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Supreme Court rules for Hobby Lobby

Decision and later action in a nonprofit case spark responses

The U.S. Supreme Court ruled June 30 that a for-profit arts-and-crafts store chain does not have to offer health insurance coverage for types of birth control that conflict with company owners' religious beliefs, a decision that provoked swift political and legislative responses.

The decision in *Burwell v. Hobby Lobby Stores, Inc.* held that the 1993 Religious Freedom Restoration Act (RFRA) — which sets a high bar for any federal law that restricts religious practice — applies to the closely held for-profit business. It said the government could have found a way to achieve the goals of the so-called "contraceptive mandate" of the country's health care law without impinging on religious rights, which is a RFRA requirement.

Lawyers for Hobby Lobby argued that the health care law violated RFRA when it required the company and another owned by a Mennonite family — Conestoga Wood Specialties Corp. — to provide employees with insurance coverage for birth control the companies' owners found contrary to their Christian beliefs. RFRA created a legal standard to ensure that government did not substantially burden the exercise of religion without a compelling reason for doing so. Known as "strict scrutiny" in constitutional law terminology, it requires that the government satisfy a high burden of proof before infringing citizens' rights.

The Court noted that its decision does not involve publicly traded corporations, for which the owners' religious beliefs would be difficult to discern. It also points out that even though employers at the companies cannot be forced to cover types of contraception that conflict with their religious beliefs, that should not be understood to necessarily mean employers can refuse to cover any medical procedure — such as immunizations — that conflicts with their personal religious beliefs.

The Court said that the Department of Health and Human Services has given no reason why for-profit employers cannot be extended the same accommodation made available to religious nonprofits who can choose to opt-out of coverage they find objectionable (nonprofits must notify their insurers of their religious objection, and the coverage is provided directly by the insurance company or a third-party administrator). The decision said the accommodation "constitutes an alternative that achieves all of the Government's aims while providing greater respect for religious liberty."

The religious nonprofit accommodation was the subject of a different lawsuit that prompted Court action days later. In an order July 3, the Court temporarily granted evangelical Wheaton College the ability to opt-out of providing insurance coverage for contraception it finds objectionable without signing a form to do so. The college claimed that even signing the form (which instead provides for the coverage to be administered by a third party) would make it complicit in the transaction.

That order drew a vehement objection of the Court's three female justices. Justice Sonia Sotomayor, joined by Justices Ruth Bader Ginsburg and Elana Kagan, dissented from the order, saying the accommodation already granted to religious nonprofits "is the least restrictive means of furthering the government's compelling interests in public health and women's well-being."

The Court's actions led to two administration responses in July. After a measure in the U.S. Senate that would have reversed the *Hobby Lobby* ruling failed July 16, the Obama administration said employers that intend to drop coverage for some or all forms of contraception must notify employees of the change. Later, the administration said it is developing an alternative plan for employees of certain charities, hospitals and colleges to receive insurance coverage of all FDA-approved methods of birth control without having their objecting employers sign the form that allows the coverage to be provided through other means. Administration officials indicated to media outlets that the new process will be added as a second way for those nonprofit employers to opt out.

—Religion News Service with BJC Staff Reports

J. Brent Walker
Executive Director

REFLECTIONS

Exploring Hobby Lobby's narrow victory

There is much to criticize in the U.S. Supreme Court's opinion in the consolidated cases of *Burwell v. Hobby Lobby Stores, Inc*. and *Conestoga Wood Specialties Corp. v. Burwell*. The five-member majority gave short shrift to the question of whether any burden on the exercise of religion is "substantial" and ignored the real effects of the requested free exercise accommodation on the corporation's employees desiring insurance coverage for contraception services. General Counsel Holly Hollman lays out our concerns on page 3.

The picture, however, is not as grim as some critics assert. This column will take a look at the definition used for the word "person" and highlight a basis for a narrow reading of the decision that will discourage future attempts to expand the precedential effect to other, perhaps more dubious, free exercise accommodations.

First, we should be sensitive to religious liberty issues in the secular marketplace, including some for-profit corporations. The Court previously entertained — but ultimately denied — free exercise claims by an Orthodox Jewish clothing and home furnishings proprietor (*Braunfeld v. Brown*, 1961) and a kosher market that was organized by a for-profit corporation (*Gallagher v. Crown Kosher Super Market of Mass., Inc*., 1961). Moreover, Title VII of the Civil Rights Acts of 1964 requires reasonable accommodation of religion in businesses with 15 or more employees. The Religious Freedom Restoration Act (RFRA), the law that was applied here, incorporates a definition of "person" that includes "corporations." And, religious liberty principles are applied routinely to houses of worship and other religiously affiliated organizations that are often incorporated.

Thus, the Court correctly declined to summarily disqualify the secular marketplace in general — or for-profit corporations in particular — from enjoying religious liberty protection. Although one could reasonably argue against a corporate behemoth as large as Hobby Lobby (with 16,000 employees!), there should be some protection for closely held "mom and pop" businesses, even when conducted through the corporate fiction.

Second, although the majority ignored its own precedent that holds adverse effects of religious accommodation on third parties can violate the First Amendment's Establishment Clause (*Estate of Thornton v. Caldor, Inc.,* 1985), it did assume for purposes of argument that the government has a "compelling state interest" in protecting the health, safety and welfare of employees wishing to avail themselves of contraception coverage. The Court's majority then ruled, however, there was a less restrictive way for government to accomplish that compelling interest under RFRA than the Affordable Care Act's mandate. The Court ruled the accommodation that the federal government had already given to religiously affiliated nonprofits could be provided here to both protect the conscience of the owners and extend the protection of the Affordable Care Act to third-party employees. Although the Court entered a temporary injunction several days later preserving Wheaton College's argument against that form of accommodation, it strains credulity to believe that a majority of the justices would not uphold its constitutionality.

Finally, we can take some comfort in Justice Anthony Kennedy's concurring opinion. Although he joined in the Court's opinion — thus making a thin majority of five — he took the time to write separately. Justice Kennedy emphasized the limited nature of the Court's opinion. He held up the importance of the Court's assumption that the Affordable Care Act "furthers a legitimate and compelling interest in the health of female employees." He also was more attentive than the majority opinion to the need to protect the rights of third parties. After noting the importance of the accommodation of religion in our religiously plural culture, he stated firmly that accommodation may not "unduly restrict other persons, such as employees, in protecting their own interests, interests the law deems compelling." Thus, the need for Justice Kennedy's joinder as a fifth vote on any viable Court majority would likely temper willy-nilly extensions of the holding in *Hobby Lobby* beyond the confines of its own terms.

Despite this understanding of the case, several ideas have been proffered to limit the effects of *Hobby Lobby*. A bill that would prohibit employers from denying contraception coverage has already failed in the U.S. Senate. Others have suggested limiting the protections in RFRA to for-profit corporations with fewer than 15 employees (thus truly embracing the spirit of a "mom and pop" exception). At least one scholar advocates amending RFRA to compel the courts to consider and make explicit findings on the effect of an accommodation on third parties.

Responses to *Hobby Lobby* on the part of either Congress or the administration are complicated by the upcoming elections. Suffice it to say that we should not rush to fix something until we fully understand its ramifications. For our part, the BJC will look askance at attempts to amend RFRA. We have too much invested in it to allow one Court decision, for better or worse, to prompt an emasculation of that very important statutory protection for religious liberty.

"For our part, the BJC will look askance at attempts to amend RFRA. We have too much invested in it to allow one Court decision, for better or worse, to prompt an emasculation of that very important statutory protection for religious liberty."

Examining RFRA in light of Hobby Lobby

K. Hollyn Hollman
General Counsel

The U.S. Supreme Court's 5-4 *Hobby Lobby* decision has generated more interest in religious liberty law than any other decision in decades. As is typical of cases with lengthy opinions by a closely divided Court, it is subject to narrow and broad interpretations.

A narrow reading holds, first, that corporations are within the statutory definition of "person" and thus able to assert a Religious Freedom Restoration Act (RFRA) claim; and secondly, that an accommodation provided to objecting religious corporations could also be provided to Hobby Lobby, a closely held for-profit corporation.

As the leader of the coalition that pushed for RFRA's passage 20 years ago and a continuing proponent of its standard, the BJC has a significant stake in its interpretation and application. For us, the measure of RFRA's protection of religious freedom is in its broad coverage and a workable standard that balances interests, an approach that was more common for deciding free exercise cases prior to the 1990 decision of *Employment Division v. Smith*. While the standard does not guarantee religious claimants will win (and indeed they often lose), it gives them a chance and cuts down on government actions that unnecessarily interfere with religious practices.

The narrow reading of the decision reflected in Justice Anthony Kennedy's concurrence (examined by Brent Walker on page 2) is a fair application of the statute. It suggests an answer to the employers' religious liberty concern without depriving employees of health care benefits. This is the kind of win-win solution RFRA should provide, though admittedly in this case it requires additional political action — from the executive or legislative branch — to implement and avoid further delay and denial of benefits.

Beyond that reading, there is ample room for concern in aspects of Justice Samuel Alito's 41-page opinion. The Court's decision threatens to stretch RFRA's terms beyond "restorative" purpose and in ways so detached from context that it may undermine the balancing standard it was intended to ensure.

When fighting for RFRA's passage, no one had the religious interests of large, for-profit corporations in mind. Legislative debates did not anticipate the Affordable Care Act and the potential conflict between religious objections to certain birth control methods held by the owner of a business and the medical importance of those methods to some employees. Balancing interests under RFRA, one would not assume an employer's religious objection would override an employee's health care benefits provided by law. While the Hobby Lobby scenario — and countless others — were not specifically anticipated, the statute's broad terms were designed to offer strong protection for religious liberty in a variety of settings. Its design was based upon case law that recognized the importance of balancing interests.

Of course, strong protection for religious liberty requires attention to context, whether interpreting constitutional or statutory provisions. Ignoring context inevitably leads to decisions that undermine support for religious liberty. This concern is evident in the dissent, written by Justice Ruth Bader Ginsburg, warning of the "startling breadth" of the majority opinion. Neither the context of restoring a standard nor applying RFRA in the employer-employee relationship where a religious claim has a significant impact on others seemed to matter.

The Court was properly deferential when recognizing the sincerely held religious belief and practice to avoid facilitating certain contraceptive methods. The Court was too quick, however, to find a "substantial" burden on religion that only occurs by virtue of an employee's health care choices. As the dissent states, the majority opinion "elides" the distinction between the sincerity of religious belief and substantiality of religious burden. If the meaning of "substantial burden" is based largely on the religious claimant's subjective view without regard to intervening causes (such as an employee's health needs and choices), the government will have to meet the highest standard of strict scrutiny in virtually every case.

Next, the majority "assumed" for purposes of the decision, *but explicitly did not hold*, that the government had a compelling interest in providing the contraceptive services to women at no cost. That means that in later cases, including other challenges to the contraceptive mandate, the Court may deny the compelling interest it "assumes" in *Hobby Lobby*.

It is unclear how quickly the contraceptive mandate can be altered to ensure its proper effect where for-profit employers object, but at least the Court points to (if not fully endorses) a reasonable solution. The extreme deference to what amounts to a "substantial burden" in a context where a religious objection conflicts with the rights and independent choices of third parties, however, justifies worries about a slippery slope. While the majority took pains to say its holding "is very specific," it left too much room and not enough guidance for lower courts to reach reasonable decisions like the one it claims in *Hobby Lobby*.

For more on the Religious Freedom Restoration Act, visit **BJConline.org/RFRA**

BJC, others urge administration against religious exemptions in taxpayer-funded employment

The Baptist Joint Committee for Religious Liberty continues to advocate that taxpayer funds should not be used in a way that advances or promotes religion, and that fundamental fairness requires protecting against discrimination in government-funded positions. Two recent BJC efforts include contacting the president about an impending executive order and calling for an end to a policy put in place by the Bush administration.

When Congress did not advance the Employment Non-Discrimination Act this summer, President Barack Obama indicated an interest in increasing non-discrimination protections for people who are lesbian, gay, bisexual or transgender. He announced plans to do so through an executive order that would pertain to employees of federal contractors.

Following the announcement, the administration was lobbied heavily by organizations regarding whether the discrimination ban should include an exemption for religious groups that contract with the federal government. While some called for an exemption, the BJC joined almost 100 other groups in sending a letter to the president to ask for just the opposite.

"Religious freedom ... guarantees us the freedom to hold any belief we choose and the right to act on our religious beliefs within certain limits. It does not, however, provide organizations the right to discriminate using taxpayer dollars."
—Letter to President Obama

"When a religiously affiliated organization makes the decision to request a taxpayer-funded contract with the federal government, it must play by the same rules as every other federal contractor," according to the letter. It also noted that, regardless of the protected class, no organization — religious or otherwise — that hires employees with taxpayer funds should be exempt from laws regarding the use of those funds.

"Religious freedom is one of our most cherished values, a fundamental and defining feature of our national character," the letter said. "It guarantees us the freedom to hold any belief we choose and the right to act on our religious beliefs within certain limits. It does not, however, provide organizations the right to discriminate using taxpayer dollars."

President Obama signed the executive order July 21, and it did not contain a religious exemption. It amended Executive Order 11246, first issued by President Lyndon B. Johnson in 1965, by adding "sexual orientation" and "gender identity" to the list of protected categories for federal contractors. Additionally, it expanded the federal government's existing employment non-discrimination protections for its own employees to include "gender identity."

At the signing ceremony, Obama said, "America's federal contracts should not subsidize discrimination against the American people."

Executive Order 11246 has been amended on other occasions since it was issued, notably by President George W. Bush. In 2002, he issued an amending executive order to exempt religious organizations that contract with the government from the prohibition against employment discrimination on the basis of religion.

The BJC has repeatedly called upon Obama to rescind the Bush amendment to Executive Order 11246, but it was left intact as the anti-discrimination provisions were expanded.

In June, the BJC spoke out against another Bush-era policy that allows for government-funded religious discrimination. When the Department of Justice released a document that said, based on a 7-year-old official policy memo, faith-based organizations "may prefer co-religionists for employees in programs funded by covered grants" if they meet certain criteria, the BJC joined 89 other groups in sounding the alarm. The coalition sent a letter to U.S. Attorney General Eric Holder to request that the DOJ withdraw the 2007 memo establishing that policy, which interprets the Religious Freedom Restoration Act (RFRA) as overriding all non-discrimination laws.

Signed by the BJC and many other groups that led in the fight to pass RFRA, the letter to Holder noted that "RFRA was intended to provide protection of free exercise rights," and it was "not intended to create blanket exemptions to non-discrimination laws."

At press time for *Report from the Capital*, no action had been taken on the policy interpreting RFRA.

The BJC has long supported the role of religious organizations in partnering with the government to provide needed services in ways that advance governmental interests but do so without the threat of government-sponsored religion. The organization will continue to pressure the administration to ensure that government funds cannot be used to discriminate based on religion.

—Cherilyn Crowe

Supreme Court won't wade into fight over graduations in churches

The U.S. Supreme Court on June 16 let stand a lower court ruling that a Wisconsin high school acted unconstitutionally when it held its graduation ceremonies in a local megachurch.

The case, *Elmbrook School District v. Doe*, involved a high school in a suburb of Milwaukee that rented the nondenominational Elmbrook Church for its graduation exercises multiple times through 2009. In 2012, the Chicago-based 7th U.S. Circuit Court of Appeals called the event "offensive" and "coercive." The church's banners, pamphlets, Bibles and other religious materials remained in the sanctuary during the graduation.

As is their custom, the justices did not give a reason for declining to hear a challenge to the 7th Circuit ruling.

The decision may be a signal by the Court that despite its approval of sectarian prayers at public meetings in the *Town of Greece v. Galloway* decision in May, it draws the line at exposing children to religious symbols when they have no choice about it.

Justices Antonin Scalia and Clarence Thomas dissented in the decision to let the lower court ruling stand. They argued in a seven-page opinion that the *Greece v. Galloway* decision undercut the 7th Circuit decision in *Elmbrook*.

In the dissent, Scalia, a Catholic, likened the exposure of children to religious symbols at graduations to his own distaste for the public playing of "rock music or Stravinsky," implying he — and they — have to put up with it but are not damaged by it.

"It may well be ... that the decision of the Elmbrook School District to hold graduations under a Latin cross in a Christian church was 'unwise' and 'offensive,'" Scalia wrote. "But *Town of Greece* makes manifest that an establishment of religion it was not."

Reaction from religious liberty groups was divided.

"Church buildings should not be treated like toxic warehouses simply because they normally house religious activities," said David Cortman, senior counsel for Alliance Defending Freedom, an Arizona-based legal group. "We hope the Supreme Court will clearly affirm in a future case that government neutrality toward religion is not achieved by treating it like asbestos in the ceiling tiles of society."

"No student should ever be forced to choose between missing their own graduation and attending that seminal event in a proselytizing environment inundated with religious icons and exhortations," said Alex J. Luchenitser, associate legal director of Americans United for Separation of Church and State and the attorney who argued the case on behalf of the plaintiffs. "We are very pleased that the decision of the appeals court will stand."

—Kimberly Winston, Religion News Service with BJC Staff Reports

Supreme Court says Mount Soledad cross case must first be heard by 9th Circuit

The decades-long battle over a cross erected on public land in California will drag out even longer now that the Supreme Court declined June 30 to hear the case.

In the last full day of its session, the Court said the case must first go to the 9th U.S. Circuit Court of Appeals before the High Court will consider it.

The conflict in *Mount Soledad Memorial Association v. Trunk* is over a 43-foot cross that sits atop Mount Soledad on public land in San Diego. The cross was erected in the 1950s and has since become a veterans' memorial.

A veterans group that maintains the cross asked the Supreme Court to let it leapfrog over the 9th Circuit after a lower federal court ruled last December that the cross should come down.

But Justice Samuel Alito, who also issued two majority decisions for the Court on June 30, said the Supreme Court would wait for another ruling in this case.

"The Court of Appeals has not yet reviewed (the lower court's decision) on appeal," Alito wrote. "Any review by this Court can await the decision of the Court of Appeals."

The Mount Soledad cross has a long history of legal wrangling. The first challenge came in 1989, before the land surrounding it became a veterans' memorial.

The 43-foot-tall Mount Soledad cross was installed on public land in California in 1954 and remains in place for now.

In December, a federal court in San Diego ruled the cross should come down because it violates the First Amendment's Establishment Clause and promotes one religion — Christianity — over others. But the same court granted a stay, allowing the cross to remain until the veterans had a chance to appeal.

The decision by the Supreme Court to send the case back to a lower court could mean the case will last at least another two to three years.

—Kimberly Winston, Religion News Service

White House official speaks at 2014 RLC Luncheon

Melissa Rogers shares how religious freedom and church-state separation shape her work

ATLANTA – The head of the White House's faith-based office reminded the crowd gathered at the 2014 Religious Liberty Council Luncheon to continue to speak up for religious liberty and "never forget how much your voice matters."

Melissa Rogers, the executive director of the White House Office of Faith-based and Neighborhood Partnerships, spoke to more than 650 people in Atlanta, Georgia, during the annual event on June 27. Rogers also received an award from the Baptist Joint Committee for her lifetime of work to protect religious liberty for all people.

After bringing greetings from President Barack Obama, Rogers recounted the American commitment to religious liberty and provided an overview of the work of her office.

"I'm pleased to report that when it comes to the freedom that allows diverse faiths to thrive, the state of our union is indeed strong," she declared.

"We are a better nation because of the work of the Baptist Joint Committee," Rogers told the crowd at the Religious Liberty Council Luncheon. Photo courtesy of CBF.

Rogers noted that the rich religious diversity of the United States — as well as a tradition of coming together to solve problems and better the country and the world — is no accident, but an "achievement."

Observing that the First Amendment protection of the right to freely exercise religion is easy for most people to understand, Rogers explained that the prohibition against a government establishment of religion is a bit more complicated, even though it is just as important.

"No government-established faith is free; it's a creature of the state. State establishment of religion not only harms the faith that is not favored, it also undermines the faith that the government embraces," Rogers said. "The fact that faiths are free from government endorsement creates the conditions for religious voices to have credibility and power on public as well as private issues."

Together, she noted, both the Establishment Clause and the Free Exercise Clause of the First Amendment ensure that people of every faith and of no faith are "equal as citizens before their government," and those protections also keep religion as an "independent and authentic force."

She told the crowd it was "our duty" to maintain that system, and explained how the American commitment to religious freedom and church-state separation shapes her work at the White House.

Rogers explained that the mission of the Office of Faith-based and Neighborhood Partnerships is not to promote faith, but it is to partner with community groups — both faith-based and secular — to help people who are in need.

Rogers said those non-financial partnerships are "crucial" ways to reach people who are struggling and to let them know about available government benefits and services, such as new flu shots, veterans benefits and college aid applications.

Rogers shared that another part of her job is implementing reforms to the office recommended by a diverse advisory council appointed by President Obama. Before working in her current role, Rogers served as the chair of that council. She also led a task force — which included BJC Executive Director Brent Walker — charged with drafting reform recommendations for the office.

Presently, she works to make sure those recommended changes are written into federal regulations and guidance. For example, beneficiaries of social services will receive written notice of their religious liberty protections when they receive government-funded services through a faith-based or community group. Among other statements, the notice informs those individuals that they cannot be discriminated against because of religion, they cannot be required to participate in an explicitly religious activity, and privately funded, explicitly religious activities must be separated from the government-funded service provided. Rogers said these important reforms are being put into place because "no one should ever be pressured along religious lines in order to receive government benefits."

Her office also makes sure policymakers are aware of the ways in which different policies and laws can affect religion, including how changes to child care policies could affect centers run by congregations and how policies on international development could intersect with humanitarian and missionary work of faith groups.

"So, in all these things, especially because of the American commitment to the letter and the spirit of the First Amendment, it is crucial for policymakers to be mindful about the way in which policy and law impact religious activities, institutions and ideas, and it is essential for us to remember that the First Amendment creates boundaries within which the government must operate."

Rogers noted that not everyone agrees about where

these boundaries are. "That's part of our freedom, too, of course, and that makes this task difficult, but it also underscores its importance."

On a daily basis, people of all faiths and no faith engage the White House on a wide range of policy issues. Rogers urged the crowd to speak up on issues that matter to them, including religious liberty.

"When you take the time from your busy life to stand up and to speak out, it makes an impact. It matters. We hear you. It matters at the White House, and it matters in the world."

Before she was appointed to her position in 2013, Rogers served as the director of the Center for Religion and Public Affairs at the Wake Forest University School of Divinity, as well as a nonresident senior fellow at The Brookings Institution. She was part of the staff of the Baptist Joint Committee from 1994-1999.

"I feel like I'm home again," Rogers told the crowd when she first took the stage. She briefly reflected on her professional journey during her speech, noting that her appreciation for the BJC has grown over the years. "I can safely say that there is no more respected voice on religious liberty in Washington or in the country than the Baptist Joint Committee for Religious Liberty," she said.

After her address, Rogers received the J.M. Dawson Religious Liberty Award. Named for the BJC's first executive director, the award recognizes the outstanding contributions of individuals in defense of religious liberty for all.

The luncheon also included updates from Washington, provided to the crowd by Walker and BJC General Counsel Holly Hollman. Business conducted at the event included the election of four Religious Liberty Council representatives to the BJC Board of Directors. Charles Cates of Washington, Emily Hull McGee of Kentucky, and Jenny Smith of Alabama were elected for the first time, and Joe Kutter of Kansas was elected to his second term. As the individual donor organization of the BJC, the RLC cultivates an understanding of religious freedom among Baptists and the larger public. It is one of the 15 supporting bodies of the BJC, with 13 RLC members serving three-year terms on the BJC Board of Directors.

The Religious Liberty Council Luncheon is held each year in conjunction with the Cooperative Baptist Fellowship General Assembly. The 2015 event is scheduled to be in Dallas, Texas.

—Cherilyn Crowe

Photos by Lesley-Ann Hix

More than 650 guests from across the country pack the ballroom.

BJC Executive Director Brent Walker presents Melissa Rogers with the J.M. Dawson Religious Liberty Award following her keynote speech.

Former BJC Executive Director James Dunn speaks with CBF Executive Coordinator Suzii Paynter.

Walker recognizes outgoing BJC Board Member Terri Phelps of the Religious Liberty Council.

Visit our RLC Luncheon page at **BJConline.org/luncheon** for more photos and a video of the entire event.

The day before the Religious Liberty Council Luncheon, Brent Walker and Holly Hollman led a workshop during the CBF General Assembly reviewing the major religious liberty cases of the current Supreme Court term. The standing-room-only event addressed the *Town of Greece v. Galloway* decision, challenges to the contraceptive mandate, and the history and legal standard of the Religious Freedom Restoration Act.

Standing up for religious liberty in Burma

In December of 2013, something remarkable happened. More than 30,000 people — including many Baptist leaders from around the world — gathered in Burma to celebrate the life and legacy of a man and woman they'd never met.

Two hundred years earlier, Ann and Adoniram Judson arrived in Burma to share the Good News of Jesus Christ and to make disciples. Equally, if not more, remarkable than this celebration is the fact that beginning in 2006, as refugees from Burma[1] began arriving in the United States, many sought Baptist churches in which to continue the practice of their faith. The mission that began with the efforts of the Judsons had returned full circle to the land of its origins.

Curtis Ramsey-Lucas
American Baptist Home Mission Societies

As we celebrate this legacy and the deep bond between American Baptists and the people of Burma, we also lament the current state of affairs in that country, including abuses targeting ethnic minority Christians and Muslims and a proposed "Religious Conversion Law" currently being considered by Burma's parliament.

In its 2014 report, the United States Commission on International Religious Freedom noted that "political reforms in Burma have not improved legal protections for religious freedom and have done little to curtail anti-Muslim violence, incitement and discrimination, particularly targeting the Rohingya Muslim minority." The report went on to indicate that "State-sponsored discrimination and state-condoned violence against Rohingya and Kaman ethnic Muslim minorities also continued, and ethnic minority Christians faced serious abuses during recent military incursions in Kachin state." When an American Baptist delegation traveled to Burma in December 2013 for the 200th anniversary Judson celebration, the delegation heard first-hand testimony from the Kachin about the ongoing atrocities against them by the military. Based on these violations of basic human rights and freedoms, USCIRF continues to recommend that Burma be designated as a "country of particular concern," in 2014, a designation the State Department has maintained with respect to Burma since 1999.[2]

Meanwhile, Burma's parliament is considering legislation that would create a governmental registration board to approve all religious conversions. While stating that "everyone has the freedom to convert from one religion to another," the law would require that an individual seeking to do so supply a registration board with an extensive list of personal information and answers to intrusive questions. The legislation includes penalties of up to two years in jail for those applying to convert "with intent to insult, disrespect, destroy or to abuse a religion," though it remains unclear how such intent would be proved.[3]

Responding to these developments, the Board of General Ministries, American Baptist Churches, USA, at its June 2014 meeting, took action to support legislation currently being considered in Congress (S. 1885 and H.R. 4377) that would require advances in human rights and religious liberty by the government of Burma as a condition of security assistance. In addition, the board has expressed its strong concern over restrictions of religious liberty in the proposed religious conversion law to the governments of Burma and the United States.

As Baptists, we stand in a long line of those who have sought to defend and extend religious liberty. As early as 1611, we held that "The magistrate is not by virtue of his office to meddle with religion, or matters of conscience, to force or compel anyone to this or that form of religion or doctrine, but to leave the Christian religion free to everyone's conscience, and handle only civil transgressions, for Christ only is the King and lawgiver of the church and conscience."[4]

The government of Burma is clearly meddling with religion, not only with respect to ethnic minority Christians, but also with respect to other ethnic minorities, including Rohingya and Kaman ethnic Muslims. The government is going where it ought not in matters of faith and conscience.

As the mission of the Judsons has returned full circle to the land of its origins, let our concern for religious liberty return to the people of Burma. With thanksgiving for the freedom we enjoy, let us exercise it on behalf of all those in Burma who now suffer and struggle to practice their faith freely.

Curtis Ramsey-Lucas serves American Baptist Home Mission Societies as managing director of Resource Development and is chair of the Board of Directors of the Baptist Joint Committee for Religious Liberty.

Notes:

(1) According to a fact sheet from the Department of State, the military government in Burma changed the country's name to "Myanmar" in 1989, but "[i]t remains U.S. policy to refer to the country as Burma in most contexts."

(2) USCIRF Annual Report, 2014 (p. 43)

(3) USCIRF Deeply Concerned by Draft "Religious Conversion Law," June 11, 2014

(4) The Amsterdam Confession of 1611, as cited in the American Baptist Policy Statement on Church and State

Obama nominates Rabbi David Saperstein for international religious freedom post

The White House nominated Rabbi David Saperstein to be the next Ambassador at Large for International Religious Freedom on July 28.

The ambassador-at-large position was created by Congress with the International Religious Freedom Act of 1998, which also created the Office of International Religious Freedom. The position heads that office, which promotes religious freedom as a core objective of U.S. foreign policy.

Saperstein currently serves as the director and counsel of the Religious Action Center of Reform Judaism — a role he has held since 1974. He served as the first chair of the U.S. Commission on International Religious Freedom from 1999 to 2000 and continued to serve as a member until 2001. Saperstein was also a member of the President's Advisory Council on Faith-Based and Neighborhood Partnerships from 2010 to 2011.

BJC Executive Director Brent Walker applauded the decision. "Rabbi Saperstein brings theological training and legal expertise, valuable experience serving on the U.S. Commission on International Religious Freedom, and a passion for religious liberty both in the United States and around the world," Walker said. "The United States' commitment to the cause of international religious liberty will be in good hands under Rabbi Saperstein's tutelage."

The BJC and the Religious Action Center of Reform Judaism have worked together for decades. Saperstein and Walker were co-chairs of the Coalition to Preserve Religious Liberty, and, in 2006, Saperstein was the lecturer for the BJC's inaugural Walter B. and Kay W. Shurden Lectures on Religious Liberty and Separation of Church and State.

The position has been vacant since the resignation of the Rev. Suzan Johnson Cook, a Baptist minister, in October 2013. If confirmed by the U.S. Senate, Saperstein would be the fourth person to hold the position and the first non-Christian.

—BJC Staff Reports

State Department report: Religious persecution makes migrants out of millions

Secretary of State John Kerry announced July 28 that Turkmenistan has joined the State Department's list of worst religious freedom offenders.

The State Department's "Countries of Particular Concern" list had remained static since 2006, when eight countries — Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan and Uzbekistan — were designated as CPCs.

Justifying the addition of Turkmenistan, Kerry cited reports of people detained, beaten and tortured for their beliefs, prohibited from wearing religious attire and fined for distributing religious materials.

Once part of the Soviet Union, Turkmenistan lies to the north of Iran and Afghanistan in Central Asia. It is a mostly Sunni Muslim country, and it forbids private worship and greatly restricts foreign travel for pilgrimages and religious education.

All religious organizations in the country must register with the government, and Shiite Muslim groups, Protestant groups and Jehovah's Witnesses have all had their registration applications denied in recent years. Jehovah's Witnesses, whose beliefs prevent them from fulfilling mandatory military conscription, face particular harassment.

Secretary of State John Kerry releases the annual report on international religious freedom. With him are Rabbi David Saperstein (left), President Obama's nominee to serve as Ambassador at Large for International Religious Freedom; and Tom Malinowski, assistant secretary of state for democracy, human rights and labor. Photo: U.S. Department of State

This edition of the State Department's annual religious freedom report focused heavily on discrimination, impunity and the displacement of religious minorities.

"In 2013, the world witnessed the largest displacement of religious communities in recent memory," the report said. "In almost every corner of the globe, millions of Christians, Muslims, Hindus, and others representing a range of faiths were forced from their homes on account of their religious beliefs."

CPCs were not the only offenders named. Kerry cited anti-Muslim sentiments in Europe and a poll from last year showing that nearly half of the local Jewish populations in some European countries had considered emigrating to escape anti-Semitism.

The report summary also names Syria, Sri Lanka, Egypt, Iraq, Bangladesh, Indonesia, India and Nigeria for failing to protect vulnerable religious communities, which often face violence, discrimination and harassment.

Kerry called the report "a clear-eyed objective look at the state of religious freedom around the world. He called for the CPC designations to be grounded in real action that can help change reality on the ground.

Although sobering, this year's report is not without positive developments.

Kerry mentioned Pakistani Muslims who formed human chains to protect Christian worshippers after a church bombing in Peshawar and a Jewish neighborhood watch team that helped Muslim leaders in London ensure safe access to mosques after a series of attacks.

In April, the U.S. Commission on International Religious Freedom, an independent watchdog panel created by Congress to review international religious freedom conditions, recommended that the State Department add Turkmenistan, Egypt, Iraq, Nigeria, Pakistan, Tajikistan, Vietnam and Syria to the list of CPCs.

—Brian Pellot, Religion News Service

Ground Zero cross can stay at 9/11 museum, appeals court rules

A cross-shaped beam from the wreckage of the World Trade Center can remain on display in the National September 11 Memorial & Museum at Ground Zero, a three-judge panel of the 2nd U.S. Circuit Court of Appeals ruled, dismissing a lawsuit brought by atheists.

American Atheists filed a federal suit in 2012 claiming the 17-foot display at the museum built with a mix of public and private funds was unconstitutional. The group said its members suffered from both physical and emotional damages from the presence of the beamed cross, resulting in headaches, indigestion and mental pain.

The steel beams in the shape of a cross are shown in this photo taken at Ground Zero after the terrorist attacks of Sept. 11, 2001. The ruling means they can remain on display in the National September 11 Memorial & Museum.

The atheist group filed an appeal after a lower court dismissed the lawsuit, shifting the focus from the cross to asking for an added plaque that would say something like "atheists died, too."

An observer would understand that the cross was also an inclusive symbol for any persons seeking hope and comfort in the aftermath of the 9/11 attacks, federal Judge Reena Raggi wrote in the court's decision.

"Such an observer would not understand the effect of displaying an artifact with such an inclusive past in a Museum devoted to the history of the September 11 attacks to be the divisive one of promoting religion over nonreligion," she wrote. "Nor would he think the primary effect of displaying The Cross at Ground Zero to be conveying a message to atheists that they are somehow disfavored 'outsiders,' while religious believers are favored 'insiders,' in the political community."

The beam was found by rescue workers two days after the terrorist attacks and is part of the 1,000 artifacts in a 100,000-square-foot underground museum. American Atheists can appeal to the entire court or ask the three-judge panel to reconsider its decision before it can file a petition with the U.S. Supreme Court.

—Sarah Pulliam Bailey, Religion News Service

IRS agrees to monitor churches for electioneering

The Internal Revenue Service said it will monitor churches and other houses of worship for electioneering in a settlement reached with an atheist group.

The settlement was reached July 18 in federal court in Madison, Wisconsin, where the initial lawsuit was filed in 2012 by the Freedom from Religion Foundation, a Wisconsin-based atheist advocacy group that claims 20,000 members nationwide.

The suit alleged the IRS routinely ignored complaints by the FFRF and others about churches promoting political candidates, issues or proposed legislation. As part of their tax-exempt status, churches and other religious groups are prohibited from engaging in partisan political activity.

At the time the suit was filed, the IRS maintained it was not ignoring complaints of electioneering, but had failed to hire an official to investigate church politicking, which it had been ordered to do in 2009 as the result of another lawsuit.

"This is a victory, and we're pleased with this development,"said Annie Laurie Gaylor, FFRF's co-president.

However, under the current congressional investigation of the IRS for improperly monitoring conservative groups, there is a moratorium on all IRS investigations. Still, Gaylor said the suit may be revived if the IRS fails to police what she called "rogue political churches" after the moratorium is lifted.

But Rob Boston, director of communications for Americans United for Separation of Church and State, was more reserved.

"If the FFRF has managed to wrench some concessions from the IRS over the issue of church politicking, I think that could be very helpful," he said. "But the fact is, the IRS has been dragging its feet over this matter for some time. What is taking so long?"

In 2009, a federal court ordered the IRS to appoint a "high-ranking official" to investigate complaints of politicking by churches and other tax-exempt organizations. A spokesman for the IRS declined to comment on the settlement, saying the IRS does not comment on litigation.

Without IRS confirmation, it is unclear if anyone has been hired.

Of particular concern to FFRF and other First Amendment advocacy organizations is "Pulpit Freedom Sunday," a project of Alliance Defending Freedom, an Arizona-based legal group. On a designated Sunday, pastors are encouraged to advise their congregations on political matters, such as marriage and abortion rights, and even endorse or oppose candidates. The last "Pulpit Freedom Sunday" was held in June 2013 with the participation of more than 1,100 churches.

The Freedom from Religion Foundation is widely seen as the most litigious of the dozen or so national atheist advocacy groups. It claims to have brought 40 First Amendment lawsuits since 1977 and is currently involved in legal challenges to a Ten Commandments monument, graduation prayers and a Catholic shrine on public land.

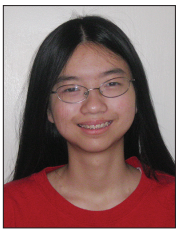
—Kimberly Winston, Religion News Service with BJC Staff Reports

BJC announces essay scholarship contest winners

The Baptist Joint Committee is pleased to announce the winners of the 2014 Religious Liberty Essay Scholarship Contest, sponsored by the Religious Liberty Council. The topic asked students to discuss whether or not religious messages, such as Bible verses on "run-through" banners at football games, should be permitted at public school-sponsored events.

Ingham

Li



Hsu

This year, the BJC received 637 submissions from 48 states and the District of Columbia, as well as China and Albania.

The winner of the $2,000 grand prize is Daniel Ingham of Ellicott City, Maryland, for his essay "Run-Through Banners and Religious References: Exploring the Rights and Responsibilities Afforded in the First Amendment." In his essay, Ingham argues that cheerleaders at a Texas high school cannot display Christian run-through banners at football games because doing so constitutes "public speech being made by the school that is in direct conflict with the Establishment Clause." He wrote that the cheerleaders have other options available to them for private expressions of faith, but once that religious speech enters the sphere of a public school-sponsored forum, it threatens to conflict with the Establishment Clause.

The son of John and Hillary Ingham, he will also receive a trip to Washington, D.C. in conjunction with the BJC board meeting in October. Ingham attends Church of the Resurrection in Ellicot City and plans to start classes at Providence College this fall.

The second place winner is Sienna Li of Portland, Oregon. She will receive $1,000 for her essay, "A Tightrope Walk." She argued that religious messages on "run-through" banners should be prohibited in a public school setting because the cheerleaders holding the banners enjoy a platform to which other students do not have access. The daughter of Charles and Lisa Li, Sienna will attend Yale University this fall.

The winner of the $250 third place prize is Cathy Hsu of Monterey, California, for her essay, "Christianity in Cheerleading: The Role of the First Amendment in Public Schools." A rising senior at Monterey High School, Hsu plans to study political science in college. She is the daughter of Tienhui and Huichu Hsu.

Now entering its ninth year, the Religious Liberty Essay Scholarship Contest is open to all high school juniors and seniors. The topic for the 2015 contest is scheduled to be announced later this year. For more information, please visit our essay contest page at **www.BJConline.org/contest**.

Judge approves settlement in Baptist children's home case

A federal judge has approved a settlement in a 14-year legal battle over government funding of Baptist homes for children in Kentucky.

The lawsuit started in 2000 when Sunrise Children's Services fired a staffer, Alicia Pedreira, after discovering she was a lesbian. The agency, formerly known as Kentucky Baptist Homes for Children, also was sued by Pedreira and other taxpayers who claimed government money was being used for services "infused with the teachings of the Baptist faith."

Pedreira's employment discrimination claims were dismissed in the courts, but in 2009 the 6th U.S. Circuit Court of Appeals permitted the portion of the suit alleging that state-funded activities advanced religion to continue.

"Children will be protected against any kind of religious coercion, discrimination or proselytization in child care placement centers funded by the state," said Alex Luchenitser, associate legal director of Americans United for Separation of Church and State, of the June 30 decision.

"Importantly, the agreement does not indicate there were any Establishment Clause violations by the Commonwealth or Sunrise," said U.S. District Court Judge Charles R. Simpson III of Louisville.

Sunrise was not a party to the settlement but unsuccessfully tried to halt the agreement between the plaintiffs and the state. Under the agreement, Kentucky officials must commit to ensuring that religious preferences of children in their care are respected. The judge said the agreement, which changes the way the state works with child service providers, did not have to satisfy Sunrise.

Sunrise officials could not be reached for comment, but John Sheller, an attorney for Sunrise, told The Associated Press that Sunrise intends to appeal Simpson's decision.

—Adelle M. Banks, Religion News Service

President signs World War II prayer plaque bill into law

On June 30, President Obama signed the World War II Memorial Prayer Act of 2013, paving the way for a plaque containing a prayer said by President Franklin D. Roosevelt to be placed on the National World War II Memorial in Washington, D.C.

The bill was passed by the Senate on June 5 by unanimous consent, meaning that there was no vote, only a chance for objections. No senator objected. On June 23, the House of Representatives pushed the bill through on a 370-12 vote.

The prayer, which President Roosevelt recited on D-Day, June 6, 1944, reads in part, "O Lord, give us Faith. Give us Faith in Thee; Faith in our sons; Faith in each other; Faith in our united crusade."

—Jordan Edwards

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FACES OF RELIGIOUS LIBERTY

Hear five people share their passion for our first freedom

Who are some of the people standing up for religious liberty in their communities? Visit **BJConline.org/faces** to hear five individuals discuss their personal connection to the need to defend religious liberty and the separation of church and state.

Each story includes a picture, short description and a recording of the person telling his or her story. You can hear Mitch Randall discuss his ancestors' subjection to state-sponsored religious coercion, Brad Bull recount his stance against a government-sponsored Ten Commandments display, Madison McClendon talk about his playground epiphany in second grade, Mary Elizabeth Hanchey share the bond she developed with another mother when their newborns were fighting for their lives, and Jeffrey Haggray remember his initial embrace of religion as an inherent right.

Every connection to religious liberty is important, and we want to hear from you! Email us at **bjc@BJConline.org** to share your story.

BJConline.org/faces