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May 29, 1998
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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:

This is our annual summary of cases in which the UUA joined in filing an amicus curiae brief. This report is for the period beginning May 17, 1997 (the date of my last report) to date.

United States Supreme Court

1. Vacco v. Quill. 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. On June 26, 1997, the United States Supreme Court held that the state's prohibition of assisted suicide did not violate the Constitution.

2. Bauchman v. Salt Lake City Schools. This is an important religious liberty case in which review is being sought in the United States Supreme Court. In May 1998, Rachel Bauchman, a Jewish high school student in Salt Lake City, petitioned the Court to review a troubling decision of the Tenth Circuit Court of Appeals dismissing her complaint. Rachel's claim arises from the continuing conduct of a high school choir teacher who used his class to promote the Mormon religion. The teacher regularly held concerts at religious ceremonies, included an overwhelming preponderance of religious songs in the class's

repertoire, led prayers and sacraments during performances and urged his students to accept the message of the Christian lyrics. When challenged, the teacher retaliated against Rachel by comments regarding her Jewish beliefs and by ostracizing her from class activities.

I am pleased to say that my firm accepted, on a pro bono basis, the task of drafting and filing an amicus brief supporting Rachel's petition for review. On behalf of the UUA, Americans for Religious Liberty, Americans for Democratic Action and others, I and an associate, Kathryn Conde, submitted a brief urging the Court to grant certiorari so as to review and reverse the Tenth Circuit. If review is granted, we anticipate filing another amicus brief.

Cases Involving Boy Scouts of America

A significant victory was won in March 1998 in Dale v. Boy Scouts of America, Appellate Division of New Jersey Superior Court. The case involved the Boy Scouts' refusal to allow homosexual members or leaders and, specifically, the expulsion of a gay Eagle Scout. The UUA joined with the Episcopal Diocese of Newark, New Jersey, the Friends Committee, the Jewish Reconstruction Federation and the Religious Action Center of Reform Judaism to argue that the New Jersey anti-discrimination law applied to the Boy Scouts' conduct. Of several amicus briefs submitted, the court cited only the one joined by the UUA, stating "[w]hat is clear is that the [Boy Scouts'] preemptive exclusion of avowed homosexuals is employed without regard for the diverse ideological differences among the religious institutions and other groups [who constitute part of the membership of Boy Scouts]." The court noted our amicus position as "persuasive." It held that New Jersey law prohibited the Boy Scouts from anti-gay discrimination.

Coming out the other way was the California Supreme Court in Randall v. Boy Scouts of America, Orange County Council and Curran v. Mt. Diablo Council. In Randall, 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. On March 23, 1998 the court ruled that the California anti-discrimination law does not apply to the Boy Scouts. Thus, the Boy Scouts are free to discriminate on the basis of religious belief. On the same date, the California Supreme Court ruled that the Boy Scouts' refusal to approve a homosexual adult leader was not actionable because the California anti-discrimination law does not apply to the Boy Scouts.

Separation of Church and State

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. In May, 1997 the Court of Appeals for the Tenth Circuit of Ohio held that the voucher program violated the Establishment Clause of the Constitution.

2. Coles v. Cleveland Board of Education. This is an appeal in the U.S. Court of Appeals for the 6th Circuit, in 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.

Jurisdiction Over Intra-Church Disputes

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 Supreme Judicial Court, on June 19, 1997, held unanimously that the plaintiffs had no legal standing, as members of the church, to prosecute the action, and, thus, the case was dismissed.

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.

Very truly yours,

Edward P. Leibensperger

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