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REPORT
from the Capital

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Religious Liberty Day Report

Celebrating a “Religious Liberty Day” allows you to engage your congregation in a dialogue about religious liberty and educate them about the importance of our first freedom.

In Oneida, Ky., BJC supporter Bill Genet wanted to find a way to talk to the members of his congregation about religious liberty. When his pastor asked him to put together a program for a Wednesday night service, Genet used the opportunity to teach others about the relationship between religion and government. Using pamphlets, commentaries and other materials that are available on the Baptist Joint Committee’s Web site, Genet explained how the government cannot infringe on the free exercise of religion, and he pointed out that it also cannot establish religion. He went on to talk about religion in the public schools, and he took questions at the end of the program.

After attending the service, one church member remarked that she now realizes there is a lot of misinformation out there about prayer in schools.

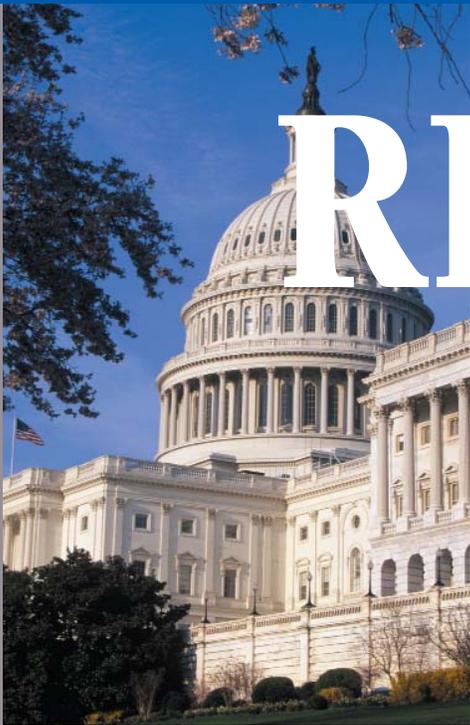
There is not a “one size fits all” model for a Religious Liberty Day. Some congregations may devote an

entire Sunday morning service to the topic with Scripture, music and responsive readings. Others might find that a Wednesday night prayer meeting or topic-oriented discussion to be the best fit for a congregation. Or, a simple moment or prayer in a service might be an ideal way to bring up the subject in your church. You can even use your Religious Liberty Day service to give people the opportunity to sign up to receive *Report from the Capital* by downloading a sign-up sheet from our Web site, setting it out at church and then mailing it to us.

The BJC is happy to provide resources to help you plan your own Religious Liberty Day or discussion at your church, with a variety of documents available on our Web site at www.BJCOnline.org. Talk to your pastor, your Sunday school teacher or your friends to decide what might best suit your congregation. And, if you plan an event, we want to hear from you!

Contact Kristin Clifton at (202) 544-4226 or at kclifton@bjconline.org with any questions or just to let us know you are planning a Religious Liberty Day event.





REPORT

from the Capital

School year brings focus on conflicts over religion in the public schools

As schools across the country begin a new academic year, many students, parents and teachers are subjected to the myth that God has been thrown out of public schools. That misleading statement often is carelessly asserted in a way that skews the public's understanding of the appropriate and constitutional role of religion in the public schools.

The First Amendment clearly protects citizens' rights to exercise their religion freely while also prohibiting the government from advancing religion. So, students are free to exercise their religious rights in public schools (as long as it is not disruptive), but administrators must be careful because, as government employees, their promotion of religion will usually be seen as an action of the state. Of course, public school employees have rights to exercise their religious beliefs in places such as the teachers' lounge and when they are not in school, but they do not have the right to use their status as government employees to do so. The lines are difficult to discern for many, and situations around the country illustrate that confusion. Several news stories so far in 2009 showcase the tense nature of the debates — and the misunderstandings — over the appropriate role of religion in public schools.

News outlets have followed two cases of confusion in Santa Rosa County, Fla., this summer. Last year, the ACLU filed suit against the public school district, claiming school officials were promoting prayer at school events and violating the Establishment Clause in various other ways. The district agreed to stop those activ-



ities. Officials worked with the ACLU to craft a written agreement to end the suit, and a judge issued a temporary injunction on those activities.

However, school officials violated the injunction in 2009. When a school district clerk was told not to pray at an Employee of the Year banquet, she had her husband offer a prayer at the podium. In August, a federal judge cleared her of charges, saying she did not know that the event was covered by the settlement in the federal lawsuit.

A principal and an athletic director from the same school district are also facing criminal contempt charges for violating the same agreement. During a school-day luncheon dedicating a field house, the principal asked the athletic director to offer a prayer to bless the food, and he did so in the presence of a crowd of students, faculty and other community members. The two men are scheduled to come

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On the Web

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State updates



Both houses of Congress spent much of August and the first part of September in recess, but states continued to see new issues, lawsuits and decisions related to the relationship between church and state.

Georgia: Kosher law

A Georgia rabbi filed suit in August over a law requiring kosher food to meet “Orthodox Hebrew religious rules.” The rabbi claims the government is endorsing one set of religious beliefs over others by declaring the orthodox branch of Judaism as authoritative. In 2002, an appeals court struck down a similar law in New York.

Illinois: State funds to religious groups

The “Illinois Jobs Now!” plan aims to combat unemployment by boosting state-funded infrastructure projects. Some watchdog groups are concerned that the bill has no safeguards against violations of church-state separation, and they say it could funnel taxpayer funds to religious organizations.

Kentucky: Law demanding dependence on God

A judge ruled that references to a dependence on “Almighty God” in a law forming the commonwealth’s

department of Homeland Security create an unconstitutional establishment of religion. He noted that although Kentucky’s history does not exclude God from statutes, it also does not allow the legislature to demand that citizens depend on God.

Virginia: Jail censorship update

A jail created a new inmate mail policy after complaints saying officials removed religious language from incoming letters. Previously, officials removed anything cut and pasted off the internet. Now mail clerks will check those pages for religious material and ensure it is received by the inmates.

If you have a question about the potential religious liberty implications of something happening in your state, the BJC is a resource for you.

— Cheryl Crowe

Second “Pulpit Freedom Sunday” set for September

In what some observers say is an attempt to force an IRS investigation, the Alliance Defense Fund is encouraging pastors across the United States to speak from the pulpit about current government officials and the issues they support. The organization is declaring Sept. 27 as the second “Pulpit Freedom Sunday,” and it is urging pastors to use their sermons in a way that could cause a conflict with existing tax laws.

The initiative is set to counter the 1954 “Johnson amendment” that changed the IRS tax code to prohibit nonprofit organizations (including churches) from supporting or opposing candidates for office. An ADF resource on Pulpit Freedom Sunday says the Johnson amendment is unconstitutional because its restriction “excessively entangles the government with religion,” and, if the IRS tries to punish speech coming from the pulpit, it would encounter constitutional issues.

By provoking investigations into the tax-exempt status of the churches participating in Pulpit Freedom Sunday, ADF lawyers could then challenge the investigations in court in an effort to force a legal decision declaring the Johnson amendment unconstitutional.

J. Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty, said the ADF’s “Pulpit Freedom Sunday” is a misnomer because pulpits are free already in this country.

“Preachers are perfectly free to interpret and apply Scripture as they see fit, speak out on the great moral

and ethical issues of the day and urge good citizenship practices, such as registering to vote and voting,” Walker said. “The only thing they can’t do — in exchange for the most favored tax-exempt status — is to tell the faithful how to vote.”

Some religious organizations and publications have forfeited their tax-exempt status over the years so they would be free of any government restrictions. But, the ADF campaign is seeking to have churches participate actively in political campaigns while still benefitting from the government’s tax exemptions.

ADF told the news media that about 30 churches participated in the first “Pulpit Freedom Sunday” in September 2008. According to news reports, one pastor referred to Republican presidential candidate Sen. John McCain as the “most righteous” of the candidates, and a different pastor (who endorsed Alan Keyes from the pulpit) said “according to my Bible and in my opinion, there is no way in the world a Christian can vote for Barack Hussein Obama.” Another pastor told his congregation, “As Christians, it’s clear we should vote for John McCain.”

Media reports on sermons in six churches in 2008 led Americans United for Separation of Church and State to file formal complaints with the IRS. However, in the past few months, the IRS informed those churches that they are ceasing their investigations.

— Staff Reports



K. Hollyn Hollman
General Counsel

Dealing with religious display matters

A stand-alone cross about five feet tall on government property violates the First Amendment's Establishment Clause because it has the primary effect of advancing religion. That was the unremarkable decision of a federal district court in California that was upheld by the 9th U.S. Circuit Court of Appeals.

Religion is unquestionably on display in myriad ways in America. Of course, religious individuals and faith communities — not the government — have the interest and responsibility for promoting religion. While religious imagery on government property is constitutional in some contexts, it is hard to see how the preeminent symbol of Christianity, standing alone atop a hill on a National Preserve and used as a gathering place for Easter services, could pass muster under the Constitution's prohibition on government sponsorship of religion. Indeed, it cannot.

But the cross in the case of *Salazar v. Buono*, which has existed in various forms for decades on a National Preserve in the Mojave Desert, has a more complicated story. That story illustrates the political pressures applied in legal disputes about government-sponsored religious displays. When the display was challenged, Congress intervened and sought to prevent removal of the cross by prohibiting the use of government funds to remove it. Later it designated the cross a "national memorial commemorating United States participation in World War I." Still later, it attempted to transfer the property on which the cross sits to a private party who had erected the current version of the cross at the site. For years, litigation has continued over the enforcement of the injunction to remove the cross and the effect of the purported cure of the Establishment Clause violation through a land transfer.

When it decided to hear the government's appeal, the Court agreed to consider two questions. The first question is whether the plaintiff, Frank Buono, a former Park Preserve employee who is Catholic, has legal standing to challenge the display of the cross. Specifically, the government suggests that Buono's Christian faith and lack of objection to the display of the cross in other contexts disqualifies him from challenging the government's display. The second question is whether the court of appeals erred in refusing to find that Congress had remedied the Establishment Clause violation by transferring the land to

a private party.

Both questions are important in the continuing disputes over religious displays on government property. The religious freedom we enjoy depends on citizens being able to challenge violations of the Establishment Clause. Restrictive procedural barriers to lawsuits, such as a rule that defines injury according to a court's understanding of the plaintiff's religion, threaten the ability to hold government accountable.

Likewise, when the government runs afoul of the Constitution, it should be made to correct the violation. Whether congressional action to transfer land ownership with minimal difference in the display's appearance, as in this case, is a sufficient "cure" is a significant question that will impact other similar disputes.

In the run-up to Oct. 7 oral arguments before the U.S. Supreme Court, the case has generated significant *amicus* attention, much of it from veterans' groups. Some support the government's position and claim that the lower court's ruling threatens many memorials involving religious imagery. Other veterans' groups side with Buono, distinguishing the Christian symbol in this case from religious symbols that mark individual gravesites and memorials that incorporate symbols from other traditions, which more accurately reflect the diverse beliefs of those who died in military service.

Joined by the Interfaith Alliance, the BJC filed an *amicus* brief that responds to the government's assertion that Buono lacks sufficient injury to have standing to sue because he is a Christian objecting to the government's display of a Christian symbol. That assertion lacks any foundation in the law and misses one of the primary purposes of the Establishment Clause. While the First Amendment's promise of neutrality toward religion is no doubt important to religious minorities, including those Jewish, Muslim, and other non-Christian soldiers who fought in World War I and are not represented in this memorial, it also protects religion itself. As former Supreme Court Justice Sandra Day O'Connor put it in a religious display case just a few years ago, "Voluntary religious belief and expression may be as threatened when government takes the mantle of religion upon itself as when government directly interferes with private religious practice."

For more information on *Salazar v. Buono*, visit our Web site at www.BJConline.org. Click on "Religious Displays" to learn more about the issue, and download the BJC's *amicus* brief in the "Documents" section.

Your guide to religious freedom



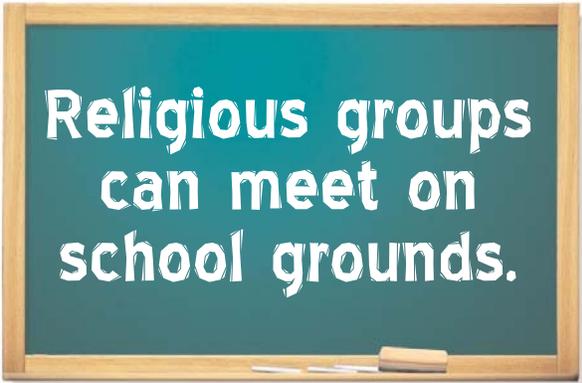
**Students
can pray
in school.**

 Prayer is a constitutional right, but it cannot be forced on others. Prayer also cannot be performed in a manner that could be taken as a school endorsement of the prayer. Voluntary, student-initiated prayer is permitted if it is not disruptive, but school-sponsored prayer is not allowed.

 Religious messages on clothing are permissible to the same extent that other messages are allowed. If a school has a dress code that does not permit any words on any clothing, then that also applies to religious words. But, if any words or symbols are allowed, then the same is true for religious words and symbols.



**Students can
wear religious
clothing and
accessories.**



**Religious groups
can meet on
school grounds.**

 Events that are student-initiated and meet when class is not in session (like prayer around a flagpole before school begins) are constitutional. Schools also are required to give religious groups the same access to school grounds as they do other groups that are not related to school curriculum. Students cannot force a captive audience to participate in a religious exercise, and school personnel cannot encourage or discourage participation in religious groups or events.

SCHOOLS *continued from page 1*

before a federal judge on September 17.

While cases involving prayer in school are making headlines, so are cases involving moment of silence laws that give students time to pray. Laws that allow (or, in some cases, mandate) a moment of silence in school are not necessarily unconstitutional, but the devil can be in the details and semantics of a statute.

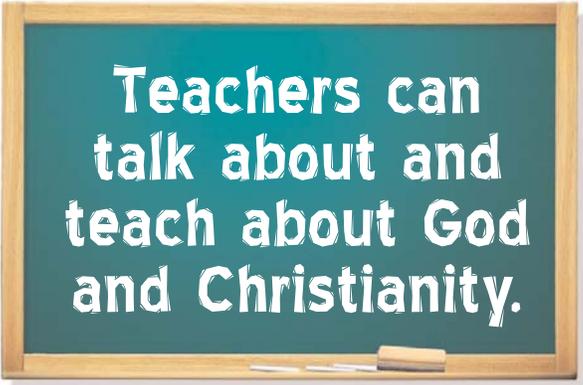
In Texas, the 5th U.S. Circuit Court of Appeals held earlier this year that the state's mandatory moment of silence law is constitutional. The Texas statute requires local school boards to set aside one minute at each school to allow students, as they choose, to "reflect, pray, meditate, or engage in any

other silent activity that is not likely to interfere with or distract another student."

However, when Illinois' "Silent Reflection and Student Prayer Act" was ruled unconstitutional, lawmakers put together a bill that took the words "student prayer" out of the title and made it optional (instead of mandatory) for a teacher to have a moment of silence before the school day begins. The revised act passed the Illinois house in March, but it stalled in a senate committee.

Setting aside quiet time to allow students a moment of reflection or prayer is allowed, but students cannot be forced or coerced to pray. And while students may be taught *about* religion in a

Liberty in public schools



Teachers can talk about and teach about God and Christianity.

 Public schools may teach about all religions in courses such as history, social studies and comparative religion, to name a few. Learning about religion helps students learn about history and cultures. Critical historical events – from the Crusades to the Holocaust – would be distorted without a discussion of the role of religion. It is important to note that school officials cannot teach any certain religion in a devotional sense or in a way that would promote one religious point of view over others or religion over non-religion.

 Students are free to pray, read Scripture, make religious comments in class (when relevant to a subject being discussed) and even share their faith with others at school. Students cannot disrupt a classroom or harass others, but they have the right to talk about their beliefs.



Students may express their faith in school.



Visit www.BJConline.org for more information.

 The BJC Web site has downloadable issue guides for parents and teachers. Visit www.BJConline.org, go to the “Resources” tab, select “Documents,” and take a look at the section called “Public Schools.” You will find a host of helpful pamphlets and brochures, including one that shows how schools and religious communities can work together to enhance the mission of public education while respecting constitutional guidelines.

“Bible as literature” or world religions class, they cannot be taught religious belief in a devotional sense.

The Bible itself is not banned in public schools, but officials cannot endorse it as a religious text. In Missouri this summer, a court ordered a school district to abandon its practice of distributing Bibles to fifth graders during the school day. The district court found the practice to be in violation of the Establishment Clause, but said the school could possibly find a constitutional way to implement a more general distribution policy.

Similar news stories will rise as the school year begins. The role of religion in public schools is a dif-

ficult field to navigate, and often people in public schools and surrounding communities misunderstand their rights and responsibilities. While public schools have to be careful to avoid promoting religious faith, students’ religious rights are constitutionally protected.

Check out the chalkboards on the top half of this page for some reminders of the rights and constitutional limitations of the role of religion in public schools, and visit our Web site for more detailed information.

—Cherilyn Crowe

REFLECTIONS



J. Brent Walker
Executive Director

The lion of religious liberty

“Last lion” is how Peter Canellos characterized Sen. Edward Kennedy, in the title of a new book he and a team of *Boston Globe* reporters wrote earlier this year.

The book is aptly named. Indeed, Sen. Kennedy was known as the lion of the Senate for much of his nearly 50 years of Senate service. The adjective “last” signals his uniqueness — his once-and-onlyness. The book is also subtitled with a clever twist: “The Fall and Rise of Ted Kennedy.” As the subtitle suggests, Kennedy finished strong after some well-chronicled missteps. Other senators have served longer and to an older age, but they usually have gone out with the muted meow of a house cat. Kennedy roared like a caterwauling lion until the end.

Sen. Kennedy will be remembered for his prolific legislative work on issues such as health care, education, economic/social justice and civil rights writ large. He was a natural legislative leader. It has been said that Kennedy could be “ideological without being an ideologue.” He could, at the appropriate time, bend as well as bluster. Kennedy was also a fierce defender of religious liberty and a champion of the separation of church and state.

As he did on other matters, Kennedy worked both sides of the aisle on church-state issues. Along with his ideological alter ego, Sen. Orrin Hatch, R-Utah, Kennedy spearheaded the charge to pass the Religious Freedom Restoration Act (“RFRA”) in 1993 — maybe the most important piece of religious liberty legislation in the past quarter century. Kennedy and Hatch, of one mind on this issue, gave a critical political cover to the rest of the Senate, and RFRA passed with a vote of 97-3.

When the U.S. Supreme Court struck down RFRA in *City of Boerne v. Flores* (1997), Sen. Kennedy responded quickly and forcefully, declaring “this decision cannot be allowed to stand!” He then led the way, again with Sen. Hatch, for the consideration of the Religious Liberty Protection

Act and, eventually, the passing of the Religious Land Use and Institutionalized Persons Act (2000) to rectify some of the damage done by the Court to the Free Exercise Clause in *Boerne*.

Sen. Kennedy cared about Establishment Clause values, as well as Free Exercise. He fought tooth and nail the efforts to institute voucher schemes that aimed to funnel tax dollars to private and parochial schools. A staunch defender of public schools to be sure, he understood also that using public funds to pay for the teaching of religion offended even the most modest understanding of the separation of church and state.

One of my favorite Kennedy quotes concerning religious liberty comes from his speech delivered in 1983 on the campus of Jerry Falwell’s Liberty University. (Falwell’s inviting Kennedy to Liberty itself is an interesting story.) Among other things, Kennedy declared to the Liberty students:

The separation of church and state can sometimes be frustrating for women and men of religious faith. They may be tempted to misuse government to impose a value which they cannot persuade others to accept. But once we succumb to that temptation, we step into a slippery slope where everyone’s freedom is at risk. Those who favor censorship should recall that one of the first books ever burned was the first English translation of the Bible. . .

Let us never forget: today’s Moral Majority could become tomorrow’s persecuted minority.

This lion has roared for the last time. However, I trust that whether one embraces Sen. Kennedy’s political views or not, we can all be inspired by his penchant for speaking the unvarnished truth as he saw it, while, at the same time, extending a hand of compromise and a spirit of civility to those who disagreed with him.

“As he did on other matters, Kennedy worked both sides of the aisle on church-state issues.”

Brent Walker's personal remembrances of Sen. Ted Kennedy

◆ Sen. Kennedy had a wonderful sense of humor and was quite adept at mimicking others. I remember at a party on Capitol Hill to celebrate some legislative victory (I can't remember which), Sen. Kennedy mimicked Sen. Ernest Hollings, D—S.C., changing his Boston brogue to Hollings' genteel southern accent in a way that brought the house down with laughter.

◆ I met with Sen. Kennedy and several others in his top floor Capitol hideaway office — walls covered with Kennedy memorabilia and a breathtaking view of the Mall. He met personally with us for more than an hour to plot strategy for pursuing passage of the Workplace Religious Freedom Act in the Senate. (We almost always meet with the member or staff in their regular Senate office building suites. This is the one and only time that I have ever been invited to a hideaway for a meeting!)

◆ I recall on one occasion watching Sen. Kennedy — not his staff, but Kennedy himself — walking his dog in the park next to the Russell Senate Office Building at lunchtime. Unlike Splash, the Portuguese water dog that he owned at the end of his life, I seem to recall this was a very small dog. It was a spectacle that stopped tourists in their tracks.

◆ I appreciated Sen. Kennedy inscribing pictures of himself to my two children with the handwritten admonition at the bottom to study hard and do well in school. He was always the proponent of education!



Brent Walker, Sens. Ted Kennedy and Orrin Hatch participate in a 1998 press conference on the Religious Liberty Protection Act in front of the U.S. Capitol. Kennedy and Hatch were the senate sponsors of the bill.

Baptists mark 400th anniversary, celebrate religious freedom

UTRECHT, Netherlands — Four hundred years after the first Baptist congregation was established, followers have been challenged to continue championing religious liberty.

"We as Baptists must continue to defend religious freedom for all peoples and all religions," said Denton Lotz, the former general secretary of the Baptist World Alliance, at a special service held in Amsterdam to mark the 400th anniversary of the Baptist movement.

The service was held in a Mennonite church, a short distance from the site of what is honored as the first Baptist congregation, founded in 1609 by exiles from Britain who had fled religious persecution in England.

"If we fail to take seriously the 21st century and merely continue to defend religious freedom as though we were living under King James I, then we will have become irrelevant and our defense of freedom irrelevant," said Lotz, who served as the BWA's top executive for 19 years until his retirement in 2007.

That first Baptist church was established in an Amsterdam bakery under the leadership of Thomas Helwys and John Smyth, a former Church of England cleric, who sought a self-governing church free from state control.

The service was the highlight of a series of international events held in the Netherlands by the BWA and the European Baptist Federation to celebrate the anniversary.

The anniversary service was attended by the delegates of the BWA annual gathering and general council meeting held in a nearby town.

—Religion News Service

Religious freedom experts put India on "watch list"

The U.S. Commission on International Religious Freedom has put India on its "watch list," citing the country's "inadequate" response to recent waves of violence toward religious minorities.

USCIRF has been particularly concerned about India's religious tolerance since 2002, when organizations related to the Hindu Nationalist party Bharatiya Janata were on the rise. At that time, India was designated as a "country of particular concern," — the commission's most condemning category — but has since been removed from that list.

With attacks against Christians in December 2007 and into 2008, USCIRF's attention has been called back to India. They reported inadequate police and judiciary response to the violence and the subsequent displacement of 60,000 or more Christians in August and September 2008.

Although USCIRF's annual report is generally released in May, the chapter on India was postponed after the Indian government declined to issue visas for the organization's visit to the country.

What sets India apart from many countries on the list (which includes Somalia, Cuba and Afghanistan) is their democratically elected government.

"In practice, however, India's democratic institutions charged with upholding the rule of law ... lack capacity and have emerged as unwilling or unable to consistently seek redress for victims of religiously-motivated violence," said the USCIRF.

—Religion News Service