

THE CHRISTIAN LAWYER®

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REGARDING LIFE

Honoring Christ in Pregnancy Care, Adoption, Foster Care,
Elder Care, and the Fight Against Human Trafficking

“For I know the plans I have for you,” declares the Lord,
“plans to prosper you and not to harm you, plans to give you hope and a future.”
Jeremiah 29:11



ALSO IN THIS ISSUE

Go Light Your World *by Herb Jensen*

Shaky Signature, Invaluable Soul *by Elizabeth Oklevitch*

The Equality Act's Direct Assault on All Americans' Religious Freedom *by Kim Colby*



David Nammo,
Executive Director
and CEO

The issue in your hands began with a conversation I had with a good friend of mine.

She and her husband have been fostering two wonderful, young children. Before coming to live in the home of my friend and her husband, the children had been through unimaginable trauma, all before the age of five. After nearly two years, my friend and her husband have come to love these children and have been considering them for adoption. The children call them “mom” and “dad,” and they are their children. It now seems likely, however, that these two children will end up back in a bad situation that puts them at risk of future abuse.

It is heartbreaking. It is heartbreaking for the children. It is heartbreaking for my friend and her husband. And it is heartbreaking just how broken the system is, which is merely a symptom of how broken and fallen we are as humans.

Several years ago, I had the opportunity to get to know the leading lawyer in America litigating nursing home cases. The things being done to the elderly were (and still are) criminal, to say the least. In his opinion, it was shameful that we would care so little about someone at the end of his or her life. The abuse of those who were sick, lonely, or just struggling was off the charts unimaginable. I will not go into the details here, but it was heartbreaking, and he sued the abusers for all they were worth and more.

Then, a few years after getting to know him, one of my own family members became a victim of abuse in a nursing home. It was not extreme, but it was enough

that we moved that family member to a safer, more reliable location. What was once for me a legal or theoretical issue became a personal one. Life matters, and the fight is worthy against those who destroy, hurt, or devalue life.

In his *Evangelium Vitae*, Pope John Paul II stated firmly, “we are facing an enormous and dramatic clash between good and evil, death and life, the ‘culture of death’ and the ‘culture of life.’ We find ourselves not only faced with but necessarily in the midst of this conflict: we are all involved and we all share in it, with the inescapable responsibility of choosing to be unconditionally pro-life.”

We are either on the side of death or the side of life when dealing not only with the issue of abortion but also with issues like adoption, foster care, elder care, bioethics, human trafficking ... the list goes on and on.

In this issue, it is our hope that you will take the time to think and consider all of the pro-life issues.

As followers of Jesus, we should be on the forefront of any life issue, knowing that every human is endowed with dignity and imprinted with the image of God. And, as Christian lawyers, Dr. Kohm rightfully states in this issue that we are called to advocate for a “fuller meaning” of what it means to be pro-life.

To quote the recently cancelled Dr. Seuss, from *Horton Hears a Who*: “A person’s a person, no matter how small ...” I would add, or how old, or how disabled, or how young, or how abused, or

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The Comprehensive Life Advocate

BY LYNNE MARIE KOHM, GUEST EDITOR

Every human being is made in the image of God, the *imago dei*. This theological term is applied uniquely to humans, denoting the symbolic relation between God and humanity, made in His image and likeness.¹

This issue of *The Christian Lawyer* considers the fuller meaning of being a pro-life advocate. Christian lawyers living out a Christian worldview in their practice of law must keenly consider a comprehensive vision and lifestyle that actively upholds the sanctity of human life. In fact, being pro-life means being for every life, empowering women and men and children to choose life at every turn. To be pro-life is to be pro-science, pro-women, pro-child, and pro-family, and to promote human flourishing for all, as “the pro-life movement is deeply rooted in the fundamental belief that all life, no matter how small or poor or unwanted, is worth protecting. Those of us who are pro-life fight for the inherent dignity within every human life, no matter what the age or stage of human development.”² Being pro-life means seeing and understanding how to be that advocate in numerous areas of life and law practice. This issue brings those avenues to light.

“Caring for Women Facing Unplanned Motherhood” by Anne O’Connor with the National Institute for Family and Life Advocacy (NIFLA) focuses on the critical nature of the pro-life advocate’s aid to pregnant women. Explaining the care, or lack of it, that women facing unplanned pregnancy bear, this piece presents that burden and traces the legal cases surrounding pregnancy resource centers in America today. Anne confides that no matter the outcome of these cases or the attacks by those who oppose their good work, pregnancy centers will continue to do what they have always done: “help to care for women at their time of need and empowering them to be all they can be to choose life for their unborn babies.”

“A Radical Life Mission: Faith-based Adoption,” by Todd Gathje, Ph.D. and policy analyst at the Family Foundation of Virginia, proffers that to profess to be pro-life incorporates the recognition that every child needs a loving home, and every child is a blessing to the entire community. Explaining how this mission has been furthered by the creation of faith-based agencies (FBAs), which help train, equip, and support families for foster care and adoption, he illustrates that their help in coordinating the placement of countless orphans and newborns is a priceless

service to society. While governments have largely co-opted the child welfare system, he shows how dependent states are on FBAs to recruit and train prospective foster and adoptive families, even in the face of myriad litigation, explaining that adoption and caring for the orphan is radical pro-life advocacy.

Herb Jensen’s “Go Light Your World” details the journey of a family called by God to work in foster care. You will read of his and his wife’s thoughts, fears, hopes and dreams for themselves and the children they are called to love,

serve, and nurture. Providing to children in need of a family a safe home, educational opportunities, family experiences, and a healthy lifestyle can change the world.

New York estate litigation attorney Elizabeth Oklevitch discusses the pro-life aspects of estate planning advocacy work. In her article entitled “Shaky Signature, Invaluable Soul: Honoring the Inherent Worth of Aging Individuals through Ordinary Estate Planning and Litigation,” she discusses how one of the delights of her practice is to show honor to the elderly and respect for their full humanity. Using the basic tenets of communicating value, respect, and dignity of the *imago dei*, Elizabeth traces and details the latest in undue influence litigation and shares how advocating for the elderly in this context protects the sanctity of human life.

Every human being is made in the image of God, the *imago dei*. This theological term is applied uniquely to humans, denoting the symbolic relation between God and humanity, made in His image and likeness.

California family law attorney Rachel Toberty also works around the globe to fight human trafficking. Her article entitled “The Case for the Pro-Life Advocate’s Engagement in Anti-trafficking Work” examines what sex trafficking is precisely, the health consequences it has for its victims, and the points of intersection between anti-trafficking work and the pro-life movement, while offering for the Christian lawyer practical suggestions for using those intersections to support human dignity. She argues that any advocate for human life will also be an advocate against human trafficking.

It was an honor and a joy to work with each of these authors, and I am so pleased to express my great appreciation for their work, both here for *The Christian Lawyer* and in their own advocacy work and practice.

Each of these important articles has a unique and distinct pro-life angle. As Christian lawyers, we would be wise stewards of the law and our faith to put into practice the importance of each of these parts in our full and comprehensive witness for Christ, as advocates for life.

END NOTES

- 1 Genesis 1:27.
- 2 *What Does It Really Mean to Be Pro-Life?*, American Center for Law and Justice (2017), <https://aclj.org/pro-life/what-does-it-really-mean-to-be-pro-life>.



LYNNE MARIE KOHM, GUEST EDITOR

Lynne Marie Kohm, law professor, author, lawyer, speaker, and discipleship mentor, is dedicated to family restoration through the application of Christian legal principles. Teaching family law, bioethics, child advocacy, professional responsibility, and wills, trusts & estates as the John Brown McCarty Professor of Family Law at Regent University School of Law, happily married 34 years, a (homeschooling) mother of two, and leader in the realm of state and volunteer bar service, Professor Kohm brings a servant leadership model of family preservation and restoration to the practice of family law. See her research on SSRN.com and her full bio at Regent.edu.



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Caring for Women Facing Unplanned Motherhood

BY ANNE O'CONNOR

“Being a mother is learning about strengths you didn't know you had.”¹

As any mother will tell you, motherhood is full of ups and downs. Motherhood becomes even more complicated, however, when the woman was not planning on being a mother at that particular point in her life. It becomes a “crisis pregnancy” and often women are faced with the difficult choice: to eliminate the “pregnancy” or to find help to eliminate the “crisis.” This is where the nation’s 2,700 life-affirming pregnancy centers step in to help. They help these mothers find the strengths they didn’t know they had to choose life for their unborn children.

Pregnancy centers exist to remove the “crisis” in a crisis pregnancy so that women are empowered as mothers. These Christian nonprofit organizations are wellsprings of compassion offering every service possible to empower women, including medical services, support and educational services, and a vast amount of social services. All are provided free of charge to women and their families.

In 2019, pregnancy centers provided an estimated \$266,000,000 in free services to more than 1,800,000 people.² A majority of these services were medical services such as pregnancy testing and ultrasound, performed by more than 10,000 licensed medical professionals, many of whom volunteer their services. The remaining are education and support services including material support such as baby clothes, diapers, and other supplies, parenting/prenatal education classes, post-abortion support, and sexual risk avoidance education.

For more than 50 years, pregnancy centers have empowered women and men with medically accurate information, sustainable prevention, and holistic care. According to a report compiled by the Charlotte Lozier Institute, by helping women “avert a first abortion and repeat abortion, pregnancy centers:

- Promote women’s and children’s health and the overall well-being of families.
- Avert mental health impacts of abortion for women, which include elevated rates of depression, substance abuse, and even suicide.

- Reduce rates of repeat abortion, which account for an estimated 43 percent of abortions in the United States according to abortion surveillance published by the Centers for Disease Control and Prevention.
- Lower the incidence of preterm birth. A risk association has been identified between previous induced abortion and subsequent preterm birth in numerous published studies internationally for over three decades.
- Lower the incidence of breast cancer. A risk association has been identified between previous induced abortion and subsequent occurrence of breast cancer in numerous published studies internationally.³

To be pro-life is to be in support of pregnancy resource centers.

In light of all the good work that pregnancy centers do, it is surprising that they often face legal and political battles from those who seek to silence them. A history of these attacks and a summary of cases against pregnancy centers can be found in “The Law and the Battle Against Pregnancy Centers” published by the National Institute of Family and Life Advocates (NIFLA) in 2018.⁴ For the last 25

years, NIFLA’s mission has been to help protect, defend, and train pregnancy centers. The attacks against centers range from organized negative public relations campaigns to deliberate political attacks and have for the most part all failed for lack of truth and for violating the U.S. Constitution.

The most recent legal victory for pregnancy centers came from the United States Supreme Court in *NIFLA v. Becerra*.⁵ In 2015, California enacted the Reproductive Freedom, Accountability, Comprehensive Care, and Transparency (FACT) Act, which targeted the speech of pregnancy centers by compelling them to place notices on their walls advising clients how they could procure an abortion. The government was using its power to force pro-life pregnancy centers to provide free advertising for abortions. This compelled speech clearly violated the pregnancy centers’ First Amendment rights and undermined their mission to offer life-affirming care to women and children. The Supreme Court ruled 5-4 to protect pro-life pregnancy centers’ rights to serve women and children according to their religious mission. Justice

**“Being a mother
is learning about
strengths you didn’t
know you had.”**



Clarence Thomas wrote the majority opinion of the Court, which held that the free speech guarantees of the First Amendment to the U.S. Constitution prohibit government compelled speech when such speech mandates and compels people to speak a message with which they fundamentally disagree, and which violates their consciences.⁶

Current cases involving pregnancy centers and the rights of mothers are being litigated in the states of Illinois, New York, and North Dakota.

Illinois passed a law in 2016 that specifically targets pro-life medical professionals and facilities. Under the law, medical professionals and facilities are required to discuss the “benefits” of abortion with their pregnant patients. They must also give women a list of doctors who perform abortions if a woman inquires about abortion. NIFLA, on behalf of our member centers in Illinois and represented by Alliance Defending Freedom (ADF), challenged the law in the United States District Court, Northern District of Illinois (*NIFLA v. Schneider*, Docket No. 3:16-C-50310). The law was preliminarily enjoined in 2017, holding that a likelihood of success on the First Amendment Free Speech claim had been demonstrated. After discovery, NIFLA filed a Motion for Summary Judgment based on the facts as presented so far in the case and in light of the Supreme Court’s ruling in *NIFLA v.*

Becerra. That motion was denied last fall, with the judge (erroneously, we believe) holding that the law is a regulation of professional conduct that only incidentally impacts speech and is, therefore, permissible. We proffer that *NIFLA v. Becerra* clearly resolved this issue to the contrary and are proceeding with an appeal.

In 2019, New York Governor Cuomo signed a bill known as the “Boss Bill,” which forces pro-life organizations to hire employees who are pro-abortion. The Boss Bill is clearly unconstitutional and has grave implications for pregnancy centers based in New York. NIFLA, representing our member centers in New York, joined in a lawsuit filed by ADF in the United States District Court, Northern District of New York, to challenge the law (*Compasscare, NIFLA and First Bible Baptist Church v. Andrew Cuomo, et al.* Docket No. 19-CV-1409.) We sought declaratory and injunctive relief to prevent the law from going into effect but were denied that relief except on one count regarding compelled language in employee manuals. The case is proceeding through discovery and an appeal is eventually anticipated to the Second Circuit Court of Appeals.

In North Dakota, the interests of the mother/child relationship are at issue in a case filed in the United States District Court, District of North Dakota, Western Division (*American Medical Association v. Stenehjem*, Docket No. 1:19-CV-125.) The North Dakota legislature passed an informed consent law that, among

other things, requires that prior to terminating her unborn baby's life, a woman be given a *Human Being Disclosure*. This disclosure requires pregnant mothers to be informed that "abortion will terminate the life of a whole, separate, unique, living human being." The statute defines "human being" in the biological sense only, as "an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation" (NDCC 14-02.1(9)). This informed consent disclosure is extremely important to women making informed decisions regarding abortion. Many women attest to being deceived or ignorant about this fact and that they would have made a different decision if they had known.⁷

Ironically, the American Medical Association (AMA) partnered with the last standing abortion clinic in North Dakota, Red River Women's Clinic, to file a federal lawsuit challenging the constitutionality of this informed consent disclosure. The North Dakota Attorney General is defending the state statute and NIFLA, along with two of our member centers (Dakota Hope Clinic in Minot and Women's Pregnancy Center in Grand Forks), both centers' Medical Directors, and an association of 113 North Dakota physicians, has intervened to defend the *Human Being Disclosure* because of its significance to the right of the mother to understand her rights in regard to her child.

Interestingly, North Dakota's *Human Being Disclosure* uses the exact same definition of "human being" that was used in a South Dakota statute that was challenged by Planned Parenthood and was upheld by the Eighth Circuit Court of Appeals (*Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 735-36 (8th Cir. 2008) (*en banc*)). The Court of Appeals there ruled that the South Dakota *Human Being Disclosure* was a true statement of fact – not a statement of ideology – that is truthful, non-misleading, and relevant to a pregnant mother's decision about her relationship with her child and her right to motherhood.

No matter the outcome of these cases or the attacks by those who oppose their good work, pregnancy centers will keep on doing what they always have done: help to care for women at their time of need and empowering them to be all they can be to choose life

for their unborn babies. Pregnancy centers know how to assist mothers find those strengths they didn't know they had.

If you would like more information on how to get involved and help a local pregnancy center, please feel free to contact NIFLA, at <https://nifla.org/>. Caring for women facing unplanned motherhood is absolutely pro-life.



Anne J. O'Connor is the vice president of legal affairs with the National Institute of Family and Life Advocates (NIFLA).

END NOTES

- ¹ Linda Wooten, *Mothers Thoughts* (Winston-Derek Pub. 2014).
- ² *Pregnancy Centers Stand the Test of Time*, Charlotte Lozier Institute (2020), https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020_FINAL.pdf.
- ³ *Id.* at 96-97.
- ⁴ Thomas A. Glessner and Anne J. O'Connor, *The Law and the Battle Against Pregnancy Centers*, National Institute of Family and Life Advocates (NIFLA), 2018, available at www.nifla.org.
- ⁵ 138 S. Ct. 2361 (2018).
- ⁶ *Id.* That free speech standard was distinguished by Justice Thomas from situations where the State is regulating the conduct of the physician in which that physician's speech is merely incidental to conduct, such as speech related to the performance of an abortion.
- ⁷ See sworn testimonies of 4,660 women who regret their abortions at "Women's Testimonies," *Operation Outcry* (2019), <https://www.operationoutcry.org/about/collecting-testimonies/>.



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A Radical Life Mission: Faith-based Adoption

BY TODD L. GATHJE, PH.D.

The early Christian church - not government - unquestionably changed how orphans and vulnerable children are cared for in society. It was common practice by society in that day, and even encouraged by the Roman ruling government, to leave unwanted newborns or infants with certain physical deformities to be abandoned - left to die from exposure to the elements or by being eaten by wild animals. In fact, the teachings of Jesus to “care for the orphans” (James 1:27) was a highly-controversial and revolutionary statement of the day because vulnerable children had virtually no rights. Suffice it to say, the Christian church was the first to extend the sanctity of life to the care of orphans.¹

In accordance with biblical teachings, every human is “fearfully and wonderfully” made in the image of God, and thus deserving of the opportunity to grow and mature in order to advance God’s Kingdom on earth. What made the early Christian church so radical, however, is that they never envisioned the care of orphans being performed by orphanages or so-called group homes. Instead, the commandment to care for orphans was directed to families, a model that’s survived for centuries.

As Timothy O’Malley proclaimed, “Every child’s existence is a gift not simply to the mother and father but to the entire human family. Adoption is the institutional way of upholding the gift of the child, whether his or her biological parents recognize that child as a gift or not.”² To profess to be pro-life incorporates the recognition that every child needs a loving home, and he or she is a blessing to the entire community.

The obvious pro-life act is exemplified when a single mother contemplating abortion selflessly allows her child to be adopted by another loving family,³ or for a foster family to care for an infant with special needs until the biological parents are capable of caring for the child on their own. But so too is providing a home to a young adolescent to help him or her escape a traumatic or destructive homelife so as to have any chance of a future.

In 2009, the Catholic bishops issued a paper that viewed adopting a child as “a gift to the child who receives a new family, to the new parents who receive a child to love and to raise, and to

the biological parents who, in self-sacrificing love, have done all they can to provide their son or daughter with a good home and a bright future.”⁴

Over the past 100 years or more, this mission has been furthered by the creation of faith-based agencies (FBAs) that help train, equip, and support families for foster care and adoption, and also help coordinate the placement of countless orphans and newborns. Although governments have largely co-opted the entire child welfare system, they are still highly dependent on FBAs to recruit and train prospective foster and adoptive families. For most government-run child welfare systems, these agencies have become critical to their success.

But now these critical, life-saving institutions are under severe scrutiny. In certain states and cities, they are being squeezed out of the system by forcing them to choose between complying with state regulations or violating their religious convictions regarding natural marriage. The unfortunate narrative that is being advanced is that the value of human life is less valuable than advancing particular ideology.

In Massachusetts, Catholic Charities of Boston was forced to shut down its adoption and foster care services because of its beliefs on marriage. In just one year, the percentage of children who aged out of the state foster care system rose by over 50 percent, and it lost over 2,000 families. In 2010, Washington, D.C., forced Catholic Charities to end its adoption and foster care services and, since then, adoption has declined by 22 percent, while there has also been a 53 percent increase in children with disabilities who have aged out of foster care.

Illinois enacted a law that caused many FBAs to close, which resulted in the loss of over 5,300 homes for children between 2012 and 2019. As recently as 2019, the City of Philadelphia ended contracts with Catholic FBAs because they only approved families that aligned with their biblical views on marriage, thereby displacing hundreds of children. The Catholic Charities sued the city, which made its way to the U.S. Supreme Court (*Fulton v. City of Philadelphia*).⁵ Last November, the Supreme Court heard oral arguments on whether the City of Philadelphia can

“Every child’s existence is a gift not simply to the mother and father but to the entire human family.”

-Timothy O’Malley



legally prevent Catholic Social Services from participating in the foster care system because they refuse to certify unmarried or same-sex couples for foster placement. A ruling is expected by June 2021.

What these states and cities are doing is in fact discrimination, and now it's coming to Virginia. With nearly 5,400 children in Virginia's foster care system, many of whom are ready for adoption right away, now is not the time to impose more restrictions that would further replete the state of willing foster and adoptive parents. And yet, that's exactly what is being attempted this year as legislation is moving through the Virginia General Assembly that would repeal at least a portion of a 2012 law that provides religious conscience protections for faith-based child placement agencies, which allows them to participate in the state's child welfare system and help facilitate child placements.

The conscience protection clause was passed in response to an effort in 2011 by some organizations who were pressuring Virginia's Board of Social Services to end licensure for adoption and foster care agencies and force them out of the child welfare system because of their beliefs regarding marriage. The Board eventually rejected this measure, but only after months of debate. It was in response to this regulatory threat that the General Assembly enacted the conscience protection law in 2012, with the intent of preserving the ability of FBAs to

continue participating in the child welfare system. If this conscience clause is repealed, there is no doubt that the Board will once again attempt to end licensure for these vital organizations. Essentially, this proposed legislation would limit the number of adoption and foster agencies to help care for Virginia children, leading to many of the same outcomes that have occurred in other states.

It would be wise for Virginia's General Assembly to wait for the U.S. Supreme Court's ruling in *Fulton v. City of Philadelphia* because there is sufficient reason to assume the outcome in this case will be favorable for FBAs. As Justice Alito declared: "It's the fact the City can't stand the message that Catholic Social Services and the Archdiocese are sending by continuing to adhere to the old fashion view about marriage."⁶

The tragic consequence in all of these cases and in the legislation being advanced in Virginia is that many young lives could be, and are being, lost because the government is placing more emphasis on *equality* than it is on *quality loving homes* that benefit children. A society that is constantly redefining marriage and family will never be able to value the dignity of human life. Jesus' teaching to "care for the orphans" was controversial and revolutionary then, and still is two millennia later. It is pro-life to protect vulnerable children with adoption, extending the sanctity of life to the care of orphans.



Todd L. Gathje, Ph.D., is Director of Government Relations for The Family Foundation of Virginia.

- 3 Jenn Hesse, “Why adoption is a redemptive pro-life option,” *The Ethics and Religious Liberty Commission* (Sept. 17, 2019), <https://erlc.com/resource-library/articles/why-adoption-is-a-redemptive-pro-life-option/>.
- 4 David Gibson, “Why Doesn’t Everyone View Adoption as a Pro-Life Option?,” *For Your Marriage* (2021), <https://www.foryourmarriage.org/blogs/why-doesnt-everyone-view-adoption-as-pro-life/>.
- 5 *Fulton v. City of Philadelphia*, 140 S. Ct. 1104 (2020) (mem).
- 6 Amy Howe, “Argument Analysis: Justices sympathetic to faith-based foster-care agency in anti-discrimination suit,” *SCOTUSblog* (Nov. 4, 2020), <https://www.scotusblog.com/2020/11/argument-analysis-justices-sympathetic-to-faith-based-foster-care-agency-in-anti-discrimination-dispute/> (quoting J. Alito during oral argument in *Fulton*).

END NOTES

- 1 Levi Bariether, “Orphan Care and the Early Church,” *Story International* (Jan. 31, 2019), (<https://www.storyintl.org/blog/orphan-care-and-the-early-church>).
- 2 Timothy P. O’Malley, “Adoption and a Pro-Life Anthropology,” *Public Discourse* (Jun. 2019), <https://www.thepublicdiscourse.com/2019/06/52537/>.

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Go Light Your World

BY HERB JENSEN

Christopher M. Rice's incredibly moving song, "Go Light Your World," repeats the refrain "Carry your candle, Run to the Darkness" followed each time with these words in that portion of the music that I would call the chorus:

*Seek out the hopeless, confused and torn;
Seek out the lonely, the tired and worn;
Seek out the hopeless, deceived and poor;*

It then concludes with:

*Seek out the hopeless, confused and torn
Hold out your candle for all to see it
Take your candle, and go light your world
Take your candle, and go light your world.*

If by chance you are not familiar with the song, I would urge you to look up "Go Light Your World" – Kathy Troccoli on YouTube – and be prepared to be blessed.

It was a dark night and we were in a part of Indianapolis that was unfamiliar to our family. We were looking for a small Christian school where our second oldest child was to play in a basketball game that evening. We (that actually means me) were running late and I knew that the game was going to start very soon. We had stopped by The Guardian's Home to pick up two new foster children before heading to the game. When I say dark, it was a very dark cloudy evening and we had been driving far longer than we should have been. Suddenly, from the back seat, came this strong little voice from Annie, one of our new foster kids, proclaiming to her sister with some sense of frustration, "We're lost, yep, we are lost" (with some emphasis). Being of the sex that does not like to stop and ask for directions and this being before phone GPS, I asked my wife, Deanna, "What did she say?" You know the response ... "We're lost." Without turning I asked Annie, "And how do you know that we are lost?" to which this precious little child (all of 3 years of age) said, "Well, we have passed the same gas station several times." I can't say that I took the criticism well, but I knew she was right and we quickly stopped for directions in an effort to get to most of the game. Annie and her sister Angela (not their real names) became well integrated into our family for the next six months. While they were with us, we held out our candle as best we could.

When she was young, Deanna had seen a movie on General Electric theatre about a family who adopted a number of children of many races. She was also a great fan of Roy Rogers and Dale Evans, who had also adopted several children of different races. Early on she felt that God had put a desire in her heart to do the same. She always loved children and decided to become a social worker so that she could help them. She wanted to save the children. It became our fantasy, that we could just love them and they would turn into wonderful, productive people. We were true believers in environment being the key to success.

We had a lot to learn. Only God can save, and heredity plays a much larger factor than we knew. We are called to love and nurture the children and give them a safe home, educational opportunities, and experiences, as well as a healthy lifestyle. All of our children when they were old enough, foster and natural, were placed in a Christian school where they were nurtured in a faith

in Christ. Some of the children had been left and were afraid to let Deanna out of their sight. Some ate too much or hid food in their rooms as they were unsure when the next meal might be. We were privileged to live in the country on nine acres with horses, dogs, cats, pet raccoons, mice, and snakes. We built a large playcenter and basketball pad and had a

creek to wade in and look for crawdads. We also had a large garden that the children helped to weed, which actually supplied a good portion of our food. It was a healthy place for kids to grow and bloom. Still, we were only planting seeds. Some for a few weeks, some for a few months, some for a few years. The children still made choices, some of which we applauded and some of which we didn't approve of at all. When they had to leave, we were generally not allowed any additional contact with them. Some, however, have reached out to us as they grew older.

People would say, "I could never do that and have to give them back." Others would say, "I need some extra money so I would like to take in some foster children to supplement my income." Wrong ideas. We told them to babysit, that way you can sleep all night, and the per diem never covered diapers, formula, or an older child's school and clothing costs. God gives us our biological children for a few years and then we are to send them into the world, hopefully equipped to handle what comes their way and a

We are called to love and nurture the children and give them a safe home.



relationship with our Savior. We feel that God sent us foster children for a season to love and care for and then, even if we were crying, to send back into the world with at least seeds of love for Jesus planted in their hearts.

No matter the race of the children we fostered, our biological children learned to share their parents, their time, their rooms, and their toys. They learned that when any of them was hurt, they all bled red. Most of all, they learned to love all of the children regardless of any differences.

Deanna and I have now been married over 50 years and have four natural children and four adopted children. The last adoption was that of our youngest foster child, Dakota who now, at the age of twenty-four, chose to be adopted in January of this year. She came into our home at the age of one. We had tried to adopt her when she was much younger but were not allowed to do so as she is a Native American and a registered member of the Omaha tribe. Over the years, we have had the privilege of more than thirty children share their lives with us.

Did everything work out perfectly? No. Will everything work out perfectly for you and your family if you decide to step into foster care? We pray that it would, but only God knows the answer to that question.

When we decided to use our candle (our home) to cast some light into the lives of some who seemed “hopeless” or “confused and torn,” we were intentional about the task that we were undertaking. We gave the decision a considerable amount of prayer, took the requisite instruction from the state of Indiana, and then jumped in. When we started, we told the department of child services that we had some requirements of our own. First, we did not want to

take any children older than our children. As our children matured, we were able to take older kids, but we still adhered to that requirement for we wanted our children to be the influencers rather than the influenced.

Second, we were as clear as one can be with State authorities that ours was a Christian home and that we would not compromise our beliefs in the time that any child would be with us. Finally, we reserved the right to return any child whose behavior or continued presence in our home was detrimental to our children or other foster kids already placed with us. Thankfully, we never had to do so.

If you are thinking about foster care and looking for affirmation in Scripture, you need to consider the following:

Mark 9:37 - “Whoever receives one such child in my name receives me, and whoever receives me, receives not me but Him who sent me.”

Psalm 82:3-4 - “Give justice to the weak and the fatherless; maintain afflicted and the destitute. Rescue the weak and the needy; deliver them from the hand of the wicked.”

[Carry your candle, run to the darkness. Seek out the hopeless, confused and torn]

Isaiah 1:17 - “Learn to do good; seek justice, correct oppression; bring justice to the fatherless, plead the widow’s cause.”

Mark 10:14 (Jesus’ words) - “Let the children come to me, do not hinder them, for to such belongs the kingdom of God.”

[Carry your candle, run to the darkness. Seek out the helpless, deceived and poor]

From our perspective, foster parenting is not something that you can do without the Lord's help and the help of your church community. We found on the internet a brochure published by Bethany.org that speaks of the qualities of those who foster parent well. That brochure lists the following six:

- (1) they go with the flow;
- (2) they have a sense of humor;
- (3) they ask for help;
- (4) they are open to new parenting techniques;
- (5) they celebrate small victories; and
- (6) they have a fierce love for kids.

We would add another that we found, of all places, on Pinterest: "Always be kinder than you feel."

Deanna and I would also strongly suggest another quality that really needs to be number one: a strong love of the Lord Jesus Christ and a resolve to pray, really pray, for each of the children. It is that love that will not only drive you, but it is the love and prayer that will sustain you and your marriage, if you decide to become a foster parent.

You might ask, "Is there really a need?" There was an article in *Faith and Work* in September of 2018 by Sarah Eekhoff Zylstra. The article is entitled "How Foster Care Became a Christian Priority – Just in Time." The numbers in the article are heart wrenching. In Arizona before 2009, there were between 6,000-9,000 children in the system. By 2016, there were almost 19,000 children in the Arizona system. Nationally those numbers increased from 397,000 in 2012 to 437,000 in 2016.

Knowing that there is a need is simply not enough. The question each of us faces is what can we do about that need. Jason Johnson in his blog "Five Powerful Truths in Scripture Every Foster Parent Must Know" provides wisdom to foster parents. I won't give you the Scripture or explanation he provides, but Deanna and I would ask you to consider his main points.

First, it won't be easy. Deanna and I can attest to that fact, but God does not call us to do "easy."

Second, it will be worth it. We found ourselves at times asking why we were continuing as foster parent, but we were attempting to

hold out our candle not necessarily for all to see, but for the kids that we brought into our home to see. We wanted these kids that we welcomed into our home to see the love of Christ.

Third, you can't see everything. What I believe Johnson is saying is that when you receive a child into your home, you do (hopefully) get some background information, but you really can't see the depth of the frustration and hurt of the children that you are asked to love.

Fourth, God is sovereign. The system will not make that same acknowledgment. There are those who work in the system who are willing to do so, but, as Christian foster parents, no matter how much it hurts to see the system send the children back home, we need to remember that God is sovereign.

Finally, you are not alone. If we do not recognize that we depend on God for all that we have and our response to all that happens, the task of foster parenting

from our perspective would be unbearable. Some of the children never saw the light that we were trying to place before them. Some did. Our responsibility was to be faithful.

What we really want to encourage you to do is to "Carry your candle, the light of Christ, and with that candle, Run to the darkness." In doing so we would encourage you to seek out the hopeless, confused and torn; the lonely, tired and worn; and the helpless, deceived and poor – in this case, children. Not hiding your candle under a basket but rather letting it burn brightly in your home so that it gives light to all who are in your house (Matthew 5:14-16).

If you would like to discuss foster care, please feel free to reach out to us at herbjensen@jensenlegal.us. Let your light shine for Christ.



Herb and Deanna Jensen have been married for over 50 years and have 8 children and 13 grandchildren. Additionally, they have fostered approximately 30 other children. Herb has practiced law for over 46 years, served at one time on the national board of Christian Legal Society and, years ago, formed the first CLS chapter in Indianapolis, Indiana.

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Shaky Signature, Invaluable Soul: Honoring the Inherent Worth of Aging Individuals through Ordinary Estate Planning and Litigation

BY ELIZABETH OKLEVITCH

As an estate planning and estate litigation attorney, one of the delights of my practice is to show honor to the elderly and respect for their full humanity. I get to do this even when my aging clients struggle to give themselves this basic respect. Many of my clients are visibly grieved by their functional decline and often apologize for simple things like a shaky signature. I laugh that off with a lighthearted, “Just wait ‘til you see mine!” (it is worse than a doctor’s), but despite our shared laughter, the loss they feel is real and cuts deep. So I look for ways to highlight and affirm the worth of the soul sitting across the table, regardless of the function of the body it inhabits. I have identified three ways of honoring my aging clients: intentionally giving common courtesy, carefully discussing end of life plans in living wills, and proactively safeguarding against subtle forms of undue influence. This article touches on all three of these methods but focuses on the third because it is easily overlooked and is the subject of a recent surge of legal development.

Communicating Value through Everyday Common Courtesy

I am humbled by the power of common courtesy to remind both myself and my elderly clients of their value. I repeatedly see clients light up and uneasiness dissipate when I ask them about their lives, listen to them, and speak affirmation back. It may be a genuine “thank you for your service” and follow-up questions to a Vietnam veteran who is now nearly fully dependent on others. Or it may be a reference to a G.K. Chesterton quote noting the indispensable role of motherhood to a great-grandmother shyly admitting she never held “a real job.” Speaking affirmation about an elderly person’s life’s work reminds both of us of the importance of their life.

Sometimes it is just the act of listening that matters. Oftentimes that listening is hard; resisting the urge to rush or interrupt clients who speak and process slowly takes self-control. Yet doing so protects the integrity of the process, making sure my client’s wishes are heard rather than assumed, and it also communicates value.

Honoring the *Imago Dei* through Careful Discussion of Living Wills

The second and perhaps most obvious way to affirm the value of human life is by carefully discussing living wills. Our approach matters. These discussions offer a rare opportunity to expressly bring up the source of human value in the natural flow of conversation. The specifics matter, too. When clients are considering advance health care directives on matters of life support, helping them distinguish artificial hydration and nutrition from other forms of intervention can bring greater moral clarity to their decision-making. Most clients are not interested in the detailed arguments of ethicists, but a working knowledge of basic frameworks empowers you to be a more effective guide. For instance, in the Catholic tradition spanning from Thomas Aquinas to Pope John Paul II, distinctions are made between “a natural means of preserving life,” which typically includes provision of food and water, even if by artificial means and “a medical act” or “therapeutic treatment.”¹ Different moral considerations apply to each. Being prepared to navigate these can help you guide your clients, believers and non-believers alike, in a way that ascribes inherent value to the individual far beyond his or her abilities, contributions, or perceived burden to others.

Championing the Vulnerable through Safeguards against Subtle Undue Influence

Safeguarding the interests of individuals in their later years is another way that attorneys can act upon the conviction that every person, at every stage of life regardless of physical or cognitive function, has dignity and is worthy of the full protection of the law. This is especially critical now that the global pandemic has left many of our elderly isolated from society at large and dependent upon fiduciaries to a greater degree than ever before, compounding their vulnerabilities.

The law in every state recognizes and condemns undue influence to some extent, but there is a move in many states to strengthen protections to ensure they cover subtle and insidious exertions of

undue influence, not just the easily-recognizable overt exertions. These efforts are fueled by a growing and increasingly wealthy aging population and a growing understanding of the unique psychological and social vulnerabilities of this population.

The State of New York, where I practice, is among the states giving attention to this matter. In New York, one in four New Yorkers is expected to be over age 60 by 2030.² Meanwhile, they continue to accumulate wealth as they age. A 2019 report explained that “older adults and baby boomers” generated 63 percent of New York’s household income: over \$379 billion.³ That is greater than the gross domestic product of all but 50 countries worldwide.⁴ Such prolific figures, reflective of national trends, have led financial experts to refer to the upcoming generational transfer of wealth from the baby boomers as the “great wealth transfer.”⁵

As the size and wealth of our nation’s aging population has increased, so too has our understanding of this population’s particular vulnerabilities. New York’s Office of the Statewide Coordinating Judges for Family Violence Cases released a publication in 2017 outlining and calling attention to “normal cognitive declines” contributing to age-associated financial vulnerability, including vulnerability to undue influence.⁶ The factors contributing to such cognitive declines are surprisingly commonplace. The publication references work published by the National Academy of Sciences and others showing “[c]hanges in cognition can be exacerbated by a range of other factors associated with aging—from increased anxiety, to vision and hearing loss, to social alienation and depression,” and “compared with younger people, a larger percentage of older adults are less able to recognize a characteristically untrustworthy face, which means they are more likely to trust people they shouldn’t ... [due] to reduced functioning in the region of the brain that triggers the ‘gut feelings’ of aversion and risk we’ve all experienced.”⁷

A trailblazing policy initiative in California similarly worked to integrate a multi-disciplinary understanding of altered cognitive function into a modernized legal approach to undue influence.⁸ That project began with an extensive literature review and survey of state laws in 2009. It reviewed literature from the field of psychology on such topics ranging from how totalitarian regimes control populations and how hostages bond with their captors to how white-collar criminals use manipulation and deception for financial gain.⁹ It blended those insights with findings that most states lacked thorough, updated guidance on determining the presence of legal undue influence and made policy recommendations.¹⁰ California’s probate code now requires a

factfinder in a case alleging undue influence to assess four factors:¹¹ the vulnerability of the victim, the influencer’s apparent authority, the actions or tactics used by the influencer, and the equity of result.¹²

On first look, these factors track with longstanding statutory and common law principles, but the detail of California’s law draws attention to important protections for the elderly against subtle undue influence. First, it demands recognition that undue influence can be exerted not only by brute force or overt manipulation (“I won’t buy your groceries if you don’t add me to your will”), but by much more subtle and even superficially innocent means, like the “use of affection.”¹³ This clarity has been needed, for while such influence falls within the purview of longstanding undue influence rules,¹⁴ it can often get overlooked because the rules use strong words that evoke more dramatic imagery such as “moral coercion,” “destroyed free agency,” and “constrained the testator.”¹⁵ An ABA publication acknowledged this disconnect, noting that “[u]nderstanding undue influence, dissecting it, defining it, and understanding the term, has proven elusive in social service and legal settings.”¹⁶ This is in part because “when a perpetrator is able to bend an older adult’s will to meet his or her nefarious objectives ... [t]his type of manipulation is usually wrapped in declarations of love, affection and friendship.”¹⁷ Numerous bar associations, academic journals, and service providers have hailed California’s recent treatment of undue influence as instructive in articulating a standard that offers meaningful and more readily apparent protections not only against cases of overt, strong-arm coercion, but also cases of insidious manipulation within family or other close relationships.¹⁸

Second, in a move consistent with contemporary psychological research, California’s law expressly states that conditions less severe than incapacity, such as age or impaired cognitive function, can make one susceptible to undue influence. While this reality is not absent in common law and older statutory schemes, it is often obscured. For instance, in a case my firm is litigating before the New York Court of Appeals, the Appellate Division conflated capacity and undue influence, citing the testatrix’s “capacity” as a reason to reverse the Surrogate’s finding of undue influence where the Surrogate had made an undisturbed finding that the 88-year-old testatrix’s mind was weakened.¹⁹ We are asking the Court to reject this narrow analysis and reaffirm the Court’s comprehensive factors-based approach established over a century ago.²⁰ When courts are looking only for victims that fit a certain profile rather than considering the entirety of the factors surrounding each situation, exploitation can be missed.

At a time when secular legal thought leaders are sounding alarms about the vulnerabilities of our aging population and the need for meaningful protections, the convictions we carry as Christian attorneys, judges, and policy influencers should propel us to excel in delivering those protections. As pro-life advocates, we have reason to insist on a well-informed standard for undue influence that is comprehensive enough to condemn undue influence ranging from the overt and overpowering to the subtle and insidious.

Christian advocates for life understand the importance of thoughtfully engaging our clients in making end-of-life medical decisions, knowing we are touching the sacred. We have motivation to look out for undue influence as we craft estate plans for aging clients, protecting their interests long before a will is contested. And we delight to listen, affirm, and honor, extending courtesies with patience fitting of the weight of glory our clients carry. In doing so, we are just doing our jobs, but we are also declaring the worth of the soul.



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END NOTES

- 1 For a cursory overview showing the consistency of centuries of Catholic teaching on artificial hydration and nutrition, see Fr. Jonah Pollock, O.P., *Understanding Catholic Teaching About Artificial Nutrition and Hydration in the Light of Previous Church Teachings and the Catholic Moral Tradition*, Dominican Friars Health Care Ministry of New York (Aug. 29, 2019), <https://www.healthcareministry.org/understanding-catholic-teaching-about-artificial-nutrition-and-hydration-in-the-light-of-previous-church-teachings-and-the-catholic-moral-tradition/> (last accessed Feb. 9, 2021), comparing, e.g., Aquinas, “A man has the obligation to sustain his body, otherwise he would be a killer of himself ... by precept, therefore, he is bound to nourish his body and likewise, we are bound to all the other items without which the body cannot live,” *Commentary on 2 Thessalonians*, with Pope John Paul II’s 2004 Address, “I should like particularly to underline how the administration of water and food, even when provided by artificial means, always represents a natural means of preserving life, not a medical act.”
- 2 *Older Adults: An Economic Powerhouse*, Aging (Nov. 19, 2019), <https://aging.ny.gov/news/older-adults-economic-powerhouse>.
- 3 *Id.*
- 4 *CIA Word Factbook*, CIA.gov, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html> (last accessed Aug. 25, 2020).

- 5 Mark Hall, “The Greatest Wealth Transfer in History: What’s Happening And What are the Implications,” *Forbes* (Nov. 11, 2019) <https://www.forbes.com/sites/markhall/2019/11/11/the-greatest-wealth-transfer-in-history-whats-happening-and-what-are-the-implications/#3dd171974090> (last accessed Aug. 26, 2020).
- 6 Hon. Janet DiFiore, Hon. Lawrence K. Marks & Hon. Deborah A. Kaplan, *Understanding and Preventing Financial Exploitation of Vulnerable Older Adults* at 7, NYCOURTS (Nov. 2017), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-09/monograph.pdf>.
- 7 *Id.* at 7.
- 8 Mary Joy Quinn, *Undue Influence: Definitions And Applications, Final Report* (March 2010), <https://nyceac.org/wp-content/uploads/2013/01/UndueInfluence.pdf>.
- 9 *Id.* at 10.
- 10 *Id.* at 9.
- 11 Importantly, these are factors, not elements. Requiring all four signs to be present to support a finding of undue influence would allow the more insidious types to be missed.
- 12 California Probate Code §86; California Welfare and Institutions Code §15610.70.
- 13 California Welfare and Institutions Code §15610.70(3)(B).
- 14 See, e.g., New York holdings that undue influence may be of “a silent resistless power” (*Matter of Walther*, 6 NY2d at 49, 53 [N.Y. 1959] [citations omitted]), that subverts “the victim’s will to the point where it becomes the willing tool to be manipulated for the benefit of another” (*Matter of Burke*, 82 AD2d 260, 269 [2d Dep’t 1981]).
- 15 *Matter of Kumstar*, 66 NY2d 691, 693 (N.Y. 1985), reh’g denied 67 NY2d 647 (N.Y. 1986).
- 16 Mary Joy Quinn, *Defining Undue Influence*, 35 *Bifocal* 72 (Jan.–Feb. 2014), <https://www.americanbar.org/content/dam/aba/publications/bifocal/BIFOCALJanuary-February2014.pdf>.
- 17 DiFiore, et al. *supra* note 6, at 9.
- 18 E.g., Quinn, *supra* note 16; See also Amy Erickson and Beth Morrison, Hennepin Cnty. Bar Assn, *Undue Influence in Estate Planning: When Help Goes Too Far*, (Apr. 23, 2020), <https://www.mnbar.org/hennepin-county-bar-association/resources/hennepin-lawyer/articles/2020/04/23/undue-influence-in-estate-planning-when-help-goes-too-far>; Daniel A. Plotkin, James E. Spar & Howard L. Horwitz, *Assessing Undue Influence*, 44 *J. Am. Acad. Psychiatry L.* 344–51 (Sep. 1, 2016), <http://jaapl.org/content/jaapl/44/3/344.full.pdf>; Lisa Nerenberg, *Undue Influence: An Insidious Form of Elder Abuse*, NYC Elder Abuse Ctr. (Jan. 10, 2013), <https://nyceac.org/undue-influence-an-insidious-form-of-elder-abuse/>.
- 19 *Matter of Kotsones*, 185 AD3d 1473, 1476 (N.Y. 4th Dep’t 2020).
- 20 *Rollwagen v Rollwagen*, 63 NY 504, 519 (N.Y. 1876).

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The Case for the Life Advocate's Engagement in Anti-trafficking Work

BY RACHEL K. TOBERTY

While January is recognized as National Slavery and Human Trafficking Prevention and Awareness month, Sanctity of Life Sunday, celebrated nationally by many churches, and the anniversary of *Roe v. Wade* also fall in the month of January. The calendar, however, is not the most important intersection between the pro-life movement and anti-trafficking advocacy. This article examines for the Christian lawyer what sex trafficking is, the health consequences it has for its victims, and the points of intersection between anti-trafficking work and the pro-life movement, while offering practical suggestions for using those intersections to support human dignity. Any advocate for human life will also be an advocate against human trafficking.

What is Sex Trafficking?¹

The Trafficking Victims Protection Act (TVPA) of 2000 was the first comprehensive federal law to address human trafficking. The TVPA defines sex trafficking as the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is not yet 18 years old.² For child victims, no showing of force, fraud, or coercion is necessary.

Victims of sex trafficking include children (both girls and boys), as well as adults. The United States National Human Trafficking Hotline serves as one reliable way to track data on trafficking in the United States. From the hotline's inception in December 2007 to December 2019, over 63,380 incidents of human trafficking were identified through the hotline.³ Based on the 2019 Report, for those incidents of identified sex trafficking, a majority of the victims were women.

The 2019 Report shows that the average age a victim is first trafficked is 17, although it can be much younger. While popular myths like those from the movie *Taken* characterize traffickers as kidnapping young girls from plain sight in a dramatic fashion, these myths unfortunately distract from the vulnerabilities that traffickers seek to exploit. There are four primary areas of vulnerability: (1) children in the foster-care system; (2) runaways

or homeless youth; (3) those with abusive relationships in their past; and (4) foreign nationals.

Kayla's story illustrates a common way that victims are approached and then controlled by their traffickers:

[W]hen I turned 13 I'd had enough of the abuse in home and I ran away. I didn't know where to go so I went to the center of town and stood by the town hall. A man saw me hanging around there and he said that he was looking for a "protégé." I didn't know what it was but it sounded fine to me. He said that I could stay at his house if I didn't have a place to stay.... When we got to his house, he pulled out a bottle of gin and had me drink and drink. The next thing I remember is waking up drunk in his bed all wet and hurt. He took me out on the street and told me what to do . . . During that time, I saw 10 to 20 men a day. I did what he said because he got violent when I sassed him. I took all kinds of drugs – even though I didn't really like most of them . . . Over the years I had pimps and customers who hit me, punched me, kicked me, beat me, slashed me with a razor. I had forced unprotected sex and got pregnant three times and had two abortions at [a clinic]. Afterward, I was back out on the street again. I have so many scars all over my body and so many injuries and so many illnesses. I have hepatitis C and stomach and back pain and a lot of psychological issues. I tried to commit suicide several times.⁴

Health Consequences for Sex Trafficking Victims

In a first of its kind study in the United States, Laura J. Lederer and Christopher A. Wetzel researched the physical, emotional, and mental health symptoms experienced by sex trafficking victims. The study collected data from victims of sex trafficking in several cities throughout the United States.

The study found, "[o]n average, the respondent reported being used for sex by approximately thirteen buyers per day, with a median response of ten. Some respondents reported typical days of as many as thirty to fifty buyers."⁵ The study also found that



nearly all victims suffered from some physical health condition as a result of being trafficked. These physical conditions involve neurological symptoms – including memory loss, headaches and migraines, dizziness, severe weight loss, and malnutrition.⁶ It also confirmed the pervasiveness of lasting mental and emotional effects of trafficking, including PTSD, suicide attempts, and flashbacks of the trauma.⁷

Abortion and Sex Trafficking

Pregnancy is a common experience for most sex trafficking victims, with 71.2% of victims reporting at least one pregnancy and 21.2% reporting five or more pregnancies during the time they were being trafficked.⁸ It is not uncommon for these pregnancies to be terminated through abortion. Of those reporting pregnancies, 55.2% reported at least one abortion, and 29.9% reported having multiple abortions.⁹

Some victims reported that they were forced by their traffickers to have an abortion. “The survivors in this study similarly reported that they often did not freely choose the abortions they had while being trafficked. While only thirty-four respondents answered the question whether their abortions were of their own volition or forced upon them, more than half (eighteen) of that group indicated that one or more of their abortions was at least partly forced upon them. One victim noted that ‘in most [of my six abortions,] I was under serious pressure from my pimps to

abort the babies.’ Another survivor, whose abuse at the hands of her traffickers was particularly brutal, reported seventeen abortions and indicated that at least some of them were forced on her.”¹⁰

Sex Trafficking Objectifies Humans Created in the Image of God

Christians are familiar with the *imago dei* concept, “So God created man in his own image, in the image of God he created him.”¹¹ Being image bearers inherently bestows us with dignity and worth. Nothing can take away from the dignity in our creation.

At the heart of the pro-life movement and those who advocate against human trafficking is the recognition of persons being image bearers of God and the core principle of human dignity. “All human beings are created and embodied, unrepeatable, precious, and fundamentally equal.”¹²

Sex trafficking objectifies its victims. It denies the inherent dignity in each human being by not seeing the victim as a worthy, precious, unrepeatable being but rather a means to an end. As image bearers of God, humans were never meant to be a means to an end. But in a fallen world, buyers of sex and traffickers treat victims of sex trafficking as a means to sexual gratification and money.

Practical Applications

How can pro-life attorneys work with anti-trafficking organizations to abolish sex trafficking? The options are many, but a few ideas rise to the top of any list.

Pro-life attorneys can help in the identification of victims. Attorneys can make sure the crisis pregnancy centers that they support through their communities or churches are well trained to identify sex trafficking victims. Partnering with a local anti-trafficking organization to make sure volunteers and staff are up to date on the latest research and things to look for in a trafficking victim is an easy way to partner in the critical work of abolishing trafficking. These crisis pregnancy centers can present life-saving options to victims that protect the victim and the unborn baby.

For lawyers supporting anti-trafficking organizations, getting to know some of the local pregnancy centers is recommended. Not only can you work with them on identification training, but given the high percentage of trafficking victims who have had abortions, it may be wise to find post-abortion support groups for survivors. These support groups can help address the trauma many victims may experience from abortions.

As Christian lawyers we recognize the sanctity of each life and are equipped to “Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow.”¹³ Advocating against human trafficking is being pro-life.



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END NOTES

- ¹ This article focuses exclusively on sex trafficking. For a better understanding of human trafficking – including labor trafficking, sex trafficking, child soldiers, and organ trafficking, see Jeffrey Brauch, “The Destructive Reach of Human Trafficking – and God’s Call to His People,” Vol. 13, *The Christian Lawyer* (2017).
- ² 22 U.S. Code §7102.
- ³ 2019 Data Report: The U.S. National Human Trafficking Hotline, Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf.
- ⁴ Laura J. Lederer and Christopher A. Wetzel, “The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities,” *The Health Policy and Law Review of Loyola University Chicago School of Law*, 61 (2014).
- ⁵ *Id.* at 72.
- ⁶ *Id.* at 68.
- ⁷ *Id.* at 70.
- ⁸ *Id.* at 72.
- ⁹ *Id.* at 73.
- ¹⁰ *Id.* at 73-74.
- ¹¹ Genesis 1:27.
- ¹² O. Carter Snead, *What it Means to be Human: The Case for the Body in Public Bioethics* (Harvard 2020).
- ¹³ Isaiah 1:17.



Life, Love & Legal Aid: The Call to Serve Those in Need

BY KEN LIU

“Work is not a curse but a gift from God.”¹

This pronouncement from Hugh Whelchel’s book, *How Then Should We Work?*, might ring hollow to many lawyers, as so many in our profession seem to be unfulfilled in our work.² Even Christian attorneys so often struggle with finding meaning in our profession.³ I was also a victim to this mentality early in my career.

It wasn’t until I started serving in Christian Legal Aid (CLA) about sixteen years ago⁴ that I felt most fulfilled in my work as a lawyer. Before I started volunteering in legal aid, I had only done legal work for corporations and nonprofit organizations, not individual people, much less anyone who was in desperate need. Of course, there is certainly great value in all types of law, and we need good people to serve throughout the legal profession, but there is simply something more life-affirming in using our God-given skills to serve those who are downtrodden and suffering.

Although the U.S. Supreme Court may have determined that corporations also have “personhood” under the law, there is a

big difference between helping companies protect their intellectual property (I’ve practiced IP law for two decades) and helping a poor abused mother whose husband just left her fend off a \$500/hour divorce attorney fighting to take away custody of her children. After all, Jesus didn’t say, “Truly I say to you, protect thy corporate brands from those who would infringe them,” but rather, “Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me” (Matthew 25:40).

Scripture doesn’t mince words about the call to justice: “The righteous care about justice for the poor, but the wicked have no such concern” (Proverbs 29:7). “Do not deny justice to your poor people in their lawsuits” (Exodus 23:6). “Do not exploit the poor because they are poor and do not crush the needy in court” (Proverbs 22:22). These and other verses speak directly to we lawyers who have the tools and knowledge to work for justice. When we look into the eyes of someone who is suffering an injustice and have a chance to help right a wrong, we are directly fulfilling the call of God.

Former CLS Executive Director Lynn Buzzard wrote, “Law is inextricably fraught with the very issues and dynamics of Christian theology and life: justice, redemption, community, righteousness, forgiveness, repentance, and judgment.”⁵ Perhaps nowhere is this truer than in the issues seen by legal aid attorneys: the poor being taken advantage of by unscrupulous landlords, the elderly being preyed upon by fraudsters, immigrants being taken advantage of by unjust employers, etc.

Lawyers are uniquely gifted and called to work for justice in a broken world. In his book *Generous Justice*, Pastor Tim Keller states, “To do justice means to go to places where the fabric of shalom has broken down, where the weaker members of societies are falling through the fabric, and to repair it How do we do that? The only way to reweave and strengthen the fabric is reweaving yourself into it Reweaving shalom means to sacrificially thread, lace, and press your time, goods and power and resources into the lives and needs of others.” Christian Legal Aid allows us to weave our lives into our communities and help repair the fabric that allows so many to fall through the holes.

Given how busy attorneys are, serving in legal aid is definitely a sacrifice. It’s not easy to pull ourselves off our billable hour requirements and donate our free time to do even more legal work. But because attorneys have a legal monopoly on providing legal services, if we don’t help those who can’t afford it, literally no one else can. Especially as Christian lawyers do we have a specific calling from God to serve.

Of all the ways we attorneys can use our skills, serving in Christian Legal Aid is most directly an act of love. The founder of The Salvation Army, William Booth, saw the importance of legal services for the poor and conceived of creating a “Legal Advice Bureau,” a place “where men and women in trouble can come when they please to communicate in confidence the cause of their anxiety, with a certainty that they will receive a sympathetic hearing and the best advice.” Booth recognized that lawyers could be more than just legal advisers, stating, “Many a poor soul is miserable all the day long, and gets dragged down deeper and deeper into the depths of sin and sorrow and despair for want of a sympathizing friend, who can give her advice, and make her feel that somebody in the world cares for her, and will help her if they can.”⁶

Christian Legal Aid gives us the opportunity to be Christ to someone who may not have any other connection with Him. Many CLA clients come to a clinic when they are beaten down or full of bitterness and anger. In Christian Legal Aid, we not

only have the chance to help with a crucial life issue, we can also be Christ’s hands and feet. When we touch the heart of someone who is down and out and provide some words of comfort, we are sharing God’s love with someone who might be sorely desperate for a compassionate soul. Many clients might not ever walk into a church, but because CLA clinics offer tangible help to those in need, we can offer them a tiny glimpse into the Kingdom of God.



Ken Liu serves as CLS’ Director of Christian Legal Aid, helping to start and support local Christian Legal Aid programs around the country. Ken also serves, for the past 15 years, with Good Samaritan Advocates (GSA), a Christian Legal Aid program in northern Virginia. Ken works part-time at Gammon & Grange, P.C, a law firm serving nonprofits, churches, ministries, and small businesses and is a co-founder of the Orthodox Christian Attorney Network.

END NOTES

- 1 Hugh Whelchel, *How Then Should We Work?*, p.13. He continues: “By our work we employ useful skills to glorify God and love our neighbors. Work is not a result of the Fall, although the Fall because of its curse made it inevitable that sometimes work would be frustrating and feel meaningless (Genesis 3:17-19).” Whelchel, Executive Director of The Institute for Faith, Work, and Economics, is a wonderful champion of serving God through one’s career. We ask for prayers for him, as he is currently battling amyotrophic lateral sclerosis (Lou Gehrig’s disease).
- 2 A major study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs in 2016 found 28% of attorneys struggle with some level of depression, 19% demonstrate symptoms of anxiety, and 21% suffered from alcohol addiction. Krill, Patrick R., JD, LL.M.; Johnson, Ryan, MA; Albert, Linda, MSSW, “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,” *Journal of Addiction Medicine*: Jan./Feb. 2016, Vol. 10, Issue 1, p. 46-52. See www.hazeldenbettyford.org/about-us/news-media/press-release/2016-aba-hazelden-release-first-study-attorney-substance-use.
- 3 See the Fall 2020 issue of CLS’ *The Christian Lawyer* on the topic of “Living on Purpose: Wellness, Self-Care, and the Fruitful Life,” available at www.christianlegalsociety.org/fall-2020-issue.
- 4 I started volunteering with what is now called Good Samaritan Advocates, a Christian Legal Aid program in Northern Virginia, which was incubated by my law firm Gammon & Grange (where I still work part-time) in 2015.
- 5 Lynn Buzzard, Preface to *No Higher Calling* (devotional book for lawyers), available at <https://advocatesinternational.org/blog-list>.
- 6 William Booth, *In Darkest England and the Way Out*, p. 218.



Honoring Life, Lives, and the Lord – By an Unqualified Lawyer

BY JEFF WAHL

How does a corporate lawyer honor life? Or, for that matter, how does any busy lawyer, who isn't a dedicated activist or major pro-bono hero, honor (or value) life?

That was the basic question posed to me as the topic to address in this article. It is true that I have practiced corporate/mergers and acquisitions law for 18 plus years and been a follower of Jesus Christ since childhood (and more devotedly for the past 25 years). That does not make me qualified to try and put forth any definitive answer here, and I don't think one exists; however, I will try to walk through the process I applied in trying to answer this question and where that process has led me.

As any good lawyer would do, I start with some disclaimers. First, I am not special and really have no business writing on this topic. Nearly all my initial thoughts, impulses and default settings are selfish. If I am honest, all I really want is a comfortable (for me) life, preferably one that involves eating foods that are bad for me. Observers might mistake Ohio State Buckeye football and basketball for my religion, rather than Christianity. I too often lose my temper and act like a jerk to my family. I am a bit of a

cold fish – no one who really knows me describes me as compassionate. Also, and to put an exclamation point on my lack of qualifications, I have no theological training whatsoever. Thus, the following should be understood simply as some regular person's best effort to synthesize his own (and hopefully, Holy Spirit-assisted) understanding of the Bible plus wisdom picked up from great Christian writers and preachers through the years. In other words, dear reader, the rule of *caveat emptor* (i.e., "let the buyer [or, in this case, reader] beware") applies.

Just like the answer to every question ever posed in any Sunday school class in any church anywhere, my process for attempting to honor life begins with Jesus. Jesus is uniquely positioned to speak on this subject, given his qualifications as the Creator of life, the one who through great personal sacrifice saved my life and being the best, most special and smartest person I have encountered in my entire life. He also happens to have designated Himself as "the life" (see John 14:6).

Jesus spelled out my role in our relationship quite clearly in John 15:14 when he said, "You are my friends if you do what I

command.” More simply (my paraphrase), “If you love Jesus, you’ll do what Jesus says.”

This naturally means I must learn what Jesus said (Bible study) and, in Matthew 25, I am told that Jesus especially cares about and very clearly wants me to help those who regularly do not have enough to eat (the hungry), those who do not have routine ready access to clean healthy water (the thirsty), immigrants (strangers), those who lack basic material needs (the naked), the sick (stuck in hospitals or at home) and those who are incarcerated (prisoners). It is impossible to read almost any book in the Old Testament without being told repeatedly that Jesus (d/b/a God) wants His followers to care for and protect orphans, widows, immigrants, and the poor, which, using modern terminology, I think fairly includes at-risk kids (born and unborn, and whether technical orphans or not) and any other persons or groups most vulnerable and in need of fundamental support and advocacy in their society. My comfort levels and politics were not consulted in Jesus’ construction of this list.

Faced with this list and Jesus’ statement that loving Him means doing something in response to this list, what must one do? Nearly twenty years ago, I started by picking one thing on the list and trying to “just do something.” My church had a prison ministry team, so I volunteered and ended up teaching a Bible study in a juvenile prison for nearly a decade. Interacting with those young men did not result in a storybook-level radical alteration of the course of my life or priorities, but it certainly opened my heart and eyes more and allowed me to do ministry alongside some wonderful Christian men whose influence is still with me today.

Alongside this, in 2005, my church started a free legal clinic, and, as a lawyer in the congregation, I didn’t see a way I could get out of that one and not look bad. I assessed the situation correctly – I couldn’t, even though nobody visiting a legal clinic needs a mergers and acquisitions attorney. So I learned to muddle through landlord/tenant and debtor/creditor issues. I still serve to this day and, once in a while, I even get to form a nonprofit corporation or LLC. While I must admit that it can sometimes feel too much like regular legal work, the legal clinic is the one place where my regular work allows me to perform a seemingly super-heroic act for someone on Jesus’ list. I once received the following thank you note from a clinic client: “Thanks a lot, you are powerful ... You did what I thought was [not] humanly possible.” As mentioned above, I am not special and certainly not powerful, but, per Matthew 25:40, it is as if Jesus wrote that thank you note to me (“whatever you did for one of the least of

these brothers of mine, you did for me”). That’s a nice note to receive from your Lord and Savior.

Lastly, in no small part because of Jesus’ list, my wife and I chose to add additional children to our family through international adoption. We are the proud parents of two wonderful biological daughters and two equally wonderful sons born in China, and we are waiting and praying for pending applications for the adoption of two children from Haiti to make it through the system. Adoption feels to me like a very special way to honor life, as we get to play an intimate role in helping children born into challenging circumstances grow toward their potential instead of away from it. And, without trying to be too dramatic about it, that impact on our sons will extend out to those they impact throughout their lives and down through future generations. At the same time, that I take joy in seeing our boys experience a healthy, positive childhood, I can’t help but wonder and be sad about how many excellent leaders, scientists, artists, and innovators are each year lost or derailed in utero or in childhood by a world that doesn’t protect and value them like it should. If anyone is wondering about what Jesus wants you to do ministry-wise, and you aren’t sensing a particularly clear answer, it is hard to go wrong trying to do something that will help one or more orphans or other at-risk kids.

As you can probably sense, serving in prison ministry and legal clinic never (or haven’t yet) developed into passions for me. They were/are more about being obedient to Scripture. But, although adoption may have started with Matthew 25, we are so far beyond mere scriptural obedience now and well into passion. Part of that is, of course, because of the fact that we know and love our adopted children. Yet there is also a spiritual component to adoptive parenting that is different than with our biological girls. More than any other thing, being a father to my two boys (and anticipating our next adoptions) feels like I am truly (and with genuine love) honoring life. It feels like doing part of what I was built to do and has the added virtue that it makes Jesus (a/k/a “the life”) smile.

My encouragement to any Christ-follower reading this far is to honor life by making sure your ministry activities and dollars support at least one of the categories on Jesus’ list. If that isn’t presently the case, my encouragement is to simply pick one thing on Jesus’ list and try to “just do something.” He’ll help you refine it from there.

If you are like me, you will instantly think of many excuses and objections to doing this. Three of the biggest and most common objections go something like this: First, I don’t know where to

start. Second, going down this path could have big consequences for me. How far do I go with something like this? And third, I'm not really wired that way – I don't feel a passion for Jesus' list. We never admit the third one out loud, of course, but it is there nonetheless.

I humbly suggest that the starting place is whatever is nearby. Volunteer for an existing church ministry or legal clinic. Don't make the first step any harder than it has to be. Starting is hard enough.

Any worries that these types of causes can overwhelm and consume all the time and money you can throw at them are very, very well-founded and correct, but asking "How far do I go?" is not the right approach. Instead, at any given point, ask "Can I do more than I'm doing now?" If the answer to that question is yes, first look at how you can do a little more and then ask that question again later down the road.

And what about a lack of passion? Join the club. Passion rarely arrives at the party before obedience. Especially for a low-compassion, analytical, and introverted corporate lawyer. Rather than wait for divine inspiration, I think we have to respond to Jesus' list the same way Peter responded in Luke 5:5 when Jesus (a carpenter, not a trained fisherman) gave Peter (a professional fisherman) seemingly nonsensical instructions about how to catch fish after Peter had already done everything the proper way and struck out. Peter said "Master, ... because you say so, I will." Peter was obedient in spite of, not because of, his logic and common sense, and he certainly had no passion after working all night. The result was that Jesus turned out to be the smarter of the two, and Peter caught so many fish following Jesus'

suggestion that his nets began to break. Do you wonder what that story might look like if the trade were lawyering rather than fishing? Sometimes all we bring to the equation is mere obedience; sometimes semi-begrudging obedience. Jesus can, and will, use that, and He won't even complain about it.

Finally, if by chance you are a Christ-follower who finds it more natural (or even more scriptural) to focus primarily on your own personal holiness and less on service applications of the gospel, there is a solution for you too. Just flip a few pages over to James 4:17. James resolves the issue succinctly, stating, "Anyone, then, who knows the good he [or she] ought to do and doesn't do it, sins." Personal holiness and loving and serving those on Jesus' list are intertwined. We cannot escape it.

So, in summary, whether inclined or not, whether comfortable or not, pick one thing on Jesus' list and "just do something." That's my attempt at addressing how a lawyer honors life (a/k/a Jesus "the life" Christ). But my answer is nowhere near as important as how you answer the question.



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The Equality Act's Direct Assault on All Americans' Religious Freedom

BY KIM COLBY

The Equality Act (EQA)¹ is an unqualified disaster for all Americans' religious freedom, as well as for their individual freedom. The proponents of the EQA deny that it harms religious freedom, but a plain reading of its text shows that the denials simply are not true.

The EQA opens up the Civil Rights Act of 1964 to insert “sex, sexual orientation, and gender identity” as protected classes throughout its provisions. Recall that the Civil Rights Act is composed of “titles,” each title addressing discrimination in different contexts (e.g., public accommodations (Title II), education (Title IV), federal financial assistance (Title VI), employment (Title VII), and housing (Title VIII)). All of the titles prohibit discrimination on the basis of three protected classes: race, color, and national origin.

Some titles also add “sex” or “religion” as protected classes. The titles that add sex or religion may also include a religious exemption. For example, Title VII prohibits employment

discrimination on the basis of race, color, national origin, sex, and religion; and it has a strong exemption for religious employers as to discrimination based on religion. It also only applies to employers with fifteen or more employees. On the other hand, Title II prohibits discrimination on the basis of race, color, national origin, and religion in public accommodations, but it does not have a religious exemption or other limitations.

Should the Equality Act pass, the courts will have an important role in interpreting its terms and determining its scope. But I believe the following concerns are a legitimate interpretation of its current text, particularly in light of recent decisions, such as the Supreme Court's 2020 decision in *Bostock v. Clayton County*.²

Four Overarching Concerns

1. Religious Freedom Restoration Act Eviscerated: Proponents misrepresent the EQA when they insist it has no impact on religious freedom because it leaves in place the Civil

Rights Act's existing religious exemptions for employment and housing. *But the EQA explicitly rescinds the Religious Freedom Restoration Act's protections.* The EQA states: "The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title."³

The EQA utilizes a simple formula for determining winners and losers: any LGBT claim, no matter how unfounded, trumps any religious freedom defense, no matter how strong. Consider how radical that proposition is. If the government brings a claim against a religious school for discrimination on the basis of sexual orientation or gender identity because it denies admission to a high school student who dates a person of the same sex or who insists on using the locker room of the opposite sex, the school cannot use the Religious Freedom Restoration Act as a defense. The school can only use the First Amendment to defend itself even though the Religious Freedom Restoration Act is the single most important protection for all Americans' religious freedom at the federal level and generally more potent than the First Amendment.⁴

2. Abortion: The EQA adds "sex" to several titles that did not previously include "sex" as a protected class, including public accommodations (Title II) and federal financial assistance (Title VI). The EQA specifies that "sex" includes "pregnancy, childbirth, or a related medical condition."⁵ It further states that "pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions."⁶

While it does not say so explicitly, there is a reasonable basis for believing that abortion would be considered "a related medical condition." If so, abortion will be protected as a civil right under the Civil Rights Act, a deeply concerning development.⁷ This concern finds support in the fact that Title VII and Title IX, the two leading federal civil rights laws that prohibit sex discrimination, include "abortion neutral" language that counters an inference that their prohibition on sex discrimination requires the provision or coverage of abortion.⁸ Because the EQA does not include an "abortion neutral" provision, a court could infer that Congress intended to protect abortion because it clearly knew how to add "abortion neutral" language if it wished to do

so. In addition, at least one federal appellate court and a federal regulation have interpreted "related medical condition" to include abortion.⁹

3. Gender Identity: The EQA defines "gender identity" to be basically unlimited: "The term 'gender identity' means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth."¹⁰ It is hard to see how this nebulous definition can be administered in any meaningful way.

4. Tax Exemption: Although the EQA does not address the tax-exempt status of religious nonprofits, some religious freedom advocates are concerned that it could be used to justify revocation of the tax-exempt status for religious nonprofits with tra-

ditional beliefs regarding marriage, sexual conduct, and sexual identity. In the EQA's findings, Congress "finds" that "[b]ecause discrimination based on sexual orientation or gender identity inherently is a form of sex discrimination, as held in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), this Act furthers the *compelling government interest* in providing redress for the serious harms to mental and physical health, financial security and

wellbeing, civic participation, freedom of movement and opportunity, personal dignity, and physical safety that result from discrimination."¹¹ Mindful of former Solicitor General Verrilli's response in *Obergefell v. Hodges* that tax-exempt status for religious colleges might be an issue if same-sex marriage were recognized to be a constitutional right,¹² some religious freedom advocates fear that the EQA would be interpreted as elevating sexual orientation and gender identity to the same status as race, that is, a compelling interest of the first order. They fear that the EQA lays the groundwork for revocation of religious nonprofits' tax-exempt status using the rationale of *Bob Jones University v. United States*.¹³

Repurposing the Civil Rights Act of 1964 Title-by-Title

Title II – Public Accommodations: The EQA would expand the number of protected classes in Title II from the original four classes (race, color, national origin, and religion)¹⁴ to seven classes by adding three new classes (sex, sexual orientation, and

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gender identity). The addition of these new classes creates a clash with the rights of many Americans' religious beliefs that did not previously exist when Title II's protection focused on "race, color, national origin, and race." The addition of "sex," for example, is problematic because of various spaces that are limited to males or females, such as bathrooms or locker room facilities. And the addition of sexual orientation creates problems for wedding vendors. Yet no religious protections have been added to address these and other new problems.

Another problem results from the EQA's breathtaking expansion of the federal definition of a "public accommodation." Currently, Title II applies to businesses in four categories: places to eat, lodging, gas stations, and places of public entertainment, such as theaters. Note that houses of worship, religious schools, and religious nonprofits would not readily fall into any of these categories. But that changes with the EQA's radical new understanding of what and who constitute a public accommodation.

The EQA redefines "public accommodation" to include not just every organization, regardless of whether it is commercial or noncommercial, but *individuals* as well. The EQA defines "public accommodation" to include "any establishment that provides a *good, service, or program*."¹⁵ It then mandates that "establishment" "shall be construed to include an individual whose operations affect commerce and *who is a provider of a good, service, or program*."¹⁶ And the EQA explicitly states that it "shall not be

construed to be limited to a physical facility or place."¹⁷ Unlike the current Title II, the EQA regulates *nonphysical* places, *non-commercial* activities, and *any individual* who provides a good, service, or program that affects commerce.

Recall that, unlike Title VII, which applies to employers only if they have fifteen or more employees, Title II does not have a numerical limit to its reach. It is no exaggeration to say that the EQA makes *every American* a *potential public accommodation*. That is a breathtaking expansion of federal power.

In addition to its definition of an "establishment" for purposes of a public accommodation, the EQA increases the scope of the public accommodations law by adding two new lists of covered "establishments" to Title II's current list of covered "establishments." The first list expressly adds "place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display."¹⁸ A place or establishment that provides "public gathering" would seem to include houses of worship unless they limit their activities to "members only," which few churches do. The second list further specifies that "establishment" includes "a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor[,]" as well as providers of "health care, accounting, or legal services" or any transportation.¹⁹ It should be noted that the

second list is not exclusive but merely illustrative of an “establishment that provides a good, service, or program.”

EQA proponents assert that the First Amendment will protect houses of worship from any negative side effects of Title II’s expansion. But the First Amendment’s protections are limited after the Supreme Court’s 1990 decision of *Employment Division v. Smith*.²⁰ And even the limited ways in which the First Amendment would provide protection to religious persons are increasingly under pressure from persons who oppose religious freedom.²¹ Instead, the primary protection for religious congregations, schools, and nonprofits would be the Religious Freedom Restoration Act – except that the EQA explicitly denies the Religious Freedom Restoration Act’s protections to religious persons and congregations.²²

Title VI – Federal Financial Assistance: Title VI is an extraordinarily potent federal law that states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²³ The definition of *program or activity* is very broad. Essentially, an entity that takes any federal financial assistance cannot discriminate in any of its programs or activities, even if those programs or activities do not receive federal funding.

Title VI is strong medicine as is appropriate for race, color, or national origin discrimination. But the EQA would double the number of protected classes in Title VI by adding “sex, sexual orientation, and gender identity.” The addition of these classes poses particular problems for religious freedom without adding any protections for religious freedom.

Note that the addition of “sex” to Title VI will effectively subsume Title IX, the current statute that prohibits sex discrimination in educational institutions.²⁴ Unlike Title IX, however, which has a broad exemption for religious educational institutions,²⁵ Title VI has no protection for religious entities.

As a result, various religious nonprofits that serve as providers of social services will be subject to discrimination claims under

Title VI if they receive even minimal federal financial assistance. A religious school that participates in the federal school lunch program will find all of its programs and activities subject to Title VI’s prohibition on discrimination on the basis of sexual orientation and gender identity. A religious congregation that accepts federal security grants, historic preservation grants, or FEMA funding to repair hurricane damage to its house of worship will likewise be subject to Title VI’s expansive prohibition on sexual orientation or gender identity. A religious college that receives federal research grants or whose students receive federal financial aid will likewise be subject to severe restrictions regarding sexual

orientation and gender identity. Faith-based homeless shelters will not be able to structure their programs to serve only biological women in their facilities. A religious agency that places children for adoption or foster care will have its ability to choose families that align with its religious beliefs regarding marriage restricted. A religious hospital or doctor will have to provide gender transition surgeries and drugs, and perhaps even abortions. A religious nonprofit that administers a federal grant will forfeit its ability to conduct its

activities and programs, even those not receiving federal financial assistance, in accordance with its religious beliefs.

Title VII – Employment: Title VII prohibits discrimination in employment on the basis of race, color, national origin, religion, or sex.²⁶ Given the Supreme Court’s decision in *Bostock v. Clayton County*,²⁷ the EQA is mostly redundant in its addition of “sexual orientation and gender identity” as protected classes for purposes of Title VII. In *Bostock*, the Court reinterpreted Title VII’s prohibition on “sex” discrimination to include “sexual orientation and gender identity,” accomplishing through the Court what the EQA supporters had been unable to persuade Congress to do. The *Bostock* majority, however, emphasized that the *Bostock* case did not involve a religious employer or religious freedom claim, and that religious freedom claims or defenses could be brought under the First Amendment, the Religious Freedom Restoration Act, and Title VII’s extant religious exemptions.²⁸

Instead, the primary protection for religious congregations, schools, and nonprofits would be the Religious Freedom Restoration Act – except that the EQA explicitly denies the Religious Freedom Restoration Act’s protections to religious persons and congregations.

Title VII has four relevant exemptions, two specifically for religious employers and two for all employers. The first protects religious associations' right to employ only "individuals of a particular religion."²⁹ The second protects religious educational institutions' right to employ only "employees of a particular religion."³⁰ These exemptions should provide broad protection for a religious employer to take into account whether an employee's conduct, for example, entering a same-sex marriage, violates the employer's religious standards for employees. But liberal academics are pushing for these exemptions to be restricted to allowing an employer to ascertain whether the employee or job applicant belongs to the employer's faith, but not whether the employee conducts herself according to the employer's faith requirements. In other words, a Baptist college could ask an applicant for a faculty position whether she is a Baptist; but if she affirms that she is, the college could not refuse to hire her if she is living with her boyfriend or has married another woman. The scope of these religious exemptions is already becoming a matter of litigation.

The third exemption, which applies to all employers, is that Title VII only applies to employers of fifteen or more employees.³¹ The fourth exemption is the BFOQ exemption, which allows any employer to hire on the basis of religion, sex, or national origin "where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."³² The EQA expressly modifies the BFOQ exemption by expressly stating that "in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity."³³ The transgender person, not the employer, determines whether the BFOQ applies.

Title VIII – Housing: Title VIII, the Fair Housing Act, prohibits discrimination in housing based on race, color, national origin, religion, sex, handicap, or familial status.³⁴ The EQA would add sexual orientation and gender identity as protected classes. Title VIII has an existing religious exemption that allows "a religious organization, association, or society" to "limit[] the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin."³⁵

Religious nonprofits, such as nursing homes and homeless shelters that provide shelter for persons regardless of their faith but wish to manage that housing according to their religious beliefs,

including beliefs about marriage, sexual conduct, and gender identity, will face new challenges under the EQA. Religious colleges will face challenges regarding sexual orientation in their management of their married student residences and regarding gender identity in their management of single-sex dormitories. The EQA provides no additional religious protections to address these problems. Furthermore, the addition of sexual orientation and gender identity to Title VI means that religious nonprofits providing housing will face new challenges under Title VI, which has no religious exemption, even if the existing Title VIII exemption provides protection.

Conclusion

This is not a comprehensive discussion of the EQA; however, this examination of the EQA should be enough to alert religious Americans to the dangers posed by the EQA to all Americans' religious freedom.

Because of the obvious danger that the EQA poses to religious freedom, some members of Congress have spoken of the need for a compromise measure that would offer some protections for religious freedom while amending the Civil Rights Act to include sexual orientation and gender identity.

There is great debate among religious advocacy groups as to whether compromise legislation is possible or desirable, but stopping the EQA must be the first priority for all religious freedom supporters.



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 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

- 1 On February 25, 2021, the United States House of Representatives passed the Equality Act, H.R. 5, by a vote of 224-206. All Democrats and three Republicans voted in favor of the Act, while all opposing votes were cast by Republicans. The House-passed version of H.R. 5, as placed on the Senate calendar, is at <https://www.congress.gov/117/bills/hr5/BILLS-117hr5pcs.pdf>. At present, a Senate version, S. 393, has 49 co-sponsors, all the Democratic senators save one, and no Republican co-sponsors. The EQA is not expected to pass the Senate if the filibuster remains in place, but that is a huge “if.”
- 2 140 S. Ct. 1731 (2020).
- 3 H.R. 5, § 9(2)(b)(3) (“Sec. 1107.Claims”).
- 4 For an explanation as to why the Religious Freedom Restoration Act offers stronger protection than the First Amendment, see Kim Colby, “The Religious Freedom Restoration Act: A Complicated Legacy for Justice Antonin Scalia”, *Outcomes*, Summer 2016, 32-33, [https://www.clsreligiousfreedom.org/sites/default/files/site_files/Center%20Other/Outcomes%20-%20Summer%202016%20Colby%20feature%20\(002\).pdf](https://www.clsreligiousfreedom.org/sites/default/files/site_files/Center%20Other/Outcomes%20-%20Summer%202016%20Colby%20feature%20(002).pdf). See also, Kim Colby, *Symposium: Free Exercise, RFRA, and the Need for a Constitutional Safety Net*, (Aug. 10, 2020), <https://www.scotusblog.com/2020/08/symposium-free-exercise-rfra-and-the-need-for-a-constitutional-safety-net/>.
- 5 H.R. 5, § 9(2)(a)(4)(B); § 9(2)(b)(1) & (b)(3)(a)(1).
- 6 *Id.* § 9(2)(b)(1).
- 7 For a detailed discussion of the Equality Act and abortion, see Richard Doerflinger, *The “Equality Act”: Threatening Life and Equality*, (Jan. 14, 2021), <https://lozierinstitute.org/the-equality-act-threatening-life-and-equality/>. See also, U.S. Conference of Catholic Bishops, *The Equality Act: Its Impact on Government Funding of Abortion*, (Feb. 2021), <https://www.usccb.org/about/pro-life-activities/upload/Equality-Act-PL-Hyde.pdf>.
- 8 42 U.S.C. § 2000e(k); 20 U.S.C. § 1688.
- 9 *Doe v. C.A.R.S. Protection Plus*, 527 F.3d 358, 364 (3d Cir. 2008); 29 C.F.R. § 1604.10, App.
- 10 H.R. 5, § 9(2)(a)(2).
- 11 H.R. 5, § 2(a)(22) (emphasis added).
- 12 Transcript of Oral Argument at 38, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (“JUSTICE ALITO: Well, in the Bob Jones case, the Court held that a college was not entitled to tax-exempt status if it opposed interracial marriage or interracial dating. So would the same apply to a university or a college if it opposed same-sex marriage? GENERAL VERRILLI: You know, I don’t think I can answer that question without knowing more specifics, but it’s certainly going to be an issue. I don’t deny that. I don’t deny that, Justice Alito. It is going to be an issue.”) (cleaned up).
- 13 461 U.S. 574 (1983).
- 14 Title II is found at 42 U.S.C. §§ 2000a-2000a-6.
- 15 H.R. 5, § 3(a)(2)(C).
- 16 H.R. 5, § 3(c).
- 17 *Id.*
- 18 H.R. 5, § 3(a)(2)(A).
- 19 H.R. 5, § 3(a)(2)(C).
- 20 494 U.S. 872 (1990).
- 21 For example, in *Hosanna-Tabor Evangelical Church & School v. EEOC*, 565 U.S. 171 (2012), the Solicitor General, the federal government’s second highest lawyer, argued that the Free Exercise Clause did not protect the right of a religious congregation to fire ministers if the minister asserted a claim under federal nondiscrimination laws. That argument lost 9-0 when the Supreme Court ruled that the First Amendment included the “ministerial exception,” the right of churches or religious schools to determine the leaders who would carry out their mission. But some federal judges continue to limit this First Amendment protection as much as possible.
- 22 See *supra* notes 3 and 4 and accompanying text.
- 23 Title VI is found at 42 U.S.C. §§ 2000d-2000d-7.
- 24 20 U.S.C. §§ 1681-1688.
- 25 *Id.* § 1681(a)(3) (protecting religious institutions of higher education when Title IX’s requirements conflict with an institution’s religious tenets); 34 C.F.R. § 106.12 (same).
- 26 Title VII is at 42 U.S.C. §§ 2000e-2000e-17.
- 27 40 S. Ct. 1731 (2020).
- 28 *Id.* at 1753-54. In a dissent joined by Justice Thomas, Justice Alito examines the troubling religious freedom consequences of the majority’s addition of sexual orientation and gender identity to Title VII. *Id.* at 1754, 1780-82 (Alito, J., dissenting).
- 29 42 U.S.C. § 2000e-1(a).
- 30 *Id.* § 2000e-2(e)(2).
- 31 *Id.* § 2000e-(b).
- 32 *Id.* § 2000e-2(e)(1).
- 33 H.R. 5, § 7(b)(3).
- 34 The Fair Housing Act is at 42 U.S.C. §§ 3601-3619.
- 35 42 U.S.C.A. § 3607(a).

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“Be still and know that I am God.”

BY KELLY SHEA DELVAC

“Be still and know that I am God” (Psalm 46:10). Easier said than done in the hectic, whirlwind of a ride that is law school, where every opportunity is presented as the most important thing, where every “win” adds hours and hours of work onto an already hectic academic load, and every “loss” feels like a new insurmountable hurdle to the future. Grades, law review, moot court, trial team, externships, clerkships, jobs, student leadership, applications, writing competitions . . . the work is endless.

This past year of pandemic lockdowns has made that work – the wins and the losses – more pronounced. It has stripped us of community and the collective experience uniquely shared with our classmates; however, perhaps this year has also forced a stillness that has given us a unique chance to know God just a little bit better.

2020 was strange. Doing school online changed schedules, living situations, and community. Where there used to be built-in breaks in the day – drive time, changing classes – I now sit at my computer non-stop. Many of my friends, once living on their own, are now finishing law school from their childhood

bedrooms. Where once we collectively worked in the library, individually working on our own tasks – but at least together – we are now linked only by texting, social media, and Zoom.

That loss of community is never more palpably felt than in the wins and losses. There is less comfort for the lows and less jubilation in the highs. At Pepperdine, we lost our beloved Professor McGoldrick¹ to COVID in May. We each grieved in our own way. While there was a Zoom memorial and wake, those virtual reflections do not begin to ease the grief or compare to being with the Pepperdine community in person to hug, cry, and celebrate his life together.

The wins are also bittersweet. At Pepperdine, we have a bell the size of the Liberty Bell that students and alumni ring when they secure a full-time job. It is an exclamation point on an already exciting accomplishment. With campus closed, Pepperdine’s bell has been silent for a year. We text and congratulate (and joke about sneaking onto campus to ring it), but the celebration is not the same. Yet at the same time, perhaps the lockdowns of this

past year have given us law students a unique moment of pause in what is normally a non-stop three years of work.

As a Christian law student, I do not think there is a verse that stops me in my tracks more than Psalm 46:10: “Be still and know that I am God.” Just eight words, or perhaps it is just the first two – “Be still” – that make my heart stop in the midst of everything there is to do, amid the competition, the learning, the community building. In all the good things God has put in front of us, He asks us to be still. Not so we can rest (although that is a command too) but so that we may KNOW Him.

When the losses feel huge, and we can't find a way forward. When the wins seem dampened by the lack of celebration around us. When the community around us, struggling through law school together, is stripped away. God has given us a year of enforced stillness, and in that stillness, He invites us to use it to know Him.

Earlier this year, I wrote a law review article. I put hundreds of solitary hours of research and writing into it. Pepperdine passed on publishing it. I edited it for countless more solitary hours. I submitted it to dozens of law reviews. I got dozens of nos. And then at home, by myself, one tiny little e-mail came through: “Accepted for publication!” God and I celebrated in that elation and stillness.

When you know God, the ebbs and flows of law school are a little more manageable. When a job says no thanks, your grades are less than you hoped, or you don't make a team you thought you would, knowing God reminds us that He's in control. When you get published, make the dean's list, or land that first job and the silence around you is deafening, knowing God reminds us that He is the one that bestows these good and perfect gifts upon us.

Knowing God puts law school in perspective. It's three years. It's the beginning of something, not the end. It's a place God has put us for a time such as this. It does not define us, but it is a tool God uses to shape us.

God was not surprised by 2020. He was not surprised that our law school journey was interrupted, that Zoom classes became the norm, or that the human loss was high. He was not surprised by your grades, by your extracurricular activities, or the jobs that said yes or no to you.

God knows you and sees you. He is grieving with you and cheering for you. While we may be separated from our school communities, He is with us. He invites us to be still and know Him, and when we do, the ups and downs of law school feel a little more manageable because God reminds us who is actually in charge – Him.



Kelly Shea Delvac is a 2021 J.D. candidate at the Pepperdine Caruso School of Law and holds Bachelor of Arts degree from Thomas Edison State University. She currently resides in Encino, California, with her husband, Bill, and plans on practicing criminal appellate law with an emphasis on exonerating the wrongly convicted.

Before law school, Kelly split her time between performing with the circus and leading mission trips with East-West Ministries International. Kelly is a passionate member of CLS at Pepperdine and is proud to be a 2020 CLS Fellow.

END NOTES

- 1 James M. McGoldrick, Jr., “Rebuilding: Joy After Tears,” 9 *Christian Legal Soc’y Q.* 4, 4–5 (1988).



Lakuita Bittle, Director of Attorney Ministries

Lakuita Bittle is Director of Attorney Ministries at Christian Legal Society. Lakuita comes to CLS from the Office of the State’s Attorney for Prince George’s County (Maryland), which she joined in 2015 as a law clerk in the Grand Jury Unit. She was sworn in as an Assistant State’s Attorney in 2017 where she first handled misdemeanor criminal and jailable traffic cases before prosecuting cases involving domestic violence, child abuse, sexual assault, motor vehicle theft, armed robbery, attempted murder, and other related felonies. Lakuita is a graduate of David A. Clarke School of Law at The University of the District of Columbia. Lakuita also has her Associate’s Degree from Guilford Technical Community College and her Bachelor’s Degree in Sociology from High Point University. Lakuita also has over nine years of professional work experience in the legal field prior to attending law school.

Lakuita shares, “I am so humbled and honored to be part of the CLS Staff. Coming to CLS seems like a natural fit and has brought things full circle in my career. As a staff member at Georgetown Law prior to attending law school, several law students invited me to attend Christian Legal Society meetings. When I began law school, I looked for the same Christian community on my law school campus, but it no longer existed, so I restarted the CLS law student chapter at UDC-DCSL and began prayer groups, Bible study, and career discussions. Attorneys need the same sense of community. The practice of law can often be overwhelming and stressful; however, because it is a calling, it is so important that we find our balance in strengthening our faith and depending on God as we serve others. We are the body of Christ, with many members. It is so important for us to remain connected to one another, with Jesus as our head. As the new Director of Attorney Ministries, I am excited to support and connect attorneys nationwide, and I am eager to expand our attorney memberships to those who are also yearning for the same sense of Christian community as they practice their faith and practice law.”

welcome



Anton Sorkin, Director of Law Student Ministries

Anton Sorkin is Director of Law Student Ministries at Christian Legal Society. He previously practiced employment law and religious freedom litigation. His research and writing are focused on the confluence of law, religion, and public policy – with a number of academic publications in journals that range from the Journal of Law and Religion, Cardozo Journal of Law & Gender, and the Oxford Journal of Law and Religion. Anton has presented his research in various international and domestic forums, including at St. Hugh’s College in Oxford, England; Pepperdine University in Malibu, California; and the University of Ottawa in Ottawa, Canada.

In his free time, Anton likes discovering new music, attending film festivals, discussing theology, and exploring discount booksellers to clutter his apartment. He’s also trying his luck with the game of golf – which continues to embarrass him in public.

Recently, Anton completed his doctorate (SJD) at Emory University School of Law under the supervision of Professor John Witte. He also received an LLM from Emory, a JD from Regent University School of Law, and an engineering degree from the University of Texas at San Antonio.

Anton shares, “For the last five years, I’ve kept my academic, professional, and ministry roles separate in an effort to jealously guard my time to pursue a doctorate, while trying to pay the bills. Finally, with CLS comes an opportunity for these worlds to collide! An opportunity to consolidate my work to build formative communities in order to support law students in living out their faith together through the integration of law and service. I am beyond grateful for this task, humbled by the shoes I am asked to fill, and enter the labor with sincere expectation that God will carry on his work through my weakness.”





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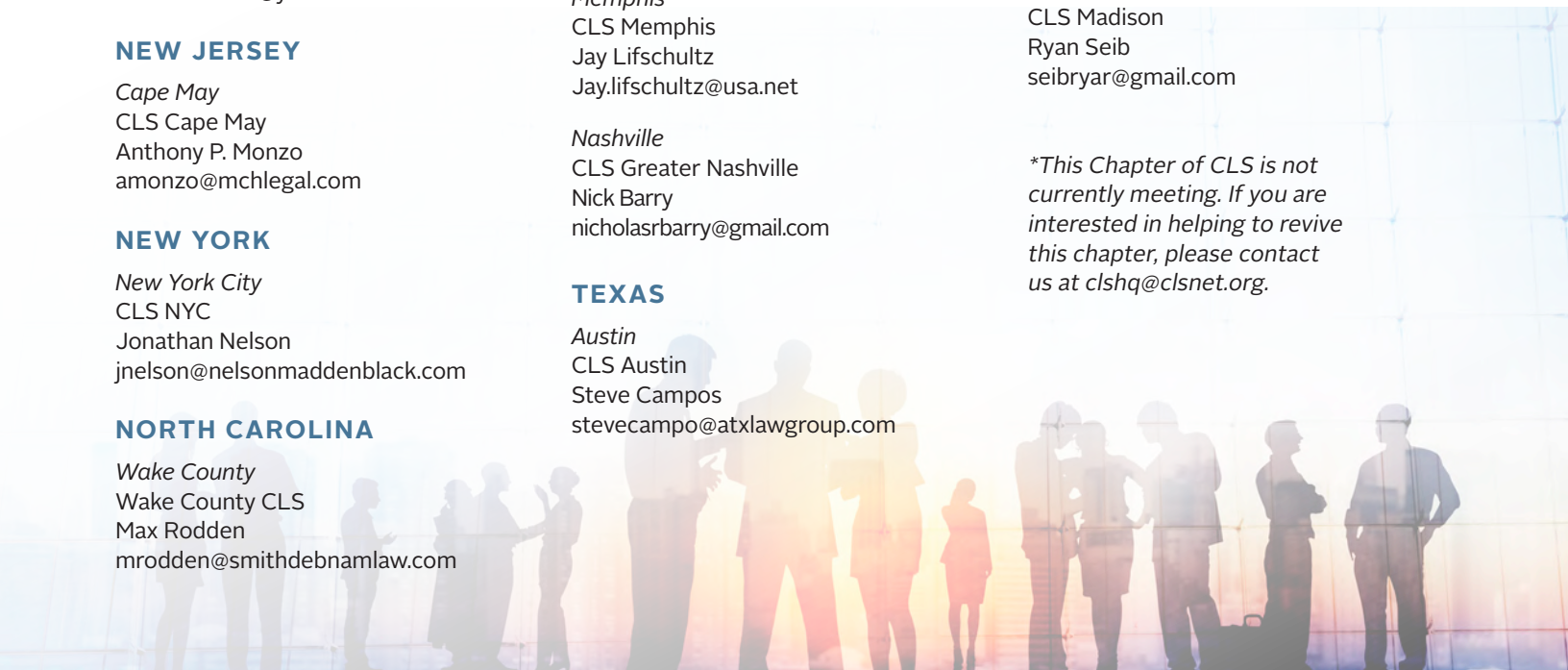
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Charlie Oellermann,
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“Grace and peace to you from God our Father and the Lord Jesus Christ!” thus the Apostle Paul opened many of his New Testament letters, written to explain the wonderful story of the gospel and its enduring truth for all times, including these fast-changing times of 2021.

As the sole national grass-roots organization of Christian lawyers and law students, CLS has long been built on personal relationships and fellowship. For the past year, however, relatively few of us have met in person. Thanks to God’s providence and the efforts of our staff, led by CLS’ Executive Director and CEO David Nammo, CLS was able to employ the blessings of technology to pivot effectively in 2020 to virtual retreats, webinars, a new online gathering, and even the 2020 National Conference. In many instances, CLS reached more people through these activities than ever before. Praise the Lord!

As we celebrate this 60th anniversary of our organization’s founding back in 1961, CLS finds itself at a crossroads. On the one hand, CLS’ role of bringing the light of Christ to the legal profession and our law school campuses is more important than ever. Providing Christian fellowship to lawyers and law students and legal assistance to the needy, as well as defending religious freedom, are all critically and increasingly needed. As CLS continues these essential ministries, it will be important for our organization to remain steadfast to the gospel and CLS’ core commitments. The inalienable right to life is a good example. Nearly 30 years ago, our board of directors expressly authorized CLS’ Center for Law and Religious Freedom to become involved in cases regarding the sanctity of human life, and both the Center and many of our members have been engaged in this crucial issue for the ensuing decades. This issue of *The Christian Lawyer* illustrates a beautiful array of activities in which the CLS community has engaged to advance a culture upholding the sanctity and dignity of human life.

On the other hand, a doctrinally steady CLS faces the urgent need to adapt to a society that is increasingly hostile to the gospel and to utilize the avenues now available to communicate God’s Word and the Good News into that environment. One might naively ask, “Who could object to CLS’ vision, ‘Seeking Justice with the Love of God’?” But as every CLS member knows, that vision is vitriolically opposed by many. Religious freedom in the U.S. is threatened in a way that hasn’t been seen in many years, if ever. Church membership has declined precipitously in the last 20 years. Lawyers and law students face pressure to suppress their faith as lawyers and on campus.

Alas, what to do? Thankfully, help is on the way, if we can effectively use the available technological means. As noted above, that technology helped us to keep in touch for the last year, and we will need to lean on it heavily in future ministry. CLS law students across the country have used those means brilliantly, hosting a speaker event “in” California that drew more than 1,000 people, and frequently collaborating with other, geographically distant chapters. I recently participated in a Zoom panel discussion with CLS law student chapters from several different states – an event that would have been almost unimaginable a few years ago.

As Paul counseled nearly 2,000 years ago, we should pray together fervently, and unceasingly, that CLS will be able to use effectively the tools available to continue as Christ’s salt and light in the legal profession and academy, and that our vision of Justice with the Love of God will become a reality.

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