea Party activists favor a voucher bill while others prefer a tax credit approach. Several Washington, D.C.-based groups are pushing “school choice” legislation in the Keystone State “to expand their national agendas, including anti-union legislation,” wrote Tea Party expert Kate Zernike in *The New York Times*. The divisions within the Republican Party’s right wing have slowed down the voucher rush in the Pennsylvania legislature.

- Julie Underwood’s article, “Starving Public Schools,” in *The Na-*

tion (August 1-8), decried efforts by the conservative pressure group ALEC (American Legislative Exchange Council) to weaken public education through various forms of privatization. The group’s voucher and tax credit proposals have been passed in Arizona, Indiana, Louisiana, Oklahoma, Florida and Utah and are pending in several other states. Working with other right-wing “think tanks,” ALEC has intensified its drive for “ideological” and “profit-driven” systems of education. But Underwood warns, “Voucher schools clearly should outperform public schools, but they do not. Nor are they less expensive; often private costs are shifted to taxpayers; a local school district typically pays for transportation, additional education services and administrative expenses. In programs like Milwaukee’s, the actual cost drains funds from the public schools and creates additional charges to taxpayers.”

- An Indiana judge refused to halt the state’s expensive voucher program on August 15, holding that the Republican-sponsored law “is religion-neutral and was enacted ‘for the benefit’ of students, not religious institutions or activities.” Marion County Superior Court Judge Michael Keele accepted a key pro-voucher argument. “It permits taxpayer funds to be paid to religious schools only upon the private individual choices of parents.” Keele ignored the fact that it is the private schools themselves that do the choosing and that the state money goes directly to the schools, which are predominantly church-related. About 2,800 students have been approved for the vouchers, which predominantly are not reserved for lower-income families.

Keele ruled only against a preliminary injunction to stop the program, but the merits of the case will go to trial later. The plaintiffs, a group of teachers and religious leaders backed by the Indiana State Teachers Association, charge that the program violates the state constitution.

The Indiana Constitution, Article 1, Section 6, says: “No money shall be drawn from the treasury, for the benefit of any religious or theological institution.” Section 4 provides: “No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.” ■

Updates

Bishops Lose Big in New York

The passage of New York’s Marriage Equality Act is seen as a major defeat for the state’s politically active Catholic bishops. The state’s Catholic Conference, the bishop’s lobbying arm, fought intensely against the bill, just as the state’s Catholic Democratic governor, Andrew Cuomo, fought tirelessly for it. The 33-29 vote in the state senate included four Republicans and many Catholics. Even though the final bill included ironclad guarantees against any coercion of religious groups that refuse to recognize same-sex marriage, Catholic officialdom, joined by Orthodox Jews, conservative Protestants and some African American churches, still opposed it.

Catholic leaders have urged its institutional infrastructure to refuse to allow access to church property to supporters of the law that took

effect on July 24. Brooklyn bishop Nicholas DiMarzio called on Catholic schools “not to bestow or accept honors nor to extend a platform of any kind” to those legislators who supported the law. Elizabeth Tenety, editor of the *Washington Post* blog on politics and religion, said the bishop’s statement “may signal a new era in church-state relations in the Empire State.” Polls showed majority support for the marriage equality measure.

An editorial in *National Catholic Reporter* (July 8) decried the bishops’ action, saying, “The bishops’ hyperbolic reaction to laws such as that enacted in New York is not only wrong-headed but counterproductive.” The journal added, “The vote in New York sends a strong message to Catholic leadership. The danger is not in the vote itself. The danger they face is far deeper—a crisis of leadership and authority for which they have only themselves to blame.”

House Bans Same-Sex Marriages in Military

In an obvious last-ditch attempt to slow down or reverse allowing gays and lesbians to serve in the U.S. military, House Republicans voted on July 8 to prohibit military chaplains from performing same-sex marriages on military bases. The vote was 236 to 184. Republicans voted 227-9 (96%) in favor while only 5% of Democrats (9 of 184) supported the ban.

The amendment to the defense spending bill was sponsored by Rep. Tim Huelskamp (R-Kan.), who said he wanted to make certain that "America's military bases are not used to advance a narrow social agenda." Polls show that 70% of Americans favor allowing military service by gays and support the end of the "Don't Ask, Don't Tell" policy. The practical effect of the vote is uncertain, since the Senate is not likely to agree. Congress must approve a defense spending bill before October 1, and the House and Senate versions must be reconciled. The Pentagon has already accepted the change and is planning to certify it.

Most of the dissenting Republicans were from the Northeast or Midwest and were Catholics, Episcopalians or Greek Orthodox. Most of the dissenting Democrats were Baptists or Methodists from the South or Border South regions.

Mormon Problem Still Here

A quarter of Americans still say they would be less likely to support a presidential candidate who is a Mormon. That is a small decline from the 30% who expressed a similar reluctance in 2007. Both surveys were conducted by the Pew Research Center. The 2011 survey, released on June 2, found that 34% of white evangelicals and 31% of Democrats expressed reservations about a Mormon candidate. So did 24% of religiously unaffiliated voters and 23% of Republicans. The most tolerant groups were white Catholics (only 16% expressed reservations), white mainline Protestants (19%) and Independents (20%). Two Republican presidential prospects, Mitt Romney and Jon Huntsman, belong to the Mormon faith.

McCotter Enters GOP Race

A five-term congressman from the Detroit suburbs, Thaddeus McCotter, launched a surprise bid for the GOP presidential nomination in July. An unconventional member, he announced his candidacy at an Independence Day rock festival. Given little or no chance, the guitar-playing congressman is a supporter of the auto industry and has cast a few pro-labor votes.

He has been critical of U.S. military presence in Afghanistan and U.S. involvement with the NATO campaign in Libya. A Catholic, he voted to ban abortion in foreign aid programs but he also supported a bill to ban bias against gays in the workplace, a minority position among Republicans. He voted in 2004 to amend the Constitution to ban same-sex marriage. He supported the 2003 bans on "partial birth" abortions and on human cloning. He backed the D.C. school voucher plan in a 2003 vote.

New Members of Congress

Janice Hahn is the new Democratic member of Congress from California's 36th District. A veteran California politician, she is a mem-

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ber of the fundamentalist Church of Christ and a 1974 graduate of the church's Abilene Christian University. She taught in a faith-based school, the Good News Academy, from 1974-1978. But she is a liberal Democrat and a pro-labor activist, the only Church of Christ Democrat in Congress. This fact reinforces the point that religious affiliation alone is rarely a predictor of political conviction. New York's newly elected Democrat, Kathy Hochul of the normally Republican 26th District, is a prochoice Catholic.

North Dakotans to Vote on Liberty Amendment

Voters in North Dakota will vote in 2012 on a proposed amendment to the state constitution that strengthens the Free Exercise principle. The proposal says that government "may not burden the religious liberty" of individuals or religious organizations unless government can prove a compelling interest. Actions must stem from a "sincerely held religious belief" in order to qualify for the additional protection. The vote, however, is scheduled for the June primary, which will draw a much lower turnout than in November, during the presidential election.

Science Education Receives a Boost

The Texas State Board of Education rejected attempts by far-right groups to force publishers to include anti-evolution materials in textbooks and science instruction materials. They also rejected the adoption of supplemental instructional material from a New Mexico-based promoter of "intelligent design" creationism. Texas Freedom Network president Kathy Miller expressed satisfaction at the July 22 decision: "Today we saw Texas kids and sound science finally win a vote on the State Board of Education. Now our public schools can focus on teaching their students fact-based science that will prepare them for college and a 21st-century economy."

Private Insurance Must Cover Birth Control

The Obama administration issued guidelines in August that require private insurers to provide a wide range of contraceptives at no cost to

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Updates, continued from page 11

those covered by the plans. Insurers may not charge a co-payment or deductibles under the Affordable Care Act. The provisions go into effect on August 1, 2012, and include annual medical checkups for women, counseling on sexually transmitted diseases and other screenings designed to improve health care for women.

One controversial provision allows some religious institutions to opt out of the coverage requirement. Those eligible for the exemption must have religious employees and promote religious causes, which may leave out some para-church organizations. The Family Research Council and the U.S. Conference of Catholic Bishops claimed the exemption did not go far enough and also decried the inclusion of FDA-approved emergency contraceptives. But the National Women's Law Center and Catholics for Choice thought the exemptions were too broad and would discriminate against some women. By 2013 nearly 34 million women ages 18 to 65 will be covered by plans that include these provisions. Health and Human Services Secretary Kathleen Sebelius said the changes would advance health care for women. "Under the law, we're making it illegal for insurers to charge women more just because of their gender," she said.

These changes were recommended by the Institute of Medicine, a nonpartisan branch of the National Academy of Sciences.

Charter Schools Cluster in Cities

The Economist reported in July that public charter schools are particularly numerous in New Orleans, Washington, D.C., and Detroit. More than two-thirds of public school students in New Orleans are enrolled in charter schools, for example. Three smaller Midwestern cities, Flint, Dayton and Kansas City (Missouri), also have a large proportion of their public school students enrolled in public charter schools.

While a disproportionate number of charter school students are African American, many black leaders in Mississippi and New York oppose their expansion.

GOP Gains Among White Voters

A Pew poll released on July 22 found that "the electorate's partisan affiliations have shifted significantly since Obama won office nearly three years ago." The GOP has gained, cutting the Democratic Party affiliation edge from 12 points to four points. Republican gains are concentrated among white voters, and in particular white voters aged 18-29 and those with lower-incomes. Republicans now lead among all whites regardless of age, income, education and gender. Younger whites and white women were among Obama's strongest supporters in 2008,

but both groups have moved toward the GOP.

Republicans have a large 57% to 35% lead among Southern whites and comfortable margins in the Midwest and West. Only in the Northeast do Democrats lead by one point among white voters. Republican gains have been most pronounced in the Midwest.

White evangelicals are the strongest Republican subgroup, with a 71% to 23% GOP preference. White Catholics have shifted nine points toward the GOP.

GOP gains are smallest among college graduates, high-income voters and mainline Protestants. The GOP has made a small two point gain among black voters but lost six points among Hispanics—the only group to move in a Democratic direction.

Air Force Suspends Religious Training

The Air Education and Training Command (AETC) suspended an ethics training course that was apparently designed to give a Biblical justification for nuclear war. Every new missile officer had to take the course at Vandenberg Air Force Base in California. In July AETC officials told *Military.com*, "We're in the process of reviewing that training and we'll make a determination whether or not to continue [it] or if it will be a different course." The Military Religious Freedom Foundation and a website, *Truthout.org*, called on the Air Force to end "this repugnant nuclear missile training" that has existed for decades.

Will Parochials Become Charters?

A bill pending in the New Jersey legislature (it passed the Assembly but not the Senate) would allow Catholic parochial schools to avoid closing by becoming public charter schools. They would have to eliminate all religious symbols and religious education classes and adopt a secular name. However, current students and faculty would be given preference in the new school. But officials of the Camden Catholic Diocese have rejected the proposal, saying that "religious beliefs and values are at the core of the curriculum," according to *Philadelphia Inquirer* staff writer Claudia Vargas.

International Updates

Budapest: A proposed law relating to churches and religious communities provides privileges to "registered" or "recognized" churches only. The European Humanist Federation protested the proposal. The group's president, David Pollock, in a letter to Prime Minister Viktor Orban, warned that the law "would require every other lawfully functioning religious group to re-register under discriminatory and restrictive conditions.... The minimum requirements for length of establishment (20 years) and number (1000 members) are a blatant breach of Hungary's obligations as set out in UN, ECHR and OSCE standards." Pollock added that the proposal "would abandon the principle of state neutrality concerning religious or other convictions and adopt a policy committed to a religious way of life without the necessary respect for equality of all people, making it possible for the Government to cooperate with religious organizations enjoying 'church status' even more closely than at present and thereby endangering the equal treatment of all those who are either non-religious or who are not members of registered churches." Hungary has signed Article 9 of the European Convention on Human Rights that addresses freedom of religion and belief.

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Dublin: The fourth government probe into Catholic Church coverups of child abuse was published in July. The report criticizes the diocese of Cloyne in southwest Ireland for ignoring Irish church rules that suspected molestation cases be reported to the police. The coverups include the years 1996-2009, and investigators found that the Vatican encouraged the concealment. Justice Minister Alan Shatter announced that he would support a law making it an imprisonable offense to withhold knowledge of suspected child abuse. On July 20 parliament unanimously supported a motion denouncing the Vatican for encouraging Irish bishops to flaunt Irish law. Prime Minister Enda Kenny thundered, "This is not Rome. This is the Republic of Ireland 2011, a republic of laws." The Vatican had no initial response but then suddenly recalled its ambassador to Ireland on July 25. Foreign Minister Eamon Gilmore had summoned Archbishop Giuseppe Leanza, the Vatican nuncio, and demanded an official response from the Vatican. The Holy See said it would respond at an "opportune time" and expressed "surprise and disappointment" at the Irish government's "excessive reaction."

Newspaper reaction was overwhelmingly supportive of the Irish government. An editorial in the *Financial Times* said, in part, "No Irish prime minister has ever condemned the Vatican in language as blistering as that used by Enda Kenny. No prime minister was ever more justified in doing so.... Now the Vatican, in high dudgeon, has withdrawn the papal nuncio to Ireland. Relations between the Holy See and Dublin have plunged to an all-time low. For a country where, as in Poland and Spain, Catholicism is the historical foundation stone of

national identity, this may seem astonishing. But in truth the child abuse scandals long ago shattered the Vatican's moral authority in Ireland."

Santiago: Students and others demonstrated in Chile's capital in August demanding improvements in education. According to *The Economist* (August 13), "Analysis done in Chile of the [OECD's PISA] test results in the 65 countries that took part finds that it ranked 64th in terms of the variance of the results according to social class. Rich pupils get good private education; poor ones are condemned to underfunded, dilapidated state-funded ones." Chile's failure to reduce this disparity is the fault mainly of the Pinochet dictatorship's imposing a Milton Friedman school voucher system on the country.

Vaduz, Liechtenstein: A bill before the parliament of the tiny principality would strip the Catholic Church of its status as the established or state church, as provided by the 2003 Constitution. The proposed legislation would also remove state subsidies for all "recognized" religions. While the Catholic Church, the religious community to which 78% of the country's 36,000 citizens belong, is generously funded by the state, so is the Lutheran Church. Markus Meidert, president of the Evangelical Lutheran Church of Liechtenstein, told the National Security Society newsletter that half of his church's budget comes from state grants. The proposal would also limit the Catholic Church's role in education by reducing or abolishing religious teaching in schools. ■

Books and Culture



The Spiritual-Industrial Complex: America's Religious Battle Against Communism in the Early Cold War, by Jonathan P. Herzog. Oxford University Press, 2011, 273 pp., \$34.95.

Tracing the history of Christianity's clash with Communism, the author shows how U.S. policymakers and leaders sought to challenge the Soviet Union's official atheism with a renewed emphasis on religion as an ally. Religion, of course, meant Christianity or the hybrid called Judeo-Christianity. America in the Cold War era stood for religion, for religious values and freedom. The Soviets stood for irreligion.

The Cold War use of religion as armor actually began with President Harry Truman, whose Attorney General Tom Clark stressed "spiritual mobilization" and "used his position to advocate a strand of Americanism premised upon religion." Truman also initiated a series of exchanges with Pope Pius XII, in which the president urged the Vatican to collaborate with the U.S. in a spiritual war on Communism, though nothing came of it.

Under Truman this posture even affected the military, as character formation classes in 1947 required religious instruction. At Fort Knox, 90% of recruits became weekly churchgoers after the "instruction" period. Weekly religious services were mandated for army trainees.

But it was under President Dwight Eisenhower that the Cold War-religion connection became what the author labels "a spiritual-industrial complex." Eisenhower and his Secretary of State John Foster Dulles saw the Cold War as a struggle rooted in religion. Thus it was during his presidency that cabinet meetings began with prayer, that "In God We Trust" became a second national motto and was placed on paper currency, and "under God" was added to the Pledge of Allegiance. He even composed a prayer for his inauguration and was baptized into the

Presbyterian Church a week later.

The Kennedy Administration began to challenge these assumptions. Kennedy emphasized "strength, achievement, sincerity, peace and prestige" rather than Eisenhower's preference for "spiritual vigor."

"Rather than casting itself as the world's moral and spiritual guardian, as it had under Eisenhower and Dulles, America could fight Communism in the developing world by feeding, clothing, and educating the vulnerable masses." The author continues, "The difference between Eisenhower and Kennedy's beliefs turned on the state's role in religious matters. Eisenhower was America's most powerful proponent of sacralization since Lincoln. He strove to harness government, business, educational, and media power to reendow religion with new meaning in a holy war. Kennedy abandoned this program for politically sound reasons."

The author, a Foreign Service officer and former history professor, addresses the question of nonbelievers in a nation bent on using religion as a political and foreign policy tool. He also discusses the U.S. Supreme Court's decisions on school prayer and devotional activities. The High Court, he says, "addressed the publicly sponsored program of sacralization in place since the late 1940s." Justice Tom Clark was a key player since he had supported the earlier efforts. But as a justice "he repudiated the central tenet of the spiritual-industrial complex—the idea that in a time of holy war the state should sanction religious belief and practice." These rulings "at least halted the march down the road of sacralization."

In an epilogue he notes that the Religious Right wants to return to the Eisenhower-era policy. "Although the rhetoric of holy war is now

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Books and Culture, *continued from page 13*

shunned, the heritage of holy war is still embraced.”

This is really a great book that reveals much new material about a crucial epoch in U.S. history.

—Al Menendez

Render Unto Rome: The Secret Life of Money in the Catholic Church, by Jason Berry. Crown Publishers, 2011, 420 pp., \$25.00.

Jason Berry’s meticulously-researched book concentrates on the financial profile of the Catholic Church, including a study of the Vatican legal system. Berry casts a withering eye on “dishonest bishops, concealed sex offenders and mismanaged money” from the perspective of a liberal Catholic journalist, who himself broke the story of the clerical sex abuse scandal in Louisiana two decades ago. The result of these failures is that the Catholic Church in America “is undergoing the most massive downsizing in its history and is liquidating assets at a startling pace.”

Not only has the clerical sex offenders’ scandal cost the church dearly in terms of income and prestige, but the closing of churches to help stop the flow of funds is causing dismay. “As bishops shut churches against the people’s will, questions of financial ethics hover like black clouds.”

Some of the conflicts will end up in the U.S. legal system. “The financial accountability of bishops is an issue that seems destined for more activity in the civil courts,” writes Berry.

An excellent book in its own right, it would have been even better had it also considered how much government money has gone to the church.

—Al Menendez

Ranking Faiths: Religious Stratification in America, by James D. Davidson and Ralph E. Pyle. Rowman & Littlefield Publishers, Inc., 2011, 219 pp., \$49.95

Religious “stratification” reveals a lot about religious power blocs and the shifting political and cultural influences wielded by religious groups in the U.S. This fascinating book explores both the continuities and changes in religious stratification over the centuries and considers whether it is a good or bad thing for democracy.

In times of continuity the same dominant groups in the colonial days (Episcopalian, Presbyterian) joined by Jews and Unitarians are today’s “upper stratum.” The upper middle includes Catholics, Hindus, Methodists, Mormons, Quakers and the United Church of Christ. The lower middle groups include Buddhists, Lutherans, the religiously nonaffiliated and the Dutch reformed. The lower stratum includes Muslims, Baptists, Pentecostals and fundamentalists. These rankings combine access to “power, prestige and privilege” and are based on reliable data sources such as income, education and the numbers in each group in Congress, among the presidents and Supreme Court justices and presidents of Ivy League universities.

The authors note that, “Since the 1960s, a number of laws have been passed that favor religious equality.” Protestant hegemony was challenged and weakened. “The Supreme Court’s decisions on school prayer and Bible reading challenged the notion that public schools should sponsor religious activities, thus validating the principle that no one religious tradition should be favored by state institutions.”

While mainline Protestants have declined in numbers, their overall power and prestige are not totally diminished. “[Protestantism’s] power relative to Catholics and Jews has not declined very much. Although the number of Catholics continues to grow, the organizational base of the Catholic Church is shrinking, and alliances with various Protestant

groups have faltered. And, although Jews have been upwardly mobile in recent decades, the Jewish percentage of the total population is declining, the Jewish community’s organizational base is not growing, and its alliances with other groups are more fragile than firm.”

Among the authors’ conclusions: “Religion continues to be an important influence in modern society and has important effects on people’s access to resources, even after other factors are taken into account,” and “Religious stratification has always been and continues to be an important part of our society.” Power struggles between groups continue to affect outcomes. “Through it all, America’s historically elite religions still have far more access to most resources than other groups do.”

Laws have evened the playing field somewhat. “Most of the laws that favored the Protestant Establishment in the colonial period have been struck down by the courts and replaced by ones guaranteeing religious groups equal protection.” On the other hand, “In terms of the dominant ideology’s belief component, liberal Protestant values remain the societal norm... Anglo-Protestant ideology has been impacted by multiculturalism, but it has not been supplanted or replaced by it.”

The authors believe that religious stratification “fosters tension between elites and nonelites,” and they argue, “Americans wanting a more just and equal society should add religious stratification to their list of conditions that need to be overcome.”

This book is outstanding, but data on Congress from 2001 should have been updated to reflect that three Buddhists and two Muslims now serve in that body.

—Al Menendez

American Evangelical Protestantism and European Immigrants, 1800-1924, by William J. Phalen. McFarland & Company, Inc., Publishers, 2011, 220 pp., \$45.00 softcover.

Recent congressional votes on immigration-related issues show that evangelical Republicans are the most hostile to immigration reform or to anything that smacks of “amnesty” or fair treatment for undocumented immigrants and their families. Heavily evangelical Alabama recently passed the harshest anti-immigration law in the country. And in 1965 when Congress overhauled the infamous 1924 national origin restrictions on immigration, it was Baptists and Methodists who were the most opposed. That 1924 act, which was abolished in 1965, tried to sharply reduce immigration from predominantly Catholic, Jewish and Eastern Orthodox countries in Europe, not to mention the non-white nations in Asia and Africa, leaving nations of Protestant Northern Europe alone.

This book gives the historical background to controversies over who should be allowed to emigrate to the U.S. As Phalen explains, immigration was related to the culture war conflicts between Protestants (mostly native born) and Catholics (mostly immigrants) in the 19th century. Such issues as temperance/Prohibition, observance of Sunday closing laws, and the role of religion in education (using the Bible as a textbook and reference point, and religiously-biased texts), interacted with immigration. Protestants who wanted to preserve their hegemony fought intense political battles with Catholics over these issues, with the Protestants deciding that keeping out Catholics would be the best way to maintain their domination of the culture. “These conflicts focused on divergent sets of social norms,” Phalen observes.

The battle over public versus parochial schools added another nasty dimension to the conflict. “The bedrock upon which the evangelicals created the common school was the use of the Bible as the primary text... Many found the public schools intolerant, causing them to struggle to clear the schools of anti-Catholicism.” After the evangelicals largely won this fight, Catholics developed a separate school system.

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“The bigotry in the management of the public schools contributed to the destruction of support for them within the Irish Catholic community, causing them to now support parochial schools in far greater numbers than they had before.”

Phalen notes that evangelical opposition to immigration grew when they realized that their attempts to convert Catholics proved largely unsuccessful. “The irreconcilable enemies joined battle early and often. The tempo of conflict accelerated as the Protestant hope for evangelizing the immigrant faded and the size of the Catholic population increased.”

After three decades (1890-1920) of high levels of immigration, a movement, spearheaded by evangelicals, was formed to create a National Origins Act that “carefully discriminated against the newer immigrants from Southern and Eastern Europe.” Some evangelicals even worked with the second Ku Klux Klan and other nativist organizations, going so far as to support denial of naturalization to immigrants and literacy tests that would deny admission to those who could not read and write. One Protestant journal referred to immigrants as “the scum of Europe.”

With the triumph of Prohibition and a Republican landslide in 1920, anti-immigration forces achieved their goal. Phalen concludes, “The popular hysteria of 1917 to 1920 helped accomplish what for decades Protestant nativists had been unable to achieve.”

This book shows how religion influenced the outcome of an important national issue.

—Al Menendez

Was America Founded as a Christian Nation?: A Historical Introduction, by John Fea. Westminster John Knox Press, 2011, 287 pp., \$30.00 paper.

The author challenges the Christian Nation thesis championed by today’s Religious Right. He points out that the federal Constitution “was written to be a frame for a government, not a treatise on the relationship between Christianity and the state.” He also notes that those who claim the Constitution is a Christian document do not have history on their side. “In the eighteenth century it was those who opposed the Constitution who made the strongest arguments in favor of the United State being a Christian nation.” He adds, “The most important documents connected to the coming of the American Revolution focused more on Enlightenment political theory about the constitutional and natural rights of British subjects than on any Christian or

biblical reason why resistance to the Crown was necessary....The founders cited from Enlightenment, Whig, and classical authors more than twice as much as they cited the Bible.”

He also chides today’s Baptist conservatives. “Many of today’s conservative Virginia Baptists, such as those affiliated with Jerry Falwell’s fundamentalist Baptist empire in Lynchburg, Virginia, might be surprised to learn that in their attempts to promote a ‘Christian America’ they are actually breaking with, rather than carrying on, the legacy of their Baptist past.”

Religion was more pervasive in government proceedings during the Articles of Confederation period, he writes, but less so when the Constitution was debated and ratified. While emphasizing the importance of Article VI in banning religious tests for public office, he notes that religious tests and privileges for dominant groups were maintained at the state level in some areas well into the nineteenth century. Since the U.S. Supreme Court applied the Bill of Rights to the states in the twentieth century, state religious tests are certainly illegal today. They are presumptively unconstitutional since the Supreme Court invalidated a Maryland law in the 1961 *Torcaso v. Watkins* case.

The author seems ambivalent in some areas, especially when he constantly emphasizes that “the religious culture of pre-Civil War America was shaped by evangelical Protestantism” and that “Protestant evangelicalism defined the culture.” While admitting that most of the Founders were not evangelical Christians, he insists that “all the founders believed that religion was necessary in order to sustain an ordered and virtuous republic.” It would have been a stronger argument to assert that all, or most, believed that religious liberty was an inherent right of individuals and that the government had an obligation to protect that right and to remain neutral and impartial in religious matters.

The author errs, in my view, when he says that “most people were Christians or at least affiliated in one way or another with a Christian church or denomination” in 18th century America. Historian Edwin Gaustad and sociologists Roger Finke and Rodney Stark, among others, have shown that no more than 15% to 20% of colonial Americans belonged to any church.

Fea, a professor at an evangelical college in Pennsylvania, may disappoint many in the Jeffersonian-Madisonian tradition, but if he succeeds in weaning evangelicals from a distorted Christian Nation thesis, he will have succeeded in fashioning a thoughtful, if imperfect, study.

—Al Menendez



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Commentary

Five Myths About Religion in Politics

One – Religious influences on politics and elections are a good thing, bringing ethical insights to the political realm.

Were that it was so, but rarely has that been the case in U.S. history. Political campaigns infused by religion are usually negative, pitting one religious group against another or appealing to one group by casting aspersions on others. The Know-Nothing campaigns of the 1850s, aimed at Catholic immigrants, and the hysterical attacks made in the 1928 and 1960 presidential campaigns, when the Democratic nominees, New York Gov. Alfred E. Smith and Massachusetts Sen. John Kennedy, both Catholics, are examples. So are the attacks on Thomas Jefferson in the 1800 election by supporters of John Adams and criticism from some evangelicals of Republican candidate William Howard Taft in 1908, because of his Unitarianism. Count on it. Religion is more divisive and negative when it becomes a campaign issue.

Two – Most political party platforms mention God or make a reference to religious faith.

This is another untruth, first mentioned by President George H.W. Bush in his unsuccessful reelection campaign of 1992, criticizing Democrats for omitting references to a deity in their platform. In actual fact, no Republican platform from 1856 to 1944 contained a reference to God, nor did the Democrats. Only in 1948, when the U.S. faced a mounting Cold War challenge from the officially atheist Soviet Union, did platforms mention God. This continued during the 1950s but Democrats have omitted such references since the 1960s. Republicans have continued the practice, except in 1964 when Barry Goldwater was the nominee.

Three – Fox News recently claimed that President Barack Obama “failed to recognize the national observance of Easter Sunday, Christianity’s most sacred holiday.”

False again. First of all, no American president has issued an “official” Easter proclamation. Obama, in fact, is the only president to have sponsored an informal Easter Prayer Breakfast at the White House during 2010 and 2011. Thanksgiving proclamations began with George Washington in 1789 and were occasionally issued until Abraham Lincoln made it an official holiday during the Civil War. There were no presidential Christmas proclamations until Calvin Coolidge issued a brief

informal comment at the lighting of the first National Christmas Tree in 1923 (at the request of electric company executives, who wanted to promote greater use of electricity.) More formal Christmas messages began with Herbert Hoover and have continued down to the present day.

But there are no “official” religious holidays in the United States. Thanksgiving and Christmas are “legal” holidays, but no one is required to observe them. Easter is not a legal holiday.

Four – Religious groups always support candidates of their own religious tradition.

Not always. Voters increasingly put political considerations above religious sentiments. While a majority of Catholics supported Smith in 1928 and Kennedy in 1960, a majority did not support John Kerry in 2004 – though all were Catholic Democrats. Political attitudes change over time. A majority of Southern Baptists voted for Jimmy Carter over Gerald Ford in 1976. But a majority of Baptists voted against him in 1980, supporting Ronald Reagan. The all-Baptist ticket of Bill Clinton and Al Gore lost among Baptists to George H.W. Bush in 1992 and Bob Dole in 1996. Al Gore lost the Baptist vote heavily to George W. Bush in 2000.

Plenty of other examples can be found in congressional and state elections. Jewish candidates frequently win in heavily Christian areas. Muslims have won congressional seats in Minneapolis and Indianapolis, where there are few Muslim voters. A Buddhist who won a congressional race in Georgia in 2006 has been reelected twice. Mitt Romney, a Mormon Republican, defeated a Catholic Democrat for governor in heavily Catholic and Democratic Massachusetts in 2002.

Five – Religion is fading away in U.S. politics.

Hardly. Exit polls over the last several national elections show that specific religious faith and frequent or infrequent attendance at worship services influence party preference and presidential choice. Frequent claims that the “Religious Right” is dying or dead have been disproved after each election’s returns have been tabulated. Sharp differences over public policy are often determined by religious conviction, and these differences are translated into political choices.

—Al Menendez