



REPORT from the Capital

Missouri 'prayer' amendment passes, lawsuit filed challenging its effect

One day after voters in Missouri overwhelmingly approved a "right to pray" amendment to the state's constitution, a lawsuit was filed challenging the measure's effect on prisoners' rights.



which limits prisoners' rights to those "afforded by the laws of the United States." The ACLU-EM said the provision takes away prisoners' rights established in 1820 when

the Missouri Constitution was adopted. More than 80 percent of voters approved Amendment 2 on Aug. 7, which supporters said would protect religious expression, but others warned it could harm religious liberty. The Baptist Joint Committee and other groups opposed the amendment over concerns about its necessity and legality.

"Not only is it unconstitutional to take away the rights of one class of citizens, but it is an affront to our American values of religious liberty," said Brenda L. Jones, executive director of the ACLU-EM, in a press release.

The language on the ballot described the amendment as protecting the rights of citizens to express their religious beliefs — including the right to pray in "public settings" — and the rights of children to pray and acknowledge God in schools. The full text of the amendment includes additional provisions, including one allowing students to be exempt from classroom activities that violate their religious beliefs.

In a letter sent to BJC supporters in Missouri, Executive Director Brent Walker said the amendment would authorize activity that harms religious freedom by allowing state-sponsored religious activity in violation of the federal constitution. "Limitations on government-sponsored prayer are a key component of 'no establishment' and *protect* individual freedom of conscience by ensuring all citizens may freely participate in the democratic process without regard to one's religious beliefs," Walker wrote.

State Rep. Mike McGhee, a Republican who sponsored the amendment, said it would remind people about their religious freedoms, such as reading religious books at school. "It's OK to bring your Bible to study hall," he said.

"It opens up a can of worms most people don't want to open," said Greg Grenke, a 22-year-old voter from Columbia who voted against the amendment. He said he is not against prayer — he just does not think the amendment was necessary.

It is not clear how students' exemption from classroom activities will be regulated. McGhee has said it could vary by age group, and individual school districts could create their own policies on the matter.

Pediatrician Ellen Thomas, 48, said the amendment seemed like propaganda.

The amendment was backed by Missouri's four Catholic bishops and the Missouri Baptist Convention. The Baptist Joint Committee and the Episcopal Diocese of Missouri were among the groups opposing it.

"I really just think it's designed to stir up angry sentiment." She added, "There's no infringement on people's right to pray as it is."

Critics argued the amendment is redundant — the U.S. Constitution already protects religious freedom. And some warned that it could spark countless lawsuits and bring unintended consequences.

Kathy Rowland, 55, of Columbia, Mo., said the amendment seemed "well-intentioned," but unnecessary.

The day after the vote, the ACLU of Eastern Missouri (ACLU-EM) filed a lawsuit challenging the section of the amendment

Still, the amendment garnered enough support to pass by a 7-1 margin. "I was glad to see it," said Margie Cravens, 87, as she left her Columbia polling place. "And we need prayer now more than ever before."

—Kellie Kotraba, Religion News Service & BJC Staff Reports

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Candidates offer rare glimpse of their spiritual lives

President Obama says it is not his job to defend his Christian faith against doubters who suspect he is Muslim. His GOP challenger, Mitt Romney, says religion is “integral” to his life, even as often he avoids mentioning his Mormon faith by name.

In interviews published Aug. 21 by *Cathedral Age*, the magazine of the Washington National Cathedral, the candidates responded in writing to nine questions about their faith.

Religion has been a tricky political issue thus far for both men. A recent Pew Research Center poll found that only 49 percent of Americans can correctly identify Obama as a Christian. More Americans know that Romney is Mormon, but a significant minority (30 percent) does not believe that The Church of Jesus Christ of Latter-day Saints is Christian.

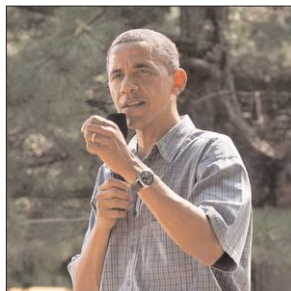
Asked about people who question the sincerity of his faith, Obama responded: “You know, there’s not much I can do about it. I have a job to do as president, and that does not involve convincing folks that my faith in Jesus is legitimate and real.”

Answering the same question, Romney said: “I am often asked about my faith and my beliefs about Jesus Christ. I believe that Jesus Christ is the Son of God and the Savior of mankind. Every religion has its own unique doctrines and history. These should not be bases for criticism but rather a test of our tolerance.”

Both men said that political candidates should be judged by their works, not faith.



Mitt Romney speaks to supporters at a rally in Tempe, Ariz., on April 20. RNS photo by Gage Skidmore/courtesy Flickr.



Barack Obama speaks to supporters in Sandusky, Ohio, on June 15. Obama for America photo by Christopher Dilts/courtesy Flickr.

“A political leader’s faith can tell us a great deal or nothing,” Romney said. “So much depends on what lies behind that faith. And so much depends on deeds, not words.”

Both also men said that religion is central to their lives. “My Christian faith gives me a perspective and security that I don’t think I would have otherwise: That I am loved. That, at the end of the day, God is in control,” Obama said.

Romney said that “faith is integral to my life. I have served as a lay pastor in my church. I faithfully follow its precepts.”

The men differed slightly on the role of faith in public life.

Obama highlighted religion’s contributions to the suffrage, abolition and civil rights movements. He also said that faith provides a “moral framework and vocabulary” for the country in times of crisis.

Romney said the country should “acknowledge the Creator, as did the Founders — in ceremony and word.” God should remain present in American currency, the Pledge of Allegiance and history lessons, as well as nativity scenes and menorahs in public places, he added.

“In recent years, the notion of the separation of church and state has been taken by some well beyond its original meaning,” Romney said. “They seek to remove from the public domain any acknowledgment of God.”

—Daniel Burke, *Religion News Service*

Saddleback forum called off, interfaith event planned

Saddleback Church pastor and *The Purpose Driven Life* author Rick Warren announced Aug. 22 that a civil forum planned with President Barack Obama and Republican presidential nominee Mitt Romney has been canceled.

Warren, who held a similar event in 2008 featuring then-candidate Obama and Republican John McCain, said he pulled the plug this year because he believes discourse between the two campaigns has become so uncivil that a polite exchange for two hours would seem hypocritical.

“The forums are meant to be a place where people of goodwill can seriously disagree on significant issues without being disagreeable or resorting to personal attack and name-calling, but that is not the climate of today’s campaign,” Warren said, according to *The Orange County Register*. “I’ve never seen more irresponsible personal attacks, mean-spirited slander, and flat-out dishonest attack ads, and I don’t expect that tone to change before the election.”

Warren announced plans for the forum in a conference call with reporters July 16. He said he had been in touch with senior officials from both campaigns who expressed their interest in participating, though no formal agreement had taken place.

The following day *Politico* quoted unnamed campaign officials as saying there would be no joint appearances by Obama and Romney before presidential debates that begin Oct. 3.

Warren, who said in July that 5,000 tickets would be available and distributed by lottery, announced alternate plans for an interfaith civil forum on religious freedom in September.

“I have invited the leading Catholic voice in America, the leading Jewish voice in America, and the leading Muslim voice in America to join me,” Warren said in an interview with the *Register*. “We obviously have different beliefs, but we are all ‘neighbors’ in the national sense and the scriptures command us to ‘love your neighbor as yourself.’”

Warren said one thing they all have in common is “mutual concern for protecting religious freedom for everyone.”

“We intend to speak out for each other,” he said. “If the government suddenly decreed that all Jewish delis must now offer pork, you’d find me opposing that with my rabbi friends. I don’t have a problem with pork, but I support your right to follow your faith.”

—Bob Allen, *Associated Baptist Press*

REFLECTIONS

Signs we're taking 'no religious test' seriously

The upcoming election will be an important one and certainly historic in at least one sense. In the 223 years of our republic, this will be the first time that no white Anglo-Saxon Protestant will appear on either ticket of the two major parties for president or vice president. The only professed Protestant on either ticket is President Barack Obama. The other candidates all belong to non-Protestant churches: Gov. Mitt Romney is a member of The Church of Jesus Christ of Latter-day Saints, and Vice President Joe Biden and Rep. Paul Ryan both are Roman Catholic.

We have never had an American president who claimed to be atheist or agnostic, but there have been several whose religious affiliation was not entirely clear and at best professed a generic, civil religiosity. Most presidents, except for John F. Kennedy, stood generally in the Protestant tradition even if at times their theology was deistic and non-Trinitarian. Four presidents have been Baptist: Warren Harding, Harry Truman, Jimmy Carter and Bill Clinton. Much the same has been true of vice presidents in our history. Joe Biden is the first Roman Catholic to serve in that office. Baptist vice presidents — who were not also president — were Richard M. Johnson (1837-1841), Nelson A. Rockefeller (1974-1977) and Al Gore (1993-2001).

This astonishing fact about the two tickets in the upcoming election is accompanied by a similar shift in the judicial branch of the federal government. With the retirement of Justice John Paul Stevens and the ascension to the U.S. Supreme Court of Elena Kagan, for the first time in our history no Protestants are serving on the High Court. Three justices — Elena Kagan, Stephen Breyer and Ruth Bader Ginsburg — are Jewish, and the other five are Roman Catholic.

Protestantism has been the dominant religious affiliation of the 112 justices who have served on the Court. Throughout most of the 20th century, there was an informally designated "Jewish seat." The first Jewish justices on the Court — Louis Brandeis (1916-1939) and Benjamin Cardozo (1932-1938) — were followed in succession by Felix Frankfurter (1939-1962), Arthur Goldberg (1962-1965) and Abe Fortas (1965-1969). The same is generally the case about a "Catholic seat." In the 20th century, Catholics have included Edward White (1894-1910, Chief Justice 1910-1921), Joseph McKenna (1898-1925), Pierce Butler (1923-1939), Frank Murphy (1940-1949), Sherman Minton (1949-1956) and William Brennan (1956-1990). Only three Baptists have served on the Supreme Court: Howell E. Jackson (1893-1895), Charles Evans Hughes (1910-1916, Chief Justice 1930-1941) and, most recently, Hugo Black (1937-1971).

These startling facts about the eclipse of Protestant hegemony at the top the executive and judicial branches are more than just interesting. It is some evidence that we seem to be taking seriously the clause in Article VI of the U.S. Constitution that bans religious tests for public office. That nobody is talking much about it suggests that we are becoming more comfortable with the principle that our leaders should not have to sign on the dotted line of a particular religious confession in order to serve.

Yes, some of our countrymen (erroneously) still talk about an officially designated "Christian nation." Others — even some professed Republicans — say they would never vote for a Mormon. (This remains to be seen. We'll soon find out whether dissatisfaction with the record of President Obama will trump their distaste for Mormonism.) But, the conspicuous absence of white Protestants at the highest levels of two of three branches of the federal government without much fanfare or criticism says that, in practice, we have made peace with the no religious test principle even if some continue to talk as if they want one.

This fact not only attests to a practical aversion to religious tests but also reflects our increasing ethnic and religious pluralism. The United States continues to be one of the most religious and religiously diverse nations on the planet. Although still dominated by a majority claiming to be Christian, the mosaic of other faiths in our country is staggering.

Adding to this texture of pluralism is the recently reported rise in atheism, agnosticism and others who claim to be "spiritual" but do not affiliate with any faith tradition. While the number of Americans who say they are atheists has risen from one percent to five percent over the years, the total number of these so-called "nones" now stands at 19 percent. And, overall in the United States, the percentage of those polled who self-identify as "religious" stands at 60, dropping from 73 percent seven years ago.

Of course, these statistics are just that: statistics. The numbers can fluctuate depending upon the nature of the questions asked and the methodology employed by pollsters. But, they do continue to demonstrate that the United States is robustly religious, religiously plural and substantially secular in its demographic makeup.

It is no accident — in a country that generally is unwilling to impose a formal or even practical religious test and whose First Amendment protects the freedom of and from religion — that we see palpable religious pluralism encouraged thereby and manifested in the upper reaches of our government.



J. Brent Walker
Executive Director

God goes back

WHY GETTING RELIGION R

Millions of kids return to school this month — and, contrary to culture-war rhetoric, most of them won't leave their faith at the schoolhouse door.

As classes get under way, public school students across America will form religious clubs, pray together in their free time, distribute religious literature to classmates, share their religious convictions in class discussions and in many other ways belie the myth of the "godless public schools."

Many teachers, meanwhile, are gearing up to teach about religions in various history and literature classes. State standards, especially in the social studies, now require that students learn something (and, in some states, a considerable amount) about the major faith traditions.

This much religion in schools may strike some readers as surprising and new. But God hasn't come back into public education overnight.

In fact, it has taken more than two decades for student religious expression and study about

religions to return, slowly but steadily, to public schools — owing to court decisions, legislation, and broadly supported guidelines issued by religious, educational and civil liberties groups.

Considering the slow pace of most changes in public education, the high level of inclusion of religion in only 20 years is nothing less than a quiet revolution.

Of course, the return of religion to public schools doesn't mean that all schools are getting religion right.

In August, I visited a school district in Michigan that remains mostly silent about religion in its policies and practices. As a result, the school climate suffers in this religiously diverse community. In a recent survey of students, for example, every Muslim student reported having been harassed because of his or her faith.

In districts still afraid to deal with religion,

By Charles
DIRECTOR
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to public school

RIGHT MATTERS IN SCHOOLS

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religious diversity remains the ignored diversity. Administrators and teachers are unsure how to deal with student requests for religious accommodation and often mistakenly discourage student religious expression that is protected by the First Amendment.

On the opposite end of the spectrum, I recently received an email from an employee of a California public school who complained about a mandatory school assembly that included proselytizing and prayers led by a local pastor. School officials in this district apparently haven't gotten the memo explaining that school-sponsored religious practices are unconstitutional.

Although increasingly rare, pockets of schools (especially in the rural Southeast) continue to defy the law by promoting religion through religious-themed assemblies, teacher-led prayer, distribution of Bibles in classrooms and other

unconstitutional practices. Only when some courageous parent or student finally speaks up does the offending school begin to clean up its act.

But here's the good news: Growing numbers of school officials across America understand and apply the First Amendment when addressing the role of religion in their schools.

In public schools that get it right, teachers and administrators uphold religious freedom by remaining neutral toward religion while simultaneously protecting the right of students to express their faith within the framework established by current law.

By modeling the First Amendment arrangement in religious liberty — no establishment, but free exercise — schools prepare students to live and work together as citizens of one nation with people of all faiths and none.

In other words, getting religion right in schools matters because getting religious freedom right in America matters.

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



K. Hollyn Hollman
General Counsel

HollmanREPORT

Religious liberty and individual states

During this election season, the presidential race is the primary focus for political energy. That makes sense, given the important role of the presidency and the varied and tremendous challenges our government faces. In many states, however, there are also election efforts under way with ramifications for religious liberty specifically.

Last month we reported on a North Dakota ballot measure, Initiated Constitutional Measure 3, which supporters

dubbed the Religious Liberty Restoration Amendment (RLRA). But unlike the federal Religious Freedom Restoration Act (which the BJC helped to enact) and its state counterparts, the RLRA omitted important language that courts use to balance competing state and individual interests when the government burdens religious exercise. Fortunately, Measure 3 was soundly defeated, with 64 percent of voters rejecting the constitutional amendment.

As we report this month, Missouri voters overwhelmingly passed a constitutional amendment, Amendment 2, with regrettable consequences for religious liberty. The so-called “Right to Pray” Amendment does little to expand existing religious freedom rights and appears to authorize activity that could actually harm religious liberty, such as government-sponsored prayer. The language that appeared on the ballot was a short and misleading summary of the amendment’s full text, which added nearly 400 words of new language to the Missouri Constitution. A lawsuit has already been filed challenging one provision of the amendment, and others may follow.

In November, Florida voters will decide whether to amend their constitution to repeal an important provision that prohibits direct or indirect state funding of churches and other sectarian institutions. This “no-aid” provision has been part of the Florida Constitution since 1885 and has been re-ratified three times since its adoption, most recently in 1997. After a successful legal challenge to the original version of the proposed amendment, the Florida attorney general sub-

mitted a revised ballot statement with minor changes. This version, now known as Amendment 8, will appear on the ballot.

These state initiatives deserve our attention because they illustrate efforts to fundamentally alter religious liberty in all states. They offer cautionary tales for other states that want to avoid unnecessary confusion and litigation over religious liberty rights.

The U.S. Constitution and most state constitutions protect religious liberty in at least two important ways: by prohibiting government establishment of religion and by protecting the free exercise of religion. While there are challenges in defining the tests that apply and achieving the proper balance of the two clauses, the BJC works to ensure that both are closely guarded.

By varying degrees, state constitutions also secure religious liberty in ways that complement and strengthen our federal guarantees. The federal constitution sets the floor — meaning a state can’t provide less protection than federal law affords — but not the ceiling. Many state constitutions grant broader free exercise rights or impose greater restrictions on no establishment requirements. Generally, that is a good thing. For instance, many state constitutions, like Florida’s, contain no-aid provisions limiting government funding for religious organizations even more stringently than the federal Establishment Clause. A successful no-aid repeal in Florida could inspire renewed vigor for similar efforts in other states, encouraging voucher legislation and other forms of government support of religious institutions.

Religious liberty is a precious freedom that is affected by elections, including the upcoming presidential election. Through many expressions of executive leadership, including the power to nominate U.S. Supreme Court justices, the president will influence the state of our first freedom. But the power to shape religious freedom is also alive and well at the state level and should not be overlooked. As citizens assess each candidate’s perspectives on religious liberty and other issues of personal import, voters must also stand guard and speak out on efforts at the state and local levels that involve direct threats to our most fundamental freedom.

“During this election season, the presidential race is the primary focus for political energy. ... But the power to shape religious freedom is also alive and well at the state level and should not be overlooked.”

Deaton joins BJC staff as director of development

Taryn Deaton, a native of Austin, Texas, has started her work as director of development at the Baptist Joint Committee. Previously, she worked in alumni affairs for Columbia University in New York, as well as donor development for the National Capital Area Chapter of the Leukemia & Lymphoma Society. Deaton also has been the director of campus relations for the Texas Exes, which is the alumni association for the University of Texas at Austin, and the director of development and admissions for the John Leland Center for Theological Studies in Falls Church, Va.



Deaton

Deaton is a communication graduate of Southwestern University, and she earned a Master of Theological Studies degree from Palmer Theological Seminary of Eastern University in 2012, where she was a Brauch Scholar.

Deaton and her husband live in Alexandria, Va.

Challenge to clergy tax break clears hurdle

A Wisconsin judge has given a green light to a lawsuit challenging a federal law that exempts clergy from paying income taxes on the fair rental value of their homes.

U.S. District Judge Barbara Crabb ruled Aug. 29 that the Madison, Wis.-based Freedom From Religion Foundation (FFRF) has legal standing to challenge the constitutionality of a 1954 law that grants certain tax benefits to “ministers of the gospel.”

The same group dropped a similar lawsuit in 2011 after the U.S. Supreme Court ruled in another case that individuals can sue the government only if they are affected directly by a law and not just because they are taxpayers. FFRF responded by changing its salary structure to include housing allowances, which employees cannot claim on their tax returns because they are not members of the clergy.

The plaintiffs contend that the law violates the First Amendment ban on establishing religion and the Fifth Amendment guarantee of equal protection under the law. A press release called it “pure discrimination” for the government to give tax privileges to clergy that are denied to atheist leaders.

The current law allows employers to set aside a portion of a minister’s compensation to be used to rent or purchase a home, including furnishings and utilities. Around in some form since 1921, the exemption’s original intent was to reduce the tax burden on ministers, assuming they were poorly paid, and in acknowledgement that clergy conduct much of their ministry from their home, making their residence akin to a home office.

The ministerial exemption has faced legal challenges before, notably in 1996 when the IRS ordered *The Purpose Driven Life* author Rick Warren to pay taxes on part of the

nearly \$80,000 he claimed as a housing allowance as pastor of Saddleback Church in Lake Forest, Calif.

Warren later won on appeal. During the process, however, focus shifted from whether Congress intended to allow an unlimited deduction or cap it at a fair market rental amount to whether or not the whole idea of exempting clergy is constitutional. Lawmakers responded in 2002 with the Clergy Housing Allowance Clarification Act to protect the parish exemption but limit it to the fair market rental value.

One study estimated the parsonage allowance saves U.S. clergy as much as \$1.2 billion in tax exemptions each year.

—Bob Allen, *Associated Baptist Press*

Judge grants Catholic business owners temporary exemption from mandate

A federal judge in Colorado granted a temporary injunction exempting a secular business owner from complying with the Obama administration’s contraceptive coverage mandate, which took effect Aug. 1 and was authorized by the Affordable Care Act.

Hercules Industries, a private air conditioning firm, is owned and operated by a Catholic family that objects on religious grounds to providing employees with free access to birth control. The employers argue that because their religious beliefs are central to the company’s business model, the contraceptive mandate impermissibly burdens their free exercise of religion in violation of the federal Religious Freedom Restoration Act. Notably, Hercules Industries is the first secular, for-profit employer to challenge the mandate in court.

Because U.S. District Judge John L. Kane found that the government is not likely to prevail in the lawsuit, he issued the temporary injunction pending the outcome of the case. Among other things, Kane concluded that because “[t]he government has exempted over 190 million health plan participants and beneficiaries from the preventive care coverage mandate[,] this massive exemption completely undermines any compelling [governmental] interest in applying the preventive care coverage mandate to Plaintiffs.”

The order emphasized that the injunction is limited and applies only to the parties in this case.

The Colorado District Court is the first federal court to halt enforcement of the controversial contraceptive provision. Religiously-affiliated employers with objections to contraceptive coverage currently fall within a safe harbor period that prevents enforcement against them through August 2013. The administration has said it intends to formulate alternatives to the current rule that will protect religious institutions. As a result, other federal courts have dismissed similar lawsuits on the grounds that legal challenges are not yet ripe for adjudication, since it is unclear how the final policies will affect such organizations when the safe harbor period expires.

The case, *Newland v. Sebelius*, will continue making its way through the judicial process.

—BJC Staff Reports



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REPORT from the Capital

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WHY WE GIVE

No other group 'will use a donation so effectively' for church-state separation

Dr. William C. Byrd Jr.'s financial support of the mission of the Baptist Joint Committee spans more than 30 years. A retired physician from Kerrville, Texas,



Byrd

Byrd first became aware of the BJC during the years the Southern Baptist Convention was considering pulling support from the organization. Byrd heard former BJC Executive Director James M. Dunn speak at Baptist meetings and began reading his writings. Later, at gatherings for the newly formed Cooperative Baptist Fellowship, Byrd began meeting many leaders who were strong supporters of the BJC.

The Baptist Joint Committee's support of church-state separation makes the organization and its work unique in Byrd's eyes. "There is no other single entity that will use a donation so effectively to push for separation of church and state," he said.

Byrd is among a growing number of donors who have included the BJC in their estate plans. Grateful for the work the BJC is presently doing, Byrd wants to ensure that work continues in the future. By leaving the BJC in his will, Byrd will leave a legacy of religious liberty.

If you are interested in making a planned gift to secure the long-term influence of the BJC, please contact **Taryn Deaton**, director of development, at tdeaton@BJCOnline.org or 202-544-4226.

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.