

Our Legal Freedom to Lead

Our modern world is governed by laws. In the west, and America in particular, our Christian heritage is the reason we've traditionally viewed legislation as useful for building a just society and protecting our rights and freedoms. America's founders proclaimed that we receive our most basic rights directly from our Creator, not the State. They understood the Bible to be the eternal Lawgiver's *objective* and *unchanging* truth. This view underpins the design of our founding documents and constitutional republic, with its checks and balances among three branches of government and power vested in a citizen electorate exercising its conscience before God. This paradigm of reality is largely what set America apart from other nations during our first 200 years.¹

Unfortunately, consensus in today's America is gained through an electorate in which just 8% possess a Biblical worldview.² Increasing secularism and the 'progressive' notion that ever-evolving humans can now engineer a *more perfect* society has led to growing government activism and legal 'positivism.' Relativistic thinking justifies new laws and legal interpretations apart from any stable concept of morality or justice. Legal positivism dominates America's legal profession today, where courtrooms are increasingly the domain of those who believe they are pragmatically engineering a more enlightened society. Such postmodern thinking provides little long-term protection from tyranny or from discrimination against those who think otherwise. As we've seen in recent decades, fixed standards of justice and morality are being increasingly abandoned as we 'legalize' things once widely viewed as evil and destructive. With legal positivism, there are no fixed laws or legal principles to serve as a predictable foundation for healthy families, commerce, etc. When laws are no longer linked to a transcendent view of right and wrong, it's impossible to be sure of what's permitted or forbidden. Instead, we're simply left to react to unpredictable edicts emanating from our capitols and courthouses.

The dangers of legal positivism can be seen in Nazi Germany's brief history, where the monstrously evil laws of Hitler's Third Reich were seen as *valid* in a society that believed that the most powerful humans are the ones who ultimately define what's right or wrong. In such systems (e.g., Marxism), government essentially becomes 'deity'! In today's America, by viewing our founding documents as "living" documents (i.e., subject to wholesale reinterpretation) and ignoring legal precedence prior to the current 'enlightened' generation, we've increasingly replaced the 'rule of law' with the 'rule of judges'!³ The resulting confusion is eerily reminiscent of Israel's woes during its own 'judges' period, in the second millennium before Christ, when "everyone did what was right in his own eyes" (Jdg 21:25, ESV).

How Does this Relate to Business?

For business leaders, legal positivism and secular utopianism produce countless consequences as evidenced by the exploding morass known as the legal and regulatory code. America is now mired in so many laws and regulations that even 'experts' can't accurately estimate their numbers by major category! Just think for a minute about the many federal, state, and local laws and regulations (e.g., IRS, OSHA,

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EPA, EEOC, financial reporting, wages & hours, product liability, proprietary assets, zoning, building codes, etc.) to which companies are accountable.

This unwieldy collection, if published as a set, would literally comprise millions of pages! The Federal Tax Code, alone, is tens of thousands of pages, with nearly 1000 forms. It's a moving target that's poorly understood by both IRS auditors and the veritable army of accountants trying to comply. The 'pocket edition' of the Federal Criminal Code is roughly 1500 pages! The Federal Register⁴ of governmental regulations, from 300 federal agencies, is nearly 100,000 pages long with overlapping jurisdictions and conflicting requirements that are tough to satisfy without violating yet others. The spectre of increased federal intervention in the medical and financial sectors is certain to multiply these mountains of poorly administered statutes. All-in-all, this morass provides fertile ground for corruption, favoritism, injustice, and poor, yet costly, administration. So, what's a 'law-abiding' Christian CEO to do?

For God's children, complications arise when our civil authorities and legal institutions depart from God's truth! As Christ's stewards, ambassadors, and the "salt of the earth" – entrusted with leading many others – how do we navigate these murky waters? How do we obey God and model true integrity while leading with a servant's heart? As is so often the case, God's way involves pursuing a 'both/and' approach. We're to peacefully submit to God-ordained governing authorities, but also to wisely and courageously lead in a way that honors and obeys our Lord and the freedom we have in Him. Quickly scan (don't read out loud) the brief listing of Scripture passages below to appreciate this God-ordained tension:

Peaceful Submission:

"If it is possible, as far as it depends on you, live at peace with everyone." Ro 12:18

"Everyone must submit himself to the governing authorities, for there is no authority except that which God has established... he who rebels against the authority... will bring judgment on themselves." Ro 13:1-3

"Give to Caesar what is Caesar's, and to God what is God's." Mt 22:21

"Live such good lives among the pagans that, though they accuse you of doing wrong, they may see your good deeds and glorify God... submit yourselves for the Lord's sake to every authority instituted among men..." 1Pe 2:12-13

"I urge... that requests, prayers, intercession and thanksgiving be made for everyone – for kings and all those in authority..." 1Ti 2:1-2

Fruitful Obedience:

"I am sending you out like sheep among wolves. Therefore be as shrewd as snakes and innocent as doves." Mt 10:16

"We demolish arguments and every pretension that sets itself up against the knowledge of God, and we take captive every thought to make it obedient to Christ." 2Cor 10:5

"It is for freedom that Christ has set us free. Stand firm, then, and do not let yourselves be burdened again by a yoke of slavery." Gal 5:1

"...and you have been given fullness in Christ, who is the Head over every power and authority." Col 2:10

"...the man who looks intently into the perfect law that gives freedom, and continues to do this... he will be blessed in what he does." Ja 1:25

Unfortunately, religious discrimination is becoming more prevalent in our society that claims to honor 'diversity.' Active efforts are underway by secularists (e.g., the ACLU) to institutionalize discrimination against Christians in every arena (e.g., 'hate-crime' laws to limit religious speech). Such laws actually serve to undermine the common good rather than serve it. While this is no surprise, as Christ calls believers in every generation to bear His cross (Mt 10:38), it begs the question regarding limits on submission when governing authorities use tax monies to fund activities and organizations incompatible with Christian conscience.

The Sanhedrin ordered Peter and John to stop preaching. Their reply was, *"Judge for yourselves whether it is right in God's sight to obey you rather than God. For we cannot help speaking about what we have seen and heard"* (Ac 4:19-20). When Paul stood before Roman governors, Felix and Festus, he spoke the truth while demanding his rights as a Roman citizen to be brought before Caesar in Rome. Theologians such as Augustine and Thomas Aquinas commented on lawful resistance against governmental tyranny, saying that we can't be charged with a breach of law for abandoning evil rulers who attempt to bind our consciences. Dietrich Boenhoeffer (Nazi Germany) and Martin Luther King, Jr. engaged in 'civil disobedience' when they concluded that complying with the law would be unjust, require immoral activity, or gravely violate their firmly-held Christian beliefs. In both cases, these men were willing to, and did, die for their beliefs.

Even in our increasingly secularized culture, we're called to stand and show forth God's glory, truth and grace in Christ. When we enter a courtroom or stand before regulators, we share the opportunity Paul enjoyed. Like Paul, we've been providentially positioned in this place and at this time that we might win some to His kingdom. This requires that we're good stewards of the opportunities before us, in spite of the legal and regulatory land mines, and that we equip ourselves to courageously stand for our rights and "what's right" in this culture. Recently, the Manhattan Declaration⁵ was issued by leading American Christians to draw the line regarding efforts to coerce Christians to support ungodly pursuits or refrain from freely proclaiming the truth. This 4700-word declaration emphasizes the sanctity of life, marriage, and families, and closes with the following statement: *"We will fully and ungrudgingly render to Caesar what is Caesar's. But under no circumstances will we render to Caesar what is God's."* This declaration has since been signed by a half million Americans, including the leaders of C12.

Two Contemporary C12 Vignettes

Let's consider the stories of two C12 members who faced challenging legal and regulatory issues to see what practical lessons we can learn.

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Vignette 1: "...you do not even know what will happen tomorrow" (Ja 4:14)

Richard served as President of a major Christ-centered retirement community which was embarking on a major expansion project. The much anticipated \$100 million expansion would provide a new level of innovative senior care in a beautiful setting, and generate dozens of new jobs in the distressed local economy. In the process of gaining the necessary approvals and funding to launch the project, Richard was continually reminded of the myriad of governmental regulatory agencies, each with the ability to derail a project that had been carefully planned for two full years. As leader of a organization that served senior residents, Richard had always viewed the vast array of rules, regulations, and audits relating to health, safety, patient and family care, record-keeping, and workplace oversight as mind-boggling. But now, a state regulator reported observing a trickle of water in an area that had been excavated for building construction!

Because the property bordered a public reservoir constructed by the Army Corps of Engineers, it was designated as a special 'watershed' area. This prompted multiple federal, state and local regulators to descend on the property to make their individual determinations regarding what *must* be done to properly deal with this 'perennial stream.' In spite of Richard's costly attempts to expedite this process, the regulators took several weeks, which threatened to derail the project's intricately planned financing and construction timetable. The state Department of Natural Resources actually had two different regulators involved; one with responsibility for the 'stream' and the other with responsibility for the stream 'banks'... a novel distinction since the 'stream' was a barely discernable flow of water made obvious only by excavation work! In the process, the various regulators made conflicting recommendations. They also failed to take responsibility for reconciling, or even understanding, their differing perspectives and prescriptions. Richard knew that any single regulator could prevent the project from moving forward. The prospects for a timely resolution of this seemingly minor issue appeared dim at best. If project schedules were broken, bond covenants could be violated, and the resulting expensive revisions to the general contracting timetable would jeopardize the entire project. **Put yourself in Richard's shoes. Take a few minutes to discuss *what* you would do and *how* you would do it.**

Postscript: Richard reports that this episode was a severe test in that there was no clear strategy or path forward rooted in logic or accountability. They spent \$50,000 to ensure timely follow-up, using a law firm with offices in the federal and state capitols. They also incurred hundreds of management team man-hours, while attempting to interact carefully and respectfully with each regulator to win their cooperation. Richard credits prayer, flexibility, humility, and persistence for ultimately gaining the approvals necessary to finish the project on-time.

Vignette 2: "...show integrity, seriousness and soundness of speech..." (Tit 2:7)

Bob owned a company that manufactured aftermarket vehicle accessories. As a C12 member, he'd become increasingly enthusiastic about his opportunity to build a company that ministered to those it served. He was also convicted about having previously built his management team without considering their alignment with

the Christian core principles he had come to cherish. One day, near the end of a staff meeting, Bob confessed his failing and expressed his commitment to grow the business with key executives with whom he is “equally yoked.” The meeting concluded with little further discussion. A few months later, Bob ‘resized’ the company’s overhead in response to softening orders. As part of the restructuring, he terminated Jim, a key executive whom he deemed to be a marginal performer with a questionable commitment to the future health and success of the business.

At the end of his six-month severance period, Jim, a professed Christian who hadn’t exhibited a servant’s heart in managing others, began to say that he had been targeted because he wasn’t ‘Christian enough.’ He filed a claim with the state EEOC, claiming religious employment discrimination. As Bob prepared for the hearing, he wished he could take back the ‘equal yoking’ comment he’d made during that earlier staff meeting, even though he knew Jim’s termination was due to a justifiable business restructuring. Operating in a state known for secular activism, Bob hoped that the EEOC wouldn’t use his earlier comments to ‘school’ him at great cost! **Put yourself in the shoes of Bob’s C12 Chair. What advice would you give to Bob?**

Postscript: During the EEOC’s investigation, Bob clearly related the business realities driving his actions. He was transparent regarding his faith and the firm’s core principles, but made it clear that these were not precipitating issues in his decision. Fortunately, Bob’s case was assigned to a ‘reasonable’ EEOC investigator who found that there was no basis for an employment discrimination court case. Bob made a mental note to clear up any confusion or fears over job security with his remaining staff related to his earlier comments about ‘equal yoking.’

A Few Helpful Thoughts

Obviously, it’s impossible to provide a comprehensive primer on the topic of legal and regulatory issues relating to business in a single C12 segment. With literally thousands of regulators on the public payroll in each state, and a mountain of poorly understood legal statutes and regulations, it’s impossible to eliminate the possibility of running afoul of some obscure requirement even with the best intentions! None of us are immune from frivolous lawsuits. C12’s philosophy is to be bold in doing what’s right, consistent with our living faith, and to trust our Sovereign God to work “*all things*” out for the good of His own. Remember, the Lord has placed us in business for His purpose. We, as the fragrance of Christ, are in society to serve and transform it (2Cor 2:14-16). Activist judges and regulatory administrators are free to hear anything they choose, and sometimes make seemingly arbitrary rulings with little accountability. Fortunately, a few basic principles will generally help us to navigate today’s increasingly bureaucratic and litigious waters, and help us avoid accidentally funding some opportunist’s legal lottery jackpot!

The fact is that the law is surprisingly friendly to our Christian witness and we have great freedom to lead our companies with core principles rooted in Biblical principles. Here’s a simple checklist of things to consider:

- The mutual respect, care, trust, and transparent communication that

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accompany Christ-centered **servant leadership** generally serve to safeguard our stakeholder relationships.

- A principle rooted in historic common law and still effective in most legal and regulatory situations is the '**reasonable person**' standard (i.e., behaving or operating as a reasonable person would in particular situations by taking due care in consideration of others). This helps to establish sound intentions vs. negligence or abusive behavior.
- The principal workplace law pertaining to private companies with 15 or more employees is **Title VII** of the Civil Rights Act of 1964, which forbids discrimination in hiring, compensation, and promotions based on race, color, religion, sex or national origin. Compliance is straight-forward, and we have 180 days to resolve issues brought before the EEOC. (See **Appendices A, B & C** for more information)
- Finally, the specific nature of every company's business drives our need to be vigilant in particular legal and regulatory areas (e.g., financial services – IRS, plating/machining – EPA, steel erection contractor – OSHA, etc.). All businesses should conduct an occasional internal '**compliance audit**' to consider areas of poor awareness, procedures, safeguards, documentation, etc. Companies too small to retain legal counsel or an internal compliance officer can fund a periodic external compliance audit using local consultants. Many small-to-midsized businesses belong to employers/trade associations, or subscribe to a newsletter service, to stay abreast of the growing number of relevant issues related to our growing government, legal and regulatory institutions. For example, some C12 members recently were able to reclaim a bit of their hard-earned earnings by receiving federal subsidies for newly hired employees based on the 2010 *Hiring Incentives to Restore Employment Act (HIRE)* which provided a whopping \$18 billion in incentives for businesses adding certain types of employees and equipment.

Let's wrap-up today's wide-ranging topic by sharing a few of our own 'lessons learned.'

¹*Original Intent*, by David Barton (WallBuilder Press, 1999) is an excellent resource that chronicles in detail the intentions of America's founding fathers based on their own words and correspondence (www.wallbuilders.com).

²According research by The Barna Group (www.barna.org)

³*Law and Creation*, interview with Dr. Augusto Zimmerman, Creation Magazine, Mar-May 20094

⁴checkout www.regulations.gov

⁵*Manhattan Declaration: A Call of Christian Conscience*, released Nov 20, 2009 (www.manhattandeclaration.org)

Appendix A

Highlights from 2007 C12 Leaders Conference Presentation, 'Our Legal Freedom to Lead'

[Note: available in entirety through C12 website's member portal]

■ Situation Analysis:

- ◇ Era of rampant social activism, frivolous litigation & a legal lottery mentality
- ◇ A generation accustomed to demanding new & expanding rights
- ◇ Christian employers need to know **their** rights & freedoms
- ◇ Fortunately, **actual** U.S. workplace law is fairly straight-forward and enables us to **lead with confidence**, consistent with our identity in Christ

■ Christians are in society to transform it! We have a threefold purpose:

- ◇ Cultural/stewardship mandate (Gn 1:28, Ps 8:6-9, Col 3:23-24)
- ◇ Neighbor-love & mercy (Mt 22:39, Lk 10:25-37, 1Co 13:4-8, Jn 15:12-13, Ja 1:27)
- ◇ Evangelism (Mt 5:16 & 28:19-20, Lk 16:9 & 24:47-48, Acts 1:8, 1Pe 2:12)

■ We **are** able to openly lead as Christian CEOs (just *seems* 'countercultural')

- ◇ Don't fall victim to our culture's 'boiling frog syndrome' by fearing imagined limitations!

"The fear of God makes a hero; the fear of man makes a coward." Alvin York

"For God did not give us a spirit of timidity, but a spirit of power, of love and of self-discipline." Paul (2Ti 1:7)

■ The law is **surprisingly friendly** to our Christian witness

- ◇ It's quite legal to lead according to Biblical core principles
- ◇ Religious freedom laws/guideline reflect 'common sense' (i.e., don't coerce others)
- ◇ We're not immune from frivolous lawsuit anyway... so be bold!

■ Governing U.S. workplace law: **Title VII of Civil Rights Act of 1964** (+state regs)

- ◇ Applies to private employers with 15+ employees (i.e., 20+ hrs/wk + captive contractors)
- ◇ Aimed at **eliminating discrimination** due to race, color, religion, sex, or national origin for **hiring, compensation, and promotions**
- ◇ Claims are referred to the EEOC or relevant state EEO agency
- ◇ Employer has 180 days to mediate/resolve complaint; Failing that, complainant has 90 days to file suit; Protects religious employees **and** those declining participation
- ◇ Employers must reasonably accommodate employees' religious principles unless they cause business hardship

(Continued on next page...)

■ General guidelines for compliance:

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- ◇ Owners and managers **are** able to communicate their religious beliefs through company policies, practices, and witnessing **if** they:
 - 1) don't give current or prospective employees the perception that employment or advancement requires workers to adopt a certain religious belief
 - 2) accommodate employee objections and provide equal opportunity of expression and use of resources/facilities (unless incompatible with stated company core principles)
 - 3) don't require employees to participate in worship
 - ◇ Recommendation: Ensure company written materials (e.g., application, manuals, etc.) inform employees that their religious beliefs or non-beliefs play no role in hiring, termination, promotion, or in the terms, conditions or privileges of employment.
 - ◇ Note: these guidelines are general and are not a substitute for detailed legal advice
- **Best way to build a unified team while avoiding legal issues:**
- ◇ Always be clear in communicating and reinforcing the core principles of the firm
 - ◇ Recruit & interview employees with these principles firmly in view
 - ◇ Ask candidates how they will contribute in such an environment; hire accordingly
 - ◇ Hold **all** your people accountable for abiding by these core principles
 - ◇ Give **everyone** committed to achieving these core principles an equal opportunity to be hired, developed, promoted, and compensated
 - ◇ Maintain a policy requiring internal disputes to be resolved according to a clearly defined conflict resolution process with the 'final step' being third party mediation or arbitration

Appendix B

Christian Legal Resources

Several Christ-centered legal organizations offer websites, publications, help lines, and legal counsel to defend Christian freedom in the workplace. These resources include:

- **Alliance Defense Fund** (www.alliancedefensefund.org); pamphlet – *The Truth behind Faith in the Workplace*.
- **American Center for Law & Justice** (www.aclj.org); wonderfully informative website, pamphlet – *Workplace Rights*
- **Pacific Justice Institute** (www.pacificjustice.org); pamphlet – *Reclaim Your Workplace*
- **Christian Legal Society** (www.clsnet.org); Christian lawyer referral service
- **Peacemakers Ministries** (www.peacemaker.net); Christian conciliation services, and helpful teaching and discipling materials applicable to workplace, churches and homes.

Other organizations, dedicated to preserving religious liberties for churches, ministries, families, and individuals in our culture, include:

- **Christian Law Association** (www.christianlaw.org); focused on churches, ministries
- **Christian Legal Services** (www.christianlegalservices.org); family resources
- **Liberty Counsel** (www.lc.org); legal services and education aimed at protecting religious freedoms in America

Appendix C

Religious Activities by Employers under Title VII

[excerpted from the excellent content available at www.aclj.com]

Christian employers often have sincerely-held religious beliefs which they want their businesses to reflect. But confusion over federal and state laws prohibiting religious workplace discrimination has discouraged many Owners and CEOs from communicating their religious convictions at work. The good news is that, just like employees, business owners don't have to check their religion at the door when they come to work. The Q & A provides guidance for Christian employers who want their business to reflect their faith.

Q: *Do employers unlawfully discriminate when operating based on Biblical principles?*

A: No. An employer doesn't discriminate on the basis of religion by affirming the faith of its owners in business objectives. Title VII doesn't, and couldn't, require individual employers to abandon their religion. Employers must be careful not to give prospective or current employees the perception that employment or advancement with the company depends on acquiescence in the religious beliefs of the employer. This can be accomplished in a number of ways. For instance, employment applications should state that applicants are considered for all positions without regard to religion. This statement should also be included in any orientation materials, employee handbooks, and employee evaluation forms. Employers must also be sure that this statement is accurate by not discriminating on the basis of religion.

Q: *As a business owner, can I witness to my employees?*

A: An employer can talk about his religious beliefs with employees as long as employees know that continued employment or advancement within the company isn't conditioned upon acquiescence in the employer's religious beliefs. For instance, one court has held that an employer didn't discriminate against an employee by sharing the gospel with him and inviting him to church. Employers must be careful, however, not to persist in witnessing if the employee objects. Such unwanted proselytizing could be deemed as harassment or creating a hostile work environment. Employers can't impose their religious beliefs on their employees.

Q: *Am I permitted to give my employees religious literature?*

A: As with spoken religious speech, employers can share their religious beliefs with their employees in print form such as pamphlets, books, and newsletters. Employers must be careful, however, not to give employees the impression that they have to agree with the employer's religious beliefs in order to keep their job or get a promotion. For instance, in one case a Jewish employee was wrongfully terminated for complaining about the printing of Bible verses on his paychecks and the religious content of a company newsletter. If an employer shares religious convictions with employees,

and the employee disagrees or protests, no adverse action can be taken against the employee. Further, employers should be ready to accommodate any employee's objections to the religious speech contained in publications distributed to employees. Sufficient accommodation may be to provide the objecting employee with a publication that does not contain the religious content. In order to counter any impression given by publications that job security and advancement are contingent upon faith, it's also recommended that publications with religious material state that the employer doesn't discriminate on the basis of religion for purposes of continued employment, employee benefits, or promotion.

Q: *Can an employer hold regular prayer meetings or chaplain services for employees?*

A: Employers can hold regular devotional meetings for employees so long as attendance is not required. Moreover, active participation of management in these meetings doesn't make them discriminatory. To ensure that employees understand that devotional meetings are voluntary, notice of the meetings should state that they aren't mandatory. It's wise to hold these meetings before the work day begins, during breaks, or after work.

Q: *Can I require my employees to attend training based on Biblical principles?*

A: Employers can use training programs that are based on the Bible. For instance, requiring an employee to attend a management seminar put on by the *Institute of Basic Life Principles* which used Scriptural passages to support the lessons it sought to promote didn't violate a Massachusetts civil rights law. Employees can't, however, be required to undergo religious training, participate in religious services, or engage in behavior that would violate their sincerely held religious belief.

Application Worksheet

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- Where does our legal freedom to lead *truly* come from? How have you reconciled this truth with providing servant leadership while submitting to the relevant governing authorities? Do your firm's core principles and policies align with this thinking? Have you adequately shared and discussed them with your organization? Consider a few 'lunch and learn' sessions with your staff to discuss the areas most relevant to your organization (consider using today's segment and appendices).
- Have you ever done a compliance audit aimed at identifying the various areas of legal and regulatory responsibility and risk within your company? If not, how can you conduct education and accountable management delegation with your staff?
- As chief stewards and servant leaders in our companies, we should promote responsible thinking in-line with company core principles and equip our employees to succeed. But we're only as good as the 'weakest link' on our entire management team. How are you doing in this regard? Do you know? When was the last time you used an anonymous employee survey to test what employees are really thinking and how well they understand your company's policies and core principles?

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- Invest the time to learn about the concepts discussed in this segment. Ask your sponsoring CEO how you can help to solidify your company's efforts toward communication and compliance in critical areas of risk. Perhaps you can lead a 'lunch and learn' session on a specific key regulatory compliance topic.

*Priorities are what we do.
Everything else is just talk!*