



REPORT

from the Capital

Supreme Court to hear contraceptive mandate, rule on religious rights of corporations

The Supreme Court announced that it will hear oral arguments March 25 on whether for-profit businesses can be treated like religious entities in a test of the Obama administration's mandate that employers include free contraception coverage as part of their health plans.

The cases, which will probably be decided in June, will not deal with a string of other lawsuits over the mandate that have been filed by nonprofit faith-based groups. Those complaints are still working their way through the lower courts.

Still, the cases the High Court will now take up are likely to establish important precedents by setting the parameters of religious rights in two key arenas.

The main yardstick for the justices, according to legal experts, will be the 1993 Religious Freedom Restoration Act. The law was passed largely in response to the Supreme Court's 1990 *Employment Division v. Smith* decision, which said the First Amendment is not violated when neutral, generally applicable laws conflict with religious practices.

RFRA sought to redress the decision by mandating that the government may not "substantially burden a person's exercise of religion" without a "compelling" reason.

That threshold is expected to be a major hurdle as the White House tries to fend off challenges to the contraceptive mandate, which has become one of the president's most bitterly contested policies.

More than 80 lawsuits have been filed against the mandate by Christian groups and Christian-owned businesses — many of them Catholic — that object to providing birth control coverage or the coverage of sterilization procedures and medication that some believe are tantamount to abortion. Others object to the way the government decided which entities qualify for religious exemptions.

"It would be a huge expansion of RFRA to let businesses win cases under that stat-



ute," said Leslie Griffin, a law professor at the University of Nevada, Las Vegas, who has written widely on church-state issues and the contraceptive mandate.

The second, though perhaps less important, guidepost for the justices will be the controversial *Citizens United* decision of 2010, in which a sharply divided Supreme Court ruled that corporations have free speech rights and therefore cannot be prevented from spending money to support or oppose political candidates.

Now the justices will decide whether corporations whose owners espouse particular religious beliefs also have some of the same rights as individual believers and houses of worship. *Citizens United* has already been cited by lower court judges in ruling against the mandate.

"We see no reason the Supreme Court would recognize constitutional protection for a corporation's political expression but not its religious expression," Judge Timothy M. Tymkovich wrote for the majority in a ruling for the 10th U.S. Circuit Court of Appeals in favor of Hobby Lobby Inc., a nationwide chain of crafts stores owned by the Green family, whose members are evangelical Christians.

The Hobby Lobby case is one of the cases the Supreme Court will hear. The other is an appeal from Conestoga Wood Specialties Corp., a Mennonite-owned cabinetmaker in Pennsylvania that employs around 1,000 people. Conestoga lost its case against the mandate in the lower courts and petitioned the Supreme Court to hear its claims.

Opponents of Conestoga and Hobby

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District court rules against clergy tax break

A federal judge said that an IRS rule allowing clergy to avoid paying taxes on a part of their income designated as a housing allowance violates the constitutionally mandated separation of church and state.

Judge Barbara Crabb of the U.S. District Court for Western Wisconsin ruled Nov. 23 that a section of the tax code granting a benefit for “ministers of the gospel” not available to everyone else favors religion over non-religion, thus creating an establishment of religion prohibited by the First Amendment of the U.S. Constitution. She ordered that her ruling should not take effect until after the conclusion of any appeal.

The so-called “parsonage allowance” dates back to 1921, when most churches maintained a parsonage near the church where the minister and his family lived rent-free. The IRS allowed ministers to exclude such in-kind compensation from federal taxes.

In 1954, Congress extended the law to cash allowances, as more and more ministers were moving out of parsonages to rent or purchase their own homes.

Over the years challenges have arisen, including a high-profile case in 1996 when *Purpose Driven Life* author and megachurch pastor Rick Warren deducted his entire \$77,663 salary from Saddleback Church in Lake Forest, Calif., as a housing allowance. The IRS ordered Warren to pay back taxes on a portion of his income.

Warren spent four years in court defending his housing deduction and won in 2000, when a court struck down

the IRS argument capping the deduction at a “reasonable” amount and accepted Warren’s argument that the amount could be unlimited.

The IRS filed an appeal, but before it reached a three-judge panel, Congress swiftly passed the 2002 Clergy Housing Allowance Clarification Act to protect the parish exemption but limit it to the fair market rental value of a home.

Several challenges to the benefit have failed due to the legal loophole of “standing.” Courts have ruled that non-ministers suing for a benefit available only to clergy cannot possibly prevail, and the only result would be to deny it to those who qualify.

The current case, filed in September 2011 by the Freedom From Religion Foundation, cleared that hurdle by designating a portion of employee compensation as a housing allowance. Two employees in turn sued the federal government, claiming that denying them a benefit available to ministers violates the Establishment Clause and gives the IRS and Treasury Department authority to make “sensitive, fact-intensive and subjective determinations” on religious matters such as whether an individual is “duly ordained.”

The IRS has interpreted the exemption broadly, taking “ministers of the gospel” to mean not only those who preach from the New Testament, but also as applying to thousands of ministers, priests, rabbis, imams and other faith leaders.

In her 43-page ruling, however, Judge Crabb said because a minister’s primary function “is to disseminate

a religious message, a tax exemption provided only to ministers results in preferential treatment for religious messages over secular ones.”

Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty, disagreed.

“The ministerial housing allowance does not violate the First Amendment’s Establishment Clause,” Walker said in a statement. “Government violates the Establishment Clause when it gives religion a tangible benefit, such as grants to churches to finance their ministries or vouchers to parochial schools to pay for the teaching of religion. However, accommodations of religion, such as tax exemption and other exclusions, are generally permitted.”

Walker says the Free Exercise Clause of the First Amendment does not require such accommodation but the Establishment Clause does not forbid it. While Section 107 of the tax code applies specifically to clergy, he said, other sections give similar relief to other segments of society including members of the military, taxpayers living abroad and employees required to live on premises or who are on 24-hour call.

In her ruling, Crabb said if members of Congress believe there are “important secular reasons” for granting the exemption, they can rewrite the law in a way that includes ministers as part of a larger group of beneficiaries, but as currently written the tax code “is unconstitutional.”

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

COURT CONTINUED FROM PAGE 1

Lobby, which has 13,000 full-time employees, argue that because they are for-profit businesses they do not have the same rights as religious believers. They also note that the companies hire employees of varied faith backgrounds who also have religious rights. Another concern is that granting a religious exemption to businesses will allow companies to claim a range of other exemptions from other statutes.

Given the polemics, Notre Dame law professor Richard Garnett said he worries “that what I regard as accidental aspects of the case — the *Citizens United* debate, the ‘war on women’ rhetoric from the last election, the controversies about (health care reform) — will distract the court from the more specific legal question presented, which has to

do, again, with the interpretation of a particular, and an important, federal statute.”

Other legal experts said that even without the atmospherics surrounding the issue, it is going to be hard enough for the justices to sort through the arguments, and few were willing to predict how the case will turn out.

“It’s one of the most difficult legal questions I’ve seen, in terms of all the issues that are intertwined,” Howard Friedman, a retired law professor who runs the Religion Clause blog, told *Christianity Today*.

For more, see the *Hollman Report* on page 6.

—David Gibson, *Religion News Service*
with BJC Staff Reports

REFLECTIONS

A Baptist commitment to freedom and evangelism

A pastor friend recently asked me to write a short piece on the importance to Baptists of church planting. I agreed to do it, but only in the context of a larger discussion about the relationship between freedom and evangelism.

Historically, this has been a both/and proposition for Baptists. We are passionately committed to soul freedom for each and religious liberty for all; we are similarly dedicated to missions which includes evangelism and, even more tangibly, church planting. The Gospel of Jesus Christ is both a covenant of freedom and a mandate for sharing.

The Bible teaches both individual freedom and responsible evangelism. The Apostle Paul issues a clarion call for freedom in Christ to the Galatians when he said, "For freedom Christ has set us free, do not submit again to a yoke of slavery." (Gal. 5:1)

Paul was a freedom guy through and through. But he was also the great missionary of the early church. His embrace of freedom did not detract from — but added to — his enthusiasm for sharing the Gospel. And, Peter tells us in his first letter that we must "always be prepared to make a defense to anyone who calls you to account for the hope that is in you, yet do it with *gentleness and reverence*." (1 Peter 3:15) (emphasis supplied)

As far as we Americans are concerned, protections for religious liberty and freedom of speech are both ensconced in the First Amendment. We are able to practice our religion as we see fit and free to go tell others about it.

Respecting the other person's soul freedom does not mean we cannot share our faith; it does mean, however, that we respect and honor that person's right to say no. We must fight to resist others doing, or the church doing, or the government doing what even God will not do — to violate conscience or coerce faith.

Our commitment to religious freedom and sensitive evangelism has resulted in amazing religious and cultural pluralism. We no longer need to discharge the Great Commission to take the Gospel to "all nations" only by sending foreign missionaries. The "world" is now next door, down the street, in our workplace and throughout our culture.

Living alongside people from around the world allows us to get to know and understand them and their religious points of view. Ideally, "with-nessing" should come before "witnessing." That makes what we say so much more effective and credible. And, it allows us to learn from the Hindu, the Buddhist, the Jew, the Muslim and countless others. As Christians, we believe we know the *ultimate* truth in the person of Jesus Christ, but we do not presume to know *all* the truth. We can learn a lot from our brothers and sisters from various religious traditions.

But what about the relationship between freedom and missions on the international front?

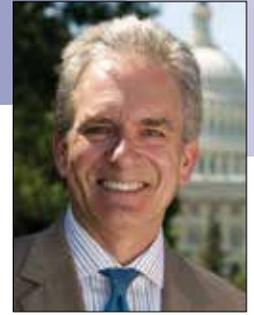
The human rights movement around the world has seen better days and, in many places, religious persecution abounds. In a recent op-ed piece in *The Washington Post*, Stephen Hopgood — professor at the School of Oriental and African Studies at the University of London — attributes this diminution of human rights internationally, ironically enough, to the influence of religion. He blames, at least in part, the effects of Islamic fundamentalism in the Middle East, North Africa and South Asia, but also "the passionate evangelism shared by millions of Christians in the Americas and Africa particularly." He also indicts the "nationalist, authoritarian and conservative-religious backlash against the language and practices of secular human rights ..."

This need not be the case. Religious freedom — including the freedom to share one's faith and change one's mind — is not antithetical to human rights. In fact, they are closely related.

People of faith were integrally involved in the drafting and adoption of the Universal Declaration of Human Rights. In fact, J.M. Dawson, the first executive director of the Baptist Joint Committee, along with Gov. Harold Stassen (a Baptist from Minnesota), were instrumental in convincing the United Nations General Assembly to embrace the Universal Declaration in December 1948 as the aspirational goal for the post-World War II world. Both Dawson and Stassen understood religious rights and human rights go hand in glove. Moreover, Article 18 of the Universal Declaration itself recognizes the inextricable relationship between freedom ("Everyone has the right to freedom of thought, conscience and religion; ...") and evangelism ("... this right includes freedom to change [one's] religion or belief ...").

Although Hopgood deserves some criticism for setting up this dubious religious liberty vs. human rights dichotomy, he is to be applauded for his call for religious groups of all kinds to play a greater role in the struggle for human rights. He recognizes, as has been suggested by Pope Francis, that "the church has a deeper, more powerful, more attractive and more important spiritual message to spread" and the "weak grip of conventional Western human rights principles in individual communities is no match for the moral power of the church."

Yes, in the U.S. and around the world, we must fight for freedom, standing alone and in league with the human rights movement. And we must be free, at the same time, to engage in missionary efforts, yet do it, as the Scriptures instruct, "with gentleness and reverence."



J. Brent Walker
Executive Director

8 countries on UN Human Rights Council restrict religious freedom

Eight of the 47 countries that hold seats on the United Nations Human Rights Council imprisoned people in 2013 under laws that restrict religious freedom, according to a new report from Human Rights Without Frontiers International, a nonprofit advocacy organization based in Belgium.

The eight UNHRC member states on the group's second annual World Freedom of Religion or Belief Prisoners List, released Dec. 30, are Morocco, China and Saudi Arabia (whose new three-year terms began Jan. 1) and current members India, Indonesia, Kazakhstan, Libya and South Korea.

Hundreds of believers and atheists were imprisoned in these and 16 other countries for exercising religious freedom or freedom of expression rights related to religious issues, according to the report. These rights include the freedom to change religions, share beliefs, object to military service on conscientious grounds, worship, assemble and associate freely. Violations related to religious defamation and blasphemy are also included in the report.

According to the report's findings from 2013:

- In China, Protestants, Catholics, Buddhists, Muslims and Falun Gong adherents were arrested for proselytizing, holding illegal gatherings, providing religious education classes and publicizing their persecution.
- In Morocco, a convert to Christianity was arrested and fined for "shaking the faith of a Muslim" by sharing his newfound beliefs.
- In Saudi Arabia, 52 Ethiopian Christians were arrested for participating in a private religious service.
- In India, Protestants were arrested for holding private prayer meetings.
- In Indonesia, a Pentecostal pastor was arrested for holding

religious services without a valid permit, and an atheist was sentenced to 30 months in prison for starting an atheist Facebook page where he posted the words "God does not exist."

- In Kazakhstan, an atheist was arrested for allegedly inciting religious hatred in his writings.
- In Libya, foreign missionaries, dozens of Coptic Christians and a Protestant were arrested and allegedly tortured for proselytizing.
- In South Korea, nearly 600 Jehovah's Witnesses were serving prison sentences for conscientious objection to mandatory military service.



The report designates China, Eritrea, Iran, North Korea and South Korea as countries of particular concern for the highest number of religious freedom prisoners. The U.S. State Department's latest International Religious Freedom Report includes Saudi Arabia on its list of worst offenders.

"Human Rights Without Frontiers is alarmed by the evolution of the UN Human Rights Council which accepts as members an increasing number of countries perpetrating egregious violations of human rights and, in particular, of religious freedom," the

group said in a statement.

The UNHRC replaced the U.N. Commission on Human Rights in 2006, in part "to redress (the Commission's) shortcomings," which included granting membership to countries with poor human rights records. The resolution establishing the revamped UNHRC declares that member states "shall uphold the highest standards in the promotion and protection of human rights."

But that's not happening, said Willy Fautre, director of Human Rights Without Frontiers.

"Our best wish for the New Year is that these and the other member states of the Human Rights Council may give the good example to other nations of the world by releasing such prisoners of conscience and not depriving any other believer or atheist of their freedom in 2014," he said in a statement.

"In Morocco, a convert to Christianity was arrested and fined for 'shaking the faith of a Muslim' by sharing his newfound beliefs."

Articles 18 and 19 of the Universal Declaration of Human Rights, which the U.N. General Assembly adopted in 1948, explicitly protect freedom of thought, conscience, religion, opinion and expression.

The U.N. General Assembly has the power to suspend the rights of UNHRC members that commit serious human rights violations. Libya became the first and only country to be suspended from the council in 2011 amid the Gaddafi regime's brutal suppression of protesters. Libya was readmitted to the council eight months later under new leadership.

—Brian Pellot,
Religion News Service

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If you have questions, contact Development Director Taryn Deaton at tdeaton@BJCOnline.org.



K. Hollyn Hollman
General Counsel

Hollman REPORT

BJC supports strong legal standard in contraceptive mandate cases

“The outcome of these cases will depend on the Court’s interpretation of RFRA’s operative language: is a secular, profit-seeking corporation a ‘person’ that can ‘exercise religion’ under the statute?”

The Obama administration’s contraceptive mandate — the requirement, under the Affordable Care Act, that most employer-provided health insurance plans cover all FDA-approved methods of contraception — continues to stir controversy and spawn new lawsuits at a dizzying rate. It is not only the number of cases that is striking. The variety of arguments and contexts in which they are made create a very complex picture for determining whether the mandate violates religious liberty law. While it will take a long time to decide all the related claims, the U.S. Supreme Court has decided to hear two cases that involve one of the most significant and high-profile issues at stake. The two cases, *Sebelius v. Hobby Lobby Stores* and *Conestoga Wood Specialties v. Sebelius*, address whether the contraceptive mandate violates the religious rights of secular corporations and their owners. The corporations employ people without regard to religion and sell non-religious goods, but their individual owners strongly object to some forms of contraception and maintain that both they and the corporations themselves have free exercise rights that will be violated by the mandate. The cases have been consolidated, and oral arguments will be held on March 25.

Resolution of these claims will turn on interpretation of the federal Religious Freedom Restoration Act (RFRA), which the Court is being asked to apply in this complicated and unprecedented context. The BJC led a broad coalition that pushed for RFRA’s passage after a 1990 Supreme Court decision left free exercise rights more vulnerable to government intrusion. Twenty years after its enactment in 1993, opinions vary about RFRA, with some prior advocates expressing concern about its interaction with civil rights and health care laws. The BJC continues to support the strong standard RFRA embodies.

At a recent conference marking RFRA’s 20th anniversary, panelists acknowledged that at the time of RFRA’s passage, this precise application of RFRA — to claims by large-scale, for-profit employers challenging administrative requirements stemming from comprehensive health care reform — could not have been predicted. RFRA advocates did, however, intend to furnish a broad standard for protecting religious liberty, and it is unsurprising that litigants would use the statute in novel ways as new conflicts arise between

religious beliefs and competing governmental interests. RFRA’s legal standard does not dictate specific outcomes; instead, it balances interests and seeks a workable solution that preserves religious liberty values without transforming them into an automatic trump card. When claimants can show sincere religious beliefs are substantially burdened by the government’s actions, the government must show that the burden is necessary, as applied to the specific religious claimant, to achieve an important government interest.

As in other religious liberty cases to reach the Supreme Court, the BJC has an opportunity to weigh in on this case. For us, however, the particular religious claim is less important than the need to advocate for strong standards that protect religious liberty for all. It matters much less which religious group or governmental entity we are aligned with in a case (indeed our history shows cooperation with groups across the theological and political spectrums) than that strong legal principles are maintained that protect us all.

RFRA allows religious claimants and the federal government to have their day in court. Here, the corporations’ owners have religious objections to some contraception and oppose facilitating its use in any way. For them, the mandate is a fundamental matter of religious liberty. Their claims should be taken seriously and the statute applied according to its terms. The government likewise advances legitimate interests in promoting comprehensive health care and gender equality in the workplace within the framework of an employer-based system of health insurance coverage. Vigorous defense of its policy under RFRA is to be expected.

The outcome of these cases will depend on the Court’s interpretation of RFRA’s operative language: is a secular, profit-seeking corporation a “person” that can “exercise religion” under the statute? If so, does the contraceptive mandate constitute a “substantial burden” on such entities’ religious exercise? And can the government demonstrate a sufficiently “compelling interest” for imposing the mandate on these particular claimants?

These substantive questions will be thoroughly briefed by the parties and their *amici*. For the BJC, the fact that these questions will determine the outcome is more important than whether any particular religious claim succeeds.

BJC welcomes spring intern

The Baptist Joint Committee is pleased to have a new intern working with our Washington, D.C., staff for the spring semester. Cody Clifton of Mars Hill, N.C., is a 2013 Graduate of Mars Hill University, where he earned a bachelor of arts degree in history. He is the son of Tim and Joy Clifton and a member of Mars Hill Baptist Church in Mars Hill. After his time with the BJC, Clifton plans to attend law school.



Clifton

Religious Liberty Essay Scholarship Contest deadline approaching

The March 7 deadline for the BJC's Religious Liberty Essay Scholarship Contest is just around the corner. Open to all high school juniors and seniors, this year's contest asks applicants to discuss whether or not religious messages written by students should be allowed at public school events. The full writing prompt is:

In many public high schools, cheerleaders and other students display banners for student athletes to run through at football games. In some schools, the messages on the banners have included Bible verses or other religious references. In response, some high school administrators have banned the use of these "run-through" banners out of concern these messages might convey that the school is promoting religion. In several instances, students have argued that the banners are expressions of their personal religious beliefs, asserting that they have the free exercise right to display religious messages at school events.

Should religious references be permitted on student banners used at school-sponsored events? Why or why not?

Write an essay in which you discuss both the students' rights and the school administrators' responsibilities in the public school setting. In order to support your point of view, articulate your understanding of the Establishment Clause and the Free Exercise Clause in the First Amendment and their relationship to each other. Discuss what you believe is the best solution to the controversy over school banners with religious messages. Be sure to explain how your outcome helps to defend and extend religious liberty for all people.

The BJC receives hundreds of entries each year competing for the prizes of \$2,000, \$1,000 and \$250. The grand prize winner also receives a trip to Washington, D.C.

"Our topic for 2014 provides high school students an opportunity to reflect on their personal rights to religious expression in a public school setting," said BJC Education and Outreach Specialist Charles Watson Jr. "We hope students will take up the challenge of researching and writing about this religious liberty issue."

For complete rules and topic, students can visit www.BJConline.org/contest.

—Jordan Edwards

Meyerson releases titles of Shurden Lectures

Michael I. Meyerson has released the titles of the 2014 Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State.

The first lecture is titled "The False Divide: Religious Support for the Separation of Church and State." The title of the second lecture is "Freedom of Religion: The Framers' Extraordinary Compromise."



Meyerson

The lectures will be held April 1-2 on the campus of Baylor University in Waco, Texas.

A professor of law and Piper & Marbury Faculty Fellow at the University of Baltimore, Meyerson is also an accomplished writer. He is the author of three books, including *Endowed by Our Creator: The Birth of Religious Freedom in America*, and numerous law review articles and book chapters.

The lectures are the result of a gift made to the BJC in 2004 by Dr. Walter B. Shurden and Dr. Kay W. Shurden of Macon, Ga. Each year, an expert visits a college campus to speak about the importance of religious liberty and to inspire others to make an ardent commitment to religious freedom and the separation of church and state.

The Shurden Lectures are free and open to the public. Visit BJConline.org/lectures for the latest information.

Update: 'Snake Salvation' pastor won't be charged with violating law

A Tennessee serpent-handling pastor's legal woes are over for now.

After a Jan. 8 hearing, a grand jury decided not to indict the Rev. Andrew Hamblin on charges of violating a state ban on possessing venomous snakes.

In November, state officials seized 53 serpents — including rattlesnakes, copperheads and exotic breeds — from the Tabernacle Church of God in LaFollette, Tenn., where Hamblin is pastor. The church has been featured in a National Geographic television series, "Snake Salvation."

Hamblin and his church say the Bible commands them to handle the snakes in worship. But state law bans the possession of venomous snakes.

Hamblin argued that the ban violates congregations' religious liberty. He said he told the grand jury that the snakes weren't his; they belonged to the church, and wildlife officials had no business raiding a church.

Since 1947, Tennessee law has banned venomous snakes during church services or in public settings. The state Supreme Court upheld that ban in the 1970s.

Matt Cameron, a spokesman for the Tennessee Wildlife Resources Agency, said most of the snakes were in ill health when they were seized. More than half died since the raid, and the rest are being cared for at a Knoxville zoo.

State officials don't plan to take any other action toward the church or Hamblin, said Cameron.

—Religion News Service and BJC Staff Reports



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REPORT from the Capital

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WHY WE GIVE

'[T]he work of the BJC can be sustained for years to come if we all give to the endowment'

Throughout her life, Reba Cobb has learned that religious liberty and separation of church and state are a critical part of Baptist identity. But, it wasn't until she heard James Dunn speak during seminary that she first learned of the work of the Baptist Joint Committee.

Cobb values the BJC's unique position to influence public opinion as a leading advocate for religious liberty in the nation's capital. "Our staff is much sought after as experts on religious liberty and separation of church and state. Over the years, the BJC has developed strong credibility with Congress, the courts, and citizens alike," she said.

Cobb began annually supporting the BJC nearly two decades ago. "I give to the BJC because it is important. Even though religious liberty is the law of the land, it is constantly under attack and even ignored. The BJC is prepared to strongly defend religious liberty," she said.

Cobb's deep love for the BJC and the First Amendment led her to include the BJC in her estate plans. "I

chose to remember the BJC in my will because the work of the BJC can be sustained for years to come if we all give to the endowment," she said.



A planned gift to the BJC is the best way to strengthen our mission for the future, and it is a powerful way for our committed friends to continue to have a place in our work for many generations. Ensure that our history will always have a future by remembering the BJC in your will.

There are several options for making a lasting commitment to the BJC. Please consult your lawyer or financial adviser if you wish to make a planned gift to the BJC. Contact Taryn Deaton, director of development, at tdeaton@BJCOnline.org or 202-544-4226 for more information.

The BJC's mission is to defend and extend God-given religious liberty for all, furthering the Baptist heritage that champions the principle that religion must be freely exercised, neither advanced nor inhibited by government.