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Ms. Kathleen C. Montgomery
Executive Vice President
Unitarian Universalist Association
25 Beacon Street
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Re: Amicus Curiae

Dear Kay:

What follows is a summary of cases in which the UUA joined in filing an amicus curiae brief. This report is for the period beginning August 23, 1995 (the day of my last report) to date.

United States Supreme Court

1. Romer v. Evans. The UUA joined with The Center for Human Rights Advocacy in a brief arguing that Colorado's Amendment 2 violated the Establishment Clause of the United States Constitution. Colorado's Amendment 2 was a referendum that denied protected status (i.e., protection from discrimination laws, etc.) based on homosexual, lesbian or bisexual orientation. The brief pointed out that the State of Colorado, itself, conceded that Amendment 2 was intended to protect " core religious values" of those who want to discriminate against homosexuals, thus, lending government backing to a particular religious viewpoint. On May 20, 1996, the United States Supreme Court, in what promises to be a landmark decision, struck down Amendment 2 as unconstitutional.

2. Vacco v. Quill. This is the so-called "right to die" case pending before the Court. Oral argument was heard early in 1997. The UUA joined with 36 other religious organizations and scholars in a brief arguing that criminal prohibition of physician-assisted suicide is unconstitutional. Specifically, the brief argued that the interests protected by the free exercise of religion clause of the First Amendment mandate that individuals be allowed,

with appropriate safeguards, to hasten death without interference from the state. A decision is expected by June 1997.

Cases Involving Boy Scouts of America

The UUA joined in three amicus curiae briefs opposing policies of the Boy Scouts of America. Two cases (Curran v. Mt. Diablo Council of the Boy Scouts of America, California Supreme Court, and Dale v. Boy Scouts of America, Appellate Division of New Jersey Superior Court) involved the Boy Scouts' refusal to allow homosexual members or leaders. For example, in Curran, the UUA's brief argued for the application of California's anti-discrimination law to the Boy Scouts' policy. The brief filed by the Boy Scouts argued that "[r]eligious groups to which a majority of Americans belong consider homosexual conduct to be immoral, and supporting civil rights does not imply support for placing persons engaged in sinful conduct in positions of moral leadership." The UUA joined with the Lambda Legal Defense and Education Fund to oppose that argument.

The third case in which the UUA was involved against a policy of the Boy Scouts is Randall v. Boy Scouts of America, Orange County Council, California Supreme Court. The UUA joined with the ACLU Foundation of Southern California to argue that the Boy Scouts' policy of requiring scouts to profess a belief in God is a violation of California's anti-discrimination law. These cases are all still under advisement by the courts.

School Prayer

The UUA joined with the National Committee for Public Education and Religious Liberty in two cases involving school prayer.

1. Gatton v. Goff, Franklin County, Ohio. This amicus curiae brief on behalf of a large number of religious organizations argued that a program of school vouchers allowing public money to be spent in private religious schools is unconstitutional. No decision has issued.

2. Coles v. Cleveland Board of Education, U.S. Court of Appeals for the 6th Circuit, is an action challenging the practice of the Cleveland School Board to open its meetings with prayer. This case presents the grey area between officially-led prayer in schools (clearly unconstitutional) and official prayer in legislative bodies (held, in some instances, to be constitutional). The brief in which the UUA joined argues that officially-led prayer at a school board meeting, where students are almost always present, is unconstitutional. The brief noted that the meetings of the school board, in addition to dealing with disciplinary matters and petitions by students for policy changes, served as the political body most relevant to students' educational life. Accordingly, in the members' role

as public school educators, they have the same obligation as teachers and administrators to separate religion from their official duties in order to avoid exerting subtle coercive pressure on childrens' religious beliefs. The 6th Circuit has not, as yet, decided this case.

Separation of Church and State

The UUA joined with other religious organizations in two cases challenging the jurisdiction of secular courts to resolve disputes within religious organizations.

1. Weaver v. Wood, Supreme Judicial Court of Massachusetts, is a case where members of the First Church Christ Scientist allege that the Church's multi-million dollar foray into television broadcasting was ultra vires; i.e., outside the authority granted to the Church's Board of Trustees by the religious writings of Mary Baker Eddy. Amici joined with the First Church to argue that the court's determination regarding the propriety of the business venture necessarily involves interpretation of religious doctrine. Thus, the court should decline to take jurisdiction. The case is still pending before the Supreme Judicial Court.

2. Imuta v. Nakano, California Supreme Court, also involves the jurisdiction of the secular court to decide matters of internal church disputes. UUA joined with the Union of American Hebrew Congregations to argue that the California court should have declined jurisdiction. No decision has been rendered.

Other

1. Able v. United States. This case, in the United States Court of Appeals for the Second Circuit, challenged the "don't ask, don't tell" policy of the U.S. military as it relates to homosexuality. UUA joined with Lambda Legal Defense Fund in a brief opposing the policy. The brief argued that there is a diversity of religious viewpoints regarding homosexuality and, thus, there is no basis for using fear of "moral condemnation" as a rationale for the policy. On July 1, 1996, the Court of Appeals reversed a favorable decision in the lower court and remanded for further proceedings.

2. Evangelical Lutheran Church of America Board of Pensions v. Basich. This case in the Minnesota Court of Appeals concerned a claim by ministers and other participants in the ELCA Pension Fund. ELCA's policy of "socially responsible" investing (e.g., no investments in companies doing business in South Africa) was alleged to have caused a lower investment return to the Plan participants. ELCA argued that the First Amendment prohibits the court from examining ELCA's investment policy when such policy was based, in part, on religious principles and social policies espoused by the denomination. The UUA joined in an

amicus brief in support of ELCA. On November 28, 1995, the Minnesota Court of Appeals held in favor of ELCA and dismissed the action.

3. Christiansen v. State of Georgia, Georgia Supreme Court. UUA joined with ACLU - Georgia to challenge Georgia law criminalizing certain consensual sex acts. The brief argues that the law is an unconstitutional invasion of privacy. The court has not rendered a decision.

Very truly yours,

Edward P. Leibensperger

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