

Thomas O. Bean
Attorney at Law

May 1, 2017

Rev. Sarah Lammert
Interim Chief Operating Officer
Unitarian Universalist Association
24 Farnsworth Street
Boston, MA 02210

Re: Summary of UUA Amicus Participation

Dear Sarah:

I am pleased to present the following summary of the cases in which the UUA joined in filing an *amicus curiae* brief. This report will cover briefs filed during the period from February 8, 2016 (the date of the last report), to the present.

United States Supreme Court

Gloucester County School Board v. G.G.

The case was filed on behalf of Gavin Grimm, a transgender male student at Gloucester High School who will graduate in 2017. The lawsuit argued the school district's bathroom policy requiring him to use the bathroom of the gender he was assigned at birth or "alternative private" facilities is unconstitutional under the Fourteenth Amendment and violates Title IX of the U.S. Education Amendments of 1972, a federal law prohibiting sex discrimination by schools. The Fourth Circuit, which enjoined the School District's policy, relied heavily on a 2015 opinion letter from President Obama's Department of Education's Office of Civil Rights which concluded that, if schools opt to separate students in restrooms and locker rooms on the basis of their sex, "a school generally must treat transgender students consistent with their gender identity."

The UUA joined a faith-based amicus brief that argued that a wide cross-section of American religious traditions recognize the dignity of transgender persons. The brief relied on the Supreme Court's decisions in *Lawrence v. Texas* and *Obergefell v. Hodges* that relied, in part, on the dignity of adults who choose to enter into same-sex relationships as the basis for striking laws punishing homosexual activity and legalizing same-sex marriage; it argued that transgender persons were entitled to recognition of the same dignity.

On February 22, 2017, the Trump administration revoked the 2015 guidance given by Obama administration. Both the School District and G.G. argued that the case should go forward to determine whether the board's bathroom policy violated Title IX. In a one-sentence order, the

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Supreme Court sent the case back to the Fourth Circuit for further proceedings, which presumably will include a closer look at the question of whether the school board's policy violates Title IX.

Fourth and Ninth Circuits

International Refugee Assistance Project v. Trump *State of Hawaii v. Trump*

Shortly after his election, President Trump issued an Executive Order restricting immigration from seven countries. After a stay of that order was upheld by the Ninth Circuit, President Trump issued a second Executive Order, purportedly narrower than the first, restricting immigration from six of those same seven countries.

District Courts in Maryland and Hawaii granted injunctions staying the effectiveness of the second Executive Order on the basis that the order violated the First Amendment. After the United States appealed both injunctions to the Fourth and Ninth Circuit Courts of Appeals, the UUA joined almost fifty diverse, interfaith religious and interreligious congregations, associations, and organizations in supporting the states' challenge to the second Executive Order. These diverse groups coming from different faith traditions united to speak with one voice against the imposition of barriers to entering the United States that are based solely on ethnicity, nationality, or religion, as well as to the suspension and reduction of the United States Refugee Assistance Program. The brief quoted the UUA's past President, Peter Morales, as saying "The executive order targeting refugees and Muslims is an affront to the core values of the United States."

The United States' appeals to the Fourth and Ninth Circuits have not yet been heard.

Fifth Circuit

Barber v. Bryant

In April 2016, the State of Mississippi adopted the "Religious Liberty Accommodations Act" that permits people to decline, based on their religious beliefs and moral convictions, to provide a multitude of services to people – mainly LGBTQ+ people – without being penalized by the state. Specifically, but without limitation, the law permits people (a) who provide wedding-related services, including state employees who perform weddings or issue marriage licenses, to decline to provide those services based on their religious beliefs or moral convictions; (b) to decide not to hire, terminate, or discipline an individual whose conduct or religious beliefs are inconsistent" with their beliefs or moral convictions; and (c) to refuse to sell or rent housing they control based on their religious beliefs or moral convictions.

After the District Court enjoined enforcement of the law, the State appealed to the Fifth Circuit. The UUA joined with organizations representing a diverse group of faith traditions in arguing that it is wrong for Mississippi to sanction discrimination based on the religious beliefs of only some citizens with respect to the dignity and place in civic life of LGBT persons and their families, and that such discrimination violates the Establishment Clause and the Equal Protection Clause of the United States Constitution and inhibits, rather than protects, the Free Exercise of Religion.

The Fifth Circuit has yet to render a decision in the case.

Sixth Circuit

EEOC and Aimee Stephens v. R.G. and G.R. Harris Funeral Homes, Inc.

A funeral home fired a transgender female employee for expressing her intention to present herself as a woman and to wear women's clothing. The Equal Employment Opportunity Commission and the employee sued the funeral home arguing that the funeral home's actions violated Title VII by discriminating against a transgender person. The District Court held that the Religious Freedom Restoration Act (RFRA) overrode Title VII when employers contend that their religious beliefs require them to discriminate.

The UUA filed an amicus brief in support of the EEOC and the former employee citing Supreme Court authority for the proposition that RFRA provides no shield against enforcement of civil-rights laws prohibiting workplace discrimination. The brief observed that Title VII prohibits discrimination on the basis of both race and sex, that numerous decisions of the Supreme Court had repeatedly rejected the claims of people who cite their religion and morality as reasons to discriminate on the basis of race had been rejected for decades, and that claims of religious discrimination on the basis of sex should similarly be rejected.

The case has yet to be heard by the Sixth Circuit.

State of New York

Myers v. Schneiderman

Plaintiffs, individuals with terminally ill conditions, physicians, and an organization that supports end-of-life choices, sued the Attorney General and District Attorneys in New York seeking a declaration that a New York statute criminalizing assisted suicide did not apply to the practice known as “aid-in-dying,” and if it did, that the New York statute was unconstitutional. After the Appellate Division dismissed the case, Plaintiffs appealed to the New York Court of Appeals, the highest court in the state.

The UUA, the Ethical Culture Society of New York, and Buddhist Professor Robert Thurman filed an amicus brief in *Myers*, supporting a narrow construction of the New York statute prohibiting assisted suicide such that aid-in-dying would be permitted. In supporting the plaintiffs, the UUA relied on a general resolution adopted at its 1988 General Assembly on the right to die with dignity. That resolution provided, in pertinent part:

BE IT FURTHER RESOLVED: That Unitarian Universalists advocate the right to self-determination in dying, and the release from civil or criminal penalties of those who, under proper safeguards, act to honor the right of terminally ill patients to select the time of their own deaths; and

BE IT FURTHER RESOLVED: That Unitarian Universalists advocate safeguards against abuses by those who would hasten death contrary to an individual’s desires[.]

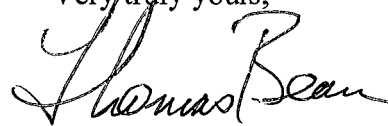
The UUA argued that if the statute were not narrowly construed it, it would violate the New York Constitution’s prohibition on establishment of religion because the penal prohibition on assisted suicide was derived from Catholic doctrine first advanced by St. Augustine.

Myers is scheduled to be argued before the New York Court of Appeals on May 30, 2017.

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It is a pleasure to assist the UUA with amicus briefing. We are pleased that courts have adopted so many of the positions advocated by the UUA in recent years.

Very truly yours,

A handwritten signature in black ink that reads "Thomas O. Bean". The signature is written in a cursive style with a large, stylized 'T' and 'B'.

Thomas O. Bean