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June 5, 2002

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 June 4, 2001 (the date of my last report) and continuing to the present.

United States Supreme Court

1. McCarver v. North Carolina. In March 2001, the U.S. Supreme Court granted certiorari to examine whether national standards have evolved such that executing a mentally retarded person would violate the 8th Amendment prohibition against cruel and unusual punishment. The UUA joined the United States Catholic Conference and 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 people with mental retardation is morally intolerable.

While the case was pending, North Carolina enacted a law barring the execution of persons with mental retardation. As the new law rendered the case moot, the U.S. Supreme Court dismissed the writ of certiorari as improvidently granted. Thus, a decision was never reached on the merits of the case.

2. Atkins v. Virginia. This case involves essentially the same issue as was raised in McCarver v. North Carolina; namely, whether the execution of persons with mental retardation violates the 8th Amendment prohibition against cruel and unusual punishment. On December 2, 2001, the U.S. Supreme Court granted a motion to consider the amici curiae briefs that were previously filed in McCarver v. North Carolina in making its decision in the instant case. Oral arguments were made before the Court on February 20, 2002. No decision has been rendered.

Rights of Gays and Lesbians

1. T.B. v. L.R.M. The UUA joined the Women's Law Project, the Center for Lesbian and Gay Civil Rights, and the Support Center for Child Advocates in an amicus brief in support of second-parent adoption in Pennsylvania. On December 28, 2001, the Pennsylvania Supreme Court ruled 5-2 that lesbian co-parents who are in loco parentis to a child have standing to seek visitation with that child. The ultimate decision as to whether visitation should be granted is based on the best interest of the child. While there is a presumption in favor of the legal parent, this case makes great strides in this area of the law as it allows lesbian co-parents the opportunity to show that it would be in the best interest of the child to maintain an ongoing relationship.

2. In re Adoption of R.B.F. and R.C.F. The UUA participated in an amicus brief written by the Women's Law Project that argued that Pennsylvania's Adoption Act must be interpreted to permit second-parent adoption. In November 2000, the Pennsylvania Superior Court, Pennsylvania's appellate court, ruled that Pennsylvania's Adoption Act excludes gays and lesbians from second-parent adoption rights. The Act requires a biological parent to consent to termination of his or her parental rights before a child may be adopted, unless the adopting parent is the spouse of the biological parent. Because a gay or lesbian biological parent cannot marry his or her partner, the partner cannot adopt the child unless the biological parent gives up all parental rights. The brief argues that this application of the Act by the Superior Court is not in the best interest of the child and is otherwise unlawful.

On August 8, 2001, the Pennsylvania Supreme Court agreed to hear the case. The UUA joined the Women's Law Project in filing another amicus curiae brief in favor of second-parent adoption. A decision has not yet been rendered.

3. Boy Scouts of America v. D.C. Commission on Human Rights. In this case, the BSA asserted there is a standardized view in favor of excluding homosexuals from the BSA based on religious values. On June 18, 2001, the District of Columbia Commission on Human Rights held that the religious sponsors of the BSA do not have a uniform view of homosexuality that can be used to exclude gays from the organization. The BSA is appealing this decision to the District of Columbia Court of Appeals.

The UUA submitted an amicus curiae brief in opposition to the BSA's efforts to wrap its discriminatory practices in religion. In response, the BSA attempted to bar the UUA from participating as an amicus, arguing that the submission of an amicus curiae brief is not appropriate. The UUA filed a motion in support of its request to participate in the case. The court has yet to make a decision as to whether to permit the UUA to file a brief amicus curiae.

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

Ms. Kathleen C. Montgomery
June 5, 2002
Page 3

Very truly yours,

Edward P. Leibensperger

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Ms. Kathleen C. Montgomery

June 5, 2002

Page 4

bcc: Katherine A. McConnell

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