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August 16, 2000

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Ms. Kathleen C. Montgomery
Executive Vice President
Unitarian Universalist Association
25 Beacon Street
Boston, MA 02108

Re: UUA - Amicus Curiae

Dear Kay:

What follows is a summary of the cases in which the UUA joined in filing an amicus curiae brief. This report is for the period beginning May 29, 1998 (the date of my last report copy attached) to the present.

United States Supreme Court

1. Boy Scouts of America v. Dale. In August, 1999, the New Jersey Supreme Court ruled that the Boy Scouts' refusal to allow participation by homosexual members or leaders, and specifically, its expulsion of a gay Eagle Scout violated the Jersey anti-discrimination law. The Court also rejected the Scouts' claim that the First Amendment right of freedom of association gives it the right to discriminate on the basis of sexual orientation. The UUA participated in an amicus brief as described in my May 1998 letter.

The UUA's participation as an amici made a difference. The Court referenced the fact that religious organizations do not present a unanimous view condemning homosexuality. Moreover, the Boy Scouts "repeatedly reviewed the charters of religious organizations adhering to a view that homosexuality is moral." This was found to undermine the Boy Scouts' position that requiring it to accept a homosexual leader would be inconsistent with its overall message and mission.

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In June, 2000, however, the Supreme Court of the United States reversed and remanded the New Jersey Supreme Court's decision. In this proceeding, the UUA once again participated in an amicus curiae brief, this time with the General Board of Church and Society of the United Methodist Church, the United Church Board For Homeland Ministries, the Religious Action Center of Reform Judaism, and the Diocesan Council of the Episcopal Diocese of Newark.

The U.S. Supreme Court held that the Boy Scouts had the right to exclude a gay troop leader despite the New Jersey law prohibiting discrimination in public accommodations based on sexual orientation. Citing the Boy Scout oath as evidence, among other things, Chief Justice Rehnquist described the Scouts as an expressive association whose "general mission" is "to instill values in young people." Based on that characterization, he then concluded that the First Amendment barred the state from overruling the judgment of the Boy Scouts that a gay troop leader would be inconsistent with the values the Scouts were seeking to convey.

In dissent, Justice Stevens pointed out that the record was ambiguous, at best, on whether the Scouts actually had a policy on homosexuality, and that the exclusion of Dale in this case had more to do with status than ideology.

2. Santa Fe Independent School District v. Doe. The UUA joined the American Jewish Congress and other religious organizations in a brief arguing that organized prayer prior to school-sponsored football games is government-endorsed speech which therefore violates the separation of church and state. On June 19, 2000, the Supreme Court agreed and ruled that a school district policy permitting its student body to vote at the beginning of each school year whether to have prayers before football games violated the Establishment Clause.

First, the Court rejected the argument that the decision to allow students to vote on the question of prayer relieved the school district of any constitutional responsibility. Second, the Court concluded that the school district's ongoing and unconstitutional purpose had been to promote prayer at football games, even though the wording of the school's policy had changed during the course of litigation. Third, the Court held that the school district's policy was facially unconstitutional regardless of the outcome of any particular vote because it allowed the majority to determine the religious rights of the minority through election.

3. Stenberg v. Carhart. The Supreme Court ruled on the constitutionality of a Nebraska ban on so called "partial birth" abortions. The UUA joined with the Coalition for Reproductive Choice and others to inform the court of the unique and contrasting perspectives on the issues of religious conscience and abortion, and the shared commitment of members of the religious community to the Constitution's protection of each person's ability to exercise freedom of religion and conscience.

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The Supreme Court struck down the Nebraska ban on "partial birth" abortions on two independent grounds. First, the Court ruled that the statute was unconstitutional because it did not contain an exception for women's health. Second, the Court held that the broad wording of the ban reached other common methods of abortion as well and thus, under Casey, represented an undue burden on a woman's right to reproductive choice.

4. Bryan v. Moore. On behalf of Anthony Bryan, a death row inmate, an action was instituted against Florida's Secretary of the Department of Corrections, arguing that death by electric chair violated the Eighth Amendment's ban on "cruel and unusual punishment." The UUA joined with 20 other religious organizations in a brief arguing that there is a societal moral consensus that execution by electrocution violates contemporary standards of decency and the basic dignity of man.

The Supreme Court ultimately dismissed the case as moot because Florida's legislature recently changed the state's primary method of execution from electrocution to lethal injection.

Separation of Church and State

1. Coles v. Cleveland Board of Education. In December, 1996, the federal court in Cleveland was asked to rule on the constitutionality of the Cleveland Board of Education's practice of opening its public meetings with a prayer. The court ruled that the actions of the Cleveland Board of Education were not substantially different than those upheld by the U.S. Supreme Court's decision in Marsh v. Chambers. Marsh upheld the practice by which formal, government sponsored and initiated prayer opened each session of the Nebraska Legislature.

This decision was appealed to the Sixth Circuit Court of Appeals in May 1997. On March 18, 1999, a three judge panel of the Sixth Circuit struck down the prayers as unconstitutional because the school board's practice in this case conveyed the message of government endorsement of religion in the public school system. The UUA joined in an amicus curiae brief with the National Committee for Public Education & Religious Liberty ("PEARL") and the American Jewish Committee arguing that the opening prayer violated the Constitution's Establishment Clause. Furthermore, the Coles court quoted widely from PEARL's amicus curiae brief drafted by Nutter, McClennen & Fish, LLP.

In June, 1999, the full Circuit refused to reconsider the case en banc.

2. Amancio v. Town of Somerset. In Massachusetts, Gil Laurence Amancio, the director of the Massachusetts American Atheists, brought a suit challenging the constitutionality of a holiday display erected by the Town of Somerset on the front lawn of the town hall. On November 23, 1998, upon cross-motions for summary judgment, the court held that the display violated the Establishment Clause of the First Amendment.

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The Town of Somerset filed an appeal to the U.S. Courts of Appeals for the First Circuit. The UUA joined as amicus curiae with the American Jewish Congress, the American Baptist Association, and others in a brief. The UUA argued the Town of Somerset's action violated the Establishment Clause.

The case, however, never was decided by the Court of Appeals. In response to the possibility of a lengthy appeals process, attorneys from the ACLU who represented the plaintiff reached a settlement with the town fathers. The ACLU pledged it would no longer pursue its case in return for receipt of \$35,000 from the town to cover legal fees. Additionally, the Town of Somerset promised that the nativity display would be changed to include secular holiday symbols.

3. Boyette v. Galvin. In May, 2000, the federal court in Boston ruled that government officials in Massachusetts cannot be forced to allow a vote on removing a provision of the state constitution that bars taxpayer aid to religious schools. The court denied a motion for preliminary injunction that would have enabled the Massachusetts legislature to vote on a school choice initiative before the constitutional deadline of May 10, 2000.

The judge rejected the lawsuit brought by the Becket Fund for Religious Liberty, a conservative Catholic legal advocacy group. The court agreed with the Massachusetts Attorney General who had earlier ruled that putting the question on the ballot would violate another provision of the state constitution that bans ballot initiatives relating to "religion, religious practices or religious institutions."

In the amicus curiae brief, the UUA argued in support of the Attorney General's earlier decision which stressed the separation of church and state. The UUA joined in submitting the brief with the American Jewish Congress, Americans United, the American Baptist Churches of Massachusetts, Citizens for Participation in Political Action, Citizens for the Public Schools, the League of Women Voters of Massachusetts, and the Massachusetts Federation of Teachers.

Homosexual Rights

1. In re Adoption of RBF and RCF. The Pennsylvania Superior Court, Pennsylvania's appellate court, has recently been asked to rule whether gay partners have the right to adopt each other's children. The UUA joined in a brief written by the Women's Law Project which argued that Pennsylvania's Adoption Act must be construed to permit second-parent adoption, that the best interests of the children involved are paramount, and that the psychological literature demonstrates that children raised by lesbian and gay parents do very well.

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This case was recently argued before the court. No date has been set for the court's ruling.

If you would like additional information regarding any of these cases, please let me know.

Very truly yours,



Edward P. Leibensperger

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