

REPORT FROM THE CAPITAL

Magazine of the Baptist Joint Committee for Religious Liberty



Faith-based activism and service in focus at Chicago event

AMANDA TYLER on equipping others to take a stand

HOLLY HOLLMAN explores the BJC's brief in *Masterpiece Cakeshop*

BJC Blogger **DON BYRD** reviews the top church-state stories of 2017

Tax proposal targets the Johnson Amendment



As Congress works on passing a tax bill this year, the protections of the “Johnson Amendment” for houses of worship continue to be on the chopping block. Both the House and Senate passed their versions of tax reform legislation, and one of the significant differences centered around that provision which protects nonpartisanship in the charitable sector by prohibiting 501(c)(3) organizations from endorsing or opposing candidates for political office.

On Nov. 2, Rep. Kevin Brady, R-Texas, who chairs the House Ways and Means Committee, introduced the “Tax Cuts and Jobs Act.” Buried near the end of the 429-page bill was Section 5201, a provision that would permit churches, their integrated auxiliaries and denominations to intervene in partisan political campaigns while retaining their 501(c)(3) status. BJC Executive Director Amanda Tyler said it would harm the tax law that protects houses of worship. “Pastors and people of faith know that there’s nothing free about a pulpit that is bought and paid for by political campaign donations or beholden to partisan interests,” she said.

The Joint Committee on Taxation, a non-partisan organization which estimates the potential economic impact of certain legislation, stated that this provision would cost taxpayers \$2.1 billion over the next 10 years. Testifying before the Ways and Means Committee, JCT’s chief of staff described the basis for this number as “a diversion of some substantial growth in political contributions into a deductible form that is not deductible today.” Because most churches and denominations are 501(c)(3) organizations, contributions to them are tax deductible for the donor. But, political action committees are not 501(c)(3) organizations, so PAC donations are not tax deductible. If religious organizations would be permitted to engage in partisan campaign activity, political donors would have an incentive to funnel their campaign contributions through organizations that could give them the added gift of tax deductibility.

As the House Ways and Means Committee was considering the legislation, Rep. John Lewis, D-Georgia, introduced an amendment to strip Section 5201 from the bill and preserve the status quo. Several lawmakers spoke in favor of how current law protects the independence of churches, including Rep. Lloyd Doggett, D-Texas, who quoted Tyler and CBF Texas Field Coordinator Rick McClatchy in his remarks. Rep. Lewis’ amendment failed in a party line vote.

Although no legislators who spoke in favor of carving out churches from the reach

of the Johnson Amendment advocated that the carve-out should go further and apply across-the-board to the entire charitable sector, Rep. Brady unexpectedly amended his own bill to do just that prior to the committee vote. The change was widely criticized by the charitable sector. “[Nonprofit organizations] don’t want to be dragged into the political swamp; we don’t want corrosive partisanship to make us as ineffective as partisan government today,” said Tim Delaney, president and CEO of the National Council of Nonprofits, in response.

The entire House passed the bill with the expanded Section 5201. The bill “limits” this partisan activity by requiring the partisan statements to be in the organization’s ordinary course of its activities and result in not more than a *de minimis* incremental expense. Further, the ability of these organizations to endorse or oppose candidates is limited to the tax years 2019-2023, but it will still cost taxpayers more than \$2 billion.

Especially problematic for churches would be tasking IRS bureaucrats with the duty to determine which of a church’s activities were in (and outside of) its “ordinary course” and which church expenditures were *de minimis* and incremental, inviting additional scrutiny. Under current law, churches and denominations — unlike all other 501(c)(3) organizations — are exempted from filing annual forms with the IRS that reveal income and expenses.

Unlike the House bill, the Senate’s tax bill did not include language undoing the Johnson Amendment. At press time for *Report from the Capital*, the process was beginning for the two chambers to work out the differences before a final bill can be sent to President Donald J. Trump’s desk.

Individuals and organizations publicly advocating for repeal of the Johnson Amendment are few and far between, while the opposition to repeal is widespread, diverse and transparent. More than 5,500 religious and secular nonprofit organizations across the country have expressed their opposition, joining more than 4,300 clergy and lay faith leaders and more than 100 denominational and religious organizations. Faith leaders can still add their names to the advocacy effort to keep the Johnson Amendment at FaithVoices.org, and nonprofit leaders can visit GiveVoice.org to join forces with other groups asking to keep the protections on the books.

By Jennifer Hawks,
BJC Associate General Counsel

Equip others to raise their voices for religious liberty

By Amanda Tyler, BJC Executive Director



Like many of you, we at the BJC are reflecting on 2017 and noting it's a year like we have never seen before. Religious liberty cases and issues made front-page news throughout the year. Legislative threats to the independence of houses of worship and their ability to stay separate from partisan elections have escalated as changes to the "Johnson Amendment" were included in tax bills. The U.S. Supreme Court said — for the first time — that there are instances when the government must fund churches. And we have seen several versions of immigration policies that have been challenged for targeting people for unfair treatment based on their religion.

You have come to count on the BJC to be a watchdog on all of government to ensure that the state neither impedes nor promotes religion and its practice. Our focus is rightly on holding government — specifically Congress and the courts — accountable. Our work would not be possible without the generous contributions of individuals, churches and our denominational supporters. We are grateful to have these partners committed to our shared work.

The past year has demonstrated how religious freedom also can be jeopardized by acts of individuals. We have all seen the news stories — about the desecration of graves in Jewish cemeteries, harassment and bullying of Muslim neighbors, and vandalism of churches, synagogues and mosques. For some of our neighbors, more than their freedom of worship is at stake. Their very existence is being challenged and threatened.

The dramatic surge in hate rhetoric and violence directed at religious minorities over the past year is as much a threat to religious liberty as any law passed by Congress or Executive Order signed by the president. And these individual acts require both a response from our officials but also from we the people.

At this summer's gathering of the Religious Liberty Council in Atlanta, we made a "Call to Action" to encourage you to participate in the "Know Your Neighbor" campaign and to tell us how you are raising your voice for religious liberty for all. Whether it be hosting an interfaith dialogue at your church, partnering with a house of worship in your community on a service project, or just endeavoring to learn more about the experiences of others, we all have a part in defending religious liberty.

For more than four centuries, Baptists have been standing up for religious liberty for all, and we at the BJC are honored to be carrying that torch in the 21st century to raise our voice for our neighbors. This year has shown us that new threats to religious liberty require new responses to meet the need. We at the BJC are prepared to meet that need, but your partnership is necessary.

The BJC's vision for the future calls us to mobilize supporters — like you — to be advocates for religious liberty. We want to engage you to take a more active role in our mission of defending religious liberty for all and provide you with the information and tools you need to be an ambassador in your community.

"This year has shown us that new threats to religious liberty require new responses to meet the need. We at the BJC are prepared to meet that need, but your partnership is necessary."

Now is the time for us to expand our capacity to make this work possible. We plan to hire two new staff members in 2018 to direct and support this endeavor of mobilizing new ambassadors for religious liberty. Bringing on additional team members to meet new challenges will require an added investment of \$125,000 in 2018. We cannot do this without your help.

Whether you have supported the BJC for years or you have never contributed before, I invite you to invest in our future at this critical juncture. Please prayerfully consider a gift to the BJC and partner with us on this bold move into the future.

Buddy Shurden, who has written so much about what it means to be a Baptist, has said, "It is easy to holler freedom when you are the one who does not have it. It is a more principled position, however, to cry for freedom when you are in the majority but now lift your voice on behalf of new minorities." Your gift today will allow us to empower and equip new voices to cry for religious freedom for all.

To make a gift, use the enclosed envelope or visit our website at BJCOnline.org/donate.

BJC joins brief in religious display case

A 34-foot Latin cross on government property is an unconstitutional endorsement of religion, as a federal court in Florida held earlier this year. The Baptist Joint Committee is one of several religious organizations asking that the ruling be upheld.

On Nov. 22, the BJC joined with Americans United for Separation of Church and State and 12 other religious and religious liberty organizations to file a friend-of-the-court brief in the case of *Kondrat'yev v. City of Pensacola*, supporting those challenging the display. After a trial court determined the cross monument in a city park violated the Establishment Clause, the city appealed the ruling to the 11th U.S. Circuit Court of Appeals.

The BJC has long opposed government-sponsored religious monuments as antithetical to the Establishment Clause's purpose of ensuring a religiously neutral government that equally treats all religious faiths (including the absence of faith) without preference or discrimination. The brief explores how separating the institutions of government and religion has safeguarded religious freedom.

The brief asserts that "[g]rounded in both the understanding that freedom of conscience is an essential component of faith, and the experience of a long, sad history of religiously based strife and oppression, the principle of separation recognizes that

governmental support for religion corrodes true belief, makes religious denominations and houses of worship beholden to the state, and places subtle—or not so subtle—coercive pressure on individuals and groups to conform."

Responding to the notion that the cross could be a generic secular symbol to honor the dead as opposed to the preeminent symbol of Christianity, the brief notes that "to downplay the significance of the Latin cross is to misunderstand its essential nature and abiding power, both for those who revere it and for those who do not."

The trial court ordered the city to pay the plaintiffs \$1 in damages and remove the cross within 30 days, though the order to remove the cross was stayed until the appeal can be considered.

The brief has also been signed by the American Civil Liberties Union, Anti-Defamation League, Central Conference of American Rabbis, Jewish Social Policy Action Network, National Council of Jewish Women, Muslim Advocates, Sikh Coalition and the Union for Reform Judaism.

As of press time, oral arguments before the 11th Circuit had not been scheduled.

By Jennifer Hawks, BJC Associate General Counsel

Clergy housing allowance declared unconstitutional by federal court

A federal district court in Wisconsin has once again declared the clergy housing allowance an unconstitutional preference for religion, and the case is expected to continue.

In the *Gaylor v. Mnuchin* decision, the court examined the history and constitutionality of the clergy housing allowance, which permits churches to designate part or all of the salary of qualified ministers as a housing allowance, thereby excluding it from the ministers' taxable income.

This ruling was not unexpected as the judge had issued a similar ruling in 2013. That decision was overturned by the 7th U.S. Circuit Court of Appeals the following year when it said that the plaintiffs — executives at the Freedom From Religion Foundation — lacked standing to challenge the statute. The court held that "there is no reasonable interpretation of the statute under which the phrase 'minister of the gospel' could be construed to include employees of an organization whose purpose is to keep religion out of the public square." The plaintiffs seemingly corrected the standing issue when they applied for — and were subsequently denied — the housing income inclusion from the Internal Revenue Service.

Historically, many houses of worship have provided parsonages (church-owned homes) for their pastors. In the U.S., parsonages are typically exempt from state and local property taxes. Since at least 1921, the rental value of parsonages has also been excluded from the gross income of the pastors who reside

in them.

The provision at issue in this case — the housing allowance — was added to the tax code in 1954 in the same bill as the so-called "Johnson Amendment," which protects all 501(c)(3) organizations, including houses of worship, from politicians and political donors seeking partisan campaign endorsements. The housing allowance gave parity to religious denominations that provided housing through compensation with denominations that provided housing through parsonages. In 1954, Congress decided that a clergy housing allowance should be treated like a military housing allowance: tax free. One benefit of the housing allowance to local communities that is often overlooked has been more clergy housing being on the property tax rolls.

In *Gaylor v. Mnuchin*, the court specifically held that the clergy housing allowance "violates the establishment clause because it does not have a secular purpose or effect and because a reasonable observer would view the statute as an endorsement of religion." At press time for *Report from the Capital*, intentions to appeal the ruling to the 7th Circuit had been announced but no appeal had yet been filed.

With the standing issue seemingly resolved, the 7th Circuit should rule on the merits if the case is appealed.

By Jennifer Hawks, BJC Associate General Counsel

Nondiscrimination and religious liberty

By Holly Hollman, BJC General Counsel

Protecting religious liberty often involves treating religion in special ways. In addition to protecting against government-sponsored religion, the BJC is known for supporting laws that accommodate religion, some of which provide exemptions from otherwise applicable laws. Respect for religious liberty should demand such accommodations where they do not threaten the rights of others or undermine compelling governmental interests.

It is difficult, however, to justify accommodations for the exercise of a religious belief that would negatively impact someone else. Claims for exemptions from nondiscrimination laws — laws specifically crafted to protect individual rights — present a particular challenge for religious liberty conscience claims. The BJC's latest Supreme Court brief explores this. Our friend-of-the-court brief in *Masterpiece Cakeshop v. Colorado* reviews how nondiscrimination laws — like Colorado's public accommodation law — are good for religious liberty. Those laws protect customers from being denied goods and services based on their religious identity (in addition to other characteristics) and typically exempt houses of worship. The Constitution does **not** require an exemption from such laws designed to prevent discrimination in the commercial marketplace for a baker who sells wedding cakes to the public but opposes same-sex marriage.

In this case, the commercial baker is claiming a right under the Free Speech and Free Exercise Clauses to an exemption from a state public accommodation law. Under that law, any commercial bakery that sells custom wedding cakes to opposite-sex couples must also sell them on the same basis to same-sex couples. The baker argues that the state cannot apply the anti-discrimination law to the sale of his custom wedding cakes because preparing a wedding cake is artistic expression that celebrates marriage, and the state cannot make him celebrate same-sex marriages. The baker also considers his work to be active participation in marriage since he believes the wedding cake is a centerpiece of wedding festivities.

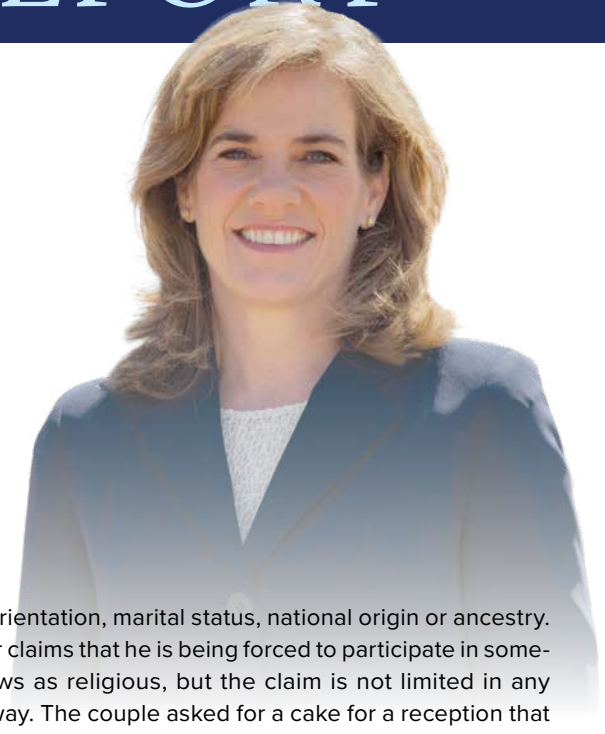
On the other side, Colorado and the couple who was denied services want enforcement of that state law that provides equal access to the commercial marketplace. Colorado's Anti-Discrimination Act applies to businesses that are open to the public and prohibits them from refusing to serve a customer based on certain personal characteristics: disability, race, creed (religion), color,

sex, sexual orientation, marital status, national origin or ancestry.

The baker claims that he is being forced to participate in something he views as religious, but the claim is not limited in any meaningful way. The couple asked for a cake for a reception that was held in a different venue, on a different date and in a different state from the wedding ceremony. If an exemption is granted in this case, the brief argues "[r]eligious liberty itself would suffer, as religious individuals would be subject to being denied service because the commercial proprietor's religious views differed from theirs." This could include an interracial or interfaith couple's wedding, a bar mitzvah, or even a birthday or graduation party. While the bakery owner's religious objections are sincere, they do not warrant granting such a broad religious-based exemption, which would allow every business owner to defeat the purpose of the nondiscrimination law by simply asserting a religious justification.

The brief filed by the BJC, along with the General Synod of the United Church of Christ, the Episcopal Church, the Evangelical Lutheran Church in America and the Chicago Theological Seminary, emphasizes the importance of context in weighing the religious liberty arguments in this case. It says that the Colorado statute strikes an appropriate balance respecting religious liberty and ensuring access without unlawful discrimination in the commercial marketplace. Houses of worship and other institutions principally used for religious purposes are not affected. Whether this baker wins or loses does not determine other religious rights with regard to beliefs about marriage or other religious matters outside this context.

Free exercise claims should be treated respectfully and seriously. The Constitution and other laws protect religious liberty in different ways in different contexts. Free exercise law provides many protections for the religious beliefs and actions of individuals and institutions that oppose same-sex marriage for religious reasons. Legislative compromises that account for the interests of all sides may be possible through carefully negotiated exemptions. The Constitution, however, does not provide a right for commercial vendors to refuse to sell goods and services to certain people in violation of a nondiscrimination law by simply asserting a faith-based reason. We must protect all of our churches and religious beliefs about marriage and — at the same time — recognize as citizens and Christians that we should treat all equally and without regard to religious differences in the commercial marketplace.



Symposium explores faith-based activism in American public life

Melissa Rogers and other leaders speak on how people of faith can be the conscience of the state

Religious communities can hold political officials accountable to principles that are at the heart of civic and constitutional traditions, according to Melissa Rogers, the former head of the White House's faith-based office.

"But, religion must be, in meaningful ways, independent of the state," she said, noting that such an independence lets religion be authentic and vital, allowing religious communities to call our nation to be its best.

Rogers delivered a powerful account of faith being transformed into action at a special Baptist Joint Committee Symposium on October 26. Held on the campus of McCormick Theological Seminary in Chicago, "Faith-Based Activism and Service in American Public Life" included a lecture from Rogers and a panel discussion with leaders from Chicago and Washington, D.C.

Currently a nonresident senior fellow in governance studies at The Brookings Institution, Rogers recently served as special assistant to the president and executive director of the White House Office of Faith-based and Neighborhood Partnerships during the Obama administration. Previously, Rogers served as chair of the inaugural Advisory Council on Faith-Based and Neighborhood Partnerships. Prior to that, Rogers was director of the Center for Religion and Public Affairs at Wake Forest University Divinity School. She has also served as executive director of the Pew Forum on Religion and Public Life and general counsel of the Baptist Joint Committee.

Rogers' address focused on how the United States' laws and traditions ensure religion's independence from government, and she offered a few examples of how religious communities are using their independence today to serve as the conscience of the state.

She reviewed the three basic ways the Constitution separates the state from religion: prohibiting religious tests for public office in Article VI, barring the government from establishing religion — any religion — in the First Amendment's Establishment Clause, and protecting the free exercise of faith in the First Amendment's Free Exercise Clause.

"The Constitution's protections are **essential** for creating a context where religious communities are meaningfully independent from the state," she said. But, those protections are not sufficient by themselves to create that independence.

"[A]ll the freedom and protections that are offered by our Constitution can't ensure a religious community's independence if it gets in its own way," she said,



All photos by Tricia Konin

Melissa Rogers shares from her experiences during a panel discussion on faith-based activism and service in American public life. Moderated by Dr. Reggie Williams, the panel featured the Rev. Dr. Otis Moss III, the Rev. Dr. Stephanie Crumpton and Amanda Tyler.





Rogers and the panelists are pictured with David Crawford (second from right), interim president of McCormick Theological Seminary.

offering examples of harm done when a religious group serves as a “lap dog” of a political party, faction or tribe.

Tribalism is as simple as a leader or group faulting someone outside the faction for certain behavior, yet giving someone inside their favored faction a pass for the exact same behavior.

“When Christians engage in these and other forms of tribalism, we do incalculable damage to our witness,” she said. “This is a danger that really all religious groups, I believe, have to be constantly aware of.”

Rogers offered examples of her time in the White House when religious communities of all stripes sometimes held their feet to the fire. “[I]t always made us think,” she said, “and sometimes it made us change our minds.”

“It also reminded us that our government is limited, that there are checks and balances — both formal and informal — for a reason, and that all of these things work together to make our country truly great,” she recounted.

“In short, religious communities must

apply their standards consistently across administrations and across tribal or partisan lines. When religious communities act in this way, they are independent. And when they are independent, they are credible. And when they are credible, they have influence, including on our nation’s public life.”

That influence can be used, she said, to promote justice and freedom for all; to extend mercy to those who suffer; to stand in solidarity with the marginalized; and to bear one another’s burdens and bind up wounds.

She also elaborated on how the Establishment Clause protects the integrity of majority faiths. A government establishment of religion not only harms non-religious people and minority faiths, she noted, but it also harms the faith that the state backs, as it picks and chooses among elements of the faith it finds helpful to the government’s agenda.

“This warps faith,” Rogers said. “It makes religion a creature of the state, and thus robs it of its prophetic power.”

Following her lecture, Rogers par-

ticipated in a panel discussion to explore the topic further. Moderated by Dr. Reggie Williams, professor of Christian ethics at McCormick, the conversation included the Rev. Dr. Otis Moss III, pastor of Chicago’s Trinity United Church of Christ; the Rev. Dr. Stephanie M. Crumpton, professor of practical theology at McCormick; and BJC Executive Director Amanda Tyler.

Panelists discussed activism and current issues facing people of faith. They also explored the importance of bringing a specific faith perspective when advocating for a cause and adding something unique to the conversation.

Crumpton said that distinction is bringing “a presence to the table that speaks up for life in the name of God for all and all it takes to sustain life.” Faith-based activists recognize and call for humanity, she said, because we believe God created all — not just those who can bring a certain benefit to the table or fit a certain mold.

Faith-based activism is not only direct action and a prophetic voice, but



Rev. Dr. Otis Moss III



Rev. Dr. Stephanie Crumpton



BJC Executive Director Amanda Tyler

it has a very distinct flavor, said Moss, in the words we use and the issues we bring to the forefront. He said it is a way of expressing moral agency in civic discourse, “forcing society to face the blues that people in power created” and demanding that they join in finding solutions.

“It’s really putting your feet and your mouth where your heart is,” said Tyler, who discussed the importance of speaking to amplify the voices of those who don’t always have a seat at the table.

Rogers pointed out the impact of the faith community’s advocacy for others during her time in the White House. “I have been in meetings seeing government officials recognize that a person is there not for anything they’re going to get out of it, but because they feel called to speak to protect those who are vulnerable,” she shared. “And it pierces the noise, and it matters. It makes a huge difference.”

The panelists also talked about the importance of recognizing dissent and making sure we do not demonize the

other side. “The commitment is to recognizing humanity and calling for humanity,” Crumpton said. “We can be in a moment of deep discord and disagreement, but our commitment, however, is to remind each other that we do not have to devolve into dehumanization.”

Moss used a sports analogy to point out the difference in engagement. Playing a sport is markedly different from watching it on television, he said. In a spectator model, when someone isn’t playing, one can take on a fundamental hate for the “other” because he or she is not invested in the game. “All they do is sit in the stands and cheer for the hurt and harm of the person they’ve decided to hate. We see that today, rhetorically and politically,” he said.

The results of activism are not as measurable as one might think, according to the panel. Rogers said the faith-based activist’s job is not to necessarily win at any cost, but to bear witness all the time.

Tyler reminded the crowd that activism is not just limited to issues on the

national stage. Some people disengage when they feel issues are so big that they cannot make an impact. She encouraged everyone to think about activism outside of Washington, including at the local level. “There is activism to be done in our communities in a way that you can bear witness and maybe see more of the positive impact you can have on the local level.”

“When the laws of the land are not in alignment of what we understand to be human rights, then we act to address it by faith,” Williams said in summing up the conversation.

The BJC Symposium on Faith-Based Activism and Service in American Public Life is the third in a series of events sponsored by the Baptist Joint Committee to increase its demographic reach, bringing religious liberty discussions and the BJC to diverse communities.

For more, visit our website page at BJCOnline.org/McCormickSymposium.

By Cherilyn Crowe

Apply to be a 2018 BJC Fellow

The Baptist Joint Committee is now accepting applications for the 2018 BJC Fellows Program, which offers young professionals the opportunity to deepen their legal, historical and theological understanding of religious liberty.

Those chosen for the program will attend the BJC Fellows Seminar, an educational program in Colonial Williamsburg, Virginia, from July 25-29. During the seminar, Fellows will engage in conversations about religious freedom advocacy and activism, and they will learn from preeminent scholars and BJC staff members. Lodging, meals and most travel expenses are covered. No

religious requirement is necessary to apply; all individuals with six years or less experience in their current profession are eligible.

BJC Fellows must commit to being advocates for religious liberty in their houses of worship and communities upon completion of the seminar. They will have projects to complete during the seminar as well as individual projects afterward.

Visit BJCOnline.org/Fellows for more information and application materials. The deadline to apply for the 2018 class is February 16. To learn more about the experience, visit our website or search #BJCFellows on social media.



From left to right: The 2015 BJC Fellows enjoy a bike ride; A Colonial Williamsburg interpreter portraying Thomas Jefferson speaks to the 2016 BJC Fellows; the 2017 BJC Fellows take a guided tour of Colonial Williamsburg, focusing on religious history.

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Open to all high school juniors and seniors

**Grand Prize: \$2,000 & a trip for two to Washington, D.C.
Second Prize: \$1,000 · Third Prize: \$500**

– Topic –

Public schools and the accommodation of religious holidays and absences.

For the full writing prompt, visit:

BJCOnline.org/contest



Top stories of 2017

By Don Byrd
Author of the BJC's
Blog from the Capital

This year, we saw a blizzard of news items that impact religious liberty and the separation of church and state. Some headlines, like those involving legislative prayer disputes, religious monuments on government property, or government funding of religion, are familiar topics to those who closely follow this subject. Other issues, such as immigration and the laws governing the tax exemption of churches, seem to have emerged directly from the January inauguration of President Donald J. Trump.

There has been unusual upheaval — politically, administratively and culturally — in the nation's capital. Some of these developments should be alarming to anyone who supports religious liberty and understands that the separation of church and state is essential in maintaining that ideal.

The list of 2017's top stories includes areas of concern that came to the forefront this year, as well as news items affecting issues we watch every year. Any one of the first five could easily become the most impactful development on the list in a year's time. At the top of my review, however, is a case decided by the U.S. Supreme Court that could significantly disrupt traditional means of keeping the institutions of church and state separate.

1. *Trinity Lutheran Church of Columbia, Inc. v. Comer*

In June, the U.S. Supreme Court ruled that the Constitution does not allow the state of Missouri to exclude houses of worship from a grant program designed to refurbish playgrounds. Missouri denied the application of Trinity Lutheran Church because of a long-standing provision in the state's constitution barring taxpayer funds from being used to support churches. The Court sided with the church's argument that the denial amounts to religious discrimination forbidden by the First Amendment. While the ruling is arguably limited to the facts of this particular case, it will likely have a significant impact on state policies regarding taxpayer funding of houses of worship.

The *Trinity Lutheran Church* ruling is troubling for a couple of reasons. First, it ignored church-state precedent disallowing direct monetary grants from taxpayers to houses of

worship. As the Baptist Joint Committee argued in a brief filed with the Supreme Court, preventing taxpayer funding from subsidizing churches is a key religious liberty protection. That principle has "ensured that churches would not be funded through the coercive power of the state, but through the voluntary contributions of adherents, thus providing a restraint on government and a measure of religious liberty to fund or refuse to fund religious institutions."

Second, the ruling calls into question the ability of states to enforce their own religious liberty protections barring taxpayer aid to religion, many of which date back to the 18th century. Thirty-eight other state constitutions contain no-aid provisions similar to Missouri's, reflecting the conventional view that houses of worship hold a distinct place in our tradition of religious liberty. That special treatment both insulates them from government intrusion and prohibits taxpayer support. Discarding that traditional boundary, the Court held that enforcing the no-aid provision in this case amounts to unlawful discrimination. The U.S. Constitution, the Court ruled, requires Missouri to extend its playground-funding grants to churches, regardless of well-established state law that forbids it.

The Court's opinion countered the state's concerns by focusing on the fact that the funds requested by the church would only be used for improving playground safety. That emphasis suggested the decision may be limited to funding earmarked for public safety and for facilities like playgrounds that the Court seemed to view as ancillary to the religious activities of the church. As the BJC's Holly Hollman wrote about the ruling, "[w]hile it is the first time the Court has upheld a direct government grant to a church, the Court maintains the basic constitutional principle that forbids government advancement of religion."

It is too early to evaluate the full reach and impact of *Trinity Lutheran Church*, but — without question — it marks a substantial change in the way we have traditionally understood state and federal protections against government funding of religion. Already, claims for state funding of religion have cited the deci-



sion, including a challenge to FEMA's policy of excluding houses of worship from grants to rebuild church buildings in the wake of Hurricane Harvey in Texas.

A close reading of the ruling signals the possibility that protections against taxpayer funding of religion may remain largely in place. Those protections, however, will have to be defended vigorously against the legal challenges that are sure to follow this troubling decision.

2. President Trump's Travel Ban Raises Religious Discrimination Concerns

In January, just days after he took office, President Trump issued an Executive Order halting entry to the United States from seven Muslim-majority countries. The action also suspended the U.S. refugee program pending review, and it directed the State Department to prioritize refugee applications from refugees who are suffering religious-based persecution, but only if "the individual is a minority religion in the individual's country of nationality." Immediately after the Order was issued, BJC Executive Director Amanda Tyler released a statement rightly criticizing the move as a "back-door bar on Muslim refugees."

The policy seemed to echo President Trump's outrageous campaign proposal that the U.S. should halt all Muslims from entering the country, an idea that would certainly violate constitutional protections barring the federal government from engaging in religious discrimination. The Executive Order was halted quickly by numerous federal judges across the country as a likely violation of due process and the Establishment Clause. Courts ruling on church-state grounds found that the Order's true purpose was to disfavor Muslims. The administration released a revised Order in March which was also challenged in court, and the U.S. Supreme Court agreed to hear two cases based on the revised Order. The BJC urged the Court to reject the policy as unconstitutional because it "selectively burdens Muslim-majority countries while exempting comparable Christian-majority countries."

Before scheduled arguments, a new White House proclamation in September created entirely different travel restrictions, including some involving non-Muslim-majority countries. That change, coupled with the expiration of the Executive Orders, prompted the Supreme Court to cancel the hearing and instruct the lower courts to dismiss the cases. Lawsuits challenging the newest iteration of President Trump's travel ban, however, continue to work their way through the federal court system.

This story, from campaign pledge to awkwardly implemented immigration policy, has been an especially ugly chapter in America's commitment to religious liberty for all. That commitment is enriched through our proud tradition of religious pluralism. Any government policy that would scapegoat religion, relegate any faith to second-class status or use religion as a proxy for national security concerns, runs counter to the aims of the First Amendment and gives official voice to expressions of religious bigotry that deserve clear condemnation from all people of faith.

3. Johnson Amendment Under Fire

At press time, a key protection for houses of worship is on the

brink of being dismantled in Congress (see page 2). The Johnson Amendment insulates churches and other tax-exempt organizations from politicization by prohibiting them from engaging in electoral politics. For more than 60 years, that provision in the law has helped maintain the autonomy of houses of worship and the integrity of our campaign finance system by keeping candidates from being able to exploit such organizations for political purpose. It also helps congregations avoid unnecessary division along political lines.

But perhaps not for much longer. The U.S. House of Representatives passed tax legislation with language severely limiting the law's effectiveness.

The BJC has fought strongly against such a proposal, joining with other religious liberty advocates in recognition of the fact that opening our sanctuary doors to political campaigns will harm our congregations and offer no religious liberty benefit. The BJC was among the more than 100 religious organizations that signed a letter urging Congress to leave the Johnson Amendment intact, while more than 4,300 individual faith leaders from all 50 states expressed their opposition to changing the law through a letter available at Faith-Voices.org. If the Johnson Amendment is undone, it could have a profound impact on the relationship between our politics and our worship.

4. Supreme Court Hears Controversial Nondiscrimination Case

In June, the U.S. Supreme Court announced it would take up *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, a closely watched case involving a bakery owner's refusal to provide a cake for a same-sex couple's wedding reception. Jack Phillips claims the enforcement of a Colorado law prohibiting discrimination on the basis of sexual orientation violates his religious liberty rights and his First Amendment right to freedom of expression as a cake designer.

The BJC filed a brief urging the Court to reject Phillips' request for what would be a virtually limitless religious exemption from nondiscrimination laws in a commercial context. "The rule that the baker and his place of business wish to establish," the brief warns, "would subject any member of the public to the possibility that they might be denied service, at any time, without warning." (See Holly Hollman's column on page 5.)

Unfortunately, the rhetoric surrounding cases like this has become heated and polarizing. The dispute is too often mischaracterized as pitting the religious community against the LGBT community, or religious liberty against nondiscrimination. Advocates on both sides too often underestimate the complexity of the issues involved and fail to acknowledge the significance of the beliefs and interests at stake for all.

For its part, the Supreme Court may decide the case solely on the basis of the free speech issues, and leave unaddressed the religious exemption questions raised. As of press time, oral arguments had not yet been heard.

5. Increase in Bigotry and Violence Targeting Religion

How do I rank the significance of a resurgence of hate? It's not just one story, but more of a creeping disturbance that has revealed



itself in multiple headlines. Reviewing the year's news, I cannot forget the images of torch-bearing marchers chanting anti-Semitic slogans in Charlottesville, Virginia, or the story of a congregation in Texas gunned down while gathered for worship, or the recent release of an FBI report showing hate crimes targeting American Muslims have skyrocketed. If religious freedom means anything, it must mean the right to worship according to one's conscience, free from fear.

We must remain attentive to these stories and resolve to stand with the oppressed and victimized against religious bigotry in all its forms, and stand against acts of violence or intimidation that would leave adherents of any faith more fearful to engage in worship.

Laws and other public policies are important in protecting religious liberty and the separation of church and state, but combating hate rhetoric and violence targeting religious communities is just as necessary. The BJC continues to promote interfaith dialogue and understanding as an essential step in overcoming the harmful religious and cultural divisions that too often keep us apart.

6. Neil Gorsuch Appointed to U.S. Supreme Court

In April, Justice Neil Gorsuch was confirmed to the Supreme Court, filling a vacancy left for more than a year following the death of Justice Antonin Scalia. Asked about his religious liberty views during his confirmation hearing, Gorsuch acknowledged the difficulty of church-state cases. A review of his record as a judge for the 10th U.S. Circuit Court of Appeals revealed a mixed record on religious liberty issues, according to the BJC. At times he gave careful consideration to statutory elements and religious claims, but his total deference to claims of burden in the *Hobby Lobby* case and his "lack of concern about promotion of religion" were troublesome. In his brief tenure on the High Court, Gorsuch jumped immediately into a church-state case, voting with the majority in the *Trinity Lutheran Church* case.

7. Legislative Prayer Cases Likely Headed Back to Supreme Court

It has been a mere three years since the U.S. Supreme Court ruled in a case involving a local government's policy for opening meetings with government-sponsored prayer. (2014's *Town of Greece v. Galloway*). But there is every reason to believe the justices could take up another case (or two) now in front of them, thanks to a pair of conflicting rulings this year in federal appeals courts.

In July, the full 4th U.S. Circuit Court of Appeals ruled unconstitutional the Rowan County (North Carolina) Commission's practice of opening meetings with prayer delivered by the commissioners themselves on a rotating basis. The court found that "legislator-led prayer ... heightens the constitutional risk," and that the facts in this case landed outside those approved by the Supreme Court in *Town of Greece*. In September, the entire 6th U.S. Circuit Court of Appeals reached the opposite conclusion in reviewing the Jackson County (Michigan) Commission's similar practice, rejecting the argument that the prayer practice violates the Establishment Clause.

The Rowan County case has been appealed to the U.S. Su-

preme Court, which has never ruled squarely on the issue of legislator-led prayer.

8. Bladensburg Cross Ruled Unconstitutional

In October, the 4th U.S. Circuit Court of Appeals ruled that an enormous memorial cross on publicly owned land in Bladensburg, Maryland, is unconstitutional. The monument was erected in 1925, intended as a memorial to area service members who died during World War I. The appeals court rejected the argument of both the Maryland Park and Planning Commission and the lower court that the memorial is merely a generic symbol of remembrance, rather than a distinctly religious marker. "The Latin cross is the core symbol of Christianity," the court ruled. "[I]t only holds value as a symbol of death and resurrection because of its affiliation with the crucifixion of Jesus Christ."

Supporters of the memorial cross vow to appeal the ruling, as are proponents of a cross in Pensacola, Florida (see page 4). These cases, like those involving Ten Commandments monuments, continue to create division in communities across the country. State and local governments would do well to refrain from promoting religious symbols on land that is owned by, and meant to serve, all constituents of any faith and no faith. Thankfully, in the Bladensburg cross case, the appeals court rejected the troubling argument that crosses are acceptable government symbols because they are not religious. As the court indicated, nothing could be further from the truth.

9. Senators Cross Line in Scrutinizing Nominees' Religion

In confirmation hearings for various Trump appointees, senators came under pressure this year for scrutinizing religious views and religious fervor. Sen. Bernie Sanders, I-Vermont, questioned and criticized an Office of Management and Budget Deputy Director nominee for his view that accepting Christ is the only path to salvation. That "line of questioning," BJC Executive Director Amanda Tyler responded, "imposed a religious test, which is forbidden by Article VI of the Constitution." Religious questions also were part of the conversation for other nominees. The Constitution anticipates this criticism with a stark rule that senators should remember: there is no religious test for office.

10. RFRA Argument Rejected in Keystone Pipeline Protest

The Standing Rock Sioux Tribe's closely watched protest of the construction of the Keystone XL Pipeline earlier this year included a claim in federal court under the Religious Freedom Restoration Act (RFRA). They requested an injunction halting the project on the grounds that it would desecrate waters under their land and substantially burden their ability to exercise their religious beliefs. A federal court denied that request and held that while the management and use of government land may have an "incidental impact on religious exercise," it does not constitute a substantial burden in this case, as RFRA requires.

Many of these stories are ongoing. Stay tuned to the BJC Blog at BJCOnline.org/blog for the latest on these issues and the BJC's continued work to defend religious liberty for all people.

George W. Truett: A true Baptist icon for religious liberty, stewardship

By Colin Harris

Baptist icon George W. Truett was the focus of a recent high school assembly in Hayesville, North Carolina, commemorating the 150th anniversary of the Clay County native's birth.

An invitation to participate in the event sent me to Keith Durso's excellent biography of the Baptist icon, titled *Thy Will Be Done*.

Recent efforts by state legislatures to propose and enact "religious liberty" bills also prompted a look back at what is regarded by many as Truett's landmark address on the topic in May 1920.

Southern Baptists were meeting in Washington, D.C., and the Dallas pastor was asked to offer an extra-agenda address from the Capitol steps.

For more than two hours, a crowd of 15,000 stood and listened to a historical and philosophical review of the principle of religious liberty and its essential place in the nation's DNA. It was also a celebration of the Baptist contribution to that principle.

The context in 1920 included the emerging fundamentalist response to "modernist" developments in the sciences (Darwin) and the consequent circling of the wagons in a kind of tribal defense against a "war on religious beliefs." This helped shape the focus of attention to religious liberty.

The context also included the slow start to the Baptist 75 Million Campaign, of which Truett was a champion. This added an emphasis on stewardship to his thinking at the time.

What is striking about these two emphases — religious liberty and stewardship — is not that he was in favor of them. (Who wouldn't be?) Rather, each one had a depth of focus that gave it special relevance at the time, and perhaps for our more recent time, nearly 100 years later.

Religious freedom for Truett was not limited to its obvious sense of one's right to one's own way of believing and living.

There are obligations imposed on a free people, he said. Like the religious teachings he lived by and preached, he believed that one cannot be free and flaunt that freedom without concern for the freedom of one's companions in life. Freedom must be balanced with a sense of responsibility for the well-being of others.

He was deeply committed to his own beliefs, and he did not hesitate to point out differences he believed were



important between him and other ways of believing. However, he was as committed to the religious liberty of people of other faiths and of people of no faith profession as he was to that of his own tradition.

No matter how small a minority or how different another's beliefs might be, Truett said, "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor and for his Jewish neighbor and for everyone else."

His commitments to his own faith were equaled only by his commitment to community within the larger human family.

In a sweeping gesture to the importance of international relations, he said this in his 1920 address: "God does not raise up a nation to go strutting selfishly, forgetful of the high interests of humanity. National selfishness leads to destruction as truly as does individual selfishness. Nations can no more live to themselves than can individuals. Humanity is bound up together in the big bundle of life. The world is now one big neighborhood. There are no longer any hermit nations. National isolation is no longer possible in the earth."

Another feature of his perspective is the breadth of his understanding of stewardship.

Often understood as generosity in support of church programs, Truett's understanding certainly included that; he evidently was a master at keeping the contributions coming in to support his large church.

But he took with him from the farm and family of his childhood the roots of a belief that all of life is a gift and that human responsibility is to be a steward of that gift — not only material resources, but also the grace of human relationships and the keen possibilities of the mind.

Stewardship for him was not a matter just of money, but of the whole person, especially the mind. This is why education was so important to him.

A deeper understanding of freedom and stewardship — a timely task for the 1920s, and a timely task for us as well.

Colin Harris is professor emeritus of religious studies at Mercer University and a member of Smoke Rise Baptist Church in Stone Mountain, Georgia.

This article originally appeared on EthicsDaily.com and is reprinted here with permission.

Interfaith panel featuring BJC Fellows champions religious liberty as universal value

“The darkest memories produce rays of light,” Sofi Hersher, a staff member of the Religious Action Center of Reform Judaism, told an interfaith gathering in Round Rock, Texas.

In her darkest memory, Hersher is nine years old, watching her synagogue engulfed in flames. Now, from the perspective of 18 years, she realizes her hometown of Sacramento, California, “became a better place to live than it was before” two brothers torched Congregation B’nai Israel and two other synagogues.

Hersher and panelists from five other faiths conducted “a conversation on religious liberty,” sponsored by Peace of Christ Church, a Cooperative Baptist Fellowship congregation. The event was the latest installment in a series of interfaith discussions — two each in the fall and spring — the church convenes in the booming, diverse community north of Austin, noted Pastor Kyle Tubbs, a 2015 BJC Fellow.

“I remember people hated me. ... Why? Because we’re Jewish,” Hersher recalled. “I felt the rise of fear because of religious bigotry.”

Jews are the target of 56 percent of hate crimes in the United States, although they comprise just two percent of the population, noted Hersher, the first non-Christian BJC Fellow.

Ignorance, in the form of religious illiteracy,

fans the flames of religious violence, she insisted, adding, “People fear what they don’t understand and hate what they can’t conquer.”

“At its most basic, religious liberty is the freedom to believe anything you want,” Hersher explained. And the best, most practical way to protect religious liberty is “to get to know each other and protect each other’s rights.”

That happened in Sacramento after the synagogue arsons, she reported, describing beautiful childhood memories, when her community rallied to support Jews devastated by the synagogue fires. Those expressions of interfaith unity taught her an important life lesson: “We, too, can build a better world.”

After Hersher’s keynote address, she and other panelists discussed how religious liberty is a theme embedded in various faith traditions.

“There is room for religious liberty in Islam. Everyone can practice their own faith,” said Mohamed-Umer Esmail, imam of the Nueces Mosque in Austin. To illustrate, he described how the Prophet Mohamed allowed not only his followers, but also Jews and pagans to operate their own legal systems and courts in territory he controlled.

“Religious liberty is founded on the inviolability of each human conscience,” stressed

Uche Ande, a native of Nigeria and pastor of St. Margaret Catholic Church in Giddings, Texas.

Conversely, the concept of religious toleration “has caused more harm than good,” Ande added. Toleration implies religious practice is a privilege, which can be revoked or taken away, he explained, while religious liberty is a divine right.

Religious liberty is vital because of its link to respect, said David Zuniga, a Zen Buddhist priest in Austin. “It’s important to respect others” of all faiths and no faith, he said.

Similarly, government decisions to favor one religion over others are unwise, added Jagannath Vedula, a founding trustee of Austin Hindu Temple and Community Center.

“The Baptist tradition was founded on religious freedom,” said Aurelia Davila Pratt, pastor of spiritual formation at Peace of Christ Church and a 2017 BJC Fellow. She shared examples, including how Thomas Helwys, one of the two founders of the first Baptist church in the 17th century, confronted King James I of England, championing absolute religious freedom.

“This topic is one that makes me proud to be a Baptist,” Pratt added.

By Marv Knox, Fellowship Southwest



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The Baptist Joint Committee for Religious Liberty defends religious liberty for all people and protects the institutional separation of church and state in the historic Baptist tradition. Based in Washington, D.C., we work through education, litigation and legislation, often combining our efforts with a wide range of groups to provide education about and advocacy for religious liberty.

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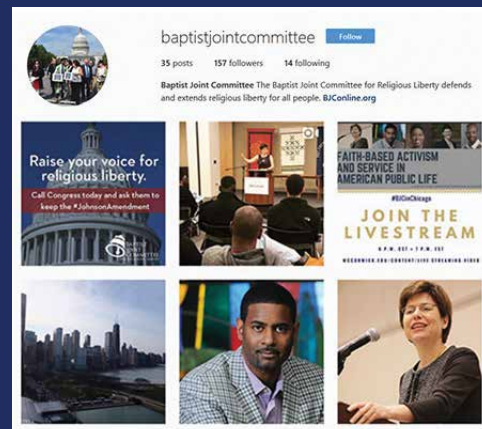
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Thank you for your support!
Thanks to all who supported the BJC Fellows Program on Giving Tuesday. Pictured are BJC Fellows Sofi Hersher, Kyle Tubbs and Aurelia Davila Pratt (see p. 15).