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## REPORT from the Capital

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Editor

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Associate Editor

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## Show your support for religious liberty!

The Baptist Joint Committee counts on *you* to help us get the word out about religious freedom and show your dedication to religious liberty in your church and community.

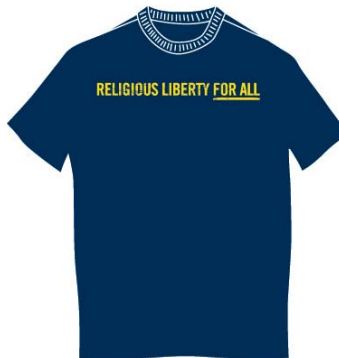
And now, there is a new way to show your support for religious liberty anywhere you go: the Baptist Joint Committee T-shirt.

The front says "Religious Liberty For All," and the back has the BJC website on the left shoulder.

The shirt can be a great way to open up a conversation with a friend or even a stranger. After someone commented

on his shirt in the grocery store, BJC intern Cody Moore had the chance to explain that the BJC works for the separation of church and state to protect all religious groups and those who choose no religion. Paul in Tokyo, Japan, ordered one to wear as a way to honor his country's commitment to religious liberty even though he is currently living abroad.

The 100-percent cotton American Apparel shirts are made in the USA and available in S, M, L, XL and limited XXL. Each T-shirt costs \$15 including shipping and handling and can be purchased at [www.BJCOnline.org/store](http://www.BJCOnline.org/store).



Call our office at (202) 544-4226 or e-mail Kristin Clifton at [kclifton@BJCOnline.org](mailto:kclifton@BJCOnline.org) if you have any questions.

The BJC also has our classic "Separation of Church & State is Good for *Both*" bumper stickers available for free. These have been popular for

several years. During this year's Religious Liberty Council Luncheon, Anita from Georgia was glad to see the BJC still had bumper stickers available. Her daughter's car had been destroyed by a storm in Florida, but one of her biggest complaints about losing her car was the loss of her BJC bumper sticker! If you would like a bumper sticker to display with pride, call our office at (202) 544-4226.

As you find ways to share your commitment to religious liberty for all, tell us about it! If you have a Baptist Joint Committee T-shirt, show us where you are wearing it. If you have a bumper sticker on your car, let us see it. And, if you find other ways to get the message out, let us know. E-mail your photos to Kristin Clifton at [kclifton@BJCOnline.org](mailto:kclifton@BJCOnline.org).

Continue to look for opportunities to spread the message about the importance of religious freedom. Each one of us can be a spokesperson for religious liberty for all.





# REPORT from the Capital

## U.S. Supreme Court says public college can limit access to a forum

WASHINGTON — On June 28, the U.S. Supreme Court announced that public colleges and universities may require recognized student organizations to comply with an “all-comers” policy in order to receive associated benefits. In *Christian Legal Society v. Martinez*, the Court rejected the Christian Legal Society’s (CLS) claim that the University of California’s Hastings College of the Law’s policy violated its rights to free speech, expressive association and free exercise of religion.

In a 5-4 decision, the Court said Hastings did not violate the Constitution in requiring CLS “to choose between welcoming all students and forgoing the benefits of official recognition” because the school’s “all-comers” policy was applicable to all student groups, religious and secular alike, on the Hastings campus. The Court went on to say that Hastings “may reasonably draw a line in the sand permitting all organizations to express what they wish but no group to discriminate in membership.”

The case presented a conflict between Hastings’ interest in nondiscrimination and CLS’s right to define its membership to protect its expressive interests. Hastings grants recognition to a wide variety of student clubs, providing a forum and attendant benefits (including funding from mandatory student fees) that allows them to meet on campus outside of class time to pursue various interests. Such groups, however, must allow any student to join, ensuring that all students have an equal opportunity to benefit from the school’s programs and activities. Hastings denied recognition to CLS because CLS requires all members to sign a faith statement and be subject to its standards for moral conduct — that is, they “discriminate” based on religion.

The Baptist Joint Committee for Religious Liberty filed the only friend-of-the-court brief submitted on behalf of neither party. In its brief, which was also joined by The Interfaith Alliance Foundation, the Baptist Joint

Committee maintained that what Hastings has given with one hand — a forum for student clubs to organize around common interests — it has taken away with the other by conditioning access to the forum with acceptance of the all-comers policy. The brief urged the U.S. Supreme Court to avoid rendering a decision that sanctions either direct funding of a private religious organization and their religious activities or that unduly curtails the expressive association rights of the organization.

The Baptist Joint Committee’s view of this case was primarily one concerning religious groups’ “equal access” to public forums and facilities generally available to non-religious groups, but only so far as government entities stay out of the business of funding religion, said BJC General Counsel K. Hollyn Hollman.

Hollman said, “While equal access to a student forum facilitates religious expression without creating the risk of government endorsement of religion, a public university’s funding of religious student groups beyond the incidental sort previously upheld by the Court threatens an Establishment Clause violation and confuses the application of equal access to the forum.”

The Court emphasized the fact that even after being denied official recognition, CLS continued to have access to the Hastings campus and prospered. If students begin to exploit an all-comers policy — by joining a group to sabotage it — the Court said Hastings presumably would revisit and revise its policy. Despite the potential for such mischief, the Court maintained that the all-comers policy was reasonable under the circumstances and that “the advisability of Hastings’ policy does not control its permissibility.”

The Supreme Court remanded the case back to the 9th U.S. Circuit Court of Appeals for possible consideration of whether Hastings selectively enforces its all-comers policy.



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### On the Web

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[www.BJConline.org/blog](http://www.BJConline.org/blog)



@BJContheHill

# BJC warned of 'Christian nationalists,' honor Gardner C. Taylor at luncheon

CHARLOTTE, N.C. — The culture warriors who contend that the United States is a "Christian nation" gravely endanger freedoms sacred to both Christianity and the nation, Mercer University President William D. Underwood warned supporters of the Baptist Joint Committee for Religious Liberty June 25.

Underwood's warning came during the BJC's annual Religious Liberty Council luncheon at the Cooperative Baptist Fellowship General Assembly meeting in Charlotte, N.C. The group — comprised of the BJC's individual donors — also elected new officers and honored legendary preacher Gardner C. Taylor.

Underwood noted that, when he was a young boy in the late 1950s and early 1960s, there was a broad consensus in the United States about the value of church-state separation "as one of the cornerstones of liberty — as perhaps America's greatest contribution to democratic theory."

As an example of that consensus, he quoted legendary conservative W.A. Criswell, longtime pastor of First Baptist Church of Dallas, saying in 1960 that the Framers wrote "into our Constitution that church and state must be, in this nation, forever separate and free."

But the church-state consensus, Underwood noted, broke down quickly after Supreme Court decisions in 1962 and 1963 banned government-sanctioned prayers in public schools. With the rise of the Religious Right as a national political force in the 1970s and '80s, some began to question the appropriateness of church-state separation at all.

By 1984, Underwood observed, Criswell himself had changed his tune dramatically. In a speech the Southern Baptist leader gave at the Republican National Convention that year, he said, "I believe this notion of the separation of church and state was the figment of some infidel's imagination."

But such stridency is unnecessary, Underwood contended — because the Supreme Court hasn't kicked God out of schools, and because government-sponsored religion is itself an affront to both Christianity and the Constitution.

He noted that doubts about church-state separation have crept into the highest levels of government — with Supreme Court justices claiming in minority opinions that it's perfectly fine for the government to favor religion over non-religion and prominent politicians denigrating church-state separation.

He quoted former GOP vice-presidential nominee Sarah Palin from a May appearance on Fox News in which she said that policy makers should return "to what our founders and our founding documents meant — they're quite clear — that we would create law based on the God of the Bible and the Ten Commandments."

Underwood begged to differ. "The United States Constitution is a secular document. It makes no mention of God, a Creator or a Supreme Being of any sort. It doesn't mention the Bible," he said. "Nor is it true that our legal system is

founded on the Ten Commandments. To the contrary, our laws don't prohibit blasphemy, coveting, lying, adultery or failing to honor our parents."

But, he said, although adherents of the view that America is a Christian nation are "wrong about our history and wrong about our Constitution," such "Christian nationalists are nonetheless gaining ground." He referred to polls that majorities of Americans believe the founders wrote Christianity into the Constitution, that America is a Christian nation and that teachers in public schools should be allowed to lead their students in prayer.

"These views are the result of a relentless campaign by Christian nationalists to rewrite our nation's history," Underwood said. "This fight for narrative control of American history has now expanded beyond home schools and some private Christian academies to our public schools, with the Texas State Board of Education seeking to place an ideological imprint on history, social studies and science courses — including writing separation of church and state out of the history lessons taught to future generations of Americans."

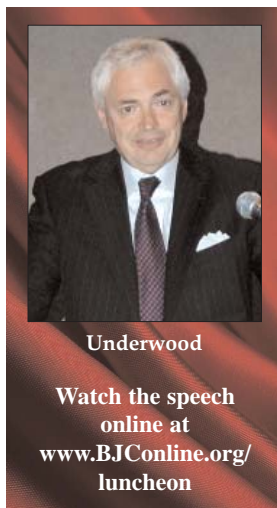
If "Christian nationalists" triumph by gaining ground on the Supreme Court and changing long-standing interpretations of the Constitution, Underwood said, what would a "Christian nation" look like? If government-sanctioned prayer returned in public schools, for instance, what would the prayers say?

"I suppose it will depend on which Christian God we are praying to," Underwood said. "Will we pray to the God of wrath and vengeance that many Christians worship — the God who two prominent Baptist clerics credited with bringing the 9/11 attack as revenge for America supporting the agenda 'of the pagans, the abortionists, the feminists and the gays and lesbians,'" he said — a reference to an on-air conversation between broadcaster Pat Robertson and the late Jerry Falwell in the days after Sept. 11, 2001. "Or will we pray to the very different God of love and grace that many other Christians worship?" Underwood added, saying those Christians are the ones who tend to take Jesus seriously when he enjoins believers from showy public prayer rituals.

"Who will write the prayers?" he asked. He said that, once elected officials become involved, political fights over which official prayers or interpretations of Bible passages are allowed would cause the current partisan acrimony to pale in comparison to elections that hinge on theological differences.

"Why would we want to trade the strength, vitality and authenticity of religious experience in America for the empty edifice of state religion?" Underwood asked. "Is our goal to change people's hearts — or to twist their arms?"

After Underwood's speech, BJC officials gave both Underwood and Gardner Taylor the J.M. Dawson Religious Liberty Award. Taylor is the retired pastor of Concord Baptist Church of Christ in Brooklyn, N.Y., and has repeatedly been

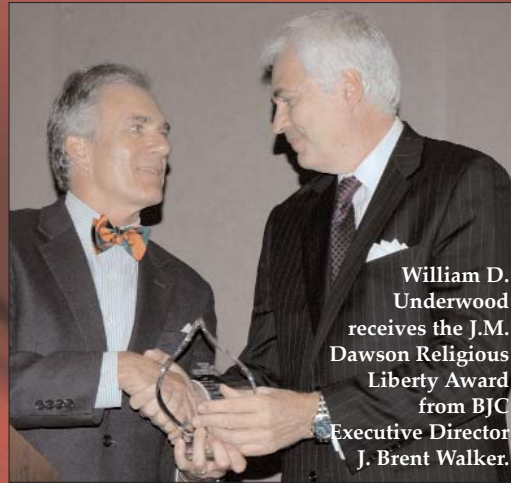


# RLC Luncheon 2010

Watch the event online at [www.BJConline.org/luncheon](http://www.BJConline.org/luncheon)



BJC Executive Director J. Brent Walker presents the Rev. Dr. Gardner C. Taylor with the J.M. Dawson Religious Liberty Award.



William D. Underwood receives the J.M. Dawson Religious Liberty Award from BJC Executive Director J. Brent Walker.



Religious Liberty Council Co-chair Mary Elizabeth Hanchey addresses the crowd and talks about the importance of the BJC.



BJC Executive Director J. Brent Walker (left) and Religious Liberty Council Co-chair Mark Wiggs (center) present Chris Chapman with the Jefferson Cup to thank him for his service to the BJC Board of Directors.



Hollman



Smith



Durso



Dunn

The RLC Luncheon included an update on the BJC's work from general counsel Holly Hollman, a benediction from Progressive National Baptist Convention president T. DeWitt Smith, an invocation from BJC Board Chair Pam Durso and former BJC Executive Director James Dunn introduced the Rev. Dr. Gardner C. Taylor.

honored as one of the nation's best preachers; *Time* magazine called him the "dean of the nation's black preachers." A leader in the Civil Rights Movement and one of the founders of the Progressive National Baptist Convention, Taylor is also a long-time supporter of the BJC.

During the luncheon, BJC supporter Babs Baugh announced a matching campaign that lasted from the luncheon until July 4. The 10-day campaign was a significant boost to the spring fundraising effort, and 15 percent of the contributions were from new donors. BJC General Counsel K. Hollyn Hollman expressed gratitude for the support of so many. "We could not do what we do in Washington without the moral and financial support of so many individuals and churches across the country, and we are thankful to everyone who gave during this



Baugh

matching challenge." Every dollar donated was matched by Baugh's foundation and BJC supporter Patsy Ayres.

In other business, members of the Religious Liberty Council re-elected their officers – co-chairs Mark Wiggs of Mississippi and Mary Elizabeth Hanchey of North Carolina and secretary Reba Cobb of Kentucky. They also elected and re-elected board members. Marc Heflin of Arkansas, Ashlee Ross of Texas and Gary Walker of Florida were re-elected to three-year terms. Mark Edwards of North Carolina, Amanda Tyler of Texas and Joe Cutter of Kansas were elected to their first terms on the board.

— Rob Marus, *Associated Baptist Press* & BJC Staff Reports



K. Hollyn Hollman  
General Counsel

## Closing the term with 'CLS v. Martinez'

"The strongly worded opinions reflected deep ideological divides, as the Court stands at the cusp of another transition in its composition."

On the final day of the U.S. Supreme Court's 2009-10 term, my colleague James Gibson and I walked over to the Court. We expected the Court to announce its decision in *Christian Legal Society v. Martinez*, a case in which the BJC had filed an *amicus* brief, as well as the remaining decisions of the term, which included significant cases on executive power and gun laws.

We also wanted to witness the end of an era. It was senior Associate Justice John Paul Stevens' last day on the Court after 34 years of service.

It turned out to be a more time-consuming, but also much more interesting, excursion than we expected. Fortuitously, we were seated in the front of the lawyers' section, just a few feet from the raised bench where the justices preside. In honor of the occasion, many lawyers, journalists and visitors (men and women) sported bow ties, Justice Stevens' signature look.

After the marshal called the Court to order and the justices were seated, Chief Justice John Roberts began with the announcement that Associate Justice Ruth Bader Ginsburg's husband of 56 years, Martin David Ginsburg, had died the night before. Speaking on behalf of the other justices and their families, the Chief recalled the life of a devoted husband and father, accomplished legal scholar, and beloved Georgetown professor. Justice Ginsburg sat still and appeared stoic, her face only briefly betraying emotion when the Chief recounted their wedding three years after they met on a blind date. It was as if the black robes she and her colleagues wear somehow augmented her personal strength beyond what could be expected. Chief Justice Roberts concluded his remarks by ordering that the Journal of the Court reflect that the day's adjournment of the 2009-10 term was in honor of Martin David Ginsburg.

The Court then turned to the business at hand: the announcement of the term's remaining decisions.

Among those announced, *Christian Legal Society v. Martinez* took relatively little time. Justice Ginsburg began by reading aloud from her 5-4 majority opinion, saying that the case was decided on the stipulated fact that Hastings School of Law had an "all-comers" policy for its recognized students groups. This meant that no organization could turn away any student for any discriminatory reason — including religion

or sexual orientation. For the majority, this defeated any claim that the Christian Legal Society (CLS) was singled out for unfair treatment based on its religious beliefs and requirement that members sign a faith statement and agree to live by the organization's core values. Despite claims by CLS that the university's policy was not accurately reflected in the stipulation, the Court upheld the university's broad non-discrimination policy, holding that the policy did not violate CLS's First Amendment expression and association rights.

The justices were divided along typical lines, this time with the liberals in the majority, joined by Associate Justice Anthony Kennedy, and the conservatives in dissent. The case is likely to be limited in its reach unless other public schools and universities begin adopting similar "all-comers" policies. Some aspects of the majority's opinion, however, could prove troubling to religious groups in other contexts. The finding that the Hastings policy was "viewpoint neutral" rested on the majority's analysis of CLS's membership requirements simply as "conduct" rather than as a manifestation of the group's "Christian perspective."

The concurring opinion of Justice Stevens and the dissent written by Associate Justice Samuel Alito revealed sharp differences among the justices. Characteristic of his perspective in many free exercise cases, Justice Stevens was dismissive of arguments that religion should be treated differently and that CLS should be allowed to define its membership by excluding students. In the dissent, Justice Alito railed against "political correctness" being used by the majority as a basis for ignoring CLS's First Amendment rights and for tolerating what he characterized as Hastings' discrimination against the group.

The other decisions announced included *McDonald v. Chicago*, which struck down a handgun ban in Chicago. Justice Alito read extensively from the majority opinion. Providing a history of various developments in doctrines of incorporation (the process by which federal constitutional rights bind state and local authorities), he laid the groundwork for the Court's 5-4 decision that the Second Amendment's guarantee of an individual right to keep and bear arms applies not only to the federal government but also to state and local governments. In a decision upholding the con-

stitutionality of the Sarbanes-Oxley Act (a law enacted to reform accounting oversight in the wake of the Enron and WorldCom scandals), dissenting Associate Justice Stephen Breyer expressed pointed criticism of the majority's views on the extent to which executive authority could be delegated. At some length, he questioned the majority's decision that the President of the United States must be able to remove regulatory personnel hired by the Securities and Exchange Commission and strongly warned that it could lead to unconstrained presidential power to dismiss numerous federal employees.

At the end of the session, Chief Justice Roberts again spoke in a noticeably more gentle tone, noting the retirement of Frank D. Wagner, the Court's Reporter of Decisions. Tasked with preparing the decisions of the Court for official publication, correcting formatting and citation errors, and writing official case summaries, Wagner had served for more than two decades.

The Chief then acknowledged Justice Stevens' imminent retirement, and read a letter congratulating him. The letter was signed by the other justices, as well as by former Justices Sandra Day O'Connor and David Souter. The letter revealed their respect, admiration and good wishes for Justice Stevens. After the Chief humorously paused to allow Justice Stevens "time for rebuttal," Stevens responded briefly and humbly with appreciation, a bit of humor and some historical observations. Chief Justice Roberts then thanked the Court staff and members of the Bar before wishing everyone a good summer and adjourning the Court until the next term, which begins in October. As the justices rose to depart, the Chief Justice broke with protocol and motioned for Justice Stevens to take his place in leading the justices out of the chamber.

Even beyond the CLS case — the impact of which will become clearer as future litigants contest its meaning — it was a significant day at the Court. The proceedings provided a glimpse of the institution's unique role in our government and the complex relationships among the nine justices. The beginning and end of the session were marked with statements that showed great respect for the Court and the personal contributions and sacrifices of those who are part of its work, evoking smiles and a few tears. The announcement of decisions, however, had an entirely different feel. As justices read some lengthy portions of majority opinions and dissents (an occurrence that has been rare historically but has become more frequent on an increasingly divided Court), some of their colleagues sat with tight jaws, raised eyebrows and what appeared to be painful restraint. The strongly worded opinions reflected deep ideological divides, as the Court stands at the cusp of another transition in its composition.

## Excerpts from the Court's decision in 'CLS v. Martinez'

### The opinion of the court, written by Associate Justice Ruth Bader Ginsburg:

"In requiring CLS — in common with all other student organizations — to choose between welcoming all students and forgoing the benefits of official recognition, we hold, Hastings did not transgress constitutional limitations. CLS, it bears emphasis, seeks not parity with other organizations, but a preferential exemption from Hastings' policy. The First Amendment shields CLS against state prohibition of the organization's expressive activity, however exclusionary that activity may be. But CLS enjoys no constitutional right to state subvention of its selectivity."

"[Registered Student Organizations], we count it significant, are eligible for financial assistance drawn from mandatory student-activity fees; the all-comers policy ensures that no Hastings student is forced to fund a group that would reject her as a member."

### A concurring opinion, written by Associate Justice John Paul Stevens:

"To be sure, the policy may end up having greater consequence for religious groups — whether and to what extent it will is far from clear *ex ante* — inasmuch as they are more likely than their secular counterparts to wish to exclude students of particular faiths. But there is likewise no evidence that the policy was intended to cause harm to religious groups, or that it has in practice caused significant harm to their operations."

### The dissenting opinion, written by Associate Justice Samuel Alito:

"There are religious groups that cannot in good conscience agree in their bylaws that they will admit persons who do not share their faith, and for these groups, the consequence of an accept-all-comers policy is marginalization."

# Religious L

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In the first half of 2010, churches across the co  
religious liberty with their congregati



Find resources at  
[www.BJConline.org/ReligiousLibertyDay](http://www.BJConline.org/ReligiousLibertyDay)

You can use the resources provided on our website,  
but feel free to adapt them for your congregation.

- A “litany” can be a responsive reading for the entire church, two people in front of the congregation, or text on the cover of your bulletin.
- Music can be played or sung by the choir or orchestra, individual church members or the entire congregation.  
At **Ravenworth Baptist Church in Annandale, Va.**, Jake and Jesse Baskin performed “Christ, our Liberty” for the congregation and added an original verse. You can hear their rendition on our website.

## Think outside of the box!



- **First Baptist Church, Clemson, S.C.**, printed a photo from the Jefferson Memorial on the cover of its July 4 bulletin. The BJC has a host of photos that congregations are free to use.
- In **Lynwood, Wash.**, **Good Shepherd Baptist Church** had a discussion on religious liberty in the Adult Education hour on a Sunday morning and then used its Facebook page to tell those excited by the discussion that the Baptist Joint Committee is also on Facebook!

Independence Day fell on a Sunday this year, and the staff of **Pulaski Heights Baptist Church** in **Little Rock, Ark.**, wanted to develop a special worship service for the holiday that celebrated freedom but didn’t lead congregants to nation-worship. So, they made July 4 “Religious Liberty Day.”

To help create the service, staff members used materials from the Baptist Joint Committee website as inspiration to organize a service centered on religious freedom. It included litanies, a children’s sermon, special music and two dramatic monologues that the staff adapted. Pastor Randy Hyde even contributed an original monologue based on John Leland (which is now available on the BJC website).

Throughout the year, churches across the country have celebrated religious liberty with a variety of activities and programs, teaching congregations about the importance of our first freedom.

Several pastors have used the summer months to preach a series of sermons on basic Baptist distinctives, and many timed a religious liberty sermon for Independence Day weekend. Pastor Greg Magruder of **Parkview Baptist Church** in **Gainesville, Fla.**, preached on religious liberty during his summer series on July 4. Using John 8:31-36, he reminded the congregation that, as Christians, “we believe that true freedom comes through Jesus Christ who provides the basis for the freedoms we have as citizens of this world.”

The worship service also included a litany based on George Truett’s 1920 sermon delivered on the steps of the U.S. Capitol, a Roger Williams monologue, and bulletin inserts about religious liberty. Parkview Baptist also had an All-American lunch after church, complete with hot dogs, hamburgers and apple pie.

In **Bennington, Vt.**, **First Baptist Church** Pastor Jerrod Hugenot focused his July 4 sermon on religious liberty, using Luke 10:1-11, 16-20 as the text. In his message, Rev. Hugenot talked about Jesus’ directive to the disciples to go out and encounter friend and foe with the same attitude. He reminded his congregation that, as Baptists who affirm religious freedom, “to be a good Baptist is to follow Jesus and live peaceably with others, whether one follows Jesus or another path. We share the Gospel we hold dear, yet we do not hinder the right of others to believe differently.”

Pastor Stephen Jones of **Second Baptist Church** in **St. Louis, Mo.**, used his July 4 sermon to focus on religious liberty by examining the differences between theocracy and democracy. Jones contrasted two faith-based processions: Jesus’ entrance into Jerusalem on Palm Sunday (Luke 19:37-44) and Roman soldiers arriving in Jerusalem for Passover to maintain order. Jones likened the two processions to groups existing today: those have no fear publicly announcing their faith but not imposing it on others and those who advocate for America as a Christian nation.

# Liberty Day rundup

Country found new and creative ways to celebrate  
ons. Hear their stories and be inspired!

Galatians 1:1-15 was the text for Pastor Jeff Rogers' sermon on July 4 at **First Baptist Church, Greenville, S.C.** He focused on "a free church in a free state" as a concept that is ground not only in political theory and philosophy but in Scripture and theology as well.

**Smoke Rise Baptist Church in Stone Mountain, Ga.,** wanted to find a way to highlight a proper understanding of church and state and what early Baptists contributed to the First Amendment. On July 4, the church had a combined Sunday school for adults with a message titled "Listening to the Voices of Faith & Freedom," and then gathered in the Fellowship Hall for a picnic lunch and musical presentation to celebrate the holiday as a congregation.

Some churches, such as **Heritage Baptist Church in Annapolis, Md.,** choose to celebrate religious liberty at times other than on the weekend surrounding Independence Day. Its staff chose June 13 for Religious Liberty Day. Pastor Henry Green prepared his congregation for the day by writing in his monthly column about Roger Williams and John Leland, reminding it that one of the hallmarks of our religious heritage is religious liberty and its civil corollary: separation of church and state.

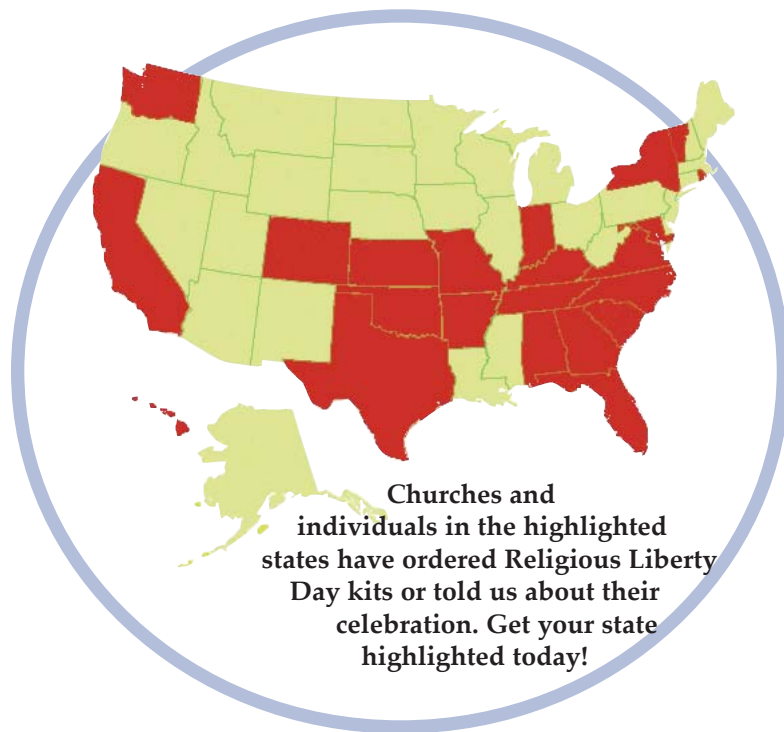
**Ravensworth Baptist Church in Annandale, Va.,** follows the Lectionary and chose June 27, the fifth Sunday after Pentecost, to highlight religious liberty. Pastor Steve Hyde's sermon was on the freedom we have in Christ, and BJC General Counsel Holly Hollman — a member of the church — gave a missions minute about the work of the BJC and led a children's lesson on the voluntary nature of religion.

Religious Liberty Day emphases are appropriate throughout the year (see right) and are not limited to a morning worship service. Janice Dunn, a retired school teacher and member of **St. Matthews Baptist Church in Louisville, Ky.,** led two Wednesday night group discussions in May about religious liberty and then took an opportunity to lead a class on July 4.

Dunn started following the work of the BJC after hearing BJC Executive Director Brent Walker speak at her church years ago. For her discussions, she used BJC resources and worked them into a small group program she was comfortable leading, focusing on Baptist history and heritage. Dunn reminded members of her group about their church's personal connection to the BJC, including a line item in the budget for support and the former church members who have been interns with the BJC.

These are mere examples of some of the ways congregations supportive of religious liberty have celebrated that freedom in recent months. The stories provide ideas that hopefully inspire and challenge other congregations to plan a religious liberty celebration appropriate for their churches. Contact the BJC at 202-544-4226 if we may assist you.

—Cherilyn Crowe



Churches and individuals in the highlighted states have ordered Religious Liberty Day kits or told us about their celebration. Get your state highlighted today!

Mark  
it down!

Looking for a tie-in to celebrate religious liberty in your church? Here are some dates that could be a catalyst for conversation:



- **September 12:** 50th anniversary of JFK's speech on religion and politics)
- **September 17:** Constitution Day
- **October 31:** Reformation Day
- **November 2:** Election Day
- **November 11:** Veterans Day
- **January 16:** Anniversary of the passage of the Virginia Statute for Religious Freedom



# BJC brief opposes N.C. board's prayer policy

WASHINGTON — A policy inviting religious leaders to use meetings of the Forsyth County (N.C.) Board of Commissioners as a platform to promote their faith is unconstitutional, threatens religious liberty and degrades religion by entangling it with government, says the Baptist Joint Committee for Religious Liberty in a friend-of-the-court brief filed July 8 in the 4th U.S. Circuit Court of Appeals.

The BJC filed an *amicus* brief in the appeal of a case brought by two residents of Forsyth County, N.C., who filed suit in March 2007 against the county. The residents challenged the county's practice of allowing sectarian government-sponsored prayers at county board of commissioners meetings under the First and Fourteenth Amendments to the U.S. Constitution and sections of the North Carolina Constitution. They claimed the Board's prayers advance Christianity and have the effect of affiliating the Board with it.

In its brief, the Baptist Joint Committee writes that the legislative prayers delivered pursuant to the Board's policy at the meetings are "clearly unconstitutional" under the U.S. Supreme Court's 1983 ruling in *Marsh v. Chambers*. That ruling "carved out a narrow exception from general Establishment Clause principles for non-sectarian legislative prayer," the brief states. The BJC urges the appeals court to uphold the district court opinion and to strictly apply *Marsh* in this case, only authorizing non-sectarian prayer rather



than expanding *Marsh* "far beyond its limited holding."

"This narrow application of *Marsh* maintains the integrity of the Establishment Clause while recognizing the unique circumstances surrounding legislative prayer," the brief states. A misapplication, on the other hand, would "further [blur] the line between church and state in an area of Establishment Clause jurisprudence where the threat of entanglement is already considerable."

In a previous ruling on cross motions for summary judgment, a district court ruled the Board's invocation policy violated the Establishment Clause. The court adopted the recommendations of a magistrate judge which reviewed the policy as implemented and stated that "these prayers as a whole cannot be considered non-sectarian or civil prayer." It ruled that "the prayers given under Defendant's policy do not reflect th[e] [religious] diversity" the policy purports to promote and instead had the effect of affiliating the government with Christianity.

The brief states that the prayers offered under the Forsyth County Board of Commissioners written policy violate the Establishment Clause by entangling the state with religion and conveying a message of religious endorsement.

"In the legislative prayer context, the State has no place attempting to create a religious bazaar where every faith has a booth, a scenario far more likely to foster competition between sects than knit the cohesive 'fabric of our society,' the goal of the Supreme Court's decision in *Marsh*," the brief argues. "When the religious marketplace is made part and parcel of a legislative proceeding, courts entangle themselves in monitoring and regulating the competition."

K. Hollyn Hollman, general counsel for the Baptist Joint Committee, said protecting both religion clauses of the First Amendment — no establishment and free exercise — is the way to protect religious liberty for everyone.

"The Supreme Court has upheld legislative prayer, but the Court's precedents should not be misconstrued to allow someone to exploit the prayer opportunity in a way that advances a particular religion, stretching an exception into a new rule of law," Hollman said. "We all should pray for our government officials, but we should not ask the government to supply a platform to promote religion in a county business meeting."

— BJC 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.

### LOUISIANA

Gov. Bobby Jindal signed the "Preservation of Religious Freedom Act," declaring the free exercise of religion to be "a fundamental right." The new law prevents the government from substantially burdening a person's exercise of religion without a compelling governmental interest. Opponents said the legislation is unnecessary and will open the state to lawsuits.

### TEXAS

A federal appeals court ruled in favor of a Native American kindergartner who claimed the right to wear his hair in two long braids. The school district's dress code required boys to wear short hair. The court said the school's policy would be a "significant" burden on the practice of the boy's faith in violation of the Texas Religious Freedom Restoration Act.

## Originalism and the Supreme Court



**Stan Hasteley**  
Guest Columnist

During the Senate Judiciary Committee's confirmation hearings on the qualifications of Solicitor General Elena Kagan as the next associate justice of the U.S. Supreme Court, less attention was given to her views on "originalism" as over against a "living" Constitution than in other such proceedings in recent years. Originalism posits a "static" Constitution subject to minimal review over the course of time, while others hold the Constitution to be an "organic" document adaptable to changing times and circumstances.

The debate over originalism as a central feature of confirmation hearings has been with us for a generation, dating to the rejected nomination of a previous solicitor general, Robert Bork. It was Bork himself, a noted constitutional scholar, who fiercely defended a long paper trail he had left behind advocating for originalism. Senators rejected his views and defeated the nomination.

Those were the days before the High Court tilted to the right with the additions of Associate Justices Antonin Scalia, Anthony Kennedy and Clarence Thomas. Scalia and Kennedy were both confirmed without any senator voting against them, but Thomas was only confirmed by a slim majority after a contentious confirmation hearing. Ruth Bader Ginsburg and Stephen Breyer were both confirmed overwhelmingly and, as expected, both have turned out to be practitioners of the view in most cases that the Constitution is a living document that requires continuous interpretation.

Following the death of long-time Chief Justice William H. Rehnquist in 2005, John G. Roberts was nominated to succeed him. Less than a year later, Samuel Alito joined the court to succeed retiring Associate Justice Sandra Day O'Connor. Alito's confirmation vote in the Senate was 58-42, a margin reflecting the fear of many senators that Alito would side with the new chief and Justices Scalia, Thomas and Kennedy and thus form a new conservative majority of five in many closely disputed cases. During their confirmation hearings, both Roberts and Alito answered questions from members of the Judiciary Committee assuring their devotion to originalism.

Finally, in the space of scarcely more than a year, we have seen two vacancies on the high court. The first nominee in recent years, Sonia Sotomayor, was challenged by some members of the Senate Judiciary Committee to explain her views on originalism. Still, she was confirmed by the full Senate, 68-31, taking her seat as the court's junior member in time for the beginning of the

just-completed 2009-2010 term.

This recitation of recent history is given to underscore the supposed importance of the question of originalism in the Senate's proceedings in confirming Supreme Court justices over the past three decades. Arguably, a majority of the Roberts Court has departed from its originalist moorings as a determining factor in its overturning of long-standing understandings of the power of Congress, as well as state and local governments, in the areas of campaign financing and gun control.

On the latter, in nearly identical rulings in 2008 and this year, a 5-4 majority threw out strict controls on ownership and possession of firearms in the federal city of Washington, D.C., and the city of Chicago, respectively. In so doing they found that the Second Amendment to the Constitution ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed") amounts to a fundamental, individual freedom to possess firearms.

As for campaign financing, another 5-4 majority dispensed with more than a century of congressional lawmaking designed to restrict the power of corporations unduly to affect the results of elections (*Citizens United v. Federal Election Commission*). In breathtaking fashion, the majority conferred on corporations — even those whose directors include citizens of other nations or subsidiaries in other countries — the same protections under the First Amendment's free speech clause that are guaranteed to individual U.S. citizens. Hereafter, the court ruled, corporations may spend unlimited amounts of money in political campaigns up to Election Day.

As Elena Kagan reminded us during her confirmation hearing, "we are all originalists" in that all justices consider what the Constitution's text says and what the drafters meant. Differences arise as to whether the text and the Framers' views are the end of the discussion or only the beginning of constitutional adjudication.

The current Court's inconsistent adherence to originalism teaches us that judicial activism is not the exclusive domain of more progressive justices, but instead a shorthand sound bite leveled by people of all political persuasions when they are on the losing side of a case.

*Stan Hasteley was the first executive director of the Alliance of Baptists and served on the Baptist Joint Committee staff from 1974-1989. He is currently working on a book about the history of the BJC.*

*BJC Executive Director Brent Walker is on a summer sabbatical. His column will return in October's Report from the Capital.*

# Live-blogging the Kagan confirmation hearing

## BJC Blogger recaps the church-state discussions in days of questions

For those of us watching closely for church-state discussion, the big moment in Supreme Court nominee Elena Kagan's confirmation hearing finally arrived mid-way through the third day, on June 30, when Sen. Dianne Feinstein, D-Calif., quizzed the nominee on the interaction between the two bedrock religious freedom principles in the Constitution — the Free Exercise and Establishment clauses.

By then, of course, I was a dishevelled mess. After beginning the C-SPAN marathon with all of the excited hopefulness of a soccer fan watching the World Cup, two and a half days of wall-to-wall congressional hearings with no pointed questions on religious liberty had left me bleary-eyed and over-caffeinated.

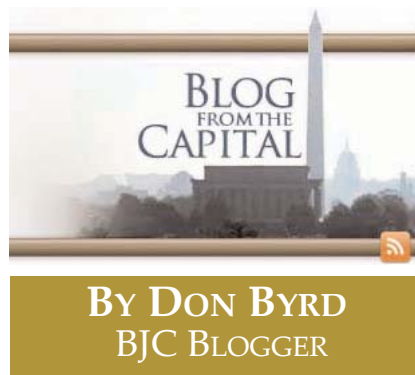
There was certainly reason to be on alert for Kagan's answers. Reading the tea leaves at one of these hearings (a wise woman once called them "vapid" and "hollow") is difficult enough when the nominee is a judge with a record of decisions to examine. In that case, we might at least see how she has applied the law to real-life conflicts in the past. Kagan's experience, though, was not on the bench but in the classroom and in the White House as a lawyer and policy adviser. Her statements to the Judiciary Committee may be our only chance to gauge her church-state views.

Once we finally got a meaty question and the dust settled on her confirmation hearings, did we learn anything instructive about her attitude to church-state problems and her philosophy of interpreting the laws protecting our religious liberty?

I took away three things that struck me as substantive — not overly specific of course, but things that, politically and legally speaking, she did not have to say that might reveal something of her approach.

First, Kagan emphasized that government should have some breathing room, discussing the need to allow "play in the joints" between protecting religious exercise on one hand, and assuring no establishment of religion by the state on the other. Specifically, she said, "There needs to be some freedom for government to act in this area without being subject to a claim from the other side — some freedom for government to make religious accommodations without being subject to Establishment Clause challenges, and some freedom on government's part to enforce the values of the Establishment Clause without being subject to Free Exercise claims."

This is an important recognition on Kagan's part of the constitutional rock and a hard place sometimes facing government officials. We see this played out every year with Christmas displays, for example. City leaders are sued for allowing religious displays, and sued for disallowing them. That is not to say how she might rule in a particular case, but — perhaps reflecting her experience in the Clinton White House working on legislative issues including religious



expression in the workplace — Kagan's statement here may indicate at least an understanding of church-state dilemmas from the perspective of policy makers.

Second, she was very clear on one thing: interpreting the Establishment Clause is a difficult challenge. In contemplating which legal test should be applied when evaluating government action, she said to Sen. Feinstein it was "a hard, hard question." She showed a keen knowledge of the many approach-

es various justices have taken recently in this regard, and seemed to indicate that there may be a time for all of them, given the "many varied contexts" in which these cases arise.

Kagan's response here leaves me with the impression that she is not likely to take a uniform approach to Establishment Clause cases. More importantly, her emphasis of the difficulty of church-state conflicts leaves me strangely comforted. Optimistically, I take it as a sign of just how seriously she takes the concerns on both sides in such disputes.

I was reminded of her statement elsewhere that working on the religious expression in the workplace guidelines was the "most challenging" project she had undertaken in government. If confirmed, her job will be different as a justice, but the task of reckoning with the passionate interests of church-state debate requires no less understanding.

Third, Kagan emphasized the role of precedent. She said quite directly — surprising me, actually — that in interpreting the First Amendment, judicial precedent is typically "more important" than the intent of the Founders, adding, "the court very rarely actually says... 'what did the Framers think about this?'" While she didn't mention church-state law specifically in this discussion — using Free Speech as an example instead — religious freedom is certainly a part of the First Amendment.

The biggest challenge church-state advocates may face in potential Supreme Court Associate Justice Elena Kagan may simply be the loss of Associate Justice John Paul Stevens, whom she could replace. A fierce champion of the Establishment Clause, Justice Stevens was a dependable protector of church-state separation. In her confirmation hearing, Kagan did, however, demonstrate a thorough knowledge of church-state law, while acknowledging the difficulty of adjudicating its disputes. She vowed to be "very practical" in searching for the method that will yield the "best answer on the law" for each individual case, rejecting a one-size-fits-all approach to constitutional interpretation. Stay tuned!

*Don Byrd writes and continually updates the Baptist Joint Committee's blog. His work live-blogging the Kagan confirmation hearing generated a lot of buzz on the Internet. Read Byrd's latest postings at [www.BJConline.org/blog](http://www.BJConline.org/blog).*

# Honorary and memorial gifts to the Baptist Joint Committee

## In honor of

**Babs Baugh & John Jarrett**  
By Neal & Jayne Knighton

**In honor of Joe & Marjorie Brake**  
By Richard & Wendy Brake

**In honor of Don Byrd**  
By Robert & Joyce Byrd  
Lloyd & Sue Elder

**In honor of Dr. Virginia Connally**  
By Elaine Bleakney

**In honor of Rev. Gregory J. Dover**  
By Tina Ballew

**In honor of James M. Dunn**  
By Harrel & Sally Morgan

**In honor of Rev. L. Jack Glasgow, Jr.**  
By Donald & Jo Ann Horton

**In honor of Henry Green**  
By Richard Davies

**In honor of Dr. Carey Herring**  
By Monty & Diane Jordan

**In honor of Dr. L. H. Hollingsworth**  
By Nancy H. Brown

**In honor of Holly Hollman**  
By Mark Siler & Kiran Sigmon  
Kathleen Smith

**In honor of Sharon James**  
By Lindel S. Bittick

**In honor of Drexel Malone**  
By Pattisue Thoman

**In honor of Tom & Vicki Morris**  
By Steve & Joy Hadden

**In honor of John & Marcia Neubert**  
By Elizabeth & Richard Myers

**In honor of George Harrison Wade**  
By John Keith Wade

**In honor of Brent Walker**  
By William & Judith Neal

## In memory of

**Dr. Alice Fleetwood Bartee**  
By Wayne C. Bartee

**In memory of Patton & Irene Clarke Ingle**  
By Pat Ingle Gillis

**In memory of Rev. J. Oscar Lumpkin**  
By Lorene Lumpkin

**In memory of Shelley Marsh**  
By Nathan McCoy

**In memory of Beverly McNally**  
By Ashlee Ross

**In memory of Peggy A. Meyers**  
By Ken & Adrienne Meyers

**In memory of Caroline Terry Moss**  
By Cindy Lee Edge

**In memory of Dr. Cecil E. Sherman**  
By Walter & Kay Shurden

**In memory of Valeda & Russel Strawn**  
By Bud Strawn

## BJC, others ask for examination of Faith-based Initiative

On June 18, the Baptist Joint Committee and other organizations comprising the Coalition Against Religious Discrimination (CARD) asked a congressional subcommittee to hold hearings on the current status of the Faith-based Initiative. The organizations sent a letter to Rep. Jerrold Nadler, D-N.Y., the Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties.

The letter says, despite campaign promises from President Barack Obama to reinstitute constitutionally-required religious liberty protections, "the White House and all the federal agencies are still operating under the same inadequate safeguards against proselytizing and insufficient constitutional protections imposed by the previous Administration."

The letter also makes it clear that the signing organizations do not have any desire "to interfere with the ability of religious organizations to hire on the basis of religion with respect to privately funded positions," but they are simply asking the subcommittee to examine the Obama administration's position on federally funded discrimination in hiring on the basis of religion.

Other signers of the letter include the Anti-Defamation League, Interfaith Alliance, National Education Association and United Methodist Church General Board of Church and Society. At press time for *Report from the Capital*, the letter had not received a response.

## 2010 Religious Liberty Essay Contest winners announced

The BJC is pleased to announce the scholarship winners of the 2010 Religious Liberty Essay Contest.

High school juniors and seniors across the country wrote essays reacting to John F. Kennedy's landmark 1960 speech about the relationship between his religion and his politics and the separation of church and state.

This year's grand prize winner is Nathan Webb from Lumberton, Texas. His essay, which will be published in a forthcoming edition of *Report from the Capital*, discussed the importance of the separation of church and state, writing that "in order to protect the free exercise of religion for all, the rights of the minority must be preserved." Webb will receive a \$1,000 scholarship and a trip to Washington, D.C., in conjunction with the Baptist Joint Committee board meeting in October. A rising senior at Lumberton High School, Webb is the son of Dr. Bob and Dianne Webb and attends First Baptist Church of Loeb.

Benjamin Miller earned the second place prize of \$500. A 2010 graduate of Moline High School in Moline, Ill., Miller is the son of Flint and Debra Miller and a member of First Baptist Church of Moline.

The third place winner is Melody Wu from East Hanover, N.J. A 2010 graduate of Hanover Park High School, Wu will receive a \$100 scholarship. She is the daughter of Ming-Ju Wu and Tzu-Yun Li.

The annual Religious Liberty Essay Contest is sponsored by the BJC's Religious Liberty Council.