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REPORT from the Capital

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Report from the Capital (ISSN-0346-0661) is published 10 times each year by the Baptist Joint Committee. For subscription information, please contact the Baptist Joint Committee.

◆ Development Update ◆ Our strongest link

Thank you to everyone who gave financially to support the work of the Baptist Joint Committee in 2009. If you donated to us last year, you will be receiving your contribution statement by the end of January. If you have never given to us before, there are several ways to do so. You can make a credit card donation by calling us at (202) 544-4226 or by visiting our Web site at www.BJCOnline.org. You can also mail a check to our office. Your support means everything to us, and we couldn't do our work without you.

As we enter 2010, know that *you* are a key component in the fight for religious liberty. You are our strongest link to others who need to know about the importance of our first freedom.

We appreciate your taking the time to read *Report from the Capital*, and we want you to use the information to make a difference in the world around you.

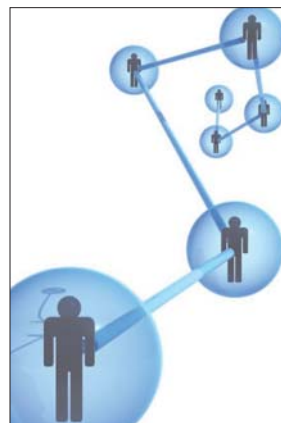
Many of you are already helping us tell others about religious liberty. When we are contacted by people who want to be added to our mailing list, they often say they heard about our work from a friend. We had more than 700 individuals join our mailing list

last year, and there is always room for more! This year, resolve to tell at least one person a month about the importance of religious liberty. Let them know they can sign up to receive *Report from the Capital* and our e-mail updates for free, allowing them to stay up to date on the latest church-state news.

Maybe you feel impelled to support the cause in other ways. You can write a letter to your local paper about a church-state issue, or you can speak to your church or community group about the importance of religious freedom. In addition to this monthly newsletter you receive, we also have resources on our Web site at www.BJCOnline.org that will inform you about the key church-state issues and offer ideas for speaking to your church and to other gatherings.

Whatever action you take, tell us about it! We want to hear from *you*.

Don't let another year go by without finding a way to show your support for religious liberty. We cannot do it without you! If you've never told anyone about our work — or if you've never made a contribution — please consider this your invitation to partner with us in 2010 and beyond.





REPORT

from the Capital

BJC supports church autonomy in case before Va. High Court

The Baptist Joint Committee and a diverse group of national, regional and state denominational entities have filed an *amicus* brief in a Virginia Supreme Court case challenging a Civil War-era statute that interferes with religious freedom and church autonomy.

The case involves disputes over church property following the departure of 11 congregations from the Episcopal Church of the United States.

In the *amicus* brief, the BJC and other groups argue that Section 57-9 of the Code of Virginia put in place to determine property rights in the event of a church division, originally caused by differences over slavery, unconstitutionally interferes with religious freedom guaranteed by the First Amendment. They cite U.S. Supreme Court precedent that precludes government from becoming entangled in questions of religious doctrine, polity or practice. According to the brief, in *Jones v. Wolf* (1979), the High Court held that “state legislatures and courts must respect and enforce a religious organization’s choice, through the use of commonplace trust provisions, to dedicate local church property to a particular denomination.”

The brief states that Section 57-9 imposes a one-size-fits-all method for resolving the disputes, thus interfering with a church’s constitutional right to adopt and apply its own rules of governance and replacing the church’s chosen means of resolving property disputes with one imposed by the commonwealth.

Those joining the brief were entities affiliated with the Methodist, Presbyterian, Lutheran, Church of the Brethren and Seventh-day Adventist churches. The groups represent a broad range of denominational interests and include the most common varieties of church government — hierarchical, connectional and congregational.

“Each of the [groups] comes from a spe-

cific faith tradition, and each has a view toward church property ownership that is informed by their individual structures and roles, reflecting faith-based differences in the polity (internal structure and allocation of responsibility) of their denominations,” the brief states.

Virginia Code 57-9 distinguishes between hierarchical and congregational churches in determining property rights in the event of a division. In churches with hierarchical or connected structures, the statute threatens to upset the manner of property division established by the denomination. In hierarchical churches in which the property is held by trustees, such as Methodists, Episcopalian and Presbyterian churches, “the members of such congregation over 18 years of age may, by a vote of the majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong.” For congregational churches, such as Baptists, “a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice or custom, may decide” ownership.

In the brief, the groups assert Section 57-9 “discriminates against and among churches — impeding the use of trust provisions by churches alone, and expressing a frank bias against ‘hierarchical’ or ‘connectional’ denominations.”

K. Hollyn Hollman, general counsel of the Baptist Joint Committee, said the Free Exercise Clause of the First Amendment forbids the application of a statute such as Section 57-9 that is not neutral or narrowly tailored.

“The statute conflicts with federal constitutional protections that keep civil courts from interfering with internal ecclesiastical matters.”

— Jeff Huett

Magazine of the Baptist Joint Committee

Vol. 65 No. 1

January 2010

INSIDE:

- ❑ Decade in review . . . 2
- ❑ BJC Gifts 4-5
- ❑ Hollman Report . . . 6
- ❑ Martin E. Marty 7

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REFLECTIONS

The decade in religious liberty



J. Brent Walker
Executive Director

Many in the media have written retrospectives on the past decade. As far as I can tell, no one has taken a look at how we fared on the church-state front. That's what I aim to do here.

Dubbed by *Time* magazine the "decade from hell," the past 10 years have been ones for which we can say good riddance: September 11, two costly and deadly wars, the economic meltdown. In terms of religious liberty and church-state relations, however, it has been a mixed bag — some good news, some bad. When compared to the state of religious liberty internationally, we continue to do reasonably well in the United States.



BJC Executive Director Brent Walker speaks to reporters after oral arguments in *Good News Club v. Milford Central School* (2001) in front of the U.S. Supreme Court. At issue was whether a Christian youth organization could meet after school in a public school. A lower court made a distinction between inclusion of secular topics from a religious perspective and religious instruction and worship. Walker said, "The free speech and free exercise rights of students should not turn on such dubious hairsplitting." The U.S. Supreme Court agreed, embracing the equal access principle.

United States Supreme Court

The decade saw the Rehnquist Court become the Roberts Court and, after 11 years of the same nine justices, a change in one-third of the high tribunal.

From the BJC's perspective, when John Roberts took over for William Rehnquist as Chief Justice, the Court's church-state posture was somewhat improved. In our estimation, Chief Justice Rehnquist almost always decided church-state cases wrongly. Chief Justice Roberts appears to be more sympathetic to free exercise even though he may be no better than

Chief Justice Rehnquist in Establishment Clause cases. Although we sometimes disagreed with the opinions of Justice Sandra Day O'Connor, she was right most of the time and could be counted on to render carefully nuanced opinions. While Justice Samuel Alito's church-state jurisprudence has not been fully fleshed out, his replacement of Justice O'Connor is definitely a minus. He authored the Court's opinion in *Hein v. Freedom From Religion Foundation* (2007), which severely curtailed the taxpayer standing doctrine, making it harder for plaintiffs to bring Establishment Clause cases. Finally, Justice Sonia Sotomayor appears from her Judiciary Committee testimony and judicial record to be sound in her church-state views, but Justice David Souter, whom she replaced, was nearly perfect in the 20 church-state opinions he wrote or joined. She has a lot to live up to.

On balance, we have taken a small step backward in terms of the justices' church-state jurisprudence.

Establishment Clause

The Establishment Clause jurisprudence, generally speaking, continued to weaken, especially with regard to the issue of government funding of religious activities and organizations. The decade started off with *Mitchell v. Helms* (2000) in which the Court further pared back a key standard set by the 1971 case of *Lemon v. Kurtzman* (at least for funding cases) and loosened the strictures on direct aid to pervasively religious organizations. In *Zelman v. Simmons-Harris* (2002), the Court narrowly upheld the constitutionality of a school voucher program, at least where parents purportedly have genuine choice to exercise. As noted earlier, the Court's *Hein* decision made it harder to challenge government expenditures under the Establishment Clause. The effects of that decision have been felt in the lower courts.

With respect to other Establishment Clause cases dealing with religious speech and sectarian symbols, we fared better. The Court continued to rule out government-sponsored student prayer in *Santa Fe School District v. Doe* (2000) and the posting of the Ten Commandments absent a clear secular purpose in *McCreary County v. ACLU of Ky.* (2005). Under different facts, where the decalogue is displayed along with many other monuments and has gone unprotested for decades, the rule is different, according to *Van Orden v. Perry* (2005).

Free Exercise Clause

On the free exercise front, I think we made some significant progress. The 1990s were terrible because of the Court's decision in the Native American peyote case gutting the Free Exercise Clause of any significant protection. However, the Religious Freedom Restoration Act (RFRA) in 1993 restored increased protection — at least at the federal level — for the exercise of religion and its salutary effect continued through the next decade. Many states have passed similar measures. In *UDV v. Gonzales* (2006), the Court properly upheld an application of RFRA that protected the religious liberty interests of a small religious sect that sought an exemption to the Controlled Substance Act. Moreover, the Religious Land Use and Institutionalized Persons Act (RLUIPA), championed by the BJC, passed by the Congress

and signed into law in 2000, provides increased protection in zoning and prisoner free exercise cases. The Supreme Court, in *Cutter v. Wilkinson* (2005), upheld RLUIPA's constitutionality, at least with respect to prisoner cases. Finally, in *Good News Club v. Milford Central School* (2001), the Court embraced the equal access principle in cases dealing with religious exercise and after-class club meetings in the public schools.

Religion and Public Life

We continued to work on how to ensure the separation of church and state without divorcing religion from public life. The public square has never been as "naked" as some would have us think. For most of the past decade, it was dressed to the nines in talk about religion. In a sense, then-Governor George Bush set the tone for the decade when, in a Republican primary presidential debate in December 1999, he revealed that Jesus Christ was his most admired philosopher. And we were off and running, throughout his presidency and in other venues.

By the end of the decade, polls demonstrated that the American public had become less enamored of the explicit melding of religion and politics, even though they continued to desire leaders to be religious and showed little enthusiasm for banning religion altogether from the public square. At least from 2006 and certainly in the 2008 presidential election, it became apparent that Democrats had "gotten religion." This was seen especially in the alacrity with which presidential candidates Hillary Clinton and Barack Obama were willing discuss their religion to a degree that exceeded the comfort level of Republican candidate John McCain.

It is also fair to say that there has been a growing and militant, but still minority, sentiment that would banish religion from public life altogether if these folks had their druthers. Here I am talking about those leveling a trenchant atheistic critique of religion generally and religion in public life in particular, including Christopher Hitchens, Sam Harris and Richard Dawkins. While troublesome, I think this group still pales in influence and numbers against those on the other end of the spectrum who would explicitly and unabashedly combine religion and public life, if not church and state altogether.

Religious Liberty Abroad

Religious liberty on the international front continues to

be dismal. According to a recent study released by the Pew Forum on Religion & Public Life, 70 percent of the world's population — some 6.8 billion people — lives in countries where religious liberty is significantly restricted in some fashion. Much of the hoped-for freedom that we saw

emerging from the demise of Communism and other authoritarian regimes in the late 1980s and 1990s never came to fruition and, in some cases, became worse. In addition, the study found that even in cases where the governments do not restrict religious freedom, some have had

their freedom diminished by other citizens and groups within the society. The annual reports of the U.S. State Department and the U. S. Commission on International Religious Freedom concur.

Conclusion

In this country we have not always managed to get the church-state, religious freedom, religion and politics equation just right. That is true for the past 10 years. Nevertheless, when compared with human rights abuses and denials of religious liberty — and often outright persecution — in other countries, it puts our shortcomings in perspective. We should redouble our efforts to argue for a stout vision for both religion clauses in the First

Amendment, welcome religion in the public square (while arguing against abusing religion for partisan purposes), and provide an example for the rest of the world to see and, hopefully, imitate. In the meantime, we should work diplomatically to encourage all countries to uphold the principles set forth in Article XVIII of the Universal Declaration of Human Rights (adopted by the United Nations in 1948) as the aspirational goal for all of humankind: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Let's all hope and pray that the next decade is better than the preceding one — maybe a "decade from heaven" when it comes to religious liberty.



BJC General Counsel Holly Hollman speaks on the steps of the U.S. Supreme Court in 2005 after oral arguments in *McCreary County v. ACLU of Ky.* regarding a display of the Ten Commandments on government property. Hollman said, "The abundance of religion we have in this country is not because we have government-sponsored religious displays. It's because of religious freedom."



BJC Executive Director Brent Walker (left) participates in a 2009 panel discussion about religious liberty and the Supreme Court. This panel also focused on Sonia Sotomayor's judicial record, and it was held for senate staffers days before Sotomayor's Supreme Court confirmation hearings began. Next to Walker is Melissa Rogers, former BJC General Counsel.

Honorary and memorial gifts

Throughout 2009, many people chose to honor or remember a loved one with

In honor of Carmen and Ron Anderson

By Becky and Spence Wilson

In honor of Marjorie and Joe Brake

By Wendy and Richard Brake

In honor of Steve Case

By Pam Durso

In honor of DeDe and Gil Mook

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In honor of Jamie and Charles Petty

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In honor of Stephanie and Paul Nash

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In honor of Kaye and Jimmy Nickell

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Patty and Jerry Wilson

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By Reba S. Cobb

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In honor of Babs Baugh

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Memorial Gifts

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By Cathy and John Baskin

In memory of Jo Lumpkin

by Lorene Lumpkin

In memory of Rev. D. Mike Williams

By Beth and Gordon J. Kieft

In memory of Claude N. Holmes

By Cynthia S. Holmes

In memory of Sara Rutherford

by Charlotte L. Beltz

In memory of Eldon Fields Wood

By Martha H. Wood

to the Baptist Joint Committee

a donation to the BJC in his or her name. Here are those who were honored:

In honor of Brent Walker and Holly Hollman

By Weyman Johnson
Mr. and Mrs. Earl McLane

In honor of Holly Hollman

By Cathy and John Baskin

In honor of Brent Walker, Holly Hollman and Jamie Gibson

By Michael Lieberman

In honor of Brent Walker and the BJC staff

By the Brummett Family

In honor of Brent Walker

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Phillip B. Allen
Nancy and Fred Anderson
Nannette and Joel Avery
Charlotte L. Beltz
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Emil Williams
Glenda and Jimmy Williamson
Hilda C. Wilson
Kay and C. Roy Woodruff
Ouida Wyatt
Carol and Brett Younger

You can honor someone with a gift to the Baptist Joint Committee anytime throughout the year. Just send a note with your check or, when giving online, use the "comments" section to give us the individual's name and to note whether the gift is an honorary gift or a memorial gift. Contact Kristin Clifton at kclifton@BJCOnline.org if you have any questions.



K. Hollyn Hollman
General Counsel

Improving dialogue on religion in public life

How do we move our debates about religious liberty forward? How do we bring political and ideological opponents together to advance the cause of religious liberty in our country? As the Baptist Joint Committee works to defend religious freedom in the contexts of particular litigation and legislative battles, we also constantly evaluate those questions and look for opportunities to educate the public and build appreciation for the religious freedom Americans enjoy, but often take for granted. That is why we were eager to participate in a project that resulted in the publication of “Religious Expression in American Public Life: A Joint Statement on Current Law.”

Too often debates about specific religious liberty controversies perpetuate misinformation about the First Amendment and how it has been applied in the courts. The debates extend from the halls of Congress to talk radio, from coffee shops and truck stops to churches and kitchen tables across the country. Many of the debates involve the role of religion in the public square. While people often disagree on how the law *should* be applied, how it is *currently* applied is discernable. Many rudimentary questions have clear answers in existing law on which people across the political and religious spectrums agree.

Months of research, discussion, drafting and debating among a diverse group of religious and civil liberties experts led to the creation of a new and detailed summary of current law. The project, led by Melissa Rogers from the Wake Forest Divinity School’s Center for Religion and Public Affairs (and former BJC general counsel), was introduced to the public on Jan. 12 with an event at The Brookings Institution here in Washington, D.C. The statement explains what is legally permissible when it comes to religious expression in American public life, and it is written in a question and answer format in language that is easily accessible. This statement is not something lawyers created for lawyers — it is for everyone. You can access the document at www.BJConline.org.

The thorough statement addresses 35 questions, explaining subjects that are settled and clear (though often misunderstood), as well as noting

where the ambiguities lie. Questions range from the legality of oaths on the Bible and other religious expression by elected officials (questions 6 and 7) to explaining that although there are no First Amendment restrictions on the political activities of religious organizations, there are IRS restrictions on the political activities of all tax-exempt organizations, including tax-exempt religious organizations (questions 8-11). The statement even explains the different ways religious expression is protected in various types of governmental forums (traditional public forums, designated public forums and nonpublic forms). Throughout the document, we demonstrate how the law recog-

nizes an important distinction between religious expression that involves the government and religious expression attributable to nongovernmental organizations and individuals.

The project is not intended to give any false notions of agreement among adversaries about what the law should be. BJC Executive Director Brent Walker and I served on the drafting committee, alongside leaders from a diverse range of organizations. Some groups who support the document are actively working to

reverse some of the decisions that create the law we now know. Others are working to prevent changes. The diversity of the drafters, however, made for a more precise statement of the law. We believe the statement will be helpful to sharpen and strengthen discussions about America’s robust religious liberty and avoid some common misconceptions.

We trust this statement will improve our national dialogue on the issues of religion in public life. The drafters of this document are united in their belief that current law protects the rights of people to express their religious belief and practice their faith in public life while preventing the governmental establishment of religion. This project has the potential to put aside the debate about whether the law protects religious expression beyond one’s home or house of worship (it clearly does). It clarifies where lines are drawn. That will not end our debates, but it will certainly make them more productive.



BJC General Counsel Holly Hollman speaks at The Brookings Institution at the release of “Religious Expression in American Public Life: A Joint Statement on Current Law” on Jan. 12.

BJC welcomes spring semester intern

The Baptist Joint Committee is pleased to welcome Natalie Johnston as one of our spring semester interns working alongside our staff in Washington, D.C. Johnston is a 2007 graduate of Howard Payne University where she earned a degree in Christian Studies. She is currently in her second year at George W. Truett Theological Seminary at Baylor University pursuing her Master of Divinity degree.



Johnston

The Waco, Texas, native is married to Jason Johnston and is the daughter of Bob and Dianne Webb. Johnston is a member of Lake Shore Baptist Church in Waco.

Christian Legal Society case headed to U.S. Supreme Court

The U.S. Supreme Court agreed Dec. 7 to hear the case of an evangelical Christian group that was prevented from being recognized as a campus organization at a California law school. The group's bylaws exclude many classes of individuals from membership, including gays, lesbians, non-Christians and Christians who do not sign the group's narrow faith statement.

The Christian Legal Society sued to be officially recognized at the public Hastings College of Law — part of the University of California in San Francisco — but was denied. Officials from the group said the school's policy violated their freedoms of speech, religion and association.

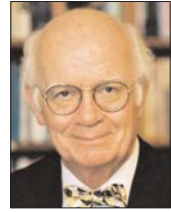
Hastings said the organization must comply with the school's nondiscrimination policy to receive formal recognition, which gives them access to resources and travel funds.

The 9th U.S. Circuit Court of Appeals ruled in favor of the school. The High Court will hear the case, *Christian Legal Society v. Martinez*, in the spring.

— Religion News Service and staff reports

Martin E. Marty to deliver annual Shurden Lectures

Martin Marty, one of the most prominent interpreters of religion and culture today, will deliver the annual Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State April 27-28 on the campus of Samford University in Birmingham, Ala.



Marty

The lectures are sponsored by the Baptist Joint Committee for Religious Liberty and Samford University.

Marty is an ordained minister in the Evangelical Lutheran Church in America and the Fairfax M. Cone Distinguished Service Professor Emeritus of Modern Christianity at the University of Chicago Divinity School. In 1998, on his retirement after 35 years of teaching, the school named its Institute for the Advanced Study of Religion in his honor. The Martin Marty Center is a research center and the major conference and program arm of the divinity school, with a focus on public religion.

Marty will deliver three presentations on the Samford University campus as part of the lectureship: 10 a.m. and 2 p.m. on April 27 and at 10 a.m. on April 28.

In 2004, the Shurdens of Macon, Ga., made a gift to the Baptist Joint Committee in Washington, D.C., to establish the annual lectureship. Designed to enhance the ministry and programs of the Baptist Joint Committee, the lectures will be held at Mercer University every three years and at another seminary, college or university the other years.

The lectures are free and open to the public.

Deadline approaching for Religious Liberty Essay Contest

March 1 is the deadline for high school students to submit essays for this year's Religious Liberty Essay Scholarship Contest. For entry forms, prize information and topic details, visit www.BJConline.org/contest.



State updates

If you have a question about the potential religious liberty implications of a bill or statute in your state, the Baptist Joint Committee is a resource for you.

Maryland: secular government monument

A proposed monument to the U.S. Constitution in Allegany County is under fire. Members of "Citizens for a Secular Government" want to erect the monument on the courthouse lawn in the same area as a Ten Commandments monument and a statue of George Washington, but another local group does not want the word "secular" to appear anywhere on the monument, even in the name of the sponsoring group.

Vermont: tuition for religious schools

A member of the Vermont legislature says he plans to introduce a bill that lets students use tax dollars to attend accredited religious schools. Some small towns in Vermont have tuition programs that send students to schools in neighboring areas. Rep. Greg Clark told *The Burlington Free Press* his bill could save money by letting students choose less expensive religious schools. Critics say it would be hard to make the bill constitutional.