The Intersecting Stories of Family Life Services and CLS: Serving Moms in Need and Religious Freedom

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Family Life Services (FLS) is a Christian ministry in Colorado Springs founded in 1942 that serves Moms (and their kids) leaving domestic violence or homelessness. FLS operates a two-year residential program in which moms participate in the FLS Christian community while developing skills to provide stable housing for their families.

FLS is renovating and expanding its campus to double the capacity of this program. As a condition to receiving HUD funding for this expansion, the City required FLS to certify that the program's focus on moms does not violate the nondiscrimination requirements of the Fair Housing Act (FHA). In support of this certification, the CLS Center for Law and Religious Freedom prepared a letter to the City explaining how application of the FHA to the program would violate the religious exercise rights of FLS.

The session will share challenging and touching stories of how FLS has nurtured a Christian community and mission for over 80 years. The session will then explain how fundamental religious liberty doctrines developed in court cases and statutes over the past thirty plus years protect FLS from the FHA requirements and ensure FLS's eligibility for HUD funding.

Attendees of the session will learn (i) how a ministry organization can position itself well to assert religious liberty protections, (ii) how these protections have strengthened over the past thirty years, (ii) and the multi-faceted ways in which CLS continues to nurture Christian lawyers and religious freedom.

Outline

I. The Transformed Legal Landscape for Religious Liberty

1. Protection of Religious Exercise: From Narrow to Broad

   a. *Employment Division v. Smith*, 494 U.S. 872 (1990)(applying protection only to laws that are not neutral and generally applicable).
   b. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993) (striking down city law targetting religious activity).
   c. *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719 (2018) (prohibiting the government from acting with hostility toward religious beliefs pertaining to sexuality and marriage).

d. *Tandon v. Newsom,* 141 S.Ct. 1294 (2021) (holding that a law is not generally applicable if it exempts activity comparable to religious exercise that is not exempt).

e. *Fulton v. City of Philadelphia,* 593 U.S. 222 (2021) (applying strict scrutiny to the exclusion of religious exercise pertaining to sexuality and marriage where government has discretion as to participation).

f. *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025) (holding that a law is not neutral if it creates a denominational preference

g. *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014) (treating the practices of a commercial business as religious exercise and applying strict scrutinty under RFRA) ("Free exercise means the right to express religious beliefs and to establish one's religious (or nonreligious) self-definition in the political, civic, and economic life of our larger community").

h. *Grand County Board of Commissioners v. Colorado Property Tax Administrator,* 401 P.3d 561 (Colo. Ct. App. January 14, 2016) (deferring to YMCA's characterization of hiking as a religious activity in a Christian environment).

2. Even Broader Protection for Faith Communities

a. *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987) ("For many individuals, religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals.") (Brennan and Marshall concurring).

b. *Hosanna Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012) (with respect to religious groups, their "very existence is dedicated to the collective expression and propagation of shared religious beliefs.") (Alito and Kagan, concurring).

c. *Our Lady of Guadalupe School v. Agnes Morrissey-Berru*, 140 S.Ct. 2049 (2020) (civil rights laws do not apply to faith community leaders or "ministers").

d. Church property and governance cases. *Serbian Orthodox Diocese v. Milijovech*, 426 U.S. 696 (1976); *Jones v. Wolf* 443 U.S. 595 (1979)

e. Education. *Wisconsin v. Yoder,* 406 U.S. 205 (1972).

f. Health Care. Maryland Insurance Code 8-404 (exempting Mennonite insurance plan from regulation).

g. Social Security. 26 USC 3121(b)(8)(B) (exempting ministers from social security).

3. Government Discrimination Against Religious Organizations in Funding: From Required to Prohibited.

a. *New York v. Cathedral Academy*, 434 U.S. 125 (1977) (requiring exclusion of all classes at religious schools from state funding).

b. *Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008) (striking down law requiring government to exclude from government funds otherwise qualifying activities that are too religious);
c. *Espinoza v. Montana Department of Revenue,* 140 S.Ct. 2246 (2020) (funding for religious schools);
d. *Carson v. Makin,* 596 U.S. 767 (2022) (funding for religious schools);
e. *Fellowship of Christian Athletes v. San Jose Unified School District,* No. 22-15827 (9th Cir. 2022) (applying strict scrutiny to the exclusion of a student group from school club benefits because the group requires its leaders to agree with its beliefs pertaining to sexuality and marriage)

4. Widespread confusion (or strategic ambiguity) persists.

a. *Locke v. Davey*, 540 U.S. 712 (2004) (excluding training to be professional clergy from government scholarship program).
b. *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) (construing "because of sex" to encompass same sex relationships).
c. *Obergefell v. Hodges*, 576 U.S. 644 (2015) (defining "marriage" to include same sex relationships)
d. 34 C.F.R. 106 (defining "sex" and "gender" as both synonymous and different)

II. <u>Accessing Specific Religious Accommodations/Benefits</u>

1. Family Life Services (FLS) and HUD Funds
    a. FLS's history as a Christian organization and its current programs for moms in need and their kids.
    b. FLS's policy defining its Christian community standards for its leaders, staff, participants and activities as religious exercise.
    c. The moms served by FLS fall within the criteria for qualifying HUD HOME-ARP programs. 24 CFR Part 92 (populations which are homeless, at risk of homelessness, or fleeing domestic violence).
    d. HUD (and the City of Colorado Springs) cannot exclude an otherwise qualifying program like FLS merely because it is religious. 24 CFR section 5.109(c)(1); HUD Notice No. CPD-21-10; see *infra* Section I.3.
    e. The statutory exemptions from HUD's nondiscrimination requirements for certain recipients create a Free Exercise right for FLS.
        i. The statute permits private clubs like sororities to serve only their own members. 42 USC 3603(a).
        ii. The statute exempts religious organizations that provide housing only for co-religionists. 42 U.S.C. 3607(a).
        iii. FLS qualifies for the private club exemption but not the limited religious exemption (since moms are not required to be Christian).
        iv. Even if FLS does not qualify for the private club exemption, the very existence of these exemptions triggers strict scrutiny of a denial of FLS under *Tandon* and *Catholic Charities.* See *infra* Section I.1.d,f.

v. The Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1, also protects the religious exercise of FLS.
vi. The government cannot demonstrate that it has a compelling interest in prohibiting FLS from serving only moms while not prohibiting private clubs from serving only their members and religious organizations from serving only co-religionists.

2. Other examples:
    a. Employment: 42 USC 2000e-1(a) (religious employer exemption); application of "ministerial exception" following *Our Lady of Guadalupe*.
    b. Religious property tax exemption. C.R.S. 39-3-106 (property used for "religious worship").
    c. Public Accommodation exemptions. C.R.S. 24-34-601(1) (property used principally for religious purposes).
    d. IRS Form 990 Filing exemption. 26 U.S.C. 6033(a) (exempting churches); *Foundation of Human Understanding,* 614 F.3d 1353 (Fed. Cir. 2010)