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Phone: 202.544.4226
Fax: 202.544.2094
E-mail: bjc@BJConline.org
Website: www.BJConline.org

REPORT from the Capital

J. Brent Walker
Executive Director

Jeff Huett
Editor

Cherilyn Crowe
Associate Editor

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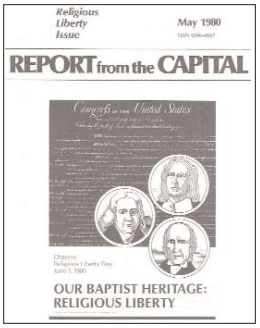
Religious Liberty Day

The Baptist Joint Committee has been calling on churches to celebrate a "Religious Liberty Day" since at least the late 1970s. Back then, issues of *Report from the Capital* asked churches to set aside the first worship service in June to focus on the topic. Now, the Baptist Joint Committee wants *you* to pick the date to celebrate religious liberty, and we are here to provide the resources you need to make the celebration a success!



This month, every church that directly contributes financially to the BJC will be invited to order a free planning kit for a celebration of religious liberty. A Religious Liberty Day can be as extensive as an entire worship service with every element connected to religious freedom, or it can be as simple as a prayer in a service, a special song, a Bible study lesson or a table set up in the lobby with information about religious liberty.

Thirty years ago in *Report from the Capital*, guest columnist Raymond P. Jennings — who was the pastor of historic National Baptist Memorial Church in Washington, D.C. — wrote that a Religious Liberty Day celebration "should be high on the list of special Days for observance by every Baptist church — it should hold a place right alongside of Christmas and Easter for, if religious liberty were to be lost, there would be no right to publicly celebrate these great Christian festivals."

Our Baptist ancestors in this country were heavily persecuted by state churches. Although that notion may have faded from modern memory, it is precisely why we must teach our children and remind our adults about the freedom we enjoy in this country.

Religious Liberty Day is a time for a church body to pause and thank God for the religious rights and educate Baptists about how fragile freedom is.

If your church did not receive a packet — or if **you** want to help plan a Religious Liberty Day — you can also get the resources you need to conduct a successful and educational celebration of religious liberty!

Reserve your Religious Liberty Day kit today by calling Kristin Clifton at (202) 544-4226 or by e-mailing kclifton@BJConline.org.

Religious Liberty Council luncheon update


Underwood

Soon, you will be able to purchase tickets for this year's Religious Liberty Council luncheon, set for June 25 in Charlotte, N.C., during the Cooperative Baptist Fellowship General Assembly. Our speaker will be Mercer University President William D. Underwood.

The Religious Liberty Council is an association of individuals working to provide education about and advocacy for religious freedom and the separation of church and state. Anyone can be a part of the group— just attend the luncheon to learn more! Tickets will soon be available at **www.BJConline.org/luncheon**.

REPORT from the Capital

Magazine of the
Baptist Joint Committee

Vol.65 No.3

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INSIDE:

On the Web

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BJC files U.S. Supreme Court brief supporting freedom of religion

Friend-of-the-court brief supports principles but neither party

WASHINGTON — The U.S. Supreme Court should protect the religious autonomy of student groups that have expressive association rights to meet on campus as part of a public university's forum, but not in a manner that clears the way for government funding of religious groups, says the Baptist Joint Committee for Religious Liberty.

In the only friend-of-the-court brief (*amicus* brief) filed on behalf of neither party in *Christian Legal Society v. Martinez*, the BJC says a public university's laudable goal of preventing discrimination is not impeded by allowing a student group to control its own message and membership criteria. The BJC supports the constitutional requirement that religious clubs on a public university campus receive equal access to a forum for speech that is offered to other student organizations.

At issue in this case is whether the Constitution permits the University of California's Hastings College of the Law to exclude the campus chapter of the Christian Legal Society (CLS) from official recognition and attendant benefits afforded other clubs solely because the group requires its officers and voting members to share its core religious commitments.

Those commitments include agreeing to live "in a manner consistent with the Statement of Faith," which would exclude those who do not agree with the club's interpretation of Scripture. CLS allows anyone to attend meetings, but only those who sign the Statement of Faith can vote.

The dispute arises out of the fact that the law school grants official recognition only to student groups that do not discriminate on the basis of race, color, religion, natural origin, ancestry, disability, age, sex or sexual orientation.

The High Court agreed to hear CLS's appeal of a lower court's ruling that the chapter, like other official school-recognized groups, had to follow the school's nondiscrimination policy to participate as a recognized student organization with access to related benefits, such as use of school name and logo, campus e-mail addresses and mass e-mail privileges.

In its brief, which was joined by The Interfaith Alliance Foundation, the BJC wrote that the U.S. Supreme Court should 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.

On the membership issue, the brief argues there is nothing extraordinary about a religious club wanting to control its message by having exclusionary criteria for membership.

BRIEF *CONTINUED ON PAGE 2*

According to the brief, "for CLS, allowing those who would not affirm their Statement of Faith to become voting members would alter who they are."

As for the law school's nondiscrimination policy, the brief states, its application "interferes with rights of expressive association and destroys its intended purpose of allowing student groups to meet around common interests and to encourage the exchange of ideas on campus."

BJC Executive Director J. Brent Walker said the policy is problematic because it does not allow groups to develop viewpoints that are diverse from other groups. "What Hastings gives with one hand — a forum for student expression — it takes away with the other hand by not allowing CLS to define itself and its message."

"What Hastings gives with one hand — a forum for student expression — it takes away with the other hand by not allowing CLS to define itself and its message."

—J. Brent Walker

As the brief explains, "the constitutional principle of equal access for a speech forum, however, is constitutionally and logically tied to principles of no establishment that protect against government sponsorship of religion."

"This case should be resolved in a way that best reflects and preserves religious liberty protections in its specific context — a public educational institution's forum for student clubs to meet on campus and exercise First Amendment rights," said K. Hollyn Hollman, general counsel of the BJC.

There were 22 *amicus* briefs filed on behalf of the Christian Legal Society. The briefs siding with Hastings College of the Law are due on March 15.

The U.S. Supreme Court will hear oral arguments in the case of *Christian Legal Society v. Martinez* on April 19.

For more on this case and the brief filed by the BJC, see pages 8-9.

—Staff Reports

State updates

High-profile religious liberty cases continue in some states, and a few state legislatures are considering bills that could also impact religious liberty.

Colorado: Public School Religious Bill of Rights

A bill proposed in the Colorado state senate would have allowed teachers to distribute religious material and opt out of teaching subjects that might conflict with their religious beliefs. The sponsor later amended the bill to simply require that questions about religious rights in the schools be addressed by the state's attorney general, but the bill still did not make it out of committee.

Florida: High school prayer case continues

Christian Educators Association International claimed the rights of school district employees were violated when the ACLU and the district of Santa Rosa County, Fla., came to an agreement to end administration-promoted prayer (see Sept. and Oct. 2009 *Report from the Capital*). A federal judge ruled the group lacked standing to intervene in a settled lawsuit.

Kentucky: Bible literacy in schools

A proposal making its way through the legislature would create guidelines for public schools to establish an elective social studies course on the Bible. Sponsors say the course would teach Bible literacy academically, but opponents fear it is an unconstitutional attempt to teach religion in the public schools.

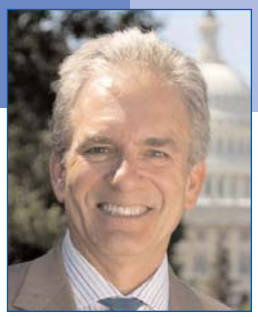
North Carolina: County to appeal prayer ruling

On Jan. 28, a federal judge banned sectarian prayers before board meetings in Forsyth County, N.C., saying the prayers were a violation of the Establishment Clause. In February, the county board of commissioners voted 4-3 to appeal the decision. The Nov./Dec. 2009 *Report from the Capital* has more on the case and the early injunction stopping the prayers.

Oklahoma: Ten Commandments in Haskell County

The U.S. Supreme Court declined to get involved in a case regarding a Ten Commandments display on the Haskell County courthouse lawn. A lower court ruled the monument was an unconstitutional endorsement of religion. Because the High Court will not hear the case, the lower court's decision will stand (see Nov./Dec. *Report from the Capital*). At press time, separate plans to erect a Ten Commandments monument on the Oklahoma Capitol grounds were still in place.

REFLECTIONS



J. Brent Walker
Executive Director

Religion in foreign affairs

In February, the Chicago Council on Global Affairs issued a comprehensive report arguing that U.S. foreign policy is hindered by a lack of appreciation of the role of religion in world affairs and a sometimes slavish devotion to secularism. The report, titled "Engaging Religious Communities Abroad: A New Imperative for U.S. Foreign Policy," proffers a number of recommendations to counter this ignorance and indifference about religion on the international scene.

The credibility of the report is heightened by the collaboration of a diverse task force comprised of 32 members from all along the political and foreign policy spectrum and co-chaired by Notre Dame Professor Scott Appleby and Richard Cizik, president of the New Evangelical Partnership for the Common Good. You can go online to **www.TheChicagoCouncil.org** to read the full report.

Among its many recommendations, the report urges more training and education about the nature of religion in the world for foreign service officers, diplomats and other government officials. It also recommends taking steps to develop a bureaucratic infrastructure within existing departments and agencies where a broader understanding of non-governmental actors on the international scene, including religious ones, can take place. It also urges clarifying the role of the United States in advancing human rights and religious freedom in the context of foreign policy to include not only the right of persons and groups to be free from persecution but also "to advance their values publicly in civil society and political life." In this connection, the Administration is implored to strengthen the position of Ambassador-at-Large for International Religious Freedom in the State Department.

In the main, the task force's 100-page report is on target and will prove to be helpful. Others have long pointed out this so-called "God gap" in foreign policy, including former Secretary of State Madeleine K. Albright. In a world that has become increasingly more religious — where sectarian strife is commonplace and terrorism often motivated by religion — it is absolutely critical that policymakers and those who implement foreign policy learn more about religion. They must be able and willing to take religion into account in their decision-making and, in appropriate cases, even accommodate religious groups and activities that are consistent with U. S. foreign policy aims.

However, I have several notes of caution to sound. The word "engagement" (or a form of it) is used in the report nearly 200 times. But, the report never defines clearly what "engagement" means. It seems to me, however it is defined, stepped up engagement must respect the following caveats.

As a starting point, I believe the First Amendment's Establishment Clause applies to the conduct of U.S. foreign policy. Yes, there is a debate here. In fact, this is apparently the one place where the task force members were not of one mind. Several members filed a dissent from the report's statement that the Establishment Clause, while it "does not bar the United States from engaging religious communities abroad in the conduct of foreign policy,... it does impose constraints on the means that the United States may choose to pursue this engagement." (For more on the Establishment Clause issue, see my "On Faith" post reprinted on page 10.)

Although the Establishment Clause may, in some exceptional cases, need to be "balanced by the weighty interest at stake in the conduct of foreign policy," that still means "religion does not control government and that government does not distort religious preferences by subsidizing, preferring, endorsing, or favoring particular religions or religion in general," according to the report.

Further, sound policy and the *principles* underpinning the Establishment Clause would require that religion not be abused in the course of this new "engagement" initiative. In fact, the report recognizes this when it says, "The United States should avoid actions that use or appear to use religion *instrumentally*, i.e., the United States should not try or be widely perceived as trying to *manipulate* religion in pursuit of narrowly drawn interests." (emphasis added) One remembers allegations — some apparently well-founded — of the CIA in the early 1990s using American missionaries as vehicles for the acquisition of intelligence or to conceal clandestine activities.

Finally, this new emphasis on religion, again as the report understands, should not be deemed to be a "western assault on local faith and custom." Yes, we should articulate a robust vision of religious freedom (the right to *exercise*, not just worship, and to do it *publicly*, not just in private) as stated in the Universal Declaration of Human Rights. And, we can hold up the non-establishment principle — if not our First Amendment in all its glory — as being conducive to freedom and democracy. But we should not insist or even expect other countries to embrace any of these notions overnight or any of our culturally conditioned institutions.

Make no mistake about it: religion is important — and relevant — to both public life and U.S. foreign policy; but, so is religious liberty. That is why religion must be handled with special care.

Faith-based council adopts reform recommendations

Advisory Council asks the president to improve the rules regarding faith-based organizations' partnerships with the government

WASHINGTON – On March 9, a panel of religious and secular leaders charged with improving the operations of the White House Office of Faith-based and Neighborhood Partnerships presented proposals for change to members of President Barack Obama's administration. The 25 members of the President's Advisory Council adopted the recommendations in February from six different task forces, including one charged with finding ways to reform the office.

The Council approved the reform of the office task force's 12 specific recommendations to strengthen the constitutional and legal footing of public-private partnerships. The recommendations ask the administration to clarify the prohibited uses of direct financial assistance, provide guidance on the protection of religious identity while providing social services and assure the religious liberty rights of clients and beneficiaries of federal social service funds.

Baptist Joint Committee Executive Director J. Brent Walker served on the task force that drafted the recommendations for reform of the office.

"Partnerships between government and religious organizations are a given," Walker said. "But, the Office of Faith-based and Neighborhood Partnerships needs to carefully craft rules that will protect the ability of religiously affiliated groups to participate without compromising the principle of the separation of church and state. These recommendations go a long way to achieve this goal."

The Council's approved recommendations made it clear that regulations and guidance regarding the use of federal social service funds should equally emphasize two requirements. First, any explicitly religious activities offered by a provider must be privately funded, separate in time or location from the government-funded program, and, second, non-governmental providers that receive federal grant or contract funds may maintain their institutional religious identity.

The final report highlights some disagreement among the 25-member Advisory Council. While agreeing that the government should permit providers to retain certain aspects of their religious

identities while providing federally funded social services, "[m]embers of the Council disagree … about whether the Government should allow social services subsidized by Federal grant or contract funds to be provided in rooms that contain religious art, scripture, messages, or symbols" the report states.

Additionally, the Council was split over the issue of whether the government should require houses of worship to form separate corporations, such as 501(c)(3) organizations, to receive federal funding for social services. The Council agreed to add the requirement to the proposal, narrowly approving the idea by a vote of 13-12.

Two members of the 25-member Advisory Council have connections to the Baptist Joint Committee. The BJC's former general counsel, Melissa Rogers, chairs the Council and the task force charged with reform of the office, and the Rev. William Shaw is a member of the Council and a member of the Baptist Joint Committee Board of Directors.

The Advisory Council also approved recommendations developed by five other task forces, which included work on economic recovery and domestic poverty; environment and climate change; fatherhood and healthy families; global poverty and development; and interreligious cooperation.

The final Council meeting on this matter was the March 9 presentation of proposals. The results of that meeting were not available at press time for *Report from the Capital*. Please visit our *Blog from the Capital* at **www.BJConline.org/blog** for the latest information on the White House Office of Faith-based and Neighborhood Partnerships.

You can read more on the recommendations approved by the Advisory Council on the next page.

— *Staff Reports*

What did the task forces recommend?

After a year of work, the President's Advisory Council on Faith-based and Neighborhood Partnerships adopted several recommendations on Feb. 26, ranging from church-state separation to fighting poverty and promoting fatherhood.

"The recommendations call ... for greater clarity in the church-state guidance given to social service providers so that tax funds are used appropriately and providers are not confused or sued," the panel's report said.

"The recommendations also insist that beneficiaries must be notified of their religious liberty rights, including their rights to alternative providers."

Among the panel's 64 recommendations, advisers voiced support for:

♦ developing interfaith service projects on 500 U.S. college campuses and in 40 U.S. cities

♦ working to correct the "deeply flawed" ways the federal government measures poverty to better respond to the needy who are not currently eligible for social services

♦ increasing federal funding for programs to promote fatherhood, including among fathers in the military and in prison

♦ limiting the Pentagon's role in development work

♦ providing guidance to state and local governments to help nonprofit groups "retrofit and green" their buildings.

The advisers reached consensus on most recommendations but were divided over two contentious issues: whether houses of worship that receive direct federal funding for social service programs should form separate nonprofit corporations; and whether federally funded religious charities should remove religious art, symbols or messages in facilities used to provide social services.

— *Adelle M. Banks, Religion News Service*

Task force recommendations for reform of the White House Office of Faith-based and Neighborhood Partnerships

BJC Executive Director J. Brent Walker served on the task force charged with drafting recommendations for reform of the White House Office of Faith-based and Neighborhood Partnerships. The diverse group agreed on 12 specific recommendations for reform, which are listed below. You can read more about the recommendations on our Web site at **www.BJConline.org.**

Recommendation 1: Perform a strategic review of government-supported technical assistance and capacity building.

Recommendation 2: Convene and encourage learning communities of social service programs and providers.

Recommendation 3: Develop a strategy to partner with State, county, and city officials.

Recommendation 4: Strengthen constitutional and legal footing of partnerships, and improve communications regarding White House Office of Faith-based and Neighborhood Partnerships and Agency Centers.

Recommendation 5: Clarify prohibited uses of direct Federal financial assistance.

Recommendation 6: Equally emphasize separation requirements and protections for religious identity.

Recommendation 7: State more clearly the distinction between "direct" and "indirect" aid.

Recommendation 8: Increase transparency regarding federally funded partnerships.

Recommendation 9: Improve monitoring of constitutional, statutory, and regulatory requirements that accompany Federal social service funds.

Recommendation 10: Assure the religious liberty rights of the clients and beneficiaries of federally funded programs by strengthening appropriate protections.

Recommendation 11: Reduce barriers to obtaining 501(c)(3) recognition.

Recommendation 12: Promote other means of protecting religious liberty in the delivery of government-funded social services.

Working for teachers' religiou

Throughout the year, you read stories in *Report fro* extend outside the beltway as we fight for true relig tion in Oregon. The state passed a landmark Workp school teachers from wearing religious clothing in t involved in a state thousands of miles away from o advance religious freedom for all while protecting t

2009 **2010**

July 16: The Oregon WRFA bill is signed by Gov. Ted Kulongoski.

Feb. 23: The **Senate votes 21-9 to pass** few wording changes. It goes On the same day, **the House Senate version and passes th**

MAY JULY DECEMBER JANUARY FEBRUARY

May 29: The Oregon legislature passes the Workplace Religious Freedom Act (WRFA), requiring employers to provide accommodation for religious beliefs if there is no "undue hardship" on the business. A news item appears in June's *Report from the Capital*. The bill leaves a law in place that prohibits teachers from religious dress.

Dec. 1: Media reports Oregon House Speaker Dave Hunt plans to introduce a bill to repeal the ban on teachers' religious clothing in the 2010 legislative session. The news item appears in the Nov./Dec. *Report from the Capital*.

Jan. 1: Oregon's WRFA law takes effect.

Feb. 1: The 2010 Oregon Legislative Special Session convenes. **House bill 3686**, which would repeal the ban on teachers' religious garb, has its first reading.

Feb. 4: The Baptist Joint Committee joins a diverse group to send a letter to Oregon legislative leadership urging the immediate repeal of the law forbidding public school teachers from wearing religious dress. Excerpts are below. Visit **www.BJConline.org** to read the entire letter.

Feb. 10: Brent Walker's al calling for teachers' wear religious clothing classroom is published *Register-Guard* in Euge Oregon. Later that day **Oregon House passes by a vote of 51-8**, send measure to the state Se

Feb. 4, 2010

Dear Senate President Courtney and House Speaker Hunt:

We, the undersigned interfaith, civil rights, and Bar association organizations, represent millions of diverse constituents around the nation i the cause of promoting robust workplace religious freedom legislation consistent with our constitutional heritage and values. In this context we join together to urge an immediate repeal of ORS 342.650 . . . an Oregon law that forbids teachers from wearing religious dress . . . .

Supporters of the status quo have argued that allowing public school teachers to wear religious dress will disrupt religious neutrality in the classroom and lead to proselytization of students. Both propositions are factually incorrect. The private act of wearing religious dress in adherence to faith is distinguishable from the public act of asserting a proselytizing message. The Establishment Clause of the U.S. Constitution affords sufficient protection against state endorsement of religion; banning all forms of religious dress for teachers is a prohib tively overbroad approach to the issue. This explains why . . . .it is increasingly common to find teachers wearing yarmulkes (headcoverin hijabs (headscarves), and dastaars (turbans) in public schools throughout our diverse nation.

Given our nation's growing commitment to the cause of workplace religious freedom, and our desire to give a greater measure of security our constituents and people of all faiths by strengthening protections for religious freedom in the workplace, we respectfully urge you to repeal ORS 342.650 and amend the Oregon WRFA so that all Oregonians have a fair opportunity to find self-fulfillment and economic sec ty in any career they choose.

American Islamic Congress
American Islamic Forum for Democracy
American Jewish Committee
Anti-Defamation League
Asian American Justice Center
Asian Law Caucus
Baptist Joint Committee
The Becket Fund for Religious Liberty
Interfaith Alliance
Japanese American Citizens League
North American Religious Liberty Association
North American South Asian Bar Association
Portland Chapter of the National Lawyers Guild
Sikh American Legal Defense and Education Fund
The Sikh Coalition
South Asian Bar Association of Northern California
Union of Orthodox Jewish Congregations of America

us liberty in Oregon

n the Capital outlining the Baptist Joint Committee's work in Washington, D.C. But, our efforts gious liberty across the country and in all levels of government, as illustrated by a recent situa- place Religious Freedom Act in 2009, but it still left a law in place that explicitly forbade public the classroom. The BJC and other partner organizations (such as The Sikh Coalition) got ur Washington, D.C., offices. This timeline illustrates one example of how the BJC works to the separation of church and state.

s the bill, making a back to the House. **concurs with the e bill, 48-7**.

Final step
The bill needs the signature of Oregon Gov. Ted Kulongoski to become law. He had not signed it at press time, but media reports say he is expected to do so.

2011

July 1: Law would go into effect.

JULY

s editori- rights to g in the l by *The* ne, **, the bill 3686** ing the enate.

Oregon's religious freedom law shouldn't exclude teachers

By J. Brent Walker
Published Feb. 10, 2010, in *The Register Guard*, Eugene, Oregon

On Jan. 1, workers in Oregon got a boost in the protection of their religious expression when the state's Workplace Religious Freedom Act went into effect. Public school teachers, however, were left out in the cold.

Even though the Civil Rights Act of 1964 forbids workplace discrimination on the basis of religion by employers with 15 or more employees, the U.S. Supreme Court has interpreted that provision so narrowly that employers generally do not have to accommodate religion if it would cause even minimal inconvenience.

For example, employers are not required to allow employees to use their vacation leave for religious observances or to allow employees to wear clothing called for by their religion.

Oregon's Workplace Religious Freedom Act protects employees by requiring employers to provide accommodation for religious belief as long as it does not impose an "undue hardship" on the business.

The Oregon legislation, however, specifically excludes the right for public school teachers to wear religious clothing. Section 4 of the act makes sure Oregon law (Oregon Revised Statutes 342.650) continues to prevent all public school teachers from wearing "any religious dress while engaged in the performance of duties as a teacher."

The punishment for doing so, according to ORS 342.655, is suspension or dismissal from his or her job.

Allowing teachers to wear religious clothing is vital to protecting their religious freedom, and it would not interfere with our country's wise separation of church and state. The Baptist Joint Committee was proud to join a coalition of various faith, citizenship and legal organizations in sending a letter to Senate President Peter Courtney and House Speaker Dave Hunt to call for the repeal of these statutes.

The letter makes clear that repeal will not hamper religious neutrality in the classroom. In most other states, public school teachers are allowed to wear yarmulkes, hijabs and other items of religious dress.

Public school teachers have a specific set of rules to follow because they are instructors and government employees; as representatives of the state in their classrooms, they cannot endorse religion in front of their students.

The First Amendment's first 16 words have two distinct clauses relating to religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It is important that true religious freedom is not compromised by a governmental establishment of religion.

Teachers do not have to leave their faith at the schoolhouse door.

However, they also cannot advance or otherwise threaten to establish religion in the public schools, because this would imply governmental establishment.

Public school teachers should be allowed to wear non-obtrusive jewelry and clothing that reflects their personal faith, but they still cannot wear anything that proselytizes.

There is a big difference between wearing a cross on a necklace that has personal religious meaning, and wearing a T-shirt or button with an undeniable and direct religious message to others, such as "Jesus saves."

The Workplace Religious Freedom Act is a huge step forward for Oregon, but it did not go far enough.

House Bill 3686 would repeal the ban on religious garb for teachers, thereby extending workplace religious freedom to all employees in Oregon by protecting teachers' rights. It will be another means by which the government allows all persons to choose their faith through the dictates of their conscience without forcing others to share their beliefs.

The First Amendment — and true religious liberty — demand no less.

The bill is scheduled for a House vote today.

K. Hollyn Hollman
General Counsel

Defending our constitutional freedoms

Christian Legal Society v. Martinez can be viewed from a variety of constitutional perspectives. It is neither primarily about free exercise nor establishment of religion, but its outcome could be significant for religious liberty. The U.S. Supreme Court must determine if the Constitution allows a public university law school to exclude a religious student organization from its "forum" because the group requires its members to share its core religious commitments. When the BJC decided to file a brief in this case, we did so in way that acknowledged the competing interests of the parties and that stands firm for the principles that protect religious liberty.

"Our unapologetic belief in a robust Establishment Clause does not lead us to the unwarranted and untrue conclusion that religion must be quieted in the public square or that religious individuals should suffer special detriments."

At the University of California's Hastings College of the Law, there are about 60 "recognized student organizations." Such groups are organized around interests such as politics, legal theory, religion and sports. The law school specifically disclaims sponsorship of any of these groups. It provides, however, a registration process for them to become "recognized," thereby making them eligible for a variety of benefits, such as use of facilities, communications outlets, and the ability to apply for funding.

Generally, the effect of maintaining a registered student organization program is the creation of a "limited public forum" where the state (in this case, the public university) cannot treat groups differently because of their viewpoint. This forum, like countless others on university campuses nationwide, is designed to engage students in noncurricular activities. It offers an opportunity for student leadership development and social interaction outside of class, giving students the opportunity to exercise their First Amendment rights of speech and association.

This case arose after the Hastings student chapter of the Christian Legal Society (CLS) was denied participation in the law school's "recognized student organization" forum in 2004 due to its requirement that all members sign a Statement of Faith and pledge to live in accordance with its precepts. Hastings requires all recognized student organizations to follow its nondiscrimination policy, including its prohibition on religious discrimination. Therefore, this case presents a conflict of two competing interests: the law school's interest in ensuring that all of its students may participate in campus activities without regard to their status versus CLS's expressive association interest in protecting its core values and self-definition.

The Establishment Clause of the First Amendment does not bar activity by religious groups on public property where there is no significant risk of government sponsorship of religion. As the Supreme Court has stated — and as the BJC regularly teaches — there is a "crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect." In the context of a student group forum on a public school or university campus, First Amendment principles weigh strongly in favor of inclusion of religious groups on an equal basis with secular groups.

The BJC has long supported this principle of "equal access" for religious entities. The Baptist Joint Committee argued for and supported the Court's landmark ruling in favor of the "equal access" principle in *Widmar v. Vincent* (1981), advocated that Congress enact the Equal Access Act of 1984 (a federal law governing student clubs at the secondary level), joined with others to successfully defend the Act's constitutionality in *Board of Education v. Mergens* (1990), and have consistently and vigorously continued to support equal access.

Our commitment to religious liberty leads us to support a broad range of constitutional and statutory protections. Our unapologetic belief in a robust Establishment Clause does not lead us to the unwarranted and untrue conclusion that religion must be quieted in the public square or that religious individuals should suffer special detriments. Government should guard against any sponsorship or promotion of religion under the Establishment Clause, but also should avoid interfering with religion.

Religious student groups, like their secular counterparts, have speech and association rights that may be reflected in membership criteria. Of course, the state (or in this case, a public educational institution) has a strong interest in promoting its own message of nondiscrimination, which may conflict with the message of some religious student groups. In the case of a limited public forum for student speech, however, that interest should not be used to justify interference with the group's membership criteria.

Were this the end of the analysis, the BJC could have filed an *amicus* brief squarely supporting CLS. We could not do so, however, because "equal access" principles do not, and should not, pave the

way for government funding of religious organizations for religious activities. While the Constitution requires equal access to a forum for religious student clubs, it also forbids the government from funding religion. The legal principle of "equal access" does not extend to general grants to religious student groups engaged in religious activity. Because registered student organization status at Hastings carries with it the eligibility for groups to apply for funding that is not clearly limited to the incidents of the forum, the BJC, joined by The Interfaith Alliance, filed a brief in support of *neither* party so that we could effectively affirm our support of "equal access" while maintaining our long-held and inviolate stance against government funding of religion.

> "[E]qual access" does not extend to general grants to religious student groups engaged in religious activity.

"Equal access" does not allow sponsorship or control of religious student groups by the public school or university. When a public university law school links access to a limited public forum for student organizations with financial benefits (beyond what is merely incidental to the forum and its purpose), it subverts the positive nature of "equal access" principles for a religious group in a limited public forum, creating confusion and raising Establishment Clause concerns. Hastings muddied the "equal access" waters by doing just that: including eligibility for money as a benefit of its registered student organization forum — money that is not necessary to the purposes of the forum. The religious liberty rights of all students, as well as the integrity of public institutions, demand that public schools and universities take measures to provide a clear separation between the schools' own speech and sponsored activities and those of their students. This requires avoiding financial support for religion, and Hastings should revise its policies accordingly.

Principled protection of religious liberty requires advocacy on all fronts. Some individuals and organizations are enthusiastic proponents of the Free Exercise Clause, but disdain the Establishment Clause. Others waste no chance to raise the specter of Establishment Clause violations (overusing "separation of church and state" language) but lack comparable zeal for protecting the free exercise rights of persons and faith communities. Others support one or both of the religion clauses but may not see that religious liberty draws on several constitutional rights — including free speech and association — that need defending carefully. Still others constantly subordinate these rights to the principle of nondiscrimination.

The BJC's guardianship of religious liberty does not always lead us to determine a clear right side and wrong side in specific court cases. But, no matter the details of the dilemma before the Court, we will work diligently to promote an outcome that best serves religious liberty.

EQUAL ACCESS

Although "equal access" is not the sole principle at stake in *Christian Legal Society v. Martinez*, it is one of several considerations the U.S. Supreme Court will have to weigh in deciding the case. Below are the Supreme Court cases and federal legislation that define "equal access."

***Widmar v. Vincent* (1981):** The Court first recognized the principle of "equal access" by ruling that a state university could not close its facilities to a religious student group while allowing secular groups to use those same facilities.

Equal Access Act of 1984: Congress enacted this law extending the "equal access" principle to student-initiated meetings and clubs in public secondary schools.

***Board of Education v. Mergens* (1990):** This decision upheld the constitutionality of the Equal Access Act against a challenge that claimed the law amounted to government establishment of religion.

***Lamb's Chapel v. Center Moriches Union Free School District* (1993):** Applying "equal access" outside of the student group context, the Court ruled that a church must be given the same access as secular groups to use school facilities after hours.

***Rosenberger v. Rector & Visitors of the University of Va.* (1995):** The Court applied the "equal access" principle to a public university's reimbursement policy for the printing of student publications, requiring that a student publication with a religious viewpoint receive the same treatment as other publications.

***Good News Club v. Milford Central School* (2001):** The Court reaffirmed its rulings in *Widmar* and *Lamb's Chapel*, holding a public school could not prohibit a religious group from having weekly meetings on school property after hours.

The Establishment Clause applies to U.S. foreign policy

By J. Brent Walker

BJC Executive Director J. Brent Walker and other panelists for* The Washington Post / Newsweek *"On Faith" conversation responded to a recent report that said the U.S. government should develop a strategy to make religion "integral" to American foreign policy.

Religion is relevant to U.S. foreign policy; but, at the same time, it must be handled with special care. I would like to emphasize the importance of the question of whether the First Amendment's Establishment Clause applies to the conduct of U.S. foreign policy. I think it does.

The Report of the Task Force on Religion and the Making of U.S. Foreign Policy calls on the president to make clear that, while the First Amendment's Establishment Clause does not preclude the U.S. from "engaging religious communities abroad in the conduct of foreign policy," it does "impose constraints on the means that the United States may choose to pursue this engagement."

Several on the Task Force dissented in writing from this recommendation, arguing that U.S. foreign policy cannot be limited by "constraints ... imagined to derive from the Establishment Clause." That dissent was countered by others who quite properly point out that "it is beyond question that all branches of the U.S. government must act in accordance with the Constitution when conducting American foreign policy." They went on to observe, "There is no reason to believe that the Establishment Clause is an exception to this requirement."

Yes, we can debate the nuances of how and to what extent the Establishment Clause may or may not apply to foreign affairs (as we have been doing for decades on the domestic front). And yes, because of standing-to-sue limitations and the fact that foreign policy is typically a non-justiciable "political question," the courts have been unable or unwilling to rule definitively. But to suggest that the Establishment Clause can never apply beyond our borders would be an emasculation of that critical pillar of the First Amendment that ensures religious liberty for all Americans and whose underlying principle of governmental neutrality informs a proper understanding of religious liberty abroad.

BJC presses for promised changes in Office of Faith-based and Neighborhood Partnerships

On Feb. 4 and March 9, the Baptist Joint Committee joined other religious and civil liberties groups in sending a letter to President Barack Obama requesting that he take action to prevent government money from funding religion and religious discrimination. Both letters called on the president to keep his pledge and reform the White House Office of Faith-based and Neighborhood Partnerships.

The letters come almost one year after President Obama created a Faith-based Advisory Council to make recommendations for "changes in policies, programs, and practices" of the Faith-Based Initiative which began under President George W. Bush.

The letters note that Obama inherited a "deeply flawed" Faith-based Office, but express disappointment that, to date, "almost every aspect of the Bush Administration Faith-[b]ased Initiative remains in place." They applaud the "extraordinary efforts that many Advisory Council members have made to identify ways to strengthen the constitutional protections" of the office, but the signatories "deeply regret that the [Faith-based Advisory] Council was not permitted to make recommendations on the issue of religion-based employment decisions."

The BJC has long been a proponent of making sure that the White House Office of Faith-based and Neighborhood Partnerships has strong guidelines on hiring for government-supported programs.

J. Brent Walker, executive director of the BJC and a member of the task force charged with recommending reforms for the Faith-based Office, recognizes the benefits of government cooperation with faith-based organizations. "However, the rules of cooperation must be carefully crafted to protect religious liberty," he said.

Walker applauds Obama's focus on developing ways to cooperate with organizations helping those in need, and doing it the right way. "But, I do urge the president to ban religious hiring discrimination in government-funded programs."

The letters urge President Obama to "restore the constitutionally-required safeguards and civil rights protections governing partnerships between government and religiously-affiliated institutions." Three key steps are recommended to make that a reality:

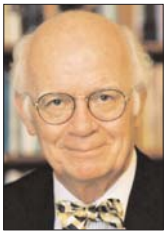
1. Religious organizations should be prohibited from discriminating in hiring on the basis of religion within federally funded social welfare projects.

2. The recommendations of the Reform of the Office of Faith-based and Neighborhood Partnerships Task Force should be adopted in full.

3. The Administration should amend existing Executive Orders and make uniform guidance resources for federal agencies on a number of specific issues.

— *Staff Reports*

Shurden lectures set for next month


Marty

Dr. Martin E. Marty, a prominent interpreter of religion and culture, and members of the Baptist Joint Committee staff will be in Birmingham, Ala., on April 27-28 for the annual Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State.

Marty will be delivering three lectures over the two-day period on the campus of Samford University, all focused on the theme of "Reconceiving Church-State Issues with New Assists from the Founders." No tickets are required to attend the lectures, and please consider this your invitation to join us on Samford's campus. If you have any questions, call the offices of the Baptist Joint Committee at (202) 544-4226 or e-mail Jeff Huett at jhuett@BJConline.org. Learn more about the schedule at **www.BJConline.org/lectures**.

ACLU files suit over USAID's abstinence programs

The American Civil Liberties Union has filed suit against the U.S. Agency for International Development for not providing information about "religiously infused" abstinence programs the agency has funded.

The lawsuit, which was filed Feb. 18, follows a report last July from USAID's inspector general that found "some USAID funds were used for religious activities" during 2006 and 2007.

According to its complaint, the ACLU twice filed requests under the Freedom of Information Act seeking documents related to programs that promoted sexual abstinence. USAID acknowledged receiving the requests but never responded by sending the requested documents.

"The United States government cannot be in the business of exporting religiously infused abstinence-only-until-marriage programs that we know fail to give young people the information they need to stay healthy" said Brigitte Amiri, an attorney with the ACLU.

"It is essential that the government provide all of the information it has about these programs so that the public has a full accounting of how taxpayer dollars are being spent."

The inspector general report said USAID funded an abstinence program for HIV/AIDS prevention for African youth whose curriculum included Psalm 119:9 as a Bible memory verse. "God has a plan for sex and this plan will help you and protect you from harm," the curriculum said.

When the inspector general report was released, a USAID spokesperson said its results are "not supported by the facts and is an unsupported legal conclusion regarding the constitutional requirement of separation of church and state."

— *Adelle M. Banks, Religion News Service*

Memorial gifts to the Baptist Joint Committee

In memory of Carmen Sanchez
by Esther M. Gonzalez

In memory of the Rev. David E. Brooks
by Sylvia H. Brooks

In memory of Harry L. Downey, Jr.
by Sally F. Downey

Wiccan chaplain battles for state recognition

A volunteer Wiccan chaplain is headed to a federal appeals court in an attempt to get California to hire prison clergy outside five religious categories.

The Rev. Patrick McCollum argues that the state policy deprives inmates of other religious backgrounds from getting the services they need and deserve.

The court challenge began when McCollum, 59, a prominent leader in Wiccan and correctional circles, applied and was rejected for a full-time position as a chaplain in the California Department of Corrections and Rehabilitation.

"When I got to the personnel office, they refused to give me an application to apply for a state job because they knew that I was a Wiccan," said McCollum. "They never reviewed my qualifications."

Wiccans practice a nature-based pagan faith rooted in pre-Christian celebrations of the cycles of the seasons.

In court documents filed with the 9th U.S. Circuit Court of Appeals, the department said the case amounts to a "decade-long crusade" by McCollum to get hired, and an attempt to force the creation of a "new pagan chaplain job" for him.

"The district court saw through the veneer of constitutional arguments, and dismissed McCollum's claims as inappropriately premised on the rights of inmates, rather than his own," the department wrote in a brief.

McCollum counters that his case is more than a fight over a job but rather an effort to expand the state's policy beyond the hiring of only Catholic, Protestant, Jewish, Muslim and Native American clergy as chaplains.

In its court filing, the department said "the door to future changes in religious accommodation remains open" but defended its current policy.

In a friend-of-the-court brief, representatives of a variety of faith groups said the bias demonstrated by the department "extends beyond Wiccans/Pagans to all members of the interfaith community."

WallBuilders, a Texas-based organization that promotes the "godly heritage" of America, filed a brief siding with the state. It argues that the founders "did not intend the religion clauses to protect paganism and witchcraft" when they crafted the Constitution's First Amendment.

— *Religion News Service and Staff Reports*