

REPORT

from the Capital

2012 YEAR IN REVIEW

Religious liberty conflicts emerge from unexpected places

BY DON BYRD
BJC BLOGGER

This year in religious liberty proved there is no use in predicting. I would have thought, in a presidential election between a Mormon and a Christian (who much of the population still wrongly believes to be Muslim), there would be lots of religious fireworks, questionable theology, and “who’s-the-real-Christian” wars between the campaigns. Apart from some moments in the GOP primary, that was not to be.

Instead, 2012 was the year “religious liberty” became synonymous with the freedom not to provide health coverage for birth control. Who would have guessed?

Here are my choices for the top religious liberty stories of 2012:

■ **Supreme Court ruling in *Hosanna-Tabor*** — In January, the U.S. Supreme Court unanimously affirmed the “ministerial exception” that protects religious institutions from the reach of employment discrimination laws. While not defining the full scope of the exception, the Court held that it applied to a teacher entrusted with some ministerial duties at a religious school.

■ **White House issues faith-based guidelines, sidesteps controversy, continues flawed program** — In April, the White House announced guidelines for implementing reforms adopted back in 2010 at the recommendation of the President’s Faith-Based Advisory Council, chaired by former BJC General Counsel Melissa Rogers. Helpfully, the guidelines provide steps for ensuring that federal grants are kept separate from religious activities, in order to avoid church-state entanglement.



Unhelpfully, the guidelines fail to address the issue of religious discrimination in hiring using federal funds. The Obama administration has steadfastly refused to address this highly contentious issue. A report in August indicated that the Department of Justice is continuing the troubling Bush administration practice of issuing certificates of exemption from discrimination laws to religious organizations receiving federal funds.

■ **Controversy over contraception coverage mandate** — No religious liberty story dominated 2012 like the Affordable Care Act’s requirement that employers provide employee health insurance that includes coverage for contraception. The ensuing firestorm of doomsday hyperbole and political grandstanding created nearly enough noise to drown out legitimate religious accommodation concerns. To understand just where this enormous, ongoing story sits currently, a tour of the year’s developments might be helpful.

In January, the Department of Health

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Religious leaders pledge to work with Obama administration 'for liberty and justice for all'

WASHINGTON — A diverse group of religious leaders sent President Barack Obama a letter Nov. 13 congratulating him on his re-election and pledging to work with the administration "during the next four years to help our nation live up to the promise of liberty and justice for all."

Baptist Joint Committee Executive Director J. Brent Walker, American Baptist Churches USA General Secretary A. Roy Medley, American Baptist Home Mission Societies Executive Director Aidsand F. Wright-Riggins III and Progressive National Baptist Convention Interim General Secretary Ralph W. Canty Sr., were among the more than 30 leaders who signed the letter.

"As people of faith, we are mindful that all are called to active concern for all human beings and to respect and care for all of creation," the leaders wrote. "Our faith inspires us with hope as we join with you in seeking a world envisioned by the prophet Micah, in which 'They shall all sit under their own vines and under their own fig trees, and no one shall make them afraid.' (Micah 4:4)."



They continued, "Our nation will grapple with challenging domestic and global issues during the next four years, including rising inequality, economic injustice, violations of human rights and freedom of religion, environmental degradation, and peacemaking in a divided world. We commit ourselves to supporting initiatives to enact just and compassionate policies that will serve the common good, strengthen our commitments to

care for each other, and ensure that there is enough for everyone."

Other leaders signing the letter include Sister Simone Campbell, executive director of NETWORK, A Catholic Social Justice Lobby; Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism; the Rev. Geoffrey Black, general minister and president of the United Church of Christ; and Sharon Watkins, general minister and president of the Christian Church (Disciples of Christ) in the United States and Canada.

The full text of the letter is available online at BJCOnline.org.

—BJC Staff Reports

Controversial 'Mojave Cross' returns to desert

After being debated for more than a decade, covered with a wooden box and stolen, now it is back in plain sight.

On Veterans Day, a controversial war memorial cross was re-erected and rededicated on a rock in California's Mojave National Preserve.

The cross was placed on a one-acre parcel of private property within the government-owned preserve thanks to a 2010 Supreme Court decision (*Salazar v. Buono*) that upheld the congressionally approved transfer to private land. In recent years, more legal wrangling occurred on the local level, where a court reviewed the transfer.

"When this all first happened, I prayed and asked God to protect the cross," said Wanda Sandoz, a caretaker of the cross, in a statement to Religion News Service. "I wish I hadn't worried so much, but just left it in God's hands. Now I know that He was always in control."

She and her husband, Henry, took care of the cross at the request of a veteran friend who died in 1984. The Veterans of Foreign Wars, represented by the Texas-based Liberty Institute, was among the groups that fought for the cross in court. The case started in 2001 when Frank Buono, a former assistant superintendent of the preserve, sued because the National Park Service permitted the

cross on its land but rejected a Buddhist shrine.

Peter Eliasberg, legal director of the American Civil Liberties Union of Southern California, which represented Buono, said his legal group remains concerned that a cross has been designated as a national memorial to honor World War I veterans of all faiths. But a settlement removes the cross — first erected in 1934 — from government property.

"The government has agreed that the property will be clearly delineated as private property," he said. "There will be fencing around it and signs up to show that it is not government-owned."

When the cross was in dispute, it was at times covered with a bag or a wooden box. After the Supreme Court decision, it was stolen. On Nov. 11, a 7-foot, white cross made from steel pipe was erected to replace the previous one.

"VFW is most pleased that the issue over the cross with the ACLU is now closed, that the property is transferred to the VFW, and we can rededicate a replacement cross at Sunrise Rock," said James R. Rowoldt, an official of the VFW Department of California, in a statement.

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

REFLECTIONS

Modeling the virtues of Christmas

What do Barnes & Noble, Foot Locker, L.L. Bean, Old Navy, Office Depot and Radio Shack have in common? They are all against “Christmas” — at least according to the American Family Association, which has compiled a list of “naughty or nice” businesses. These companies — and others like them — who speak of “Christmas” only sparingly in promos and ads are deemed naughty, while those who use it frequently are applauded as nice.

In cahoots with the AFA, Liberty Counsel has launched its 10th annual “Friend or Foe Christmas Campaign.” Using the naughty or nice compilation, the sponsors aim to pressure these retailers — indeed even encourage boycotts — when they use the more inclusive “holiday” language instead of, or in addition to, specific Christmas language.

These are private businesses, not government bodies. They are free to speak of the approximately one dozen religious holidays between Thanksgiving and the New Year as they please. If they choose as a matter of business strategy to speak and advertise more generally or inclusively, then so be it. Merchants should not be penalized for seeking to embrace the diversity of religious celebrations in December in this country. They should be applauded for it.

This goes for private individuals, too. Yes, Christmas is Christmas and a tree is a tree. And there’s nothing wrong with calling it what it is: a Christmas tree. And it is perfectly appropriate to extend specific Christmas greetings. But it is also quite acceptable to wish one another “happy holidays” or “season’s greetings.” It is not political correctness run amok, but just a matter of good manners and common courtesy. If I am talking to a person whose religious affiliation I do not know, I may employ a more general greeting. None of this discourages the celebration of Christmas one iota or diminishes my enjoyment of it in the least.

Another perennial issue in the so-called “December dilemma” has to do with crèches or Nativity scenes on public property. If government bodies sponsor or pay for the display, constitutional issues can arise. The rules are pretty straightforward. Government may not sponsor thoroughly religious symbols, like freestanding Nativity scenes. However, it may sponsor a holiday display that includes a Nativity scene if secular symbols — such as a Christmas tree, Santa Claus and reindeer — also are included. Private citizens cannot display a Nativity scene on government property if it is made to appear that the government is speaking

the message or embracing the symbol as its own. But, private citizens can usually display religious holiday symbols on public property — like parks — where expressive activity is allowed for all and it is clear that government is not speaking.

These are some of the issues being raised in a recent California case. For six decades, churches have put up Nativity scenes in a public park in Santa Monica, Calif. So far so good. Last year, atheist groups wanted to put up their display, too. The city set up a lottery to negotiate new requests from all parties; secular groups won the right to use 18 spots, while two went to traditional Christmas displays and one to a Hanukkah display. This is OK too, right? Common fairness and arguably the First Amendment require opening the forum to all, not just to one or some. But bickering, recrimination and even vandalism ensued and continued. This year the city decided to shut down the forum altogether, banning all displays to help allay the acrimony. A group of mostly churches sued the city to force it to re-open the forum, and the U.S. District Court denied the churches’ demands.

Does anybody see anything wrong with this? If you insist upon your right to speak in the public square — especially on public property — you must allow people who disagree with you to speak as well. And why insist to the point of being boorish that government accommodate your speech on public property when you can proclaim the same message — far more effectively and virtually without limitation — on private property that is in full public view? A crèche in front of every church and a menorah in front of every synagogue — without having to share the space for an opposing message while helping keep the peace — sounds like a win/win to me! In fact, after the court’s decision in Santa Monica, Nativity scene proponents staged the displays on private property — but in public view — elsewhere in the city.

No, we do not need government promoting our religious holidays to the exclusion of others. Nor do we need a corps of purity police trying to dissuade our efforts to respect the religious diversity that is the hallmark of contemporary America.

What irony and how sad to be picking fights over how to celebrate the season in which many experience the hope, joy, peace and love of Advent. We who observe Christmas would all do well to model these virtues for others, friend and foe, regardless of religious belief.



J. Brent Walker
Executive Director

“What irony and how sad to be picking fights over how to celebrate the season in which many experience the hope, joy, peace and love of Advent.”



K. Hollyn Hollman
General Counsel

Hollman REPORT

Government interests and religious objections

Now that the presidential election of 2012 is over, perhaps we will hear fewer claims that religious liberty is under attack. There is little evidence that such rhetoric affected the election's outcome, but there are plenty of worries that the public's understanding of religious liberty has been harmed.

Conflicts between government policies and religious objectors — such as the recent battle over the Obama administration's requirement that most employers include no-cost contraceptive coverage in employee health insurance plans — are not new. A presidential campaign, however, is a tough forum for a debate about the application of federal healthcare regulations to those who have religious objections to contraception. As we have stated, there are real legal and policy concerns at play, as well as an ongoing agency rule-making process. Absent additional and significant reforms, however, claims that the contraceptive mandate violates religious liberty will continue in the courts with varying results.

How will the dozens of cases be resolved? There are numerous fact patterns and a few different legal theories that give rise to free exercise challenges to the Department of Health and Human Services rules, which apply differently to secular, religious and religiously affiliated employers. While there is no perfect analogy for these disputes, review of two U.S. Supreme Court precedents can bring the controversy over the contraception mandate into clearer focus.

First, in *U.S. v. Lee* (1982), a member of the Old Order Amish, who worked as a farmer and carpenter employing other Amish, objected to employer duties related to filing and paying social security taxes. The plaintiff claimed that the Amish religion prohibited him from participating in the social security system — either accepting benefits or making contributions. The Court did not dispute the sincerity of those religious beliefs, noting that it is not within “the judicial function and judicial competence” to decide the proper interpretation of religious doctrine.

The Court acknowledged that “compulsory participation in the social security system interferes with [the sect's] free exercise of religion.” At the same time, the Court noted that “the conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding government interest.”

Relying on the government's interest in providing a comprehensive insurance system, with costs shared by all, the Court unanimously rejected the claim that the Amish were exempt from making the mandatory contributions. The constitutional standard for free exercise cases has changed since *Lee*, making such a plaintiff's constitutional claim to

opt out of a nationwide governmental program even less likely to succeed, but a 1993 federal statute requires that the government meet a higher standard and gives religious liberty plaintiffs a better chance for relief.

That statute, the Religious Freedom Restoration Act (RFRA), was specifically designed to make it hard for government to substantially burden the exercise of religion without a good, specific reason. The statute requires that the government demonstrate its interest with case-specific facts, not reliance on general congressional findings about the need for regulation. When Congress passed RFRA, it recognized that many times general laws incidentally and unintentionally harm religion. RFRA was enacted to guard against such harms.

In a more recent case, *O Centro Espirita Beneficente Uniao Do Vegetal et al v. Gonzalez* (2005) (*UDV*), the Court applied RFRA to a small religious sect's claim that the government violated the statute when it attempted to enforce the Controlled Substances Act against the church for using a sacramental tea containing a regulated substance. In *UDV*, the Court unanimously rejected the government's argument that it had a compelling interest in the “uniform application” of the drug laws. RFRA, said the Court, expressly contemplates exceptions from generally applicable laws for some religious claimants. It is meant to provide a workable legislative test “for striking sensible balances between religious liberty and competing prior governmental interests.”

While the *UDV* case was a solid victory for the vitality of RFRA, the Court emphasized that the decision depended heavily on the facts. For instance, it pointed out that despite the government's claim that granting the requested accommodation would undermine its ability to broadly enforce the drug laws, there were already existing exemptions for Native American religious use of a similar regulated substance. In *Lee*, by contrast, the Court concluded that Social Security would cease to function if citizens were allowed to opt out based on religious objections. *UDV* does not mean that a case with different facts would have the same result. It does, however, clarify the legal standard that the government must meet if it may lawfully impose a substantial burden on religious exercise.

Lee and *UDV* illustrate how claims of conscience can collide with important government interests, and the starkly different results these cases can produce. *Lee* teaches that countervailing concerns for health, welfare and safety will sometimes conflict with and at times override religious freedom claims, while *UDV* demonstrates how RFRA's heightened burden of proof reigns in the government's ability to prevail. While a number of courts have agreed that the government's interest in providing comprehensive health care to women is important, it remains to be seen whether the government will be able to justify its authority to enforce the contraceptive mandate against the particular employers seeking religious exemptions.

Okla. judge defends sentencing teenager to church even if it's not legal

MUSKOGEE, Okla. — A district judge in Oklahoma who sentenced a 17-year-old boy to 10 years of church attendance is standing by his sentence as the right thing to do — even if it may not have been the constitutional thing to do. After giving out the sentence, the judge became the subject of a judicial complaint.

Judge Mike Norman gave Tyler Alred a 10-year deferred sentence for DUI manslaughter. Alred was driving a Chevrolet pickup in December 2011 when he hit a tree. His passenger and friend, 16-year-old John Dum, was pronounced dead at the scene.

The church requirement is just one of the conditions that Norman placed on Alred's deferred sentence. The judge also ordered him to finish high school and complete welding school. Both Alred's attorney and the victim's family agreed to the terms.

Norman said the church requirement is something he has done in the past, especially in child support cases. He has never done it for a manslaughter charge.

Ryan Kiesel, the executive director of the Oklahoma chapter of the ACLU, said the requirement to attend church is a "clear violation of the First Amendment."

"It's my understanding that this judge has recommended church in previous sentences, and I believe that goes too far, as well," Kiesel said. "This, however, actually making it a condition of a sentence, is a clear violation of the Establishment Clause and the Free Exercise Clause of the First Amendment."

Norman said he did not believe his sentence would pass an legal challenge — but he does not believe either side will seek an

appeal.

"Both families were satisfied with the decision," Norman said in an interview. "I talked to the district attorney before I passed sentence. I did what I felt like I needed to do."

On Dec. 4, the ACLU of Oklahoma filed a judicial complaint against Norman, according to *The Oklahoman*, accusing Norman of violating Oklahoma's Code of Judicial Conduct. The complaint was not requested by Alred or his family.

In order to challenge the constitutionality of the church attendance requirement, an individual or organization must show that it has legal standing to do so. Kiesel said the ACLU is considering what options they have.

The Rev. Bruce Prescott, executive director of Mainstream Oklahoma Baptists and president of the Norman, Okla., chapter of Americans United for Separation of Church and State, said he is sure the sentence does not pass constitutional muster, but he is equally worried about the spiritual ramifications.

"I'm a minister," Prescott said. "I want people to go to church, but it's not helpful for a judge to sentence someone to church. What will the judge do if the young man changes his affiliation in the next few years? Will he be allowed to switch to a mosque or become an atheist? Religion is not a tool of the state, and it's certainly not for the state to use as a tool of rehabilitation."

Kiesel said he is especially concerned in this case because the judge admits to making a decision he knows is not legal.

"The Constitution is not exercised at your discretion," he said. "You take an oath to uphold it all the time, not just sometimes."

—Greg Horton, *Religion News Service*, and *BJC Staff Reports*

The 8th annual

Religious Liberty Essay Scholarship Contest

Open to high school students in the classes of 2013 & 2014

TOPIC: The United States of America was religiously diverse at its founding. Its population included numerous Protestant groups, small Catholic and Jewish populations, those who practiced traditional Native American religions as well as those who practiced African religions. The United States has become even more religiously diverse, yet Christianity has remained the majority faith tradition since the country's beginnings. Today, some Americans assert that the country was founded as a "Christian nation" while others contend that statement is a myth. **Using the Constitution and writings of the Founders, research and evaluate the claim that the United States was founded as a "Christian nation." Include a discussion of the current implications for religious freedom for all people in a democratic country in which the majority rules in elections and ballot initiatives.**

For entry forms, visit www.BJConline.org/contest

Deadline: March 1, 2013

Grand Prize: \$2,000 scholarship and trip for two to Washington, D.C.

Second Prize: \$1,000
Third Prize: \$250



Leaders react to results, including Fla. rejection of 'no-aid' repeal

Florida voters rejected a measure to repeal the state's ban on public funding for religious organizations Nov. 6, 55 percent to 45 percent.

Amendment 8 would have removed language from Florida's constitution prohibiting state funds from being used "directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution."

The Roman Catholic Church, a supporter of the amendment, said it would advance religious freedom. The Florida Education Association opposed it, claiming it opened the door to vouchers allowing students to attend private schools at taxpayer expense.

It also divided Baptists. Leaders of the Florida Baptist Convention said the measure is needed to ensure that faith-based groups like the Florida Baptist Children's Homes can continue to contract with the state to provide social services. The Baptist Joint Committee for Religious Liberty opposed the amendment, sending a letter to Florida supporters in advance of the election expressing its concerns. The BJC says parents have the right to send their children to religious schools but not to ask other taxpayers to pay for it. The letter said bans on public funding for religious organizations "ensure that government does not improperly advance religion, and they restrict government interference into the private affairs of religious organizations."

Florida voters rejected by a similar margin a measure to prohibit public funding for abortion, and also a proposal that would have prohibited the state from requiring people to obtain health insurance, 52 percent to 48 percent.

Elsewhere, voters in Maryland, Maine and Washington approved same-sex marriage. They are the first three states to do so directly by



the electorate and not by legislature or the courts.

Americans United for Separation of Church and State termed the election a "bitter defeat" for Catholic bishops and the Religious Right, two groups that invested heavily in both national and state elections.

"The bishops and the Religious Right bent every rule to try to impose their political will, but they failed badly," said AU Executive Director Barry Lynn. "The American people clearly are not inclined to take

voting orders from presumptuous preachers."

Albert Mohler, president of Southern Baptist Theological Seminary in Louisville, Ky., called the 2012 election "a catastrophe for crucial moral concerns."

"Clearly, we face a new moral landscape in America, and a huge challenge to those of us who care passionately about these issues," Mohler wrote Nov. 7 in his blog. "We face a worldview challenge that is far greater than any political challenge, as we must learn how to winsomely convince Americans to share our moral convictions about marriage, sex, the sanctity of life and a range of moral issues."

"This will not be easy," Mohler said. "It is, however, an urgent call to action."

The Association of Welcoming and Affirming Baptists celebrated wins for marriage equality, including Minnesota's rejection of an amendment to ban same-sex marriage in their constitution and New Hampshire's election of a governor who advocates minority rights.

The association's board and staff predicted "2013 will be a big year for AWAB." The organization, which turns 20 next year, celebrated new civil-marriage victories and pledged to work on behalf of others "who do not yet have this right."

—Bob Allen, *Associated Baptist Press*
and *BJC Staff Reports*

'Ten Commandments judge' wins old job back

MONTGOMERY, Ala. — Roy Moore, forever known as Alabama's Ten Commandments judge, has been re-elected Alabama chief justice in a triumphant political resurrection after being ousted from that office nearly a decade ago.

Republican Moore defeated Jefferson County Circuit Judge Bob Vance, a Democrat, to win back his former office.

"It's clear the people have voted to return me to the office of chief justice," Moore said.

Moore thanked supporters at his party



Moore

RNS photo by Joe Songer/
The Birmingham News

for sticking with him through what had been an up-and-down night that had Vance out to an early lead. Moore eventually won the race with

52 percent of the vote with

99 percent of precincts reporting. "Go home with the knowledge that we are going to stand for the acknowledgment of God," Moore said to shouts of "Amen"

from supporters.

Moore was elected chief justice in 2000, but a state judicial panel removed him three years later after he refused to obey a federal judge's order to remove a 5,200-pound granite Ten Commandments monument from the lobby of the Alabama Judicial Building. At the urging of Alabama clergy from various denominations, the BJC filed a brief opposing the monument. For many defenders of religious liberty, the display was an affront to the constitutional values that benefit all



Report finds religiously, racially diverse voter coalition key to election

The road to the White House is no longer white and Christian.

President Obama won in 2012 with a voter coalition that was far more racially and religiously diverse than Mitt Romney's — a phenomenon both predicted in the days before the election and confirmed in the days after.

What the Public Religion Research Institute has concluded since, however, has farther-reaching implications: that relying on white Christian voters will never again spell national electoral success — especially for the GOP.

"The changing religious landscape is presenting a real challenge to the strategy that relied on motivated white Christians, particularly white evangelical Christians," said PRRI Research Director Dan Cox, referring to a PRRI study released Nov. 15.

"They're still turning out at similar levels as they did in previous elections, but their size in comparison to other groups is shrinking."

Obama's religious coalition was a diverse mix, including 13 percent white mainline Protestants, 8 percent white evangelical Protestants, 10 percent Hispanic or other Catholics, 13 percent white Catholics, and 16 percent black Protestants. His largest subgroup of "religious" voters was the unaffiliated — those that do not identify with a religious group — at 25 percent.

Compare that to Romney, whose largest subgroup of religious voters — white evangelical Protestants — accounted for a full 40 percent of all his votes. Add in other white Christians and Romney's total white Christian vote count was 79 percent. By contrast, white Christians repre-

sented 35 percent of those who chose Obama.

So many white Christian eggs in one electoral basket would not be a problem for candidates if the supply of these voters growing. But it's not, according to studies, even as the white Christian proportion of Republican presidential voters — about eight in 10 — has held fairly steady for the last six elections, according to national polls.

At the same time, the proportion of white Christians voting for Democratic presidential candidate has declined, from about six in 10 in 1992 to less than four in 10 in 2012.

These trends dovetail with the striking growth of religiously unaffiliated voters, who represented about 7 percent of all Americans in the early 1990s and nearly one in five today. Unaffiliated voters tend to be young, and though they don't get themselves to the polls as reliably as other voters, their influence on American elections and culture will only continue to increase, said Cox.

The term used by demographers is "generational replacement," and in this case, younger unaffiliated voters are replacing the older Christian ones who preferred Romney to Obama.

"You see tectonic shifts when one generation looks very different from the generation it's replacing," Cox said.

The study of 1,203 voters, which has a margin of error of plus or minus 3.5 percentage points, was conducted from Nov. 7-12.

—Lauren Markoe, Religion News Service

religions.

Moore still maintains the federal judge's order was unlawful and that he should not have followed it. But he has promised he will not return the Ten Commandments when he returns to the court. Moore said the issue was never about a monument but about the "acknowledgement of God."

A replica of the Ten Commandments tablets decorated the food table at Moore's party, but supporter Myron K. Allenstein, a Gadsden attorney who knew Moore when he was a deputy district attorney, said he liked Moore for reasons beyond his famous stance.

"He's a good judge, a fair judge," he said.

Moore had teetered on the brink of political oblivion after two failed runs for governor. However, in the spring he harnessed his name recognition and grassroots support to defeat two better-funded candidates and win the Republican primary for chief justice.

"It has to be regarded as a remarkable comeback," said political scientist Bill Stewart.

Natalie Davis, a pollster and political scientist at Birmingham-Southern College, said Moore benefited from high name

recognition and a base of voters that associate him with the Ten Commandments.

"He benefits from straight-ticket Republican voting and he benefits that Alabama is one of the most religiously oriented states in the country," Stewart said.

Stewart said while some voters were turned off by Moore's defiance of a federal court order, others likely were not.

"Defiance of the federal government, we know what a tradition that is in Alabama," Stewart said.

—Kim Chandler, *The Birmingham News*; distributed by Religion News Service. BJC Staff also contributed to this article.

REVIEW CONTINUED FROM PAGE 1

and Human Services (HHS) announced the proposed rule requiring all employer-based health plans to cover contraceptive services for women. Houses of worship were exempted, but not other religiously affiliated institutions including religious hospitals and educational institutions, which were given an additional year to comply. Many observers, including the Baptist Joint Committee's Brent Walker, argued the exemption should be expanded beyond houses of worship. The White House heard the complaints, sped up the review process and President Obama announced a change in February. The new rule would allow religiously affiliated employers to avoid paying for contraception coverage but require their insurance companies to offer such services directly to the insured so that no worker would go without access to birth control, and the religious liberty of faith-based employers would be protected. Walker called the change a "step in the right direction."

Not everyone was satisfied, however. Critics argued this was more of an accounting maneuver than a religious liberty accommodation. With a presidential election added to the mix, the president was accused by some of waging a war on religion and on religious liberty. Lawsuits were filed challenging the contraception mandate on First Amendment grounds and under the Religious Freedom Restoration Act, raising important questions about the religious liberty rights of employers, employees and corporate entities.

In March, the U.S. Senate narrowly defeated the Blunt Amendment, a measure proposed by Sen. Roy Blunt, R-Mo., that would have exempted objecting employers from providing health services mandated by the ACA, including the contraceptive mandate, if doing so would violate an employer's religious beliefs or moral convictions regardless of religious affiliation (or lack thereof). Later that month, HHS further clarified that students attending religious universities are covered by the mandate, as are employees of religious institutions that self-insure. The rule recommends that the third-party claim administrator in such a case be required to provide the coverage if the religious employer objects.

Details of how the government's mandate will apply to religiously affiliated nonprofit organizations have yet to be finalized. Who will pay for employee access to contraception if not their objecting employers? Because the requirement does not go into effect until Aug. 1, 2013, time remains to address those uncertainties. HHS intends to release the final rule governing contraception coverage for those groups sometime prior to that date.

On the other side, at least 40 cases have been filed challenging the mandate, and they are at various stages of litigation. In July, a federal judge in Nebraska dismissed the lawsuit brought by seven states as premature. A judge in Colorado, however, halted the mandate's application to Hercules Industries, a for-profit family-owned business. More recently, the lawsuit brought by Tyndale Publishing, a for-profit Bible publisher, was allowed to continue, while the complaint filed by Hobby Lobby, a for-profit business with a devout owner, was dismissed. The 4th U.S. Circuit Court of Appeals is set to

Memorable stories of 2012



Barton

While it's surely not one of the most important stories, 2012 was the year everyone could watch pseudo-historian **David Barton** tangle with the truth. For years, Barton has been pushing false stories about America being founded as a "Christian nation," among other whoppers. This year, it may have caught up with him as questions about his book, *The Jefferson Lies*, prompted publisher Thomas Nelson to pull it, having lost "confidence in the book's details."

One of the fun stories of the year was the March Madness run of the **Beren Academy boys basketball team** in Houston, Texas. They made it to the semis of the Texas Association of Private and Parochial Schools State Championship before they realized the final games were on the Sabbath. To play on that day would have violated the religious beliefs of the school and many of the Jewish boys on the team. The association wouldn't budge until public outcry, an appeal from the opposing team and threat of a lawsuit finally won the day, and the games were moved to allow Beren to participate! They made it to the final game, where they lost by four points.

—Don Byrd

hear the appeal of evangelical Liberty University, now that the Supreme Court has removed a procedural barrier to that case.

Judges in these cases are wading into complex areas of religious freedom law. Can a for-profit corporation exercise religion? Do employers have individual free exercise rights that supersede employee protections passed by Congress? What constitutes a religious, or religiously affiliated, employer? Stay tuned as these cases wind their way through the judicial system and toward, perhaps, Supreme Court review.

■ Presidential election mercifully avoids excessive religious fear-mongering

— How could I leave out a story as central as the U.S. presidential election? And yet, if anything, this year's election made the religious liberty list by staying clear of much talk of religion or the exploitation of religion as a divisive tactic. Considering the scrutiny of President Obama's Christian faith in 2008 and that of his opponent Mitt Romney's Mormon faith in recent years, I was preparing for an avalanche of religious whisper attacks and accusations. With a few exceptions, though, the religion-based animosity in the general election campaign was pretty tame. And that's good news for all.



Romney photo: RNS photo by Gage Skidmore/courtesy Flickr. Obama photo: Obama for America photo by Christopher Dilts/courtesy Flickr.

■ **IRS silence over church electioneering** — Once again, “Pulpit Freedom Sunday” pastors tried to bait the IRS into a legal battle over the rules prohibiting ministers from endorsing candidates from the pulpit. This year, more than 1,400 participated. But once again, the IRS remained silent about the protest, declining thus far to investigate any of the violations. A number of religious liberty advocates have urged the IRS to act. A lawsuit seeking to compel enforcement of the IRS regulations was filed in November (see page 10 of *Report from the Capital*).

■ **Florida’s Amendment 8 defeated** — A school voucher vehicle disguised as a religious liberty bill, Florida’s Amendment 8 would have removed the “no aid to religion” provision of the Florida Constitution. “No-aid” protections prohibit state governments from sending tax dollars directly to religious institutions. In December 2011, the Florida referendum survived an effort to remove it from the ballot for having a misleading title and description when the judge in that case ordered it be rewritten. The amendment was defeated, however, by voters in the November 2012 election by a 55-45 margin. The Baptist Joint Committee was among the many religious liberty advocates who successfully opposed it (for more, see page 6 of *Report from the Capital*).

■ **Profiling allegation prompts criticism of NYPD** — An investigation by The Associated Press published in February revealed secret New York Police Department files devoted to surveillance of Islamic centers. The files detailing information about mosques and mosque attendees prompted a federal lawsuit in June. The BJC joined other religious liberty groups in signing a letter to a Senate Judiciary subcommittee asking for the practice of religious profiling to end. In

September, NYPD officials announced they no longer employed such techniques.

■ **Attack on Sikh temple in Wisconsin** — The nation was shocked in August when a gunman opened fire at a Sikh temple in Oak Creek, Wis., killing six and wounding four others. As I wrote soon after, targeting a religious minority was an attack on the religious liberty of all Americans. A Senate Judiciary subcommittee held a hearing on hate crimes in response to the event.

■ **Workplace protections inch forward** — California passed one of the nation’s strongest workplace religious freedom protection bills. Signed by Gov. Jerry Brown in September, the bill clarifies that religious clothing and hair-style are covered as religious observances. It also heightens the standard for employers who claim that accommodating the religious observance of employees will be an undue hardship. Lastly, the bill does not allow employers to accommodate the religious observance of employees by segregating them from the public. Congratulations to the bill’s sponsor, Assemblywoman Mariko Yamada, on its passage. Now, where’s the federal Workplace Religious Freedom Act?



Residents hold candles during a vigil at Cathedral Square Park in Milwaukee Aug. 5 after shooter Wade Michael Page killed six people at a local Sikh temple that morning. RNS photo by Lacy Landre.

2013

and beyond

The next year should be an interesting one. Here are things to look for throughout 2013:

- ♦ As I indicated with regard to the biggest religious liberty story of 2012, there are lots of developments to watch for in the contraceptive mandate dispute in 2013. Church-state challenges continue toward the Supreme Court, and HHS will finalize and implement the mandate by August.
- ♦ Will we ever get direct answers from the administration about the policy regarding hiring discrimination with federal funds?
- ♦ Will public school cheerleaders in Texas be allowed to hold signs with distinctly Christian messages on the field for high school football games?
- ♦ Will the Supreme Court get a new appointment next year? Will it take up a new church-state dispute?
- ♦ Will Egypt settle on a constitutional framework that allows religious freedom for all?
- ♦ What new church-state controversy nobody can see coming will take the stage in 2013? Who knows, but I will be following it all. Bookmark the BJC blog (www.BJConline.org/blog) and follow me on Twitter @BJCblog to keep up!

—Don Byrd

Obama stresses religious freedom in Burma, hears from Baptists with ties to the country

President Barack Obama stressed religious freedom in a historic speech Nov. 19 in Burma, a country long beset by military conflict and regarded as one of the world's worst oppressors of minority faiths. His speech came after American Baptist Churches USA and other groups urged the president to raise a number of issues with international leaders.

Obama, the first sitting U.S. president to visit the Asian nation, also known as Myanmar, defended "the freedom to worship as you please" in a speech at the University of Yangon in Rangoon, Burma's largest city and the former capital.

"This country, like my own country, is blessed with diversity," Obama said. "Not everybody looks the same. Not everybody comes from the same region. Not every-

body worships in the same way. In your cities and towns, there are pagodas and temples and mosques and churches standing side by side. Well over a hundred ethnic groups have been a part of your story. Yet within these borders, we've seen some of the world's longest running insurgencies, which have cost countless lives, and torn families and communities apart and stood in the way of development."

Prior to his trip, groups including American Baptist Churches USA and the U.S. Commission on International Religious Freedom urged the president to emphasize freedom in meetings with Burma's president, Thein Sein.

ABC/USA General Secretary Roy Medley and President Ruth Clark wrote the president in light of the denomina-

tion's long ties to the Asian country, urging the president to raise several issues in his meetings with political leaders, including armed attacks on civilians, military use of rape, religious persecution, torture, destruction of churches, forced displacement and killing of ethnic nationalities. In their Nov. 12 letter, they said "we continue to be gravely concerned by human-rights violations, particularly as they pertain to ethnic nationalities."

Baptist ties to Burma date back nearly two centuries to 1813 when Adoniram and Ann Judson landed in Rangoon as



Medley



Clark

BURMA CONTINUED ON PAGE 11

Group sues IRS for failure to monitor church politicking

A First Amendment watchdog group is suing the Internal Revenue Service for failing to challenge the tax-exempt status of churches whose pastors engage in partisan politicking from the pulpit.

The Freedom From Religion Foundation, which advocates total separation of church and state, filed the lawsuit Nov. 14 in U.S. District Court in Western Wisconsin, where the 19,000-member organization is based.

The lawsuit claims that as many as 1,500 pastors engaged in "Pulpit Freedom Sunday" on Sunday, Oct. 7, when pastors endorsed one or more candidates, which is a violation of IRS rules for nonprofit organizations.

IRS rules state that organizations classified as 501(c)(3) non-profits — a tax-exempt status most churches and other religious institutions claim — cannot participate or intervene in "any political campaign on behalf of (or in opposition to) any political candidate."

Though the regulation has been in place since 1954, a federal court ruled in 2009 that the IRS no longer had the appropriate staff to investigate places of worship after a reorganization changed who in the agency had the authority to launch investigations.

IRS rules do allow for some nonpartisan activity by religious institutions, including organizing members to vote and speaking out on issues. But endorsing or supporting specific candidates could jeopardize their tax-exempt status.

A recent Associated Press story reported that the IRS has not challenged any religious organizations on charges of electioneering in the past three years. An IRS spokesperson told the AP that it was "holding any poten-

tial church audits in abeyance" until rules on electioneering could be "finalized."

The lawsuit also challenges the legality of several full-page newspaper advertisements paid for by the Billy Graham Evangelistic Association, another 501(c)(3), that exhorted voters to vote along "biblical principles." The ads ran after Graham met with Republican presidential candidate Mitt Romney and promised to do "all I can" to support his campaign.

FFRF has filed 27 complaints about church electioneering with the IRS this year, including:

—Roman Catholic Bishop David Ricken of Green Bay, Wis., who wrote an appeal on diocesan letterhead inserted in parish bulletins warning voters that they could "put their own soul in jeopardy" if they voted for a party or candidate that supports same-sex marriage or abortion rights.

—Roman Catholic Bishop Daniel Jenky of Peoria, Ill., who criticized President Obama in a homily and then exhorted parishioners that "every practicing Catholic must vote, and must vote their Catholic consciences."

—Roman Catholic Bishop Robert Morlino, who, in an article appearing in the local diocesan newspaper, wrote of "non-negotiable" political issues, and that "No Catholic may, in good conscience, vote for 'pro-choice' candidates (or) ... for candidates who promote 'same-sex marriage.'"

A similar complaint against the U.S. Conference of Catholic Bishops for the electioneering of its members was filed by the Washington-based Citizens for Responsibility and Ethics in Washington.

—Kimberly Winston, Religion News Service

Mark your 2013 calendar

March 1: Religious Liberty Essay Scholarship Contest entries due

April 9-10: Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State at Stetson University in DeLand, Fla., presented by BJC Executive Director Brent Walker

June 28: Religious Liberty Council Luncheon in Greensboro, N.C.



For more events, visit BJCOnline.org/calendar

Mass. Supreme Court to hear case against 'under God' in pledge

Massachusetts' Supreme Judicial Court has agreed to hear the appeal of a non-religious family that's challenging the mandatory daily recitation of the Pledge of Allegiance in their children's classrooms.

The family, who are secular humanists, claim that the phrase "under God" in the pledge is a violation of the state's constitutional ban on religious discrimination.

In June, a lower court ruled against the family, saying the required recitation of the pledge was not discriminatory because it did not uphold one religion over another. The family appealed and will now gain a hearing from the state's highest court.

The battle to remove "under God" from the pledge has been a long and, so far, unsuccessful one within atheist circles. California atheist Michael Newdow unsuccessfully argued for its removal before the U.S. Supreme Court in 2004.

This time, the suit seeks protection under a state constitution's equal protection measure, not under the U.S. Constitution's guarantee of the separation of church and state.

"There is very little case law that precedes this," said Bill Burgess, director of the American Humanist Association's Appignani Humanist Legal Center, which is representing the plaintiffs. "The court will be making new law when it issues its decision."

Massachusetts has a history of leading the vanguard in discrimination cases. In 2003, the same court ruled that it was discriminatory, and therefore unconstitutional, to prohibit gay marriage, becoming the first state to issue marriage licenses to same-sex couples.

"The gay marriage decision is a signpost for what the court might do here," Burgess said. "It is a similar principle and the court has shown the courage in the past to do something ahead of its field and we are hoping for a similar result here."

Supporting the recitation of the pledge is The Becket Fund for Religious Liberty, which is representing the Knights of Columbus and another family that wants to uphold the

recitation of the pledge.

"We are confident that the Supreme Judicial Court will uphold the pledge just like every other court that has decided this question," said Diana Verm, an attorney for the Becket Fund.

The appeal in the case, *Doe v. Acton-Boxborough Regional School District*, has not yet been scheduled.

—Kimberly Winston, *Religion News Service*

BURMA CONTINUED FROM PAGE 10

the first American missionaries in the country. The following year, the first national organization of Baptists in the United States formed to unite autonomous Baptist congregations in support of foreign missions. Commonly called the Triennial Convention because it met every three years, the organization split over slavery in 1845 into separate bodies known today as American Baptist Churches USA and the Southern Baptist Convention.

Katrina Lantos Swett, chair of the U.S. Commission on International Religious Freedom, sent a similar letter drawing particular attention to the plight of minority Muslim and Christian communities in the Rakhine, Kachin and Shan states of Burma.

While encouraged by recent progress that includes democratic elections and the release of political prisoners, human rights advocates want the United States to insist on greater protection of religious freedom before increasing trade with Burma. Last year, Secretary of State Hillary Clinton visited the country, the first visit from a U.S. secretary in 50 years, and the United States rewarded Burma's reform gestures by restoring full diplomatic relations.

Burma remains on the State Department's list of Countries of Particular Concern for "egregious, ongoing and systematic" abuses of religious freedom, a designation first earned in 1999 under the International Religious Freedom Act.

According to official statistics, about 90 percent of Myanmar's population practices Buddhism, 4 percent practices Christianity and 4 percent practices Islam. Among ethnic groups including the Kachin, Chin and Naga, however, Christianity is dominant, the legacy of western missionaries.

Obama described his bilateral meeting with Sein as "a very constructive conversation."

In his speech, President Obama encouraged Burma to view its diversity "as a strength and not a weakness."

"I say this because my own country and my own life have taught me the power of diversity," Obama said. "The United States of America is a nation of Christians and Jews, and Muslims and Buddhists and Hindus and non-believers. Our story is shaped by every language; it's enriched by every culture. We have people from every corners [sic] of the world. We've tasted the bitterness of civil war and segregation, but our history shows us that hatred in the human heart can recede; that the lines between races and tribes fade away. And what's left is a simple truth: e pluribus unum — that's what we say in America. Out of many, we are one nation and we are one people. And that truth has, time and again, made our union stronger. It has made our country stronger. It's part of what has made America great."

—Bob Allen, *Associated Baptist Press*



200 Maryland Ave., N.E.
Washington, D.C. 20002-5797

Phone: 202.544.4226
Fax: 202.544.2094
E-mail: bjc@BJCOnline.org
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REPORT from the Capital

J. Brent Walker
Executive Director

Jeff Huett
Editor

Cherilyn Crowe
Associate Editor

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WHY WE GIVE

Being a monthly donor 'allows me to show my support and appreciation for the BJC's work'

BJC donor Stephen Reeves formerly served the Baptist Joint Committee as staff attorney. The BJC's mission was one he wanted to work to support. "The BJC is unique because no



Reeves

other organization completely understands both Baptist theology and practice as well as First Amendment law," Reeves said. "The BJC stands out as really the only faith group in America so committed to strong adherence to both the Establishment Clause and the Free Exercise Clause."

Since leaving the BJC to join the Texas Baptist Christian Life Commission in 2006, Stephen's involvement in and support of the BJC have remained steady. Monthly financial support has been an important part of his commitment. "Being a monthly donor allows me to give a little at a time, and I know it will add up. It allows me to show my support and appreciation for the BJC's work in a

way that they can count on when creating their budget," he said.

Stephen began giving monthly to the BJC to fulfill his pledge to the Capital Campaign but continued even after it was complete. "Giving monthly is easy and the automatic, direct withdrawal means I don't have to think about it, and I can't forget," Reeves said.

Make a lasting investment in religious liberty by becoming a monthly donor today. Visit our website at BJCOnline.org/Donate to set up your gift or contact Development Director Taryn Deaton at tdeaton@BJCOnline.org or 202-544-4226 for assistance.

End-of-year giving

As you consider your year-end charitable giving, please consider making a gift to the BJC Annual Fund. Gifts can be made at BJCOnline.org/donate or mailed to 200 Maryland Ave., N.E., Washington, D.C., 20002. Gifts for 2012 must be postmarked by Dec. 31 or made online by midnight that day.