

#### Magazine of the Baptist Joint Committee

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# **BJC** joins brief supporting prisoner's right to religious grooming practice

WASHINGTON — A prisoner has the right to exercise his religious belief by adhering to certain religious grooming standards, according to a brief filed at the U.S. Supreme Court and signed by the Baptist Joint Committee for Religious Liberty.

The BJC joined the American Jewish Committee and other organizations in a friend-ofthe-court brief defending the religious rights of Gregory H. Holt (also known as Abdul Maalik Muhammad), a practicing Muslim serving a life sentence in Arkansas. Holt says he has a religious obligation to maintain a beard, but the Arkansas Department of Corrections (ADC) has a policy prohibiting facial hair other than neatly trimmed mustaches. It does allow one-quarter-inch beards for inmates with a diagnosed dermatological medical condition. Holt sought permission to grow a one-half-inch beard as a "compromise" but was rejected.

Holt says the Religious Land Use and Institutionalized Persons Act (RLUIPA) protects his right to have a religiously mandated beard while incarcerated. The ADC denied his request, saying an exemption to its policy could create security issues, such as giving an escaped prisoner the ability to change his appearance by shaving, making it easier to distribute contraband or leading to the perception of preferential treatment.

RLUIPA, which became federal law in 2000, was designed to protect the religious freedom of prisoners and other persons in government custody, as well as protect religious freedom in the context of zoning and other land use laws. The law provides that government may substantially burden the exercise of religion only if it demonstrates that it has used the least restrictive means to further a compelling interest. The BJC led a diverse coalition of religious and civil liberties groups in supporting RLUIPA, and a unanimous Congress enacted the measure.

The Supreme Court recognized RLUIPA as a permissible accommodation of religion in *Cutter v. Wilkinson* (2005) that provides "heightened protection" for religious exercise,



allowing prisoners to seek religious accommodations under the same standard as the Religious Freedom Restoration Act (RFRA).

While prison officials have a compelling interest in maintaining security, the question is whether their refusal to allow a religious exception for a one-half-inch beard is the least restrictive means of furthering that interest. The ADC only presented hypothetical security concerns and did not show that an exception for Holt would undermine security, despite the fact that he has been allowed to maintain a one-half-inch beard since winning a preliminary injunction in October 2011.

The vast majority of states and the Federal Bureau of Prisons permit inmates to maintain certain beards for religious reasons, and, as noted in the brief, Arkansas is one of just seven states that does not allow "incarcerated Muslims, Jews, Sikhs, Rastafarians, and other individuals to grow beards in accordance with their beliefs." Under the ADC's policy, the prisoner "must choose between violating one of the key tenets of his religious beliefs or refusing the shave, which would undoubtedly lead to punishment or the withholding of benefits."

The brief explains that the ADC's medical exemption demonstrates that a less restrictive facial hair policy is feasible within the prison's facilities. "Part of RLUIPA's purpose is to elevate religious needs to a similar level as other considerations," according to the brief. "In light of the high degree of protection that RLUIPA gives to inmates' religious rights, it is illogical for the same institution to provide an almost identical accommodation for medical reasons, while denying that same accommodation for religious purposes. "

The Supreme Court is expected to hear the case of *Holt v. Hobbs* during its fall term. —*BJC Staff Reports* 

### Court upholds 'In God We Trust' on currency

Atheists lost their case against the "In God We Trust" motto on the nation's currency May 28.

It's a battle they have lost several times before, as court after court has affirmed that printing and engraving the country's motto on its money does not violate the U.S. Constitution.

The plaintiffs, a group that included humanists and minor children, argued before a federal appeals court that the words amount to a government endorsement of religion, disallowed by the First Amendment's Establishment Clause. They further held that, forced to carry around a religious statement in their pockets and pocketbooks, their constitutionally guaranteed right to freely exercise religion is being violated.

But the three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York noted that the courts have long looked at the motto not so much as the entanglement of government in religion but as a more general statement of optimism and a "reference to the country's religious heritage."

The decision in *Newdow v. United States of America* pleased those who have worked to protect religious expression in the public sphere. "Americans need not be forced to abandon their religious heritage simply to appease someone's animosity toward anything that references God," said Rory Gray of the Alliance Defending Freedom.

But it frustrated those who see religion creeping into places where they believe church and state should be separated. The group American Atheists, which was not a party to the suit, said the court's reasoning — based on historical acceptance of the motto — is faulty.

"Tradition is a terrible excuse for any behavior," said American Atheists spokesman David Muscato. "If we allowed 'tradition' to guide our views, what else would we uphold — slavery, denying the vote to women?"

"The simple fact is that 'In God We Trust' has no rightful place on currency in the United States, a country with separation of church and state, and it never has," he continued.

The 2nd Circuit also questioned the atheists' objection to money that forces them "to bear on their persons ... a statement that attributes to them personally a perceived falsehood that is the antithesis of the central tenant of their religious system." The atheists had reminded the court that the Religious Freedom Restoration Act requires the government to prove that it has gone to great pains to avoid so burdening religious expression.

"We respectfully disagree that appellants have identified a substantial burden upon their religious practices or beliefs," the judges responded.

> —Lauren Markoe, Religion News Service

#### Atheists lose court battle with IRS

A federal court has dismissed three atheist groups' suit against the IRS, in which they accused the tax agency of discriminating against nonreligious nonprofits.

American Atheists and its co-plaintiffs argued that tax filing requirements for nonprofit atheist groups are unfairly tougher than they are for religious nonprofits. They contended that churches and other religious organizations should have to meet the same standards that other nonprofits meet in disclosing information on their donors, employee salaries and other details about the organization.

"We're going to keep fighting," said American Atheists President David Silverman after the U.S. District Court in Kentucky handed down its decision May 19. "The court has upheld a prejudiced government practice."

The atheists had argued that the

IRS violates the First Amendment's Establishment Clause and the right to due process, guaranteed by the Fifth Amendment. Generally, tax-exempt organizations must file a 990 financial form with the IRS, but religious and religious-related groups are exempted.

The court found that the atheists had no standing to bring the suit, in part because American Atheists could have applied to the Internal Revenue Service for designation as a religious organization, but never had. It's just speculation that the IRS would reject the application, the court wrote; in fact, the IRS has granted nontheistic groups status as religious nonprofits in the past.

"A review of case law establishes that the words 'church,' 'religious organization,' and 'minister,' do not necessarily require a theistic or deity-centered meaning," the court wrote. The atheists held that to apply to the IRS for status as a religious organization would go against their principles.

The court wrote that the plaintiffs had failed to establish that any concrete harm had come to them at the hand of the IRS. But the atheists had argued that they could raise far more money if they could tell their potential donors as religious organizations may that their names do not have to be disclosed on documents available to the public.

The plaintiffs argued that the American government unfairly subsidizes religious organizations that do not have to prove they do anything to benefit the American people. That is special treatment that costs \$71 billion in annual tax revenue, the groups said.

> –Lauren Markoe, Religion News Service

# **REFICUTIONS** New book on President Jimmy Carter highlights redemption, Baptist faith

Adopting the Christian motif of redemption, Randall Balmer has penned a new biography titled *Redeemer: The Life of Jimmy Carter*. Balmer is a professor at Dartmouth College, an Episcopal priest and the BJC's 2009 Shurden Lecturer. Balmer tells the story of Jimmy Carter's political life, drawing a parallel between the gospel's redemption narrative and "Carter's transformation from the ashes of political annihilation in 1980 to elder statesman, world-renowned humanitarian, and winner of the Nobel Peace Prize."

According to Balmer, redemption can be discerned on at least two levels. First, Carter's election to the presidency in 1976 reestablished the political viability of progressive evangelicalism that had lain dormant for decades. In a way that had not been seen in a national campaign at least since William Jennings Bryan ran for president at the turn of the 20th century, Carter spoke freely and naturally in his campaign about his "born again" faith. Balmer tells the story of how Carter — only a decade and a half after John F. Kennedy had urged the country to put his Catholicism aside in their voting calculus — unapologetically highlighted his evangelical faith to corroborate a progressive public policy agenda.

Carter's public expression of his religious faith was tempered by his Southern Baptist-rooted appreciation for the separation of church and state. Indeed, in his famous (or to some, infamous) interview in *Playboy* magazine — more renowned for Carter's confession of having "committed adultery in [his] heart" — Carter declared, in Kennedyesque fashion, his "belief in absolute and total separation of church and state." As Carter himself has pointed out in his own book, *Our Endangered Values*, although personally opposing abortion and capital punishment, as president he was able to enforce the civil law with respect to those issues.

Balmer chronicles Carter's four years as president and describes how millions of evangelicals who had cheerfully supported Carter in 1976 turned against him in 1980, voted for Ronald Reagan and helped usher in a new brand of conservative evangelical politics that would eclipse the progressive evangelical tradition throughout the 1980s and beyond.

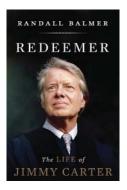
If Carter's redemption of progressive evangelicalism's political expression failed or was only transitory, Balmer describes a second redemption that is more substantial and lasting. It has often been said that Carter was "the first president to use the White House as a stepping stone." However historians ultimately judge Carter's presidency, they will certainly report that he was one of the best *former* presidents in our history. Carter's commitment to a variety of social issues — including fair housing through Habitat for Humanity, the elimination of poverty around the world through the work of the Carter Center and his never-ending labor for peace in the Middle East has elevated him to a citizen of the world and merited the Nobel Peace Prize. Balmer also chronicles how Carter became the public face of moderate Baptist life after his repudiation of Southern Baptist fundamentalism, his embrace of the Cooperative Baptist Fellowship, his efforts to make peace among the warring factions of Southern Baptist life and his outreach to Baptists of many stripes through the New Baptist Covenant initiative over the past several years.

The resurrection of progressive evangelicalism and the continuing redemption seen in Carter's post-presidential life are accompanied in this book by other subtexts. These include Carter's upbringing in rural Georgia, his life in the Navy, his marriage to Rosalynn and, in Balmer's words, his "insatiable ambition to rise above his circumstances." The book's epilogue recounts the author's "Sunday Morning in Plains," visiting the Sunday school class that Carter teaches and enjoying time with the Carters after Maranatha Baptist Church's worship service was over. Balmer also includes two substantial appendices - one, a timeline of Jimmy Carter's life and the other, the full text of Carter's "Crisis of Confidence" speech, often mistakenly referred to as the "malaise" speech (the word malaise was never used!). Often regarded as a watershed event in his presidency, the speech sounding for all the world like a sermon – reflects Carter's political passion, as well as his determination to succeed and frustration in falling short as he laments "the loss of unity of purpose for our nation" and calls for "the restoration of American values."

The association of a theological concept like redemption with a biography of a president can be tricky at best and sacrilegious at worst. Balmer acknowledges this and avers that Carter would never make any messianic claims for himself. That disclaimer made, the parallels that Balmer draws are not hard to see. Perhaps "Redemption," rather than "Redeemer," would have been a better title. But anyone who is interested in squaring appropriate expressions of faith in politics along with the separation of church and state, 20th century American political and religious history, and Baptist life in this country over the past four decades will want to read and savor this important and incisive effort by Randall Balmer.



J. Brent Walker Executive Director



# A guide to the ne

In May, the Baptist Joint Committee redesigned its website. **BJConline.org** has long be site allows visitors to easily navigate and access articles, columns, educational mate

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Report from the Capital June 2014

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en a dependable destination for religious liberty information, and the newly organized rials and other resources. Here are a few things you can expect when you go online:

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- Education and outreach programs
- Legislative efforts
- Litigation work at the Supreme Court and other courts

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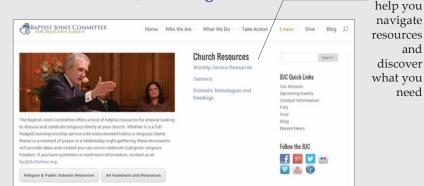
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June 2014

- Coalition work
- Defense of freedom of conscience

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- Guides to navigating religion and public schools
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- BJC handouts and publications
- *Report from the Capital* archives



Visit the Take Action section for ways you can be involved in our work, and check out the Give section to support the BJC and hear from other friends of religious liberty.

#### **Plus:**

#### BJC history and Baptist heritage in the Who We Are section





#### New layout for the BJC Blog



Have a question about the site? Want to share a comment? Send us your feedback at bjc@BJConline.org.



K. Hollyn Hollman General Counsel

"[V]oucher legislation continues to undercut the principle that public funds should be used for public purposes and not for religious indoctrination."

## HollmanREPORT BJC opposes school vouchers, files brief in Colorado case

Depending on where you live, one of your primary religious liberty concerns may be fighting against public funding of private religious schools. Approximately a dozen states and the District of Columbia now have some kind of school voucher program, often referred to as "scholarship" or "school choice" programs, which use public dollars to pay private school tuition. These programs vary in size, scope and threat to religious liberty. While they are often pursued in hopes that competition among schools will lead to increased student achievement and decreased education costs, data supporting those outcomes is scarce. Yet voucher legislation continues to undercut the principle that public funds should be used for public purposes and not for religious indoctrination.

In our efforts to protect that principle, the BJC recently joined in a lawsuit challenging a voucher program in Colorado as a violation of that state constitution's prohibition against government funding of religious schools, which is a key component of religious liberty protection. In a friendof-the-court brief filed on behalf of the BJC and other religious and civil liberties organizations, we argue that the "no aid" provision, found in Article IX, Section 7 of the Colorado Constitution, is one of the strongest in the country, protecting against the diversion of public money for private, religious purposes, and that the voucher program should be held unconstitutional.

The program at issue (known as the "Choice Scholarship Program") operates in Douglas County, providing tuition vouchers to 500 students that can be spent at private schools. More than 75 percent of the private schools participating in the program are religious schools, which can then use those taxpayer dollars for a variety of religious activities, including religious instruction.

On behalf of a group of parents, clergy and taxpayers, the voucher program was challenged by Americans United for Separation of Church and State, the American Civil Liberties Union and the ACLU of Colorado. The plaintiffs and the signatories to the *amicus* brief agree that religious education of children is a matter best left to families and their houses of worship, and the use of tax dollars to fund religious institutions and religious education impedes rather than advances the cause of religious freedom. A district court halted the program, finding it violated Colorado's "no aid" clause as well as other provisions of the Colorado Constitution. The state appeals court reversed that decision in February 2013 and upheld the program.

The BJC's brief in the Colorado Supreme Court recounts theological and political opposition to the state funding of religion and presents the historical background and current implementation of the "no aid" clause promoting religious liberty in Colorado. The brief states that the provision is an "expression of both the philosophical and political traditions of freedom of conscience" and a way religious freedom is currently protected. "In drafting and adopting this strict No-Aid Clause, the delegates to Colorado's constitutional convention expressly sought to promote religious freedom and protect the public schools and the public-school fund by imposing an absolute prohibition against the use of public dollars for religious instruction," according to the brief.

"Grounded in the understanding that freedom of conscience is an essential component of faith and the experience of a long, sad history of religious oppression, the principle of separation recognizes that governmental support for and funding of religion corrodes true belief, makes religious denominations and houses of worship beholden to the state, and places subtle — or not so subtle — coercive pressure on individuals and groups to conform," according to the brief.

The case, LaRue v. Colorado Board of Education, reflects a second stage in religious liberty litigation over vouchers. While the U.S. Supreme Court found that a school voucher program that involved a number of public and private school choices did not violate the First Amendment in Zelman v. Simmons-Harris (2002), this case – like other challenges in the courts - is based specifically on a state constitution's "no aid" clause. Some 35 states have "no aid" provisions in their constitutions, which provide more protection against government establishment of religion than the U.S. Constitution. Colorado's clause declares unequivocally that no government entity "shall ever make any appropriation, or pay from any public fund or moneys whatever" for any church or sectarian purpose or to help support or sustain any school controlled by a church or sectarian denomination.

The BJC has long opposed vouchers for the threat they pose to religious liberty. As the brief explains, programs like the one in this case encroach on that principle by interfering with free choice in matters of conscience and making religion dependent on government.

# SMER

#### **BJC** welcomes summer interns

The Baptist Joint Committee is pleased to have three summer interns working with our staff in Washington, D.C.

Adam McDuffie of Atoka, Tennessee, is a rising senior at Wake Forest University, pursuing a degree in religion with a concentration in religion and public engagement. He is the son of Dennis and Debbie McDuffie and attends Wake Forest Baptist Church in Winston-Salem, North Carolina. McDuffie plans to attend seminary after graduation.

South Moore of Murfreesboro, North Carolina, is a rising senior at the University of North Carolina at Chapel Hill, majoring in political science with a minor in social and economic justice. The son of Danny and Lynne Moore, he is a member of Murfreesboro Baptist Church. Moore plans to pursue a law degree with a focus on constitutional law.

Ashton Murray of Pittsboro, North Carolina, is a Moyers Scholar at the Wake Forest University School of Divinity. He earned a Bachelor of Arts degree from the University of North Carolina at Chapel Hill with a double major in public policy and African-American studies. Murray is a member of Peace Haven Baptist Church

in Winston-Salem, where he serves as pastoral assistant for congregational development. He plans to pursue a career in religious lobbying and community revitalization efforts.

#### Tennessee mosque fight laid to rest after Supreme Court denies cert

The four-year legal conflict over construction of a mosque in Murfreesboro, Tennessee, ended June 2 when the U.S. Supreme Court declined to hear the case.

Hundreds marched in protest after Rutherford County officials approved plans for the Islamic Center of Murfreesboro in 2010. Televangelist Pat Robertson labeled the Islamic center a "mega mosque" and claimed Muslims were taking over Murfreesboro. An arsonist set fire to construction equipment on the building site.

Mosque opponents eventually filed a suit against the county, seeking to block construction of the worship space.

On the surface, the fight was over the minutiae of Tennessee's public notice laws. Mosque foes claimed local officials failed to give adequate notice of a meeting where plans for the mosque's construction were approved.

But a thriving anti-Muslim movement in Tennessee fueled the fight. Mosque foes asserted that the First Amendment's guarantee of religious freedom did not apply to the mosque. In court, Joe Brandon Jr., a lawyer for mosque foes, said Islam is not a religion, and he argued that the mosque was a threat to the community.

Initially, a local judge ruled for the mosque foes and ordered a halt to mosque construction. But a federal court quickly overruled that decision, paving the way for the mosque to open in 2012. A state appeals court also later overturned the lower court decision.

Local Muslims, many of whom had worshipped in the community for years, found themselves having to defend their faith and their status as American citizens at the trial.

Members of the Islamic Center found help in local interfaith groups and other local leaders who rallied to their assistance. More than 100 local religious leaders signed a letter supporting the mosque.

Foes of the mosque haven't given up yet. A group of plaintiffs recently filed suit to block local Muslims from building a cemetery on the mosque grounds.

According to The Daily News Journal in Murfreesboro, a ruling on the cemetery lawsuit is expected in mid-June.

-Bob Smietana, Religion News Service with BJC Staff Reports

#### House considers prayer plaque at World War II Memorial; interfaith coalition says 'no'

An interfaith coalition has again asked the U.S. House of Representatives to reject a prayer plaque at the World War II Memorial in Washington, D.C.

The proposed plaque, which is under the consideration of a House subcommittee, would feature a prayer spoken by President Franklin Delano Roosevelt on the radio on D-Day, June 6, 1944.

"O Lord, give us Faith," it reads in part. "Give us Faith in Thee; Faith in our sons; Faith in each other; Faith in our united crusade." It concludes with, "Thy will be done, Almighty God."

The coalition – a mix of religious and secular organizations that includes the Center for Inquiry, a humanist organization; three Jewish groups; the Hindu American Foundation; and the United Methodist Church – said the prayer does not reflect the religious diversity of the United States.

"Our religious diversity is one of our nation's great strengths," they stated in a letter to the subcommittee. "[This bill] endorses the false notion that all veterans will be honored by a war memorial that includes a prayer that proponents characterize as reflecting our country's 'Judeo-Christian heritage and values.""

H.R. 2175 is sponsored by two Ohio Republicans, Rep. Bill Johnson and Sen. Rob Portman. Portman is a member of the United Methodist Church, one of the organizations that opposes the plaque.

The attempt to place a prayer plaque at the memorial, which opened to the public in 2004, dates back to 2011. It has been approved by the House before but was rejected in the Senate.

-Kimberly Winston, Religion News Service with BJC Staff Reports

Editor's note: In the April Report from the Capital, a story on page five incorrectly stated that 3 percent of the population in America at the time of the writing of the Constitution adhered to Judaism. It was much less than 3 percent; Michael Meyerson said Judaism was one of the miniscule religions at that time.

Moore

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McDuffie



Report from the Capital June 2014



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Learn more about including the BJC in your will or estate plans by visiting our new "planned giving" page at **BJConline.org/ planned-giving**. You will find stories from others who have chosen to leave a lasting legacy of religious liberty, and have the option to request more information or to let us know if you have already made plans to include the BJC in your will. A planned gift is a powerful way to ensure the BJC's mission for generations to come.

For any additional questions, contact Taryn Deaton, director of development, at **tdeaton@ BJConline.org** or **202-544-4226**.



#### Why We Give



You don't have to have a large amount to begin giving monthly, and "it absolutely makes a difference." –Jorene and Terry Swift



The BJC embraces "the diversity of all God's children while remaining true to their distinctively Baptist Christian voice." –Cathy and John Baskin



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