



REPORT from the Capital

New Congress brings change, could impact church-state separation

WASHINGTON — As the 112th Congress settles in with more than 100 new members, a new House speaker and the loss of one of its foremost religious liberty defenders from its ranks, many will be watching to see what the next two years hold for church-state separation.

When Congress began its new session Jan. 5, there were 96 new members of the U.S. House of Representatives and 13 new members of the U.S. Senate — a larger than usual group of rookie lawmakers. While the Democratic Party retained the majority and the leadership posts in the Senate, the Republican Party now holds a 49-member majority in the House. This is the first time since the Reagan administration that Congress began its work with split chambers.

After four years as Speaker of the House, Nancy Pelosi, D-Calif., handed the gavel over to John Boehner, R-Ohio, who will set the legislative agenda. During his 20-year tenure in the House, Boehner has seen many religious liberty issues. Most significantly, he has been a strong proponent of school vouchers and has indicated a desire to restart the District of Columbia school voucher program, which he originally shepherded through the education committee as its chair in 2004. He has never co-sponsored any major religious liberty legislation other than the 2005 bill to ban court challenges to the phrase “under God” in the Pledge of Allegiance, a measure that passed the House but stalled in the Senate.

Part of Boehner’s job as speaker is to select committee chairs. His pick to lead the House Committee on Homeland Security, Rep. Peter King, R-N.Y., has made a statement about his own priorities. King has promised to hold hearings on the “radicalization of the American Muslim community.” In an op-ed piece, he wrote that he will do all he can “to break down the



wall of political correctness and drive the public debate on Islamic radicalization.”

Noticeably absent from the 112th Congress is one of its most effective religious liberty champions, former Rep. Chet Edwards, D-Texas, who lost his re-election bid. During his 20 years in the House, Edwards fought against government-sponsored displays of the Ten Commandments, government funding of religion, and constitutional amendments regarding prayer. He was one of the eight original co-sponsors of the Religious Land Use and Institutionalized Persons Act, which passed in 2000. Edwards was a supporter of the BJC and delivered the keynote address at its annual Religious Liberty Council Luncheon in 2009.

“Chet has been a dedicated public servant and a great friend of religious liberty,” said BJC Executive Director J. Brent Walker. “His long-standing commitment to the principle of religious liberty and willingness to speak out on its behalf served as a witness to other members of Congress, who counted on his voice on the issue.”

“We will miss him, but we look forward to continuing our work in the new Congress,” said BJC General Counsel K. Hollyn Hollman. “The BJC will build and maintain relationships with new and returning members to ensure that religion can be freely exercised, neither advanced nor inhibited by the government.”

— Staff Reports

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Calif. war memorial cross ruled unconstitutional

WASHINGTON — A federal appeals court ruled Jan. 4 that a veterans' memorial featuring a 43-foot cross on California's Mount Soledad is unconstitutional.

"The use of such a distinctively Christian symbol to honor all veterans sends a strong message of endorsement and exclusion," wrote Judge M. Margaret McKeown for the 9th U.S. Circuit Court of Appeals.

"It suggests that the government is so connected to a particular religion that it treats that religion's symbolism as its own, as universal."

The decision that the memorial in La Jolla, Calif., violates the Establishment Clause reverses a lower court decision but does not determine what will happen to the cross that has been the dominant feature of the monument since it was erected in 1913.

"This result does not mean that the memorial could not be modified to pass constitutional muster nor does it mean that no cross can be part of this veterans' memorial," McKeown concluded.

The case has wound through the courts for two decades, a fact noted in the decision. At the outset of the opinion, the court acknowledged the difficulty of finding a resolution for the longstanding controversy. The court stated: "We acknowledge the good intentions and heartfelt emotions on all sides of this dispute, and recognize the sincere anguish that will be felt regardless of whether we affirm or reverse the district court. We also acknowledge the historical role of religion in our civil society. In no way is this decision meant to undermine the importance of honoring our veterans."

"We are grateful to the Ninth Circuit for its recognition that the Establishment Clause of the First Amendment affirms the contribution of diversity in American democracy without pre-eminence to any single religion," said Robert M. Zweiman, past national commander of the Jewish War Veterans of the USA, which worked with the American Civil Liberties Union to challenge the memorial.

Legal groups that supported the memorial, including Liberty Institute and the American Center for Law and

Justice, called the decision a "slap in the face" to military veterans.

The Baptist Joint Committee joined a brief in the case arguing that the "cross sitting on the top of a mountain, standing at the center of the memorial, on a tiny patch of federal land created for the sole purpose of saving the cross in its current location [is] not — and cannot — be permitted under the Establishment Clause."

K. Hollyn Hollman, BJC General Counsel, applauded the decision of the three-judge panel that ruled the cross unconstitutionally promoted the Christian tradition over all others.

"This is a very well-reasoned and clearly written decision in a dispute that is not easily resolved," Hollman said. "The court's thorough recitation of the facts and careful application of the Supreme Court's guidance from cases dealing with religious displays on government property is laudable."

The court recognized the fact that the cross is a prominent landmark of San Diego and credited the secular purpose offered for the federal government's acquisition of the memorial. Examining the primary effect of the memorial, however, as reflected in its context, history and physical setting, the court concluded that a reasonable observer would perceive the memorial as projecting a message of religious endorsement.

Hollman added, "We are glad the court did not allow the government to prevail in redefining the cross as a secular symbol. The cross is too important a Christian symbol for it to become a casualty of government sponsorship. In fact, government endorsement of religion or its symbols does religion no favors at all."

A second case involving a controversial monument in Southern California also remains in the courts.

Last April, the U.S. Supreme Court permitted a war memorial cross to remain at the Mojave National Preserve and told a lower court to further consider a congressionally approved transfer of the cross to private land.

—Religion News Service and Staff Reports



State updates

If you have a question about a religious liberty issue in your state, the Baptist Joint Committee is a resource for you.

Illinois: suit against school district

The federal government filed suit against an Illinois school district for not allowing a Muslim teacher to make the hajj pilgrimage to Mecca. The school district turned down the teacher's two requests for an unpaid leave of absence. She resigned and said she could not delay the hajj, which is required of all Muslims who are physically and financially able.

Washington: conscience clause

The state Board of Pharmacy voted to leave standing a rule requiring pharmacists to dispense Plan B emergency contraception, despite any religious objections. After four years of legal wrangling over the measure, the Board had begun a process to change that provision.

REFLECTIONS

Baptist contributions to religious liberty

Many of you are well aware of the importance of the Virginia experience — Thomas Jefferson’s famous Statute and James Madison’s magnificent Memorial — in disestablishing the Anglican Church and in providing religious liberty for all; indeed, Virginia’s successes provided the foundation for the American experiment in religious liberty that finds full flower in the First Amendment. Some may not appreciate, however, the important contribution made by Baptists along with Jefferson and Madison and other Founders.

In Colonial Virginia, Baptist preachers (along with other dissenters) were required to obtain a license in order to preach. And if they refused (as most did), they could be horse whipped, fined or forced to cool their heels in one of Virginia’s dank and dingy jails. John “Swearing Jack” Waller (a pre-conversion nickname no doubt) was mercilessly whipped by authorities in Caroline County and spent 113 days in four separate jails. James Ireland was jailed in Culpeper, Va., where he continued to preach through the bars while his hands were blooded by knife-wielding detractors seeking to resist his gesticulations. Elijah Craig was charged with disturbing the peace and jailed in Orange County. (Later he moved to Kentucky where he adopted a more peaceful work of distilling bourbon whiskey.) I could name many more.

Why tell the stories of these courageous preachers? Because their suffering inspired Madison to do something about what he called “that diabolical hell-conceived principle of persecution....” It was the witness of Baptist preachers in the face of horrendous persecution that gave Madison the necessary genes to become the father of our Constitution and oppose religious establishments and the persecution they wrought.

But it wasn’t just their *example*. Baptists also lobbied Madison to go beyond disestablishing the Anglican church to spell-out protection for religious liberty in a Bill of Rights to the Constitution he was siring. John Leland, an itinerant Baptist evangelist preaching in Virginia during that heady decade of the 1780s, played an integral role in convincing Madison of the need for a provision in the Bill of Rights protecting religious freedom. In fact, it is said that Leland and Madison met just outside of Orange, Va., on the Fredericksburg Road and made a bargain that bore fruit in the First Amendment. Leland agreed not to oppose Madison’s bid to be a delegate to the Constitutional convention if Madison would promise to seek specific guarantees for religious liberty. (You can go to that very spot today and visit Leland-Madison park.) Madison came through on his prom-

ise and two years later wrote the first 16 words of the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

It is in that tradition of promoting religious liberty and pressuring the powers that be for a robust understanding of those two clauses that the Baptist Joint Committee has labored seven and a half decades in our nation’s capital.

This Baptist, Virginian and American commitment to these twin pillars of our constitutional architecture — no establishment and free exercise — has provided a remarkable degree of religious liberty at least when compared to the rest of the world. The New Year’s Eve bombing of the Coptic church in Egypt and the assassination of Salman Taseer in Pakistan are stark reminders of how blessed we are to resolve our religious differences through dialogue and debate, not with bombs and guns. Still, we are far from perfect and sometimes miss the mark.

We have witnessed a watering down of these protections — by the courts, Congress and culture — riddling them with qualifications and exceptions. Georgetown law professor David Cole penned in *The Washington Post* what he heard as the 112th Congress read the Constitution when members came to the First Amendment: “Congress shall make no law abridging the Freedom of Speech, except where citizens desecrate the Flag ...; respecting an establishment of Religion, except to support Christian schools ... and the display of crosses in public places; or abridging the free exercise of Religion, except to block the construction of mosques in sensitive areas as determined by Florida Pastors or Fox News.”

In addition to ensuring that government does not meddle in religion in that constitutional relationship, we need to accept and embrace our religious diversity on the cultural level. It is not just how *government* treats religious liberty; it’s how *we* treat each others’ religion. Ours is not a Christian nation, as some contend, but made up of many faiths, including now 17 percent who embrace no faith at all. Our plush pluralism is something to be celebrated, not something to be feared. And our biggest challenge today may be how we view Islam and treat our Muslim friends.

It is my hope and prayer that we — in the tradition of Jefferson and Madison, as well as Leland and Waller, and in partnership with the Baptist Joint Committee — will lead out to fight for religious freedom for everyone unaided and unimpeded by any government authority and to learn to treat our fellow citizens as we would want them to treat us.



J. Brent Walker
Executive Director

This column is adapted from Walker’s speech upon receiving the Virginia First Freedom Award (see page 7).

Honorary and memorial gifts to

In the last quarter of 2010, many chose to honor

In honor of Janice and Paul Allison
By Reba Cobb

In honor of Betsy and Mark Bass
By Ardelle and Hardy Clemons

In honor of Rosemary and John Brevard
By Parma and Robert Holt

In honor of Gina Brock
By Michelle McClendon

In honor of Kathleen and Kerry Campbell
By Ardelle and Hardy Clemons

In honor of Anne and Bill Carpenter
By Ardelle and Hardy Clemons

In honor of Barbara and Coy Carson
By Ardelle and Hardy Clemons

In honor of Robin and Alan Copeland
By Reba Cobb

In honor of Delia and Pat Copeland
By Reba Cobb

In honor of Jeanette and John Cothran
By Ardelle and Hardy Clemons

In honor of James Dunn
By Robert H. Rhode

In honor of June and Richard Ferguson
By Ardelle and Hardy Clemons

In honor of Anita and Don Flowers
By Ardelle and Hardy Clemons

In honor of Debby and Wayne Griffin
By Reba Cobb

In honor of Mary Conley-Holladay & David Holladay
By Hugh Tobias

In honor of Holly Hollman
By Paul McCraw

In honor of Adeanya Hunt
By Gregory Hunt

In honor of Richard E. Ice
By Joan Thatcher

In honor of Janice Johnson
By Michelle McClendon

In honor of Donna Forrester & Jerry Kerns
By Ardelle and Hardy Clemons

In honor of Rebecca and Mac Macsovits
By Carmen Anderson

In honor of Lisa and Edgardo Mansilla
By Reba Cobb

In honor of Michael Massar
By C.R. Hurst

In honor of Kyle Matthews
By Michelle McClendon

In honor of Michelle and Rod McClendon
By Ardelle and Hardy Clemons

In honor of Barbara and David McMaster
By Ardelle and Hardy Clemons

In honor of Zeb Morton
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In honor of Stephanie and Paul Nash
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In honor of Kaye and Jimmy Nickell
By Ardelle and Hardy Clemons

In honor of Evelyn Owens
By Ardelle and Hardy Clemons

In honor of Beth and Lee Pennington
By Ardelle and Hardy Clemons

In honor of Terri Phelps
By Kathey Golightly Sanders

In honor of Mary Nell Powell
By Ardelle and Hardy Clemons

In honor of Sonny Rhem
By Ardelle and Hardy Clemons

to the Baptist Joint Committee

for friends and loved ones with a gift to the BJC.

In honor of Jeff Rogers
By Michelle McClendon

In honor of Kay and Buddy Shurden
By Ardelle and Hardy Clemons

In honor of Mary Singleton
By Phillip B. Allen

In honor of Frank Smith
By Michelle McClendon

In honor of Brent Walker
By David Bloom

Susan and Hugh Greene
Donna and Richard Heider
Jean Lin
Gail and Tom Litwiler
Sheila and James Martin
Oliver Thomas
Bill Wildhack
Hal Wingo
Elaine and Archer L. Yeatts, III

In honor of Thomas Watson
By Matt Buckles

In honor of Mark Wiggs
By Patty and Earl Wiggs

In honor of Becky and Spence Wilson
By Carmen Anderson

In honor of Stephanie and Spence Wilson
By Carmen Anderson

In honor of Webb and Tate Wilson
By Carmen Anderson

In honor of Curtis E. Woods
By Kristina Woods Brown

In honor of Baxter Wynn
By Michelle McClendon

In honor of Paula and Baxter Wynn
By Ardelle and Hardy Clemons

In honor of Lauren and Tommy Young
By Carmen Anderson

Memorial Gifts

In memory of C.E. Carlson
By Ray Appelquist

In memory of Lou Ann Claypool
By Reba Cobb

In memory of Harry L. Downey, Jr.
By Sally Downey

In memory of Marshall Hargrave
By Carolyn and Bill Blevins
LeAnn and Ross Brummett
Bernadean and Floyd Welton

In memory of Joe Hunt
By Gregory Hunt

In memory of Allan McCarty
By Ouida Wyatt

In memory of Marjorie Vickers Randle
By J. Grady Randle

In memory of Herbert Reynolds
By Ashlee Ross

In memory of Sara & J.T. Rutherford
By Ann Rutherford

In memory of Cliff York
By Reba Cobb

You can honor someone with a gift to the Baptist Joint Committee anytime. Just send a note with your check or, when giving online at BJCOnline.org/donate, check the box to denote that the gift is in honor or memory of someone.

Contact Development Officer Kristin Clifton at kclifton@BJCOnline.org if you have any questions.

As Congress changes, BJC stays the same

This year marks the 75th anniversary of the Baptist Joint Committee. For the first 58 years of our existence, partisan control of the United States Congress was relatively stagnant. In the past 17 years congressional control has changed almost as many times than over the preceding six decades combined. The birth of the 112th Congress this month marks yet another transition, with Republicans reclaiming the House of Representatives and gaining seats in the Senate just five years after losing both.



By James Gibson
BJC Staff Counsel

Capitol Hill's political dynamics are always one factor in our legislative work. Yet whether Congress is controlled by Republicans, Democrats or the BCS Computer Rankings, the BJC's paramount legislative priority does not change: to stand guard for legislative threats to religious liberty while seeking opportunities to defend and extend it for all.

We monitor and weigh in on state and local legislation, but the bulk of the BJC's legislative portfolio is necessarily focused on Congress. Unlike the comparatively clear-cut steps of filing *amicus* briefs in significant court cases, our legislative work — mirroring Congress itself — is less predictable.

Even so, in any given Congress we work in coalitions of groups to advocate for religious liberty legislation. Coalition work includes sending letters and resources to members and visiting offices to discuss bills. We may serve as panelists at educational briefings for congressional staff, as we did when Sonia Sotomayor was nominated to the U.S. Supreme Court, or assist in planning congressional hearings, such as one on the Faith-based Initiative in 2010. At times, we may chair coalitions, as we did when leading successful efforts to enact the Religious Freedom Restoration Act of 1993 (RFRA) and the Religious Land Use and Institutionalized Persons Act of 2000. Currently, we are active in the Workplace Religious Freedom Act (WRFA) Coalition, which advocates for legislation to enhance protections for persons of faith in the workplace. Comparing RFRA and WRFA demonstrates how such legislation can progress — or not — on Capitol Hill. Like RFRA, WRFA is a necessary response to a bad court decision curtailing free exercise rights. Unlike RFRA, which passed relatively quickly, WRFA's substantive provisions invite allies and adversaries from beyond the religious community, complicating the legislative process and (so far) stymieing the bill's passage. Our WRFA advocacy con-

tinues in the 112th Congress, with some indicia of progress on the horizon.

The BJC's legislative portfolio is not confined to bills mentioning the words "religious liberty." We serve as a "watchdog" for even seemingly benign provisions in unrelated bills that

might harm religious liberty. In the past two years, we worked with coalition partners and congressional staff to "religious liberty"-proof legislation as diverse as health care reform, the hate crimes bill, and climate change proposals. While the BJC took no position on these or other legislation outside our religious liberty focus, we sought to guarantee that any legislation reaching the floor does

no harm to religious liberty. Rarely do such behind-the-scenes efforts warrant *Report from the Capital* or other media coverage, but it is essential to protecting

Americans from bad religious liberty consequences, unintended and otherwise, buried in seemingly unrelated legislation.

Critical to our legislative work are command of the legislative process and maintenance of relationships with key congressional members and staff. Knowing the right person to contact allows us to guide BJC supporters in corresponding and meeting with their members of Congress, and it is also a means to quickly take care of minor issues that could have unforeseen religious liberty ramifications. The publication you hold in your hands is sent to every congressional office, and many recognize its value as an important resource.

The 112th Congress offers renewed opportunities — along with challenges — in pursuit of the interests that motivated the BJC's conception in 1936. Then, as now, it is crucial for religious voices to be heard when decisions directly affecting religious liberty are made, and equally important to keep a watchful eye out for policies that, while ostensibly unrelated, could harm religious liberty interests. That is what we did in 1936, when Speaker William Bankhead, D-Ala., ran the House. That is what we will do in 2011, while Speaker John Boehner, R-Ohio, runs the House. And that is what we will continue to do as we seek to defend and extend religious liberty for all for the next 75 years.

The "Hollman Report" will return in next month's Report from the Capital.

Unlike the comparatively clear-cut steps of filing *amicus* briefs in significant court cases, our legislative work — mirroring Congress itself — is less predictable.

BJC welcomes spring semester interns

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

Douglas Nash of Rome, Ga., is a junior at Temple University majoring in political science. The son of Robert and Guyeth Nash, he is a member of the First Baptist Church of Rome. After graduation, Nash plans to continue his education with a focus in public policy.

Graham Younger of Fort Worth, Texas, is a senior at Davidson College majoring in English. The son of Brett and Carol Younger, he is a member of Broadway Baptist Church in Fort Worth. Younger plans to enter law school in the fall.



Nash



Younger

Walker presented with First Freedom Award

Baptist Joint Committee Executive Director J. Brent Walker received an award for his work advancing freedom of conscience and basic human rights for people of all faiths, traditions and cultures.

Walker was named the winner of the Virginia First Freedom Award on Jan. 13. It is one of the three awards given annually by the Richmond, Va.-based First Freedom Center to recognize extraordinary advocates of religious freedom who have made remarkable contributions. The education organization also bestows International and National First Freedom Awards.

Previous recipients of the Virginia award include Melissa Rogers, who is a former BJC general counsel and director of the Center for Religion and Public Affairs at Wake Forest University School of Divinity, First Amendment Center Senior Scholar Charles C. Haynes, the Most Rev. Walter F. Sullivan of the Catholic Diocese of Richmond, former B'nai B'rith International President Tommy P. Baer and civic leaders James E. Ukrop and Robert S. Ukrop. Other past recipients of First Freedom Awards include former U.S. Secretary of State Madeleine Albright, former Prime Minister Tony Blair, former U.S. Ambassador to the U.N. Richard C. Holbrooke, U.S. Rep. Chet Edwards and award-winning television documentary producers Bill and Judith Moyers.

—Staff Reports

10th Circuit won't re-hear challenge to Utah Highway Patrol crosses

By a 5-4 vote, the 10th U.S. Circuit Court of Appeals declined to re-hear the suit challenging roadside crosses commemorating fallen Utah State

Troopers.

In its Aug. 18, 2010, decision in the case of *American Atheists v. Duncan*, the circuit court ruled that the 12-foot memorial crosses emblazoned with Utah Highway Patrol symbols were unconstitutional, rejecting the argument that crosses are primarily secular symbols. The crosses, mostly on state property along highways, marked places where individual troopers died.

The defendants have told the media they plan to appeal to the U.S. Supreme Court.

—Staff Reports

Oregon releases policy for religious clothing at schools

Oregon state officials released a policy on Dec. 8 intended to give school districts guidance in applying Oregon's new law on religious clothing.

A statewide ban on teacher religious dress was originally enacted in 1923 to keep Catholic nuns from teaching in public schools during a time of anti-Catholic bigotry.

The Baptist Joint Committee joined a diverse group of organizations in sending a letter to Oregon legislative leadership urging repeal of the law. State lawmakers repealed the ban during a special legislative session in February 2010.

For about a month, a group of about 20 people from organizations including the Teacher Standards and Practices Commission, Oregon Education Association, American Civil Liberties Union of Oregon and the Ecumenical Ministries of Oregon worked to create a model policy to help districts create their own policies.

The new law, which goes into effect on July 1st, allows district employees to wear religious clothing except if it hinders the district's ability to "maintain neutrality" in the school environment.

The policy gives districts a number of factors to consider before restricting or prohibiting an employee from wearing religious clothing. The factors include evaluating the size and visibility of the religious clothing, the number of employees wearing similar clothing, and whether the employee intends to use the clothing to proselytize students.

— Religion News Service and Staff Reports

Contribution statements coming soon

Thank you to all who donated to the work of the Baptist Joint Committee in 2010. If you made a financial contribution of \$100 or more, you will soon receive a contribution statement, which will be mailed by January 31.

If you have any questions, contact Development Officer Kristin Clifton at kclifton@BJCOnline.org or 202-544-4226.

Baptist Joint Committee Supporting Bodies

- Alliance of Baptists
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- Baptist General Association of Virginia
- Baptist General Conference
- Baptist General Convention of Missouri
- Baptist General Convention of Texas
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- Cooperative Baptist Fellowship of North Carolina
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- Progressive National Baptist Convention Inc.
- Religious Liberty Council
- Seventh Day Baptist General Conference

REPORT from the Capital

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Enter the 2011 Religious Liberty Essay Scholarship Contest

Don't let high school juniors and seniors miss a chance to win money for college! Entries for the 6th annual Religious Liberty Essay Scholarship Contest are due on **March 15**.

The contest, which is sponsored by the Religious Liberty Council of the Baptist Joint Committee, is open to all high school students in the 2011 and 2012 graduating classes. It asks entrants to consider what happens when religious rights clash with other rights or laws and how an appropriate outcome should be determined.

Individuals may enter the contest by writing an essay addressing the following topic:

The right to freely exercise your religion is guaranteed by the First Amendment, but that right is not absolute and it sometimes clashes with the rights of others. For example, public school students have legal rights that protect their freedom of religion, but a student's right to free speech or the free exercise of religion can conflict with school policies.

Using a single example or multiple examples, write an essay explaining how religious rights clash with other rights or laws in America and how you would determine an appropriate outcome.

Essays must be between 800-1,200 words and postmarked by March 15. Contest



entry forms and more examples are available at www.BJCOnline.org/contest.

The scholarship contest offers a grand prize of \$1,000 and airfare and lodging for two to Washington, D.C. Second prize is \$500, and third prize is \$100.

Winners will be announced in the summer of 2011, and the grand prize winner will be recognized at the BJC board meeting in Washington, D.C., in October 2011.

Essays will be judged on the depth of content, the mastery of the topic, and the skill with which they are written. Students should develop a point of view on the issue and demonstrate critical thinking, using appropriate examples, reasons and other evidence to support their position. Contact Cherilyn Crowe at ccrowe@BJCOnline.org or 202-544-4226 if you have any questions.