Traditional Values or New Tradition of Prejudice? The Boy Scouts of America vs. the Unitarian Universalist Association of Congregations

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TRADITIONAL VALUES OR A NEW TRADITION OF PREJUDICE?
THE BOY SCOUTS OF AMERICA VS. THE UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS

by Eric Alan Isaacson*

INTRODUCTION

In 1910, organizers of the Boy Scouts of America (“BSA”) asked William Howard Taft, the President of the United States and a leading Unitarian whose liberal faith had been attacked by religious conservatives in the presidential race of 1908, to be honorary president of their new organization for youth. Taft not only agreed, he also ensured the group’s success: “The national character of the Boy Scouts of America was strikingly brought before the people of the country, in the very beginning, by holding the first annual meeting in

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1 See infra notes 55 and 82.
2 See infra text accompanying notes 69–75.
3 William D. Murray, The History of the Boy Scouts of America 34 (Boy Scouts of America 1937). Murray’s History of the Boy Scouts, authored by a charter member of the BSA’s Executive Board and published in 1937 by the BSA (which also held the copyright) provides the organization’s definitive history of its own early years. Taft subsequently served the BSA as its honorary vice president, from 1913 to 1930. Id. at 545–46. Taft was also prominently featured as the organization’s “Honorary President” in its first-edition Official Handbook for Boys. See Boy Scouts of America, The Official Handbook for Boys vii (1st ed. 1911) (hereinafter Handbook). Later editions became known as The Boy Scout Handbook.
the White House, on February 14 and 15, 1911, at the invitation of President Taft, honorary president of the Boy Scouts of America.”

Taft’s commitment to the BSA was resolute and he continued his relationship with the organization after he left the White House, throughout his tenure as Chief Justice of the United States Supreme Court, and until his death in 1930. One imagines that the great President and Chief Justice would be surprised to learn that—just a few decades after his death—the national leadership of the youth organization he inaugurated, whose operations today are directly supported and sponsored by the state and federal governments, has turned against his own religious denomination. The BSA leadership in 1992 banned Taft’s denomination from its Religious Relationships Committee. And in 1998 the BSA expelled Taft’s denomination from its Religious Emblems program. The denomination’s offense: a tradition of teaching its children that institutionalized discrimination is wrong.

Since the early 1990s, the BSA has displayed open hostility toward the Unitarian Universalist denomination—the denomination of the President who personally launched the BSA in 1911, and one that includes some of America’s oldest Protestant churches. While the dispute is no secret, only one law review article has noted the BSA’s action against the religious denomination and its members, and the article made only a passing reference.

Such a dearth of legal commentary on this topic is unfortunate because the dispute between the BSA and Unitarian Universalists casts considerable light on the real character of an organization that

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4 Murray, supra note 3, at 37–38, 309. Historian David I. Macleod writes that “the BSA’s greatest image-building triumph was its appropriation of the symbols of American nationhood,” beginning when its organizers “enlisted William Howard Taft as honorary president in 1911.” David I. Macleod, Building Character in the American Boy: The Boy Scouts, YMCA, and Their Forerunners, 1870–1920 178 (Univ. of Wis. Press 1983).
5 Vernon B. Hampton, Religious Background of the White House 262 (Christopher Pub’g House 1932); Mark W. Harris, Historical Dictionary of Unitarian Universalism 459 (Scarecrow Press 2004); Murray, supra note 3, at 37–38, 309, 545–46.
6 See infra text accompanying notes 82–98.
7 See infra text accompanying notes 99–126.
receives extraordinary governmental assistance and support—support that currently is the subject of litigation.\textsuperscript{10} Aside from the questionable constitutionality of governmental sponsorship and endorsement of the BSA and its programs, the BSA and Unitarian Universalists’ dispute is also important because it illuminates the meaning of “traditional values” in conversations about religion and public policy. The BSA insists that a fervent commitment to “traditional moral values” motivates its discriminatory policies.\textsuperscript{11} Yet the Unitarian Universalists, whose congregations include those of the Mayflower Pilgrims,\textsuperscript{12} and the Massachusetts Puritans’ shining “city on a hill,” also have a deep historical commitment to and knowledge of American traditions and values.\textsuperscript{13}

Section I of this Article traces the historical origins and values of America’s Unitarian Universalist denomination, which affirms the inherent worth and dignity of every human being and opposes institutionalized discrimination—including the BSA’s. Unitarian Universalists firmly believe their own opposition to institutionalized bigotry and discrimination, whether based on an individual’s race, sex, religious beliefs, or sexual orientation, flows from the traditional American values their forebears in faith struggled for centuries to develop and

\footnotesize{\textsuperscript{10} See, e.g., Barnes-Wallace v. Boy Scouts of Am., 275 F. Supp. 1259 (S.D. Cal. 2003), \textit{appeal pending}, 9th Cir. Nos. 04-55732 & 04-56167 (argued and submitted Feb. 14, 2006); Winkler v. Rumsfeld, 7th Cir. No. 05-3451 (argued and submitted Apr. 6, 2006). The author filed \textit{amicus curiae} briefs on behalf of Unitarian Universalist \textit{amici} in both appeals.}

\footnotesize{\textsuperscript{11} E.g., Opening Brief of Boy Scouts of America and Desert Pacific Council, Boy Scouts of America at 5, Barnes-Wallace v. Boy Scout of Am., Nos. 04-55732, 04-56167 (9th Cir. Feb. 16, 2005). \textit{See also} Oliver L. North, “Foreword” to Hans Zeger, \textit{Get Off My Honor: The Assault on the Boy Scouts of America} vii (Broadman & Holman Publishers 2005) (framing the matter in terms of the BSA’s “long-standing commitment to faith in God and what many of us euphemistically call traditional values”).}

\footnotesize{\textsuperscript{12} \textit{See} http://cms.plymouthuu.org (last visited Aug. 29, 2006); \textit{see generally} John Cuckson, \textit{A Brief History of the First Church in Plymouth from 1606 to 1901} (George Ellis & Co. 1902); \textit{The Church of the Pilgrim Fathers} (George N. Marshall, ed., Beacon Press 1950).

\textsuperscript{13} John Winthrop, A Model of Christian Charity (1630), \textit{reprinted in 7 Collections of the Massachusetts Historical Society} 31, 47 (3d Series) (Charles C. Little & James Brown 1838) (describing the Puritans’ consciousness of their place in history as they arrived in America: “For wee must consider that wee shall be as a city upon a hill. The eies of all people are uppon us.”). “When John Winthrop and his party stepped off the Arabella in what is now Charleston, their first action in the new world was to draw up and sign a covenant for a church on July 30, 1630.” First Church in Boston, History, http://www.fscboston.org/index.php/events/category/C58/ (last visited Aug. 29, 2006). Nearly four centuries later, that very covenant remains the basis of membership in the First Church of Boston, a Unitarian Universalist congregation. \textit{Id.; see generally} Arthur B. Ellis, \textit{History of the First Church in Boston}, 1630-1880 (Hall & Whiting 1881).}
honor. In that struggle, Unitarians and Universalists have more than once faced hostility from those who, like the BSA today, speak for a very different view of “traditional values.”

Section II documents the history of the recent BSA and Unitarian Universalist dispute, which began with the disclosure of the BSA’s new policy of discriminating against homosexuals because they are not spiritually “clean,” and with its expulsion of children and adult leaders—including Unitarian Universalists—who cannot confess a belief in God to the BSA’s satisfaction. BSA corporate leadership has enforced its controversial and deeply divisive views with a vengeance from the 1980s to present—excluding homosexuals as spiritually unclean, excluding individuals who might be reluctant to recite the Boy Scout Oath about performing “duty to God,” and expelling even those who merely speak out against such discrimination.

14 See infra text accompanying notes 21–53.
15 See infra text accompanying notes 54–81.
16 The Boy Scout Law declared from the beginning that a Scout is “brave, clean, and reverent.” See HANDBOOK, supra note 3, at 14–16. But in recent decades the BSA’s national leadership has issued new pronouncements under this “law”—that homosexuals must be condemned and shunned as not “clean,” while atheists and agnostics cannot be “reverent.” See infra text accompanying notes 84–92. On the BSA’s insistence that homosexuals violate the Scout Law that a Scout be “brave, clean, and reverent” because homosexuals are not “clean,” see infra text accompanying notes 84–86.
17 See, e.g., Sherman v. Cmty. Consol. School Dist., 8 F.3d 1160, 1162 (7th Cir. 1993) (children expelled from Scouting “because of their refusal to abide by the provision in the Scout oath which requires belief in God”); Welsh v. Boy Scouts of Am., 787 F. Supp. 1511, 1512 (N.D. Ill. 1992), aff’d, 993 F.2d 1267 (7th Cir. 1993) (exclusion from Cub Scouting of a seven-year-old child and his Unitarian Universalist father when they objected to the Cub Scout Promise and Declaration of Religious Principle); Randall v. Orange County Council, Boy Scouts of Am., 952 P.2d 261, 262 (Cal. 1998) (seven-year-old twins expelled from Cub Scouts because they could not confess a belief in God).
19 According to Eagle Scout, and University of California (Davis) Professor of American Studies Jay Mechling, the BSA’s late 1990s purge included Dave Rice, a sixty-nine-year-old veteran Scout leader from Petaluma, California. Rice, a heterosexual who had been in Scouting for fifty-nine years and was a Redwood District Scout executive for sixteen of those years, was booted from the organization for being “a visible part of the campaign to get the Boy Scouts to end their exclusion of gay youngsters and adults.”
Section III briefly reviews the consequences of the BSA’s policies in the context of the current litigation concerning government sponsorship of the BSA and its activities, in which both the BSA and its governmental sponsors somehow manage to insist that the organization is nonsectarian, or even “secular,” and that it welcomes children of all faiths.\footnote{See infra text accompanying notes 146–220.}

I. BACKGROUND OF CONFLICT: UNITARIAN UNIVERSALIST TRADITION AND VALUES IN THE AMERICAN EXPERIENCE—HONORING SPIRITUAL FREEDOM AND HUMAN DIGNITY

Comprising more than 1,000 congregations, churches, and fellowships, the Unitarian Universalist Association of Congregations (“UUA”) was formed in 1961 by the union of the American Unitarian Association and the Universalist Church of America—two denominations that, despite the BSA’s claim to speak for “traditional values,” have helped shape America’s development and moral conscience.

A. The Unitarian and Universalist Denominations in American History

American Unitarianism grew from New England’s first Protestant congregations, founded by the Pilgrims and Puritans in the 1600s, as they shed Calvinist dogmas for a noncreedal liberal faith.\footnote{They shed Calvinist dogmas for a noncreedal liberal faith.} By 1800, of the 200 churches east of Worcester County, 125 were liberal in their theology.”


\textit{See generally} EARL MORSE WILBUR, OUR UNITARIAN HERITAGE: AN INTRODUCTION TO THE HISTORY OF THE UNITARIAN MOVEMENT 389–427 (Beacon Press 1925); EARL MORSE WILBUR, A HISTORY OF UNITARIANISM IN TRANSYLVANIA, ENGLAND, AND AMERICA, 379–466 (Harvard Univ. Press 1952); CONRAD WRIGHT, THE BEGINNINGS OF UNITARIANISM IN AMERICA (Starr King Press 1955); GEORGE WILLIS COOKE, UNITARIANISM IN AMERICA: A HISTORY OF ITS ORIGIN AND DEVELOPMENT, 16–123 (American Unitarian Ass’n 1902); GEORGE E. ELLIS, A HALF-CENTURY OF THE UNITARIAN CONTROVERSY, WITH PARTICULAR REFERENCE TO ITS ORIGIN, ITS COURSE, AND ITS PROMINENT SUBJECTS AMONG THE CONGREGATIONALISTS OF MASSACHUSETTS (Crosby, Nichols & Co. 1857). “By 1800, of the 200 churches east of Worcester County, 125 were liberal in their theology.”

\textit{David E. Bumbaugh, Unitarian Universalism: A Narrative History} 105–06 (Meadville-Lombard Press 2000); \textit{see also} Hale v. Everett, 53 N.H. 9, 143–44 (1868) (Doc., dissenting) (“In the early part of the present century, large numbers of Trinitarian societies became Unitarian, in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. . . . The defection occurred in all the old orthodox Congregational societies in Boston except one, and probably in half the towns in eastern
were organized from the beginning as free churches and answered to no ecclesiastical hierarchy.\textsuperscript{22} By the early 1800s, Massachusetts’s oldest congregations were Unitarian—including the church of the Mayflower Pilgrims who landed at Plymouth in 1620 and the first Puritan churches founded in Salem and Boston.\textsuperscript{23} These are the churches of our nation’s iconic “Pilgrim Fathers,”\textsuperscript{24} and of the Puritan pioneers’ shining “city on a hill.”\textsuperscript{25}

Others, of course, joined the Pilgrims’ and Puritans’ first churches. Boston’s King’s Chapel, founded in 1686 as New England’s first Episcopal Church, has been Unitarian since the 1780s.\textsuperscript{26} Founded


\textsuperscript{23} Bumbaugh, supra note 21, at 115; see generally Cuckson, supra note 12; Ellis, supra note 13. The Plymouth congregation’s date of origin at some times is given as 1606, based on the Pilgrims’ covenantal organization at Scrooby, and at others is given as 1620—when they landed at Plymouth Rock in Massachusetts. Either way, theirs is the oldest church in New England, preceding the earliest Puritan congregations there by roughly a decade. Church historian Joseph Henry Allen aptly observed, in 1894, that “the First Church in Plymouth (1620), the First Church in Salem (1629), and the First Church in Boston (1630) . . . are all now known as Unitarian, and each exists at this day under its original covenant.” Joseph Henry Allen, An Historical Sketch of the Unitarian Movement Since the Reformation, in Joseph Henry Allen & Richard Edy, A History of the Unitarians and the Universalists in the United States 170 (Christian Literature Co. 1894). These congregations’ Internet websites show that they remain active today, as members of the UUA: First Parish Church Plymouth, http://www.firstchurchplymouth.org/ (last visited Aug. 28, 2006); First Church Salem, http://www.firstchurchsalem.org/ (last visited Aug. 28, 2006); First Church in Boston, http://www.firstchurchboston.org/ (last visited Aug. 28, 2006).

\textsuperscript{24} Cuckson, supra note 12; The Church of the Pilgrim Fathers (George N. Marshall ed., Beacon Press 1950); Dorothy B. Reed, Charles C. Forman & Ellis W. Brewster, A Brief History of the First Parish Church in Plymouth (Leydon Press 1973).

\textsuperscript{25} Winthrop, supra note 13, at 31, 47; see A. Ellis, supra note 13.

\textsuperscript{26} See Hale v. Everett, 53 N.H. 9, 141 (1868) (Doe, J., dissenting) (“The Episcopal Society of King’s Chapel, in Boston, had been in existence ninety-nine years, when, in 1785, having become Unitarian, it altered the Episcopal liturgy.”); Att’y Gen. v. Rector & Churchwardens of Trinity Church, 91 Mass. 422 (1864) (rejecting contentions that King’s Chapel’s Unitarianism frustrated a testator’s alleged intent to benefit an Episcopal institution); City of Boston v. Doyle, 68 N.E. 851, 853–54 (Mass. 1903) (construing Benjamin Franklin’s devise of property to be managed by “the Ministers of the oldest Episcopal, Congregational, and Presbyterian churches” in Boston; holding that by embracing Unitarianism “King’s Chapel ceased to be an Episcopal
in 1729 as the Church of Presbyterian Strangers, Boston's Federal Street Church “passed from Presbyterianism to independency in 1786” and—led by the Rev. William Ellery Channing—to Unitarianism in the early 1800s.

Unitarianism was not confined to New England. Recognized today as his era's leading scientist, the Rev. Dr. Joseph Priestley also was an outspoken Unitarian who wrote extensive religious commentaries. In 1794, the Rev. Dr. Priestley fled England’s mob violence and

church within the meaning of the term used by the testator,” but that Boston’s First Church remained the City’s oldest Congregational church despite its similar adoption of Unitarianism; Rector & Wardens of King’s Chapel v. Pelham, 9 Mass. 501 (1813) (rejecting contentions that a will devising property to King’s Chapel, once an Episcopalian church, should not be honored because the Church had departed from the Episcopal liturgy); see also Thomas Belsham, Memoirs of the Late Theophilus Lindsey, M.A., Including a Brief Analysis of his Works; together With Anecdotes and Letters of Eminent Persons, His Friends and Correspondents; Also A General View of the Progress of the Unitarian Doctrine in England and America 178–83 (Rowland Hunter, rev. 2d ed 1820); Bumbough, supra note 21, at 95, 102–04; F.W.P. Greenwood, A History of King’s Chapel, in Boston; the First Episcopal Church in New England 137–43 (Carter, Hendee & Co. 1833); 2 Henry Wilder Foote, Annals of King’s Chapel from the Puritan Age of New England to the Present Day ix–xii, 371–77, 380–94 (Henry H. Edes ed., Little Brown & Co. 1896); Paul Johnson, A History of the American People 114 (HarperCollins, 1st U.S. ed. 1998). King’s Chapel is a member of the UUA. See King’s Chapel, http://www.kings-chapel.org (last visited Aug. 28, 2006).

27 Hale, 53 N.H. at 142.

28 Dr. William Ellery Channing was a well-known theologian and leading Unitarian minister during the early nineteenth century, who also preached in opposition to slavery. See Charles T. Brooks, William Ellery Channing: A Centennial Memory 92–121 (Roberts Bros. 1880); Handbook of the Arlington Street Church 5–10 (Arlington Street Church, 1936). See also Att’y Gen. v. Fed. St. Meeting-House, 66 U.S. 262, 262–63 (1861) (syllabus noting contentions that “the land on which said meeting-house is built was conveyed in 1735, by its then proprietor, to trustees, to be held as a place for the preaching and maintaining of the doctrine, worship, and form of government of the Presbyterian Church of Scotland, which was Calvinistic and Trinitarian, teaching the Westminster confession of faith and catechisms; that the meetinghouse continued to be used according to the trust expressed in the deed until 1786, when various changes were introduced into the Society, and it became Congregational; [and] that this lasted until 1815, when the trust was wholly perverted and abused by the conversion of the congregation into a Unitarian Society”); Att’y Gen. v. Proprietors of the Meeting-House in Fed. St. in Boston, 69 Mass. 1, 40–41, 59–63 (1854). Following a move to Arlington Street in the 1860s, the congregation took the name Arlington Street Church, under which it continues today as a member of the UUA. See Arlington Street Church, http://www.ascboston.org/ (last visited Aug. 28, 2006).

29 See, e.g., Joseph Priestley, An History of the Corruptions of Christianity (J. Johnson 1782); Joseph Priestley, An History of Early Opinions Concerning Jesus Christ, Compiled from Original Writers, Proving that the Christian Church was at First Unitarian (Pearson & Rollason 1786); Joseph Priestley, Defences of Unitarianism (Pearson & Rollason 1786–87); Joseph Priestley, Defences of Unitarianism for the Years 1788 and 1789 (J. Johnson 1790); Joseph Priestley, A General History of the
religious persecution to organize churches and conduct Unitarian services in Pennsylvania. Upon his arrival in America, Priestley was welcomed to preach from the Rev. Elhanan Winchester’s Universalist pulpit in Philadelphia, where Rev. Winchester had founded the Society of Universal Baptists in the 1780s.

Moved by a gospel of universal love, America’s Universalists had joined Quakers and Anabaptists in leading early religious opposition to slavery. Following the American Republic’s organization in 1789 under a new federal Constitution that preserved slavery and protected the slave trade, the Universalist General Convention met in Philadelphia. Founded in 1796, Joseph Priestley’s First Unitarian Church of Philadelphia today is a member of the UUA.

30 BUMBAUGH, supra note 21, at 95; see also BELSHAM, supra note 26, at 275–98 (on Priestley’s emigration from England to America), and at 191 (noting that Priestley’s chapel at Philadelphia, which was then the seat of the American government, was “crowded with the principal characters in the United States”). Priestley’s son recounted: “It was a source of great satisfaction to him, and what he had little previous reason to expect, that his lectures were attended by very crowded audiences, including most of the members of the Congress of the United States at that time assembled at Philadelphia, and of the executive officers of the government.” Joseph Priestley II, A Continuation of the Memoirs of Dr. Joseph Priestley (Written by his Son Joseph Priestley), in The Memoirs of Dr. Joseph Priestley 144 (John T. Boyer ed., 1964). John Adams and Thomas Jefferson both made a point of hearing Priestley’s sermons. See Jack Lindsay, Introduction to Joseph Priestley, Autobiography of Joseph Priestley 32 (1970); CHARLES B. SANFORD, The Religious Life of Thomas Jefferson 6, 33, 101–16 (Univ. of Va. Press 1984). Founded in 1796, Joseph Priestley’s First Unitarian Church of Philadelphia today is a member of the UUA. See First Unitarian Church of Philadelphia, http://www.firstuuphilly.org/?Index.html (last visited Aug. 28, 2006).

31 See, e.g., Joseph Priestly, Discourse at the Philadelphia Church of the Universalists: Evidences of Revealed Religion (1796); Joseph Priestly, Discourse at the Philadelphia Church of the Universalists: Unitarianism Explained and Defended (1796); see also THOMAS BROWN, M. E., A History of the Origin and Progress of the Doctrine of Universal Salvation 325 n.* (Thomas Brown 1826) (discussing Priestley and Winchester, who fellow-shipped one another despite profound differences in Christology—Winchester was Trinitarian, while “Dr. Priestley was a Unitarian Universalist”).

32 When the Rev. Winchester was expelled from a Baptist church in 1782 on account of his Universalist convictions, nearly half the congregation left with him. See THOMAS WHITTEMORE, The Modern History of Universalism 345–47 (Thomas Whittemore 1830); EDWIN MARTIN STONE, Biography of Rev. Elhanan Winchester 53–76 (H.B. Brewster 1836); Elhanan Winchester, Sermon at the Univ. of Philadelphia: The Outcasts Comforted (Jan. 4, 1782); see also BUMBAUGH, supra note 21, at 151; Joseph R. Sweeney, Elhanan Winchester and the Universalists (1969) 45–46, 104–15 (unpublished Ph.D. dissertation, Univ. of Pa.).

33 See, e.g., 2 The Philadelphian 89–90 (Mar. 1789) (Elhanan Winchester’s Universalist publication, circulating a petition condemning the slave trade and acknowledging the Quakers as “the friends of our liberating plan”).

34 U.S. CONST. art. IV, § 2, cl. 3 (preserving slavery: “No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or
delphia in 1790 to condemn both slavery and the slave trade, in prose framed by Dr. Benjamin Rush.\footnote{Note Reference} With the 1843 Universalist General Convention’s renewed condemnation of involuntary servitude, Universalists were recognized for formally opposing slavery in the United States before other major denominations.\footnote{Note Reference} When the Fugitive Slave Regulation therein, be discharged from such Service or Labour, but shall be delivered up on claim of the Party to whom such Service or Labour may be due.’’); U.S. Const. art. I, § 9, cl. 1 (protecting the slave trade: “The Migration or Importation of Such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.”); \textit{see} \textit{Scott} v. Sanford (The Dred Scott Case), 60 U.S. (19 How.) 393, 411 (1857) (Taney, C.J., for the Court: “the importation which it [Art. I, § 9] thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them”).


\textit{Note Reference} BUMBAUGH, supra note 21, at 152, 164–65; MILLER, supra note 35, at 614–15. The 1843 Convention explained that “‘the holding in bondage of our brethren . . . or the treatment of any human being with obloquy, harshness, or any indignity on account of his color or race,’ was ‘contrary to righteousness, inconsistent with Christianity, and especially with that doctrine of Universal Grace and Love which we cherish as the most important of revealed truth.’” MILLER, supra note 35, at 614 (quoting resolutions reprinted in CASSARA, supra note 35, at 189–90).

“The Unitarians were also well represented among the abolitionists through people like Theodore Parker, William Ellery Channing, and Samuel J. May, but not until 1844, after years of interminable debate, was their association successfully badgered into passing a moderate anti-slavery resolution.” \textit{Mark D. Morrison-Reed}, \textit{Black Pioneers in a White Denomination} (3d ed. 1994); \textit{see} \textit{Samuel J. May}, \textit{Some Recollections of Our Antislavery Conflict} 335–45 (Fields, Osgood & Co. 1869) (criticizing the American Unitarian Association for its relatively slow action despite the fact that “we Unitarians have given to the antislavery cause more preachers, writers, lecturers, agents, poets, than any other denomination in proportion to our numbers, if not more without that comparison”). “In 1845, one hundred seventy Unitarian ministers published an antislavery declaration in \textit{The Liberator}, lamenting both the fact that the gospel could not ‘be fully preached in the slave-holding states’ and the ‘long silence of Northern Christians and churches.’” \textit{Unitarian Universalist Comm’n on Appraisal, Empowerment: One Denomination’s Quest for Racial Justice, 1967–1982} 12 (Unitarian Universalist Ass’n 1984) (quoting \textit{Protest Against Slavery, The Liberator XV}, Oct. 10, 1845). By then, some leading Unitarians, such as the Revs. Parker, Channing, and May, had become quite notorious for their antislavery sentiments. \textit{See}, \textit{e.g.}, \textit{Theodore Parker}, \textit{Additional Speeches, Addresses and Occasional Sermons in Two Volumes} (Little, Brown & Co. 1855) (collecting some of Rev. Parker’s antislavery orations); \textit{Theodore Parker}, \textit{The Slave Power} (James K. Horner ed., 1910) (collecting Parker’s antislavery sermons from 1841–1852); \textit{Theodore Parker}, \textit{The
Law took effect in 1850, Universalist state conventions called for civil disobedience. Some influential Unitarians joined them.

Unitarians and Universalists also led the vanguard for women’s equality in the United States. For example, “Judith Sargent Murray, an advocate of Universalism and women’s rights, held a local Universalist preacher’s license as early as the 1790s; other Universalist women joined her in the opening decades of the 1800s.” Universalists became the first American denomination to ordain women—beginning with the Revs. Olympia Brown and Augusta J. Chapin in 1863. The Universalist Rev. Brown naturally joined Unitarians Susan B. Anthony, Elizabeth Cady Stanton, Julia Ward Howe, and Lucy Stone, in leading the women’s suffrage movement. Their


37 Bumbaugh, supra note 21, at 165; Miller, supra note 35, at 622–23.
38 With the Fugitive Slave Act’s passage, “Unitarian opposition to slavery was pushed into its most active phase.” David Robinson, The Unitarians and the Universalists 84 (Greenwood Press 1985). Boston’s Rev. Theodore Parker, for example, was indicted for his abolitionist agitation. See Weiss, supra note 36, at 140–50; John White Chadwick, Theodore Parker: Preacher and Reformer 260–63 (Houghton Mifflin & Co. 1900); Henry Steele Commager, Theodore Parker: Yankee Crusader 197–247 (Little, Brown & Co. 1936).
40 Bumbaugh, supra note 21, at 167; Miller, supra note 35, at 551–54; Harris, supra note 5, at 73–75, 99–100; 5 The History of Woman Suffrage 33 (Ida Husted Harper, ed., National Am. Woman Suffrage Ass’n 1922) (noting that at the Woman Suffrage Association’s 1892 meeting, “Miss Anthony then introduced the first woman ordained by the Universalist Church, the Rev. Olympia Brown . . .”). The Rev. Chapin reportedly “noted in 1874 that Universalists claimed more ordained women than any other branch of the Christian church.” Bressler, supra note 39, at 90. In 1893, the Rev. Chapin became the first American woman to receive a Doctor of Divinity degree. See Beverly Bumbaugh, Entry for Augusta J. Chapin, http://www.uua.org/uuh/duub/articles/augustajanecchapin.html (last visited Dec. 18, 2006).
movement for political equality of women often held its meetings and conventions in Unitarian and Universalist churches.\textsuperscript{42}

Unitarians and Universalists weathered many other battles for human dignity in the United States. Mary White Ovington and the Rev. John Haynes Holmes were among the NAACP’s founders in 1909.\textsuperscript{43} Rev. Holmes also served for decades on the Board of Directors of the American Civil Liberties Union, organized in 1920 by Roger Nash Baldwin.\textsuperscript{44} Baldwin had himself taught Sunday school in


\textsuperscript{42} See, e.g., 1 The History of Woman Suffrage 75, 628, 809 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 2d ed. 1889); 3 The History of Woman Suffrage 117 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 1886); 4 The History of Woman Suffrage 841 (Susan B. Anthony & Ida Husted Hayes eds., 1902); 5 The History of Woman Suffrage 191 (Ida Husted Hayes ed., National Woman Suffrage Ass’n 1922); The History of Woman Suffrage 131, 251, 402, 442–43 (Ida Husted Hayes ed., National Woman Suffrage Ass’n, 1922); Harris, supra note 5, at 25.


\textsuperscript{44} See American Civil Liberties Union, Security and Freedom the Great Challenge: Thirtieth Annual Report of the American Civil Liberties Union, Dedicated to Roger N. Baldwin, John Haynes Holmes & Edward A. Ross (1951).
the Unitarian church in Wellesley, Massachusetts, where he learned “that you had to help the underdog—that you had a moral obligation to help the people on the bottom.” The Rev. Duncan Howlett of Washington, D.C.’s All Souls Church served as the first chair of the District of Columbia Advisory Committee to the United States Commission on Civil Rights. Unitarian Universalists, more generally, stood fast for civil rights in the twentieth century—even in the face of violence.

Following the two denominations’ 1961 merger, and reflecting values developed over the preceding centuries, the UUA’s General Assembly in the 1980s resolved overwhelmingly:

We, the member congregations of the Unitarian Universalist Association, covenant to affirm and promote
- The inherent worth and dignity of every person;
- Justice, equity and compassion in human relations;
- Acceptance of one another and encouragement to spiritual growth in our congregations;
- A free and responsible search for truth and meaning;
- The right of conscience and the use of the democratic process within our congregations and in society at large;
- The goal of world community with peace, liberty, and justice for all;
- Respect for the interdependent web of all existence of which we are a part.

These principles continue a longstanding tradition of freedom of conscience and of honoring theological diversity, both within and

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46 MARK D. MORRISON-REED, BLACK PIONEERS IN A WHITE DENOMINATION 202 (Skinner House, 3d ed. 1994).

47 See infra, text accompanying notes 78–81.

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without the denomination’s fellowships.49 As one nineteenth-century text explained:

The Unitarians acknowledge no binding creed. They contend for the fullest liberty in belief, and exclude no one from their fellowship for differences in doctrinal views. Unitarianism is declared to be “not a fixed dogmatic statement, but a movement of ever-enlarging faith,” welcoming “inquiry, progress, and diversity of individual thought in the unity of spiritual thought.”50

Although many of its oldest congregations were once part of New England’s standing order of “established” state-supported churches, the UUA has, since its formation, repeatedly reaffirmed the principle that religious freedom requires governmental neutrality with respect to religious viewpoint and genuine separation of church and state.51 Since the 1970s, moreover, it has declared vehement opposition to discrimination based on sexual orientation.52 As set forth in some detail

49 See, e.g., William Ellery Channing, Remarks on Creeds, Intolerance, and Exclusion 1 (American Unitarian Ass’n (James Munroe & Co.) 1837) (“My aversion to human creeds as bonds of Christian union, as conditions of Christian fellowship, as means of fastening chains on men’s minds, constantly gains strength.”); Davidson Loehr, America, Fascism, and God: Sermons from a Heretical Preacher 27–28 (Chelsea Green Publ’g 2005) (“Heresy is the Holy Spirit, alive and well, helping you find beliefs that can make you whole. Orthodoxy is a kind of groupthink that would cut you—and all the gods—down to the group’s size.”).


below, these positions have placed the denomination at odds with the BSA.\footnote{See infra text accompanying notes 82–144.}

\textbf{B. The Unitarian Universalist Experience with Political Disabilities and Discrimination}

The UUA comprises many of America’s oldest and most venerated churches.\footnote{See supra notes 21–28 and accompanying text.} Five persons of Unitarian belief have been elected President of the United States: John Adams and his son John Quincy Adams; Thomas Jefferson; Millard Fillmore; and of course William Howard Taft.\footnote{Hampton, supra note 5, at 339. Four of the five Presidents were unabashed Unitarians: John Adams (1797–1801), John Quincy Adams (1825–1829), Millard Fillmore (1850–1853), and William Howard Taft (1909 – 1913). See Bliss Isely, \textit{The Presidents: Men of Faith} 11, 45, 103, 206 (W.A. Wilde Co. 1954); Edmund Fuller & David E. Green, \textit{God in the White House: The Faiths of American Presidents} 18–27, 52–59, 89–91, 169–73 (Crown Publishers 1968); Steiner, supra note 50, at 55; Olga Jones, \textit{Churches of the Presidents in Washington: Visits to Sixteen National Shrines} 70–71 (Exposition Press, 2d ed. 1961); John C. McCollister, \textit{So Help Me God: The Faith of America’s Presidents} 206 (Westminster/John Knox Press 1991); Carter Smith, \textit{Presidents: Every Question Answered} 22, 50, 88, 166 (Smithsonian Institution/Hylas Publ’g 2004). Our nation’s second President, John Adams, “identified himself with and became one of the leading Unitarians in America.” Norman Cousins, “In God We Trust”; \textit{The Religious Beliefs and Ideas of the American Founding Fathers} 75 (Harper & Bros. 1958). His son John Quincy Adams, our Republic’s sixth President, was among the organizers in 1821 of the First Unitarian Church of Washington—today known as All Souls Church, Unitarian. See Jones, supra at 70–71; Laurence C. Staples, \textit{Washington Unitarianism: A Rich Heritage} 15–19 (Metcalf Printing & Publ’g Co. 1970). The Unitarian status of Thomas Jefferson (1801–1809) is somewhat more controversial. But if Jefferson never actually joined any Unitarian church, he cited the Unitarian Rev. Dr. Joseph Priestley’s work on religion, see supra note 29, as “the “groundwork of my view of this subject,” and a foundation “of my own faith.” Eugene R. Sheridan, \textit{Jefferson and Religion} 26, 75 n.41 (quoting letter of Aug. 22, 1813, from Thomas Jefferson to John Adams), “Priestley made it possible for Jefferson to regard himself as a genuine Christian and launched him on the quest for the authentic teachings of Jesus,” according to Professor Sheridan. Id. at 28. Jefferson attended Joseph Priestley’s Unitarian services when in Philadelphia, referred to himself as “an Unitarian by myself” at Monticello, and even expressed hope that “Unitarianism would become the general religion of the United States.” Charles B. Sandford, \textit{The Religious Life of Thomas Jefferson} 6, 101 (Univ. of Va. Press 1984). Jefferson wrote in December 1822, for example, that “I confidently expect that the present generation will see Unitarianism become the general religion of the United States.” Cousins, supra, at 159 (Harper & Bros., 1958) (quoting letter of Dec. 8, 1822, from Jefferson to James Smith); see also Alan Dershowitz, \textit{America Declares Independence} 33 (John Wiley & Sons 2003) (noting that “Jefferson variously considered himself a Christian, a deist, and a Unitarian”); Gordon S. Wood, \textit{The Radicalism of the American Revolution} 367 (Vintage Books 1993) (“As late as 1822 he still believed that there was not a young man now alive who would not eventually die a Unitarian!”). Thus, it appears that three of the nation’s first six Presidents were, in substance, Unitarians.}
Joseph Story, Oliver Wendell Holmes, Jr., and William Howard Taft, among them. Despite these important influences in mainstream
American life, Unitarians and Universalists have too often suffered at the hands of those who—like the BSA—purport to speak for “traditional values.”

Universalists, in particular, faced daunting disabilities; some nineteenth-century courts even refused to let them testify in legal proceedings. Additionally, some states’ constitutions apparently precluded


57 From the beginning, emotions ran high among the “orthodox” against the two liberal denominations: “It was sincerely felt that, while the one [Unitarianism] abandoned the foundation of the Christian faith, the other [Universalism] destroyed the foundation of Christian morality.” *Leonard Woolsey Bacon, A History of American Christianity* 226 (Christian Literature Co. 1897). Thus, “the conflict against the two sects called ‘liberal’ was waged ruthlessly, not as against defective or erroneous schemes of doctrine, but as against distinctly antichristian heresies.” *Id.* at 227.

58 *See*, e.g., Smith v. Coffin, 18 Me. 157 (1841); Atwood v. Welton, 7 Conn. 66, 70-79 (1828); Curtiss v. Strong, 4 Day 51, 55 (Conn. 1809) (“Every person who does not believe in . . . a future state of rewards and punishments . . . is by law excluded from being a witness.”); see also Jackson v. Gridley, 18 Johns. 98, 103 (N.Y. Sup. Ct. 1820) (“[I]t is fully and clearly settled, that infidels who do not believe in a God, or if they do, do not think that he will either reward or punish them in the world to come, cannot be witnesses in any case, nor under any circumstances.”). In the 1856 edition of his book *Religion in America*, Robert Baird (who personally detested Universalists) was pleased to report that that Universalists who disbelieved in hell were generally barred from testifying: “No State allows the oath of an atheist to be received in a court of justice, and in one only, in so far as I am aware, is that of a disbeliever in a future state of rewards and punishments received as evidence.” *Baird*, supra note 22 at 255 (Baird’s emphasis; noting New York as the exception). Some courts distinguished between those Universalists (as the Rev. Hosea Ballou) who altogether denied the notion of divine retribution and punishment in hell, and who
Universalists from holding public office because they did not accept Calvinist notions of hell.\footnote{59} Taxed to support politically established Calvinist churches from whose dogmas of human depravity, predestination, and eternal hell they recoiled, Universalists struggled for half a century to “disestablish” state-sponsored religion in Massachusetts. When Universalists started their own church at Gloucester, political authorities seized and auctioned off their property.\footnote{60} The Universalists went to court and eventually vindicated their right to support their own church instead of someone else’s.\footnote{61} Political authorities responded by prosecuting the Universalist minister for performing weddings and forced him to flee the country.\footnote{62} Massachusetts finally disestablished its churches in 1833.\footnote{63}

\footnote{59} Carl Esbeck writes that Vermont’s constitution of 1786, for example, imposed a religious test for holding public office, and an oath, that “effectively excluded deists, Jews, and Universalists,” since “[t]he oath required a belief in both the Old and New Testaments, which neither deists nor Jews could swear to, as well as belief in punishment in hell, which was objectionable to Universalists.” Carl H. Esbeck, \textit{Dissent and Disestablishment: The Church-State Settlement in the Early American Republic}, 2004 BYU L. Rev. 1385, 1527 n.509.

\footnote{60} CLARENCE R. SKINNER & ALFRED S. COLE, \textit{HELL’S RAMPARTS FELL: THE LIFE OF JOHN MURRAY} 137–38 (Universalist Publishing House 1941); RICHARD EDDY, \textit{UNIVERSALISM IN GLOUCESTER}, MASS. 20–23 (Procter Bros. 1892).


\footnote{63} See Colo v. Treasurer and Receiver Gen., 392 N.E.2d 1195, 1198–99 (Mass. 1979); 1 ANSON PHELPS STOKES, \textit{CHURCH AND STATE IN THE UNITED STATES} 418 (Harper 1950); Esbeck, supra note 59, at 1458, 1512–24. Disestablishment was, perhaps, facilitated by the fact that many of Massachusetts’s oldest established churches were, by then, Unitarian. \textit{See supra} notes 21–23. Universalists also ran into problems in other states—and in New Hampshire were even jailed for refusing financial support for established churches whose doctrines they found
Unitarians have also faced considerable hostility and occasional disabilities. For example, state authorities meddled in Unitarians’ affairs in 1868 when New Hampshire’s highest court disqualified the Dover, New Hampshire, First Unitarian Society of Christians’ chosen minister by finding him insufficiently “Christian.” Justice Jonathan Everett Sargent’s opinion for the court quoted passages from the Rev. Francis Ellingwood Abbot’s sermons to show that the minister was too open-minded to serve his congregation. The Rev. Abbot, after all, had once preached that:

Whoever has been so fired in his own spirit by the overwhelming thought of the Divine Being as to kindle the flames of faith in the hearts of his fellow men, whether Confucius, or Zoroaster, or Moses, or Jesus, or Mohammed, has thereby proved himself to be a prophet of the living God; and thus every great historic religion dates from a genuine inspiration by the Eternal Spirit.

In another sermon, Rev. Abbot had even declared that:

America is every whit as sacred as Judea. God is as near to you and to me, as ever he was to Moses, to Jesus, or to Paul. Wherever a human soul is born into the love of truth and high virtue, there is the “Holy Land.” Wherever a human soul has uttered its sincere and brave faith in the Divine, and thus bequeathed to us the legacy of inspired words, there is the “Holy Bible.”

64 “Witness the present internecine rage of all other sects against the Unitarian,” wrote Thomas Jefferson to Thomas Whittemore in 1822, lamenting the “inextinguishable hatred” displayed. Cousins, supra note 55, at 158 (reprinting Jefferson’s letter of June 5, 1822, to Thomas Whittemore). “In thousands of communities,” Vernon B. Hampton wrote over a century later, “the Unitarian Church is looked upon askance by the Orthodox bodies, both pastors and people.” Hampton, supra note 5, at 27.

65 See Hale v. Everett, 53 N.H. 9 (1868). See Kinney, supra note 63, at 113 (“One of the more celebrated cases in New Hampshire jurisprudence is that of Hale versus Everett.”); Esbeck, supra note 59, at 1534 n.541 (“As late as 1868, the state supreme court decided that a Unitarian minister would not be allowed to use the town meeting house because of his heterodoxy, and in spite of being called and settled by a majority of the community.”).


67 Id. at 87–88 (quoting Rev. Abbot’s sermon of Mar. 29, 1868).
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“If Protestantism would include Mr. Abbot in this case,” Justice Sargent opined for New Hampshire’s highest court,

[It would of course include Thomas Jefferson, and by the same rule also Thomas Paine, whom Gov. Plumer of New Hampshire called ‘that outrageous blasphemer,’ that ‘infamous blasphemer,’ ‘that miscreant Paine,’ whose ‘Age of Reason’ Plumer had read ‘with unqualified disapprobation of its tone and temper, its coarse vulgarity, and its unfair appeals to the passions and prejudices of his readers.’

William Howard Taft faced religious bigotry four decades later, as the Republican candidate in the 1908 presidential race, when religious conservatives “needed no evidence to convince them that Taft, a Unitarian, was necessarily also an infidel.”

68 Id. at 95 (quoting Life of Wm. Plumer 242–43). In stark contrast with the New Hampshire Supreme Court’s harsh words, Frederick Douglass lavished praise on Rev. Abbot for doing “much to break the fetters of religious superstition, for which he is entitled to gratitude.” Letter from Hon. Frederick Douglass to Rev. M.J. Savage (June 15, 1880), in Farewell Dinner to Francis Ellingwood Abbot, on Retiring from the Editorship of “The Index” 48 (George H. Ellis, 1880). “I know we are here Unitarians and Non-Unitarians,” Rev. Abbot remarked to those who assembled in Boston to honor him in 1880, “and I rejoice to stand with Christians, with Catholic and Protestant Christians alike, for justice and purity; and I will always do so. These things are more important than our little differences of theological opinion.” Id. at 14 (remarks of Rev. Abbot, June 24, 1880). For a detailed statement of Rev. Dr. Abbot’s theology, see Francis Ellingwood Abbot, SCIENTIFIC THEISM (Little, Brown & Co., 2d ed. 1886); Francis Ellingwood Abbot, THE WAY OUT OF AGNOSTICISM, OR THE PHILOSOPHY OF FREE RELIGION (2d ed., Little, Brown & Co. 1890); Francis Ellingwood Abbot, Collected Essays of Francis Ellingwood Abbot (1836–1903): AMERICAN PHILOSOPHER AND FREE RELIGIONIST (Everett J. Tarbox, Jr. & Creighton W. Peden, eds, Edwin Mellen Press 1996); Creighton Peden, The PHILOSOPHER OF FREE RELIGION: FRANCIS ELLINGWOOD ABBOT, 1836–1903 (Peter Lang Publ’g, Inc. 1992). For a chronicle of Abbot’s personal life, and romantic love for his wife, see Francis Ellingwood Abbot, IF EVER TWO WERE ONE: A PRIVATE DIARY OF LOVE ETERNAL KEPT BY FRANCIS ELLINGWOOD ABBOT 1855–1903 (Brian Sullivan ed., Harper Collins 2004).


70 STEINER, supra note 50, at 62. Some sources indicate that while Bryan made such remarks privately, he generally relied on his supporters to attack Taft publicly. See, e.g., Hornig,
Some denounced the Republican Taft as a “Unitarian atheist.”\textsuperscript{71} The Nation magazine noted religious conservatives’ “ardent personal appeals, not to let high heaven witness the seating in the White House of a man who denies the divine parentage of Jesus.”\textsuperscript{72} “’Think of the United States with a President who does not believe that Jesus Christ was the Son of God,’ shuddered the editor of one religious paper, ‘but looks upon our immaculate Savior as a common bastard and low, cunning imposter.’”\textsuperscript{73}

Taft faced such hostility, The Nation observed, “because he believes in the religion of Emerson, of Channing, of Theodore Parker, in fine, because he is a member of a sect which has supplied leaders for all the great humanitarian movements of the last century.”\textsuperscript{74} But the American people placed Taft in the White House, from which he of course endorsed and fostered the BSA.\textsuperscript{75}

\textsuperscript{71} Harris, supra note 5, at 458; see Fuller & Green, supra note 55, at 169 (noting that Taft was the “first President since Lincoln to have the charge of infidel raised against him,” with “some denouncing him as atheist” because of his Unitarian faith); Albert J. Menendez, Religion and the U.S. Presidency: A Bibliography 111 (Garland Publishing 1986) (noting that “Taft was a Unitarian whose religious views became an ugly issue in the 1908 election”).

\textsuperscript{72} Taft and his Religion, 87 The Nation 278–79 (Sept. 24, 1908); see also Menendez, supra note 71, at 111 (“Numerous fundamentalist and evangelical pastors urged Taft’s defeat on religious grounds.”); Hampton, supra note 5, at 26 (noting “[v]igorous criticism of President Taft on account of his Unitarianism,” including objections “voiced in various religious journals, which decried the effect of Unitarian teachings upon the people”).

\textsuperscript{73} Pringle, supra note 69, at 374 (quoting Pentecostal Herald, July 15, 1908); see also Hornig, supra note 69 at 532; Fuller & Green, supra note 55, at 171; McCollister, supra note 55, at 131–32.

\textsuperscript{74} Taft and his Religion, 87 The Nation 279 (Sept. 24, 1908). In addition to attacking Taft for his own liberal religious views, it may be noted that the fundamentalists also derided Taft for being too charitable in his dealings with Catholics. See Hornig, supra note 69, at 532; Pringle, supra note 69, at 374; Menendez, supra note 69, at 111; Berton Dulce & Edward J. Richter, Religion and the Presidency: A Recurring American Problem 73–74 (Macmillan Co. 1962). President Theodore Roosevelt wrote to Taft that “the attacks on you by a certain type of small Protestant bigots are so infamous as to make my blood boil.” Hornig, supra note 69, at 532 (quoting letter of Oct. 12, 1908, from Theodore Roosevelt to Taft).

\textsuperscript{75} Murray, supra note 3, at 37–48.
In the 1950s, Unitarian churches—which had long rejected compulsory creeds, tests, and confessions—refused government-mandated loyalty oaths. In 1958 Justice William O. Douglas observed:

[...]he principles, moral and religious, of the First Unitarian Church of Los Angeles compel it, its members, officers and minister, as a matter of deepest conscience, belief and conviction, to deny power in the state to compel acceptance by it or any other church of this or any other oath of coerced affirmation as to church doctrine, advocacy or beliefs.76

That same year Pennsylvania Unitarians filed suit to stop Biblical readings and state-sponsored prayer in public schools, eventually terminating the “religious exercises required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.”77

The Unitarian Universalist denomination faced violence in the 1960s. In March of 1965, the Rev. Martin Luther King, Jr., a Baptist minister, issued a call to American clergy of all races and faiths to come to Selma, Alabama to counter the violence against civil rights workers there. More than 200 of the approximately 500 white clergy who answered the call were Unitarian Universalists.78 But when the Unitarian Universalists came to Selma to bear witness for human dignity and equality under law, segregationists attacked them and murdered the Rev. James Reeb.79

Moved by the Rev. Reeb’s tragic end,

76 First Unitarian Church of Los Angeles v. Los Angeles, 357 U.S. 545, 546–47 (1958) (Douglas, J., concurring). Unitarians thus established the principle that churches cannot be required to give loyalty oaths. See id. The minister of the First Unitarian Universalist Church of Los Angeles recounts the four-year legal battle, during which church funds were impounded, in his autobiography. STEPHEN H. FRITCHEMAN, HERETIC: A PARTISAN AUTOBIOGRAPHY 229–247 (Beacon Press 1977).

77 School Dist. v. Schempp, 374 U.S. 203, 225 (1963). The Supreme Court explained: The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality.

Id. at 226.

78 RICHARD D. LEONARD, CALL TO SELMA: EIGHTEEN DAYS OF WITNESS viii (Skinner House 1993) (Mar. 21, 1965: “Of the estimated five hundred white clergy now in Selma, over two hundred were Unitarian Universalist.”).

79 See BUHEIRES & CHURCH, supra note 48, at 53; TAYLOR BRANCH, AT CANAAN’S EDGE: AMERICA IN THE KING YEARS, 1965–1968 58–108, 392–93 (Simon & Schuster 2006); JUAN WIL-
Viola Liuzzo, a Unitarian Universalist lay person and mother of five from Detroit, made the pilgrimage to Selma and was herself murdered by Klansmen while working for civil rights. The Rev. Martin Luther King, Jr. declared that these two individuals were “martyrs of the faith.”

Unitarian Universalists believe Reeb and Liuzzo died in a struggle for human dignity and social equality of minorities that continues today, as their denomination bears public witness against institutional-
ized discrimination on the basis of religious viewpoint and sexual orientation, thereby incurring the BSA’s indignation.

II. THE BSA VS. UNITARIAN UNIVERSALISTS

Objecting to Unitarian Universalists’ public witness against discrimination based on theological viewpoint and sexual orientation, the BSA has embarked on a policy of discrimination against not only homosexuals, atheists, and agnostics, but also against Unitarian Universalists and their children. Since the 1990s the BSA has publicly espoused a rigid theological stand, hostile to the Unitarian Universalist denomination. From the events recounted below, it becomes clear that a liberal religious faith embracing the dignity and worth of agnostics and homosexuals (and teaching its children that discrimination and shunning are wrong) is simply unacceptable to the BSA.

A. The BSA Begins to Pursue Discriminatory Policies and Bars Unitarian Universalists from its Religious Relationships Committee

The BSA’s current hostility toward the Unitarian Universalists is ironic; President William Howard Taft, a devout Unitarian leader, personally launched the BSA from the White House.\footnote{It is said that “Taft gave of himself to his church unstintingly, much more so than any other of our occupants of the highest office in the land.” \textit{Hampton}, supra note 5, at 262, 340. “In connection with no other political leader do we find such a generous activity in church work.” \textit{Id.} (emphasis in original). Hampton notes that Taft was “Vice-President of the American Unitarian Association, 1916–1922; President of the Unitarian General Conference, 1915–1925; Honorary Chairman of the Unitarian Campaign; Honorary Vice-President of the Unitarian Laymen’s League 1920–1925; [and] President of the International Congress of Religious Liberals from 1927 to . . . March, 1930.” \textit{Id.} President Taft also served as president of the General Conference of Unitarian and Other Christian Churches from 1915 to 1925 when it was absorbed by the American Unitarian Association—which itself would merge with the Universalist Church of America in 1961, to become the Unitarian Universalist Association of Congregations. \textit{Id.}; see also \textit{Harris}, supra note 5, at 459. On Taft’s early support of the BSA, see supra text accompanying notes 5–8; see also \textit{Murray}, supra note 3, at 37–38.} Unitarian and Universalist churches sponsored Boy Scout troops from the very beginning.\footnote{See \textit{Murray}, supra note 3, at 527 (noting that at the close of 1936, troops were sponsored by 27 Unitarian churches, and by 31 Universalist churches). By the early 1990s, 26 Unitarian Universalist churches still sponsored Boy Scout troops despite growing tension with the BSA. \textit{Letter of Jan. 11, 1993, letter from BSA (Townsend) to UUA (Agate) (infra App. 5).} From its formation in 1961, the UUA worked with the BSA so that Unitarian Universalist youth in Scouting might earn from the denomination and wear on their uniforms a denominational Relig-
ion in Life award recognized by the BSA’s Religious Emblems Program.

But in 1978, the BSA secretly promulgated a new policy that discriminated against homosexuals. It condemned gays publicly in 1991, insisting for the first time that homosexuals violate Scout Law because they are not “clean.” The BSA abandoned late twentieth century social norms that honor human dignity and diversity and instead condemned homosexuals as unclean by reverting to what Unitarian Universalists (and many other religious persons and groups) view as outdated Levitical notions of proper conduct and spiritual purity. The BSA also began to employ the Scout Oath’s promise of

84 Boy Scouts of Am. v. Dale, 530 U.S. at 651–52 (quoting BSA’s 1978 internal statement); id. at 672 (Stevens, J., dissenting) (noting that “the 1978 policy was never publicly expressed”; being stated only in “an internal memorandum, never circulated beyond the few members of BSA’s Executive Committee,” it was “in effect, a secret Boy Scouts policy”); see also Zeiger, supra note 11, at 65 (conceding that “the national Boy Scouts didn’t actually have an established membership code about homosexuality before 1978”).

85 If a Scout is “brave, clean, and reverent,” the BSA concluded, homosexuals cannot participate in Scouting because they are not “clean.” The BSA’s 1991 position paper asserted: We believe that homosexual conduct is inconsistent with the requirement in the Scout Oath that a Scout be morally straight and in The Scout Law that a Scout be clean in word and deed, and that homosexuals do not provide a desirable role model for Scouts. Dale, 530 U.S. at 652 (quoting 1991 BSA position paper) (emphasis added); see id. at 650 (“The Boy Scouts asserts that homosexual conduct is inconsistent with the values embedded in the Scout Oath and Law, particularly with the values represented by the terms ‘morally straight’ and ‘clean.’”) (emphasis added); see also Zeiger, supra note 11, at 66 (quoting with approval the BSA’s 1991 pronouncement).

“duty to God” and the Scout Law’s instruction that a Scout is “reverent” in order to expel atheists, agnostics, and anyone else who could not confess a satisfactory belief in the BSA leadership’s God.\textsuperscript{87}

\textit{Welsh v. BSA} involved the BSA’s exclusion of Elliott Welsh, a Unitarian Universalist, and his elementary-school son who had been solicited by his first-grade public-school teacher to join Scouting.\textsuperscript{88}

Coming from a faith tradition that rejects creeds and accommodates doubt,\textsuperscript{89} Elliott Welsh’s agnostic son was confronted with an oath “\textit{to do my duty to God}”\textsuperscript{90} and Elliott was confronted with a Declaration

Mechling writes: “To maintain the position that homosexuality is immoral amounts to preferring some religions over others on this matter.” \textit{Mechling, supra} note 9, at 225. The tension between the BSA, on the one hand, and Reform Judaism, Unitarian Universalists, and the United Church of Christ, on the other, supports this thesis.

\textsuperscript{87} \textit{See Sherman v. Cmty. Consol. Sch. Dist., 8 F.3d 1160, 1162–63 (children expelled from Scouting “because of their refusal to abide by the provision in the Scout oath which requires belief in God”); Welsh v. Boy Scouts of Am., 787 F. Supp. 1511 (N.D. Ill. 1992) (exclusion from Cub Scouting of a seven-year-old child and his father because they could not confess a belief in God to the BSA’s satisfaction), \textit{aff’d}, 993 F.2d 1267 (7th Cir. 1993); Randall v. Orange County Council, Boy Scouts of Am., 952 P.2d 261 (Cal. 1998) (seven-year-old twins expelled from Cub Scouts because they could not confess a belief in God); see also \textit{Mechling, supra} note 9, at 35–38. None of this was necessary, as can be seen from the experience of the Girl Scouts of America. While the Boy Scout Oath appears to parallel the Girl Scout Promise “\textit{to serve God and my country},” so that \textit{no child} will be excluded or denigrated because of her personal religious beliefs, the Girl Scouts of America, since 1993 has emphasized:

The word “God” can be interpreted in a number of ways, depending on one’s spiritual beliefs. When reciting the Girl Scout Promise, it is okay to replace the word “God” with whatever word your spiritual beliefs dictate.


\textsuperscript{88} Welsh v. Boy Scouts of Am., 742 F. Supp. 1413 (N.D. Ill. 1990) (denying the BSA’s motion to dismiss); Welsh v. Boy Scouts of Am., 787 F. Supp. 1511 (N.D. Ill. 1992) (granting BSA’s summary judgment motion), \textit{aff’d}, 993 F.2d 1267 (7th Cir. 1993). Currently a member of the Unitarian Universalist Society of Geneva, Illinois, Welsh has for many decades been active in Unitarian Universalist circles. The Rev. Stephen H. Fritchman describes in his autobiography how, in the 1960s, Elliott Welsh who at the time was not a church member, “came by my study one evening at the suggestion of his wife, Peggy, a member of our church since the early days of my pastorate,” to discuss his status as a conscientious objector. \textit{Fritchman}, supra note 76, at 271. Welsh faced a three-year prison sentence when the Ninth Circuit ruled his beliefs insufficiently religious to qualify him as a conscientious objector—a conclusion that the Supreme Court overturned. Welsh v. United States, 404 F.2d 1078 (9th Cir. 1970), \textit{rev’d}, 398 U.S. 333 (1970).

\textsuperscript{89} \textit{See supra} text accompanying notes 48–50.

\textsuperscript{90} The Boy Scout Oath declares: “On my honor I will do my best, To do my duty to God and my country, and to obey the Scout Law; To help other people at all times; To keep myself physically strong, mentally awake, and morally straight.” The Cub Scout Promise declares: “I, (say your name), promise, to \textit{DO MY BEST}, To do my DUTY to GOD, and my Country, To HELP other people, and To OBEY the LAW of the Pack.” A Tiger Cub Promise, for children in first grade, declared: “I promise to love God, my family, and my country, and to learn about the world.” Welsh v. Boy Scouts of Am., 787 F. Supp. 1511, 1515–17 (N.D. Ill. 1992).
of Religious Principles, which BSA lawyers described as the “‘Boy Scouts’ creed that ‘no member can grow into the best kind of citizen without recognizing an obligation to God.’” When neither could agree to these declarations, their nontheistic religious scruples provided the basis for their expulsion from Scouting, which the Seventh Circuit sustained.

The new policies deeply offended the Unitarian Universalists, who had worked with the BSA for decades. In June of 1992, the UUA’s Board of Trustees resolved to express “disapproval of the BSA’s policy of discrimination against gay and atheist scouts and leaders,” and revised the denomination’s *Religion in Life* manual to reflect this disapproval. The UUA’s Youth Programs Director, the Rev. Jory Agate, communicated the Board’s action in a letter to the BSA dated September 4, 1992, and specifically objected to the BSA’s “policy of discriminating against homosexual and atheist youth.” “Our faith tradition values the worth and dignity of every individual,” Rev. Agate wrote, “no matter their sexual orientation or their belief in a deity.” Recognizing the BSA’s commitment “to develop young men’s self-identity, confidence, and leadership skills,” Rev. Agate applied for membership on the BSA’s Religious Relationships Committee.

The BSA, however, retaliated by barring Unitarian Universalists from its Religious Relationships Committee, suggesting that “the Resolution of the Unitarian Universalist Association appears to bring to an end our longstanding alliance in serving youth.” Yet Unitarian Universalist congregations continued to sponsor Scouting troops, and

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91 Welsh, 742 F. Supp. at 1430; Welsh, 787 F. Supp. at 1517 (“Mark Welsh is not willing to subscribe to the Cub Scout Promise and Elliott Welsh is not willing to subscribe to the Declaration of Religious Principle.”).
92 Welsh v. Boy Scouts of Am., 993 F.2d 1267 (7th Cir. 1993).
94 Sept. 4, 1992, letter from the UUA (Agate) to BSA (Worley) (infra App. 1).
95 Id.
96 Id.
97 Oct. 29, 1992, letter from BSA (Townsend) to UUA (Agate) (“Because of the resolution you have passed, I do not see a member of the Unitarian Universalist Association serving on this committee.”) (infra App. 2).
to award their denomination’s Religion in Life emblem for Boy Scouts and a Love and Help emblem for Cub Scouts.

B. The BSA Disapproves of Unitarian Universalist Religious Awards, Thereby Prohibiting Scouts from Displaying their Denominational Emblems

Problems came to a head in 1998, when Dr. Lawrence Ray Smith, as Chair of the BSA’s Religious Relationships Committee, dispatched a letter dated May 7, 1998, to the UUA’s Youth Programs Director, complaining that the denomination’s Religion in Life manual “contains several statements which are inconsistent with Scouting’s values.”

First, the UUA manual said: “The Boy Scouts of America is a secular organization that does not attempt to define or promote a specific theological position.” This, Smith wrote for the BSA, was flatly wrong: “Boy Scouts is not a ‘secular organization’ as stated in Religion in Life; Boy Scouts is an ecumenical organization which requires belief in God and acknowledgement of duty to God by its members.”

The BSA also objected to the UUA manual’s observation that “[s]ome Unitarian Universalists have trouble with the religious language in the Scout Oath, Law, and Charter.” The BSA insisted that any “reference to the ‘trouble’ some Unitarian Universalists may have regarding the duty to God inappropriately incorporates doubt in an award process that is designed to forge a stronger link between a youth’s Scouting values and religious life.” The Unitarian Universalists’ open-ended approach to God and the infinite was simply unacceptable to the BSA, which could not abide the denomination’s acceptance of doubt.

Finally, the BSA objected to the UUA manual for informing Unitarian Universalist youth that their denomination’s “General Assemblies have affirmed the rights of gays and lesbians to participate fully and equally in the life of their community,” and that its Board of Trustees had disapproved of the BSA’s “policy of discrimination

99 May 7, 1998, letter from BSA (Smith) to UUA (Harrison) (infra App. 7).
100 ARNASON, supra note 93, at 5 (infra App. 6).
101 May 7, 1998, letter from BSA (Smith) to UUA (Harrison) (infra App. 7).
102 ARNASON, supra note 93, at 5 (infra App. 6).
103 Smith, supra note 101.
against gay and atheist scouts and leaders.\textsuperscript{104} “We note with considerable dismay,” Smith wrote for the BSA, “that this version of Relig-
ion in Life also includes an official expression of disapproval of Boy
Scouts’ membership policies relating to known or avowed homose-
xuals.”\textsuperscript{105}

The BSA letter closed with a pronouncement that Unitarian Uni-
versalist Boy Scouts and Cub Scouts could no longer earn or wear
their denomination’s Religious Emblems:

The current version of Religion in Life does not adhere to Scouting
policies and is inappropriate for distribution to Scouting youth in con-
nection with the administration of the [UUA’s] Religion in Life reli-
gious award. Until such time as the UUA materials can be redrafted to
a form acceptable to the [BSA Religious Relationships] Committee,
youth may not be awarded a Unitarian Universalist religious emblems
[sic] in Scouting or wear the emblem on a Scout uniform. This
includes the [Cub Scout] Love and Help emblem as well.\textsuperscript{106}

The UUA’s President, the Rev. Dr. John A. Buehrens replied to
Smith in a letter dated June 11, 1998, and expressed dismay at the
BSA’s unilateral action: “Surely the Religious Relationships Com-
mittee of the Boy Scouts of America cannot intend to tell a religious
group what we may teach with regard to our own religious princi-
ples.”\textsuperscript{107} “You risk exposing the BSA to charges of discrimina-
tion—not only against a sexual minority,” Buehrens warned, “but against
entire religious groups, starting with Unitarian Universalism, a move-
ment which has deep spiritual roots in America’s commitment to
religious freedom, to democratic values, and to minority rights.”\textsuperscript{108}
He concluded: “Most Americans will see such actions for what they are:

\textsuperscript{104} Arnason, supra note 93.
\textsuperscript{105} Smith, supra note 101.
\textsuperscript{106} Id. It should be noted that the BSA never identified anything as objectionable in the
instructional materials for the UUA’s Love and Help emblem for Cub Scouts.
\textsuperscript{107} June 11, 1998, letter from UUA (Buehrens) to BSA (Smith) (infra App. 8). “You do
this because our manual for the Religion [in] Life award includes statements designed to help
Unitarian Universalist youth deal with the tension that they may feel between Unitarian Univer-
salist religious principles and certain aspects of BSA current policy,” Buehrens observed, “par-
ticularly with regard to discrimination against gay Scouts and leaders and with regard to those
whose conscientious ethical and spiritual principles may not include a belief in God.” Id.
\textsuperscript{108} Id.
blatant discrimination against children on the basis of their religion.”

The BSA’s remarkable action garnered national press coverage, with the Chicago Tribune reporting that “the loyal, friendly and cheerful Boy Scouts effectively excommunicated the Unitarians.”

The Los Angeles Times explained that the BSA had ordered “a progressive Protestant denomination with roots in colonial Puritanism, to stop giving its Religion in Life award to Unitarian Scouts.” “Until now, the Boy Scouts have never forbidden a religious body from awarding such emblems to its youth,” a Scout spokesperson told the New York Times. Newspapers across the country covered the controversy between the BSA and a denomination comprising some of America’s oldest Protestant churches.

109 Id.

110 Steve Kloehn, Boy Scouts, Unitarians Reach Parting of the Ways, CHI. TRIB., July 24, 1998, at 8 (“In recent years, the Unitarian Universalist Association, which prides itself on being open-minded, has been sharply critical of the Boy Scouts. In response, the loyal, friendly and cheerful Boy Scouts effectively excommunicated the Unitarians this summer, declaring the church could no longer sponsor the ‘Religion in Life’ badge, and that Boy Scouts could no longer wear the Unitarian Universalist emblem on their uniforms.”).


113 See, e.g., Diego Ribadeneira, Boy Scouts, Church Spar on Gay Issue, BOSTON GLOBE, July 21, 1998, at B1 (“The Boy Scouts of America has ordered the Unitarian Universalist Association, a liberal denomination with long roots in New England, to stop giving out religious awards to scouts who are Unitarians because the church promotes gay rights.”); Diego Ribadeneira, Boy Scouts Quarrel With Unitarians Stirs Some Anger, BOSTON GLOBE, July 22, 1998, at F14 (“The dispute between the Boy Scouts and the Unitarian Universalists was provoked by a manual widely disseminated by the Unitarians describing the denomination’s beliefs and practices.”); Kathleen A. Shaw, Views of Homosexuality put Unitarians, Boy Scouts in Conflict, WORCESTER TELEGRAM & GAZETTE, July 22, 1998, at B3 (“The national Scout organization told the Unitarians not to give out any more of [their] religious award emblems to Scouts of that denomination.”); Caryle Murphy & Hanna Rosin, Unitarians Taking Boy Scouts to Task; Local Church Members to Protest Stand on Gays, WASH. POST, Aug. 1, 1998, at B1 (describing controversy surrounding “the Boy Scouts’ recent order that the denomination stop giving out religious awards to Scouts in their congregations.”); Scouts’ Gay Stance Riles Unitarians, SAN JOSE MERCURY NEWS, Aug. 2, 1998, at 10A (“Many Unitarians are upset by the Boy Scouts’ recent order that their denomination stop giving out religious awards to Scouts in their congregations. That order came in response to a church handbook that calls national Scouting leaders homophobic.”); Kendall Anderson, Scouts at Odds with Unitarians; Meeting Set to Discuss Church’s Acceptance of Gay, Atheism, DALLAS MORNING NEWS, Sept. 26, 1998, at 1G (“The Boy Scouts of America require members to believe in God. In fact, they encourage thousands of
But the UUA, whose President was himself a Life Scout and as a 
pastor had helped organize a troop for impoverished inner-city youth, 
remained committed to Scouting and struggled earnestly to reach a 
workable compromise. The two organizations’ representatives met 
and managed, over several months, to negotiate an agreement,\(^{114}\)
which received national media coverage.\(^{115}\) The Unitarian Universal-

\(^{114}\) See generally Sept. 30, 1998, letter from UUA (Buehrens) to BSA (Smith) (infra App. 9); Oct. 19, 1998, letter from BSA (Smith) to UUA (Buehrens) (infra App. 10); Mar. 18, 1999, letter from BSA (Deimler) to UUA (Buehrens) (infra App. 11); Mar. 30, 1999, letter from UUA (Buehrens) to BSA (Deimler) (infra App. 12); Apr. 23, 1999, letter from BSA (Deimler) to UUA (Buehrens) (infra App. 13); Apr. 28, 1999, open letter from UUA (Buehrens) (infra App. 14); May 7, 1999, letter from BSA (Smith) to UUA (Buehrens) (infra App. 15); May 18, 1999, open letter from UUA (Buehrens) (infra App. 16).

\(^{115}\) See generally News in Brief: Scouts, Church Close to Setting Dispute, WASH. POST, Oct. 10, 1998, at B9 (“The Boy Scouts of America and the Unitarian Universalist Association are nearing settlement of a merit badge dispute that flared because of the organizations’ differing 
views on homosexuality and religious skepticism. . . . [A] tentative agreement’ was reached at a 
Sept. 29 meeting in Boston between the Boy Scouts and church officials.”); Kendall Anderson, 
that a “tentative agreement was reached at the Boston meeting”); Diego Ribadeneira, Unitari-
ans, Scouts Reach Compromise, BOSTON GLOBE, Apr. 30, 1999, at A28 (“Controversy erupted 
last May when the Boy Scouts ordered the Boston-based Unitarian Universalist Association to 
stop giving out religious awards to scouts who are Unitarians because the church promotes gay 
rights . . . . The [BSA] ‘now reauthorizes the awarding of the Religion in Life emblem.’ “); 
Scouts, Unitarians Reach Accord, DALLAS MORNING NEWS, May 1, 1999, at 2G (“Unitarian 
Universalists and the Irving-based Boy Scouts of America have reached an agreement on 
the church’s Religion in Life award, church officials said.”); Kathleen A. Shaw, Boy Scouts, Church 
Resolve Differences on View of Homosexuality; Unitarians Agree to Make Changes in Manual,
ists would publish a new edition of *Religion in Life*, omitting material the BSA leadership found offensive. As recorded in a letter from Reverend John A. Buehrens, the UUA President, to Dr. Lawrence Ray Smith, the Chair of the BSA’s Religious Relationships Committee: “Where we feel it necessary to help Scouts working on the award or Scout leaders acting as advisors to more fully explore Unitarian Universalist understandings of ‘duty to God’ or current BSA policies, the new edition will simply reference other helpful publications available from our Youth Office.”\(^{116}\)

The UUA consulted closely with the BSA in preparing a new *Religion in Life* manual. When the BSA objected to a proposed foreword, for example, Rev. Buehrens agreed that the UUA would “simply omit” it.\(^{117}\) With all controversial text expurgated from the denomination’s manual, the BSA announced on April 23, 1999, that it “now reauthorizes the awarding of the *Religion in Life* emblem to Scouts and the wearing of that emblem on a Scout uniform.”\(^{118}\) “This includes the *Love and Help* emblem [for Cub Scouts] as well.”\(^{119}\)

Rev. Buehrens thus reported to the Unitarian Universalist faithful, in an April 28, 1999, letter posted on the Internet, that “this conflict has been resolved” with the revised manual, allowing the UUA to provide its youth other “resources appropriate to dealing with issues of homophobia and religious discrimination.”\(^{120}\) If the BSA leadership’s discriminatory policies remained troubling, Rev. Buehrens still was “very pleased, however, that we have been able to resolve any implication that they wish to practice an added discrimination toward

\(^{116}\) Sept. 30, 1998, letter from UUA (Buehrens) to BSA (Smith)  (*infra* App. 9).

\(^{117}\) Mar. 30, 1999, letter from UUA (Buehrens) to BSA (Deimler)  (*infra* App. 12).

\(^{118}\) Apr. 23, 1999, letter from BSA (Deimler) to UUA (Buehrens)  (*infra* App. 13).

\(^{119}\) *Id.* Again, it should be noted that the BSA had never suggested that it found anything objectionable in UUA materials for the *Love and Help* award for Unitarian Universalist Cub Scouts.

\(^{120}\) Apr. 28, 1999, open letter from UUA (Buehrens)  (*infra* App. 14).
Unitarian Universalists simply because we support the belief that it is not homosexuality but homophobia which is a sin.\footnote{Id.}

This was too much for the BSA, which with a letter from Dr. Smith dated May 7, 1999, once again disapproved the Religion in Life award, explaining:

Your letter goes on to say the following: “The new edition of Religion in Life will be available from the UUA Bookstore this summer. Along with each copy, the Association will separately provide a letter from me, along with resources appropriate to dealing with issues of homophobia and religious discrimination.” Unfortunately, this simply reopens the entire issue of using boys as a venue to air your differences with the policies of the Boy Scouts of America.

These circumstances were not contemplated . . . . Therefore, Boy Scouts of America is not in a position to authorize the awarding of the Religion in Life emblem to Scouts and the wearing of that emblem on a Scout uniform.\footnote{May 7, 1999, letter from BSA (Smith) to UUA (Buehrens) (infra App. 15).}

The BSA’s stated object was to silence an outspoken denomination. It would permit full participation by Unitarian Universalists who would recite the Scout Oath and obey the Scout Law only if their denomination agreed not “to air [their] differences with the policies of the Boy Scouts of America.”\footnote{Id.} The BSA simply would not countenance the denomination teaching its youth that homophobia, not homosexuality, is a sin, and that atheists and agnostics should not be shunned as social inferiors.\footnote{See id.}

The BSA’s action again enjoyed widespread press coverage, with the Los Angeles Times reporting that the BSA objected to “the church’s plans to distribute its own materials on homosexuality and religious beliefs to Unitarian Scouts working toward the award.”\footnote{Boy Scouts Rescind Offer to Unitarians, L.A. TIMES, May 29, 1999, at B3 (“The Boy Scouts of America have rescinded an offer to reauthorize the Unitarian Universalist Assn. to issue its Religion in Life Award to Scouts who are Unitarians, adding a new wave of contention to a battle that many felt had been fought and settled. . . . [Lawrence Ray] Smith [Chairman of the Boy Scouts’ Religious Relationships Committee] said in a brief letter to [John A.] Buehrens [Unitarian President] that the Boy Scouts could not reinstate the Religion in Life award for Unitarians because of the church’s plans to distribute its own materials on homosexuality and religious beliefs to Unitarian Scouts working toward the award.”); see also, e.g., Diego
Unitarian Universalist parents expressed fear about the BSA policy’s impact on their children.\footnote{126}{\textit{It wouldn’t be right to put my son in a situation where he could be a victim of discrimination.}}

C. Closing the Door to Change by Excluding Religious Liberals

The UUA General Assembly responded to the BSA’s actions by expressing dismay and urging all, both within and without the BSA, to seek change of the BSA’s discriminatory policies.\footnote{127}{\textit{See General Assembly of the Unitarian Universalist Association, Work to Change Discriminatory Policies of Boy Scouts of America (1999), http://www.uua.org/actions/immediate/99bsa.html (last visited Aug. 28, 2006).}} The 1999 General Assembly resolved, moreover, to “urge individual UU Scouts to remain in Scouting, and to encourage UU members to join Scouting, \textit{in order to work for change from within the BSA}.\footnote{128}{\textit{Id. (emphasis added).}}

After the UUA General Assembly’s 1999 call for Unitarian Universalists “to join Scouting, in order to work for change from...
within,” however, the BSA closed the door to change by making not just a confession of personal faith in God a precondition for membership, but also a *willingness to declare that nontheists are inferior, second-class citizens*. The “Boy Scouts’ creed” or “Declaration of Religious Principle,” which had previously applied to adult leaders, now appears on every membership application, warning: “The Boy Scouts of America maintains that no member can grow into the best kind of citizen without recognizing an obligation to God . . . . Only persons willing to subscribe to this Declaration of Religious Principle and to the Bylaws of the Boy Scouts of America shall be entitled to certificates of membership.”

The meaning of this action is clear enough. To be a Boy Scout or Cub Scout now requires agreeing that anyone who cannot declare a faith in God, to the BSA’s satisfaction, must be shunned as not representing “the best kind of citizen.” A September 2003 Harris Poll reports that most American Jews, for example, cannot provide the confession of faith required by the BSA to qualify as the “best kind of citizen” and participate in Scouting.

129 Id.
131 See infra text accompanying notes 137–39.
133 Cub Scout Application, supra note 132; Boy Scout Application, supra note 132.
134 Based on a scientific survey conducted in September 2003, the Harris Poll found that only 48% of American Jews could affirm a belief in God. Most could not—19% were either “somewhat certain” or “absolutely certain” that there is no God, while 33% were simply “not sure whether or not there is a God.” Humphrey Taylor, *The Harris Poll #59*: While Most Americans Believe in God, Only 36% Attend a Religious Service Once a Month or More Often, Oct. 15, 2003, http://www.harrisinteractive.com/harris_poll/index.asp?PID=408 (last visited Aug. 28, 2006). On Judaism that transcends theology and dogma, see generally, *The Faith of Secular Jews* (Saul L. Goodman ed., KTAV Publishing House, Inc. 1976), *Sherwin T. Wine, Judaism Beyond God* (KATV 1995); *Judith Seid, God-Optional Judaism* (Citadel Press 2001).
135 See Torcaso v. Watkins, 367 U.S. 488, 495 n.11 (1961) (noting that among the religions that “do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others”); Welsh v. United States, 398 U.S. 333, 357 n.8 (1970) (Harlan, J., concurring) (citing *Torcaso* with approval); *Peter Harvey, An Introduction to Buddhism: Teachings, History and Practices* 36 (Cambridge Univ. Press 1990) (“Buddhism sees no need for a creator of the world, as it postulates no ultimate beginning to the world, and regards it as sustained by natural laws.”); *Rupert Gethin, The Foundations of Buddhism* 65, 114 (Oxford Univ. Press 1998) (“Buddhism does not
1989 Nobel Peace Prize, His Holiness the Dalai Lama of Tibet declared: “Buddhism does not accept a theory of God, or a creator.”

By requiring new members to subscribe to a Declaration that excludes and denigrates most secular Jews and Buddhists, along with secular humanists, atheists, and agnostics of every stripe as not “the best kind of citizen,” the BSA has excluded the vast majority of Unitarian Universalist youth. Even for those comfortable swearing an oath of duty to God, the notion that different convictions in matters of personal faith should make anyone a second-class citizen or social outcast is deeply offensive to Unitarian Universalist traditions and values.

Mandating that children subscribe to the Declaration appears to be a very recent development, postdating the UUA General Assembly’s 1999 call to the faithful to work from within the BSA for change. Previously, subscribing to the Declaration was a requirement only for adult leaders and not for youth. The BSA thus has
frustrated the 1999 General Assembly’s call for Unitarian Universalists “to join Scouting, in order to work for change within the BSA,” by barring all who cannot agree that their secular friends are social inferiors.

Many Unitarian Universalist congregations have been forced by such policies to sever longstanding relations with the BSA. They are not alone in finding that the BSA’s discriminatory policies have made further cooperation with the organization impossible. Reform Judaism has also been forced to sever links with the BSA. Following the Supreme Court’s decision in Boy Scouts of America v. Dale, the national leadership of Reform Judaism called upon Jewish families and synagogues to sever all remaining ties with the BSA in early 2001. News archives are full of articles indicating that synagogue

the Scout Law, the Scout motto, the Scout slogan, and the Outdoor Code”; adult leaders “must subscribe to the Declaration of Religious Principle, the Scout Oath and the Scout Law,” strongly suggesting that only adults, and not children, were required to subscribe to the Declaration. Other decisions similarly present subscription to the Declaration as a requirement for adult leaders, not youth. See, e.g., Winkler v. Chicago Sch. Reform Bd. of Trs., No. 99 C 2424, 2001 U.S. Dist. LEXIS 13960 at 6 (N.D. Ill. Aug. 8, 2001) (“Plaintiffs allege that all charter organizations and all of its volunteer adult leaders must subscribe to the declaration of religious principle.”); Winkler v. Chicago Sch. Reform Bd. of Trs., No. 99 C 2424, 2000 U.S. Dist. LEXIS 240, at *6 (N.D. Ill. Jan. 6, 2000) (“Under the bylaws and rules and regulations of the BSA, all adult volunteer leaders in scouting units are required to subscribe to the Declaration of Religious Principle . . .”); Welsh v. Boy Scouts of Am., 787 F. Supp. 1511, 1517 n.44 (N.D. Ill. 1992) (“Mark Welsh [a child] is not willing to subscribe to the Cub Scout Promise and Elliott Welsh [an adult] is not willing to subscribe to the Declaration of Religious Principle.”); Welsh v. Boy Scouts of Am., 742 F. Supp. 1413, 1417 n.7 (N.D. Ill. 1990) (“On October 30, 1989, plaintiffs received a reply from Harold Sokolsky, Assistant to the Chief Scout Executive, stating that in order to participate in BSA, adult leaders must sign the Declaration of Religious Principle and youth members are required to acknowledge a duty to God.”); Chicago Area Council of Boy Scouts of Am. v. City of Chicago Comm’n on Human Relations, 748 N.E.2d 759, 764 (Ill. App. Ct. 2001) (quoting the BSA employment policy concerning homosexuals and noting that employment as an adult leader requires “acceptance of the Declaration of Religious Principle . . .”); Scalise v. Boy Scouts of Am., 692 N.W.2d 858, 865 n.5 (Mich. Ct. App. 2005) (quoting the BSA Declaration of Religious Principle: “Only persons willing to subscribe to this declaration of religious principle and to obey the bylaws of the Boy Scouts of America shall be entitled to certificates of leadership.”).

140 Supra text accompanying notes 127–28.
141 See, e.g., Peter Schworn, Boy Scouts, Church Clash on Gays Policy; Troop’s Breakfast Moved to a New Site, BOSTON GLOBE, Sept. 25, 2003, at 1; Dave Wedge, Fairhaven Church May Sever Scout Ties, BOSTON HERALD, Dec. 3, 2000, at 015.
143 A January 2001 memorandum to American synagogues explained that, in light of the BSA’s discriminatory policies, and “[w]ith pain, we must recommend that congregations sponsoring/housing troops/packs withdraw sponsorship of a troop/pack and/or stop housing one. . . In addition, we recommend that parents with children in non-Reform affiliated troops withdraw their children from troops/packs.” Memorandum from Rabbi Dan Polish, Dir. & Judge David
after synagogue acted upon the Reform leaders’ recommendation.\textsuperscript{144} The BSA’s most outspoken supporters report that congregations in the United Church of Christ, and even a Baptist congregation or two, have similarly terminated their former sponsorship of Boy Scout troops.\textsuperscript{145} There is, apparently, no place for religious liberals in today’s BSA.

III. SETTING THE RECORD STRAIGHT: BSA POLICY AND CURRENT LITIGATION CONCERNING GOVERNMENT SPONSORSHIP OF A DISCRIMINATORY RELIGIOUS INSTITUTION

Although the BSA and its self-styled “social conservative” allies say they speak for “traditional values,” Unitarian Universalists see

\textsuperscript{144} For example, the Middlesex Star-Ledger, reporting on the Temple B’nai Shalom’s decision to stop sponsoring a Boy Scout troop said:

The board voted Jan. 17 to withdraw its sponsorship of the Scouts, following the recommendations issued earlier this month by the Union of American Hebrew Congregations and the Central Conference of American Rabbis. ‘Numbers of congregations literally across the country are doing exactly what Temple B’nai Shalom is doing,’ said Rabbi Daniel Polish, director of the Joint Commission on Social Action of Reform Judaism. Polish said, ‘Those core values (of the Boy Scouts) are incompatible with the core values of the Reform movement’.


\textsuperscript{145} \textit{ZEIGER, supra} note 11, at 20–22, 150–51, 193. \textit{See also Religion Briefs, WASH. TIMES}, Dec. 9, 2000 (reporting that the Taunton, Massachusetts Union Congregational Church, affiliated with the United Church of Christ, voted to cancel the charter of its Boy Scout troops).
BSA policies as reflecting a *new tradition of prejudice* in which their own children are the most recent victims. The story does not end with the BSA’s effective exclusion of religious liberals from its ranks, or even with the Supreme Court’s decision in *Dale* that the BSA is legally entitled to condemn, exclude and discriminate, since “[r]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection.” Following the Supreme Court’s June 2000 ruling in *Dale*, a UUA press release renewed the denomination’s “call upon the Boy Scouts of America to end their discrimination against gays and also to end their discrimination on the basis of religious belief, including discrimination against Unitarian Universalists and others whose definition of God is different from the Boy Scouts.” The press release warned that, with its victory in *Dale*, the BSA “cannot have it both ways,” both insisting on a right to discriminate, while simultaneously demanding government sponsorship of its activities.

When its discriminatory policies were challenged in court in the 1980s and 1990s, the BSA insisted that it was entitled to act on matters of faith and morality as a *fundamentally religious* expressive association, utterly exempt from complying with civil rights laws. “There are few religions in America which can boast of millions of youth who meet each week and openly affirm their belief in God,” its court filings bragged. The BSA insisted that obeying civil rights laws would offend “the Boy Scouts’ creed that ‘no member can grow into the

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148 Id.

149 See, e.g., Randall v. Orange County Council, Boy Scouts of Am., 952 P.2d 261, 264–65 (Cal. 1998) (“Defendant also introduced numerous formal declarations by the Boy Scouts of America to demonstrate the importance of religion, and the Scout’s duty to God, in its training of youth. . . . Adult Cub Scout leaders are expected to convey to their Scouts the fundamental belief that they cannot develop into the best kind of citizen without recognizing an obligation to God.”).

150 Barnes-Wallace v. Boy Scouts of Am., 275 F. Supp. 1259, 1270 (S.D. Cal. 2003) (quoting prior BSA briefs); see Barnes-Wallace v. Boy Scouts of Am., 9th Cir. Nos. 04-55732 & 04-56167, Excerpt of Record (“ER”) ER2007 (¶¶185, 191). The author is indebted to the plaintiffs’ lawyers in *Barnes-Wallace* for bringing this material to his attention, and for allowing him to review such portions of the *Barnes-Wallace* record as are not under seal.
best kind of citizen without recognizing an obligation to God.'"\(^{151}\)

Thus, when the United States Supreme Court ruled in *Boy Scouts of America v. Dale*,\(^ {152}\) that the BSA is constitutionally entitled to discriminate, it naturally quoted precedent to the effect that “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection.”\(^ {153}\)

But when *Dale’s* holding produced calls for an end to government sponsorship of the organization—and lawsuits were filed challenging public financing of a discriminatory religious institution—the BSA leadership suddenly changed its tune, telling courts that the BSA is not a religious organization, after all, but one that is essentially “secular” in character,\(^ {154}\) and “absolutely nonsectarian.”\(^ {155}\)

Shortly after *Dale* came down, lawsuits were filed challenging government sponsorship and public support of the BSA as a discriminatory institution. In San Diego, a lesbian couple and their son joined an agnostic couple and their son in challenging preferential leases that the City of San Diego affords the BSA, under which the BSA occupies nearly eighteen acres of San Diego’s Balboa Park and operates its regional headquarters from city-owned buildings at one-dollar-a-year rent. A Methodist minister and a Reform Rabbi filed another suit in Chicago, challenging (among other things) federal sponsorship of the BSA’s quadrennial Jamboree. Federal district judges in both cases ruled the preferential treatment and government sponsorship of the BSA to be unconstitutional.\(^ {156}\)


\(^{153}\) Id. at 651 (quoting Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 714 (1981)).


\(^{155}\) Id. at 12. See also id. at 42 (reiterating that Boy Scouts are “absolutely nonsectarian”).

Briefs written in the course of appeals from those rulings insist that the district judges erred in concluding that the BSA is a religious organization. In the appeal involving the BSA’s preferential access to public lands and operation of its regional headquarters from government-owned buildings in a city park, the BSA’s briefs tell the Ninth Circuit that the “Boy Scouts is not a religious organization,” but is genuinely “secular” in character.\footnote{Opening Brief of Boy Scouts of America and Desert Pacific Council, Boy Scouts of America at 12, 43, Barnes-Wallace v. Boy Scout of Am., Nos. 04-55732, 04-56167 (9th Cir. Feb. 16, 2005), on appeal from Barnes-Wallace v. Boy Scouts of Am., 275 F. Supp. 2d 1259 (S.D. Cal. 2003). See supra note 154.} The BSA’s Ninth Circuit briefs insist that “Scouting includes boys of virtually every religious faith and is ‘absolutely nonsectarian.’”\footnote{Brief for Appellant at 6, Winkler v. Rumsfeld, No. 05-3451, (7th Cir. Oct. 31, 2005) (citing declaration of Douglas S. Smith, Jr., whose declarations provide the basis for Secretary Rumsfeld’s description of the BSA’s mission and values, had pled guilty to charges of felony possession and distribution of child pornography more than six months before Secretary Rumsfeld filed his Opening Brief on appeal. See Press Release, United States Dept. of Justice, Colleyville, Texas Man Pleads Guilty to Child Pornography Charge in Federal Court (Mar. 30, 2005) (stating that Douglas Sovereign Smith, Jr., was employed by the Boy Scouts for 39 years before retiring last month, Smith held the position of National Director of Programs), available at http://www.usdoj.gov/usao/txn/PressRel05 smith_douglas_childporn ple.pdf (last visited Dec. 19, 2006); United States v. Smith, No. 4:05-CR-040-Y (N.D. Tex. Dec. 6, 2005) (judgment in a criminal case, committing Douglas Sovereign Smith, Jr. to prison for a term of 96 months). Secretary Rumsfeld had taken a similar position, based on Smith’s declarations, before the district court. See Winkler v. Chicago Sch. Reform Bd. of Trs., 382 F. Supp. 2d 1040, 1042 (N.D. Ill. 2005) (Defendants argue against a finding that the BSA is either pervasively sectarian or religious by asserting that the BSA is a primarily secular organization). Smith, who was not fired by the BSA but rather was permitted to quietly retire, had publicly defended the BSA’s policies against the “intolerant elements in our society,” including the ACLU, which urged it not to exclude gays and agnostics. Douglas S. Smith, Jr., Boy Scout Pride, Corp. Legal Times, at 10 (Sept. 2004) (letter to the editor); see Ralph Blumenthal, Boy Scouts Executive Surrenders in Fort Worth on a Child Pornography Charge, N.Y. Times, Mar. 30, 2005, at 13.}

Relying on the declaration of the BSA’s former National Director of Program, Donald J. Rumsfeld’s Seventh Circuit brief in Winkler, which concerns federal sponsorship of the BSA Jamboree, similarly insists that the BSA is nonsectarian, and that it “welcomes young people of every religious denomination.”\footnote{Id.} Secretary Rumsfeld’s brief defends the federal government’s expenditure of millions of dollars to sponsor
each of the BSA’s quadrennial Jamborees by claiming that the BSA is a “secular organization.”\footnote{Brief for Appellant at 42, Winkler v. Rumsfeld, No. 05-3451 (7th Cir. Oct. 31, 2005).} Citing the Seventh Circuit’s own opinion in Welsh v. Boy Scouts of America,\footnote{993 F.2d 1267, 1278 (7th Cir. 1993).} Secretary Rumsfeld adds that “[f]or more than 90 years, the Boy Scouts of America has ‘successfully presented its combination of educational, social, athletic, craft, and wilderness training and outdoor activities to our young people.’”\footnote{Brief for Appellant at 3, Winkler v. Rumsfeld, No. 05-3451 (7th Cir. Oct. 31, 2005) (quoting Welsh v. Boy Scouts of Am., 993 F.2d 1267, 1278 (7th Cir. 1993)).}

Yet Welsh itself was a case in which the BSA expelled a Unitarian Universalist, Elliott Welsh, and his young son from Scouting—because their religious beliefs were unacceptable.\footnote{See supra text accompanying notes 88–92. Currently a member of the Unitarian Universalist Society of Geneva, Illinois, Elliott Welsh has for many decades been active in Unitarian Universalist circles. See supra note 88. Welsh is among the Unitarian Universalist amici curiae represented by this article’s author in Winkler v. Rumsfeld, No. 05-3451 (7th Cir. Oct. 31, 2005).} Moreover, the BSA revoked approval for Unitarian Universalist emblems insisting: “Boy Scouts is not a ‘secular organization’ as stated in Religion in Life; Boy Scouts is an ecumenical organization which requires belief in God and acknowledgement of duty to God by its members.”\footnote{May 7, 1998, letter from BSA (Smith) to UUA (Harrison) (infra App. 7).} A religious faith embracing the dignity and worth of agnostics and homosexuals and teaching its children that discrimination and shunning are wrong was simply unacceptable.\footnote{Id.}

The BSA’s treatment of Unitarian Universalists raises serious questions about the arguments made by the BSA and its supporters in both pending appeals, a few of which are highlighted in the following pages.

A. Barnes-Wallace v. BSA: Operating Regional Headquarters from a City Park

The BSA’s briefs in its Ninth Circuit appeal acknowledge that, faced with the question of whether challenged government action violates the Establishment Clause, a court must ask whether, in light of the surrounding circumstances, hypothetical well-informed reasonable observers would perceive in the governmental action an endorsement of religion.\footnote{Opening Brief of Boy Scouts of America and Desert Pacific Council, Boy Scouts of America at 32, Barnes-Wallace v. Boy Scout of Am., Nos. 04-55732, 04-56167 (9th Cir. Feb. 16, 2006).} In the context of the San Diego case, then, what are
people excluded from Scouting for religious reasons to think when they find that the BSA runs its regional headquarters in Southern California from government-owned offices in a public park, where it controls eighteen acres of public land, while paying the City of San Diego one dollar a year in rent under an exclusive contract with the city.  

San Diego Unitarian Universalists spoke directly to this question when the San Diego City Council on December 4, 2001, gave citizens two or three minutes apiece to oppose a renewed twenty-five year lease of Camp Balboa, the eighteen acres of San Diego’s Balboa Park containing the BSA’s regional headquarters and public camping grounds. Speaking for the Unitarian Universalist Fellowship of San Dieguito’s Social Action Committee, Irving Himelblau explained to the City Council how the BSA had disapproved the Religion in Life award “[b]ecause of our egalitarian beliefs. It was because of our support of equal rights for all children, regardless of sexual orientation, and because of our support for religious freedom, that they withdrew recognition from our religious groups, to issue . . . this award.”

John Millspaugh, then an intern minister for the First Unitarian Universalist Church of San Diego, warned that “in the last few years, the Boy Scouts have legally become what they never have been before. A religious, creedal organization.” He continued, saying “if the Coun-

2005). The Supreme Court has embraced Justice O’Connor’s rule that in Establishment Clause cases “‘the reasonable observer in the endorsement inquiry must be deemed aware’ of the ‘history and context’ underlying the challenged program.” Zelman v. Simmons-Harris, 536 U.S. 639, 655 (2002) (quoting Good News Club v. Milford Cent. Sch., 533 U.S. 98, 119 (2001) and Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 780 (1995) (O’Connor, J., concurring); see Good News Club, 533 U.S. at 119 (“Because our concern is with the political community writ large, the endorsement inquiry is not about the perceptions of particular individuals or saving isolated nonadherents from . . . discomfort . . . . It is for this reason that the reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious [speech takes place]”) (parenthetically quoting Capitol Square, 515 U.S. at 779–80 (O’Connor, J., concurring); Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 317 (2000) (“To properly examine this policy on its face, we ‘must be deemed aware of the history and context of the community and forum.’”) (quoting Capitol Square, 515 U.S. at 780 (O’Connor, J., concurring in part and concurring in judgment)).


169 Amended Transcript of Testimony before the San Diego City Council, Dec. 4, 2001: John Millspaugh (mistranscribed “Milspaugh”) ER2503-04 in Barnes-Wallace Excerpt of
cil renews this lease, here and now today, we send a message that Unitarian Universalists, and Buddhists and people of diverse faith are not as welcome in this City as we thought we were.  

The City of San Diego apparently chose to send that message, by authorizing the BSA to maintain administrative authority over eighteen acres of Camp Balboa, and to operate its regional affairs from offices in the City park for another twenty-five years while giving no other organizations any opportunity to compete with the BSA for the lease. The City has even had signs posted around the public property and campgrounds housing the BSA’s regional headquarters, announcing that it “is owned by the City of San Diego and is being utilized for the benefit of the general public through the joint cooperation of the City and Boy Scouts of America.”

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Record. Milspaugh, who was then the intern minister of the First Unitarian Universalist Church of San Diego, now is settled minister of the Unitarian Universalist Church of South County, at Mission Viejo, California. See http://www.uucsc.org/ (last visited Dec. 20, 2006).

170 Barnes-Wallace Excerpt of Record ER2504.
171 Reply Brief for Defendant at 32, Barnes-Wallace v. Boy Scouts of Am., Nos. 04-55732, 04-56167 (9th Cir. Apr. 25, 2005) (reproducing one of the signs; citing SER22).
The message is clear: the City of San Diego and the BSA are working together, advancing a joint agenda out of the BSA’s regional offices. Establishment Clause cases call this cooperation “entanglement” and “endorsement.”\(^\text{172}\)

That the San Diego case involves the administration of eighteen acres of public parklands—ordinarily a governmental function—may well be pertinent. In *Evans v. Newton*,\(^\text{173}\) the Supreme Court held that “conduct that is formally ‘private’ may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to constitutional limitations placed on state action.”\(^\text{174}\) Moreover, while the BSA purports to operate the eighteen acres of Camp Balboa in a nondiscriminatory fashion, record evidence indicates that in practice, the BSA may effectively preempt public use of the park’s campgrounds during the summer months and on weekends—the very times when children are out of school and free to go camping.\(^\text{175}\)

In *Evans*, the city of Macon, Georgia, had transferred control of an urban park to a private organization—one that discriminated on racial grounds. Even if private individuals and associations are constitutionally free to discriminate, the Supreme Court held, “when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations.”\(^\text{176}\) “Mass recreation through the use of parks is plainly in the public domain,” the Court observed, holding “that the public character of this park requires that it be treated as a public institution subject to the command of the Fourteenth Amendment,” even though the state had for-


\(^{173}\) 382 U.S. 296 (1966).

\(^{174}\) Id. at 299.

\(^{175}\) The district court found that “the record does contain evidence that the Boy Scouts are able, by penciling in their own reservations in advance, to effectively preclude others from using the parklands during periods of high demand.” *Barnes-Wallace*, 275 F. Supp. at 1284. The plaintiffs contended, for example, that the campgrounds are reserved for Cub Scout Day Camp for about eight weeks of each summer, and the evidence indicates that the BSA in fact “has monopolized the campground for periods of time.” *Id.* The district court determined that the issue of unequal access nonetheless presented questions of fact, precluding any ruling as a matter of law on the extent to which the public is denied equal access to Camp Balboa’s facilities. *Id.* at 1285.

\(^{176}\) Id.
mally transferred administrative responsibilities and ownership to a private entity. 177

Thus, even if, as Dale holds, the BSA is a private expressive association, entitled to discriminate on religious or other grounds, 178 San Diego’s transfer of administrative authority over eighteen acres of urban public parklands to such an organization likely violates the Constitution under Evans. 179 But whether or not Evans controls, the City’s decision to confer administration of nearly eighteen acres of its public parklands to a private organization—permitting it to operate regional headquarters in the public spaces—says something to reasonable observers.

Decisions such as Capitol Square Review & Advisory Board v. Pinette 180 show that a discriminatory organization may demand equal access to public parklands, and to other areas traditionally open as public forums. But conferring the administration of public parklands to such an organization, and allowing it to direct its regional operations from headquarters in a public park under special contractual terms offered to no one else, that is something more than allowing equal access to the public facilities.

Capitol Square addressed the question of whether the Ku Klux Klan’s erection of a cross on the Capitol Square Park, by the Ohio statehouse, would suggest the government’s endorsement of the Klan’s bigoted religious speech. The Supreme Court held that giving the Klan equal access to a public forum does not suggest endorsement of the Klan or its message.

Four justices—Scalia, joined by Rehnquist, Kennedy and Thomas—reasoned that giving equal access to a public forum, open to all, cannot offend the Establishment Clause if some choose to use it for religious speech. 181 They emphasized: “of course, giving sectarian religious speech preferential access to a forum close to the seat of government (or anywhere else for that matter) would violate the Establishment Clause (as well as the Free Speech Clause, since it would involve content discrimination).” 182 San Diego’s lease of public parklands to the BSA obviously fail this test, for the BSA with its one-

177 Id. at 302.
179 See Evans, 382 U.S. at 299.
181 Id. at 763–70.
182 Id. at 766 (emphasis added).
dollar-a-year lease clearly receives prohibited *preferential access and support*.\footnote{See Barnes-Wallace v. Boy Scouts of Am., 275 F. Supp. 2d 1259, 1269–76 (S.D. Cal. 2003).}

Justice O’Connor, joined by Justices Souter and Breyer, concurred in *Capitol Square*, believing no endorsement of the Klan’s religious message could be inferred by reasonable observers “aware of the history and context of the community and forum in which the religious display appears.”\footnote{Capitol Square, 515 U.S. at 780.} For, Justice O’Connor explained, no endorsement could be inferred from allowing nonpreferential *equal access* to places which by long tradition or by government fiat have been devoted to assembly and debate, . . . [particularly] streets and parks which ‘have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.’\footnote{Id. at 781 (quoting Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 45 (1983)).}

“The reasonable observer would recognize the distinction between speech the government supports and speech that it merely allows in a place that traditionally has been open to a range of private speakers accompanied, if necessary, by an appropriate disclaimer.”\footnote{Id. at 782.} The San Diego lease, by taking a traditionally public area and conferring control over it to an organization that engages in religious discrimination, surely fails this test, for the BSA receives preferential access and control of land that is denied to others.\footnote{See Barnes-Wallace v. Boy Scouts of Am., 275 F. Supp. 2d 1259, 1276 (S.D. Cal. 2003) (“By entering into exclusive negotiations with the BSA-DPC without affording others a real opportunity to compete, the city effectively prevented any secular groups from having an opportunity to obtain the benefit. The city hand picked as the preferred lessee an organization that describes religious beliefs and practice as fundamental to the services it provides.”).} Far from providing an appropriate disclaimer distancing the city from the BSA’s religious discrimination, the city has posted signs around the BSA’s regional headquarters proclaiming their operation to be “through the joint cooperation of the city and Boy Scouts of America.”\footnote{See supra text and graphic accompanying notes 170–71.}
One can easily modify the *Capitol Square* facts to parallel the San Diego case. What if government did more than merely allow the Klan, or another organization with a horribly bigoted religious message, equal access to a public park? What if public authorities gave the private expressive organization several acres of the park, allowing it to administer these public parklands on the state’s behalf? What if the private organization operated its regional headquarters there—from government-owned offices on the public parklands it administered—issuing edicts to enforce the organization’s internal ideological discipline throughout the surrounding eight or nine thousand square miles? What if the organization set up an Internet website prominently displaying its parkland address, along with membership applications denouncing those who differ with its religious views as incapable of becoming “the best kind of citizen”?

What if the government erected fences enclosing the organization’s special enclave, announcing that the facilities were being operated “for the benefit of the general public through the joint cooperation” of the government and the discriminatory organization? Finally, what if the state conferred all these benefits and administrative powers over public facilities without giving anyone else an opportunity to compete for them? The reasonable observer would have to conclude that the state had endorsed the discriminatory organization’s program, hopelessly entangling itself with the organization and its message.

These are the facts of the San Diego case: A discriminatory religious organization—one that shuns homosexuals as unclean, shuns nontheists as inferior second-class citizens, excludes Unitarian Universalists from full participation, and instills values hostile to Reform Judaism and to Buddhism—has been granted the right to control nearly eighteen acres of Balboa Park, in the City of San Diego’s very heart, where it operates its regional headquarters, administering its discriminatory regional programs from government-owned offices on government-owned land. Members of the public entering the facili-

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190 *See supra* text and graphic accompanying notes 170–71; Reply Brief of Defendant at 20, *Barnes-Wallace v. Boy Scouts of Am.*, Nos. 04-55732, 04-56167 (9th Cir. Apr. 25, 2005).

191 In 1992, for example, from its headquarters in Balboa Park, the BSA terminated a volunteer leader—El Cajon police officer Chuck Merino—because he is gay. *Merino v. San Diego*
ties find membership applications there prominently featuring the BSA’s Declaration of Religious Principles, and the Internet website for the BSA’s regional headquarters in Balboa Park features the same membership materials, identifying nontheists as inferior citizens.\(^{192}\)

The Supreme Court held in \textit{County of Allegheny v. ACLU},\(^{193}\) that the “Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from ‘making adherence to a religion relevant in any way to a person’s standing in the political community.’”\(^{194}\) Justice O’Connor concurred, explaining that the government cannot engage in conduct “sending a clear message to nonadherents that they are outsiders or less than full members of the political community.”\(^{195}\) The Declaration of Religious Principle displayed on every membership application distributed at Camp Balboa and available through its Balboa Park website, makes it very clear that children and adults who do not share the BSA’s views regarding duty to God are not “the best kind of citizen.”\(^{196}\)

If the City of San Diego had leased eighteen acres of Balboa Park not to the BSA, but to the Ku Klux Klan, giving \textit{no one} else an opportunity to compete with the Klan for the use of the property, reasonable observers would have to conclude that the City had endorsed the Klan’s message. The BSA, of course, is \textit{not} the Klan; it claims no tradition of violence designed to terrorize anyone. But that means reasonable citizens are all the more likely to perceive that the City has endorsed the BSA’s views.\(^{197}\)

\(^{192}\) \textit{Supra} note 189.


\(^{194}\) \textit{Id.} at 594 (quoting \textit{Lynch v. Donnelly}, 465 U.S. 668, 687 (1984) (O’Connor, J., concurring)). In \textit{Barnes-Wallace}, the relevant “political community” would seem to be the City of San Diego.

\(^{195}\) \textit{Allegheny}, 492 U.S. at 625–27 (O’Connor, J., concurring); \textit{see also} \textit{id.} at 595 (noting that government endorsement of religion is prohibited “because it ‘sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community’”) (quoting \textit{Lynch v. Donnelly}, 465 U.S. 668, 688 (O’Connor, J., concurring)).

\(^{196}\) \textit{See supra} text accompanying notes 127–39.

\(^{197}\) The BSA’s theological character and discriminatory policies were known when the City acted. \textit{See supra} text accompanying notes 168–70.
B. Winkler v. Rumsfeld: The Boy Scout Jamboree

Since 1981, the BSA’s quadrennial Jamborees have been held at Fort A.P. Hill, with the federal government—through the Department of Defense—spending millions of dollars to support each of the outdoor extravaganzas.198 After District Judge Blanche M. Manning ruled the practice unconstitutional due to the BSA’s character as a religious institution,199 and while the government’s appeal of that ruling was pending, Congress enacted the “Save Our Scouts Act of 2005.”200 This law directed the Secretary of Defense to continue providing “at least the same level of support” for each future Jamboree as was provided for the preceding event, unless the Secretary first reports to Congress that doing so “would be detrimental to the national security of the United States.”201 The substantive issue presented on appeal in the Seventh Circuit is whether the government’s remarkable program of direct aid to a discriminatory religious


200 The “Support Our Scouts Act of 2005” was included as § 8126 of the “Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006,” which became law on December 30, 2005, and which amended 10 U.S.C. § 2554 by adding a new subsection (i):

SUPPORT. – Section 2554 of title 10, United States Code, is amended by adding at the end the following:

(i)(1) The Secretary of Defense shall provide at least the same level of support under this section for a national or world Boy Scout Jamboree as was provided under this section for the preceding national or world Boy Scout Jamboree.

(2) The Secretary of Defense may waive paragraph (1), if the Secretary –

(A) determines that providing the support subject to paragraph (1) would be detrimental to the national security of the United States; and

(B) reports such a determination to the Congress in a timely manner, and before such support is not provided.


institution and its outdoor extravaganzas violates the First Amendment’s Establishment Clause.

Secretary of Defense Donald H. Rumsfeld’s opening brief before the Seventh Circuit concedes “that the ‘touchstone of neutrality under the Establishment Clause’ is whether a program ‘differentiates based on the religious status of beneficiaries or providers of services.’”202 Yet the BSA Jamboree clearly does differentiate by discriminating against children because of their religious beliefs and—in the case of Unitarian Universalists—denominational affiliation. By excluding many children on the basis of their theology, the government-sponsored Jamboree clearly is a program that “define[s] its recipients by reference to religion”—and that, ordinarily, violates the Establishment Clause.203

Citing the nineteenth-century decision of Bradfield v. Roberts, Secretary Rumsfeld insists in Winkler that the government is entitled to enter contracts with “religious institutions.”205 Bradfield involved a government contract with a hospital that happened to be operated by Catholics. “Whether the individuals who compose the corporation under its charter happen to be all Roman Catholic, or all Methodists, or Presbyterians, or Unitarians, or members of any other religious organization, or of no organization at all, is not of the slightest consequence,” the Supreme Court held, emphasizing there is “no allegation that its hospital work is confined to members of that church.”206 Had the hospital denied treatment to Unitarians or to secular Jews on the basis of their faith—as the BSA excludes children on the basis of their religion—one suspects the result would have been very different.207

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202 Brief for Appellant at 46, Winkler v. Rumsfeld, No. 05-3451 (7th Cir. Oct. 31, 2005) (quoting Zelman v. Simmons-Harris, 536 U.S. 639, 654 n.3 (2002)).
203 Agostini v. Felton, 521 U.S. 203, 234 (1997) (sustaining a program that “does not run afoul of any of the three primary criteria we currently use to evaluate whether government aid has the effect of advancing religion [because] it does not result in government indoctrination; define its recipients by reference to religion; or create an excessive entanglement”) (emphasis added); see Mitchell v. Helms, 530 U.S. 793, 808 (2000) (quoting Agostini, 521 U.S. at 234).
204 175 U.S. 291 (1899).
205 Brief for Appellant at 24–25, Winkler v. Rumsfeld, No. 05-3451 (7th Cir. Oct. 31, 2005).
206 Bradfield, 175 U.S. at 298–99 (emphasis added).
207 See Bowen v. Kendrick, 487 U.S. 589, 609 (1988) (emphasizing that Bradfield rejected contentions “that the mere fact that the hospital was ‘conducted under the auspices of the Roman Catholic Church’ was sufficient to alter the purely secular legal character of the corporation; particularly in the absence of any allegation that the hospital discriminated on the basis of religion” or operated in any way inconsistent with its secular charter”) (emphasis added); see also Hunt v. McNair, 413 U.S. 734, 743–44 (1973) (holding that state aid to Baptist College is permis-
In *Winkler*, Secretary Rumsfeld acknowledges that Justice Breyer’s concurring opinion in *Van Orden v. Perry* aptly describes the religion clauses’ purposes. “They seek to avoid that divisiveness that promotes social conflict, sapping the strength of government and religion alike.” It seems beyond dispute that the BSA’s discriminatory policies have produced considerable social discord. Federal sponsorship of the BSA Jamboree places the government in the center of open sectarian strife, with the government taking the side of religious conservatives who control the BSA, and acting against what the BSA’s most outspoken proponents loudly deride as “liberal churches” characterized by a “gutless ecumenism” and a “sissified, watered-down Social Gospel.” The government has entered what the BSA’s proponents themselves characterize as “a spiritual war” against liberal churches and mainstream values.

Secretary Rumsfeld cites *Capitol Square Review & Advisory Board v. Pinette* for the proposition that federal sponsorship of the BSA Jamboree must be evaluated from the perspective of a “reasonable observer” fully aware of the program’s history and context. So, what are those persons whom the BSA excludes, for religious reasons, as spiritually unclean, or as not “the best kind of citizen,” to think when the federal government expends millions of dollars sponsoring every Boy Scout Jamboree? What are victims of the BSA’s religious
discrimination to think when the President of the United States attends the government-sponsored Jamboree and urges some 30,000 assembled scouts to continue their organization’s policies of religious discrimination? What, indeed, are they supposed to think when the Congress provides for a unique upward ratchet for this organization—and no other—by requiring the Secretary of Defense to provide “at least the same level of support” for each future Jamboree absent a report to Congress that doing so would pose a threat to national security?

The federal government’s decision to lavish governmental support on a specific private organization like this—and in the midst of what conservatives insist is a “culture war” against religious liberals—says something to reasonable observers. Judge Manning was right: reasonable observers can only conclude that the government endorsed the BSA’s message, standing with religious conservatives, against America’s liberal churches and synagogues—and their children.

CONCLUSION

The conflict between the BSA and the UUA is one between different views of America’s religious traditions and her “traditional values.” The history set out in this article shows that the BSA today is controlled by religious conservatives who have made it very clear that religious liberals are not welcome, and who exclude many children on the ground that they are not spiritually “clean,” or do not possess religious beliefs essential to qualifying as “the best kind of citizen.” That the government should sponsor or endorse such an organization, aligning itself with the BSA against religious liberals, against Reform Judaism, and against Unitarian Universalism—comprising the churches of the Pilgrim Fathers and the Puritans’ “city on a hill”—should give us all pause.

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218 See Joseph Curl, Bush Urges Scouts to Retain Principles, WASH. TIMES, Aug. 1, 2005, at A3 (“President Bush yesterday told more than 30,000 Boy Scouts of America gathered at their annual jamboree not to waiver from their moral conviction or their duty to God and country, telling the boys that ‘there is right and there is wrong, and we can know the difference.’”).


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APPENDIX 1

Unitarian Universalist Association of Congregations
25 Beacon Street, Boston, Massachusetts 02108

September 4, 1992

Mr. David Worley
Relationships Division
Boys Scouts of America
1325 West Walnut Hill Lane
P.O. Box 152079
Irving, TX 75015-2079

Dear Mr. Worley:

I am the new Youth Programs Director for the Unitarian Universalist Association. My job is to oversee our association's programs for 12- to 20-year-olds, including the UU scouting awards, Love and Help and Religion In Life. While the UUA is a small denomination and we serve relatively few scouts each year, I feel it is important that these youth have the opportunity to earn their religious awards in a program which shares their values and faith tradition. Therefore, I have recommended that we continue to provide services for UU scouts.

We are concerned, however, with the Boys Scouts Association's policy of discriminating against homosexual and atheist youth. Our faith tradition values the worth and dignity of every individual, no matter their sexual orientation or their belief in a deity. We find it disturbing that an organization that does so much for helping to develop young men's self-identity, confidence, and leadership skills can support a policy which is so destructive to youth who do not conform to their mold of what a boy should be.

For this reason, our Board of Trustees passed a resolution at their recent meeting once again condemning BSA's policy and reorganizing the way we provide services to UU scouts. We have also committed ourselves to educate individuals regarding BSA's discriminating policy and work toward having those policies changed.

I have enclosed a copy of the resolution as well as a check for $7.00 to register as a member of the Religious Relationships Committee. I look forward to discussing these issues with your organization in the future.

Shalom,

Rev. Judy Agate
Youth Programs Director

JA:af

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APPENDIX 2

BOY SCOUTS OF AMERICA
National Office
1325 West Walnut Hill Lane
P.O. Box 152079, Irving, Texas 75015-2079
214-580-2000

October 29, 1992

Rev. Jory Agate
Youth Programs Director
Unitarian Universalist Association
25 Beacon Street
Boston, MA 02108

Dear Rev. Agate:

Please forgive the tardy response to your September 4th letter. I wanted to present your letter and resolution to the Religious Relations and Relationships Committees before I responded. They met as part of the National Executive Board Meeting on October 13th and 14th.

It is the position of the Boy Scouts of America that we have an obligation to the youth of America and to their parents to insure the best leadership possible. Scout leaders must possess character traits that are compatible with traditional family values which have been the backbone of our country and Scouting. We grant charters to organizations whose values are compatible.

The policy of the Boy Scouts of America is not to define God nor does it discriminate against any special interest group. As a private organization, we have the right to set standards of leadership. The same Congress that has given you the right to set your agenda has granted us the same courtesies. We respect your rights and would trust that you would extend us the same consideration.

Currently, there are over 75 youth and adult religious emblems available to the Scouts of their particular faith. While it is true that the respective religious institutions set the criteria for the award, it is worn on the Scout uniform and therefore responsibility of the Religious Relationships Committee to give final approval for all such awards. We have a committee reviewing your award in light of the resolution that your association has passed.

(continued)
Rev. Jory Agate  
Youth Programs Director  
Unitarian Universalist Association  
October 29, 1992  
Page 2

While we regret that you have taken the position of condemnation of our policies we must maintain our commitment to the values that have served millions of youth since 1910. At our last National Executive Board meeting our policies were reviewed. It was determined that they should not be compromised and are nonnegotiable.

The Religious Relationships Committee of the Boy Scouts of America uses a nominating committee process. Because of the resolution you have passed, I do not see a member of the Unitarian Universalist Association serving on this committee. Therefore I am returning your check for $7.00. Please understand that the refund is for your individual registration and in no way affects registration of the 682 youth currently enrolled.

Sincerely,

[Signature]

Donald L. Townsend, Director  
Relationships Division

enclosure
2006] TRADITIONAL VALUES OR A NEW TRADITION OF PREJUDICE?  57

APPENDIX 3

Unitarian Universalist Association
of Congregations
25 Beacon Street, Boston, Massachusetts 02108
Department of Religious Education

(617) 742-2100 FAX (617) 367-3337

December 2, 1992

David Townsend, Director
Relationships Division
Boys Scouts of America
1325 West Walnut Hill Lane
P.O. Box 152079
Irving, TX 75015-2079

Dear Mr. Townsend:

I am concerned about questions raised by your letter dated October 29, which refunded my check for membership on the Religious Relationships Committee. The Unitarian Universalist Association has a long history of involvement with the Boys Scouts of America, dating back to 1961 when the first version of our Religion in Life program was approved for UU Scouts. Over the years, earning this award has become an important part of a UU scout's religious and leadership development. Working on such an award helps youth understand who they are, what is important to them, and how they can best serve others. I believe that these are goals that both of our organizations share.

You stated in your letter that the Religious Relationships Committee uses a nominating committee process. Could you please clarify this process? It is not clear from your letter whether or not this was a decision made by the Religious Relationships Committee or your own administrative action. It is my understanding that no criteria has yet been established for serving on this committee. I should like to have the opportunity to discuss the issue of my membership with you and other members at the next committee meeting in February. Perhaps we could clarify our concerns at that time.

Further, I am greatly concerned for the 682 UU youth currently enrolled in scouting. Their religion award is an important part of their scouting experience. I am sure you can recognize this since your organization mandates that "a scout shall be reverent." Can you please inform me as to when a decision would be made on the approval of our scouting award program, and on what criteria our program is being reviewed? I hate to leave our youth in limbo and want to inform them as to the status of this program.

The Unitarian Universalist Association and the Boys Scouts of America have worked together toward common goals for more than three decades. If the Religious Relationships Committee is considering severing this alliance, then it is my hope that we have the opportunity to discuss the issues before such an action is taken.

I look forward to meeting you in February.

Shalom,

Rev. Jory Agate
Youth Programs Director
December 2, 1992

Religious Relationships Committee Member
Boys Scouts of America

Dear:

Last week I received a letter from Donald Townsend, Director of the Religious Relationships Committee, returning my $7 registration fee for membership on the committee. He stated that due to the UUA Board resolution regarding BSA policy, he does "not see a member of the Unitarian Universalist Association as serving on this committee."

The Unitarian Universalist Association has a long history of involvement with the Boys Scouts of America dating back to 1961 when the first version of our Religion in Life program was approved for UU Scouts. Over the years, earning the award has become an important part of the religious and leadership development of UU Scouts. Working on such an award helps our youth understand who they are, what is important to them, and how they can best serve others. I believe that these are goals that all of us share.

Mr. Townsend stated in his letter that the Religious Relationships Committee uses a nominating committee process. He did not explain this process or state why he does not see a member of our Association as serving on this committee. It is unclear to me whether this was a decision made by the Religious Relationships Committee at your October meeting or an administrative action taken on his own part. It is my understanding that the Committee has not yet established its criteria for membership. I would appreciate discussing the issue of my membership as UUA representative at the next committee meeting in February.

Mr. Townsend informed me that the Religious Relationships Committee has also established a committee to review the approval of our Religion in Life award. I am greatly concerned for the 682 UU youth currently enrolled in scouting. Their religion award is an important part of their scouting experience. I am sure you can recognize this in administering your own awards. While our denomination is small and the number of UU scouts is few, that does not lessen the impact their Boy Scout experience has on their lives. The Boy Scout Handbook calls on all scouts to be faithful in their religious duties and to respect the beliefs of others. We expect no less from our scouts, or from the BSA Religious Relationships Committee.
2006]  TRADITIONAL VALUES OR A NEW TRADITION OF PREJUDICE?  59

Unitarian Universalist Association of Congregations
25 Beacon Street, Boston, Massachusetts 02108
(617) 742-2100   FAX (617) 367-3237

Department of Religious Education

The Unitarian Universalist Association and the Boys Scouts of America have worked together
through common goals for the past three decades. If the committee is considering severing this
relationship, then it is my wish that we have the opportunity to discuss the issues before such an
action is taken.

I hope you support our desire for continued dialogue, and I look forward to meeting you in
February.

Shalom,

Rev. Jory Agate
Youth Programs Director
January 11, 1993

Rev. Jory Agate
Youth Program Director
Unitarian Universalist Association
25 Beacon Street
Boston, MA 02108

Dear Rev. Agate:

During our 30 year association, thousands of Unitarian Universalist youth have received the positive benefits of a quality Scouting program. One of the strong bonds that our two programs have shared has been the Scout Oath and Law. Any adult or youth who in good conscience can repeat the Scout Oath and Law are welcome in the B.S.A.

The Boy Scouts of America grants charters to churches, educational, fraternal and community organizations whose mission and values are compatible. The clear intent of your resolution is to remove the Unitarian Universalist Association as a national chartered organization. At the last meeting of the National Religious Relationships Committee, your request was honored.

With regard to your question concerning the B.S.A. Religious Relationships Committee structure, the bylaws of the BSA states that the Relationships Committee is the only standing committee recognized by the Executive Board. Clause 13 does establish the nominating committee as the standard operating procedure. The Religious Relationships Committee, Catholic, Jewish, Protestant, Community Relations plus the other various committees are "ad hoc" and members serve at the will of the chairman.

The Twelfth Point of the Scout Law is a Scout is Reverent. While the BSA does not define God nor does it discriminate against any special interest group, we do feel that a Scout must be able to adhere to the Scout Oath and Law. The Religious Emblem Program of the BSA has given millions of Scouts the opportunity to earn the award of their particular faith. It is the responsibility of the BSA to establish guidelines if the award is to be worn on the BSA uniform.
2006] TRADITIONAL VALUES OR A NEW TRADITION OF PREJUDICE? 61

Rev. Jory Agate
Youth Program Director
Unitarian Universalist Association
25 Beacon Street
Boston, MA 02108
January 11, 1993
Page 2

There is currently a committee reviewing these guidelines. They will bring forward their recommendations at the next Religious Relationships Committee meeting in February.

Currently, there are 26 Scouting units serving over 680 youth sponsored by Unitarian Universalist Churches. As long as they can live within the guidelines of the Scout Oath and Law, they are welcome to participate in the Scouting program.

It is not our desire to sever relations with any of our national chartering organizations nor to deny a quality Scouting program to any person who is willing to subscribe to the Scout Oath and Law. But, the Resolution of the Unitarian Universalist Association appears to bring to an end our longstanding alliance in serving youth.

Yours in Scouting,

[Signature]

Donald L. Townsend, Director
Relationships Division

jnw
APPENDIX 6


Religion in Life for Scouts and Explorers

Denominational religious emblem programs are highly regarded among Scouts and Explorers. Most Protestant denominations as well as Catholics, Jews, and Buddhists offer a program and emblem for Scouts and Explorers of their respective faiths.

The rationale for a religious award in Scouting is found in the Scout Oath, the Scout Law, and the Charter and Bylaws of the Boy Scouts of America. For example, “On my honor I will do my best to do my duty to God and my country and to obey the Scout law” (from the Scout Oath). “A Scout is reverent toward God. He is faithful in his religious duties. He respects the beliefs of others” (from the Scout Law, Twelfth Point).

The Boy Scouts of America is a secular organization that does not attempt to define or promote a specific theological position. Nevertheless, the fact that a majority of Scout troops are chartered by Roman Catholic, Methodist, and Latter-day Saint (Mormon) churches influence the positions and attitudes of the national leadership of the Boy Scouts. Local troops will vary in the political and cultural attitudes of their leaders depending on who these volunteers are.

Some Unitarian Universalists have trouble with the religious language in the Scout Oath, Law, and Charter. The Boy Scouts of America Advancement Guidelines contain a clear statement of religious principles in Scouting, quoted below from the 1980 printing:

*The Boy Scouts of America:*

1. Does not define what constitutes belief in God or the practice of religion.

2. Does not require membership in a religious organization or association for enrollment in the movement, but does prefer and strongly encourages membership and participation in the religious programs and activities of a church, synagogue or other religious association.

3. Respects the convictions of those who exercise their constitutional freedom to practice religion as individuals without formal membership in an organized religious organization. . . .

4. If a boy says he is a member of a particular religious body, the standards by which he should be evaluated are those of that group. This is why advancement committees usually ask for a reference from his religious leader to indicate whether he has lived up to their expectations.

The Board of Trustees of the Unitarian Universalist Association has expressed its dismay at the efforts of the Boy Scout’s national leadership to forbid boys who are gay or atheists from participating in Scouting activities. On June 30, 1992 the Board passed a resolution which states in part:

WHEREAS the By-Laws of the Unitarian Universalist Association affirm the inherent worth and dignity of every person, and a free and responsible search for truth and meaning;

WHEREAS the Unitarian Universalist Association Board and numerous General Assemblies have affirmed the rights of gays and lesbians to participate fully and equally in the life of their community.

WHEREAS the National Executive Board of the Boy Scouts of America has recently reaffirmed its policy requiring all boy scouts to affirm a duty to God.

THEREFORE BE IT RESOLVED that the Board of Trustees of the Unitarian Universalist Association express to the Executive Board of the Boy Scouts of America its disapproval of the Boy Scouts of America’s policy of discrimination against gay and atheist scouts and leaders.

BE IT FURTHER RESOLVED that the Department of Religious Education undertake to update the Religion in Life and Love and Help materials to include educational materials dealing with the conflict between the values of the Unitarian Universalist Association and the Boy Scouts of America; and to allow the award to be administered by local congregations.

BE IT FINALLY RESOLVED that the Unitarian Universalist Association explore possible coalitions with other organizations who share our concern with the Boy Scouts of America’s policies, to develop effective strategies to seek appropriate changes in those policies.

The UUA is not formally affiliated with the Boy Scouts of America. Individual UU congregations may charter scout troops if they wish. The UUA’s Religion in Life program is recognized by the Boy Scouts of America as one of the religious awards in scouting. However, the Boy Scouts of America is not responsible for its content or administration. It can also be used in other liberal religious denominations.

This 1993 revision reflects our Association’s ongoing concern regarding homophobic and discriminatory attitudes of the national leadership of the Boy Scouts of America.
APPENDIX 7

Leadership

The Challenge of Servant Leadership
A Seminar-Workshop for the Church

May 7, 1998

Ms. Jennifer Harrison
Director, Youth Programs
Unitarian Universalist Association
25 Beacon Street
Boston MA 02108-2800

Re: Religion in Life

Dear Ms. Harrison:

As you know, the Religious Relationships Committee is responsible for reviewing the content of the religious award manuals of the various religious organizations to ensure adherence to Boy Scouts policies. It has come to our attention that the UUA apparently has been recommending a version of the Religion in Life manual which was never submitted to or approved by the Committee for use in obtaining the Unitarian religious award in the Boy Scouting and Exploring programs.

This version of Religion in Life contains several statements which are inconsistent with Scouting's values. Boy Scouts is not a "secular organization" as stated in Religion in Life; Boy Scouts is an ecumenical organization which requires belief in God and acknowledgment of duty to God by its members. The reference to the "trouble" some Unitarian Universalists may have regarding the duty to God inappropriately incorporates doubt in an award process that is designed to forge a stronger link between a youth's Scouting values and religious life.

We note with considerable dismay that this version of Religion in Life also includes an official expression of disapproval of Boy Scouts' membership policies relating to known or avowed homosexuals. The Committee believes that this expression of disapproval has no place in a Boy Scouting/Exploring youth religious award manual.

The current version of Religion in Life does not adhere to Scouting policies and is inappropriate for distribution to Scouting youth in connection with the administration of the Religion in Life religious award. Until such time as the UUA materials can be redrafted to a form acceptable to the Committee, youth may not be awarded a Unitarian Universalist religious emblem in Scouting or wear the emblem on a Scout uniform. This includes the Love and Help emblem as well.

Sincerely,

[Signature]

Lawrence Ray Smith, Ph.D.
Chair, Religious Relationships Committee
Boy Scouts of America

522 East Lane • Kerrville TX 78028 • 210/895-5936
Traditional Values or a New Tradition of Prejudice?  

APPENDIX 8

June 11, 1998

Lawrence Ray Smith, Ph.D.
Chair, Religious Relationship Committee
Boy Scouts of America
522 East Lane
Kerrville, TX 78028

Dear Dr. Smith:

Our Youth Office received your letter of May 7 stating that Scouting youth may no longer be awarded the Unitarian Universalist Religion in Life award for Boy Scouts nor the Love and Help award for Cub Scouts. You do this because our manual for the Religion and Life award includes statements designed to help Unitarian Universalist youth deal with the tension that they may feel between Unitarian Universalist religious principles and certain aspects of BSA current policy, particularly with regard to discrimination against gay Scouts and leaders and with regard to those whose conscientious ethical and spiritual principles may not include a belief in God.

Surely the Religious Relationships Committee of the Boy Scouts of America cannot intend to tell a religious group what we may teach with regard to our own religious principles. We teach our youth, as a matter of religious principle, that discrimination against people simply by virtue of their belonging to a particular category of human being is wrong. We cannot be expected to ignore the question of discrimination against gay scouts and leaders in our guidance to boys studying our religious principles and history.

Unitarian Universalism also has a special openness, ministry and mission to those who may have trouble with traditional ideas about God. This too is a matter of religious principle with us. We know that we are not alone in regarding doubt, as well as piety, as a part of faith. Moreover, if a good Buddhist Boy Scout said, "No, I do not believe in a God," would you exclude that child for following the teachings of his own faith?

You attempt to define the Boy Scouts of America as an 'ecumenical' organization, and object to our reference to it as 'secular.' I believe that you misunderstand both words. 'Ecumenical' is a distinctively Christian term properly used only with regard to inter-Christian cooperation. It is not appropriate to an organization that aspires to inter-faith relationships. Rabbi and imams would not find it appropriate at all. Moreover, because the BSA is grounded in moral and civic values, but not in a particular religion per se, the term 'secular' is quite appropriate. Many BSA leaders, including members of the National Council, would repudiate the implication of your statement that the BSA is an entirely Christian organization. Or do you really wish to exclude Jews, Muslims, Hindus, and members of other minority faith communities?
Your committee is charged with a great responsibility: to help the BSA relate to the increasing religious pluralism of American society. Judging by your letter, you are in danger of failing in that task. You risk exposing the BSA to charges of discrimination -- not only against a sexual minority, but against entire religious groups, starting with Unitarian Universalism, a movement which has deep spiritual roots in America’s commitment to religious freedom, to democratic values, and to minority rights.

Some of our congregations date back to the time of the Pilgrims; others are associated with the American Revolution, the abolitionist movement, the struggle for women’s rights, for civil rights, etc. Our members have long cooperated with the BSA. Our churches sponsor troops, our members serve as adult leaders (some on the National Council), and our youth regularly win awards. Hundreds have received the Religion in Life award in recent years. I myself became a Life Scout, and attended a World Jamboree. As a pastor in New York City in 1990, I helped to organize a troop for boys then living in the city’s welfare hotels. Because of our long-standing concern for religious pluralism, we could be helpful to your committee. It saddens me when I see mistakes like your letter that threaten to deny Scouting and support of Scouting to boys who could benefit from it.

I have consulted Tom Deimler, the staff member of the BSA who works with your committee, and have agreed with him to take part in a meeting about all these issues in September or October. In the meantime, I must tell you that I believe that your letter has put your committee and the BSA in an untenable and nearly ridiculous position. We will not acquiesce in such discrimination. We will not stop distributing a Religion and Life manual that reflects our religious principles. We will not stop providing Religion and Life awards and Love and Help emblems to Scouts and Scout leaders. If you and the BSA honestly believe that it will promote or defend Scouting to refuse our awards or to have Scout officials tear them off the uniforms of boys, I think that you are sadly mistaken. Most Americans will see such actions for what they are: blatant discrimination against children on the basis of their religion.

Yours regretfully,

John A. Buehrens
President

cc. Tom Deimler
Howard Guthman
APPENDIX 9

September 30, 1998

Lawrence Ray Smith, Ph.D.
Chair, Religious Relationship Committee
Boy Scouts of America
522 East Lane
Kerrville, TX 78028

Dear Dr. Smith:

Yesterday we had a very good meeting with Tom Deimler, Director of the Relationship Division of the BSA, and with Mike Healy, an active Unitarian Universalist who also serves as area president for the BSA in the Northeast region. We agreed on two steps that taken together would allow the UUA and the BSA to resume an appropriate relationship.

For our part, the UUA will publish a new, revised edition of the Religion in Life manual. While continuing to assert as a matter of religious principle our belief in the worth and dignity of every person -- regardless of race or creed, gender or sexual orientation, ability or disability -- the revised manual will be written so as not to offend the BSA in any way.

Authors of the new edition will be the Rev. Keith Kron of our Faith in Action Department and the Rev. Cynthia Breen, UUA Director of Religious Education, both of whom were present at the meeting. Where we feel it necessary to help Scouts working on the award or Scout leaders acting as advisors to more fully explore Unitarian Universalist understandings of 'duty to God' or current BSA policies, the new edition will simply reference other helpful publications available from our Youth Office. This will avoid including in a manual for a BSA award material which the BSA finds inappropriate.

In return, I ask that the Religious Relationships Committee invite a Unitarian Universalist representative to join the Committee. We think it appropriate, given our willingness to resolve this dispute over the Religion in Life manual, to be invited "inside the tent," as it were. There we hope to join other religious groups in a spirit of inter-faith cooperation, helping the BSA to meet constructively the varied challenges of diversity.

Since I would like to convey word of both these steps to the UUA Board of Trustees when they meet in Boston on October 24, it would be helpful if you could respond to me promptly following the meeting of your committee on October 13. Obviously, we would also like to see the Religion in Life award re-instated to official BSA recognition, and to convey to concerned Scouts and others news of this agreement in a timely fashion.
As we discussed with Mr. Deimler and Mr. Healy, there have been some regrettable misunderstandings in the past both about some BSA terms and procedures and about the UUA's intentions. We do, however, desire to have a constructive relationship in which each organization can be true to its own sense of mission.

I trust that you and the Committee will accept this letter as it is intended -- in a spirit of reconciliation and in the hope for relational renewal. Please recognize that we need in return a communication from you that will both welcome us to the Committee table and hold out hope for official reinstatement of the award once the new manual is published. It would be good to have a letter from you that can be released soon along with mine.

Yours in hope,

John A. Buehrens
President

cc. Tom Deimler
    Mike Healy
October 19, 1998

Dr. John A. Buehrens, President
Unitarian Universalist Association of Congregations
25 Beacon Street
Boston MA 02108

Dear Dr. Buehrens:

Thank you for your letter dated September 30, 1998, which I received on October 10, 1998. I'm pleased to learn that you had a very good meeting on September 29, 1998, with Tom Deimler, Director of the Relationships Division of the BSA and Mike Healy, active Unitarian Universalist and Area President for the BSA in the Northeast Region.

Regarding the manual for the Religion in Life and the Love and Help Awards, I'm glad that there is a mutual agreement to offer a revision acceptable to both of us. Let's move quickly to resolve this.

As chair of the National Religious Relationships Committee of the Boy Scouts of America, I am asking our Relationships Division Director, Tom Deimler, to work with the already designated members of your staff as the new editions of the booklets are developed. The material would then be reviewed by our Religious Relationships Committee. As you are aware, our concern is whether the revised material will be consistent with Scouting's values and appropriate for use by Scouts. If it is, we would authorize the awards for use by Scouts and for display on Scout uniforms. At that point we can discuss the other matters in your letter.

Sincerely yours,

Lawrence Ray Smith, Ph.D., Chairman
Religious Relationships Committee
BOY SCOUTS OF AMERICA
National Office
1325 West Walnut Hill Lane
P.O. Box 152079, Irving, Texas 75015-2079
972-580-2000

March 18, 1999

Dr. John A. Buehrens, President
Unitarian Universalist Association of Congregations
25 Beacon Street
Boston, MA 02108

Dear Dr. Buehrens:

As you recall from Dr. Lawrence Ray Smith’s letter of May 7, 1998, we have been working with you and your staff to rewrite the Unitarian Religious Award manuals so that they reflect and are consistent with the values of the BSA. If a youth is to wear a medal on his Scout uniform, it must reflect the long-held values of our programs. As you indicated in your letter of September 30, the “revised manual will be written so not to offend the BSA in any way.”

In this spirit, a subcommittee of the National Religious Relationships Committee began to review the revised Religion in Life booklet and foreword when it was received on February 24, 1999. They felt that we had made significant progress on the main body of the requirements booklet, but wanted to review the references on page 5, section 3e before making final comments. They also asked to see the revision of the Love and Help requirement booklet (Cub Scout Award) and the Religion and Youth Award (adults).

In reference to the new foreword, the committee found that it continues to use boys as a venue for discussions related to UUA policies versus those of the BSA. Secondly, the committee found the foreword to be unacceptable, because it was being used as an agenda to drive issues with the BSA similar to those found in the 1993 rewrite of the curriculum.

John, as we move forward to resolve these issues, I want you to know that we continue to be very concerned that our private conversations appear on the UUA web site. As we have discussed before, the use of this very public forum to expound your issues with our organization has not contributed toward an atmosphere of cooperation.

Again, in the spirit of contributing to the character and integrity of our youth, I look forward to hearing from you regarding our concerns.

Sincerely,

Thomas R. Deimler
Director, Relationships Division
APPENDIX 12

Unitarian Universalist Association
25 Beacon Street, Boston, Massachusetts 02108
(617) 448-2200 FAX (617) 482-3337
http://www.uua.org

March 30, 1999

The Rev. Dr. John A. Buehrens
President

Thomas R. Deimler
Director, Relationships Division
Boy Scouts of America
1325 West Walnut Lane
Irving, TX 72015-2079

Dear Tom:

I'm sorry that my proposed Foreword for Religion in Life caused consternation. Fine. We'll simply omit it.

We have also decided not to reference any specific UUA pamphlet resources on page 5, section 3e, but simply suggest that the mentor and youth select those that seem relevant. That should take care of that concern.

In addition to a revised version of Religion in Life incorporating those changes, I am also sending along a copy of the current edition of Love and Help. While last revised in 1984, we have no plans to change it. It seems to work well and has never been the cause for any concern by the BSA. I can understand the desire to see it, however.

There simply is no manual for the Religion and Youth Award currently in print. Evidently there has been insufficient demand in recent years for such a UUA publication. If we do develop one again, we will be glad to run it by you.

Certainly I'm as sorry as you are that we have to post progress reports on our discussions in the semi-public space of our website. The demand from our constituents for updates, however, makes such reporting necessary.

Please give me a call at your convenience. With all good wishes in this season of renewal,

Yours sincerely,

[Signature]

John A. Buehrens
President

cc. Breen, Kron, Stites, Hurley, Weiner
Enc. (2) Religion in Life, Love & Help

Affirming the Worth and Dignity of all People
April 23, 1999

The Rev. Dr. John A. Buehrens, President
Unitarian Universalist Association of Congregations
25 Beacon Street
Boston, MA 02108

Dear John:

Many thanks for your early response to matters concerning the revision of "Religion and Life" booklet. We have received your letter of March 30, 1999 along with your latest changes of this material.

Copies of the booklet were then forwarded to the subcommittee of the National Religious Relationships Committee for their review. A meeting of that group was held on April 20, 1999.

I am very happy to report that the committee has unanimously expressed their endorsement of this new material. They are most complimentary of the willingness of you and your staff to work closely with us in this endeavor.

Thusly, the Boy Scouts of America now reauthorizes the awarding of the Religion in Life emblem to Scouts and the wearing of that emblem on a Scout uniform. This includes the Love and Help emblem as well. If any further changes would be needed in the future, our committee will stand ready to review your proposals.

Best wishes to you.

Sincerely yours,

[Signature]

Thomas R. Deimler, Director
Relationships Division

jmw
2006] TRADITIONAL VALUES OR A NEW TRADITION OF PREJUDICE? 73

APPENDIX 14

Unitarian Universalist Association of Congregations
25 Beacon Street, Boston, Massachusetts 02108
(617) 742-2100 FAX (617) 367-3237
http://www.uua.org

The Rev. Dr. John A. Boekeborn
President

April 28, 1999

Dear Friends:

As you know, the UUA has been involved in discussions with the Boy Scouts of America regarding the status of our Religion in Life award. In May, 1998, the BSA informed us that, due to certain language in the Religion in Life manual, we could not award the Religion in Life emblem to our scouts. We strongly protested this decision. It pleased me to tell you that this conflict has been resolved: the UUA has revised its Religion in Life manual to the satisfaction of the BSA without abandoning the UU values at its core. I want to share with you a portion of the letter dated April 23 which I received from Thomas Deimler, Director of the Relationships Division of the Boy Scouts of America. The letter reads, in part:

"Many thanks for your early response to matters concerning the revision of the Religion in Life booklet. . . I am very happy to report that the committee has unanimously expressed their endorsement of this new material. They are most complimentary of the willingness of you and your staff to work closely with us in this endeavor. Thus the Boy Scouts of America now reauthorizes the awarding of the Religion in Life emblem [by the UUA] to Scouts and the wearing of that emblem on a Scout uniform. . . . Best wishes to you."

The UUA will now begin discussions with the Boy Scouts about possible service on the BSA Religious Relationships Committee. We would like to do this for three reasons.

First, many of the values of scouting are congruent with our UU principles. I myself became a Life Scout, and other UU ministers are Eagle Scouts. Scouting has played a significant role in the lives of many young UUs, no small number of whom are members of scout troops sponsored by their own UU congregations.

Second, the BSA bylaws contain a statement about the nature of God which many good people in many traditions would find impossible to accept. The BSA is already being challenged on issues of religious discrimination. The American Civil Liberties Union has sued the public schools of Chicago, for example, over sponsoring Scout units which require a particular form of religious belief. If the BSA is going to adapt successfully to the religious pluralism of the 21st century, they will need counsel from groups like the UUA -- not just from religious conservatives.

Affirming the Worth and Dignity of all People
Third, we believe that the BSA can and should adopt new policies with regard to volunteers, to membership and to homophobia. Along with many UUs involved in Scouting, it is our position that local parents, Scout Councils, and troop sponsors should assume a great role in volunteer and membership issues. Discrimination on the basis of sexual orientation should not be allowed to continue as a national policy of the BSA. It will ruin the organization, costing them the support of millions of people, of foundations, and of the United Way in many areas.

Congregations and denominations that oppose homosexuality may have some right to influence the selection of leaders in troops which serve their own youth, but they should not prevent congregations and denominations like the UUA and the United Church of Christ (UCC) from conducting themselves in a way that represents our own religious values. For us, this will include an emphasis on comprehensive sexuality education and efforts to reduce homophobia.

The new edition of Religion in Life will be available from the UUA Bookstore this summer. Along with each copy, the Association will separately provide a letter from me, along with resources appropriate to dealing with issues of homophobia and religious discrimination.

It is still not clear to me that the BSA can be redirected from patterns that in the long run will be institutionally self-destructive. I am very pleased, however, that we have been able to resolve any implication that they wish to practice an added discrimination toward Unitarian Universalists simply because we support the belief that it is not homosexuality but homophobia which is a sin.

Yours faithfully,

John A. Bauhrens
President
Unitarian Universalist Association of Congregations
APPENDIX 15

Leadership

The Challenge of Servant Leadership
A Seminar Workshop for the Church

May 7, 1999

Dr. John A. Buchrens, President
Unitarian Universalist Association
25 Beacon Street
Boston MA 02109

Dear Dr. Buchrens:

It has come to our attention that you have posted on the UUA web site a letter of April 28, 1999, in which you state that the UUA has revised its “Religion in Life” manual to the satisfaction of the Boy Scouts of America, referring to a letter of April 23 from Thomas Deimler of the BSA.

Your letter goes on to say the following: “The new edition of Religion in Life will be available from the UUA Bookstore this summer. Along with each copy, the Association will separately provide a letter from me, along with resources appropriate to dealing with issues of homophobia and religious discrimination.” Unfortunately, this simply reopens the entire issue of using boys as a venue to air your differences with the policies of the Boy Scouts of America.

These circumstances were not contemplated when Mr. Deimler wrote his letter. Therefore, Boy Scouts of America is not in a position to authorize the awarding of the Religion in Life emblem to Scouts and the wearing of that emblem on a Scout uniform.

Sincerely yours,

[Signature]

Lawrence Ray Smith, Chairman
Religious Relationships Committee
What has happened to Boy Scout honor?

The Boy Scouts of America have sent the UUA yet another letter. This one rescinds the decision to reinstate BSA recognition of our Religion and Life Award for UU scouts. Moreover, they have taken the initiative to contact the press on the matter. Both steps seem to me astonishing. I have tried consistently to be cooperative with the BSA, while staying true to Unitarian Universalist principles. On receiving the letter, my first reaction was that there must be a lack of internal coordination within the Boy Scouts or a misunderstanding of our intentions. Those intentions were explained to representatives of the Boy Scouts last September and were fully agreed to. It was agreed that the UUA would issue a new edition of the Religion and Life manual; that the manual would contain nothing objectionable to the BSA; and that the UUA would then make available, along with the manual, some separate materials that would be helpful to our young people and their advisers, showing forth our religious principles in relation to the issues that have been part of this controversy. Unitarian Universalism has long been a strong supporter of equal rights for gay, lesbian, bisexual, and transgender people, and we have a responsibility to our young people to instruct them in the religious values which underlie our commitment to this struggle.

This is all we have done. We have prepared a new manual, which they have accepted and which we will publish. We have also prepared some materials aimed at advising young people whose religion teaches “the worth and dignity of every person” how they might want to respond to slurs aimed at another person’s, or their own, sexuality, or supposed sexuality. These materials are coordinated with our comprehensive new curriculum on human sexuality, Our Whole Lives.

I have personally written a short pamphlet, When Others (or You) Say ‘God’, designed to help young people from a pluralistic religious tradition understand some of the multiple ways in which the word ‘God’ is or can be understood. It seems to me that UU youth who choose to take the Scout oath need this because in the oath a scout promises “to do my duty to God . . .”

In the course of this controversy I learned that the BSA actually knows that what it is doing in response to the so-called ‘gay’ issue has more to do with politics than with children’s safety. The BSA knows the difference between pedophilia and homosexuality. It does training on the subject. Yet they continue to practice arbitrary discrimination. Ignorance is one thing. Knuckling under to anti-gay pressure groups is quite different, and entirely unworthy.

The UUA will continue to teach its religious principles and to help its young people to apply them. This is our religious duty. My question is this: does the BSA really mean to say that our teaching must stop where it makes them uncomfortable? That we cannot provide religious materials along with Scout materials? If so, what other faith groups will suffer from Boy Scout discrimination? After all, prejudice, once it takes hold in one’s soul and is rationalized against one group can easily spread to include other objects of prejudice. Evidently Unitarian Universalists have now become such objects for the BSA. No wonder they have not been honorable in their dealings with us.

Rev. John Buehrens
President, UUA
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APPENDIX 17

PRESS RELEASE PRESS RELEASE PRESS RELEASE PRESS RELEASE PRESS RELEASE

Unitarian Universalist Association

25 Beacon Street • Boston, MA 02155

For immediate release

Religious Leader Decries Court Ruling

(June 20, 2000) The Rev. John Buehrens, president of the Unitarian Universalist Association, deplored today’s ruling by the United States Supreme Court in the case of the Boy Scouts vs. James Dale. “We regret the Court’s decision, which is a setback for justice, human rights, and non-discrimination,” Buehrens said. Addressing the issue from a moral perspective, Buehrens said, “Unitarian Universalists and others know that it is homophobia that is the sin, not homosexuality.”

“The Boy Scouts have been alone among youth organizations in practicing this kind of discrimination,” Buehrens continued. Noting that the Court’s decision treated the Boy Scout’s as a “private organization,” Buehrens said, “The Boy Scouts cannot have it both ways. If they are allowed to discriminate, then it is time to end their access to public facilities such as public schools and to consider revoking their Congressional charter.”

The Unitarian Universalist Association has been embroiled in a dispute with the Boy Scouts for over two years due to the Association’s vocal support of both gay rights and the rights of agnostic scouts. In 1998, the Boy Scouts rescinded the authority of the liberal religious group to award its Religion in Life emblem to Unitarian Universalist scouts who complete the required program. The UUA has continued to award the emblem despite the Boy Scouts’ prohibition.

“We call upon the Boy Scouts of America to end their discrimination against gays and also to end their discrimination on the basis of religious belief, including discrimination against Unitarians and others whose definition of God is different from the Boy Scouts’ definition,” Buehrens said.

Unitarian Universalism is a liberal, creedless religion with Judeo-Christian roots. The UUA was formed in 1961 through the merger of the Universalist Church of America and the American Unitarian Association. For more information on the UUA or its dispute with the Boy Scouts of America, please contact John Hurley, Director of Information, at (617) 742-2100 x131 or by email at jhurley@uua.org.

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