

Magazine of the **Baptist Joint Committee**

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from the Capital

New contraceptive mandate proposal announced, comment period opened

The Obama administration proposed a broader opt-out Feb. 1 for religious organizations that object to mandated coverage of contraceptives in employee health care plans, an effort to alleviate religious liberty concerns behind a number of lawsuits challenging the Affordable Care Act, also known as Obamacare.

New rules, subject to an open-comment period through April 8, would allow nonprofit religious employers such as faith-based hospitals and universities to opt out of the contraceptive mandate as a matter of conscience. Their employees would instead receive a stand-alone private insurance policy to provide contraceptive coverage at no cost.

"Today, the administration is taking the next step in providing women across the nation with coverage of recommended preventive care at no cost, while respecting religious concerns," said Health and Human Services Secretary Kathleen Sebelius. "We will continue to work with faith-based organizations, women's organizations, insurers and others to achieve these goals."

The new guidelines would apply only to religious nonprofits, and not to forprofit businesses like Hobby Lobby.

Brent Walker of the Baptist Joint Committee for Religious Liberty reacted with a favorable first impression.

"The proposed rules signal an ongoing effort by the administration to provide for the preventive health care needs of women employees while seeking to honor the conscience objections of religious employers and their affiliates," Walker said. "The proposed rules laudably clarify and simplify the definition of religious organizations and affiliated nonprofits, and seek to provide an acceptable alternative for self-insured



employers."

The Becket Fund for Religious Liberty said the new proposals do nothing to protect the rights of for-profit businesses like Hobby Lobby, who also find some of the covered birth-control methods immoral and oppose them on religious grounds. The group said it continues to study the proposal's impact on lawsuits it is handling for nonprofit religious organizations like East Texas Baptist University and Houston Baptist University.

Catholic schools, including Ave Maria University and Belmont Abbey College, have filed lawsuits because artificial birth control goes against teachings of the Roman Catholic Church. Baptist schools, including Louisiana College, meanwhile, do not oppose contraceptives outright but believe some of the FDA-approved birth control methods take effect after fertilization, making them a form of abortion, which the Southern Baptist Convention opposes.

The White House has said from the beginning the administration is sensitive to religious liberty concerns of employers but committed to coverage for preventive care that includes contraceptive coverage with no co-pays as a matter of women's health.

"We need a both/and solution to these important policy issues," Walker said. "Women's health care is promoted; reli-

Walker wins McCall Religious Liberty Award, inducted into Baylor Alumni Hall of Fame

At a ceremony January 25 in Waco, Texas, Baptist Joint Committee Executive Director J. Brent Walker was inducted into the Baylor University Alumni Association Hall of Fame for his work defending religious freedom.

Walker, a graduate of the University of Florida, Southern Seminary and the Stetson University College of Law, received the Abner V. McCall Religious Liberty Award. The award honors individuals with close ties to Baylor who "like the award's namesake ... have demonstrated the courage and dedication to defend and advocate for religious liberty."

McCall was a justice of the Texas Supreme Court in 1956, dean of the Baylor Law School from 1948 to 1959 and Baylor president from 1961 to 1981.

In his remarks, Walker lauded McCall for being a strong champion of religious liberty and the Baptist Joint Committee and for helping the organization "negotiate those difficult days of separation from the Southern Baptist Convention." He was "instrumental in garnering the support of Texas Baptists that continues today," Walker said.

Walker said he gladly accepts the award, "but it really belongs to the BJC."

"We are where we are today because of the leadership that preceded me," Walker said, before mentioning former BJC staff members with close Baylor ties. They included J.M. Dawson, the BJC's first executive director and the first editor of the Lariat, Baylor's campus newspaper; James E. Wood Jr., former director of Baylor's J.M. Dawson Institute on Church State Studies; James M. Dunn, Walker's immediate



Rep. Chet Edwards (right), a former Member of Congress

Walker

and McCall Award recipient, and his wife, Lea Ann, attended the ceremony. Chet Edwards is Baylor's W.R. Poage Distinguished Chair for Public Service.

predecessor and a past winner of the McCall award; and Baylor alum Melissa Rogers, who served as BJC general counsel and later as an adviser to President Barack Obama.

Since 1998, the alumni association has presented the award four times. Past recipients are Dunn, church history scholar Edwin Gaustad, Baptist philanthropist John F. Baugh and Rep. Chet Edwards of Texas, who was an ardent supporter of religious liberty on Capitol Hill during his two decades in Congress.

—BJC Staff Reports

Preachers pray for unity at Inaugural Prayer Service

WASHINGTON - President Barack Obama started his second term with a traditional worship service and a challenge to help heal the nation's divides.

"We find ourselves desperately longing to find common ground, to find a common vision, to be one nation indivisible with liberty and justice for everyone," said the Rev. Adam Hamilton, the Kansas City pastor chosen to preach Jan. 22 at the Inaugural Prayer Service at Washington National Cathedral. "In this city and in this room, are the people who can help."

The national prayer service carried that theme for more than an hour, presenting the nation's rainbow of faiths and cultures with a bilingual welcome and reading from the Gospel of Matthew, and an imam and Christian and Jewish cantors taking turns calling the congregation to prayer.

The service of petitions and patriot-



President Barack Obama and First Lady Michelle Obama enter the Washington National Cathedral for the Inaugural Prayer Service. RNS photo by Donovan Marks/ courtesy the Washington National Cathedral.

ism included a Sikh woman calling for "concern for our neighbors" and a Catholic layman urging a remembrance of Americans' interdependence. The red, white and blue theme extended to the altar flowers and a worshipper's flagfestooned headscarf.

"Seek the Lord who wills to be

found," said the Rev. Nancy L. Wilson, moderator of the Universal Fellowship of Metropolitan Community Churches, reading from the biblical book of Isaiah.

Her presence marked the first time that her predominantly gay denomination had been included in an inaugural prayer service. The cathedral recently announced that it would begin performing same-sex marriages, and Obama made two references to gay rights in his inaugural address.

Though the sole evangelical leader scheduled for the public swearing-in, the Rev. Louie Giglio, was replaced in the program after 1990s comments criticizing gays were revealed, the Inaugural Prayer Service included the presidents of the National Association of Evangelicals and the National Latino Evangelical Coalition.

"Faithful God: accept the fervent

REFLECTIONS Standing for principles in all situations

Defending religious liberty by standing up for the separation of church and state sometimes results in unpopular outcomes. Saying no to a state-sponsored Ten Commandments monument in the middle of an Alabama courthouse will sometimes raise eyebrows. After all, you say, half of the Ten Commandments deal with secular issues and the rest, while religious, can't cause any harm, right? Criticizing the congressionally mandated and presidentially proclaimed National Day of Prayer can get you into some hot water. Baptists against prayer? Can't be. Defending the "ministerial exemption" allowing churches to select their leaders without court oversight or interference - sounds good, but when it results in discrimination against a vulnerable employee and throws her claim out of court, even hard core separationists can wince.

The current debate over whether we should provide federal financial aid for churches and other houses of worship damaged by Hurricane Sandy is another one of these tough cases that stirs up a debate and splits the religious community.

Theological and constitutional principles ensuring religious liberty must apply and be followed in the hard cases as well as the easy cases. We enjoy unprecedented religious liberty in this country precisely because, over the past 222 years, we have stuck to our principles of voluntary, self-sufficient religion and disallowed governmental help or harm, even in the tough cases.

The First Amendment's Establishment Clause simply does not permit government to provide outright grants or similar financial support to churches and other houses of worship. Simply put, we do not allow taxpayer dollars to build churches; we should not allow taxpayer dollars to be used to *rebuild* churches either.

U.S. Supreme Court jurisprudence on this point is clear. A generation ago, Baptist Associate Justice Hugo Black wrote, in *Everson v. Board of Education* (1947), that opposition to "[t]he imposition of taxes ... to build and maintain churches and church property" provided impetus to the Founders' desire to completely disestablish religion in the First Amendment. Justice Black opined that our wise forbears "reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions,"

Supreme Court precedent since then has followed suit. Federal construction grants to religiously affiliated colleges can be upheld only if the buildings constructed are not used for religious activities. (*Tilton v. Richardson*, 1971) The Court has specifically held that no public funds can be used to repair or maintain facilities dedicated to the teaching of religion. (*Committee for Public Educ. v. Nyquist*, 1973).

And even though the Court has loosened the reins somewhat on indirect aid to religious institutions (e.g. educational equipment and school vouchers), it continues to make clear that *direct* monetary contributions of taxpayer dollars create "special Establishment Clause dangers." (*Mitchell v. Helms*, 2000).

Happily, we have ways to empathize with and provide aid to churches and other religious organizations damaged by the terrible storm. Of course, money to help churches rebuild can come through the private sector. Denominational efforts and grants from foundations and contributions of the faithful, as well as insurance proceeds, should not be overlooked.

Moreover, churches and houses of worship may be eligible to obtain government loans under the Small Business Administration disaster loan program. It is permissible for churches to participate in low-interest, long-term loans for damage not covered by insurance. Such loans no more raise Establishment Clause concerns than does tax exemption for religious nonprofits under Section 501(c)(3). Neither transfers government funds to churches; both are accommodations that do not take away taxes or full market interest.

It is simply not a good idea — however our heartstrings are tugged — to give churches access to the public till. Our heritage of voluntary religion would be offended and constitutional difficulties are apparent. The proper avenue for governmental involvement — mainly low interest guaranteed loans — taken together with what I trust will be a generous outpouring of tax deductible contributions from the religious community, is the way to go.

It is important for us to do good, but we must never do so at the expense of compromising constitutional principles that, after all, have stood for more than two centuries to ensure religious liberty for all.



J. Brent Walker Executive Director

"Theological and constitutional principles ensuring religious liberty must apply and be followed in the hard cases as well as the easy cases."

Poll shows a double standard about religious liberty

WASHINGTON — Half of Americans worry that religious freedom in the United States is at risk, and many say activist groups — particularly gays and lesbians — are trying to remove "traditional Christian values" from the public square.

The findings of a poll published Jan. 23 reveal a "double standard" among a significant portion of evangelicals on the question of religious liberty, said David Kinnaman, president of Barna Group, a California think tank that studies American religion and culture.

While these Christians are particularly concerned that religious freedoms are being eroded in this country, "they also want Judeo-Christians to dominate the culture," said Kinnaman.

"They cannot have it both ways," he said. "This does not mean putting Judeo-Christian values aside, but it will require a renegotiation of those values in the public square as America increasingly becomes a multi-faith nation."

Religious freedom has become an increasingly important political issue within the past year, as Republican candidates hammered President Barack Obama for a contraception mandate that many conservatives feel tramples on the religious freedom of employers who must cover birth control in their health plans.

The poll of 1,008 adults showed that 29 percent of respondents were "very" concerned that religious liberties are under threat, and 22 percent "somewhat" concerned. Evangelicals were the religious group most likely to be concerned, at 71 percent.

Asked for their opinion as to why religious freedom is threatened, 97 percent of evangelicals agreed that "some groups have actively tried to move society away from traditional Christian values."

And 72 percent of evangelicals also agreed that gays and lesbians were the group "most active in trying to remove Christian values from the country." That compares to 31 percent of all adults who held this belief.

The results are somewhat at odds with a March 2012 poll sponsored by Religion News Service and the Public Religion Research Institute, which found that a majority of Americans — 56 percent — did not feel that religious freedom was under attack in this nation.

But results between the two polls align in that the PRRI survey concluded that white evangelical Protestants were the most worried about religious liberty. It found them to be the only religious group in which a majority (61 percent) considered it under threat.

The Barna poll, conducted in November 2012, has a margin of error of plus or minus 3 percentage points.

-Lauren Markoe, Religion News Service

Should traditional Judeo-Christian values be given preference in the public square?



Millennials are less concerned about religious liberty threats.

Percentage of individuals very concerned about religious freedoms becoming more restrictive in the next 5 years in the United States:

19% Christian millennials 15% all millennials 48% Christian baby boomers 36% all baby boomers

In this study, "millennials" are defined as individuals born between 1984 and 2002; "baby boomers" were born between 1946 and 1964.

Jefferson's Religious Freedom Statute:

Setting the groundwork for the separation of church and state

By J. Brent Walker, BJC Executive Director

This article originally appeared in The Huffington Post on Jan. 16, 2013

an. 16 is designated "Religious Freedom Day," commemorating the passage of the Virginia Statute for Religious Freedom. Written by Thomas Jefferson and passed by the Virginia Assembly 226 years ago, the document formed the intellectual foundation and political foreshadowing for the First Amendment principles of religious liberty throughout the United States.

Religious liberty is often called our "first freedom," both because it is the first right ensured in the Bill of Rights and a widespread theological conviction that religious liberty is a gift from God.

The First Amendment has two religion clauses which protect that religious liberty, but by different means. The Establishment Clause ("Congress shall make no law respecting an establishment of religion") keeps government from advancing or privileging any religion or religion in general. The second clause, the Free Exercise Clause ("or prohibiting the free exercise thereof"), keeps government from interfering with religious practice absent some paramount governmental interest such as peace, safety, or public health and welfare.

Jefferson's statute disestablished the Anglican Church in Virginia and served as a harbinger of the Establishment Clause when it provides: "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." It also foreshadowed the First Amendment's Free Exercise Clause when it says: "no man shall be ... restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his reli-



gious opinions or belief; but that all men shall be free to profess ... their opinions in matters of Religion, ..." Jefferson's statute goes on to honor the "holy author of our religion" and acknowledges the "natural rights of mankind."

Historians tell us that religion in this country was at a low ebb between 1750 and 1790 - at least when measured by church attendance (estimated to have been about 17 percent). After Jefferson's bill was adopted in Virginia and the Bill of Rights ratified by the entire country, weekly church attendance increased over the years. According to a recent Pew Forum survey, 36 percent of the United States general public attends worship services at least once a week, and only 16 percent of Americans say religion is not important in their life.

Some argue that the United States has become less religious over the years. Instead, I think we have become more religiously diverse and fluid. The First Amendment requires, and we should be happy to embrace, a "secular" government in the sense that it is prohibited from promoting religion or taking sides in religious disputes, favoring one over another. It should and must be neutral toward religion.

A secular government does not mean it is hostile to religion. Nothing could be farther from the truth. The institutional separation of church and state does not mean the segregation of religion from politics nor does it strip the right of people of faith to speak forcefully in the public square. It means only that government cannot pass laws that have a primary purpose or effect that advances religion. Religious speech in the public square and even some government venues is commonplace. Examples abound. One need only to look at Tuesday's planned Presidential Inaugural Prayer Service. The president, vice president, dignitaries and Americans of diverse faiths will gather to celebrate the inauguration through prayer, readings and musical performances. And at the inauguration itself, an invocation and benediction will be offered. That doesn't sound like religion is getting short shrift or that the public square is naked. Actually, it is dressed to the nines.

Yes, our culture can be crude and some people are indifferent or hostile to religion. But the answer is not to malign the separation of church and state, which would do away with religious freedom and give government the job of promoting religion. Jefferson's radical Virginia statute created a vital marketplace for religion that must be based on voluntary belief, not government assistance. It is for us people of faith and religious institutions, like the church - to take up the task of making our religion winsome to the world and count on government to do no more than to protect our right to do so.

Report from the Capital

February 2013



K. Hollyn Hollman General Counsel

Hollman REPORT

Administrative rulemaking is essential component

After harsh criticism, dozens of lawsuits and heated debate challenging its rules on mandated contraceptive care coverage, the Obama administration announced Feb. 1 what Health and Human Services Secretary Kathleen Sebelius called "the next step" in providing no-cost preventive care for women, while respecting the religious concerns of their employers.

It is clear that the highly-anticipated proposed regulations won't yet bring the controversy to an end. The administrative rulemaking process requires a two-month public comment period, during which any citizen may submit feedback on the new rule. A predecessor rule, published last March, resulted in more than 200,000 comment submissions. The good news, however, is that the proposals reflect some significant improvements and a commitment to work with stakeholders to find reasonable solutions.

Under the Affordable Care Act, most health plans must cover a wide range of preventive health services, including contraception for women without cost sharing. Last February, the Obama administration promised to work toward a rule that would address concerns of religious and religiously affiliated employers while preserving the stated goals of improving access to comprehensive health care and promoting gender equality through contraceptive services without co-pays.

The new rule makes two principal changes to the no-cost contraceptive coverage requirement. First, it amends the criteria set forth in the initial "religious employer" exemption. Early on the administration fashioned a religious employer exemption intended to exempt the group health plans of houses of worship. It provided, however, a cramped and novel definition of which employers qualified. In particular, it exempted only those employers whose primary purpose was the inculcation of religious values and that primarily hired and served people of the same faith. This led to criticism by some that the administration had assumed improper authority to determine which employers were "religious enough" to meet the test, and the clumsy language could have been interpreted in ways that might actually exclude some of the very institutions it was meant to protect. For example, critics noted that many churches are outwardly serviceoriented, providing charitable social services to people of many different faiths (or no faith). It seemed illogical to define "religious employers" with reference to the religion of those they serve. This led to charges that the administration's definition indicated a discriminatory preference for insular religious

groups.

The new rule eliminates the multi-factor test and instead incorporates a provision found elsewhere in federal law to describe pervasively religious organizations, which are more likely to be eligible for other (unrelated) statutory exemptions. Defining exempt religious employers using familiar and workable language that applies generally to houses of worship and close affiliates places the exemption on stronger legal footing and better reflects the administration's original intent.

Second, the new rule lends clarity regarding accommodations for religiously affiliated organizations that object to providing contraceptive coverage but do not fall within the religious employer exemption. It defines "eligible organizations" as nonprofit entities that oppose some or all required contraceptive services based on religious beliefs, hold themselves out as religious organizations, and self-certify that they meet these criteria. According to the rule, this proposed definition is "intended to allow ... nonprofit religious organizations, including nonprofit religious institutional health care providers, educational institutions, and charities, with religious objections to contraceptive coverage to qualify for an accommodation." As with the modified religious employer definition, this improvement should allay some concerns about government overreach. It provides concrete protections that many critics claimed were merely illusory promises made by an administration with no intent to follow through. Further, it could resolve the claims of at least some of the institutions currently battling the contraceptive coverage requirement in court. The rule also offers greater details about the technical process by which women employees of eligible organizations could still obtain contraceptive coverage either directly from the insurer or, in the case of self-insured employers, through third party administrators. These changes should at the very least invite constructive debate over best methods of implementation. Notably, the rule makes it clear that the administration does not intend for its proposals to extend to for-profit, secular employers, and this will remain a point of contention in pending litigation.

To be sure, this latest step in the Obama administration's rulemaking on the no-cost contraception coverage provision won't satisfy some objecting employers. Nonetheless, it marks an important step forward in the lawmaking process for the benefit of healthcare and the protection of religious liberty.

NEWS

BJC welcomes spring semester interns

The Baptist Joint Committee is pleased to welcome two spring semester interns working alongside the staff in Washington, D.C.

Catherine Anne Culbertson of Richlands, Va., is a sen-

ior at Furman University majoring in religion and political science with a concentration in ancient Greek and Roman civilizations. She is the daughter of William Mahone Culbertson III and Mary Catherine Culbertson and a member of First United Methodist Church in Richlands. Culbertson is engaged to 2nd Lt. Joshua Shelton of the 82nd Airborne Division. After graduation, she plans to study religion in America.

Elana Reman of Denver, Colo., is a 2012 graduate of the University of Miami (Fla.) where she majored in political science and media management and minored in philosophy. Reman recently completed internships with the National Crime Prevention Council and the office of

Reman

Rep. Diana DeGette, D-Colo. The daughter of Aleksandr and Marina Reman, she plans to attend law school this fall and pursue a career in First Amendment issues.

Shurden Lectures topics announced

The theme of the 2013 Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State is "Religious Liberty and Church-State Separation: Oh, What a Touchy Subject!" The three presentations will be given by BJC Executive Director J. Brent Walker April 9-10 on the campus of Stetson University in DeLand, Fla. The lecture topics are listed below. Each presentation is free and open to the public.

APRIL 9

5 p.m. First principles: God-given, but government protected

APRIL 10

- **3 p.m.** First Freedoms: Accommodate religion, but don't advance it
- **5 p.m.** Religion and politics: How did we do in 2012?

Stetson University's DeLand campus is 35 miles from Orlando and 25 miles from Daytona Beach. For more information on



the university, visit www.Stetson.edu.

Visit **BJConline.org/lectures** for the latest information or contact the BJC at jhuett@BJConline.org.

PROPOSAL continued from page 1

gious liberty is protected."

The administration said it is still working out how to handle self-insured group health plans like those offered by the Southern Baptist Convention's GuideStone Financial Resources so that workers receive contraceptive coverage at no cost but eligible organizations do not have to contract, arrange, pay or refer for such coverage.

The proposal amends rules issued in 2011 that for purposes of exemption defined a religious employer as one that has the inculcation of religious values as its purpose, primarily employs persons who share its religious tenets, primarily serves persons who share its religious tenets and is a church or an integrated auxiliary, convention or association of churches.

After receiving more than 200,000 comments both for and against, the administration adjusted the criteria to ensure that an otherwise exempt employer plan is not disqualified because the employer's purposes extend beyond the inculcation of religious values or because the employer serves or hires people of different religious faiths.

-Bob Allen, Associated Baptist Press and BJC Staff Reports For analysis, see the Hollman Report on page 6.

PRAYER continued from page 2

prayers of all your people," said the Rev. Leith Anderson, NAE president, opening the "prayers for those who govern." The petitions continued with National Council of Churches President Kathryn Lohre asking for divine strength for Obama and Vice President Joe Biden, and Islamic Society of North America President Mohamed Magid asking God to give public officials "discernment and the self-control necessary to our time."

Members of Congress and the president's cabinet were in the 2,200-member congregation, as well as religious leaders, including BJC Executive Director Brent Walker. Despite the crowd, Hamilton seemed most concerned with preaching directly to the president. He singled him out as he spoke of the need to bring people together across party lines with a "new common national vision" before conquering thorny political debates over the debt ceiling and health care.

"God has given you a unique gift, Mr. President," he said, speaking of his ability to cast a vision, "unlike any other president we have ever had."

"You should have been a preacher," he added, drawing laughter from the cathedral crowd.

The Rev. Raphael Warnock, senior pastor of Atlanta's Ebenezer Baptist Church, where the Rev. Martin Luther King Jr. once pastored, gave the benediction recalling King's theology of a "beloved community."

"Bless these United States of America," Warnock prayed. "Transform the jangling discourse of our nation into a beautiful symphony of the human family. And through us may the earth and all of the families of the earth be blessed."

-Adelle M. Banks, Religion News Service and BJC Staff Reports





Culbertson



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Baptist Joint Committee

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WHY WE GIVE Giving a small amount each month 'absolutely makes a difference'

r or Jorene and Terry Swift, giving monthly to the Baptist Joint Committee is a way to keep the BJC's work constantly in their hearts and minds. It is also a way for them to make a larger financial impact on the organization. "Even though we give a modest amount it can be counted on each month, and over a peri-

od of time it adds up — we give more by being monthly donors and it is virtually painless," they wrote in an e-mail to the BJC.

To those who are hesitant to commit to monthly giving, the Swifts are quick to share their story. "Often we think we cannot give to the organizations we hold dear," they said, adding that many people assume a small donation will not make an impact. "Giving monthly means you do not have to have a large amount to begin giving and over time it absolutely makes a difference."

The Swifts first learned about the Baptist Joint Committee in the youth department of their churches during Baptist Training Union on Sunday nights. "We were in awe of the work of the BJC," they wrote. "We never forgot about it and kept up with its



Jorene and Terry Swift

work." Their dedication was so deep that Jorene joined the BJC staff during a year the Swift family lived in the Washington, D.C., area.

Through their monthly giving, the Swifts help ensure that the BJC's mission is advanced. "The BJC is respected on Capitol Hill because of its good work and consistent record of standing

for religious freedom," they wrote. "It is a freedom that can only be protected when church and state are separate. The BJC unites Baptists around this freedom that must not be taken for granted. If we follow the work of the BJC, we can be educated citizens who understand that religious freedom for us rests on working to ensure religious freedom for all."

For anyone considering becoming a monthly donor, the Swifts have a piece of advice. "Try it," they said. "Begin with a small amount."

Show your commitment to religious freedom by becoming a monthly donor today. Visit **www.BJConline.org/donate** to set up your gift, or contact Taryn Deaton, director of development, at tdeaton@BJConline.org or 202-544-4226 for assistance.

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