



REPORT

from the Capital

BJC weighs in on proposed faith-based regulations, affirms progress

On October 5, the BJC, working with a broad coalition of dozens of organizations, submitted comments on proposed regulations that would govern partnerships between the government and faith-based social service providers. These regulations from nine federal agencies demonstrate a move toward sound resolution of a church-state conflict that has been bitterly contested for more than two decades.

In early August, the Obama administration took a significant step to strengthen partnerships between the federal government and religious organizations that provide services for those in need. The issuance of the proposed rule changes is part of a complex administrative process that will continue over the next few months. The breadth of this development, and its potential to provide consistency and protect government beneficiaries, is welcome news for religious liberty.

This is the latest in a long story that began with “charitable choice,” a legislative provision inserted into a handful of social services laws in the 1990s that affected financial partnerships between the federal government and religiously affiliated organizations.

In 2001, President George W. Bush emphasized the importance of these partnerships through his faith-based initiatives, instituting regulatory changes aimed at protecting the religious character of providers and creating faith-based offices throughout the government. Building on these developments, President Barack Obama created a bipartisan advisory council to shore up legal footing for what he re-named the White House Office of Faith-based and Neighborhood Partnerships.

The advisory council’s consensus recommendations formed the basis for President Obama’s executive order in November 2010, which established important guidelines for partnerships between the federal government and faith-based social service providers. And now, after years of work, these agencies have released notices of proposed rulemaking to implement that order.

First, the current regulations prohibit

government funding of “inherently religious activities” to prevent government funding of religion, a violation of the First Amendment. This phrase has proved confusing for some faith-based providers because the services provided (such as operating a food pantry) were motivated by religious directives (for example, Matthew 25:35). The proposed regulations change the terminology to prohibit government funding of “expressly religious activities.” Faith-based providers may not use government funding to pay for overtly religious activities such as worship, religious instruction or proselytization. The proposed regulatory changes clarify that activities must be offered at a different time or in a different location from any federally funded programming.

A second — and arguably the most important — improvement is the requirement that beneficiaries receive written notice of their rights before receiving services. The written notice would identify five basic beneficiary protections: no discrimination because of personal religious belief, no requirement to participate in explicitly religious activities, a requirement that expressly religious activities be separated in time or location from those which are federally funded, optional referral to an alternative provider, and contact information to whom beneficiaries may report organizations violating these regulations. This is a significant improvement for protecting individual rights while permitting the government to contract with the greatest number of potential providers.

With the comment period now closed, the agencies will review all the submitted comments before issuing final rules. While work remains to be done, these proposals are a significant step in the right direction for strengthening partnerships between the federal government and faith-based service providers while protecting the religious liberty rights of both the beneficiaries who receive government services and the groups that provide them.

—K. Hollyn Hollman

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Walker announces retirement plans at board meeting

WASHINGTON — J. Brent Walker will retire at the end of 2016 as executive director of the Baptist Joint Committee for Religious Liberty.

Walker announced his plans at the meeting of the BJC Board of Directors, comprised of representatives of the BJC's 15 supporting member bodies.

"It has been a privilege to serve the cause of religious liberty through an organization as respected as the Baptist Joint Committee," Walker said. "Just as I discerned an undeniable spiritual calling to perform this ministry, I sense that it is time to turn the reins over to someone else."

Walker is an ordained minister and a member of the U.S. Supreme Court Bar. He first joined the BJC staff in 1989 as associate general counsel. In 1993, he was named general counsel and, upon the retirement of executive director James Dunn in 1999, Walker was called to be the agency's fifth executive director. He is the longest-serving staff member in the almost 80-year history of the BJC – 2016 will mark his 27th year with the organization.

Walker's legacy at the BJC includes working to pass the landmark Religious Freedom Restoration Act in 1993 and Religious Land Use and Institutionalized Persons Act in 2000, standing against efforts to amend the First Amend-

ment in the late 1990s, opposing government-sponsored displays of Ten Commandments monuments in the mid-2000s, and speaking out against the targeting of individuals based on religion during heightened Islamophobia in the early 2010s.

His tenure also includes an emphasis on education as well as advocacy in the courts and Congress, the change in the agency's name from "Baptist Joint Committee on Public Affairs" to "Baptist Joint Committee for Religious Liberty" in 2005, and the opening of the Center for Religious Liberty on Capitol Hill in 2012.



Walker announces his intentions to retire from the BJC at the end of next year.

The board meeting also included the election of new officers, discussion of a new vision statement to guide the BJC and the passing of an increased operating budget. Daniel Glaze, pastor of First Baptist Church of Ahsokie, N.C., and a representative of the Cooperative Baptist Fellowship of North Carolina, was elected chair. Tambi Swiney, representing the Religious Liberty Council, was elected

vice chair. She is the associate pastor of Immanuel Baptist Church in Nashville, Tennessee. Jim Hopkins, a representative of American Baptist Churches USA and pastor of Lakeshore Avenue Baptist Church in Oakland, California, was elected secretary. The new treasurer is Perry Hopper of the Ministers and Missionaries Benefit Board who also represents American Baptist Churches USA.

After the election of new officers, the board chose a search committee to recommend a candidate to be the next leader of the BJC. The members are Hal Bass, Arkadelphia, Arkansas; Valoria Cheek, Valley Forge, Pennsylvania; Dan Hamil, Rocklin, California; Jackie Baugh Moore, Fair Oaks Ranch, Texas; Suzii Paynter, Decatur, Georgia; Oliver "Buzz" Thomas, Maryville, Tennessee; Amanda Tyler, Washington, D.C.; and Glaze serving in an ex-officio capacity.

"With a clear mission, strong staff and needed voice in the public square, I am confident the BJC is poised to soar to new heights as it enters its ninth decade," Walker said.

—Cherilyn Crowe



New BJC Board officers from left: Perry Hopper of MMBB and American Baptist Churches USA, treasurer; Tambi Swiney of the Religious Liberty Council, vice chair; Daniel Glaze of the Cooperative Baptist Fellowship of North Carolina, chair; and Jim Hopkins of American Baptist Churches USA, secretary.



The BJC Board of Directors is comprised of representatives of the BJC's 15 member bodies.



Gus Reyes, representing the Baptist General Convention of Texas, talks with Suzii Paynter of the Cooperative Baptist Fellowship.



Kip Banks of the Progressive National Baptist Convention chats with Jim Johnson of the Baptist General Association of Virginia.

REFLECTIONS

Pope Francis: A religious liberty advocate

Pope Francis' visit to the United States — and, for me, the opportunity to welcome him at the White House — was a historic and special time. So much has already been written and said about it, I hate to try to gild the lily. But, I feel it's important to shed light on what his visit meant for religious liberty and other matters of interest to the work of the Baptist Joint Committee.

I was, first of all, astonished by the energy and stamina of this 78-year-old pontiff. Just watching him travel some 14 hours (round trip) and engage in peripatetic activity for five days wore me out. The man is a human dynamo.

I appreciated his embrace of religious liberty across the board without getting into the specific issues that are the divisive stuff of our culture wars. (Even his apparent meeting with Kim Davis was private and, according to Vatican reports, he extended a pastoral word of comfort to a sister in Christ without touting her refusal to grant same-sex marriage licenses.) But, the pope did not recede from potential conflict; he time and again lifted up the importance of a full-throated public conversation about religion in the public square.

Relatedly, he affirmed pluralism and meaningful life outside the Roman Catholic Church. He exhibited a respect for religious diversity and our common humanity. This was quintessentially demonstrated by his multi-faith service in New York City that made Ground Zero, the site of a religiously-motivated attack, the venue for a coming together of 12 faiths in peace and worship. His extended hand went beyond the reach of most religious leaders — and certainly his predecessors — when he, from the Capitol balcony, implored non-believers who could not pray for him at least to wish him well.

I was intrigued by the pope's selection of four Americans — Abraham Lincoln, Martin Luther King Jr., Dorothy Day and Thomas Merton — to form the scaffolding of his address to a joint meeting of Congress. I would have not thought of those four in this context, but their selection was creative and brilliant. The first two, well-known; the latter two, not so much to the general public. The first two — one barely a nominal churchman and the other a Baptist preacher; the latter two — Catholics. All four were committed to and worked for freedom, but in different ways. Lincoln, the emancipator, and King, the culminator of freedom from political oppression. Day, the social activist and exemplar of Elizabeth O'Connor's "journey outward," and Merton, the Trappist monk dedicating his life to the "journey inward." Both represented different ways

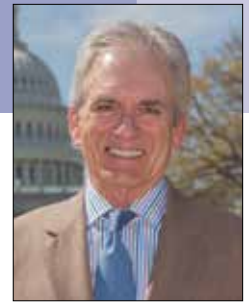
of practicing Christianity and embodied avenues of freedom from ecclesiastical convention.

Other remarkable and relevant features of Pope Francis' visit were defined by reaction from others. The first has to do with his embrace of pluralism — the inclusion of all God's children in the Kingdom of God and the rights of secular citizenship. This was counterposed by Dr. Ben Carson's thorough repudiation of the fitness of a Muslim to serve as president because Islam — in his words — is incompatible with the U.S. Constitution. Thankfully, almost everyone — including conservative commentators such as Charles Krauthammer and Michael Gerson — quickly repudiated Carson's position, pointing out that the U.S. Constitution itself bans religious tests for public office in Article VI. The BJC and nearly everyone else joined in the condemnation.

The second had to do with objections to the pope's speaking to a joint meeting of Congress on separation of church and state grounds. (I don't know why similar concerns were not registered about his White House remarks.) A Facebook friend wrote: "I agreed with almost everything he said. The fact that he was there representing the Roman Catholic Church or anyone representing such groups conflicts with my 'wall of separation.'" Another friend pointed out that Francis was actually representing the Holy See, which is recognized as a separate nation and has an embassy in Washington, D.C., making him a religious and political leader.

Yes, he is both. Also, the Queen of England — the head of the Church of England — addressed a joint meeting of Congress in 1991. But even as a religious leader, I think the pope's address can be justified. The government is not endorsing Christianity by allowing the leader of Catholics to speak any more than it would have had it permitted Baptist ministers like Martin Luther King Jr. or Jesse Jackson to speak. Over the past several decades — and perhaps even before — pastors who were serving congregations while in Congress (e.g., Rep. Bill Gray) routinely addressed the body. Frankly, I remain more troubled by the daily religious exercises in the form of prayer led by government-paid chaplains than I am by religious leaders speaking on public policy issues.

Yes, the pope's visit to the U.S. was therapeutic and a breath of fresh air. For five days, poisonous politics and divisive dithering pretty much stopped. I pray the pope's humble spirit and soft words of wisdom will leaven the political culture for the days ahead.



J. Brent Walker
Executive Director

*"For five days,
poisonous politics
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After long battle, Ten Commandments monument removed from Oklahoma Capitol grounds

On October 5, workers began digging out the Ten Commandments monument that has been on the Oklahoma Capitol grounds since 2012, well ahead of the court-ordered removal date of Oct. 12.

John Estus, a spokesman for the Office of Management and Enterprise Services, said the decision to do the work after dark was based on public safety and security.

By Oct. 6, the monument was already installed at the Oklahoma Council of Public Affairs just a few blocks from the Capitol. The OCPA is a privately funded public policy research organization that provides research data and information to legislators about state-level issues from a free-market perspective.

Thus ended a long culture war in which state lawmakers tried to save the monument but in the end only opened the door for other groups, including Satanists and the Church of the Flying Spaghetti Monster, to apply for permission to erect their own monuments on Capitol grounds.

The Oklahoma Supreme Court ordered the monument removed from the state Capitol grounds June 30. Bruce Prescott, leader of the Oklahoma Faith Network and former executive director of Mainstream Oklahoma Baptists, was the lead plaintiff in a lawsuit claiming the privately funded monument on the state Capitol grounds violated the state constitution's prohibition on

using state property in support of religion.

In a 7-2 ruling, the justices said the monument was in violation of Article 2, Section 5 of the Oklahoma Constitution. The article states that public money or property cannot be used or donated " ... for the use, benefit, or support of any sect, church, denomination, or system of religion"

The wording is critical because the monument was purchased with private donations but placed on public land.

"The OCPA was the first to make an offer to take the monument," Estus said. "They poured the concrete base for it last week, so it was an easy matter to drive it down the street and install it."

The Republican Party of Oklahoma also offered a home to the monument.

Estus said the visibility at OCPA is much better than at the Capitol. In fact, the monument will face one of the busiest streets in the Capitol area, North Lincoln, so it will be viewed by thousands of commuters every day. The former location was tucked up against the north side of the Capitol, nearly invisible to drivers.

The OCPA will take care of ongoing costs, and the monument is officially "on loan" to the organization.

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

BJC, broad coalition oppose taxpayer-funded discrimination

The Baptist Joint Committee for Religious Liberty and the American Baptist Home Mission Societies are among 130 religious, education, civil rights, labor, LGBT, women's and health organizations asking President Barack Obama to review a Bush-era legal opinion allowing faith-based organizations accepting taxpayer funds to ignore laws that prohibit employment discrimination on the basis of religion.

The diverse coalition, which also includes Americans United for Separation of Church and State, the Interfaith Alliance and the General Board of Church and Society of the United Methodist Church, sent a letter Aug. 20 to request a review of what they call a "flawed legal analysis" of the Religious Freedom Restoration Act, a 1993 federal law making it harder for the government to interfere with a person's free exercise of religion.

According to the letter, a 2007 Department of Justice memo – which analyzed the hiring practices of one grantee in one government program – is being used by several agencies to create a categorical exemption from various non-discrimination provisions. Additionally, the letter notes that other groups are seeking to expand the memo's influence beyond hiring to create an exemption from providing contracted-for services, or even referrals, based upon the organization's religious beliefs.

Signers of the letter – some of them members of the Coalition for the Free Exercise of Religion that worked to pass RFRA as a remedy after the Supreme Court curtailed free exercise protections under the First Amendment in the 1990 decision *Employment Division v. Smith* – called the memo a "broad and erroneous interpretation" of the law. They said the interpretation "has far-reaching consequences," such as potentially allowing government contractors to deny those very services required by the funding agreement.

The letter asserts that RFRA was intended to be applied on a case-by-case basis, to federal laws that substantially burden religious exercise to protect free exercise rights. "RFRA was not intended to create blanket exemptions to laws that protect against discrimination," the letter states.

Religious discrimination is "even more troubling when it is funded with taxpayer dollars," Maggie Garrett, legislative director for Americans United for Separation of Church and State, said in a news release. "President Obama vowed in 2008 to end discrimination in the faith-based initiative. It's time for him to fulfill that promise."

—Bob Allen, *Baptist News Global*
with BJC staff reports

What can we learn from Kentucky's Rowan County Clerk?

For good or bad, a Kentucky clerk became the public face, complete with “Eye of the Tiger” soundtrack, for religious freedom claims relating to same-sex marriage. Following the Supreme Court’s marriage decision, the elected Clerk of Rowan County, Kentucky, refused to issue marriage licenses and prevented her deputies from doing so. That led to a variety of court filings and legal maneuvers, a brief stint in jail, a raucous rally celebrating her release, commentary from presidential candidates, and finally marriage licenses but still not a completely clear resolution. The story has received an exhausting amount of attention. What lessons can we take away from it?

Conscience-based refusals arise in a variety of settings.

Most of the religious objections to same-sex marriage have been very different from the highly publicized standoff in Kentucky. In all cases, sincere claims of religious objection should be heard respectfully. The context is critical to evaluate and respond to religious accommodation needs. Purchasing a wedding cake at a bakery, obtaining emergency contraception at a local pharmacy, or applying building codes uniformly are different scenarios where objections have arisen, and they carry different stakes. The right approach to resolving the conflict in a county clerk’s office is not necessarily the right approach to other conflicts, even though they are all rooted in sincere religious objections to government regulations.

Elected officials have special responsibilities to serve the public and enforce the law.

Elected officials take an oath to uphold the law and act on behalf of the citizens they serve. When government agents act in their official capacity, the law views them as extensions of the state, and rightly so. We should look with special scrutiny whenever an individual, acting on behalf of the government, acts in a way that the law prohibits the government from acting. Of course, officials are also individuals with the right to freedom of belief and conscience. When possible, the law should protect their right to act in accordance with those individual beliefs, especially when that conduct would not impede their governmental duties or imply an official endorsement of religion.

Solutions that accommodate religious objectors and protect the rights of others may require hard work and should be applauded.

The eventual resolution of the events in Rowan County — full and equal access to marriage rights for all residents, without the clerk’s participation — has largely resolved the controversy. One source of the conflict in Kentucky may have been the state’s marriage license procedures themselves. Other states have found ways to navigate this conflict.

In Utah, for example, the process of solemnizing a marriage has been “outsourced to any willing celebrant in the community,” according to law professor Robin Fretwell Wilson, “avoiding the need to decide whether someone like Kim Davis must resign or be fired” Revisiting the processes by which states issue marriage licenses would be an entirely appropriate response to this controversy.

There are limits to religious freedom.

In Kentucky, the clerk’s claim of religious freedom not to issue marriage licenses and to keep others from doing so interfered with a constitutionally protected right to marry. That presents a particularly difficult religious accommodation claim.

Davis has said that same-sex marriages are not valid in God’s eyes. Expression of that religious belief is protected. But her religious belief is an insufficient basis for her actions given her job. A marriage license from Kentucky, or any other state, certifies that the couple has met all of the state’s qualifications to be married. If a county clerk is required to issue licenses in violation of her conscience, it is not a signal that Due Process and Equal Protection rights outweigh Free Exercise rights. Instead, it is recognition that as a government agency, the clerk’s office is not reducible to the individual that holds the office. The office is an extension of the public, charged with upholding the rights of all.

Some advocates on both sides have framed disputes like Rowan County’s as a contest between First Amendment rights of religious freedom and Fourteenth Amendment rights of liberty. We should avoid the divisive call to pick sides among our constitutional liberties, and instead work together to correct widespread and fundamental misunderstandings about religious liberty that can help avoid such conflicts.



K. Hollyn Hollman
General Counsel

“The right approach to resolving the conflict in a county clerk’s office is not necessarily the right approach to other conflicts ...”

BJC Fellows Seminar educates next generation of religious liberty advocates

In late July, the inaugural class of BJC Fellows gathered in Colonial Williamsburg for an intensive three-day seminar on religious liberty. The group of young professionals from across the country came together to deepen their historical, theological and legal understanding of religious liberty, as well as develop skills to advocate for the cause throughout their careers.

In addition to participating in workshops led by BJC staff, the Fellows toured the historic grounds at Colonial Williamsburg, met with interpreters of historical figures such as Thomas Jefferson and Gowan Pamphlet, and engaged with church-state historian (and 2014 Shurden Lecturer) Michael I. Meyerson, an author and professor at the University of Baltimore School of Law.

BJC Fellow Alyssa Aldape said the classroom sessions were key, but conversations with others in the class also created educational moments. "There is the need for cross-cultural relationships in the religious liberty arena," Aldape said. "We need each other to gain a more inclusive perspective on what religious liberty can be."

When applying for the program, the individuals committed to being advocates for religious liberty in their houses of worship and communities. In the past months, Fellows have demonstrated their commitment by preaching sermons on religious liberty, teaching religious liberty lessons to youth groups and writing articles for publication about lessons learned from the experience.



2015 BJC Fellows from left: Elijah Zehyoue, Washington, D.C.; Kristen Harris-Bridwell, Abilene, Texas; Lauren McDuffie, Winston-Salem, N.C.; Danielle Ashley, Laurel, Mississippi; Sabrina Dent, Petersburg, Virginia; Katie Ferguson Murray, Dallas, Texas; Kyle Tubbs, Georgetown, Texas; Caitlyn Cook Furr, Arlington, Virginia; Alyssa Aldape, Atlanta, Georgia; Adam Wright, Dallas, Texas.



From left: Kristen Harris-Bridwell shares during a group discussion on religious liberty advocacy; Brent Walker lectures during a classroom session; Elijah Zehyoue listens to a historic interpreter portraying Baptist minister Gowan Pamphlet.

Reflections on the seminar



Lauren McDuffie
Winston-Salem, N.C.

The first full day of the BJC Fellows Seminar was focused on two separate but vitally important conversations. BJC Executive Director Brent Walker spent the morning leading us in a consideration of the biblical and theological underpinnings of religious liberty, while our afternoon with Professor Michael Meyerson was spent considering the lives and work of several important Baptist leaders, including Roger Williams, John Leland and Isaac Backus. What a legacy to learn from and to be a part of as I live into my own calling as a Baptist minister.

It is a challenge as someone who has grown up in the modern Baptist church to consider how much we have changed. Professor Meyerson began his discussion of Baptist leaders by explaining the ways that Baptists in the colonial and early American period of history saw themselves as a “hated minority.” I became increasingly aware of how much more privileged Baptists are in the United States today, as a powerful denominational group within the context of an American Christianity dominated by mainline Protestants and evangelicals. I also became aware of how much this privilege impacts the way religious liberty shows up as part of the framework of what it means to be Baptist, or if it even shows up at all. When we no longer face the urgent necessity to fight for our own religious liberty, why would we be compelled to fight for anyone else’s?

The answer is, of course, in the biblically based understanding of soul freedom which we had already spent our morning with Walker discussing. If we understand ourselves and our fellow travelers on this journey — fellow Baptist or not — to be created in the image of a God who is sovereign and free, then how else can we understand the journey of faith except as one in which we are free to participate as we feel called? And if this is the case, how much more important is it for us to defend the right of all to express their faith in a way that is authentic to them, even if it does not look the same as the faith that is authentic to us? Walker described this soul freedom as our “God-infused liberty of conscience ... not because we are Christian, but because we are human.” It seems that this implies an inherent responsibility to defend that freedom for all.

I hope to encourage my community of faith to see this work as an essential part of our identity as both Christians and as Baptists.

These are abridged versions of Lauren’s and Sabrina’s reflections. Visit our website to read more.



Sabrina Dent
Petersburg, Va.

Throughout my life experiences, I have learned to recognize the sacredness of humanity and human life. In my opinion, to diminish the value or experience of any group in history is to undermine their relevance to the human

story. Thus, it is with deep conviction and reflection that I share my story of pain, pride, victory, spiritual awakening, healing and critical analysis as it relates to my engagement in the BJC Fellows Program. Quite honestly, I only imagined the logical and practical outcomes of learning more about the Baptist Joint Committee for Religious Liberty. I never imagined that my experience would cause me to wrestle with who I am spiritually and as a woman of color who still seeks to tell her story unapologetically in a society that seldom listens.

Maybe I should speak about the internal struggle to engage the idea of touring Colonial Williamsburg as a critically thinking adult versus adolescent. In elementary school, we were taught stories about the great settlers who founded America; but, as an adult I knew better. I wondered, “Who will tell the story of my ancestors? Or, will the truth about their stories be told?”

And then, there was a mention of Gowan Pamphlet. Who or what was a “Gowan Pamphlet”? I recall asking another BJC Fellow if it was a brochure or a person. They also had no knowledge. But, to my surprise, Gowan Pamphlet would be that divinely inspired voice that would speak hope and healing to my wounded spirit. Never in my black Baptist seminary experience of being exposed to liberation theology was his name mentioned. Yet, he was a black voice in the 18th century spiritual awakening movement for enslaved people who would influence my 21st century experience as BJC Fellow. Not to mention, there was a deeper connection because of our Virginia Union University roots.

For me, the BJC Fellows Seminar was a lived experience which allowed me to define my truth, inhale my hopes and exhale my anxieties while feeling each moment. Thus, I would affirm that my cry for humanity was heard in my comments, reflections, conversations and inquisition about the unspoken and painful history of slavery during the time of this religious freedom movement.

When and where I enter as an authentic voice addressing the harsh realities of our difficult past with the spirit guiding me, I open a door of greater awareness for my love towards humanity.

Visit the BJC Fellows website page • BJCOnline.org/Fellows

To read reflections from each of the program participants, visit BJCOnline.org/Fellows. The page also includes photos from the experience and videos featuring the BJC Fellows reflecting on the program.

Applications to participate in the 2016 BJC Fellows Program will be available in the coming months.



2015 Religious Liberty Essay Scholarship

Balancing Act: On Compromise Between Business

By Zoe Almeida of San Antonio, Texas

Americans take great pride in describing our nation both as a free society and as a free market. The United States government has always tried to balance the rights of businesses with the rights of the individual. This conflict has been the basis for landmark legislation over and over again, from the Square Deal to the New Deal and beyond. The relationship between workers and management in the United States has radically shifted over time, and is poised to shift once more as the Supreme Court attempts to make a decision in the milestone case brought against Abercrombie & Fitch by Samantha Elauf.

In 2008, a 17-year-old Muslim woman named Samantha Elauf applied for a sales position at an Abercrombie & Fitch store in Tulsa, Oklahoma. After initially receiving a high score during her interview with the store manager, she was ultimately rejected on the grounds that she didn't fit the Abercrombie company's "look policy." Elauf, who wears a hijab, was told by manager Heather Cooke that Abercrombie & Fitch employees are not permitted to wear "hats" at work. Religion was not discussed during the job interview, though Cooke later admitted she had assumed that Elauf wore the scarf for religious reasons; regardless, Cooke declined Elauf for the job. The U.S. Equal Employment Opportunity Commission (EEOC) has taken up a lawsuit on Elauf's behalf, arguing that the actions of Abercrombie employees amount to religious discrimination.

The EEOC's case is based on Title VII of the Civil Rights Act of 1964, which states in part that "It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual ... because of such individual's race, color, religion, sex, or national origin." According to the EEOC, Title VII applies to "any practice that is motivated by a religious belief" including the wearing of religious garb and symbols and that accommodation for such practices must be made insofar as doing so does not place "undue hardship" on employers. Undue hardship is defined as anything greater than a *de minimis* cost on the operation of the owner's business.

At first glance, the legislation seems cut and dry; but upon closer inspection, one can spot numerous ambiguities in the law. For example, what constitutes a religious belief? Must employers really tolerate anything an employee does, if he claims he does it for a religious reason? Returning to the Civil Rights Act, the term "religion" "includes all aspects of religious observance and practice as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship." The EEOC also defines religious beliefs as "all aspects of religious observance and practice," both those of organized and obscure faiths. The Commission expands the definition with

in its own documentation to even secular beliefs on morals and ethics "which are sincerely held with the strength of traditional religious views." The sincerity of religious and moral beliefs are usually not called into question in religious discrimination cases, as there is no clear protocol to determine it; the EEOC recommends employers who question the sincerity of an employee's belief "ask an applicant or employee for information reasonably needed" to evaluate any requests for religious accommodation. If all this seems vague, it's because the law *is* vague; the law is, after all, written to accommodate every possible rights violation. The application of the law depends on careful and judicious interpretation.

One can fairly interpret the law as requiring that an employee's very strong beliefs — moral or religious — must be accommodated, provided doing so does not place undue hardship on the company. But what constitutes "undue hardship" remains unclear. There is no solid answer found in the Civil Rights Act, beyond that it must be greater than a *de minimis* cost upon the operation of the business. One might argue that misrepresentation of the image of a company should qualify as an undue hardship upon an employer. One could argue that distorting a company's image alienates its fan base and in this way may place a profit hardship upon the company. Abercrombie & Fitch turned down



Zoe Almeida poses with BJC Education and Outreach Specialist Charles Watson Jr. and Executive Director Brent Walker after reading her winning essay at the 2015 BJC Board of Directors meeting.

Elauf for a position at their store because her headscarf broke with their "classic East Coast collegiate style." Whether or not the concept of this look is logical — do Muslims not exist on the East Coast? — the Abercrombie company absolutely has the right to try to create and enforce a dress code it feels reflects this look. But here we find the crux of the issue: does Abercrombie & Fitch's right to cultivate a brand image outweigh the rights of its workers to express their beliefs? Is it asking too much of a company whose livelihood depends on its "look" to accommodate deviations from that look, even on religious grounds?

Any resolution to the conflict between Elauf and Abercrombie must include a compromise between the interests of both parties. Private companies have the right to establish the environment of their own stores, down to the dress code. But Samantha Elauf's headscarf could not significantly change the image of the entire Abercrombie & Fitch organization; claiming that the detail of an individual's uniform threatens the image of the entire franchise is not credible. Therefore, the burden upon the company to accommodate is not an undue hardship. Abercrombie & Fitch could have accommodated dress code by requesting Elauf don a headscarf in company colors, or perhaps in a style altered slightly to represent their brand of "collegiate" style. Or they could expand that image to appeal to a more diverse, realistic, and representative, group of college students.

To let the image of the brand trump Elauf's rights to religious

Contest Winner

Crosses and Workers

expression would set a negative precedent, one which lower courts and subsequent Supreme Court cases would be required to follow (a concept called *stare decisis*). If the Supreme Court decides in favor of Abercrombie, it trivializes religious belief; deciding in favor of Abercrombie says that businesses can ask an individual to act against what are often their very deepest convictions in the service of a brand concept. If Abercrombie can succeed in lawfully banning hijabs, where does it end? Couldn't it also then ban turbans, crosses, the Star of David? Further, if Abercrombie is allowed to screen out job applicants based on religious garb, there is no reason why other companies won't adopt the same method. This could make it harder for members of minority faiths in America to get jobs at all.

Letting the scales tip in favor of Abercrombie opens a Pandora's box of legal and moral issues surrounding expression of faith. In order to fairly balance the interests of the company with that of the individual, a compromise should be made which allows for religious expression which does not stray too far beyond the set dress code. Balance is key to keeping our country a free society: between private practices and public interaction, between private business and individual rights.

Note: This essay was written before the U.S. Supreme Court's June decision in EEOC v. Abercrombie. Visit BJCOnline.org/Abercrombie to learn about the case and decision.

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Watch online



Watch Alameda read her essay to the BJC Board of Directors at BJCOnline.org/Contest. You can also watch videos of previous winners and learn more about the contest.

BJC welcomes fall interns

Two fall interns recently began working alongside the Baptist Joint Committee staff in Washington, D.C.

Joshua Beatty of Virginia Beach, Virginia, is a 2015 graduate of Virginia Wesleyan College. He earned a Bachelor of Arts, majoring in political science and international studies. He is the son of Floyd and Lutricia Beatty. After graduation, he completed an internship with the World Affairs Council for the Greater Hampton Roads. Beatty plans to attend graduate school in the fall of 2016.



Beatty

Destiny Manning of Fort Worth, Texas, is a senior at Texas Christian University, majoring in English with a double minor in history and political science. She is the daughter of Anthony and Sandra Manning and a member of Abundant Life Community Church in Crowley, Texas. After graduation, Manning plans to pursue a Master of Arts in English and a Juris Doctor.



Manning

Griffen announces titles of social justice lectures



Griffen

On Nov. 12-13, Judge Wendell Griffen will deliver the BJC-sponsored Lectures on Social Justice and Religious Liberty at Fuller Theological Seminary in Pasadena, California. The event is free and open to the public. For more, visit BJCOnline.org/FullerLectures.

Lecture #1:

Religious Freedom, Equal Protection, and the Ethos of Jesus: Circle, Collision, or Co-Existence?

Thursday, Nov. 12 at 10 a.m. in Travis Auditorium

Lecture #2:

What's Love Got to Do With It? Confronting Ethical and Discipleship Issues in the 21st Century

Friday, Nov. 13 at 10 a.m. in Travis Auditorium

Giving Tuesday 2015

On December 1, the BJC will participate in Giving Tuesday, asking for a swell of support on a single day. Join us on social media to show your support for the BJC and consider becoming a monthly donor.

SAVE
THE
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DECEMBER 1

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BJCOnline.org/GivingTuesday

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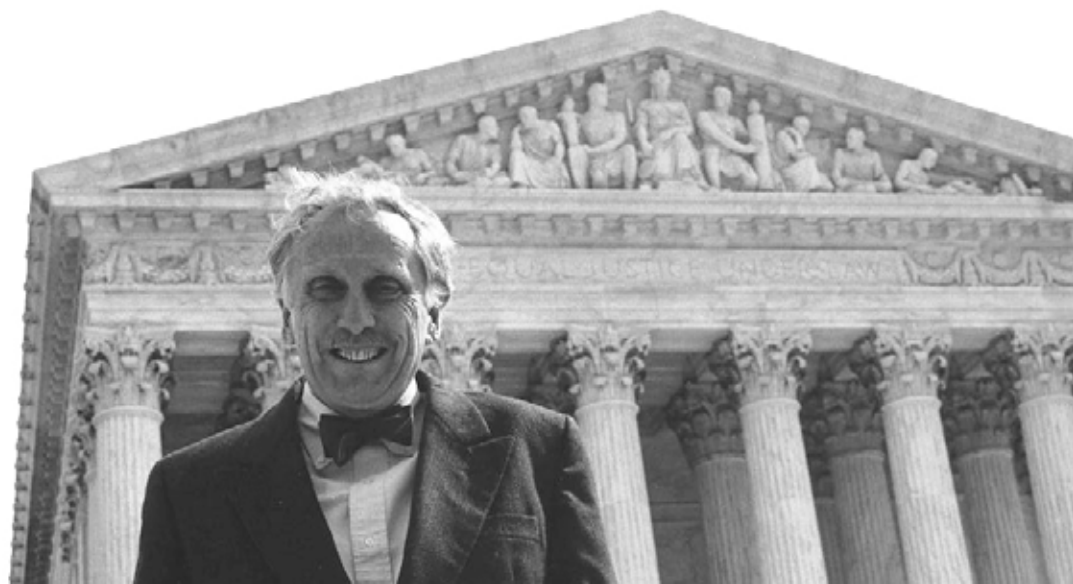
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*the life of former executive director James Dunn, who passed away in July.
generation of religious liberty advocates. Visit BJConline.org/DunnFund to learn more.*

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REPORT from the Capital

J. Brent Walker
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Editor

Jordan Edwards
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WHY WE GIVE

By Bob and Anne Fowler
Houston, Texas

We have been giving annually to the Baptist Joint Committee for at least the last 15 years. Our awareness of the BJC came even before that giving pattern began.

What James Dunn and so many others before him did to build awareness of the need to preserve religious liberty in our country seemed to us to be integral to why we were Baptists. Our freedom from establishment of religion and the protection of our free exercise, enshrined by our forefathers in the Bill of Rights, have always seemed a natural outgrowth of what we Baptists believe about our God and the free choice with which he endowed each of us.

Having a unique institution like the BJC there to defend those twin rights was critical to us. So, when the Southern Baptist Convention chose to discontinue its historical support of the BJC, it seemed only logical that individuals and individual churches needed to step forward to fill that financial void. We have been a part of that movement.

While we might not totally agree on every position the BJC thoughtfully takes, such occasional disagreements themselves reflect the very freedoms that the BJC seeks so actively to preserve. Having a non-parti-

san approach to preserving religious liberty is not only well-respected in our nation's capital but well-considered by those who seek to govern and to adjudicate.

We are impressed with what the BJC does with its resources, and we are committed to continuing to enable its mission. It is, therefore, entirely appropriate that we might leave some level of legacy after we are gone to support the continuing work of the BJC. Including the BJC in our estate planning is our next level of support of its ongoing endeavors, and we believe considering a place for the BJC in a will or other estate planning makes sense for lots of other Baptist folk.



If you have included the BJC in your estate plans or would like more information about naming us as beneficiary of a will or retirement plan, go to BJOnline.org/planned-giving and fill

out the simple form. You may also contact Development Director Taryn Deaton at 202-544-4226 or by sending an email to LegacyCircle@BJOnline.org.