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UUA Amicus

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September 21, 2004

Ms. Kathleen C. Montgomery
Executive Vice President
Unitarian Universalist Association
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Re: Summary of UUA Amicus Participation

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 June 6, 2002 (the date of my last report) to the present.

United States Supreme Court

1. Lawrence v. Texas. The UUA joined other religiously affiliated organizations in an amicus brief in opposition to a Texas statute that criminalized certain private sexual conduct between consenting adults. In opposition to the Texas Court of Appeals' statements that "homosexual conduct has historically been repudiated by many religious faiths," and that "our society's three major religions – Judaism, Christianity, and Islam – historically have viewed homosexuality as immoral," the amicus brief argued that the Texas court failed to recognize that many religious bodies in the United States are on record as opposing laws that criminalize private sexual conduct between consenting adults of the same sex.

The United States Supreme Court reversed and remanded, holding that the Texas statute was unconstitutional.

2. Newdow v. Elk Grove. In Newdow, a noncustodial father and atheist filed suit against his daughter's school district, alleging that because the Pledge of Allegiance contains the words "under God," the school district's policy requiring the recitation of the Pledge constituted religious indoctrination of his child in violation of the Establishment and Free Exercise Clauses of the First Amendment.

The UUA joined the brief of Clergy and Religious Organizations as Amici Curiae supporting the noncustodial father's position. The brief emphasized that government could not require political affirmations of citizens, nor could it request religious affirmations or exercises. The United

States Supreme did not reach the merits of the amici argument, instead finding that the noncustodial father lacked standing to bring the suit in light of the mother's sole legal custody.

3. Roper v. Simmons. On January 26, 2004, the United States Supreme Court granted certiorari to examine whether executing a man for a murder he committed when he was under 18 years old violated the Eighth and Fourteenth Amendments of the Constitution. The Supreme Court of Missouri had set aside the defendant's death sentence in light of its understanding that a national consensus had developed against the execution of juvenile offenders.

The UUA joined a number of other religious organizations in an amicus brief urging the Court to consider the views of the religious organizations in determining those national standards of decency. The brief argued that the execution of juveniles was morally intolerable.

The matter is still pending before the United States Supreme Court.

4. Crawford v. Martinez. In August of 2004, the UUA participated in an amicus brief in the United States Supreme Court, with the Christian Legal Society and other religious organizations opposing the indefinite detention of an individual, where there was no showing that he was a security risk, and where the government had not sought to release him with or without conditions. The amici argued that indefinite detention in these circumstances, based solely on an unreviewable administrative release determination, offended fundamental moral and ethical principles, was inconsistent with Supreme Court precedent, and violated the individual's rights to due process. This case is still pending.

Massachusetts Supreme Judicial Court

5. Goodridge v. Dept. of Public Health. The UUA joined in an amicus brief in support of same-sex marriage in Massachusetts. Among other things, the amicus brief argued that the trial court's reliance on ecclesiastical law to support its position that Massachusetts law prohibited same-sex marriage was erroneous because religious views should not be interjected into laws governing civil marriages.

On November 18, 2003, the Supreme Judicial Court held that the Massachusetts marriage licensing statute that prevented same-sex couples from marrying was not rationally related to the Commonwealth's asserted reasons for prohibiting same-sex marriage. Accordingly, the statute violated the Massachusetts Constitution. The rest, as they say, is history.

Other Courts

6. Strayhorn v. Ethical Society of Austin. The Ethical Culture Society of Austin (the "Society") filed suit against the Comptroller of Public Accounts of the State of Texas, Carole Keeton Strayhorn, based on Strayhorn's refusal to recognize the Society as a "religious organization" eligible for tax-exempt status. The Third District Court of Appeals of Texas held

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that Strayhorn was wrong to deny religious status to the Society because the organization failed to demonstrate a belief in a "God, Gods, or higher power."

On appeal to the Texas Supreme Court the UUA joined the Baptist Joint Committee on Public Affairs and other religious organizations in an amicus brief urging the Court to reject Strayhorn's position as violative of their religious liberties.

The Texas Supreme Court agreed with our position and on April 23, 2004, the Court denied Strayhorn's petition for review.

7. Freethought Society v. Chester County. The UUA participated in an amicus brief written by the Americans for Religious Liberty that argued that a plaque containing the Ten Commandments and quotations from the New Testament on the outside wall of the county courthouse and administration building in Chester, Pennsylvania violated the Establishment Clause.

On June 26, 2003, the United States Court of Appeals for the Third Circuit reversed the district court which had granted a permanent injunction prohibiting the continued display of the plaque. The Third Circuit Court of Appeals' decision turned on the Court's view that a reasonable observer aware of the history of the plaque would not view it as an endorsement of religion by the county. Moreover, applying the "Lemon" test, the Third Circuit found that the plaque was permissible because the commissioners had a legitimate secular purpose for refusing to remove the plaque. The Court held that the commissioners honestly believed the plaque served the secular purpose of demonstrating a key source of American law.

Please let me know if you would like any additional information.

Very truly yours,



Edward P. Leibensperger

EPL/msb

Enclosure

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