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

Dear Kay:

The following is a summary of the cases in which the UUA joined in filing an *amicus curiae* brief. This report is for the period beginning September 24, 2004 (the date of my last report) to the present.

United States Supreme Court

1. *Thomas Van Orden v. Rick Perry; McCreary County, Kentucky v. American Civil Liberties Union of Kentucky*

Van Orden and *McCreary County* involved the constitutionality of government-sponsored displays of the Ten Commandments at the Texas State Capitol in Austin (*Van Orden*), and two county court houses in Kentucky (*McCreary County*). In *Van Orden*, the United States Court of Appeals for the Fifth Circuit ruled that the Texas displays were constitutional, on the ground that the monument conveyed both a religious and secular message. In *McCreary County*, the Sixth Circuit held that the Kentucky displays were also constitutional.

The Supreme Court agreed to hear the *Van Orden* and *McCreary County* appeals at the same time. The UUA joined with the American Humanist Association and other organizations, in an amicus brief filed in the Supreme Court, arguing that the Ten Commandment displays at issue in *Van Orden* and *McCreary County* violated the Establishment Clause.

On June 27, 2005, by a vote of 5 to 4, the Supreme Court upheld the Fifth Circuit's decision in *Van Orden*, holding that Texas display at the Texas State Capitol was constitutional. On the same day, the Supreme Court reversed the Sixth Circuit's holding in *McCreary County*, also with a 5 to 4 decision, finding that the display at the Kentucky court houses was unconstitutional. The *Van Orden* and *McCreary* decisions each turned on a fact-specific inquiry into the history, purpose, and context of the particular displays. In particular, the Court noted the following: (i.) the Texas Ten Commandments monument had been there 40 years, while the

Kentucky displays were of recent origin, (ii.) the Texas monument upheld in *Van Orden* was serving secular purposes, including the role of the Ten Commandments as a foundation for law, while the Kentucky displays had an express religious purpose, and (iii.) the Texas monument was part of an overall display of over 20 monuments on the Capitol grounds, while the arguably secular symbols in the Kentucky display were only incorporated into the Ten Commandments display in an effort to defeat the constitutionality challenge.

2. *Cutter v. Wilkinson*

In *Cutter v. Wilkinson*, the UUA joined the Coalition for the Free Exercise of Religion as well as a number of other organizations in a brief arguing that the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is constitutional. RLUIPA is a federal law that requires in part, that states receiving federal money accommodate prisoners' religious beliefs unless prison officials can show that such accommodation would be disruptive.

In *Cutter*, prisoners in Ohio alleged in federal district court that prison officials violated RLUIPA by failing to accommodate the inmates' exercise of their "nonmainstream" religions. The prison officials argued that the act improperly advanced religion and thus violated the First Amendment's Establishment Clause. The district court rejected that argument and ruled for the inmates. The Sixth Circuit Court of Appeals reversed.

On May 31, 2005, the Supreme Court struck down the Sixth Circuit Court of Appeals' ruling that RLUIPA violated the separation of church and state. The Supreme Court held that, on its face, RLUIPA made an accommodation allowed by the First Amendment. .

3. *Ayotte v. Planned Parenthood of Northern New England, et al.*

In *Ayotte*, Planned Parenthood of Northern New England sought a declaratory judgment that the New Hampshire Parental Notification Prior to Abortion Act (the "Act"), which prohibits abortions for minors without parental notification, was unconstitutional. The UUA joined an amicus brief with a number of other religious organizations, arguing that the Act was unconstitutional because, *inter alia*, it failed offer a health exception and infringed on the privacy of pregnant minor women to make the decision whether to terminate a pregnancy in accordance with their religious beliefs.

The district court ruled that the Act was unconstitutional, and the First Circuit Court of Appeals affirmed the judgment. On appeal, the Supreme Court upheld the parental notification law with the caveat that the statute may not be used to block abortions in the cases where the mother's health is in danger.

4. *Scheidler, et al. v. National Organization for Women, Inc., et al., Operation Rescue v. National Organization for Women, Inc., et al.*

Scheidler involved a class action filed by the National Organization for Women, Inc. (NOW) alleging that a coalition of anti-abortion groups violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in a nationwide conspiracy to shut down abortion clinics through "a pattern of racketeering activity," including acts of extortion in violation of the Hobbs Act. The district court entered a permanent nationwide injunction against the abortion opponents. Upholding the injunction, the Seventh Circuit Court of Appeals held, in part, that the things abortion supporters claimed were extorted from them, such as women's right to seek medical services from the clinics and the clinic doctors' rights to perform their jobs, constituted "property" that was "obtained" for purposes of the Hobbs Act.

The UUA joined the Religious Coalition for Reproductive Choice in an amicus curiae brief arguing that the Hobbs Act applied to the abortion clinic protests. On February 28, 2006, the Supreme Court rejected this argument and held that the Hobbs Act was inapplicable to abortion clinic protests. More specifically, in an 8-1 decision, the Court held that abortion opponents did not commit extortion under the Hobbs Act because they did not "obtain" property from the abortion supporters as required by the Act.

5. *Gonzalez v O Centro Espirita Beneficiente Uniao Do Vegetal*

In *Gonzalez*, a Christian organization, O Centro Espirita Beneficiente Uniao do Vegetal (UDV) brought suit in federal court to prevent the government from interfering with UDV's use of hoasca, a substance used during religious ceremonies that contains a drug prohibited by the Controlled Substances Act ("CSA"). UDV argued that the Religious Freedom Restoration Act (RFRA), which prohibits substantial imposition on religious practices in the absence of a compelling government interest, established their right to use hoasca.

The district court sided with UDV, and the Tenth Circuit Court of Appeals affirmed, finding that the government had not sufficiently proven the alleged health risks posed by hoasca, nor had it shown a substantial risk that the drug would be abused recreationally. The Supreme Court upheld the Tenth Circuit's ruling on February 21, 2006 holding that the RFRA carved out the possibility for exemptions to the CSA for religious groups and that the government had failed to show that there would be serious harm done to make such exceptions in this case.

UUA's amicus brief on this case focused on the constitutionality of the RFRA, and did not advance any position regarding the use of hoasca or the prohibition of the CSA. The UUA joined with the Coalition for the Free Exercise of Religion on the brief.

Seventh Circuit Court of Appeals

6. *Winkler v. Rumsfeld*

In March of 2005, the District Court for the Northern District of Illinois declared that a 1972 statute passed by Congress that enabled the Department of Defense to provide support for the National Boy Scout Jamboree (held every four years in Virginia) is unconstitutional. The district court held that the government's support of the Boy Scouts' jamboree violated the Establishment Clause because it had a primary effect of advancing religion. The UUA filed an amicus brief arguing that the district court's holding should be affirmed. An appeal is currently pending before the U.S. Court of Appeals for the Seventh Circuit.

Ninth Circuit Court of Appeals

7. *Barnes-Wallace v. BSA*

Barnes-Wallace v. BSA involves the constitutionality of the City of San Diego's lease of 18 acres of Balboa Park, to the Boy Scouts of America ("BSA") for 1\$/year. The U.S. District Court ruled that the lease was unconstitutional.

An appeal from the District Court's decision is currently pending before the Ninth Circuit. The UUA joined an amicus curiae brief filed by the Social Justice Committee in the Ninth Circuit arguing that the city's preferential grant of 18 acres to the Boy Scouts for \$1/year was unconstitutional. Oral arguments in this matter were heard by the Ninth Circuit on February 14, 2006. A decision from the Ninth Circuit could take anywhere from two months, to more than a year.

California

8. *In re Marriage Cases*

The UUA joined a number of other organizations in an amicus brief in the California Court of Appeals arguing that California's ban on same-sex marriages was unconstitutional. On March 14, 2005, San Francisco Superior Court Judge Richard A. Kramer addressed this issue in six coordinated cases involving same-sex marriage in California. Judge Kramer ruled that California's ban on same sex marriage was unconstitutional, as "no rational purpose exists for limiting marriage in this state to opposite-sex partners." An appeal of this decision is currently pending before the California Court of Appeal in San Francisco.

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New York

9. *Hernandez. v. Robles*

This case involves a lawsuit brought in the New York County State Supreme Court challenging the denial of marriage licenses as a violation of the New York Constitution. In February of 2005, the trial court ruled that the denial of marriage licenses to same-sex couples violates the State Constitution's guarantees of due process and equal protection. The Court ordered that the State domestic relations law be construed to include same-sex couples, but stayed implementation of its judgment. In December 2005, an appellate court reversed the trial court's favorable decision, and an appeal is currently pending before the Court of Appeals (New York state's highest court). The UUA joined a number of religious organizations in an amicus brief in the New York Court of Appeals supporting marriage rights for same-sex couples.

As always, it is a pleasure to assist the UUA with respect to amicus briefing.

Sincerely,



Edward P. Leibensperger