



REPORT

from the Capital

Event examines state of free exercise of religion, landmark legislation

Twenty years after the landmark Religious Freedom Restoration Act (RFRA) was signed into law, a day-long symposium examined the current state of religious liberty in America. Some of the country's leading experts gathered at the Newseum in Washington, D.C., on Nov. 7 to discuss the history and impact of the legislation and current challenges to religious freedom.

After a 1990 Supreme Court decision left religious practice more vulnerable to government intrusion, a broad group of organizations led by the BJC formed a coalition to work toward passage of the legislation, which reflects a shared commitment to protecting the free exercise of religion in America. President Bill Clinton signed RFRA on Nov. 16, 1993.

Two decades later, opinions about RFRA vary. Some prior advocates now express concerns about its application in particular contexts, such as its interaction with civil rights and health care laws, while others argue that RFRA has not lived up to its promise of providing meaningful protection for religious liberty for all. The anniversary provided an avenue for reflection on the current state of the law, using RFRA as a lens for highlighting the importance of a shared understanding of religious freedom.

The day's events included three panel discussions as well as keynote addresses from two leaders in the fight for RFRA: former BJC General Counsel Oliver "Buzz" Thomas, who chaired the coalition, and Douglas Laycock, one of the primary drafters of the legislation who is a professor of law and religious studies at the University of Virginia School of Law.

BJC General Counsel Holly Hollman,



During a panel discussion on the history of RFRA, BJC General Counsel Holly Hollman and Mark Chopko, former general counsel for the U.S. Conference of Catholic Bishops, listen to Rabbi David Saperstein from the Religious Action Center of Reform Judaism.

who led the event's planning efforts, noted that much of the legal landscape has changed since 1993. "The symposium offered an opportunity to revisit some of the most significant developments in free exercise protection and to have a thoughtful discussion about continuing challenges," she said.

"Restored or Endangered? The State of Free Exercise of Religion in America" was sponsored by the Baptist Joint Committee for Religious Liberty, Christian Legal Society, American Jewish Committee, Religious Action Center of Reform Judaism, Union of Orthodox Jewish Congregations, Becket Fund for Religious Liberty and Religious Freedom Center of the Newseum Institute.

Read more about the symposium on pages 6-7, and visit BJCOnline.org for additional resources, including videos of the entire event.

—BJC Staff Reports

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Va. Baptists' resolution opposes state prayer amendment

An amendment to the Virginia Constitution aimed at permitting prayer in public schools and government meetings should be rejected by the state's General Assembly, according to Virginia's oldest Baptist network of churches.

A resolution adopted during the annual meeting of the Baptist General Association of Virginia called the amendment "unworthy of the support of the citizens of Virginia."

"Virginia Baptists collectively have traditionally and consistently taken the position that religious expression coming from or endorsed by government is inconsistent with the free exercise of religion according to the dictates of conscience," notes the resolution presented by the BGAV's religious liberty committee. "Sectarian legislative prayers have the effect of utilizing civil government as a mechanism for advancing faith, and Virginia Baptists have historically held that individuals and not the government should advance faith."

Sponsors of the amendment, Senate Joint Resolution 287, said they want to amend the state constitution to protect the rights of individuals and public bodies to pray on public property and in public schools and protect students from religious discrimination.

The amendment cleared one Senate committee last January but in February was returned to another committee by its lead sponsor before it could be brought to a vote by the full Senate,

which is evenly divided between Democrats and Republicans.

"I believe that we need to do some more work so that we'll bring it back next year and make sure that it is stronger," Sen. Bill Stanley, a Republican, said on the floor of the Senate at the time.

For a constitutional amendment to be approved, it must pass the General Assembly in two consecutive sessions separated by an election, and then be adopted by voters in a referendum.

SJR 287 would amend the Virginia Bill of Rights, a document drafted by George Mason, adopted by the Virginia Legislature in 1776 and later incorporated into the state constitution. Thomas Jefferson is believed to have drawn on language in the Bill of Rights when he drafted the nation's Declaration of Independence.

Section 16 of the state's Bill of Rights — to which the amendment would be added — guarantees that no one "shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief."

The proposed amendment instructs that the state shall "not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the right to pray individually or corporately in a

private or public setting" and allows individuals to "offer invocations or other prayers at meetings or sessions of the General Assembly or governing bodies."

The BGAV's resolution — adopted on a voice vote with some opposition — notes that Section 16 "has since its inception fully protected the religious freedom of the citizens of Virginia" but warned that the amendment would "dwarf the present Section 16 and detract from its iconic status."

Stephen Aycock, who chairs the religious liberty committee, told participants at the annual meeting that SJR 287 would have "the effect of entangling faith and government."

"This does not need to be adopted," said Aycock, director of missions for the Fredericksburg Area Baptist Association. "We need to stand with our forebears as champions of religious liberty."

If passed, the amendment may be trumped by the U.S. Supreme Court if it upholds a lower court ruling that a New York town violated the Constitution with its policy of opening public meetings with mostly Christian prayers. The High Court heard oral arguments Nov. 6 in *Town of Greece v. Galloway* and its decision, expected by the end of June, could be one of the most significant church-state decisions in 30 years. It would affect the nature of invocations in municipal meetings nationwide.

—Robert Dilday, *Religious Herald*

Religious Liberty Essay Scholarship Contest

Open to all high school juniors and seniors • \$2,000 Grand Prize

This year's subject: Should religious references be permitted on student banners used at school-sponsored events, such as cheerleader banners at public school football games? Why or why not?

For entry forms and the complete topic visit:

www.BJOnline.org/contest

Entries must be postmarked by March 7, 2014

REFLECTIONS

Celebrating this year, anticipating the next

The end of the year is often a stressful and chaotic time. There are holiday meals to be cooked, Christmas presents to be purchased, trips to be planned and more.

At the Baptist Joint Committee, the year's end marks the end of our fiscal year. Projects need to be finished and year-end gifts secured. The desire to finish the year strong can make us a little anxious.

In Richard J. Foster's devotional book *A Year With God: Living Out the Spiritual Disciplines*, the readings for the final days of the year are focused on the spiritual discipline of celebration.

It's something that we often overlook. Celebration doesn't fit our image of what a spiritual discipline should be. Dallas Willard writes that celebration is "the completion of worship, for it dwells on the greatness of God as shown in his goodness to us."

God has blessed the BJC abundantly this year. Let's celebrate our accomplishments and thank those who have helped make them possible.

- In October, we celebrated the first anniversary of the Center for Religious Liberty. In 2013, we have welcomed more than 200 people into the Center to learn more about religious liberty and the BJC's work. Groups included students from the University of Illinois, Andover-Newton Theological Seminary, The College of William & Mary, Samford University and more. In addition, we've hosted Passport staffers, members of Trinity Baptist Church in Seneca, S.C., and the Cooperative Baptist Fellowship Advocacy in Action participants.

- This fall, our legal team filed an *amicus* (friend-of-the-court) brief in a legislative prayer case, *Town of Greece v. Galloway*, that recently was argued before the U.S. Supreme Court. Since 1947, the BJC has filed more than 80 *amicus* briefs with the High Court.

- In July, we added our first new full-time staff position in six years: Charles Watson Jr. became our education and outreach specialist. Charles has hit the ground running to build a sustainable and ever-increasing core of supporters who can inform themselves and others about religious liberty.

- The 21st annual Religious Liberty Council Luncheon at the CBF General Assembly sold out in advance for the first time. In June, more than 560 BJC supporters gathered in Greensboro, N.C., to hear CBF's new executive coordinator, Suzii Paynter, speak.

- The 8th annual Religious Liberty Essay Scholarship Contest netted 435 entries from 46 states, China and Sweden. High school juniors and seniors were asked to examine religious diversity in America and

evaluate the claim that the United States was founded as a "Christian nation."

- I always welcome the opportunity to speak in churches and to other groups. This year, I preached at 10 churches including the First Baptist Church in America, which was founded in Rhode Island by Roger Williams in 1638. Additionally, I had the chance to deliver the commencement address at the John Leland Center for Theological Studies, speak to students at Eastern University and the McAfee School of Theology, and deliver the Shurden Lectures at my law school alma mater, Stetson University.

- General Counsel Holly Hollman has also kept busy this year. In February, she served as a judge for the George Washington University School of Law Religious Freedom Moot Court competition, in which law students presented arguments for and against the contraceptive mandate as applied to religiously affiliated employers. Holly was also invited to speak on a panel addressing religion in the public schools at the American Bar Association's mid-year meeting in Dallas, Texas. In April, she participated in a symposium sponsored by the Rutgers School of Law Journal of Law and Religion and published a journal article, titled "Religious Liberty Advocacy: The Essential Role of Religious Organizations in the Courts," in conjunction with that event.

I could go on and on, but the point is that none of this would be possible without the financial support of individuals, churches, foundations and denominational partners.

To those who have already made a gift in 2013, thank you. Your ongoing, annual financial support makes all of this possible.

Many of you rely on the BJC to:

- serve your interests when a religious liberty case comes before the U.S. Supreme Court
 - educate young people about the importance of religious liberty
 - keep you up-to-date on what's happening in the world of religious liberty through *Report from the Capital*, our emails and blog
- ...but, you've never made a gift to support the BJC's work.**

Enclosed in this issue is a contribution envelope. Pull it out now, make a gift to the BJC, join us in celebrating what we've accomplished this year, and support us as we look ahead to the challenges and threats to religious liberty and the separation of church and state we will face in the future.

Please make a gift today.



J. Brent Walker
Executive Director



K. Hollyn Hollman
General Counsel

Hollman **REPORT**

Supreme Court examines government prayer practices

Early in the oral arguments in *Town of Greece v. Galloway*, a case challenging Christian prayers at town board meetings, U.S. Supreme Court Justice Anthony Kennedy — often considered the Court's "swing" vote — asked a central question: is prayer at government meetings simply a historical aberration notwithstanding the First Amendment's Establishment Clause, or is it justified by some rational explanation?

That question has troubled church-state observers since the Court's decision in *Marsh v. Chambers* (1983), in which it upheld the Nebraska Legislature's practice of opening its official sessions with chaplain-led prayer. *Marsh* is the sole legal authority for similar practices in the U.S. Congress and other legislative arenas, and it is the basis on which attorneys for the Town of Greece relied in arguing that their clergy-led prayer practice is also permissible at local government meetings.

Attorneys for the town and for the United States, which supported the town's position and shared the oral arguments, however, struggled to articulate a rationale for upholding prayers in a government forum that supplied any limiting principle. *Marsh* was unusual in that it did not apply typical Establishment Clause principles, instead comparing the state legislature's chaplain-led prayer to Congress' prayer tradition dating back to the founding era. As National Public Radio's legal affairs correspondent Nina Totenberg put it, *Marsh's* legacy — "how to reconcile a tradition of public prayers with the Constitution's ban on establishment of religion" — is one that has "bedeviled [the Court] for decades."

This struggle was readily apparent in the justices' questioning from the bench during the *Greece* arguments. Justice Elena Kagan questioned whether the town's practice fit with the widely shared understanding that our Constitution promises that we are equal citizens without regard to how we worship, observing that prayers like the ones in Greece "might be inconsistent with this understanding that when we relate to our government, we all do so as Americans, and not as Jews and not as Christians and not as nonbelievers."

In response, the U.S. deputy solicitor general, arguing in support of the town, again emphasized

the historical practice of prayer in Congress, noting that "from the First Continental Congress, and then from the ... first Congress, there have been legislative prayers given in the religious idiom of either the official chaplain or a guest chaplain, that have regularly invoked the deity and the language of the prayer-giver."

But University of Virginia law professor Doug Laycock, representing the two Greece citizens who challenged the town's prayer practice, stressed that both context and content distinguish this case from the relevant facts in *Marsh*. In Greece, he argued, highly sectarian prayers were directed at citizens

in a coercive setting. In order to be upheld as constitutional, according to Laycock, prayers at government meetings must be nonsectarian, in the Judeo-Christian tradition of the American civil religion. For several justices, the idea that prayers must be nonsectarian raised practical problems about how to formulate and enforce such a standard.

Justice Kagan lamented the difficulty of the case for the

Court, noting that rules are certain to be perceived by some as hostile to religion. "Part of what we are trying to do here is to maintain a multi-religious society in a peaceful and harmonious way. And every time the Court gets involved in things like this, it seems to make the problem worse rather than better. What do you think?" Laycock maintained that parameters are needed and can be sustained. He said, "There are people who distort your decisions. There are people who misunderstand your decisions honestly and — and innocently. But keeping government neutral as between religions has not been a controversial proposition in this Court."

After a series of questions about the practical way to allow prayer but protect against the mostly Christian prayer practice in Greece, Justice Kennedy expressed concern, "This involves government very heavily in religion."

To that, Laycock pointed back to the Court: "Well, the government became very heavily involved in religion when we decided there could be prayers to open legislative sessions. *Marsh* is the source of government involvement in religion. And now the question is how to manage the problems that arise from that."



Hollman speaks to reporters outside the Supreme Court on Nov. 6 after oral arguments in *Town of Greece v. Galloway*.

BJC, others call for investigation of NYPD's 'unlawful' surveillance of Muslims

The BJC joined dozens of political, religious and human rights organizations in urging the United States Department of Justice to investigate the New York Police Department's allegedly "discriminatory surveillance of American Muslim communities."

A letter sent to the DOJ on Oct. 24 cites "unlawful religious profiling and suspicionless surveillance of Muslims in New York City (and beyond)." Along with violating constitutional rights, the letter maintains the practice has "frayed the social fabric of Muslim communities by breeding anxiety, distrust, and fear." The NYPD, the letter claims, not only monitors electronic avenues such as blogs, but it also sends plain-clothes officers to patrol neighborhoods with large Muslim populations.

The letter highlights specific areas in which these practices have hindered the lives of Muslims in the New York area. Attendance in mosques, for example, has decreased and disruptions "have also diverted precious time and resources away from religious education and counseling, both of which are part of mosques' core religious mission," according to the letter. In addition, the letter says that Muslim student associations (MSAs) have retreated from engaging in political conversations. Not only has attendance dropped at events, but "certain student groups have instituted a ban on political discussion in MSA spaces, out of fear that these conversations will trigger additional surveillance."

The Rev. Dr. C. Welton Gaddy, a Baptist minister and

president of Interfaith Alliance, points out that measures like the ones taken by the NYPD have an effect on all Americans, not just Muslims.

"One of the foundations of this nation is freedom of religion for everyone, yet this fundamental freedom is threatened if even one group's ability to freely practice its faith is attacked," he said in a news release. "The fact that people of faith might have to fear going to their houses of worship or freely practicing their religion is about as un-American as un-American gets."

The letter calls for the DOJ to conduct an investigation under the Violent Crime Control and Law Enforcement Act of 1994, which allows the United States Attorney General to conduct investigations involving "a pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."

The large and diverse group of signatories includes Protestant, Catholic, Buddhist, Jewish and Sikh organizations as well as civil rights agencies, including the ACLU, the NAACP and Americans United for the Separation of Church and State.

"Surveillance of citizens based on nothing more than their religious affiliation flies in the face of our constitutional free exercise protections," said BJC Staff Counsel Nan Futrell. "Unwarranted government intrusion upon Muslims' right to worship is a threat to people of all faiths."

—Jordan Edwards

Supreme Court declines review of casket case

A group of Catholic monks can continue selling their handmade caskets after the U.S. Supreme Court declined to hear an appeal from Louisiana funeral directors.

"We really can now move forward without worrying about being shut down," said Deacon Mark Coudrain, manager of St. Joseph Woodworks in Covington, La. "This is going to affect a lot of other people. A lot of people are going to have opportunities to do things that are their legal right to generate revenue."

In a little-noticed ruling on Oct. 15, the Supreme Court declined to hear the case between the brothers of St. Joseph Abbey and the Louisiana State Board of Embalmers and Funeral Directors.

In 2007, the abbey began selling handmade coffins, prompting the board to file a lawsuit that argued Louisiana law required a funeral director's license for casket sales.

The monks later brought suit in federal court and were upheld by both the Eastern District of Louisiana in 2010 and the 5th U.S. Circuit Court of Appeals in March 2013. The funeral directors appealed to the Supreme Court; by not agreeing to hear the case, the Supreme Court let stand the appeals court ruling.

The 5th Circuit said in its decision that Louisiana

does not regulate the use or construction of caskets. People may purchase any casket from out of state and Louisiana law does not require the use of a casket at all.

"Whatever special expertise a funeral director may have in casket selection is irrelevant to it being the sole seller of caskets," the decision said.

The monks had buried their own members as well as the occasional bishop or donor in handmade caskets for years. After Hurricane Katrina destroyed the abbey's timberland, a source of revenue, the monks decided to sell caskets to fund the medical and educational needs of the abbey.

The monastery invested \$200,000 in St. Joseph Woodworks and sold "monastic" and "traditional" cypress caskets for \$1,500 and \$2,000, prices "significantly lower" than caskets at funeral homes, according to the 5th Circuit Court's decision.

Coudrain said selling caskets also serves as a way of sharing Catholic teaching about the meaning of death.

"The theology of the church is that our bodies are a temple of the Holy Spirit, and the spirit has moved on, but we want to respect the body as well," Coudrain said. "Part of the Catholic tradition is you have a viewing, a funeral and a burial."

—Katherine Burgess, Religion News Service

A day of reflections on RF



Maria Bryk/Newseum

Douglas Laycock

“What one side views
as a grave evil,
the other side views
as a fundamental right.”

“Religious liberty is at risk.
RFRA is a great achievement;
it has helped immensely for
20 years; it may help more
in the future, but it is no
match for cultural change.
If the people no longer
believe in religious liberty,
we’ll lose it, and that
will be a loss for America,
no matter which side
of the culture wars you
find yourself on.”

A Nov. 7 symposium celebrated the Religious Freedom Restoration Act of 1993 as a singular legislative accomplishment and explored contemporary controversies regarding the free exercise of religion.

Former BJC General Counsel Oliver “Buzz” Thomas began the day recounting the history of RFRA, noting that it is more than a civil rights law. “It’s about what it means to be an American,” Thomas said, pointing to how diverse religious views are all protected under RFRA.

The genesis of the legislation can be traced to the U.S. Supreme Court’s 1990 *Employment Division v. Smith* decision. In *Smith*, the Court announced that the First Amendment is not violated when neutral, generally applicable laws conflict with religious practices. The decision generated widespread concern that religious groups would be vulnerable to government burdens on religion.

Thomas said that the harmful impact was immediate. “[W]e saw in just a few short years about 50 reported cases – so [there’s] no telling how many hundreds of instances – where religious claims simply lost. They never got a real day in court.”

Thomas chaired the broad and diverse Coalition for the Free Exercise of Religion, which worked to pass legislation to restore religious liberty protections diminished by the *Smith* decision. Their bill was the Religious Freedom Restoration Act, which stalled in the 101st and 102nd Congresses over fears ranging from its potential to create a claim for religiously-motivated abortion to its possible impact on the tax-exempt status of religious organizations. The coalition worked to make clear that RFRA did not “expand, contract or alter the ability of a claimant to obtain relief” beyond the pre-*Smith* state of the law. The proposed statute

was amended to clarify that the legislation did not affect the First Amendment’s Establishment Clause, which prohibits government establishment of religion.

These changes secured necessary support and cleared the way for the bill to pass the 103rd Congress with a unanimous voice vote in the U.S. House of Representatives and by a 97-3 vote in the U.S. Senate.

“We were at the mercy of government, but RFRA changed that, and it restored this delicate balance between church and state of requiring the government to justify restrictions on religious practice,” Thomas said.

He remarked that RFRA has become less popular over time as it has been applied to cases, creating winners and losers. But, Thomas said that should not be a concern. “It was the same way with the First Amendment.”

Thomas also joined the day’s first panel, moderated by BJC General Counsel Holly Holman, which brought together a group of religious liberty advocates who were key members of the coalition formed in the early 1990s. The panelists recalled the legal and political climate in the wake of the *Smith* decision and the widely perceived need for a statutory solution. They described the challenges that arose among and beyond coalition members during the legislative process and the methods used to maintain broad support.

In response to an audience question, Thomas said RFRA quite likely would not pass today. He called it “a pretty dicey proposition,” especially since polls show many Americans think that even the First Amendment goes too far in the rights it guarantees.

After the first discussion, the event provided a video presentation highlighting four stories of people who have relied on statutory protections



Photos by Maria Bryk/Newseum and Jordan Edwards/BJC

RFRA and religious freedom

for religious exercise. “Faces of Free Exercise” featured stories ranging from a Christian church who feels called to feed the homeless to Native Americans whose religious beliefs demand they protect sacred lands.

The second panel focused on current disputes over the Affordable Care Act’s contraceptive mandate, which some employers have challenged based on religious objections to providing insurance coverage for certain types of contraception. Lori Windham, senior counsel at the Becket Fund for Religious Liberty, argued that employers with religious objections to these services should not be “required to participate in something [their] faith teaches is wrong ...” Daniel Mach, director of the ACLU Program on Freedom of Religion and Belief, countered that any burden on for-profit employers’ conscience arising from the mandate is too attenuated to raise viable claims under RFRA. “These companies are not required to use contraception themselves. They’re not required to endorse it. They’re merely required to make it available as one of many ... covered services,” he said.

Douglas Laycock, professor at the University of Virginia School of Law and one of the primary drafters of RFRA, gave the second keynote address. He frankly discussed some of the current controversies and challenges regarding the protection of religious liberty in many areas, including the contraception mandate and same-sex marriage laws.

“The biggest problem for religious liberty in our time is deep disagreement about sexual morality,” he said. “The tendency of both sides to insist on a total win – liberty for them and not for the other – is a very bad thing for religious liberty.”

The conference concluded with a forward-looking panel discussion on contempo-

rary challenges to religious liberty. Panelists representing different faith perspectives discussed the current lack of consensus on the meaning of free exercise in America and the harm being wrought by divisions over same-sex marriage as well as by over-simplified — and often sensationalist — media coverage of other religious disputes.

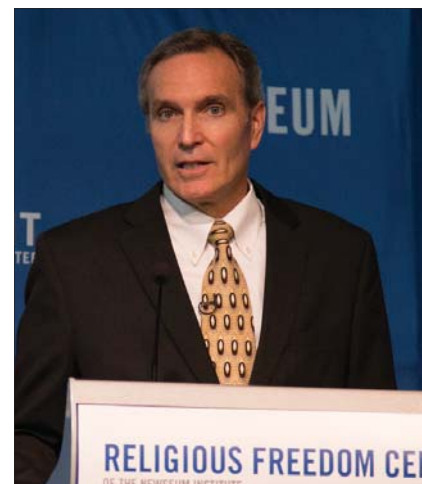
Dahlia Lithwick of *Slate* magazine shared her experiences covering religion and observed that language used in the press often isolates opposite schools of thought. “I think no one is more to blame for that polarization than the media,” she said, noting that pieces that are “fiery take-downs” often get more traction than thoughtful articles sharing a variety of perspectives.

One of the main points of discussion was whether or not building a coalition like the one behind RFRA would be possible in today’s polarized political climate. Marc Stern of the American Jewish Committee said, “It’s gone ... When I was young, we thought of religious liberty as, ‘I don’t have to agree with you, but I have to agree to let you live your life.’ ... The debate is now, ‘Do I think what you’re doing is right?’ ... For neither side should that be a winning proposition. But that is the way the battle is now shaping up.”

Kim Colby of the Christian Legal Society deflected Stern’s accusation that religious conservatives have grown “completely tone-deaf,” and she seconded Doug Laycock’s claim that the culture has “turned its back on pluralism and on genuine diversity.”

The panelists seemed to agree that a more civil dialogue and a willingness to embrace respectful pluralism are necessary to regain some of the ground that has been lost in the two decades since RFRA’s passage.

—BJC Staff Reports



Buzz Thomas

“[R]eligious liberty is very popular in the abstract; it’s only in its application that we begin shouting at one another.”

“More than a third of Americans now say that the First Amendment goes too far. ... They like religious freedom for themselves, but they’re not so sure they like it for witches or Moonies or Muslims.”

“We are all a religious minority somewhere.”

Visit www.BJConline.org
for videos of the symposium
and additional resources:



- Download a booklet prepared by the BJC with more on RFRA, including a timeline and signing remarks from President Bill Clinton

- Watch “Faces of Free Exercise” to hear stories from people who rely on RFRA

- See more photos from the day’s event and get a complete list of all panelists

The Religious Freedom Restoration Act

20 years of protecting
our first freedom



Report from the Capital
November/December 2013

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The year in review

BJC Blogger Don Byrd takes a look at the top church-state stories of 2013

This was a year of questions more than answers in religious liberty developments. As we anticipate Supreme Court resolution, some longstanding disputes only intensified this year, while other controversies are just beginning. Here is my take on the top religious liberty stories of 2013.

• The U.S. Supreme Court hears legislative prayer case

In November, the Supreme Court heard oral arguments in *Town of Greece v. Galloway*.

As regular readers of *Blog from the Capital* know, controversies over local government prayers have been commonplace in recent years. Every month or so, some school board or city council with a tradition of opening its meetings with an invocation meets with objections that the practice is unconstitutional.

Like many of those legislative prayer controversies that came before it, the Town of Greece dispute worked its way through lower courts. Supporters of government prayer insist the invocations are harmless expression, protected by the First Amendment's free exercise and free speech guarantees. Opponents contend the prayers improperly promote religion in violation of the First Amendment's Establishment Clause.

The Town of Greece dispute got the attention of the U.S. Supreme Court, which decided to weigh in on the issue for the first time in 30 years. The Town of Greece says rotating clergy should be allowed to offer sectarian prayers. The plaintiffs believe government prayers should be limited to non-sectarian appeals to a higher power. The Baptist Joint Committee filed an *amicus* brief urging the Court to prohibit official prayers at local government meetings. The BJC brief emphasized freedom of conscience and the difference between this practice and the chaplain-led prayer practices of state

legislatures or Congress upheld by the Court in 1983. According to the brief, there are specific constitutional dangers posed by official prayer in local government meetings, which citizens attend not just as silent observers from a gallery but as full participants.

Many observers believe – and I agree – the Court's

decision in this case may have a dramatic impact on the requirement that government officials remain neutral in matters of religion when acting in their official capacities. How the Court might rule, though, or even which questions it might answer, remains anyone's guess. Will they clarify the circumstances in which government prayer is appropriate? Will they offer guidance to local governments on how to safeguard the rights of citizens

against church-state concerns? Stay tuned to the BJC Blog at BJCOnline.org/blog (or follow me on Twitter: @BJCblogger) for the answers as we get them. A decision in the case is expected by the end of June.

• Contraceptive mandate controversies produce disagreement among federal courts of appeals

The Affordable Care Act's requirement that employer-provided plans offer contraception coverage was the biggest religious liberty story of 2012, as those who object to providing contraception coverage on religious grounds sought exemptions.

In 2013, the White House issued a new and expanded exemption policy, which many religious liberty advocates praised. Under the new policy, not only are houses of worship and denominational institutions exempt, but other religiously affiliated institutions can avoid the mandate. Insurance companies must separately offer such coverage free of charge directly to those entities' employees.

Most of the big contraception mandate developments in 2013 occurred in federal courts of appeals, as religious objectors who do not fall under the expanded exemption maintained that it violates their religious liberty rights under the Religious Freedom Restoration Act (RFRA). Specifically, owners of secular, for-profit businesses argue that the requirement substantially burdens their religious exercise.

In court rulings issued over the course of 2013, judges have sharply disagreed on the biggest aspects of this dispute — questions the U.S. Supreme Court will resolve in 2014.

First, can corporations exercise religion? Are they "persons" for the purpose of the First Amendment or pursuant to protection under RFRA? Some federal appeals courts this year said no; others said yes.



BJC General Counsel Holly Hollman speaks to reporters outside the Supreme Court after arguments in *Town of Greece v. Galloway* on Nov. 6, 2013.

Second, does the contraception coverage requirement place a “substantial burden” on religious exercise? Some courts have said yes. Others ruled the burden is too indirect because the mandate requires only that insurance covers contraception; it doesn’t require anyone to purchase, use or promote contraception.

How the U.S. Supreme Court answers these questions will surely be one of the most important religious liberty stories of 2014.

- **FEMA funding raises tough church-state questions**

Hurricane Sandy ravaged New York and New Jersey in October 2012, but its aftermath reached well into this year. A FEMA rule barred churches from receiving direct government aid out of church-state concerns. In February, the U.S. House of Representatives passed a bill that expressly authorized houses of worship to receive FEMA grants, a move the BJC opposed as improper funding of religion with tax dollars. A version of the bill was introduced in the Senate, and it has been in committee since July.



Rogers

- **Melissa Rogers named head of White House’s faith-based office**

In March, President Barack Obama appointed former BJC General Counsel Melissa Rogers as director of the White House Office of Faith-Based and Neighborhood Partnerships, succeeding Joshua DuBois. Under her leadership, the office has been active in promoting government partnerships with community groups and religious organizations to fight hunger, human trafficking and other issues. In August, the office touted new guidance advising agencies on how to comply with reforms ensuring faith-based partnerships safeguard against church-state concerns.

- **RFRA at 20**

In 2013, the Religious Freedom Restoration Act turned 20! The BJC commemorated the milestone by organizing a symposium examining the law’s two-decade history, including its current role in the legal battle over the contraceptive mandate. At the state level, several states either enacted a version of RFRA (such as Kentucky, where the legislature overrode the governor’s veto of the bill) or are considering such laws (including Maine and Wisconsin). An ongoing concern in the debate over state RFRAs is the precise wording of the bill. Does the bill protect *any* burden on religious exercise? Or just those burdens deemed “substantial,” as the federal RFRA requires and the BJC advises?

- **Abercrombie & Fitch faces discrimination lawsuits over headscarf policies**

Clothing retailer Abercrombie & Fitch faced a series of lawsuits this year brought by employees who allege they were fired for refusing to remove headscarves required by their faith. Notably, the company argued that accommodating the scarves would be an undue

hardship because it would violate their “look” policy. A federal judge rejected that argument in September.



Casey

- **State Department sees change in faith-based leadership roles**

In August, the U.S. Department of State announced it was creating an Office of Faith-Based Community Initiatives, naming Shaun Casey as director. News of the office, which will engage with faith communities around the world, generated significant discussion regarding the role of religion in U.S. foreign policy.



Cook

In October, Suzan Johnson Cook stepped down from her role as the U.S. Ambassador-at-Large for International Religious Freedom. Cook is a Baptist minister who began her term in May 2011.

- **Pentagon debunks rumors of a policy change on religious expression**

Some religious rights groups were up in arms earlier this year when the Pentagon reiterated its policy that service members, including chaplains, may not use their position within the military to proselytize other service members. In May, the Pentagon debunked rumors that the announcement was part of a policy shift aimed at stifling the religious expression of evangelicals.

- **Religious claims clash with state anti-discrimination laws**

In New Mexico, the state Supreme Court affirmed a ruling against a photographer who was found guilty of violating civil rights law by refusing to provide services for a same-sex wedding. Elane Photography claimed the enforcement of the law violated its religious freedom rights. The court disagreed. In Washington state, a florist is also being sued by a same-sex couple for refusing to provide wedding services.

Head-scratchers of the year

Every year, some religious liberty disputes stand out as a bit stranger than the rest.

- In Encinitas, Calif., a lawsuit challenging grade school physical education programs that include yoga argued the practice amounts to religious indoctrination in violation of the First Amendment. The trial court judge dismissed the case noting that the curriculum did not include any religious elements.

- In Tennessee, a magistrate judge changed the name of a newborn because, she said, “Messiah” has too much religious significance. A judge later overturned that decision and the magistrate is facing ethical violation charges.

Serpent handler-TV star has a new cause: religious liberty

A Tennessee pastor's dangerous spiritual practices made him a star of a reality TV series.

Now they may make him a religious liberty crusader.

Officials from the Tennessee Wildlife Resources Agency raided the Tabernacle Church of God in LaFollete on Nov. 7 and seized 53 venomous snakes — including timber rattlesnakes, copperheads and several exotic breeds.

They cited the Rev. Andrew Hamblin, the church's pastor and co-star of the National Geographic series "Snake Salvation," and charged him with 53 counts of violating a state ban on possessing venomous snakes at a Nov. 15 court hearing. Each count carries a maximum sentence of one year in jail.

Tennessee has banned serpent handling in churches since 1947; state wildlife regulations allow zoos and schools to own poisonous snakes, but not churches.

Hamblin says state law violates his

congregation's religious liberty. He and church members believe the Bible commands them to handle serpents in worship, based on a New Testament passage in the Gospel of Mark (Mark 15:16-17) that reads, "And these signs shall follow them that believe; In my name shall they cast out devils; they shall speak with new tongues; they shall take up serpents; and if they drink any deadly thing, it shall not hurt them; they shall lay hands on the sick, and they shall recover."

Hamblin pleaded not guilty to the charges, and a preliminary hearing is scheduled for Dec. 17.

"If I had the snakes in my home, around my children, that would have been my own stupidity and I would have pled guilty," said Hamblin. "But once [the authorities] came into my church house — they crossed the line."

The raid is not the first time that a serpent-handling congregation in Tennessee has run afoul of the law.

In 1947, state legislators made it illegal "for a person to display, exhibit, handle, or use a poisonous or dangerous snake or reptile in such manner as to endanger the life or health of any person."

That law was passed after a series of deaths at serpent-handling churches.

Jenna Gray-Hildenbrand, assistant professor of religious studies at Middle Tennessee State University, said state officials passed the law because they felt public safety outweighed religious liberty when it came to snake handling.

A legal challenge to the serpent handling law failed in 1975, when the Tennessee Supreme Court ruled that serpent-handling religion was too dangerous to be legal.

"[W]e hold that those who publicly handle snakes in the presence of other persons and those who are present aiding and abetting are guilty of creating and maintaining a public nuisance," the court ruled in *Swann v. Pack*.

Matt Cameron, a spokesman for the state wildlife agency, said he couldn't recall another time when state officials seized snakes from a church. He said state officials became aware that there were snakes at the church because of the

"Snake Salvation" television show.

Cameron said the law doesn't allow Hamblin to possess venomous snakes.

"He is not eligible for a permit the way the law is written," he said.

But several legal experts believe Hamblin might be able to challenge the state laws on First Amendment grounds.

Eric Rassbach, deputy general counsel at the Becket Fund for Religious Liberty, said Hamblin could claim that state officials are treating serpent handlers unfairly, since they allow zoos to have snakes but not churches.

He pointed to a 2003 U.S. court ruling, *Blackhawk v. Commonwealth of Pennsylvania*, where judges — including now Supreme Court Justice Samuel Alito — ruled in favor of a Native American man who wanted to own a black bear for religious purposes. The court ruled that the man qualified for a religious exemption for a permit to own the bear.

And Hamblin may have a legal advantage that earlier snake handlers in Tennessee did not have, said J. Brent Walker of the Washington, D.C.-based Baptist Joint Committee for Religious Liberty.

In 2009, the state legislature passed the Tennessee Religious Freedom Restoration Act, which limits the state's ability to restrict religious liberty.

Under that law, said Walker, the state can only restrict religious practice if it has a compelling interest and it uses the least restrictive means necessary.

"I think an argument can be made that the state has no legitimate interest in preventing adults from practicing their faith," he said.

Walker said the state could put some restrictions on snake handlers — for example, to protect children — but he thinks an outright ban may be struck down.

Hamblin said he has no plans to give up serpent handling. His church held its normal services on the weekend after the raid, and worshippers brought snakes to church.

All he wants, said Hamblin, is for his church to be able to practice its faith in peace.

—Bob Smietana, Religion News Service



Andrew Hamblin, 21, pastor of Tabernacle Church of God in La Follette, Tenn., holds up two rattlesnakes during church service. For more than a 100 years, small Pentecostal churches in East Tennessee and other parts of Appalachia have handled poisonous snakes and drunk strychnine during their services. The snake handlers say that the Bible tells them to do so, but it's illegal and has mostly died out. RNS photo by Shelley Mays/courtesy USA Today.

Meyerson to deliver 2014 Shurden Lectures

Professor and author Michael I. Meyerson will deliver the 2014 Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State, to be held April 1-2 on the campus of Baylor University in Waco, Texas.



Meyerson

Meyerson is a professor of law and Piper & Marbury Faculty Fellow at the University of Baltimore, specializing in constitutional law and legal history. He is the author of three books, including *Endowed by Our Creator: The Birth of Religious Freedom in America*, and numerous law review articles and book chapters.

The Shurden Lectures are free and open to the public, and the schedule will be released in the coming months. Visit BJCOnline.org/lectures for the latest information.

In 2004, Dr. Walter B. Shurden and Dr. Kay W. Shurden of Macon, Ga., made a gift to the BJC to establish the annual lectureship. The Shurden Lecturer is someone who can inspire and call others to an ardent commitment to religious freedom and the separation of church and state.

Tax-saving ways to give to the BJC

There are two methods for making a charitable donation that could give you an additional tax benefit.

Donate appreciated stock. If you have appreciated stock or mutual fund shares (currently worth more than what you paid) that you have owned for more than a year, consider donating them to the Baptist Joint Committee. You can generally claim an itemized charitable deduction for the full market value at the time of the donation and avoid any capital gains taxes.

Make charitable donations out of your IRA. The IRA charitable rollover allows individuals 70½ or older to make tax-free distributions to charity from an IRA of up to \$100,000 per taxpayer. An IRA charitable rollover is described as a “qualified charitable distribution,” or money that individuals may direct from their traditional IRA to eligible charitable organizations such as the BJC. Individuals may exclude the amount distributed directly to charity from their gross income. **This provision is set to expire on Dec. 31, 2013.**

Check with your tax adviser or IRA administrator to see if these charitable gift opportunities might be right for you.

Editor's note: In the October Report from the Capital, a page 2 story incorrectly identified the 10th U.S. Circuit Court of Appeals as the 11th U.S. Circuit Court of Appeals.

‘So help me God’ now optional in Air Force Academy Honor Oath

Air Force Academy cadets will no longer be required to include the words “so help me God” when taking their annual Honor Oath.

On Oct. 25, officials at the Colorado Springs, Colo., campus announced its 4,000 current cadets would be allowed to opt out of the final phrase of their honor code, which they reaffirm each of their four years of study and training.

“Here at the Academy, we work to build a culture of dignity and respect, and that respect includes the ability of our cadets, Airmen and civilian Airmen to freely practice and exercise their religious preference — or not,” said Lt. Gen. Michelle Johnson, the academy’s superintendent, in a statement.

“So in the spirit of respect, cadets may or may not choose to finish the Honor Oath with ‘So help me God.’”

The current oath reads: “We will not lie, steal or cheat, nor tolerate among us anyone who does. Furthermore, I resolve to do my duty and to live honorably, so help me God.”

The oath was adopted by the academy’s first class in 1959 without the final phrase, which was added in 1984 following a cheating scandal. Honor oaths at other U.S. military academies do not include the word “God.”

The change came after complaints from the Military Religious Freedom Foundation, a New Mexico-based watchdog organization headed by Michael Weinstein, a lawyer and Air Force Academy graduate whose family includes seven people who have attended the academy.

Weinstein has had other successes in rooting out religion from the military. In 2011, he successfully challenged an Air Force nuclear training course that included Bible verses and religious imagery in a PowerPoint presentation.

More broadly, Weinstein has been among the most vocal critics of the religious atmosphere at the Air Force Academy, where he and others say Christianity is given preferred status and inappropriate religious proselytism is rampant.

The decision has exposed a rift among academy alumni, their families and others associated with the military. Comments left on the academy’s website, where the decision was first announced, range from sadness to anger to approval.

John Van de Kamp, a member of the class of 1968, wrote that the honor code guided him throughout his life, though he graduated before the addition of the now-optional phrase. “It’s a disgrace to bow to political correctness and take God out of the equation even though He guides and strengthens cadets and the Academy’s leadership day by day,” he wrote.

But someone identifying herself as Kathy from Washington wrote, “This is a compromise that allows the individual cadets to choose. It should be enough to please any sensible person. Go Air Force.”

—Kimberly Winston, Religion News Service



200 Maryland Ave., N.E.
Washington, D.C. 20002-5797

Phone: 202.544.4226
Fax: 202.544.2094
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REPORT

from the Capital

J. Brent Walker
Executive Director

Cherilyn Crowe
Editor

Jordan Edwards
Associate Editor

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WHY WE GIVE

by Kiran Sigmon and Mark Siler
Asheville, N.C.

The Baptist Joint Committee for Religious Liberty and the vision for which it stands have literally been in the background of our Baptist upbringing for as long as we can remember. We are products of Pullen Memorial Baptist Church in Raleigh, N.C., where a stained glass window featuring Roger Williams constantly proclaims the Baptist roots of our nation's decision to separate church and state.

Our commitment to this history deepened in the early 1990s while living in Washington, D.C., at the same time that our dear friend Holly Hollman was a BJC intern. Through Holly's friendship, we came to appreciate and value the essential work of the BJC in new ways. We came to better understand how and why the work continues.

One of our pastors, Ken Sehested, recently offered an idea in one of his sermons that we think speaks to the uniqueness of the BJC. He suggested that faithful living, at least in part, stems from our ability to acknowledge our nation's virtues and honestly engage our nation's vices.

We're sure Ken would agree with us that one of our great virtues is the First Amendment and its critical role in supporting vibrant faith and effective government. The BJC articulates this virtue and protects its wisdom, all out of Christian conviction. This is essential. We must have Christian voices that protect

the First Amendment for the sake of faith.

This separation gives us the distance we need as followers of Christ to both celebrate our government when it helps make the way for "beloved community" and to challenge it when it fails to do so. The BJC addresses both

sides. It upholds the virtue at its deepest intent and creates the room we need to be clear about our primary allegiance to God's dream for God's creation. What important work indeed!

The reason we became monthly donors is quite simple. Our lives do not manage well the regular appeals for support from

many worthy causes. Too often, the letter from the BJC remained in "the giving pile." We want our giving to match what we most value. With that desire, becoming monthly donors means we don't have to worry if we will remember or not. By regularly and effortlessly supporting the BJC, we know we are supporting the best in our faith and our country.

If you believe in the good work and mission of the BJC, become a monthly donor. Don't let "the giving pile" weigh you down.

Make a lasting investment in religious liberty by becoming a monthly donor today. Visit BJCOnline.org/Donate to set up your gift or contact Development Director Taryn Deaton at tdeaton@BJCOnline.org or 202-544-4226 for assistance.

