



REPORT

from the Capital

After Court actions, HHS proposes new contraceptive mandate rules

The Obama administration has responded again to religious liberty challenges to the contraceptive mandate.

On Aug. 22, the Department of Health and Human Services published proposed rules that would allow some for-profit businesses to opt-out of the mandate and created an alternative opt-out method for religiously affiliated nonprofits.

The rules are meant to comply with the U.S. Supreme Court's *Hobby Lobby* ruling and its action in a case involving evangelical Wheaton College.

The contraceptive mandate, first issued in 2012, is a requirement under the Affordable Care Act that employers provide insurance coverage giving workers free access to all FDA-approved methods of contraception. Explicitly religious organizations, such as churches, were exempted from the mandate. Later, faith-based nonprofits, such as hospitals, charities and schools, were extended an accommodation that would allow them to opt-out of providing coverage they find objectionable by signing a form and providing it to their insurer or third-party administrator. After receiving the notification, the insurer or third-party administrator would provide the contraception coverage to employees. Private for-profit business owners who object to some or all forms of FDA-approved contraception were neither exempted nor accommodated.

In June, the Court held that, under the Religious Freedom Restoration Act, closely held for-profit businesses should be eligible to opt-out of providing types of contraception coverage to which the owners have religious objections.

A proposed rule has been published to seek input on the definition of for-profit entities that can receive the accommodation: either the ownership would be limited to a certain number of people or



“a minimum percentage of ownership would be concentrated among a certain number of owners,” according to a fact sheet released by the federal government. Both options require that the business not be publicly traded. Comments on the proposed rule and additional steps the government should take are being accepted until Oct. 21.

Days after its *Hobby Lobby* decision, the Court temporarily granted Wheaton College the right to opt-out of providing contraception coverage without providing the form to its insurer to do so. Several religious nonprofits — including some faith-based universities and charities — object to the method the government requires to opt-out of the coverage. For example, the Little Sisters of the Poor, an order of nuns which runs a charity, hold that no matter which process or paperwork is required, they cannot facilitate any insurer providing contraception to their employees. In their view, that would be cooperating with contraception methods forbidden by their faith.

The Court's temporary injunction for Wheaton led to regulations establishing another opt-out method for religious nonprofits: they must notify HHS of their religious objection, and the government will then notify the insurer or third party who will be responsible for providing the coverage at no cost to employees.

—BJC Staff Reports and Religion News Service

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Town of Greece, Florida county set legislative prayer rules that disadvantage atheists

The town at the heart of May's Supreme Court decision approving sectarian prayer at local government meetings has adopted new rules that may exclude atheist invocations.

On August 19, Greece, N.Y., adopted new rules for who can deliver a prayer or invocation before its public meetings. Those rules include "religious clergy" and "religious assemblies," but they make no mention of the nonreligious, such as atheists and humanists.

In May, the U.S. Supreme Court ruled in *Town of Greece v. Galloway* that sectarian prayers before local government meetings do not violate the Establishment Clause of the First Amendment as long as there is no discrimination in determining who may give them.

"If this policy does, in effect, bar the nonreligious from delivering invocations, it would represent a disappointing step backward for the Town of Greece," said Ronald A. Lindsay, president of the Center For Inquiry, a First Amendment watchdog organization that promotes humanism.

Brian Marianetti, attorney for the Town of Greece, said he did not know if atheists would be permitted to give an invocation under the rules.

"I can't say one way or another," he said. Each speaker will be "decided on a case-by-case basis."

The rules, obtained through a Freedom of Information Act request by an atheist group, also state a city clerk will compile an annual list of churches, synagogues, temples and mosques from which representatives may be drawn to open public meetings with a prayer or invocation. It makes no mention of any type of assembly of nonbelievers.

One local atheist gave an invocation in Greece before the new rules were adopted. Dan Courtney, a member of the Atheist Community of Rochester, N.Y., opened the town's July 15 meeting.

Meanwhile, a group of county commissioners in Florida is testing the Supreme Court decision by banning atheists outright from delivering an invocation before local public meetings.

Five members of the Brevard County Board of Commissioners voted unanimously August 20 against permitting a local atheist from delivering a prayer or invocation before their public meetings. They also voted to limit remarks from nonreligious people to the "public comments" section of their meetings.

In a letter to David Williamson, founder of the Central Florida Freethought Community, the board wrote, "The prayer is delivered during the ceremonial portion of the county's meeting, and typically invokes guidance for the County Commission from the highest spiritual authority, a higher authority which a substantial body of Brevard constituents believe to exist."

The Central Florida Freethought Community says on its website that it is not a proponent of prayers or invocations before public meetings, but it will seek opportunities to give them in order to test the *Greece* ruling. The group has scheduled invocations in five other Florida locations, according to its website.

—Kimberly Winston, *Religion News Service*
with BJC Staff Reports

Civil rights groups to feds: Purge your anti-Muslim training materials

Civil rights and religious groups say efforts to rid federal agencies of anti-Muslim bias have faltered and prejudice against Muslims persists, particularly in the training of anti-terrorism officers.

On August 14, 75 groups — including the Council on American-Islamic Relations, Auburn Seminary and the NAACP — sent a letter to the White House urging an audit of federal law enforcement training material.

"The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing," the letter reads.

A National Security Council representative said the letter will be reviewed and a response issued.

"As we said when these news reports first came to light, the use of racial or ethnic stereotypes, slurs or other similar language by employees is both unacceptable and inconsistent with the country's core values," said Caitlin Hayden, National Security Council spokeswoman.

The groups point to a reference to "Mohammed Raghead" in a memo and the claim by a former FBI official that the CIA's director is a "closet Muslim."

Anti-Muslim sentiment, flagged several years ago, prompted the White House to order an assessment of the intelligence community's training materials and policies — but that never happened, the letter charges. Instead, the groups wrote, administration officials settled on expanded sensitivity training and other measures that don't directly address the continued use of anti-Muslim materials.

The letter states that its allegations are based in part on a July 9 article in *The Intercept*, an online publication created by journalist Glenn Greenwald. According to its website, its immediate goal is "to provide a platform to report on the documents previously provided by NSA whistleblower Edward Snowden," the former National Security Agency systems analyst now a fugitive living in Russia.

—Lauren Markoe, *Religion News Service*

REFLECTIONS

Lambert book separates propaganda from history

Frank Lambert, professor of history at Purdue University, has written a new book that deserves our attention and careful reading. *Separation of Church & State: Founding Principle of Religious Liberty* (Mercer Press, 2014) is based on his BJC-sponsored Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State, delivered at Mercer University in 2012. Lambert's effort here is much more than a printing of his three spoken lectures — it is an expanded and more thorough treatment of the subject.

Professor Lambert's aim in the book — which, in my opinion, he succeeds in achieving — is to “separate propaganda and myth from history” palmed off by Christian right “historians” who resort to a “usable past” to revise history and to support their desire to merge church and state. Based on his own rigorous study of the original documents and historical record, Lambert concludes that “the separation of church and state was indeed a vital constitutional principle” as embodied in the First Amendment.

The book first examines — and then completely debunks — the claim that America was founded as a Christian nation. Lambert shows how the 16th century Christian commonwealth — “the City upon a Hill” — in Massachusetts Bay was a miserable failure and, by 1787, was rejected as a pattern for the new federal government. The Puritan experiment lost out to the model of separation advanced by Thomas Jefferson, James Madison and Baptists, including John Leland and Isaac Backus, who — ironically enough — hailed from Massachusetts!

Moreover, acknowledging that American culture was and is both visibly religious and deeply secular, the Constitution's religious liberty protections were joint enterprises of “revolutionary evangelicals as well as enlightened statesmen” — a project informed by both the sacred Great Awakening and the secular Enlightenment. Yes, Lambert concedes our Founders were mostly men of faith — sometimes orthodox, sometimes deistic. But they were more interested in ensuring religious liberty through the separation of church and state than ensconcing their religious beliefs in the new government. In short, Montesquieu, more than John Calvin and John Locke, and more than the Ten Commandments, are reflected in our founding documents.

Then, Lambert traces the place of separation of church and state in the development of the early state constitutions during the revolution-

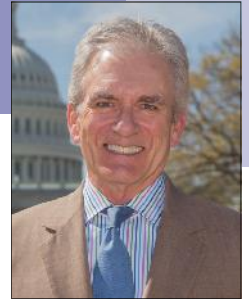
ary period. Here he compares and contrasts the Puritan experiment in Massachusetts Bay with the post-revolution Virginia model and argues that the latter formed a template for the constitutional convention in 1787.

Finally, Lambert focuses on the separation principle at the federal level. Although the phrase “separation of church and state” does not appear in the First Amendment, the concept surely does. Separation, he argues, was a pervasive principle — not just with respect to church and state, but with the separation of powers (along with the checks and balances) among the three branches of the federal government, as well as separation between the states and the new central government that forms our system of federalism.

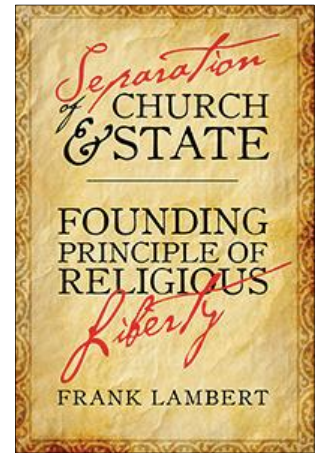
Although influenced by their religious convictions, Lambert concludes the Founders were more concerned at the federal level about creating a more perfect *union* than propagating religion. Religion was at most on the back burner as the Founders tried to counter the centrifugal effect of the Articles of Confederation. They knew they needed a more powerful central government to conduct the affairs of state, but they wanted to guard against state-supported and state-corrupted religion. Not only did they refuse to give the federal government any power to advance religion, they expressly denied its ability to impose a religious test for public office in Article VI and disclaimed any power in the federal government to advance or inhibit religion in the First Amendment.

In short, according to Lambert, “By putting religion on a voluntary, instead of a state-supported, basis, the founders created a free marketplace of religion, a competitive place whereby the various churches could check any single group from imposing its will on the whole nation, an innovative place whereby new religions are spawned and old ones adapt and change to increase their appeal to more people.”

Fittingly, the book is dedicated to Walter and Kay Shurden, the author's longtime friends and the benefactors of the lectures that spawned this first-rate scholarship written by one steeped in the best of the Baptist tradition. Next year we celebrate the 10th Shurden Lectures. Returning to Mercer University — on both the Atlanta and Macon campuses — the lectures will be delivered by Alan Brownstein, professor at the University of California, Davis, School of Law, on April 7-8. I hope you will be able to join us.



J. Brent Walker
Executive Director



Survey: Less than 1/3 of Americans can name 'religion' as a First Amendment freedom

A 2014 survey on the state of the First Amendment revealed that almost 30 percent of Americans cannot name any First Amendment freedoms, and when they are told what the First Amendment says, 38 percent think the rights guaranteed by the First Amendment go too far.

For the 17th year, the First Amendment Center conducted a national survey to learn about American attitudes toward the First Amendment of the U.S. Constitution. When asked to name the specific rights it guarantees, 68 percent were able to name freedom of speech, while only 29 percent named freedom of religion. Other freedoms fared even lower (freedom of press: 14 percent; right of assembly: 7 percent; right to petition: 1 percent), and 29 percent of respondents could not name any of the five freedoms.

The survey found that 2/3 of Americans who answered the questions think corporations should have certain religious freedoms, while 54 percent also believe wedding-related businesses should be required to serve same-sex couples, even if the business owner objects to same-sex marriage for religious reasons.

A majority of Americans surveyed also said if a religiously affiliated group receives government funding, they think the government should be able to require that group to provide health care benefits to employees' same-sex partners, even if the religious group opposes same-sex marriages or partnerships.

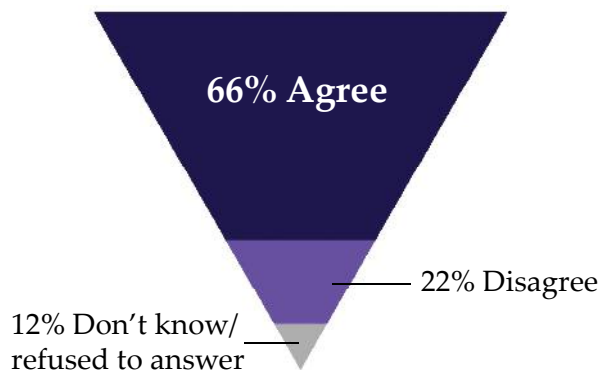
The survey of 1,006 adults has a margin of error of 3.2 percent. Information on all of the questions and responses is available on the organization's website at www.firstamendmentcenter.org/sofa.

—BJC Staff Reports

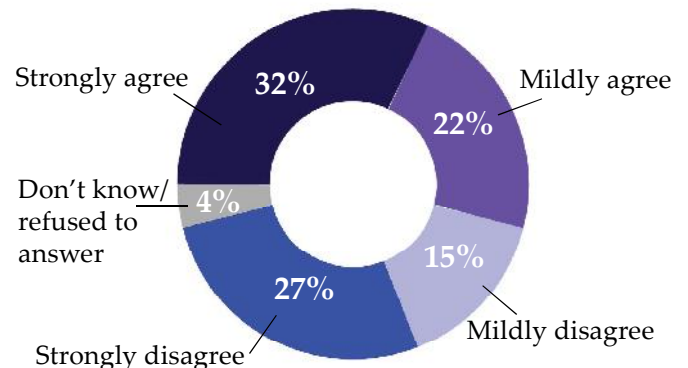
—BJC Staff Reports

More results from the 2014 survey:

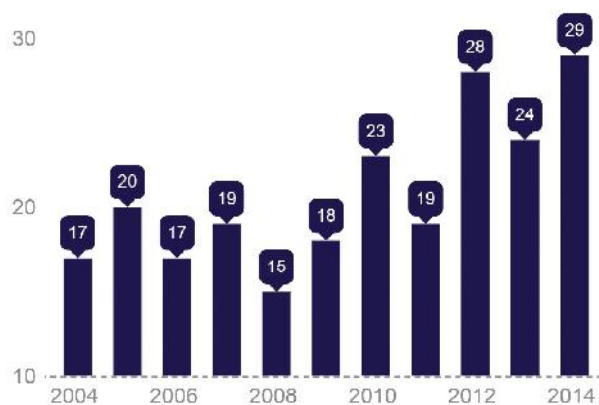
Corporations should have certain religious freedoms



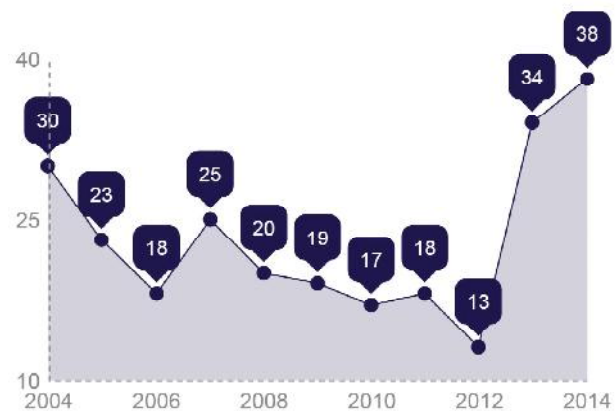
A business providing wedding services to the public should be required to serve same-sex couples, even if the owner objects on religious grounds



Percentage of those surveyed who can name freedom of religion as one of the freedoms in the First Amendment



Percentage of those surveyed who believe the First Amendment goes too far in the rights it guarantees



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A theological response to *Greece v. Galloway*

By Charles Watson Jr.

The theological implications of the U.S. Supreme Court's recent decision in *Town of Greece v. Galloway* are as important to clergy, and all people of faith, as the legal ramifications. Now that the Court has upheld prayer at local government meetings, what do we, as people of faith, do now? What are the theological implications of prayer at government meetings? We still believe religious liberty is a gift from God and that faith should never be coerced by the government; the ruling did not affect that. We know that faith means you believe and have confidence in what you know to be true. This decision does not change our faith, nor does it change the fact that our faith calls us as believers to love God and love our neighbor as ourselves. What we must do now is put that faith into action in light of the legal ruling.

Based on the Court's decision, communities around the nation may adopt new policies about prayer at their official meetings. Prayer might become a part of meetings in communities where it once was not. Clergy members who do not agree with prayer at government meetings have been or will be called to pray at a council meeting in their cities. What will be our answer when asked? Will we say "no" because we are so against the ruling? That is an option, but we also have another. The Court's decision gives us an opportunity to show the communities we live in what loving our neighbor looks like. If we accept an invitation to pray, we need to set the example of how legislative prayer should be given if it is going to be allowed at local government meetings.

As a Baptist minister, I would never tell you the words to say during your prayer, but here are two things to consider about this opportunity:

What is the purpose of my prayer in this setting?

In upholding the Town of Greece's practice against the constitutional challenge, Justice Anthony Kennedy wrote that legislative prayer "reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society." The prayer is for the council members as they make tough decisions. To that end, we are there to pray that the members of the council make sound judgments based on what is best for the entire community. Shouldn't we set that tone with our prayer? Consider this passage from Matthew 6:5, "And whenever you pray, do not be like the hypocrites; for they love to stand and pray in the synagogues and at the street corners, so that they may be seen by others. ..." Although the passage goes on to advise us to pray in a private place, it reminds us that our prayers are to God and our purpose is more important than being seen. This is not a time to convert others or tout our

faith tradition as the best or only truth. Our words must be guided by humility and wisdom. There is no need for a sermon. This prayer is not about us as individuals; it's about the legislative body and the community.

What do we want the result of our prayer to be?

We must ask ourselves if we have an agenda. If our desire is to divide rather than provide a loving, inclusive presence, we must reconsider our agenda. In the Court's dissent, Justice Elena Kagan wrote, "When citizens of all faiths come to speak to each other and their elected representatives in a legislative session, the government must take especial care to ensure that the prayers they hear will seek to include, rather than serve to divide." Let us keep Galatians 5:13-14 in our mind as we consider our words, "For you were called to freedom, brothers and sisters; only do not use your freedom as an opportunity for self-indulgence, but through love become slaves [servants] to one another. For the whole law is summed up in a single commandment, 'You shall love your neighbor as yourself.'" We want our religious beliefs respected, so we should show the same respect to those of different faiths. We should also be mindful that attendance at these meetings is not always voluntary; many must be there to conduct business that cannot be done elsewhere.

The Court's decision has caused some confusion over its direct application. Communities are still trying to decide what is acceptable now that the Court has ruled in favor of prayer at local government meetings. Many of us may even believe that the ruling is a step back from what is best for religious freedom in our country. There should be no confusion, however, about the need for clergy in our communities to set the example. Let us take this opportunity to be prophetic in our quest to defend religious liberty for all. We can use our voice to shape how legislative prayer is given if we accept the invitations that will be extended to us. Let your voice be heard; in fact, you might even do that without speaking. There is nothing wrong with asking those in attendance to join you in a moment of silence.



Charles Watson Jr. is the Baptist Joint Committee's education and outreach specialist. A graduate of the McAfee School of Theology, he is an ordained Baptist minister and CBF-endorsed chaplain resident. Scriptures used are from the NRSV translation.

The Hollman Report will return in next month's magazine.

The Bibles are back: Navy lodges scuttle removal plan

The Gideon Bibles are going back in the Navy's nightstand drawers.

In June, the U.S. Navy ordered housekeepers at thousands of Navy-owned guest lodges near U.S. and international bases to remove the Bibles and any other "religious materials" from their rooms. Scriptures would remain available on request.

But public outcry, prompted by a social media alert from the American Family Association and protests by the Chaplain Alliance for Religious Liberty, led the brass to reverse course on August 15.

Now, the Navy's "religious accommodation policies with regard to the placement of religious materials are under review," Navy spokesman Cmdr. Ryan Perry wrote in an email to *Stars and Stripes*, the daily military newspaper. Meanwhile, the Bibles (New Testament and Psalms but no Hebrew Bible) will be tucked back into nightstand drawers.

A letter from the Wisconsin-based Freedom From Religion Foundation prompted the original order to remove the Bibles. The atheists proposed that the Navy offer Bibles and other texts — including an atheist treatise, "The Born Again Skeptic's Guide to the Bible" — on request at lodge front desks.

"The bottom line is that the Navy's preferential treatment of Bibles ... shows an unconstitutional preference for Christianity over all other religions and over nonreligion," Sam Grover, the atheist group's staff lawyer, told Religion News Service on August 15.

FFRF is not only pressing the Navy for change. Grover said the group has sent a similar letter to the Air Force, which removed the Bibles from its lodges in 2012 and returned them after a similar outcry.

—Cathy Lynn Grossman, *Religion News Service with BJC Staff Reports*

Judge finalizes order finding polygamy law unconstitutional

A federal judge on August 28 finalized the order striking part of Utah's bigamy law and gave one more victory to the family from the TLC television show "Sister Wives."

The long legal battle over polygamy in Utah now appears headed to the appeals courts. Utah Attorney General Sean Reyes has said he would appeal the federal court ruling that found the law against polygamy was unconstitutional.

"Sister Wives" chronicles the lives of Kody, Meri, Janelle, Christine and Robyn Brown and their children. Utah County authorities began their investigation of the polygamous family after their show debuted.

Jonathan Turley, the attorney for the Brown family, encouraged Reyes to reconsider his plan to appeal.

Federal Judge Clark Waddoups in December struck the section of Utah's bigamy statute that can be applied when someone "cohabits with another person" to whom they are not legally married. Utah law made such a union a felony punishable by up to five years in prison. Waddoups said the ban violated the first and 14th amendments to the Constitution.

Waddoups let stand the portion of the statute that prevents someone from having more than one active marriage license.

In his ruling, Waddoups found the Utah County Attorney Jeff Buhman violated the Browns' constitutional rights when he oversaw a 2010 investigation into whether the Brown family was committing bigamy. At the time the Browns lived in Utah. They have since moved to Nevada.

Buhman eventually decided not to file criminal charges, but Waddoups said the investigation stifled the Browns' rights to free speech, religion and equal protection.

Waddoups ordered Utah to pay the Browns' attorney fees as a result of that finding.

—Nathan Carlisle, *Salt Lake Tribune distributed by Religion News Service*

Church-state group opposes tax break for Ark museum

A nonprofit group advocating church-state separation urged Kentucky officials in an Aug. 22 letter to deny tax incentives for a proposed theme park based on Noah's Ark, claiming the break would compel taxpayers to support both employment discrimination and a particular religion.

In July, Kentucky officials gave preliminary approval of \$18 million in tax breaks for Ark Encounter, a project of Answers in Genesis, a Christian apologetics ministry that teaches young-earth creationism through programs including the Creation Museum in Petersburg, Kentucky, opened in 2007.

Lawyers representing Americans United for the Separation of Church and State said public support for the Ark project was problematic from the start, but a recent online job posting requiring applicants to subscribe to the organization's statement of faith crosses a new line.

A career opportunity for a computer-aided design technician for Ark Encounter describes the position as "not just a job" but "also a ministry." Items needed for possible employment include a "salvation history," and a "creation belief statement."

The statement affirms "the great Flood of Genesis was an actual historic event, worldwide (global) in its extent and effect," and that "Scripture teaches a recent origin for man and the whole creation, spanning approximately 4,000 years from creation to Christ."

When Ark Encounter originally sought tax incentives to build the theme park in 2011, Answers in Genesis entered into a "tourism development agreement" that it would not discriminate on the basis of religion when hiring for the project.

The Americans United letter said Ark Encounter's policy of religious discrimination raises concerns under Article 5 of the Kentucky Constitution, which forbids governmental preference by law "to any religious sect." When the Kentucky Tourism Development Finance Authority gave preliminary approval for the tax incentives in July, the chairman said it was because the project would boost tourism, benefiting area hotels and restaurants and generating tax revenues for the state.

—Bob Allen, *Associated Baptist Press with BJC Staff Reports*



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REPORT
from the Capital

J. Brent Walker
Executive Director

Cherilyn Crowe
Editor

Jordan Edwards
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WHY WE GIV

The BJC is key because ‘we need an inclusive voice that seeks to change policy for the betterment of all citizens’

Alyssa Aldape knows that every gift to the Baptist Joint Committee — no matter the size — counts. “As a grad student on a tight budget, I understand how important it is to see where my money is going, and I can sacrifice one or two coffees a month knowing the money is going to further the work of the BJC,” Aldape said.



While finishing her master of divinity studies at McAfee School of Theology in Atlanta, Georgia, Aldape works as the director of youth ministries at Northside Drive Baptist Church and the Next Generation Missions Assistant at the Cooperative Baptist Fellowship.

Aldape first heard about the BJC from friends who were former interns. She said it was encouraging “to know people my age who truly care about the work the BJC does.” But, it was learning about colonial Baptist preacher John Leland in Dr. Pam Durso’s Baptist heritage class that prompted her to become a monthly donor.

“Leland understood the importance of assuring religious freedom for all

people — including those of different faiths. I don’t think we’ve quite reached the point in American society where we are accepting of people of all faiths. Perhaps it is because of fear or lack of information about other religions,” Aldape said.

“Organizations like the BJC are not solely for the protection of Baptists, but founded on the Baptist principle of religious freedom. Groups like the BJC are important because we need an inclusive voice that seeks to change policy for the betterment of all citizens — not just the Baptist ones.”

Aldape encourages her peers and others to become monthly supporters of the BJC. “I know that the money I give monthly helps to further the cause of true religious freedom,” she said.

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.