

# **APPIGNANI HUMANIST LEGAL CENTER SPEECH**

## **Mel Lipman, AHA President**

Good morning. I am Mel Lipman. As the president of the American Humanist Association, and as the head of the legal team I am delighted to be here to announce the AHA's newest venture, the Appignani Humanist Legal Center, the first nontheistic legal center in the nation's capital.

Humanists, atheists and freethinkers regularly face exclusion from public life through government-supported holidays like the National Day of Prayer, the posting of the Ten Commandments in courthouses and the favoritism toward religion seen in many individual pieces of legislation. Though there have been some freethought victories, President Bush's Faith-Based Initiatives have received billions of dollars in funding, including religious anti-choice "crisis pregnancy" centers all across the country that discourage women from making their own decisions regarding their reproductive health. What's more, in states from coast to coast, school boards are seeking ways to insert religion in classrooms, textbooks and curricula.

Today we are seeing an increasing erosion of church-state separation that threatens this nation's democratic values. The American Humanist Association has been working to expose diminishing freedoms through its publications, the media and advertising campaigns. Our organization already participates in advocacy coalitions and supports an extensive grassroots network to ensure that the legislative playing field doesn't tilt further toward religious fundamentalism. It is through such activities that we act as a unique bridge, linking nontheistic communities, progressive communities of faith and national secular organizations to create a more significant impact.

This new legal program will capitalize on our existing connections in the secular and progressive religious communities. It will also allow us to better focus our keen interest and expertise in the area of separation of religion and government.

Religious liberty faces threats on many sides. The only way we will be able to preserve this right is to create strong precedents in the legal system. The legal challenges my colleagues will discuss today, and those we take on in the future, pave the way for an America where humanists are openly and equally accepted.

The Appignani Humanist Legal Center will work to make sure that the First Amendment to our Constitution is honored. More than that, though, the Center will pick cases that highlight our cause to the broader public. By working on these and drawing attention to injustices, the Appignani Humanist Legal Center will educate Americans on the importance of religious liberty and the plight of humanists in the United States.

Litigation and education will only be two parts of the Appignani Humanist Legal Center; we'll also expand our efforts to build coalitions. Through coalition building with minority as well as majority religious traditions, new lines of communication among leaders will

be developed. The AHA has an extensive history of defending individual integrity and rights, and has long been committed to achieving the common good of church-state separation through successful coalition activity. The Appignani Humanist Legal Center will capitalize on these assets and work together with many groups toward the goal of religious liberty for all. We are a nation whose people believe in different gods or goddesses, or no such gods. Minority views concerning religious beliefs should not be made subservient to majority views by government endorsement.

In my constitutional law classes I am frequently asked why challengers of establishment clause violations don't just go along with the majority. I refer them to the 1943 Supreme Court decision in *West Virginia v. Barnette* in which Justice Jackson wrote that fundamental constitutional rights "may not be submitted to vote; they depend on the outcome of no elections." We must not allow a tyranny of the majority in this country.

In the 1963 decision declaring public school prayer unconstitutional, the school district argued that this was too trivial a matter to be in the court. Justice Clark rejected that argument saying, "What is today a trickling stream may tomorrow become a raging torrent."

Our unique Legal Center will help prevent that raging torrent.

As the first nontheistic legal center in the nation's capital, the Appignani Humanist Legal Center will be able to build on the successful working relationships that the American Humanist Association already has with national legal and religious freedom organizations in the struggle to uphold the Bill of Rights.

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## **Roy Speckhardt, AHA Executive Director**

For the second election season in a row we have a strong debate on moral values in this country. While most of the players in the debate claim a faith tradition as the basis for their beliefs, we humanists claim an ethical tradition—one based not on divine revelation but on concepts derived from human reflection and analysis. We humanists are nontheistic in outlook, deriving our values from human need and interest in the here and now. We strongly hold to the importance of compassion, and we view people around the globe as having equal inherent worth and dignity.

Humanism is a progressive philosophy of life that, without supernaturalism, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity.

Our honorary president, Kurt Vonnegut, sums up the matter succinctly, saying, “Being a humanist means trying to behave decently without any expectations of rewards or punishment after you’re dead.”

But this is a minority view in the United States. And in feeling our minority status as fully secular Americans, we are naturally concerned for ourselves and other religious and philosophical minorities. And this makes us keenly aware of the need for a religiously neutral government that respects the rights of all minorities. It’s no wonder that we are strong proponents of the principle of church-state separation.

While not being religious we aren’t antireligious. Indeed, we often value what emanates from certain religious communities. An obvious example is the great job that churches and religious individuals did when responding to the crisis on the Gulf Coast. We work in coalition with many progressive religious organizations and individuals to further goals and values consistent with a more humane, just and progressive world.

We hold that the protection of religious freedom is central to American values. And it’s central to humanism as well. The United Nations Universal Declaration of Human Rights, which the AHA works to distribute through our U.N. office, states in Article 16 that: “Everyone has the right to freedom of thought, conscience and religion.” Along with the right to a free press, free speech and freedom of assembly, the freedom of religion creates the freedom to think. Without that freedom, democracy would cease to exist. And that is why religious liberty is placed in the very first amendment to the U.S. Constitution.

But it’s a new idea to put a team of lawyers together that is specifically dedicated to defending humanists in the courts and promoting concerns unique to humanists. We have never done anything like this before. So the question arises: why now?

George W. Bush has been busy appointing conservative Christian judges who don't support the separation of church and state. And year after year we're seeing government intruding further and further into the religious sphere. It's no longer enough for us humanists to rely on our friends in other organizations to support us. Our colleagues at the ACLU, the NOW Legal Defense Fund, the Southern Poverty Law Center, Lambda Legal and others are legitimately focused on their own struggles. So we humanists, along with those who hold to other minority views, need to stand up for ourselves. We need to be clearer about our identity, clearer about our issues, and louder.

The humanist movement has a long, though sporadic, history of utilizing the courts to stand up for the rights of nontheistic Americans. From defeating McCarthy Era civil liberties abuses in the 1950's to putting a cap on some of Bush's faith-based initiatives today, reason can prevail in the courts.

In the 1960's alone the American Humanist Association was leading efforts that defeated official school prayer, extended conscientious objector status to those who don't believe in a god and ended religiously based discrimination against unmarried people who wished to use contraception.

But through all this history no nontheistic group has ever had more than a few lawyers involved at any given time. Thanks to grants from the Appignani Foundation, the Institute for Humanist Studies, and donations from dedicated members, we at last have our own Humanist Legal Center with over two-dozen lawyers aiming to do more than humanists have ever done before in the legal arena.

## **APPIGNANI HUMANIST LEGAL CENTER SPEECH**

### **James Hurley, AHLC Litigating Attorney**

Good morning. I am James Hurley, the lead litigator of the case we are here to announce and a member of the legal team. I am thrilled to be here with you all this morning and to be involved in the inaugural case of the Appignani Humanist Legal Center.

The AHLC's interest in this case springs from a recent study released by Stanford University's Graduate School of Business, which found that environmental cues in polling locations have a measurable and significant impact on electoral results ([www.americanhumanist.org/press/stanfordstudy.pdf](http://www.americanhumanist.org/press/stanfordstudy.pdf)). As churches are currently the most common polling location in America, this is an incredibly distressing fact to humanists and other concerned with church-state separation. As the wall of separation seems to erode regularly and citizens are more and more frequently asked to vote on religiously tinged legislation, the effects of voting in a religious building cannot be ignored. As such, the AHA contacted its members and asked that they contact us if they experienced any blatant religiosity in their polling locations.

The responses were shocking. Members across the country spoke of voting in churches. An Illinois member voted in a church that displayed a four-foot wooden crucifix right above the election judges. Another member in California was confronted with a large marble plaque dedicated to the "unborn children" who are killed by abortion and containing a quote from the Bible justifying the notion that the soul is alive in the womb. And a New York member voted in a room featuring large religious slogans on the wall behind the voting machines. And these are only a handful of the cases. A Jewish man in Wisconsin, whose polling place was at a Catholic church, said he was disturbed to see a crucifix hanging over a ballot box as well, and we have no doubt that scores of similar experiences occurred all over the nation.

As such, the AHLC chose one of the most egregious and well-documented cases, the one which we are gathered to discuss, and is also working to file suit against several municipalities in Illinois and elsewhere. In the current case in the Southern District of Florida, *Rabinowitz v. Anderson*, plaintiff Jerry Rabinowitz, a self-employed photographer, was assigned by Palm Beach County Supervisor of Elections Dr. Arthur Anderson to vote at Emmanuel Catholic Church in Delray Beach, Florida. To enter the polling place, he was forced to walk past a church-sponsored "pro-life" banner framed by multiple giant crosses before even entering the church to cast his vote. Mr. Rabinowitz said that "being surrounded by religious icons and prayers" set the tone for entering the voting place and that it caused him to be "extremely upset at having to cast [his] ballot in a religious setting."

Upon entering the polling place, which was located in a classroom in the church, Mr. Rabinowitz observed many religious symbols in plain view, both surrounding the election

judges and in direct line above the voting machines. These objects included a sign declaring that “Each of Us Matters to God,” multiple crucifixes, a sign that says “God, I Make a Difference!,” a large copy of the Lord’s Prayer and a Hail Mary, and a large poster of the Ten Commandments.

Mr. Rabinowitz objected to the cross and other religious symbols and asked election officials to remove or cover them for the remainder of the voting. Officials there insisted that they were to stay. Thereafter, when he was done voting, he repeatedly visited the precinct polling place that day. The religious icons, poster and framed documents remained and there was no effort made to cover or remove the religious materials. Some of the materials were in easily removable picture frames, some were just posters.

When asked, the Palm Beach County Supervisor of Elections Office said there was no rule requiring removal of such religious icons. The representative who spoke to the investigator said that though the churches were being used for government business for the day, “we can’t [remove religious objects] because they’re not tax supported” like schools or county buildings and are “at will.”

This is clearly a violation of the Establishment Clause of the First Amendment to the U.S. Constitution, which provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>1</sup> The prohibition against the establishment of religion applies to the states through the Fourteenth Amendment.<sup>2</sup> A governmental practice violates the Establishment Clause if: (1) it does not have a secular purpose; (2) its primary effect is to advance or inhibit religion; or (3) it fosters excessive government entanglement with religion.<sup>3</sup> State action violates the Establishment Clause if it fails to satisfy any of these prongs.<sup>4</sup>

The use of the church as the polling place in this case, with all of its outward and obvious manifestations of religion, has the primary effect of advancing religion. The Supreme Court has “paid particularly close attention to whether the challenged governmental practice either has the purpose or effect of ‘endorsing’ religion ....”<sup>5</sup> The Court explained that “[t]he 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.’”<sup>6</sup> The “primary effect” of the conduct at issue in this case can be nothing if not Government endorsement of religion. Dr. Anderson’s refusal to remove the religious items from the polling location after Mr. Rabinowitz had complained is further proof that the challenged

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<sup>1</sup> U.S. Const., Amend. I.

<sup>2</sup> King v. Richmond County, Georgia, 331 F.3d 1271, 1275 (11th Cir.2003).

<sup>3</sup> Lemon v. Kurtzman, 403 U.S. 602, 612-13, (1971); Lynch v. Donnelly, 465 U.S. 668, 679, (1984).

[FN12]

<sup>4</sup> Edwards v. Aguillard, 482 U.S. 578, 583, (1987).

<sup>5</sup> County of Allegheny, 492 U.S. at 592.

<sup>6</sup> Id. (quoting Lynch, 465 U.S. at 687, 104 S.Ct. 1355 (O’Connor, J., concurring)).

conduct was intentional, so this Court should find that both the intended and actual effect of the practice in dispute was the advancement of religion.

One of the reasons that the First Amendment exists is to protect us from the effects of excessive government entanglement with religion.<sup>7</sup> The 1,830 people who voted in Rabinowitz's Precinct – regardless of their individual religious beliefs – should have the freedom guaranteed therein to vote in a secular environment free of religious symbols and messages. And Mr. Rabinowitz's Precinct is by no means unique. The use of churches as polling places in the State of Florida is widespread; in many counties they amount to more than 60% of the polling places. Churches remain the top polling location nationwide.

I believe all use of churches as polls for precinct voting to be unconstitutional. This case is the first direct challenge to using religious buildings such as churches under the Establishment Clause, and we hope that it will set precedent that will eventually enable all Floridians – and all Americans – to vote in a neutral location.

I am excited to be litigating this case, along with Attorney Barry Silver of Boca Raton, Florida. I will now return to Heidi Bruggink, who will lead the question-and-answer portion of this morning.

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<sup>7</sup> See Lemon v. Kurtzman, 403 U.S. 603-04, (1971) ([p]olitical division along religious lines was one of the evils at which the First Amendment aimed).

# APPIGNANI HUMANIST LEGAL CENTER SPEECH

## Heidi Bruggink, Legal Coordinator

It is a pleasure to be here with you all this morning. My name is Heidi Bruggink and I am the legal coordinator of the Appignani Humanist Legal Center of the American Humanist Association. The Appignani Humanist Legal Center, though officially being launched today, has already been quietly busy in a variety of arenas. Over the past few months we have been building our legal team. Our attorney roster includes many accomplished and prominent nontheistic attorneys, including Jim McCollum, Wendy Kaminer, and Michael Newdow.

McCollum has been active in defending the rights and interests of nontheistic Americans since 1945, when he took the stand as a young student in what would become *McCollum v. Board of Education*, the landmark U.S. Supreme Court case that, in 1948, ended public school religious instruction. Kaminer, a former Guggenheim Fellow, social critic, and legal scholar, has written extensively about the intersection of religion and politics in America; she formerly served as a staff attorney in the New York Legal Aid Society and the New York City Mayor's Office and as a Board Member of the ACLU. Newdow is a medical doctor and attorney who gained nationwide recognition for his U.S. Supreme Court case, *Elk Grove Unified School District v. Newdow* (2004), in which he attempted to have the words "under God" removed from the Pledge of Allegiance.

The Appignani Humanist Legal Center legal team now consists of twenty-seven committed lawyers supported by several law students, myself and other American Humanist Association staff. We've been drawing on staff and legal team members alike in order to keep abreast of important legal developments nationwide. We're currently monitoring a variety of potential cases and legal concerns.

Here in the nation's capital, the Appignani Humanist Legal Center is building the framework necessary to have a significant impact in the political arena, taking steps to advance humanist ideas through activity in various local and national coalitions. Indeed, we are active in over twenty coalitions: particularly the Coalition Against Religious Discrimination, the Coalition Against Discrimination in the Constitution, Pledge Act, the National Coalition on Public Education and the Washington Interfaith Committee on Human Rights.

In the past few months the AHLC has been able to remain under the radar but still provide meaningful support for work on proposed legislation concerning same-sex marriage, the federal courts' right to hear religious liberty cases, voting rights, civil rights, symbolic speech and various other pieces of unconstitutional legislation. We have also sent numerous letters to members of Congress and lobbied our elected representatives to voice our concerns regarding these issues. We actively work with our coalition partners on reproductive rights, voucher programs that utilize public funds for

religious schools, faith-based initiatives and civil liberties issues. Next year we plan to also act to develop a new diverse working coalition that focuses on the needs of religious and secular minorities.

In addition to our activity through coalition work, the AHLC has already quietly submitted two amicus letters in the Ninth Circuit Court of Appeals. Our first amicus letter was filed on behalf of AHLC founding attorney Michael Newdow in his case, *Newdow et al. v. Carey et al.* In our letter we argued that it is unconstitutional for the Elk Grove Unified School District and the Rio Linda Unified School District to require that schoolchildren recite the monotheistic Pledge of Allegiance. Our second amicus letter was on behalf of longtime AHA member Philip Paulson in *Paulson et al. v. City of San Diego et al.* In it we argued that the Mount Soledad cross in the city of San Diego is an unconstitutional breach of the Establishment Clause and represents a clear preference for the monotheistic views of Christians. (The full story of that case is summarized by Paulson himself in the copy of the *Humanist* magazine that you will find in your press packets.)

Continued amicus activity will remain a benchmark of Appignani Humanist Legal Center, as such activity remains the most effective and efficient way, aside from direct litigation, to ensure that humanist perspectives are heard in the courts.

In the months to come the Appignani Humanist Legal Center will step up efforts to defend the constitutional rights of religious and secular minorities through direct litigation, amicus activity and public outreach. By engaging volunteers from the coalition of organizations, pro-bono lawyers will provide legal assistance to challenge unconstitutional laws and executive actions, while helping individuals who suffer violations of their constitutional rights. In recent years the American Humanist Association has received numerous requests for action from humanists across the nation who have experienced discrimination. Now we will finally be positioned to offer them the assistance they need to receive justice.

In addition to today's case, we are also monitoring several violations of the Establishment Clause that may necessitate legal activity. One such example is the fact that, in Texas, potential jurors are now being asked their religious identification, which could result in religious discrimination in jury pools. Another is that nine state constitutions--Arkansas, Maryland, Massachusetts, Mississippi, North Carolina, South Carolina, Pennsylvania, Tennessee and Texas--still mandate a religious test and affirmation of belief of God to hold public office, which restricts the civil involvement of humanists, among others. We also foresee launching a case against the use of misleading and religiously influenced abstinence-only sex education programs in public schools; such action would mark the first time these programs faced a legal challenge. Finally, we are monitoring selected cases involving our members nationwide, ranging from the teaching of creationism to the proper implementation of religious clubs in public schools.

James Hurley, the Legal Center member litigating our current case, will now discuss today's legal activity, what prompted us to file and how we see this case developing.

### **Louis Appignani**

Louis Appignani is a successful entrepreneur from Miami, a longtime Humanist and member of the AHA, and the founder of the Appignani Foundation. Through the foundation, Appignani and others encourage the spread of humanistic values through secular organizations and activities- thus contributing to the growth of the Humanist movement. Appignani currently serves as chairman and founder of LouJA Realty Inc. He was also the chairman and founder of Computer Education Inc., and Barbizon International Modeling School and has served on the boards of several professional civic organizations. He earned a BBA in accounting from CUNY-Baruch and an MS in finance from Columbia University. He attended postgraduate studies in economics at Indiana University.

### **Mel Lipman**

Mel Lipman is the president of the American Humanist Association. He is a former board member of the Nevada Civil Liberties Union and remains active in many ACLU efforts. Lipman is also on the Executive Committees of the Humanist Institute and the Humanist Association of Las Vegas and Southern Nevada. A Humanist minister, Lipman is a member of the Las Vegas Interfaith Council and frequently lectures on church-state issues.

Lipman is an attorney and constitutional law expert. Though retired from full-time legal practice, he works as an arbitrator and mediator while teaching constitutional law at Nevada State College and at the Nevada campus of the University of Phoenix.

### **Roy Speckhardt**

Roy Speckhardt is the executive director of the American Humanist Association. Speckhardt regularly provides a Humanist perspective on progressive political issues and his commentary frequently appears in print and other media. He holds an MBA and a BA in Sociology.

Speckhardt serves as a board member of the Humanist Institute and is an advisory board member of the Women's Law & Public Policy Fellowship Program and the Secular Student Alliance.

### **Heidi Bruggink**

Heidi Bruggink is the Legal Coordinator for the Appignani Humanist Legal Center, headquartered at the American Humanist Association in Washington, DC, where she directs the legal center's activity and represents the AHA in its advocacy and coalition efforts. Previously she was a paralegal for a Washington, DC law firm.

Heidi is a 2005 honors graduate of Harvard University, where she co-founded the Harvard Society for Peace and Justice and majored in Gender Studies. She has also worked as an outreach assistant at Mass NARAL, and was executive director of Franklin Afterschool Enrichment.

### **James Hurley**

James Hurley, a Florida-based member of the Appignani Humanist Legal Center, has been a practicing attorney since 1959. He graduated from the University of Illinois Law School and is barred in the Illinois Supreme Court, as well as all the lower courts for the state of Illinois. He has also litigated cases in Florida and Georgia pro hoc vice. Hurley is self-employed and focuses on civil claims, transactional work, labor law, and appellate and trial briefs.