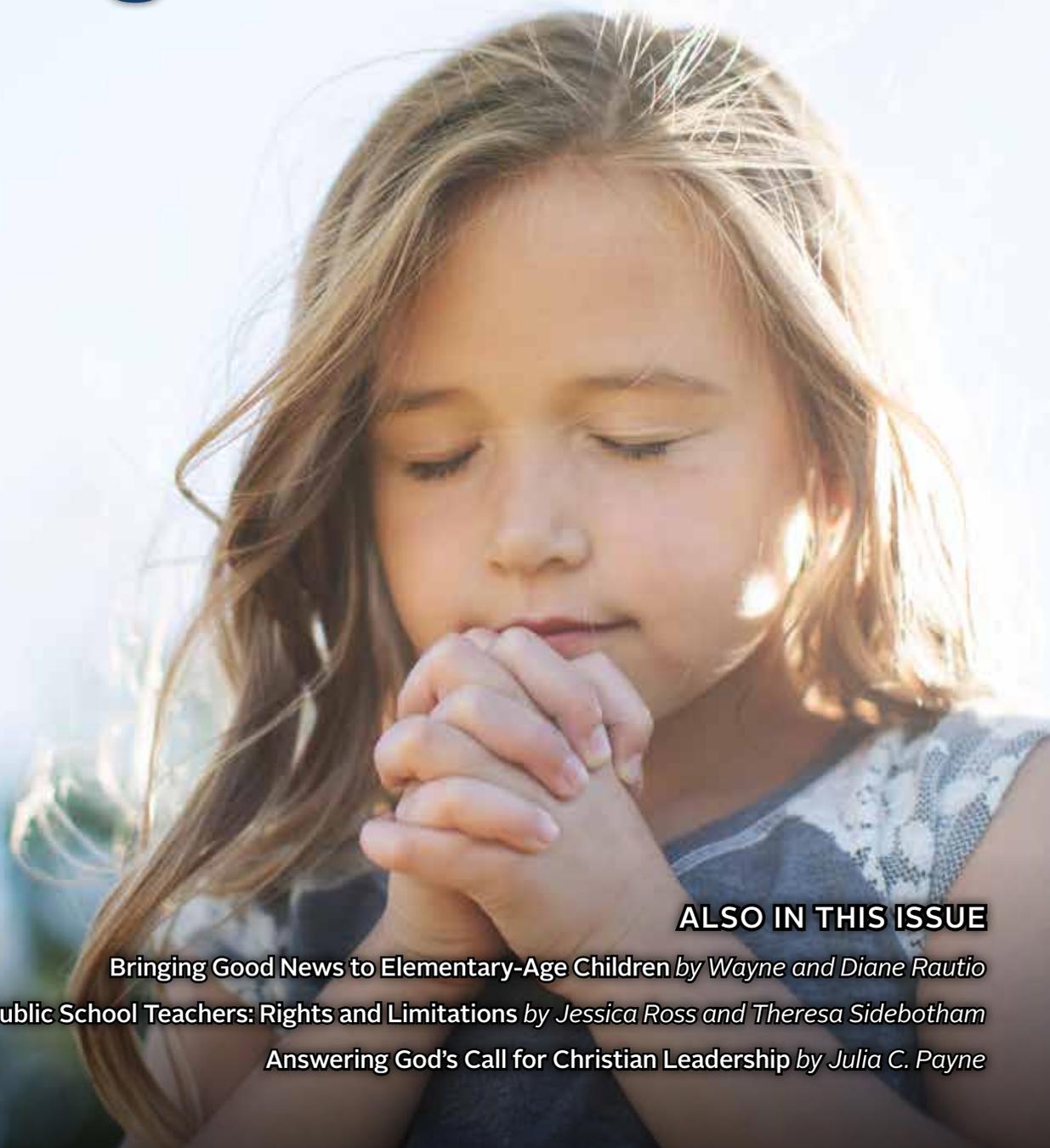


# THE CHRISTIAN LAWYER®

VOL. 14, NO. 2 | FALL 2018

A PUBLICATION OF CHRISTIAN LEGAL SOCIETY

## Public Schools and Religious Freedom



### ALSO IN THIS ISSUE

*Bringing Good News to Elementary-Age Children* by Wayne and Diane Rautio

*Religious Liberty for Public School Teachers: Rights and Limitations* by Jessica Ross and Theresa Sidebotham

*Answering God's Call for Christian Leadership* by Julia C. Payne



David Nammo,  
Executive Director  
and CEO

America ... 1984 ... Reagan was president; the Ethiopian famine was on everyone's mind; MTV was born; the Olympics were held in Los Angeles (and boycotted by the U.S.S.R.); and movies like *Ghostbusters*, *The Karate Kid*, and *Splash* were in cinema theaters. And, to give you another perspective, the incoming 1L class of today's law students won't be born for 12 more years.

CLS, in the early 80s, made a big impact while advocating for religious freedom. The result was protection in the public schools for religious students who simply wanted to meet to study Scripture and encourage one another in an increasingly hostile public school setting. CLS also helped protect those doing evangelistic work in the name of Jesus—Child Evangelism Fellowship, Fellowship of Christian Athletes, Young Life, and so many more—all of whom have been able to reach a generation of kids.

Back then, as a result of a few misguided lower court decisions, public schools were banning students' religious speech and ignoring their First Amendment rights. As a result, CLS took the lead to help draft, lobby, and build a coalition to pass the Equal Access Act—which essentially requires public secondary schools to allow student religious groups to meet for religious speech, prayer, and Bible study on the same basis as other student groups. Under the Act, if the school allows one noncurriculum club to meet in the school, it must give equal access to meeting space, the school newspaper, yearbook, and public address system, etc. to all clubs.

The Equal Access Act drew a line in the sand to require public school administrators to stop discriminating against religious student groups. The Act was passed to apply *Widmar v. Vincent*, 454 U.S. 263 (1981) to public schools. In *Widmar*, the U.S. Supreme Court found public universities that allowed student organizations

to use campus buildings for their meetings could not deny equal access to religious student groups. A few years later, the Court upheld the same principles in the landmark case, *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990) ruling that the Equal Access Act was constitutional.

CLS—a small group of Christian lawyers responding to a changing culture—helped keep the doors open for the sharing of the Gospel. In the 1990s, we fought for and helped lead a coalition to pass the Religious Freedom Restoration Act and then later did the same with the Religious Land Use and Institutionalized Persons Act. And now we are leading the fight to protect the rights of Christians who practice law by opposing ABA Model Rule 8.4(g).

The Lord needs a faithful remnant, and it is this remnant in the law—those Christians who see their calling on a daily basis, who make a difference not only in their practices, but also by coming together to be *the* Christian Legal Society—that has changed the course of this country, mentoring over a generation of law students and seeking justice for the poor and the needy.

Whether you are new to CLS or have been around since the early days, thank you for being a part—in membership, fellowship, prayers, and so many other ways. CLS has always urged its members to be faithful in walking through the “open doors” that currently exist to bring the Good News into the public schools. Each of the articles in this issue focuses on a specific “open door” including the Equal Access Act, released-time, and after-school Good News Clubs. A primary purpose of this magazine is to encourage CLS members to pray for and support these ministries in their local schools through their time, talent, finances, and prayer. The fields are ripe for the harvest.

## THE CHRISTIAN LAWYER®

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email [clshq@clsnet.org](mailto:clshq@clsnet.org).

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Design and Production: Courtney Herron  
Editorial Email: [clshq@clsnet.org](mailto:clshq@clsnet.org)  
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# Bringing Good News to Elementary-Age Children

BY WAYNE AND DIANE RAUTIO

In 1998, when we arrived at the regional office for Child Evangelism Fellowship of Northern Virginia, no Good News Clubs were meeting on a weekly basis in Northern Virginia public schools. Twenty years later, Good News Clubs meet weekly at over 50 Northern Virginia public schools. That only happened because of prayer, patience, wisdom, training, and legal help. What follows is a short version of the story, including some legal background, as well as information about how people who are called can become involved in this national effort to reach children with the Good News that God loves them.

## What Are Good News Clubs?

By way of background, we should explain that Child Evangelism Fellowship (“CEF”) is the largest evangelistic outreach to children in the world and is active in numerous countries, including the United States and Canada. Since 1937, CEF has been giving children the opportunity to learn about the Bible, pray, and fellowship through its Good News Clubs. In schools that have a Club meeting after school, children in grades K-6 can meet for an hour each week to hear a Bible story, sing songs, eat a snack, and play games that reinforce the Bible lesson.

No child may attend any Club meeting without a written permission slip signed by his or her parent or guardian. The Clubs are led by volunteer adults and teens who have been trained by CEF’s paid staff to share God’s Word systematically and clearly so that the children have the opportunity to become disciples of Jesus Christ. Through skillfully presented lessons, the children are encouraged to grow in grace and faith and to share the Good News with their family, friends, and acquaintances. CEF has 700 full-time workers and approximately 40,000 volunteers in the United States and Canada, many of whom help train volunteer teams to lead the Clubs.

## Preparation

“Northern Virginia” is shorthand for the extensive suburbs that surround Washington, D.C., on the Virginia side of the Potomac River. Wealthy zip codes populate Northern Virginia. Middle class suburbs are numerous, but so are economically disadvantaged communities, which are home to both long-time residents and very recent immigrants from every corner of the globe. The

ethnic diversity of Fairfax County has exploded in the past twenty years. In 2012, *half* of the 180,000 students in Fairfax County Public Schools spoke a foreign language at home, including Spanish, Korean, Vietnamese, Arabic, Mandarin Chinese, or any of *160 languages* found in the county.<sup>1</sup>

Our previous experience working as missionaries in other countries was tremendous training for working in the public schools of Northern Virginia. The Clubs are multicultural and reflect the ethnic diversity of their school populations. Working overseas, we had learned to be flexible, adaptable, and accepting of other cultures. We knew better than to try to “Americanize” children or their families but instead had learned to meet them where they were.

## Persistence

After having arrived in 1998, we pondered where to begin to start Clubs in the schools. Then one day the phone rang. And rang again. Our administrative assistant was surprised because she claimed “the phone had never rung before.” The callers were a Hispanic family with a child at a Fairfax County public elementary school. They had heard about Good News Clubs and wanted to help start a Club in their local school. They attended our training classes to learn how to run a Good News Club. Among the many things that we taught them were the legal “dos” and “don’ts” of meeting after school in the public schools, as well as the required best practices in child safety and protection.

Another family in the area contacted our office and ended up coming for several training sessions. The result was another Club in another public school with three or four students attending. Over the years that Club grew to having twenty students.

We worked with teams of volunteers in a few new schools each year, but progress was slow over the first decade. We had one school with a team of volunteers who were present each week, but no child showed up for that entire first year. Yet the team remained faithful, and the next year fifteen students regularly attended. In the past decade, the momentum for growth has increased, so that we now have Clubs meeting after school in over 50 public schools in Northern Virginia, reaching over 2,000



students each week. Some Clubs have as many as 115 children attending their after-school meetings.

That is partly due to the fact that the Clubs literally are good news for their schools. At about the seven-year mark, many school principals began to appreciate the contribution that Good News Clubs are making to the children whose parents chose for them to attend. The Clubs teach children moral character, including honesty, kindness, and helping others, which helps their social interactions. The Clubs also teach a strong work ethic that influences the children's study habits. As principals began to see that the Clubs contributed positively to the school environment, they began to be less resistant to the Clubs' presence.

## Legal Challenges

Good News Clubs have met after school for decades in different parts of the country. Unfortunately, in the 1990s, school administrators in some parts of the country, such as Oregon and New York, increasingly began to tell Good News Club volunteers that they could no longer meet because their meetings were religious. Other community groups – like the Cub Scouts and Brownies – could hold meetings after school, but not religious community groups.

In 2001, the United States Supreme Court heard one of these cases.<sup>2</sup> The Milford Central School District in upstate New York had

denied permission to a Good News Club to meet after school because its meetings included religious worship. The Club sued the school district for discriminating against its religious viewpoint – only to lose in the federal district court and the court of appeals.

But in the United States Supreme Court, the Club won 6-3. The Court held that the school district violated the Club's free speech rights by discriminating against its religious viewpoint because it allowed other community groups to meet after school with programs aimed at developing children's character, such as the Cub Scouts, and excluded the Club because its speech was religious. The Court also ruled that the Establishment Clause was not violated by allowing the group to meet after school hours. First, the Club was not given preferential treatment by school officials. Second, the Club required written parental permission before any child could attend. That meant that the person deciding whether a child would attend was the parent, not the child or a school official or the Club volunteer leaders.

But even after the Supreme Court's decision, some school districts placed obstacles in the Clubs' paths. While understanding that they had to allow the Clubs to meet, they refused to give the Clubs all of the same access that they provided other community groups that met after school in their facilities. In particular, several school districts, including those in the Maryland suburbs of Washington, D.C., refused to allow teachers to distribute the

parental permission slips to students so that they could take them home to their parents, even though the school districts were distributing informational flyers for dozens of other community groups to the students for their parents to see. Without those permission slips, many parents did not even know that a Club was meeting after school at their children's schools. Without those permission slips, a child could not attend the Club's activities.

The Fairfax County Public Schools initially refused to allow permission slips to be distributed. Attorneys with Christian Legal Society's Center for Law & Religious Freedom corresponded with the district to persuade them to treat the Good News Clubs fairly, eventually threatening a lawsuit. We sat through school board meeting after school board meeting, listening to frustrating arguments about whether our permission slips should be allowed, including the argument that having our permission slip (a single sheet of paper) in the backpack would make it too heavy and hurt the children's backs. But we remained quiet, praying for the right result and waiting for the right time to speak. Eventually, the school board voted, with only one dissent, to change its regulations to allow our permission slips to be distributed.

## How to Get Involved

A local committee of volunteers provides accountability and helps CEF staff develop their prayer and financial support. They intercede for the Clubs, the volunteers who lead them, the children who attend, as well as their families, and the schools where the Clubs meet.

If someone truly believes he or she is called to be involved on a volunteer team for a Good News Club in a local school, realize first that it is a significant commitment that is not easy and requires willingness to be trained and to follow CEF's model for its Clubs. If you have prayed about it and feel called to participate, please go online to the CEF website and find the nearest local chapter at <http://chapters.cefonline.com/>. You will find the contact information for the local director for your geographic area. Call or email them to see what they need in terms of volunteers to lead meetings, to raise financial support, and to provide prayer support. It can be a very rewarding investment of your time and talents.



Wayne Rautio has been the director of Child Evangelism Fellowship (CEF) of Northern Virginia since 1999. He and his wife Diane have been working for CEF since 1972. They spent two tours overseas with CEF in Finland and Germany and served on the state board of New Hampshire.

## END NOTES

- 1 T. Rees Shapiro, *Number of Fairfax Students Who Speak a Foreign Language at Home to Surpass 50 Percent*, The Washington Post, Sept. 8, 2012, [https://www.washingtonpost.com/local/education/number-of-fairfax-students-who-speak-a-foreign-language-at-home-to-surpass-50-percent/2012/09/08/de47a92a-f84d-11e1-8253-3f495ae70650\\_story.html?utm\\_term=.0d421d3ada8f](https://www.washingtonpost.com/local/education/number-of-fairfax-students-who-speak-a-foreign-language-at-home-to-surpass-50-percent/2012/09/08/de47a92a-f84d-11e1-8253-3f495ae70650_story.html?utm_term=.0d421d3ada8f)
- 2 *Good News Club v. Central Milford Sch.*, 533 U.S. 98 (2001).

# 5 Ways You Can Support CLS Today

**Pray** Please continue to pray for all of CLS' ministries as we continue to impact our nation for Christ. Our work is possible because of God's provision and your faithful support.

**Give** CLS' work is supported entirely by faithful individuals and foundations who share our mission. Please consider supporting CLS financially. Our ability to reach more people for Christ is heavily dependent on the financial support we receive.

**Volunteer** If you are interested in volunteering with one of CLS' ministries, email us at [clshq@clsnet.org](mailto:clshq@clsnet.org) to learn more.

**Follow** Follow Christian Legal Society on Facebook and Twitter and share our regular updates with your friends and family.

**Share** Please tell your friends, family, and colleagues about Christian Legal Society. The best advertising is word of mouth, and we are always thankful for your positive words in support of our ministries.

# Religious Freedom in Schools

BY KIM COLBY

The issue of religion in the public schools is constantly in the courts and the news, often generating controversy. On many specific issues involving religion in the public schools, however, there has emerged a fairly high degree of predictability as to how the courts are likely to rule. Regardless of whether one agrees with the courts' rulings, the fact remains that the law has become reasonably stable regarding several issues touching on religious expression in the public schools.

This article highlights four resources that provide information for students, parents, teachers, and community members who want to understand where the law has (and has not) become reasonably stable regarding certain issues involving religion in the public schools. These resources can serve to educate school administrators when an issue arises in a particular school district about religion. The following documents are great resources for anyone trying to understand the issues surrounding religion in the public schools.

**1. CLS Guide to the Equal Access Act:** The Equal Access Act of 1984<sup>1</sup> has served as a foundation upon which the courts and presidential administrations have often built their analysis of issues involving religion in the public schools. Christian Legal Society was instrumental in drafting the Act and leading the coalition that urged its passage. CLS then played a critical role in defending its constitutionality in the courts, securing a broad interpretation of its provisions.

The Equal Access Act requires public secondary schools to permit students to meet for religious speech, including prayer, Bible study, and worship, on the same basis as other noncurriculum-related student groups. The U.S. Supreme Court upheld the constitutionality of the Act when it ruled that student religious meetings on public secondary school campuses do not violate the Establishment Clause.<sup>2</sup>

The Equal Access Act is triggered if the school allows at least one noncurriculum-related student group to meet. (Most schools have at least one noncurriculum-related student group meeting.) Students, rather than teachers, should initiate student religious meetings and obtain permission to meet from school administrators. The Equal Access Act speaks in terms of teachers being present at student religious meetings in a nonparticipatory capacity. Students may organize prayer groups, religious clubs, and “See

You at the Pole” gatherings before school to the same extent that students are permitted to organize other noncurricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other noncurricular groups. CLS' *Guide to the Equal Access Act* provides more information about this important right for students in the public secondary schools.<sup>3</sup>

The Equal Access Act applies only to public secondary schools, but the Supreme Court in 2001 extended the equal access principle to public elementary schools.<sup>4</sup> Community religious groups may meet with school children immediately after school hours on the same basis as other community groups (such as the Scouts) are allowed to meet. The children must have signed parental permission slips to attend the after-school meetings.<sup>5</sup>

**2. Clinton Administration Guidance:** The Clinton Administration issued guidance regarding *Religious Expression in the Public Schools* in 1995, and subsequently revised and reissued it in 1997 and 1998.<sup>6</sup> The guidance letter by then-Secretary of Education Richard Riley to all of the Nation's school superintendents was well-received and has helped protect students' religious expression in public schools for over two decades. The Clinton Guidelines tend to have a persuasive effect on those school administrators who appreciate a liberal administration's reassurance that many forms of religious conduct and religious expression remain constitutionally protected in the public schools.

The Clinton guidance letter was based on a document, *Religion in the Public Schools – A Joint Statement of Current Law*,<sup>7</sup> crafted by Christian Legal Society, American Jewish Congress, and several other groups from across the political and religious spectrum. Eventually thirty-five organizations endorsed the document. Its purpose was not to state what the groups thought the law *should* be regarding religion in the public schools. Instead, its purpose was to set out the issues on which the groups could agree that the courts had generally reached a consensus, regardless of whether the groups agreed with the particular consensus position. The Clinton Administration thought that a document on which so many groups agreed should be the basis for a more widely circulated guidance letter from the Department of Education. The intention was to help school districts respect



their students' religious rights without forcing the students to go to court to vindicate rights that were settled law.

**3. Bush Administration Guidance:** The Bush Administration also promulgated guidance that focused on religious expression in the public schools, entitled *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*.<sup>8</sup> The Bush Administration's guidance was issued on February 28, 2003, and remains in effect. Section 9524 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001,<sup>9</sup> requires a school district to certify annually to the state, in order to receive federal funding, that it has "no policy" that "prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools." The Bush Guidance delineates what expression or conduct constitutes "constitutionally protected prayer in public schools."

This guidance is important because it provides the measure by which the Department of Education will determine whether a school district is in compliance regarding constitutionally protected prayer so that it may receive federal funding. The Department of Education could withhold federal funding if the district is not in compliance with the guidance.

The guidance documents from both the Clinton and Bush Administrations are remarkably similar, which augments their persuasive value. Together they provide powerful tools for persuading public school officials to respect religious expression in the public schools.

The two documents agree that while the government may not establish religion in the public schools, it must respect privately initiated religious expression and activities.<sup>10</sup> The guidance documents also agree that public school officials must "be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression."<sup>11</sup>

While it is important to read both documents in their entirety, some of their basic conclusions include the following:

- Students may pray alone or in groups;
- Students may read their Bibles;
- Students may talk to other students about their religious beliefs;
- Students may distribute religious literature to other students on the same basis as they could distribute nonreligious literature;
- Students may wear clothing with religious messages if they may wear clothing with nonreligious messages;
- Students may participate in "See You at the Pole" events;
- Students may have religious meetings at the same time that other students are allowed to gather for non-religious meetings;
- School officials "may neither discourage nor encourage participation" by students in religious events

and “should ensure that no student is in any way coerced to participate”;

- School officials may not mandate or organize prayer at graduation;
- Schools may allow community groups to sponsor religious baccalaureate services but may not mandate or organize such services;
- Schools may teach about religion, including the Bible, as part of classes in history, comparative religion, the Bible-as-literature, music, art, and literature; but they may not teach religion in a devotional manner or in an attempt to inculcate religion;<sup>12</sup>
- Schools may teach about religious holidays and observe the secular aspects of a holiday but may not observe holidays as religious events;
- Students may express religious beliefs in their homework, artwork, and other assignments;
- Released-time programs are permissible if students are released for religious instruction off the school campus;<sup>13</sup>
- Schools must comply with the Equal Access Act by allowing students to meet for religious speech, including prayer, Bible reading, and worship, on campus during noninstructional time if the school allows one or more noncurriculum-related groups to meet;
- Schools must comply with the Equal Access Act by giving religious student groups the same access to the school public address system, the school newspaper, and the school bulletin boards to announce their meetings as other noncurriculum-related student groups are given; and
- Schools must comply with the Equal Access Act by allowing religious student groups to meet during lunch periods or other noninstructional time during the school day, as well as before or after the school day, if other noncurriculum-related student groups are allowed to meet then.

#### **4. The Bible and Public Schools: A First Amendment Guide:**

Christian Legal Society assisted in drafting *The Bible and Public Schools: A First Amendment Guide*, which is an invaluable booklet<sup>14</sup> that touches on many topics regarding the constitutional-permissible use of the Bible and other religious materials in

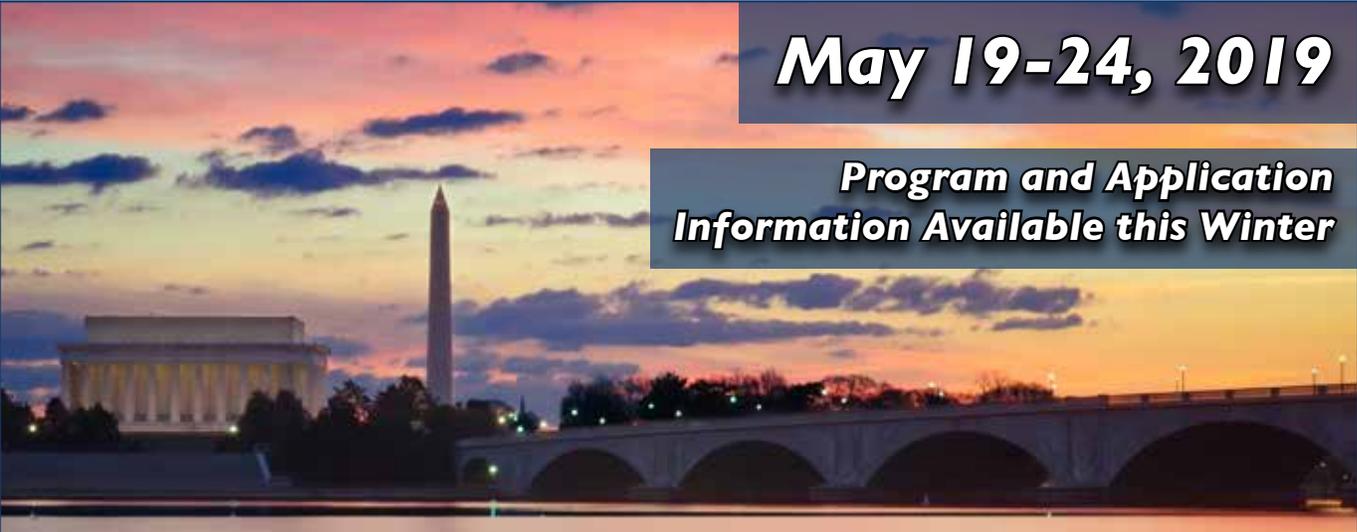
the public school classroom. It was published in 1999 by First Amendment Center and the Bible Literacy Project.



Kim Colby is Director of CLS' Center for Law & Religious Freedom. She is a graduate of Harvard Law School. Kim has represented religious groups in numerous appellate cases, including two cases heard by the United States Supreme Court. She has also filed dozens of amicus briefs in both federal and state courts. In 1984, Kim was heavily involved in congressional passage of the Equal Access Act.

#### **END NOTES**

- <sup>1</sup> 20 U.S.C. §§ 4071-4074.
- <sup>2</sup> *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990).
- <sup>3</sup> CLS' *Guide to the Equal Access Act* can be found at <https://www.clsreligiousfreedom.org/teacherresources>.
- <sup>4</sup> *Good News Club v. Milford Central Sch.*, 533 U.S. 98 (2001).
- <sup>5</sup> See *Bringing Good News to Elementary-Age Children*, page 3 of this magazine, for more information about after-school meetings for elementary school-aged children.
- <sup>6</sup> United States Secretary of Education Richard W. Riley Guidance Letter to American Educators, *Religious Expression in Public Schools: A Statement of Principles*, May 30, 1998 (previous versions issued in 1995 and 1997), at <https://www.clsreligiousfreedom.org/teacherresources>.
- <sup>7</sup> *Religion in the Public Schools – A Joint Statement of Current Law*, April 1995 (chaired by American Jewish Congress, the drafting committee included: Christian Legal Society, National Association of Evangelicals, Baptist Joint Committee for Religious Liberty, General Conference of the Seventh-day Adventist Church, Union of American Hebrew Congregations, National Council of Churches, American Civil Liberties Union, American Jewish Committee, American Muslim Council, and People for the American Way), at <https://www.clsreligiousfreedom.org/teacherresources>.
- <sup>8</sup> 68 Fed. Reg. 9645 (Feb. 28, 2003).
- <sup>9</sup> 20 U.S.C. § 7904.
- <sup>10</sup> 68 Fed. Reg. 9646.
- <sup>11</sup> *Id.*
- <sup>12</sup> First Amendment Center and The Bible Literacy Project, *The Bible and Public Schools: A First Amendment Guide*, 1999, at <https://www.clsreligiousfreedom.org/teacherresources>.
- <sup>13</sup> See *Public School and Church Partnerships That Have Stood the Test of Time . . . and the Courts* by Grayson Hartgrove, page 11 of this magazine, for more information about released-time programs.
- <sup>14</sup> First Amendment Center and The Bible Literacy Project, *The Bible and Public Schools: A First Amendment Guide*, 1999, at <https://www.clsreligiousfreedom.org/teacherresources>.



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# Public School and Church Partnerships That Have Stood the Test of Time ... and the Courts

BY GRAYSON HARTGROVE

*“When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions.”*

*Justice William O. Douglas*

In South Carolina, 13,000 public school students leave campus during the school day to study the Bible. Over 100 schools in 25 school districts are participating in released-time classes for religious education by remaining neutral on matters of religion and allowing parents to release their children from school to attend off-campus Bible classes at a nearby church or building. Since 1914, millions of students with parental permission have participated in released-time for religious instruction nationally, which was upheld as legal by the United States Supreme Court in *Zorach v. Clauson*.<sup>1</sup>

There are four requirements for establishing a legal released-time program: (1) Bible classes that are held during the school day *must be held off school property*; (2) participating students must have parental permission to be released from school; (3) no government funds can be used for promotion or instruction; and (4) school officials may not promote the program and must not be involved in the release of the students beyond the barest minimum necessary. The sponsoring church that facilitates the off-campus religious education classes is responsible for transportation, Bibles, teachers, volunteers, classroom supplies, etc. There is no cost to any family that wishes to participate.

Over fifty percent of students who attend released-time Bible classes do not have a church home. Students who participate in released-time Bible classes get many benefits from the experience. The National Council on Crime and Delinquency performed a two-year study on released-time and concluded that

students' grades improved, including reading comprehension, and that at-risk behaviors were reduced.<sup>2</sup> This is in comparison to the students who did not attend the Bible classes. Other benefits include having godly men and women as role models, the creation of new friendships, and helping to combat Bible illiteracy.

“This is what a community partnership should look like,” says a parent of a participating fifth-grade student. “The school, church, and families are coming together to benefit our children. We are able to provide Christian programs that instill a sense of community and faith values into our children.”

A South Carolina released-time volunteer shared her perspective on released-time education. Mrs. Krissie Taylor of First Calvary Baptist Church writes:

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***“This is what a community partnership should look like,” says a parent of a participating fifth-grade student. “The school, church, and families are coming together to benefit our children.”***

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As a retired teacher from the South Carolina Public School System and a Christian, I was extremely interested when a School Time Bible Ministries brochure came across my desk in 2012. Shortly after, one of our church's pastors and I attended a School Time Bible information session. After two years of prayer and allowing God to work out the details, our church partnered with

School Time Bible Ministries and a local middle school to offer a Bible class on our church campus during the school day to seventh graders in the fall and sixth graders in the spring. We have continued to offer classes each school year since.

The Bible classes continue to have a positive impact on students' lives. This is evidenced during and following Bible lessons when students share their personal feelings or details about personal situations. Students have also shared how the Bible lessons have helped them become followers of Jesus. Even parents of the students have stated

that the lessons have prompted conversations in their homes about living lives pleasing to God. Many former School Time Bible students and their families now regularly attend activities offered by our church.

I am deeply thankful for the legal battles that have been won to allow student release time during the school day to attend religious training. I am always thrilled when I walk through the doors of our local middle school to sign out the eager sixth or seventh graders who have the freedom to attend a Bible class. Thanks be to God for this opportunity and for the people who continually fight to insure the parents, students and volunteers this freedom!

There are several different program models for released-time education. Models can be designed to fit particular school and church preferences. In Greer, South Carolina, the faith community constructed a building off public school property but between the high school and middle school where released-time Bible classes are held daily. In Michigan, released-time Bible students have classes for one hour, once a month, for

seven months. In Fairmont, North Carolina, a “rolling chapel” is used for Bible classes for 4,000 public school students. In Columbia, South Carolina, School Time Bible Ministries equips dozens of local churches to provide Bible classes to students in fifth through ninth grades. Most of the classes are held once a

week. Currently, students in twenty-six schools are participating. A local church can be a sponsoring organization for a released-time program for a single school; however, for multiple church and school partnerships, it may be best to form a 501(c)3 non-profit organization to oversee all the program needs.

School Time Bible Ministries has developed a “Released-Time Program Kit,” which is referred to as the “Adopt-a-School Kit.” Churches are encouraged to foster a partnership

with a school and adopt the school as released-time classes are offered. One of the advantages of the church and school partnership model is the mutually-beneficial relationship that results between the churches and the schools they adopt. The Adopt-a-School Kit provides an individual, organization, or local church everything it needs to plan, develop, and operate a simple and inexpensive released-time program.

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*One of the advantages of the church and school partnership model is the mutually-beneficial relationship that results between the churches and the schools they adopt.*

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While most states do not have released-time legislation, it was beneficial to establish legislation in South Carolina as a way to encourage school boards to adopt policies that acknowledged that the concept of released-time religious education was permitted in the school district. As a result, the South Carolina Release Time Act was signed into law. This legislation codified the United States Supreme Court's *Zorach* decision into South Carolina state law. Through the state law, every school district in South Carolina was informed of the legality of School Time Bible Education. In 2006, the South Carolina Release Time Credit Act was signed into law. This legislation clarified the guidelines required for public high schools to give elective credit for released-time classes. This law was recently challenged and was upheld as constitutional.<sup>3</sup> Under the law, students can receive up to two units of credit toward high school graduation.

One pastor, whose church is involved in the released-time program, provided his thoughts on released-time education. Rev. Dow Welsh of Holland Avenue Baptist Church in Cayce, South Carolina, writes:

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***“Our church’s joy-filled experience with released time in public schools has been simply that... we are privileged to share with students a clear picture of the One who is stronger....”***  
***- Rev. Dow Welsh***

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The Bible is a book of fairy tales – that is what many believe. What if they were right? Do schools not require students to read about Jack and Jill and Hansel and Gretel and Tom and Huck and Miss Havisham and Pip? Why require fairy tales from kindergarten through grade 12?

G.K. Chesterton wrote this about the purpose of a fairy tale in the life of a child: “[I]t accustoms him for a series of clear pictures to the idea that these limitless terrors had a limit, that these

shapeless enemies have enemies in the knights of God, that there is something in the universe more

mystical than darkness, and stronger than strong fear.”

Our church’s joy-filled experience with released-time in public schools has been simply that in their world of darkness and terror and enemies and fear, we are privileged to share with students a clear picture of the One who is stronger – not through a fairy tale, but through the book that describes itself as living and active and contains truth and hope that cannot under any circumstances return void.

As Christians, why would we not strive to keep the doors open to that kind of hope?

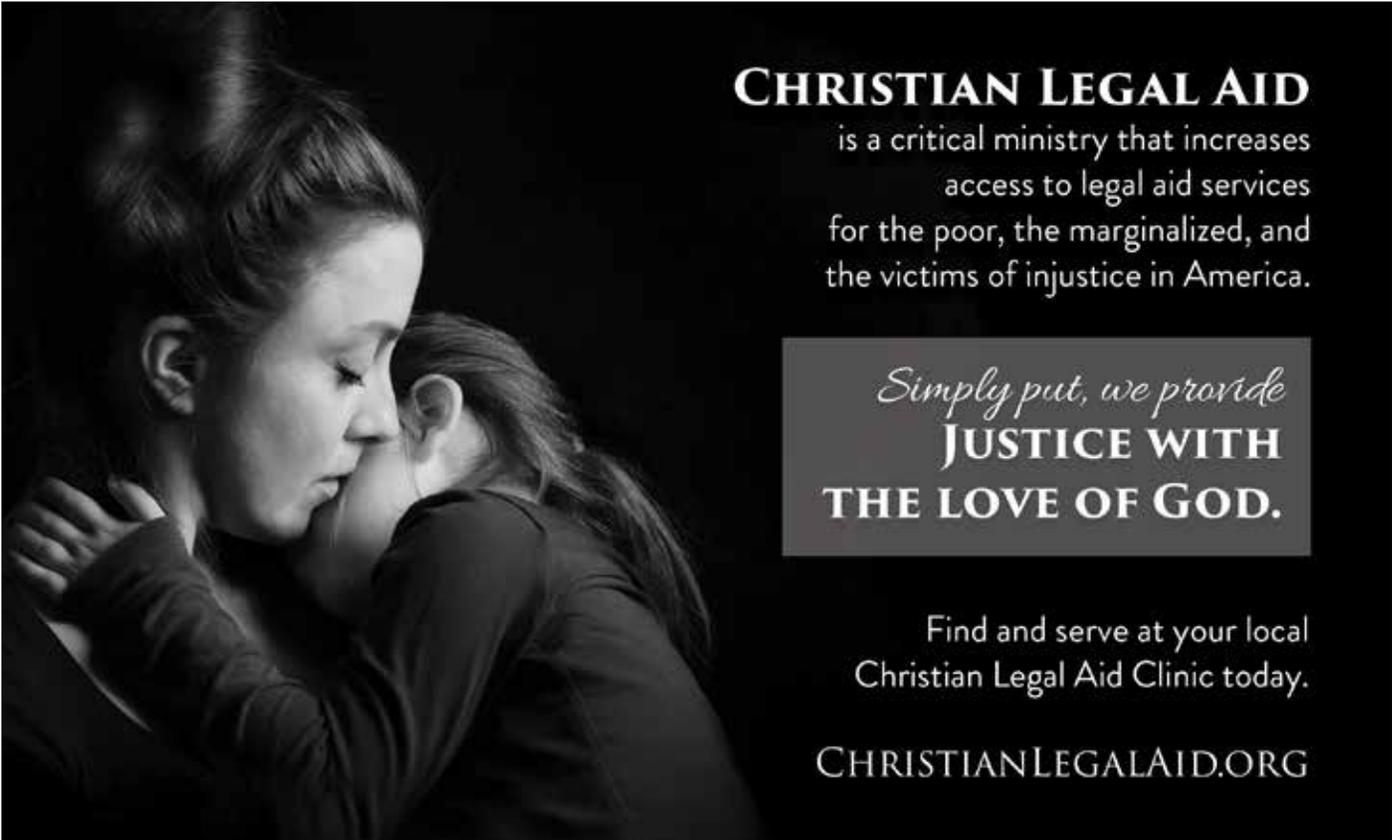
For the past twenty years, there have been successful released-time programs in South Carolina. The longevity of the ministry speaks to the need and acceptance of this opportunity offered to churches, schools, families, and students. It has been our experience that most people are unaware that released-time education is an option. Given the option, however, many take advantage of the opportunity. Is this something you could start in your community? If so, please visit the School Time Bible Ministries website at <https://schooltimebible.org> or Christian Legal Society’s website at <https://www.clsreligiousfreedom.org/teacherresources> for more information.



Grayson Hartgrove serves as Executive Director of School Time Bible Ministries in Columbia, South Carolina. He brought released-time religious education to South Carolina in 1995. He feels strongly about religious freedom and continues to defend the rights of parents who wish to choose released-time education for their children. For more information on released-time education, email Mr. Hartgrove at [Grayson@SchoolTimeBible.org](mailto:Grayson@SchoolTimeBible.org).

#### END NOTES

- 1 343 U.S. 306 (1952).
- 2 See <https://schoolministries.org/products3/summary-of-findings-national-council-on-crime-and-delinquency.html>.
- 3 *Moss v. Spartanburg County Sch. Dist. Seven*, 683 F.3d 599 (4th Cir. 2012).



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# What Should Children Know About the Study of Religion—and By What Age?

BY BENJAMIN P. MARCUS

Should a public primary school teacher ask a class of first graders to define religion? Should a group of eighth graders understand the political and religious significance of the difference between orthodox and heterodox expressions of belief? Should a history professor expect third-year college students to recognize the influence of religion in cultural, political, and economic life?

An increasing number of educators affirm the importance of religious literacy education in public and private schools, but they often disagree about concrete learning objectives for the academic study of religion. Even fewer educators agree about how to differentiate expectations for students in key age groups.

Fortunately, the National Council for the Social Studies (NCSS) approved a Religious Studies Companion Document (RSCD) to its *College, Career, and Civic Life (C3) Framework for Social Studies State Standards* in April 2017. The RSCD clearly states the disciplinary concepts and tools with which students should be familiar by the time they graduate high school. The fourteen learning indicators included in the document fall into three broad categories: (1) religious studies premises and methods of inquiry; (2) applications of religious studies premises: belief, behavior, and belonging; and (3) critical inquiry: representation, sources, and evidence.<sup>1</sup> Significantly, the document does not name specific content knowledge that students should know about religion. Readers will not find references to particular religious traditions, nor will they find specific directives about where religion belongs in history, civics, geography, or other social studies curricula. Instead, the document describes how scholars approach the study of religion from an academic, not a confessional, perspective. In brief, the RSCD suggests that high school graduates should recognize that religions are (1) internally diverse, (2) dynamic and changing, and (3) embedded in culture. Students should be able to investigate the implications

of those three premises by identifying and analyzing the meaning and significance of primary and secondary sources related to religion. Students are encouraged to consider the beliefs, behaviors, and communities of belonging that construct individuals' and communities' religious identities. According to the RSCD, this skills-based approach to religious studies education empowers students "to learn how to recognize and evaluate assumptions without undermining personal religious identity, to navigate diverse and shifting cultural values, to engage respectfully with diverse neighbors, and to resist common misunder-

standings that have negative real-world consequences."<sup>2</sup> In other words, the document affirms that academic education about religion in public schools should not make students more or less religious, but it should enable students to recognize and analyze the ways that religion is embedded in public life.

The publication of the RSCD marks a significant turning point in the history of education about religion in American public schools. For the first time, a mainstream education orga-

nization has released guidance that advocates for the study of religion and clearly describes how to teach about religion well. The RSCD's potential reach is impressive; NCSS is the nation's largest professional association for K-12 social studies educators, and the *C3 Framework* is a highly-influential resource for state and district social studies curriculum specialists. To ensure that key stakeholders would welcome the RSCD as a useful, thoughtful, and legally-appropriate framework for approaching the academic study of religion, drafters of the document insisted on an inclusive writing and revision process. A writing committee of eight scholars, teachers, administrators, and professional development providers drafted the document and invited feedback from an advisory committee of twenty-six leaders in the field of religion and education. The document received formal approval

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*An increasing number of educators affirm the importance of religious literacy education in public and private schools, but they often disagree about concrete learning objectives for the academic study of religion.*

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from the American Academy of Religion before its adoption by NCSS.

The enthusiastic adoption of the RSCD is not a result of chance, but rather is the product of decades of advocacy and scholarship by educators, lawyers, academics, and religious communities—including Christian Legal Society. In the first few decades after the United States Supreme Court’s decision in *Abington Township v. Schempp* in 1963, scholars and advocacy organizations produced consensus statements that clearly articulated legal guidelines for protecting the religious freedom rights of students, parents, and teachers in public schools.<sup>3</sup> While these publications cover topics related to a range of legal issues including student prayer and religious garb, teacher religious expression, student religious clubs, and the distribution of religious literature in schools, the publications do not provide comprehensive guidance about how to study religion in academically rigorous and constitutionally appropriate ways.

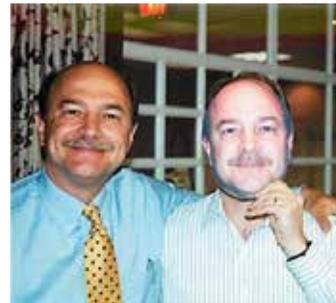
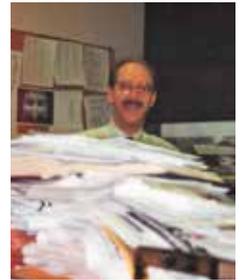
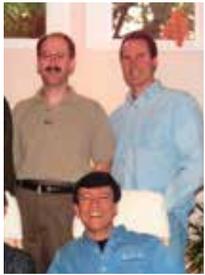
After the Department of Education distributed five of these documents to every school in the country in 2000—including the exemplary *A Teacher’s Guide to Religion in Public Schools*, co-signed by Christian Legal Society—a number of organizations

turned their attention to the treatment of religion in the curriculum.<sup>4</sup> Of particular note are the documents published by the Society of Biblical Literature (SBL) and the American Academy of Religion (AAR), titled *Bible Electives in Public Schools: A Guide From the Society of Biblical Literature* (2009) and *Guidelines for Teaching About Religion in K-12 Public Schools in the United States* (2010).<sup>5</sup> The AAR and SBL guidelines recommend key concepts that students should know about the academic study of religion and the Bible, respectively. Unfortunately, as products of learned societies—not mainstream K-12 education organizations—these guidelines did not gain significant traction in public schools. Nevertheless, the legacy of the AAR guidelines and *A Teacher’s Guide* live on in the RSCD.

As an official addition to the *C3 Framework*, the RSCD has already garnered support in a handful of states and districts. For example, the District of Columbia Public Schools have begun aligning their curricula with the learning indicators included in the RSCD, and a committee tasked with creating state standards for teaching about the Bible has referenced heavily the disciplinary concepts and tools described in the document. Furthermore, the RSCD has inspired a new set of guidelines that clarifies what



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younger students should understand about the study of religion. These new guidelines work backwards from the RSCD to articulate what students should know by the time they graduate from second, fifth, and eighth grades. The guidelines affirm the feasibility and importance of introducing our youngest students to the disciplinary concepts and tools of religious studies. Written by a mixture of members of the original RSCD writing committee and new primary school specialists, the grade-banded learning indicators illustrate how to adjust the academic study of religion to meet the developmental abilities of schoolchildren of all ages. The new guidelines currently await formal approval by the American Academy of Religion and NCSS. Interested parties can email the Religious Freedom Center of the Freedom Forum Institute for a copy of the revised learning indicators for grade bands K-2, 3-5, and 6-8.<sup>6</sup>

Concurrently, another group operating under the auspices of the American Academy of Religion is writing guidelines that articulate what every two- and four-year college graduate should know about the study of religion. These guidelines explicitly reference the RSCD, but the proposed learning indicators for college graduates are more modest than the learning indicators for high school students included in the C3.<sup>7</sup> The latest draft includes five “suggested outcomes”—compared to the RSCD’s fourteen—and they primarily relate to what the RSCD refers to as “religious studies premises and methods of inquiry.” Scholars can still comment on the proposed guidelines by reaching out to the writing committee co-chairs, Dr. Diane Moore and Dr. Eugene Gallagher.

Only time will tell how many public or private primary, secondary, and undergraduate schools will adjust their curricula to ensure that students meet the learning objectives outlined in the documents described above. Even widespread adoption of existing social studies guidelines and frameworks will not mark the end of the road for religious literacy advocates. Work remains to integrate the academic study of religion into more subjects—especially English and language arts. Ultimately, Americans will become more religiously literate only if the top down policies and guidelines offered by national education, law, and religious organizations are met with bottom up advocacy and training by local schools and districts invested in religious studies education. Fortunately, anecdotal evidence suggests that grassroots interest in religious studies education continues to grow.



Benjamin P. Marcus is the Religious Literacy Specialist with the Religious Freedom Center of the Freedom Forum Institute, where he examines the intersection of education, religious literacy, and identity formation in the United States. Marcus earned an MTS with a concentration in Religion, Ethics, and Politics as a Presidential Scholar at Harvard Divinity School. He studied religion at the University of Cambridge and Brown University, where he graduated *magna cum laude*.

## END NOTES

- <sup>1</sup> See Benjamin Marcus *et al.*, “Religious Studies Companion Document,” in *College, Career & Civic Life (C3) Framework for Social Studies State Standards* (Silver Spring, MD: National Council for the Social Studies (NCSS), 2017).
- <sup>2</sup> Marcus *et al.*, 93.
- <sup>3</sup> For an extended history of the scholarship and advocacy leading up to the passage of the RSCD, see Benjamin Marcus, “Another Historic Moment: Religious Studies Companion Document Added to a National Education Framework,” *Religion & Education* 44, no. 3 (2017): 263–85. For a discussion of the events leading up to the Department of Education’s distribution of guidelines about religion and education to every school in the country in 2000, see Marcia Beauchamp, “Guidelines on Religion in Public Schools: An Historic Moment,” *Religion & Education* 27, no. 1 (2000): 14–19.
- <sup>4</sup> For a slightly updated version of the original guidelines, see Charles C. Haynes, “A Teacher’s Guide to Religion in the Public Schools” (Nashville: First Amendment Center, 2008).
- <sup>5</sup> “Bible Electives in Public Schools: A Guide from the Society of Biblical Literature,” *Religion & Education* 36, no. 1 (2009): 94–112. Also Diane L. Moore, “Guidelines for Teaching about Religion in K-12 Public Schools in the United States” (American Academy of Religion in the Schools Taskforce, April 2010), <https://www.aarweb.org/sites/default/files/pdfs/Publications/epublications/AARK-12CurriculumGuidelines.pdf>.
- <sup>6</sup> [bmarcus@freedomforum.org](mailto:bmarcus@freedomforum.org).
- <sup>7</sup> Eugene V. Gallagher *et al.*, “AAR Guidelines: What U.S. College Graduates Should Understand About Religion” (American Academy of Religion, October 30, 2017).

# Religious Liberty for Public School Teachers: Rights and Limitations

BY JESSICA ROSS, ESQ. AND THERESA SIDEBOTHAM, ESQ.

Public school teachers face challenging circumstances when expressing their faith at work. On one hand, they are government employees, and the government may not endorse religion because of the Establishment Clause. But teachers are also private citizens with religious freedom protected by the Free Speech and Free Exercise Clauses. Teachers who want to live out their faith in their chosen vocation must understand how their government and private roles interact.

## Limits on Teachers' Rights to Express Their Faith

Teachers have the right, like any other citizen, to live out their faith; however, the unique public school environment creates some restrictions. Because religious exercise involves speech or expressive conduct, free speech principles often apply.

When deciding whether a teacher's speech is protected, most courts look at whether the teacher was speaking on a matter of public concern.<sup>1</sup> If so, then the school needs a good reason for treating the teacher differently from any other member of the general public. For instance, the government may show that restrictions on teacher speech are necessary for the school to operate efficiently and effectively. This balancing test weighs the school's interest as an employer and educator with the teacher's interest to speak freely on important societal issues.

Courts are currently split on whether teacher speech, particularly in higher education, is further restricted under a U.S. Supreme Court case called *Garcetti v. Cebellos*.<sup>2</sup> Under that case, before a court even gets to the balancing test, it first asks whether the teacher was speaking as part of his or her official duties. If so, he or she is not speaking as a citizen but rather as a government employee, and the Free Speech Clause provides no protection.<sup>3</sup> In cases where *Garcetti* applies, teacher free speech may be restricted even more than it would be otherwise.

While public schools have discretionary power over teacher speech and conduct, they are also employers and must follow Title VII of the Civil Rights Act of 1964.<sup>4</sup> Under this law, they are obligated to provide reasonable accommodations for their employees' religious practice unless doing so would cause an undue

hardship.<sup>5</sup> Teachers should work collaboratively with administrators if they need a religious accommodation to a workplace rule.

## Teacher Free Exercise: Practical Examples

Think of a continuum for how teachers can express their faith at work. Generally, an activity or speech that looks more like government endorsement of religion rather than personal expression will be restricted. The continuum is further complicated by the age of the students involved. Primary school teachers are more restricted than college professors because of their young audience. Practically, it may help to see how courts have actually decided some of these cases.

### Classroom Behavior

Restrictions on a teacher's religious freedom are most severe in the classroom. Courts have consistently held that teachers may not provide devotional religious instruction or practice their religion in certain ways in the classroom, such as follows:

- Leading prayers or encouraging prayer during a moment of silence;<sup>6</sup>
- Reading Bible passages or teaching Biblical theology in a devotional manner;<sup>7</sup> or
- Displaying religious posters or other similar material in the classroom.<sup>8</sup>

The Supreme Court has held that public schools may teach students about the Bible as long as the teaching is "presented objectively as part of a secular program of education."<sup>9</sup> As the Supreme Court noted in its 1963 "school prayer" decision:

[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities.<sup>10</sup>

Teachers may include religious materials in their lessons if the material has a legitimate and objective reason for being included. For example, an art teacher may need to explain the Biblical story behind a great religious painting being studied in class. A literature teacher might wish to expose students to the beauty of the Psalms.



A world history teacher might wish to familiarize students with the Ten Commandments or other primary source material from the Bible because of its importance in history.

In doing so, the teacher must be clear that the purpose of using the religious materials is to educate the students rather than to inculcate religious beliefs. Teachers should be scrupulous in their respect for students' (and students' families') own religious beliefs, or lack thereof. An excellent resource for understanding the legal parameters for including religious materials in the curriculum is a short booklet entitled *The Bible and Public Schools: A First Amendment Guide*.<sup>11</sup>

If school officials question inclusion of the materials, the teacher should be prepared to explain the curricular benefits of including the material, as well as the legal permissibility of using the material. But if his or her supervisors continue to oppose use of the materials, the teacher must defer to their decision. The school district, not the teacher, has the final say about the use of curricular materials.

Teachers should be able to answer student-initiated questions about their personal viewpoints—although some courts limit even this.<sup>12</sup> While teachers' abilities to express their own personal religious beliefs at school is limited, they hold an important role in

safeguarding their students' religious liberty. Students have fairly broad constitutional rights to express their religious points of view at school, and teachers can make sure they don't get shut down.

### Private Expression

In some jurisdictions, teachers can engage in personal religious practices—wearing religious jewelry, praying silently, or reading the Bible—even on school grounds.<sup>13</sup> When a teacher conducts these activities around students, however, that freedom may be limited. For example, a teacher may be able to read her Bible during her lunch break in the teachers' lounge but not during classroom silent reading time.<sup>14</sup>

School personnel are also limited in participating in student-led prayer or other religious exercises because it may seem that the school is endorsing or encouraging the practice.<sup>15</sup> Some courts take this idea to the outermost limit. Recently, a federal appeals court held that a high school football coach had no First Amendment right to take a knee to silently pray alone on the football field after a game, on the grounds that he was speaking as a public employee, not a private citizen.<sup>16</sup> While some courts have said that a school can restrict coaches from praying with students, this decision against personal, silent religious practice is quite extreme.

## Extracurricular Activities

Teachers can supervise a student-led religious group, so long as the teacher does not participate directly.<sup>17</sup> A teacher can lead or teach in non-school sponsored after-school religious clubs attended by students in some jurisdictions. One case held that a teacher was allowed to teach an after-school religious children's club held at her school because she was operating on her own time.<sup>18</sup>

## With Other Teachers/Staff

Teachers have more freedom to witness to or discuss religion with fellow staff members than with students.<sup>19</sup> There is less of a concern that the government is endorsing religion through the teacher's private conversations with adult peers. Yet even this may have limits. If a fellow teacher indicates the religious discussion is unwelcome, the discussion should stop. Administrators must be aware of their positions of power and avoid improper pressure on staff regarding religious issues.

## Behavior Outside of School

When acting on their own time outside of school, teachers and other public school employees enjoy most of the freedoms of ordinary citizens. Teachers can freely attend religious services, lead Bible studies, and teach Sunday School—even if their students also attend.<sup>20</sup> Teachers should be cautious about public remarks on controversial topics, particularly posts on the internet. There are many cases of teachers being fired or suspended for what they post on their personal social media profiles, and the law is somewhat unsettled in this developing area.<sup>21</sup>

## Teacher Free Exercise: A Balancing Act

Public school teachers' rights may be limited, but teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>22</sup> Teachers have religious rights, but they should learn their own district's rules and generally try to operate within them. Materials on the Christian Legal Society website are intended to help teachers understand the law regarding religion in the public schools.<sup>23</sup> By understanding the different principles that apply, people of faith can strike the right balance while staying true to their core convictions.





Theresa Lynn Sidebotham is the founding attorney of Telios Law PLLC, where she advises businesses and religious organizations on legal and policy issues, with a special emphasis on First Amendment policies, international law, child protection policies and practices, and employment law. Theresa also handles investigations in employment law and child abuse, advising on or supervising internal investigations or performing independent investigations as an outside firm. In addition to ordinary business litigation and employment law issues, Theresa has defended a number of churches in several states in alleged child sexual abuse cases, historic and current, as well as asserted constitutional defenses around religious free exercise, religious privilege, and other First Amendment issues.



Jessica Ross is an attorney with Telios Law PLLC where her practice focuses on advising religious organizations on a variety of issues and on complex briefing and appeals. Prior to entering private practice, Jessica completed two judicial clerkships, which cemented her love of legal research and writing. Jessica graduated from the University of Colorado Law School and is a Blackstone Fellow with Alliance Defending Freedom.

## END NOTES

- 1 See *Pickering v. Bd. of Educ. of Twp.*, 391 U.S. 563, 568 (1968); *Connick v. Myers*, 461 U.S. 138, 147 (1983).
- 2 See, e.g., *Brown v. Chicago Bd. of Educ.*, 824 F.3d 713, 716 (7th Cir. 2016) (discussing split).
- 3 *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).
- 4 See 42 U.S.C. § 2000e-2.
- 5 See *id.*; see also 29 C.F.R. § 1605.2.
- 6 See, e.g., *Engel v. Vitale*, 370 U.S. 421, 424 (1962).
- 7 See, e.g., *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 223 (1963).
- 8 *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011); see also *Lee v. York Cnty. Sch. Div.*, 484 F.3d 687 (4th Cir. 2007).
- 9 *Sch. Dist. of Abington Twp.*, 374 U.S. at 225.
- 10 *Id.*
- 11 The Bible Literacy Project, Inc., and First Amendment Center, *The Bible and Public Schools: A First Amendment Guide*, 1999, at <https://www.clsreligiousfreedom.org/teacherresources>.
- 12 *Compare Bishop v. Aronov*, 926 F.2d 1066, 1076 (11th Cir. 1991) (if a student asked about his religious views, a professor could “fairly answer the question”), with *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (school can require teacher to refrain from discussing personal religious beliefs at school).
- 13 See, e.g., *Nichol v. ARIN Intermediate Unit 28*, 268 F. Supp. 2d 536 (W.D. Pa. 2003) (instructional assistant permitted to wear cross necklace).
- 14 *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990) (teacher modeling silent reading could not read his Bible during elementary class’s silent reading time).
- 15 See, e.g., *Borden v. Sch. Dist. of Twp. of East Brunswick*, 523 F.3d 153 (3d Cir. 2008).
- 16 *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813, 830 (9th Cir. 2017).
- 17 See, e.g., *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226 (1990).
- 18 *Wigg v. Sioux Falls Sch. Dist. 49-5*, 382 F.3d 807 (8th Cir. 2004).
- 19 See U.S. Dep’t of Educ., *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited July 31, 2018).
- 20 See, e.g., *id.*
- 21 See, e.g., Mary-Rose Papandrea, *Social Media, Public School Teachers, and the First Amendment*, 90 N. C. L. Rev. 1597-1642 (2012).
- 22 *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).
- 23 Several excellent resources regarding religion in the public schools can be found on Christian Legal Society’s website at <https://www.clsreligiousfreedom.org/teacherresources>.



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# Answering God’s Call for Christian Leadership

BY JULIA C. PAYNE

*“Perhaps you have come . . . for such a time as this.”*

*Esther 4:14 CSB*

In the Old Testament, Esther, a Jewish woman, gets a bit more than she bargained for when she weds the Persian king. At first, she hides her faith from her husband out of fear, but when the king announces he plans to kill all the Jews, it is Esther’s unique position of leadership that allows her to save her people.

Like Esther, I felt I got a bit more than I bargained for when I was elected president of my CLS chapter. Shortly before beginning my second year of law school in the fall of 2015, I learned that Indiana University (“IU”) had enacted a new policy: all student organizations would be required to include a clause within their constitution stating that they did not discriminate in membership or leadership on the basis of several factors, including religion.<sup>1</sup> My chapter of CLS had long welcomed members of all beliefs, but as Christian Legal Society, we felt it important that our officers were all committed Christians.

As a lawyer-in-training, my first reaction was to do some research, and I quickly came across the Supreme Court’s decision in *Christian Legal Society v. Martinez*,<sup>2</sup> in which the Court upheld an “all-comers policy” requiring student groups to accept anyone wishing to join as a member. In contrast, the IU policy was what is sometimes referred to as a “laundry list policy,” which prohibits discrimination only based on certain factors. In other words, the vegan group could turn away those who enjoyed hunting animals and the Republican students could turn away those who supported Democratic candidates, but the Christian group could not restrict its leadership to only those who shared their faith.

After consulting with national CLS, our local executive board agreed on a plan: we would include the required nondiscrimination clause in our constitution, only omitting the word “religion,” and if our registration was rejected, we would bring a lawsuit against the university. But to our surprise, only days before the end of registration, the university announced that the policy would not go into effect until the following year. In the meantime, they would collect comments on the proposed policy from students, alumni, and members of the community.

The university’s last-minute switch meant that our strategy had to change as well. Up until this point, we had kept discussions about the policy entirely within our local CLS executive board, but the request for comments meant that we would need support from the law school community, the university community, and the local Christian community. We decided to begin a grassroots movement against the policy.

At our first CLS meeting of the semester, I explained our plan for mobilization against the policy and held my breath for the reaction. I was relieved when the first question was “How can we help?” But not everyone was so supportive. I distinctly remember one classmate telling me that we were “stupid” for trying to stand up to the university. Fortunately, we did not need unanimous support, just enough to turn the tide.

Outside of the law school, I began meeting on a monthly basis with leaders from other Christian groups on campus. After opening each meeting in prayer, we would discuss our efforts to mobilize opposition to the policy. We asked our members to submit comments on the rule. We sent newsletters to alumni requesting their support. We reached out to local clergy and organized events



to get the support of the Church community. As the only law student in the group, I was in the unique position of being able to explain why the policy violated our rights, but also understanding how it might play out on the ground for student leaders.

Around the middle of the school year, I started to feel the toll of the amount of time I was devoting to this project in addition to my regular class load, law journal, moot court, and on-campus interviews for summer clerkships. It seemed that no matter how hard we worked, the university remained firm in its determination to enact the policy. I began to question not only whether our efforts could really make a difference, but also whether I was cut out for the legal profession at all. But when I confided in a friend about my discouragement, she responded in a way I'll never forget: "Are you kidding me? It is so clear that this is the work God intended you to do."

After that, I continued to fight the policy, but I stopped worrying so much about whether we would prevail. What if I were to dedicate my entire career to fighting for the issues I believe in—free speech, religious liberty, and the sanctity of human life—and never win? Then I would be glad to know that I stood up for what I believed was right. I still didn't know if the university would ever listen to what we had to say, but I intended to go down fighting.

By spring, all signs showed that the policy would go into effect as planned. Then, suddenly and unexpectedly, the university administration announced it had decided not to enact the policy after all.<sup>3</sup> To this day, I still don't know what changed their minds. It could have been a call from an alumnus or a wealthy donor, or it could have been the collective weight of all the student comments on the

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*What if I were to dedicate my entire career to fighting for the issues I believe in—free speech, religious liberty, and the sanctity of human life—and never win? Then I would be glad to know that I stood up for what I believed was right.*

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policy or the local community's opposition. Whatever it was, I do believe that God used our efforts to make real change.

I didn't get what I bargained for when I became president of my CLS chapter, but I did get the chance to be a part of something bigger than myself, to develop leadership skills that I will take with me throughout my career, and to allow God to use my work to promote religious liberty. Today, in my work as a con-

stitutional lawyer, I always return to the story of Esther whenever I am discouraged. God gives us opportunities to do what is right if only we have the courage to take them.



Julia Payne has served as a Deputy Attorney General with the Indiana Solicitor General since October 2017. Payne received her Juris Doctor from the Indiana University Maurer School of Law in 2017 and her B.A. in History and B.A. in Spanish from Western Kentucky University in 2014. Prior to becoming a Deputy Attorney General, Payne worked as a clerk for the Solicitor General and was named a 2015 Blackstone Fellow.

## END NOTES

- 1 Indiana University, *Frequently Asked Questions about SGOs and Indiana University's Non-discrimination Policy*, Aug. 2015, at <https://www.clsreligiousfreedom.org/indianau>.
- 2 561 U.S. 661 (2010).
- 3 Indiana University, *Policy: Statement of Non-Discrimination*, April 2016, at <https://www.clsreligiousfreedom.org/indianau>.





# The Wonder and Weight of Our Calling

BY CONNIE BOURNE

Every Christian attorney—whether a solo practitioner, senior partner, or somewhere in between—has to manage his or her time between career, family, church, and Christian service. It is no easy task and is incredibly varied from person to person, practice to practice, and even family to family because of different personalities and life situations. We are all juggling a lot in our lives.

While looking through old publications, I came across a small article from former CLS Executive Director Samuel Ericsson. In his article, *Christian Legal Society v. Christian Legal Association*, he clearly states that members of a society need a place of “common unity—a community—of shared values, purpose and direction.” He further writes:

In an association, members pay their dues and generally ask, “What’s in it for me?” But a society is different, “They ask, ‘What are we becoming together?’”

The community—“society”—is the first ministry of CLS and must be the heart of this ministry. The wonder of our calling is that our Heavenly Father chose you and me to serve as His legal

disciples here on Earth. The weight of our calling is that we must live daily as His salt and light in the legal profession, in all of its aspects—through work, through caring for our clients, through caring for other attorneys, through reflecting Jesus every day. Yet we often mistakenly think we are alone or can “do it” on our own. Nothing could be further from the truth.

As Director of Attorney Ministries, I have the privilege of speaking with attorneys from every legal specialty in every form of practice from almost every place in the country. I get to see how fellowships evolve into friendships and how our members help and encourage one another in building law practices and, more importantly, spiritual relationships with other Christian legal professionals. This is often done through Bible studies, social gatherings, and training events. CLS has a rich and unique body of members. Some have been a Christian attorney for many, many years and have earned their place in the “Hall of Faith” spoken about in Hebrews. Others are just beginning their service and find themselves working in a legal environment, which today seems less and less concerned with the things of God. The fellowship

and community that we enjoy today as Christian attorneys in Christian Legal Society must be protected and preserved if we are to pass the torch on to those who will come after us.

While we work on building Christian legal relationships, we are also finding new resources to help attorneys explore the nature and call of Christian discipleship through study and training in local CLS chapters. Attorney Ministries receives dozens of calls and emails from member attorneys asking for guidance, networking opportunities, and fellowship. Here are just a few of the comments I have received over the last several months:

- “Thank you for taking the time and putting so much thought into your answer. I will take to heart what you said. Thank you again.” Sam
- “Thank you so much for replying to my email sent to you and sending additional information to possibly assist in my need—it really means a lot—many do NOT respond—God bless and thank you again.” Phyllis
- “Thank you so much I appreciate your blessings and love in Christ.” Myron
- “Thx and many Blessings to you for your insightful reply.” Stephen
- “Thank you. That is exactly what I needed to know. God Bless.” Jean
- “Thank you, Connie. I appreciate your kind thoughts and prayers.” Pauline
- “Thank you for the quick reply and the advice. May God continue to bless you and CLS.” Ken
- “Thank you, Connie. That is what I was hoping for. I really appreciate it!!!” Carl
- “Thanks for your concern and willingness to go the extra mile to ensure my welfare. In Christ” Steve
- “It’s a blessing to know I am not alone... that there are other Christian lawyers out there who are experiencing the same challenges at work. Thanks again,” Thomas.

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*You will find encouragement and support if you join a CLS chapter and gather with other Christian attorneys.*

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Regardless of the question asked or the request for prayer or guidance, my answer is always the same, you will find encouragement and support if you join a CLS chapter and gather with other Christian attorneys. There you will also find fellowship with others who share in the same Biblical truths and values and many times fun and a connectedness that we all seek in our work. I tell everyone, my greatest memories are not the cases I have won, but the many new Christian colleagues and friends I have met and made at Christian Legal Society.

Legal community is a priority in Attorney Ministries, but an equally important part of our mission is to expand opportunities for Christian attorneys to serve through mentoring law students, providing Christian legal aid for the needy, and contributing to other local social service projects. Members commented:

- “I have been an off-and-on member of CLS since law school. The ministry of CLS has been a great help to me as a Christian during law school and also during law practice. I don't think I could have gone through law school as a Christian without CLS.” Kyle
- “Thanks so much, Connie! What a blessing to receive your caring reply. I will pass along the information to the Congolese mother I am loving. Together for Life and Eternity,” Patte.
- “Your email was a pleasant surprise. I am quite pleased to know that I will become part of an organization that personally cares about its members. What an unexpected blessing to be contacted by a CLS Chapter Leader and welcomed into fellowship and we had not yet shook hands.” Roger

As attorneys we put much effort and energy into our work, but it can easily distract us from remembering the higher calling and purpose for our lives. We are called to work, and to work excellently, but not to be so impressed with the results of our efforts that we forget the importance of common unity and fellowship. At the end of the day, work is still just work. Our God, on the other hand, is the God of the Universe and beyond, and He wants us to rediscover the wonder and weight of our calling.

Even Scripture says “do not forsake the assembly of believers.” This warm directive applies to attorneys as well.

If we want to figure out how to obtain this fellowship of Christian legal community, we need look no further than Elton Trueblood, a noted 20th-century American Quaker author and theologian and former chaplain both to Harvard and Stanford universities. Elton Trueblood asks us a pivotal question, “Why not try the strategy of Jesus?” Trueblood writes:

Jesus was deeply concerned for the continuation of his redemptive work after the close of His earthly existence, and His chosen method was the formation of a redemptive society. He did not form an army, establish a headquarters, or even write a book.

All he did was to collect a few unpromising men and women, inspire them with the sense of His vocation and theirs, and build their lives into an intensive

fellowship of affection, worship, and work. One of the truly shocking passages of the gospel is that in which Jesus indicates that there is absolutely no substitute for the tiny redemptive society. If this fails, He suggests, all is failure; there is no other way. He told the little

bedraggled fellowship that they were actually the salt of the earth and that if this salt should fail there would be no adequate preservative at all. He was staking all on one throw.

What we need is not intellectual theorizing, or even preaching, but a demonstration. There is only one way of turning people’s loyalty to Christ, and that is by loving

others with the great love of God. We cannot revive faith by argument, but we might catch the imagination of puzzled men and women by an exhibition of a fellowship so intensely alive that every thoughtful person would be forced to respect it.

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*“Why not try the  
strategy of Jesus?”*

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FIND A **CLS Chapter** NEAR YOU TODAY.  
**AttorneyMinistries.org/Chapters**

If there should emerge in our day such a fellowship, wholly without artificiality and free from the dead hand of the past, it would be an exciting event of momentous importance. A society of loving souls, set free from the self-seeking struggle for personal prestige and from all unreality, would be something unutterably precious. A wise person would travel any distance to join it.

Sam Ericsson, in his final thought on the matter, stated:

If CLS is to remain the Christian Legal Society, our perspective must include an energetic concern for those beyond ourselves. If we lose that perspective it might be suggested that we change our name to Christian Legal Association. Quite frankly, I belong to too many associations already.

I second what Sam Ericsson had to say! What about you? My hope is that all of us will be encouraged throughout this next year to fellowship together in our local CLS chapter. At Attorney Ministries we believe our effectiveness in fulfilling the Great

Commission and making disciples in Jesus' name will grow exponentially as we bring back prayer and meeting together in our personal and professional lives.



Connie Bourne is Director of Attorney Ministries at CLS. Connie joined CLS in July 2017. She has more than 10 years of legal experience in estate law, elder law, and information technology government contracts. Since 2014, Connie has lectured at various higher education institutions and has published training materials on professional development topics in the law. Her favorite pastime is serving as a volunteer speaker at churches, community organizations, and universities. Connie will complete a two-year Biblical Studies Certificate Program in May 2019.

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# Tyranny, Professional Ethics, and the Role of the American Lawyer

BY MIKE SCHUTT

The Frenchman Alexis de Tocqueville toured America in the 1820s to observe its culture, institutions, and habits. *Democracy in America*, the fruit of his observations, published in 1835, remains a classic cultural commentary. Tocqueville observed that America's social institutions, including strong families, religious groups, clubs, and communities, were well-suited to preserving Americans' liberties. In the context of these "responsible" social institutions, he also had a thing or two to say about lawyers.

He believed that American lawyers and their "appreciation of orderly proceedings" would ensure that "liberty was not to drift into license, [and] government 'by the people' was neither to breed despotism nor to degenerate into mob rule." While Tocqueville valued the safeguards of religion and law, he worried that without an aristocracy there would be no check on arbitrary power of governing majorities or the unreflective passion of the people (a concern voiced increasingly today in light of a rising nationalistic populism):

In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society. They have

therefore nothing to gain by innovation, which adds a conservative interest to their natural taste for public order. If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.

In short, Tocqueville saw the legal profession as a reliable check on the power of the mob—the majority. Because of their "training and tastes," he said, lawyers are "attached to public order beyond every other consideration," and they unite "a taste for and reverence for what is old" with "a love of regular and lawful legal proceedings." Those "who have made a special study of the laws derive from this occupation certain habits of order, a taste for formalities, and a kind of instinctive regard for the regular connection of ideas, which naturally render them very hostile to the revolutionary spirit and the unreflecting passions of the multitude."

I was reminded recently of Tocqueville's appreciation for the profession as I was reading *On Tyranny* by Yale historian Timothy Snyder. Following "the precedent set by the Founders" that "demands that we examine history to understand the deep sources of tyranny," Snyder presents twenty lessons from the twentieth century on the topic "adapted to the circumstances of today." The

book is organized into twenty concise chapters, each beginning with a particular lesson and its summary. This gives the book the feel of a kind of “handbook” or field guide to history’s lessons on how the common human might be prepared for—and respond to—early signs of tyranny. It is enjoyable, frightening, and instructive, all at once.

Lawyers make a few appearances, but the chapter that brought Tocqueville to mind was Chapter 5: Remember Professional Ethics: “When political leaders set a negative example, professional commitments to just practice become more important. It is hard to subvert a rule of law state without lawyers, or to hold show trials without judges.” The implication is that the professions have built-in moral limits:

If lawyers had followed the norm of no execution without trial, if doctors had accepted the rule of no surgery without consent, if businessmen had endorsed the prohibition of slavery, if bureaucrats had refused to handle paperwork involving murder, then the Nazi regime would have been much harder pressed to carry out the atrocities by which we remember it.

This is similar to Tocqueville’s “American aristocracy”—as a class, lawyers serve an institutional role as a buffer between the state and the “people.” In Tocqueville’s vision, we calm the revolutionary

tendencies of the out-of-control majority; for Snyder, we provide systemic stability that is a natural barrier to despotism.

My fear is that our habits and training have not lived up to Tocqueville’s vision. Not only have we collectively lost “a love for what is old,” but also our habits, tastes, and instincts for order,

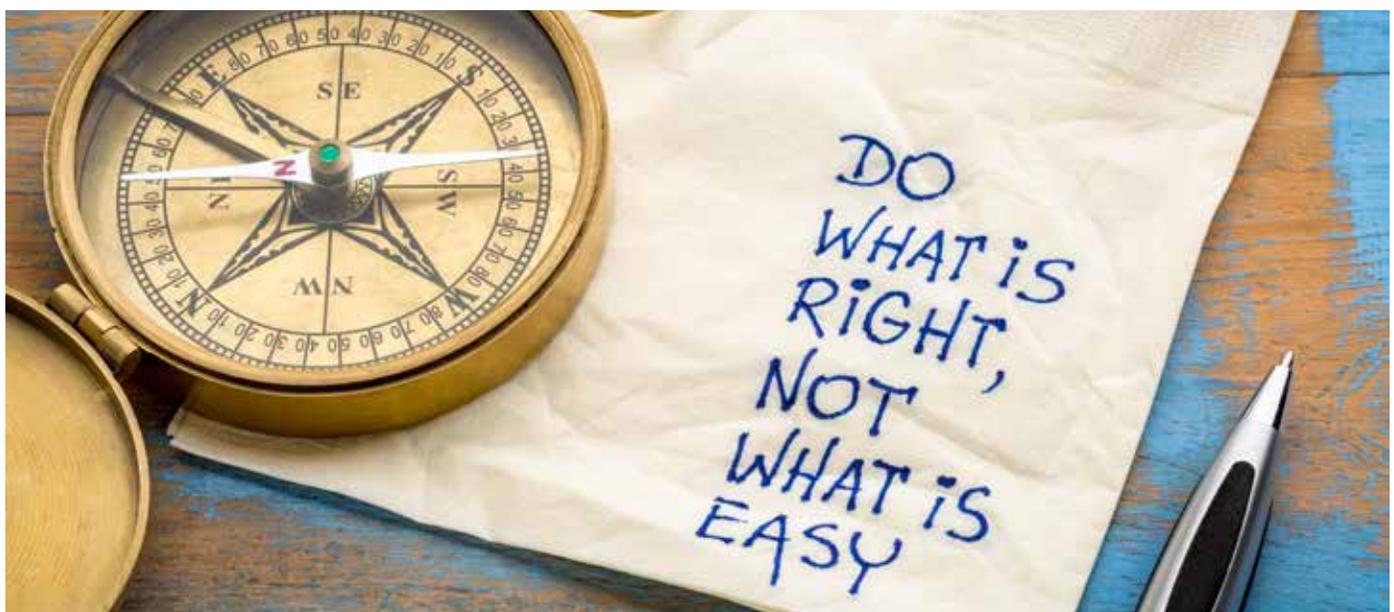
formality, and logic are no longer reliable. Even Snyder’s much more recent faith in professionals may be misplaced. Our training in the fundamentals of the Rule of Law, for example, will hardly bear scrutiny, let alone intense political pressure with economic consequences. How many of our colleagues are able to explain the significance of the Magna Carta, let alone willing to stake their professional reputations on its defense?

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*In short, Tocqueville saw the legal profession as a reliable check on the power of the mob . . .*

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Legal education is no friend of these classic visions of the legal professional. The jurisprudence of pragmatism and instrumentalism has taken the place of fixed moral principles and respect for moral process. Lawyers no longer value “what is old” and, with the social sciences displacing history, theology, and virtue, the habits and tastes of which Tocqueville spoke are no longer nurtured in the classroom. Today, lawyers do not simply “direct the blind passions of parties,” they cultivate and enflame those passions. Rather than “contempt” for the judgment of the “multitude,” lawyers seem more and more to be in the business of manipulating the judgment of the multitude by way of the media or social media.



What can aspiring lawyers do to cultivate the sorts of “habits and tastes” necessary if the profession is to maintain—or re-assert—its function as a responsible institution in American society? I have four suggestions.

First, resist the shaping influence of the legal academy. Know that you are called to be set apart and are called to resist being “conformed to the pattern of the academy.” Take nothing for granted in the law school environment—always be intentional. Discern the true role of the lawyer, the nature of law, and the end of client representation before God . . . on purpose.

Second, spend time with Christian law students who are willing to dig into the calling of the Christian lawyer. Struggle together. Ask questions of one another. Do not waste the opportunity you have in a more informal educational environment, where you have some time to explore first principles and resist the shaping influence of the academy. Press in to other disciples of Jesus in the law school environment in groups like Christian Legal Society or law school fellowships.

Third, spend time with Christians in other professions and professional schools—learn from them! (Plus, it will be a nice break from law overload).

Fourth, and finally, pay attention to legal history and the traditions of the profession. Do not buy into the lie that legal ethics codes are not important to Christians who have “higher standards.” Dig into substantive courses and discuss first principles with colleagues.

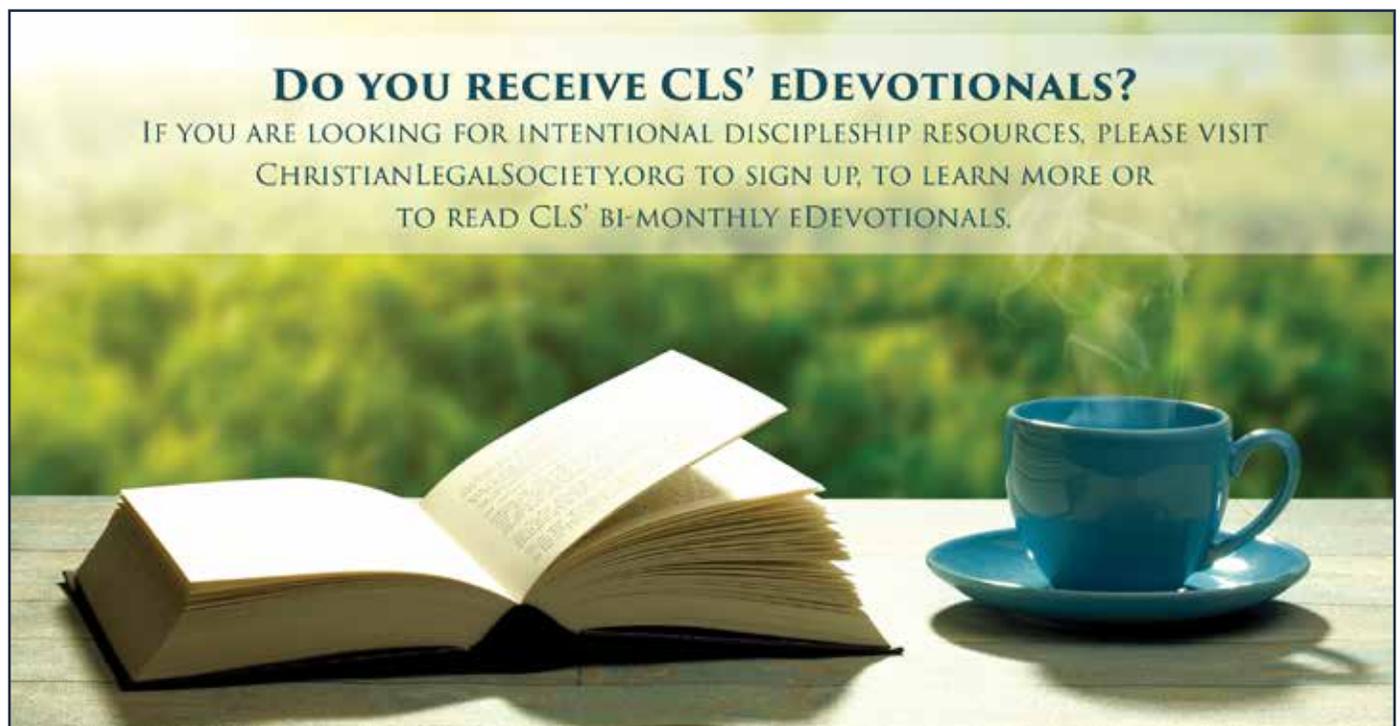
If tomorrow’s lawyers are to be more than technocrats, hired guns, and sharks, today’s law students will need to resist the theories and instruction that encourage those characteristics and tendencies. May the Lord guide you as you seek to do so!



Mike Schutt is Director of Law Student Ministries for CLS. He is an associate professor at Regent University School of Law and also serves as National Coordinator for InterVarsity Christian Fellowship’s Law School Ministry. Mike is the author of *Redeeming Law: Christian Calling and the Legal Profession* (InterVarsity 2007).

## END NOTES

- 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 278 (Phillips Bradley ed., Henry Reeve trans., Francis Bowen rev. ed. 1976) (1835) (“The Temper of the Legal Profession in the United States, and How it Serves as a Counterpoise to Democracy.”)
- 2 TOCQUEVILLE, at 278.
- 3 *Id.* at 275.
- 4 *Id.* at 276.
- 5 *Id.* at 273.
- 6 TIMOTHY SNYDER, *ON TYRANNY: TWENTY LESSONS FROM THE 20TH CENTURY* (2017).
- 7 *Id.* at 12.
- 8 *Id.* at 38.
- 9 *Id.* at 40.





# Real Sustenance in the *Masterpiece Cakeshop* Decision

BY KIM COLBY

**Slightly modified, this article contains remarks I delivered on August 3, 2018, at the American Bar Association's 2018 Annual Meeting in Chicago, Illinois, as a panelist on a panel sponsored by the Section on Civil Rights and Social Justice entitled *The Limits of Religious Accommodation: Implications of Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

My hope is to explain why the U.S. Supreme Court's carefully crafted decision in *Masterpiece* should be welcomed by all Americans who want to live in a society that allows freedom and diversity to flourish. The best summary of the *Masterpiece* decision is found in Justice Kennedy's words to the Colorado solicitor general during oral argument:

[T]olerance is essential in a free society. And tolerance is most meaningful when it's mutual. It seems to me that the state in its position here has been neither tolerant nor respectful of Mr. Phillips' religious beliefs. . . . And – because accommodation is, quite possible, we assume there were other shops that – other good bakery shops that were available.<sup>1</sup>

When Justice Kennedy spoke those words, many of us who care deeply about preserving religious freedom for all Americans breathed a little easier. Justice Kennedy's remarks suggested that the Court would rule in such a way that Jack Phillips would not be punished for living according to his religious conscience.

And that is what the Court did. The Court ruled 7-2 in favor of Phillips. And while the decision was narrow, it was nonetheless a decision in favor of Phillips and the First Amendment. The Commission's order against Phillips, requiring him to cease baking all wedding cakes if he would not bake cakes for same-sex weddings, was set aside. And a few days later, the Court granted cert in the case in which a florist declined to create custom floral arrangements for a long-time customer's same-sex wedding.<sup>2</sup> Vacating the lower court's judgment against the florist, the Court remanded for reconsideration in light of *Masterpiece*. In doing so, the Court clearly signaled that *Masterpiece* applied beyond its particular set of facts.

I would like to highlight five lessons from the *Masterpiece* decision.

**First**, *Masterpiece* is not the first time the Court has dealt with a case involving tension between nondiscrimination laws and First Amendment protections. Sometimes nondiscrimination

norms have prevailed, as in *Roberts v. Jaycees*,<sup>3</sup> and sometimes First Amendment rights have prevailed, as in *Hosanna-Tabor v. EEOC*.<sup>4</sup> In the latter case, the Court faced a conflict between a federal nondiscrimination claim and a church's assertion of its First Amendment rights. The Supreme Court *unanimously* ruled:

The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us.<sup>5</sup>

**Second**, *Masterpiece* reminds us that both religious freedom protections and nondiscrimination protections are *essential* if we want to ensure *equality for all citizens*. Throughout *Masterpiece*, the Court constantly reaffirmed the importance of both the First Amendment and nondiscrimination laws.

*Which is as it should be.* No one familiar with America's history can doubt the need for robust nondiscrimination laws to ensure all citizens' equality.

But history also teaches that religious people frequently are the targets of intolerance and animus. That is why laws protecting religious exercise are essential to achieving equality for all Americans.

And, of course, among the laws protecting religious exercise are nondiscrimination laws, which almost always include "religion" in their core list of protected categories. Ironically, in *Masterpiece*, we saw a nondiscrimination law that was supposed to protect religious persons being misused by the government to punish a person for his religious beliefs. The Court itself noted this irony when it reminded us all that "Colorado's antidiscrimination law . . . protects against discrimination on the basis of religion as well as sexual orientation."<sup>6</sup>

**Third**, – and now I am turning to the specific legal grounds on which the First Amendment prevailed in *Masterpiece* – Phillips' lead argument was that if the government compelled him to create a custom wedding cake for a same-sex wedding reception, he would be forced to express a message of support for same-sex marriage contrary to his religious beliefs.

The Court sidestepped this compelled speech claim and ruled instead for Phillips on his religious freedom claim. But the

Court left the strong impression that a compelled speech claim involving words or symbols would succeed.

There was a compelled speech argument that clearly lost. Both the State of Colorado and the ACLU claimed that if a baker would write on a wedding cake "God Bless the Union of Marty and Ruth," he must also write on a wedding cake "God Bless the Union of Charlie and David." Even Justice Ginsburg, who posed the question during oral argument, seemed surprised by the idea that Phillips could be punished for refusing to write words that so clearly contradicted his religious beliefs.<sup>7</sup>

**Fourth**, Phillips won instead on religious freedom grounds. The Court held that "[w]hatever the confluence of speech and free exercise principles might be in some cases, . . . [w]hen the Colorado Civil Rights Commission considered this case, it did not do so with the religious neutrality that the Constitution requires."<sup>8</sup>

The Court relied on two separate and independent grounds for finding hostility in the Commission's treatment of Phillips' faith: first, in the disparaging remarks by two Commissioners; and second, in the Commission's disparate treat-

ment of Jack Phillips compared to its treatment of the three bakers who refused to create cakes with anti-same-sex marriage messages.

What were the Commissioners' remarks that caused the Court to conclude that it had been biased? At the first hearing, one Commissioner "suggested that Phillips can believe 'what he wants to believe,' but cannot act on his religious beliefs 'if he decides to do business in the state.'"<sup>9</sup> At a second hearing, another Commissioner disparaged Phillips' beliefs by saying the following:

Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, whether it be – I mean, we – we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to – to use their religion to hurt others.<sup>10</sup>

The Court condemned the Commissioners for describing Phillips' faith as a "despicable piece of rhetoric" and for "compar[ing] Phillips' invocation of his sincerely held religious beliefs to defenses of slavery and the Holocaust."<sup>11</sup> According to the Court, "[t]his sentiment is inappropriate for a Commission charged with the solemn responsibility of fair and neutral

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**“[T]olerance is essential in  
a free society.  
And tolerance is most  
meaningful when it’s mutual.”  
– Justice Kennedy**

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enforcement of Colorado’s antidiscrimination law – a law that protects against discrimination on the basis of religion as well as sexual orientation.”<sup>12</sup>

Some have suggested that *Masterpiece* will be confined to its facts because the Commissioners’ remarks are an aberration. Unfortunately, the Colorado Commission is not an outlier nor a rogue commission. Instead, for the past five years, it has been commonplace to hear religious freedom disparaged as “a license to discriminate” and traditional religious beliefs regarding marriage compared to the defense of slavery or the Holocaust.

One notorious example occurred in September 2016, when the United States Commission on Civil Rights issued a report on religious freedom and nondiscrimination laws that showed utter contempt for religion and religious freedom.<sup>13</sup> The federal Commission took the extreme position that government should nearly always subordinate religious freedom claims to nondiscrimination claims – no matter how strong the specific religious freedom claim, or how weak the nondiscrimination claim, and even when both claims could be accommodated in a way that allowed all citizens to live according to their deepest convictions.

The Commission Chair at the time used terms remarkably similar to those the Supreme Court condemned in *Masterpiece*, when he wrote:

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*The Masterpiece decision bodes well for all Americans who value both nondiscrimination protections and religious freedom protections.*

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The phrases “religious liberty” and “religious freedom” will stand for nothing except hypocrisy so long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance.<sup>14</sup>

There is more, but you get the gist. One hopes that the *Masterpiece* decision will cause government officials to realize that their disdain for religious freedom may actually be thinly veiled religious bigotry – or at best, implicit bias.

**Fifth, and finally,** the Court separately found unconstitutional hostility to Phillips’ religious beliefs based on the Commission’s decision to punish Phillips for refusing to create a cake because he disagreed with its message *on religious grounds*. But the Commission decided not to punish three bakers who refused to create a cake because they disagreed

with its message *on nonreligious grounds*. The Court returned to a free exercise analysis set out in the *Lukumi*<sup>15</sup> case 25 years ago – that laws trigger strict scrutiny when they punish conduct that is religiously motivated while allowing analogous conduct that is secularly motivated to go unpunished. As a result, lower court judges must scrutinize not only a law’s text, but also its enforcement, to be sure that the government treats religiously

motivated conduct like it treats secularly motivated conduct. This will advance religious freedom and equality for all citizens. For these reasons, while narrowly crafted, the *Masterpiece* decision bodes well for all Americans who value both nondiscrimination protections and religious freedom protections. By ruling in favor of religious freedom, the *Masterpiece* Court chose the path that respects the right of both religious citizens and LGBT citizens to live according to their deepest convictions.



Kim Colby is Director of CLS' Center for Law & Religious Freedom. She is a graduate of Harvard Law School. Kim has represented religious groups in numerous appellate cases, including two cases heard by the United States Supreme Court. She has also filed dozens of amicus briefs in both federal and state courts. In 1984, Kim was heavily involved in congressional passage of the Equal Access Act.

#### END NOTES

<sup>1</sup> Oral Arg. Tr. at 62, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (June 4, 2018) (No. 16-111), at [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2017/16-111\\_f314.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/16-111_f314.pdf).

<sup>2</sup> *Arlene's Flowers, Inc., v. Washington*, 138 S. Ct. 2671 (June 25, 2018), granting cert. in No. 17-108, vacating judgment in *Ingersoll v. Arlene's Flowers, Inc.*, 389 P.3d 543 (Wash. 2017), and remanding for reconsideration in light of *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (June 4, 2018).

<sup>3</sup> *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

<sup>4</sup> *Hosanna-Tabor Evangelical Church and Sch. v. EEOC*, 565 U.S. 171 (2012).

<sup>5</sup> *Id.* at 196.

<sup>6</sup> *Masterpiece*, 138 S. Ct. at 1729 (emphasis added).

<sup>7</sup> Oral Arg. Tr. at 75-77.

<sup>8</sup> *Masterpiece*, 138 S. Ct. at 1723.

<sup>9</sup> *Id.* at 1729 (quoting Colorado Civil Rights Commission Hearing Record at Tr. 23).

<sup>10</sup> *Id.* (quoting Tr. 11-12).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> U.S. Comm'n. on Civ. Rts., *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*, Briefing Rep. (Sept. 7, 2016), <https://www.usccr.gov/pubs/docs/Peaceful-Coexistence-09-07-16.PDF>.

<sup>14</sup> *Id.* at 29 (Chairman Martin R. Castro statement).

<sup>15</sup> *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

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# *Congratulations* 2018 CLS LAW SCHOOL FELLOWS

This summer, CLS commissioned its inaugural class of Law School Fellows. CLS congratulates the 2018 CLS Law School Fellows! These young men and women invested a week of their summer engaging with professors and practitioners on issues surrounding jurisprudential and theological foundations of law, the doctrine of vocation, and the life of integrity in the law. It was an intense—but wonderful—week of fellowship, scholarly debate, and learning.

We were encouraged by the attitude and commitment of these Fellows as they embraced the challenge of this scholarly community. Thanks to their efforts, this Fellows class will form an excellent foundation on which to build a scholarly community across several generations of law students. Congratulations!



- JESSICA AYER · TAYLOR BAKER · AUSTIN BLACK · AUSTIN CROMACK · EMILY CUNNINGHAM ·
- RONIA DUBBANEH · ELIZABETH FELICIDARIO · TINSLEY GRIFFIN HILL · STEFANIE GRIGSBY ·
- MATTHEW HENDRY · NICOLE KENNEDY · PAULINA KING · NATEY KINZOUNZA ·
- CHAD MILBRANDT · ZACH MILLER · ERIC NELSON · DAX PUESCHEL ·
- IANNA RICHARDSON · HALEY ROACH · DANIEL SEGURA · CAROLINE SELL ·
- CHASE STEVENS · JOE TRAMMELL · NICK WALTER ·



# My Journey to Legal Aid

BY EKA AKPAKIP FLEMING

*Silent, aching, never knowing why.  
Your soul dies but your heart keeps beating...*

Those are the opening lines of a poem I wrote many years ago. That was me. My heart had broken in pieces, and though God was calling out to me, I couldn't hear His voice, I couldn't see His hand, I couldn't reach out. I was lost in darkness. BUT GOD sent others to be His hands and feet, to bring me light and, eventually, hope. And so I go out—and encourage others to go out—and help bring light to those lost in the darkness. That is why I serve: to bring light to those in darkness, hope to the hopeless, strength to those who are weary; as God once did for me.

I've wanted to be a lawyer for about as long as I can remember. Why? Because I learned at a young age that lawyers fought for JUSTICE. And unfortunately, I learned at a young age that there was a lot of injustice in the world. My parents had

---

*“For you were once darkness,  
but now you are light in the  
Lord. Live as children of light.”*

*Ephesians 5:8*

---

to overcome disadvantages and prejudices to get where they were. My dad, who grew up in a village in Nigeria, would tell me stories of the poverty and lack of opportunity that existed in the world. My mom, who had grown up in poverty in Dallas, would share stories of her mom's struggle to get food and of her friends being killed by the police without cause. And then there was me, growing up in a rural area where we were the only black family, and facing and fighting against all the prejudice, ignorance, and sometimes even hate that others had for me just because of the color of my skin.

I was in preschool when I discovered I was black. My best friends at preschool told me one day that they had heard their parents talking about the “black people.” Their parents had said these people were bad and did bad things and should be kept out. I had never heard this before so I was VERY concerned. After school I told my mom what I had heard and told her something had to be done about these black people! That’s when she explained to me that WE were black. I was eager to report this news to my friends at preschool the next day. I told them that there was nothing to worry about. That I had I found out last night that I’m black and I’m not bad, so everything was fine.

My friends never spoke to me again.

There’s something that happens to you when you realize people are judging you based on the color of your skin. It becomes harder to see the world as good and hopeful; it becomes easier to put your guard up and assume the worst of people.

Fortunately, from a young age I also knew that God was real. I grew up with parents who believed in and lived for God and consistently put their trust in Him. They taught me that although there is sin and pain in the world, we are to love our neighbor and be a light to those around us. I recognized the great gift God had given me to think and solve problems using logic. and I prayed about what He wanted me to do with my life. And the law was my answer. I wanted to help right the wrongs, advance the ideals of equality. I wanted to fight for justice!

But then the real world caught up with me. When I got to college, I made A LOT of mistakes. I had always thought that I needed to follow God’s law for Him to love me, so when I ended up breaking all of the rules I had followed as a child (no drinking, no sex, no drugs), I felt that God couldn’t possibly love me anymore. I couldn’t see a path back to His love and light. But I still felt the law was my calling, so I went to law school. By the time I entered law school, I was very far from God and had lost sight of His plan for my life. I acquired A LOT of debt and learned about areas of law that would actually pay me money. And if I’m absolutely honest with myself, I became enamored of the lifestyle and prestige that “Big Law” had to offer. I put aside my dream of “fighting for justice.” Instead I was going to be a corporate lawyer, I was going to make deals on Wall Street and make a lot of money. I was going to live for me, and I was going to be successful.

But God had different plans for me. With the downturn in the economy, I found myself working for the federal government in a non-legal position. And with an unexpected pregnancy, I also found myself a single mother to a beautiful baby boy. It wasn’t easy, and I needed help. I needed to go to court to get child support. Despite my legal education, I felt completely lost and alone. Just getting the case started was hard. I had no money for an attorney, so I had to figure out myself which forms to use. Luckily, I at least understood enough to know which jurisdiction I needed to file in (not that anything on the forms explained that!).



Once I started the case, things were even more stressful. My son's father had an attorney, so I was responding to briefs written by experienced lawyers completely on my own, and I argued my own case in court. And at the end of the day, it was really God's blessing and intervention that allowed me to get a good result.

In the course of representing myself in that first year of my son's life, I had a glimpse of what it's like for those whom we serve through legal aid. I couldn't have felt more powerless and afraid. Money was tight; I had to negotiate down the price for daycare; I only bought second-hand clothes; and my parents had to give me money so I could pay all my bills. That memory of feeling powerless stuck with me. Even as I got promoted, got child support, and got into a more comfortable position, I thought of all the people out there who didn't have the same support and opportunities that I had. It wasn't right that anyone should have to feel that way; God did not intend for us to have to live this way.

This was also the time when God called me back to Him. After I had my son, I knew I needed to go back to church—I wanted him to grow up learning about God and with the support of a church community. Over the next two years, I rediscovered God and had a great revelation of His love. I realized that God's love is a gift freely given, and that we should live and act out of love and gratitude, not to try to earn anything. I prayed that God would show me how I could help, where he would call me to serve.

That's when I found out about Good Samaritan Advocates, a Christian Legal Aid clinic, and it feel like what I'd been waiting for my whole life. In Christian Legal Aid, I can help those in great need who many times feel completely lost and alone. I can coach and assist clients who felt powerless and help them to see that they DO have some control over their lives. And most importantly, I can share God's love with them, to be the light of God in the world. There is nothing else like Christian Legal Aid; it allows us to use our legal gift, which is from the Father, to help further Christ's justice in the world, while

sharing the Spirit of God with those in need. It is a picture of God in the world.

Although I've been volunteering for four years and am now a Clinic Director, I still think seeing clients is one of the most intimidating, humbling, and fulfilling things I do. When I first got started, I felt very inadequate, but I kept reminding myself, it's me or nothing. Over time, I realized it's a great gift to do something where you can't just rely on your own strength. Even though I'm now more experienced, I will always need God's help when serving clients because it's not about giving legal advice—it's about giving HOPE, and only God can do that.

---

***“You did not choose me, but I chose you and appointed you so that you might go and bear fruit—fruit that will last—and so that whatever you ask in my name the Father will give you. This is my command: Love each other.”***

***John 15:16-17***

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I'll end with a prayer. First, I lift up those of you who are in need, I pray for you with all my heart. Jesus is there with you, and God loves you. I encourage those of you who are already serving or supporting Christian Legal Aid to give all that you can give and ask God where He is calling you to serve and lead in even greater measure. And I exhort those of you who have been thinking about getting involved—don't wait! The time to help is now, the need is great, and you are greatly needed. Even now, God is calling you to reach out to those in darkness and show them His marvelous light.



Eka Akpakip Fleming lives in Fairfax, Virginia with her husband, Chris, two sons (Jeffery and Matthew), and a very friendly cat named Buttercup. After graduating from Georgetown Law, she went to work for a federal agency and is now a Program Manager in the Office of the Chief Information Officer. Eka started volunteering at Good Samaritan Advocates in 2014, became a Clinic Director at the Columbia Baptist clinic in 2015, and recently joined the GSA Board. She's a member of Columbia Baptist Church where she sings in the praise band and plays the clarinet in the orchestra.



## Christian Legal Society is a community.

The events described on these pages are just a few examples of the fellowship, learning, and fun going on in CLS chapters. We are reserving this space in every magazine to share what is going on around the country, and hopefully, to inspire you to plan a similar CLS event in your area. The goal is always to bring individuals and chapters in your communities together.

*Want to be our next inspiration in Chapter Event Highlights? Tell us about a successful event or meeting you organized yesterday, last week, or last month, and we will share it with our members nationwide (and remember, it must be accompanied by a picture). We look forward to hearing about your stories and events and celebrating with you!*

### Dallas Picnic and Event

In June, the Dallas CLS Chapter co-hosted an event with Dallas Justice, a Dallas-based community of Christian lawyers focused on promoting a Biblical view of justice and encouraging lawyers to use their God-given skills to further God's justice and care for those suffering from injustice and oppression. CLS Dallas and Dallas Justice gathered at Watermark Community Church to hear Kelly Shackelford, President and CEO of First Liberty, share about their work to defend religious freedom.

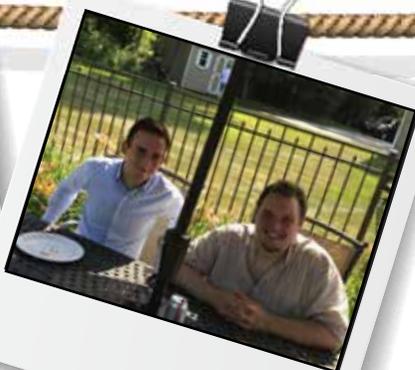
In July, CLS Dallas members of all ages gathered at a member's home for a cookout and pool party. Lawyers, law students, and family members spent the afternoon enjoying burgers, hot dogs, and accompanying fare and, more importantly, fellowship.



## New York City Summer Picnic

CLS New York City held their annual summer picnic in July. The weather was perfect for a barbecue and pool party. Lawyers, spouses and children gathered at a member's home

in Martinsville, New Jersey, and included a visit from CLS' Director of Attorney Ministries, Connie Bourne. Friendships were renewed around the pool and over cheeseburgers, and God was praised for His providence and goodness.



## Chicago Leadership Summit

The CLS Chicago chapter held an all-day leadership summit with the leadership of six of the local law schools. Brent Amato, CLS Chicago Area Staff Member, and Sally Wagemaker, CLS National President-Elect, met with the law students and a few others to discuss the roles of being a Christian lawyer, a Christian law student, a member of a CLS law school student chapter, and a leader of such a chapter. The event extended into the evening with a trip to Navy Pier for food, fun, and fellowship.



## Connect with other CLS members in your area

### ALABAMA

*Birmingham*  
CLS Birmingham  
Mark Hogewood  
mhogewood@wallacejordan.com

*Mobile*  
CLS Mobile  
William Watts  
www.helmsinglaw.com

### ARIZONA

*Phoenix*  
CLS Phoenix  
James Williams  
james@azbarristers.com

*Tucson*  
CLS Tucson  
Jim Richardson  
richardsonjim@icloud.com

### CALIFORNIA

*Inland Empire*  
CLS Inland Empire  
Maureen Muratore  
mmlawyer@peoplepc.com

*Los Angeles*  
CLS Los Angeles  
Arnold Barba  
arnold.barba@limnexus.com

*Orange County*  
CLS Orange County  
Steve Meline  
melinelaw2@yahoo.com

*Sacramento*  
CLS Sacramento  
Steve Burlingham  
steveb@gtblaw.com

*San Diego*  
CLS San Diego  
Miles C. Lawrence  
mlawrence@LECPProfGroup.com

*San Fernando Valley*  
CLS San Fernando Valley  
Ben Jesudasson  
ben@bjslawfirm.com

*San Francisco*  
CLS San Francisco  
Kirstin L. Wallace  
kwallace@archernorris.com

*West Los Angeles*  
CLS West L.A.  
Sarah Olney  
sarah.olney@yahoo.com

### COLORADO

*Colorado Springs*  
CLS Colorado Springs  
Theresa Sidebotham  
tls@telioslaw.com

*Denver*  
CLS Metro Denver  
Terry O'Malley  
tomalley@omalleylawoffice.com

### DISTRICT OF COLUMBIA

*CLS DC Metro*  
Paul Daebeler  
pfdaeber@verizon.net

### FLORIDA

*Jacksonville*  
CLS Jacksonville  
Michele Waddell  
michele@youhurtwefight.com

*Orlando*  
CLS Orlando  
Joshua Grosshans  
josh@lseblaw.com

*Tallahassee*  
CLS Tallahassee  
Andrew Wilcox  
Andrew@Wilcox-legal.com

*West Palm Beach*  
CLS West Palm Beach  
Diego Asencio  
diego634c@aol.com

### GEORGIA

*Atlanta*  
CLS Atlanta  
Clare Draper  
Clare.draper@alston.com

### HAWAII

*Honolulu*  
CLS Hawaii  
Terry Yoshinaga  
yoshinagalaw@gmail.com

### ILLINOIS

*Chicago*  
CLS Northern Illinois  
Steve Denny  
sdenny@dennylaw.com

*Wheaton*  
CLS Wheaton  
Mark Sargis  
msargis@bellandesargis.com

### KANSAS

*Wichita*  
CLS of Wichita  
Richard Stevens  
rcstevens@martinpringle.com

### LOUISIANA

*New Orleans*  
CLS New Orleans  
Frank Bruno  
frankbruno4319@att.net

### MARYLAND

*Greater Baltimore*  
CLS Maryland  
Kimberly Waite  
kimlwaite@yahoo.com

### MASSACHUSETTS

*Boston*  
CLS Boston  
Brian Tobin  
CLSBoston@zoho.com

### MINNESOTA

*Minneapolis*  
CLS of Minnesota  
Ted Landwehr  
tland@landwehrlaw.com

## MISSISSIPPI

*Jackson*  
CLS of Central Mississippi  
Bob Anderson  
andersonlawpllc@comcast.net

## MISSOURI

*Kansas City*  
CLS Kansas City  
Jesse Camacho  
jcamacho@shb.com

*St. Louis*  
CLS St. Louis  
Gary Drag  
gddrag@lawofficeofgarydrag.com

*Springfield \*New Chapter\**  
CLS of Springfield  
Lydia Seifner  
lydia@spfdfamilylaw.com

## NEBRASKA

*Lincoln*  
CLS Nebraska  
Jefferson Dowling  
jd@keatinglaw.com

## NEVADA

*Las Vegas*  
CLS Las Vegas  
David Ortiz  
davidortizlaw@yahoo.com

## NEW JERSEY

*Cape May*  
CLS Cape May  
Anthony P. Monzo  
amonzo@mchlegal.com

## NEW YORK

*New York City*  
CLS NYC  
Jonathan Nelson  
jnelson@nelsonmaddenblack.com

*Syracuse*  
CLS Central New York  
Ray Dague  
rjdague@daguellaw.com

## NORTH CAROLINA

*Wake County*  
Wake County CLS  
Max Rodden  
mrodden@smithdebnamlaw.com

## OHIO

*Columbus*  
CLS of Central Ohio  
Michael A. Renne  
mrenne@dinsmore.com

*Willoughby Hills*  
CLS of Ohio Northeast  
Robert L. Moore  
rob@robmoorelaw.com

## OKLAHOMA

*Oklahoma City*  
CLS Oklahoma City  
David Van Meter  
david@vanmeterlawfirm.com

## OREGON

*Salem*  
CLS of Oregon  
Herbert Grey  
herb@greylaw.org

## PENNSYLVANIA

*Greater Philadelphia*  
CLS Philadelphia/Delaware Valley  
Ted Hoppe  
thoppe@thoppelaw.com

*Pittsburgh*  
CLS Western Pennsylvania  
Delia Bianchin  
dbianchin@lynchlaw-group.com

## TENNESSEE

*Memphis*  
CLS Memphis  
Jay Lifschultz  
Jay.lifschultz@usa.net

*Nashville*  
CLS Greater Nashville  
Zale Dowlen  
zale.dowlen@outlook.com

## TEXAS

*Austin*  
CLS Austin  
Steve Campos  
stevec@CCLLP1aw.com

*Dallas*  
CLS Dallas  
Jessica Lewis  
president@clsdallas.org

*Houston*  
CLS Houston  
Stephen Moll  
smoll@reedsmith.com

*San Antonio*  
CLS San Antonio  
Chad Olsen  
chad@braychappell.com

*Williamson County*  
CLS Williamson County  
Terence Davis  
attorney@myfamilylawspecialist.com

## VIRGINIA

*Leesburg*  
CLS Northern Virginia  
Mark Crowley  
markvincentcrowley@earthlink.net

*Richmond*  
CLS Richmond  
Brian Fraser  
brian.r.fraser@gmail.com

## WASHINGTON

*Seattle*  
CLS Seattle  
Alissa Baier  
seattle.cls@gmail.com





# Connect with the Christian Legal Aid Clinic in your community

## ARIZONA

Phoenix Metro Area  
Christian Legal Aid of Arizona

Tucson  
Christian Legal Society of Tucson  
Christian Legal Aid Program

## CALIFORNIA

Los Angeles  
Pepperdine University Legal Aid Clinic

Los Angeles Metro Area  
Christian Legal Aid of Los Angeles

Oakland  
Pope Francis Legal Clinic

San Bernardino Metro Area  
Crosswalk Legal Clinic

San Diego Metro Area  
San Diego Christian Legal Aid (SDCLA)

San Jose  
Silicon Valley Christian Legal Aid

Santa Ana  
Trinity Law Clinic at the Orange County Rescue Mission

Santa Ana  
Trinity Mobile Legal Clinic

## COLORADO

Colorado Springs  
Ecumenical Christian Legal Services

Denver  
Justice and Mercy Legal Aid Clinic

Denver Metro  
Christian Legal Clinic of Metro Denver

- Triage Legal Clinics
- Denver Rescue Mission Clinic
- Broomfield FISH Clinic
- Samaritan House Clinic

Christian Legal Clinic of Metro Denver (continued)

- Salvation Army Clinic
- Providence Network Clinic
- More Life Center Clinic
- Life Center Clinic
- SECOR Clinic Clinic

Fort Collins  
Serve 6.8 Legal Clinic

## DELAWARE

Wilmington  
Mission Legal Aid Clinic

## DISTRICT OF COLUMBIA

Washington, DC  
Christian Legal Aid of the District of Columbia (CLADC)

- Central Union Mission
- DC Dream Center

## FLORIDA

Jacksonville  
CLS Pro Bono Project

Jacksonville Metro Area  
Jericho Road Legal Service Ministry

## ILLINOIS

Chicago  
Cabrini Green Legal Aid

- Wheaton Bible Church
- Christ Community Church
- Fox Valley Church
- Wayside Cross Ministries

Cabrini Green Legal Aid (continued)

- Christ Church of Oak Brook
- Willow Creek Care Center

Chicago Metro Area  
Administer Justice

## KANSAS

Wichita  
Wichita Christian Legal Aid

## KENTUCKY

Louisville  
Metro Christian Legal Aid

## MARYLAND

Gaithersburg  
Good Samaritan Advocates at Covenant Life Church

Silver Spring and Baltimore  
Christian Legal Aid Maryland (CLAIM)

## MICHIGAN

Detroit Metro Area  
Christian Legal Aid of Southeast Michigan

Grand Rapids Metro Area  
West Michigan Christian Legal Aid

Kalamazoo  
Christian Legal Aid of Southwest Michigan

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*“Speak up for those who cannot speak for themselves,  
for the rights of all who are destitute.*

*Speak up and judge fairly.*

*Defend the rights of the poor and needy.”*

*Proverbs 31:8-9*

---

*Lansing*  
Christian Legal Aid of Lansing

## **MINNESOTA**

*Minneapolis*  
Park Avenue Walk-in Legal Clinic

*Twin Cities*  
Twin Cities Christian Legal Aid  
(TCCLA)

## **MISSISSIPPI**

*Jackson*  
Mission First Legal Aid Office

## **MISSOURI**

*St. Louis Metro Area*  
New Covenant Legal Services

## **NEW JERSEY**

*Newark Metro Area*  
Immigrant Hope

## **NEW MEXICO**

*Albuquerque*  
New Mexico Christian Legal Aid

## **NEW YORK**

*New York City*  
Open Hands Legal Services, Inc.

## **NORTH CAROLINA**

*Durham*  
Justice Matters

*Raleigh*  
Campbell Community Law Clinic

## **OHIO**

*Cleveland*  
Scranton Road Legal Clinic

## **OKLAHOMA**

*Oklahoma City Metro Area*  
Trinity Legal Clinic of Oklahoma, Inc.

*Tulsa*  
Tulsa Dream Center:  
Legal Assistance

*Tulsa*  
Tulsa University College of Law CLS  
Christian Legal Aid Clinic

## **PENNSYLVANIA**

*Philadelphia*  
Christian Legal Clinics of Philadelphia

- West Philadelphia Legal Clinic
- Hunting Park Legal Clinic
- Carroll Park Legal Clinic
- South Philadelphia Legal Clinic
- Chester Legal Clinic
- Germantown Legal Clinic
- Kensington Legal Clinic
- Chosen 300 Legal Clinic
- North Philadelphia Legal Clinic

*Pittsburgh*  
Christian Legal Aid of Pittsburgh

## **TENNESSEE**

*Murfreesboro*  
Murfreesboro Christian Legal Clinic

*Nashville Metro Area*  
Compassionate Counsel

## **TEXAS**

*Houston*  
Houston Legal Aid Center

## **VIRGINIA**

*Arlington*  
Restoration Immigration Legal Aid

*Northern Virginia*  
Good Samaritan Advocates

- Columbia Baptist Church
- Reston Bible Church
- The Lamb Center

*Roanoke*  
Roanoke Rescue Mission

## **WASHINGTON**

*Seattle*  
Open Door Legal Services

**For contact information and other details for the Christian Legal Aid clinics, view the full Clinic Directory at [ChristianLegalAid.org/clinics](http://ChristianLegalAid.org/clinics)**



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Jennifer Patrick,  
President and  
Chairman of the Board

It has been a joy to serve as CLS President these past two years. As my term comes to a close, it is my prayer that you would continue to be blessed by being an integral part of this ministry together. We are the nationwide membership of Christian attorneys, and it is natural to reflect on what the Lord has done, not only for just a few years, but for more than 50 years of ministry.

I remain continually amazed by the dedication of our executive director and CEO David Nammo and all of our devoted staff: Connie Bourne, Kim Colby, Mike Schutt, Ken Liu, Peter Smith, Courtney Herron, Joan McElveen, Laura Nammo, Elizabeth Drake, and the indefatigable Brent Amato. Their diligence and hard work has yielded tangible fruit for CLS, and our national board is thankful for each member of our staff. In turn, I would like to thank each member of the national board for continuing to travel the country each year to plan, pray, brainstorm, and provide encouragement to our local CLS chapters and leaders, seeing firsthand your servant hearts for this ministry and the significant impact of your volunteer leadership.

We are witnessing continued growth and financial stability throughout CLS ministries that has enabled us to continue to serve our membership while significantly expanding our outreach to the legal community. This could not happen without your support. The history of CLS is replete with remarkable stories of incredible blessing to the ministry and, to this day, CLS remains firmly steeped in prayer. Throughout my presidency, I have felt the impact of these prayers. One Christian attorney in particular continues to inspire me, 105 years after his passing into heaven. E.M. Bounds was the youngest practicing lawyer in Missouri in his day. He went on to attend Seminary

and became an ordained minister. Two of his many books on prayer were published during his lifetime, with several more published thereafter. As both lawyer and seminarian, Bounds knew well the competing demands for our time and their ultimate worth. Bounds wrote, “We can learn more in one hour of praying, when praying indeed, than from many hours of rigorous study.”<sup>1</sup> His example remains starkly relevant in the present age where time spent seeking the Lord in prayer is in danger of being superseded by our ever-increasing time engaging with social media. How might our world—and the legal system in which we live and move—be forever changed if we as Christian lawyers commit even one hour to fervent prayer and waiting upon God’s response?

Let us commit together to continue in prayer for CLS, for our law students, and for our fellow attorneys in Christ. No matter your practice area or particular area of focus, I would like to encourage you to continue in your sphere of ministry to which Jesus has called you. Please stay in touch with our board and staff to let us know how we may pray for you. I would also like to affirm and congratulate Sally

Wagenmaker as she begins her term as President this October. I trust you will keep her covered in prayer throughout this next season at CLS, as well as our CLS staff, which does yeoman’s work in this ministry to carry our mission of CLS forward. Together, let us magnify the Lord through mutual service and involvement in CLS as He continues to move and build upon its solid foundation for yet another 50 years to come.

## END NOTES

<sup>1</sup> Bounds, E.M. (1990). *The Complete Works of E.M. Bounds on Prayer*. Grand Rapids, MI: Baker Publishing Group.

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