

No. 08-1371

In the Supreme Court of the United States

CHRISTIAN LEGAL SOCIETY CHAPTER OF UNIVERSITY
OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW,
PETITIONER

v.

LEO P. MARTINEZ, ET AL., RESPONDENTS

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT*

**BRIEF OF *AMICI CURIAE* EVANGELICAL
SCHOLARS (OFFICERS AND 24 FORMER
PRESIDENTS OF THE EVANGELICAL
THEOLOGICAL SOCIETY), EVANGELICALS
FOR SOCIAL ACTION, AND NATIONAL
ASSOCIATION OF EVANGELICALS, IN
SUPPORT OF PETITIONER**

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- ESV [ENGLISH STANDARD VERSION] STUDY BIBLE (2008).....9-16
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INTEREST OF THE *AMICI CURIAE*¹

The signatories to this brief include the five current officers plus 24 former presidents of the Evangelical Theological Society.² The Evangelical Theological Society, founded in 1949, is the largest academic society for evangelical scholars in theology and biblical studies in the United States. It currently has 2,370 full members (Th.M. or Ph.D. degree). It promotes evangelical scholarship by holding national and regional meetings and by publishing a leading peer-reviewed scholarly journal, the *Journal of the Evangelical Theological Society*. Election as president is for a term of one year and represents the recognition of distinguished contributions to the academic study of the Bible and theology.

Evangelicals for Social Action (“ESA”) is a national organization of Christians seeking to promote biblical faith in the churches and justice and freedom in society. ESA believes that freedom for everyone, especially freedom of religion, is a gift from God that the state does not create but should protect. ESA is grateful for the long American constitutional tradition respecting religious freedom and believes that rich heritage should be maintained in this case.

¹ Letters from all parties consenting to the filing of this brief have been submitted to the Clerk. No counsel for any party authored this brief in whole or in part, and no persons or entities other than *amici* or their counsel made a monetary contribution to its preparation or submission, except for Heartland Academy Community Church, Newark, Missouri, which contributed monetarily to printing and production costs.

² The names of the officers and former presidents are listed in the Appendix hereto.

The National Association of Evangelicals (“NAE”) is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 50 member denominations and associations, representing 45,000 local churches and over 30 million Christians. NAE serves as the collective voice of evangelical churches and other religious ministries. Religious speech as the first target of the censor goes at least as far back as John Milton’s *Areopagitica* (1644). Its protection is imperative. NAE also believes that religious freedom is a gift of God and the exercise of that freedom is essential to limiting the government that is our federalist constitutional republic.

The signatories are united in the belief that a public university law school should not be allowed to exclude a religious student organization from a forum for speech solely because the group requires its officers and voting members to share its core religious commitments, which include proscriptions on sexual activity outside traditional marriage.

SUMMARY OF ARGUMENT

The Christian Legal Society (“CLS”) requires its officers (and voting members, who elect the officers) to meet certain standards of belief and personal conduct. These standards include affirmation of a personal saving faith in Jesus Christ and agreement with a Statement of Faith, part of which affirms belief in the Bible as “the inspired Word of God.” CLS interprets belief in the Bible as “the inspired Word of God” to require “certain Biblical standards for sexual morality,” and, specifically, says that biblical standards prohibit “all acts of sexual conduct outside of God’s design for marriage between one man and one woman, which acts include fornication, adultery, and homosexual conduct.” CLS board of directors: Resolution 3-25-04, J.A. 146.

The interpretation by CLS of its Statement of Faith also states: “In view of the clear dictates of Scripture, unrepentant participation in or advocacy of a sexually immoral lifestyle is inconsistent with an affirmation of the Statement of Faith, and consequently may be regarded by CLS as disqualifying such an individual from membership.” *Ibid.*

During the 2004-2005 academic year, Hastings College of Law (“Hastings”) denied Petitioner the status of “Registered Student Organization” because the College determined that CLS’s constitution violated the religion and sexual orientation provisions of Hastings’ Nondiscrimination Policy. The result was that CLS was denied access to communication channels, reserved meeting space, and funding that are available to other student organizations.

The primary purpose of this brief is to demonstrate that the CLS Statement of Faith and its interpretation as set forth above are consistent with the core beliefs and practices of the vast majority of churches and Christian organizations throughout history who have held the same view of the Bible as “the inspired Word of God.” From New Testament times (1st century A.D.) until today, Christian groups have commonly required their leaders (as well as regular participants or voting members) to believe in the Bible as the inspired Word of God and to refrain from immoral sexual conduct (which would include sexual intercourse outside of marriage regardless of the gender of the sexual partner).

The evangelical scholars and organizations submitting this brief, like Petitioner, are part of this religious tradition, which bases its requirements regarding sexual morality of leaders and voting members not on personal preference but on core beliefs as to biblical authority.

ARGUMENT

A. Evangelical belief concerning the Bible

Evangelical groups believe that the Bible is the inspired Word of God in the sense that it speaks to people with absolute divine authority. The words of the Bible are understood to be not only the words of the human authors but also (simultaneously) words that God speaks as his own words.

A principal reason for this evangelical belief is found in acceptance of the Bible's own claims for its divine authority. Many Jewish prophets in the Old Testament prefaced their prophecies with, "Thus says the Lord." 1 Samuel 10:18; and 416 times in the Old Testament. In the New Testament, Jesus referred to the Old Testament as "every word that comes from the mouth of God." Matthew 4:4. The apostle Paul said, "All Scripture is breathed out by God." 2 Timothy 3:16. Of his own writing he could say, "The things I am writing to you are a command of the Lord." 1 Corinthians 14:37. And the apostle Peter, writing about Scripture, said, "men spoke from God as they were carried along by the Holy Spirit." 2 Peter 1:21.

Accordingly, evangelicals understand the Bible to speak with the authority of God himself.

B. Evangelical belief in standards of conduct for leaders and regular members

Evangelical groups believe that the Bible requires certain standards of conduct for Christian leaders. Paul writes, regarding the office of "overseer" (or elder):

If anyone aspires to the office of overseer, he desires a noble task. Therefore an overseer must

be above reproach, the husband of one wife, sober-minded, self-controlled, respectable, hospitable, able to teach, not a drunkard, not violent but gentle, not quarrelsome, not a lover of money.

1 Timothy 3:1-3; (the expression “above reproach” means that he does not engage in conduct that violates biblical moral standards). Elsewhere in the New Testament, leaders are expected to live lives worthy of imitation by others. Paul tells the church at Corinth, “*Be imitators of me, as I am of Christ.*” 1 Corinthians 11:1. He told his young associate Timothy, “*Set the believers an example in speech, in conduct, in love, in faith, in purity.*” 1 Timothy 4:12. He told another associate, Titus, “Show yourself in all respects to be *a model of good works*, and in your teaching show integrity, dignity . . .” Titus 2:7. The apostle Peter told the elders in hundreds of churches in Asia Minor that they should live as “not domineering over those in your charge, but *being examples to the flock.*” 1 Peter 5:3; emphasis added in all four verses.

These requirements assume that leaders teach not only by their words but also by their lives. In accepting a person for a leadership role, a Christian organization is saying, in effect, “This person’s life is worthy of imitation by others in the organization.” Therefore a Christian organization cannot establish in leadership anyone whose known conduct involves unrepentant violation of the moral standards of the Bible.

But standards of conduct are not required only of leaders. The New Testament goes further and establishes a system of church discipline for members who openly violate biblical moral stan-

dards. Paul wrote to the Corinthian church regarding a situation of incest:

It is actually reported that there is sexual immorality among you, and of a kind that is not tolerated even among pagans, for a man has his father's wife. And you are arrogant! Ought you not rather to mourn? Let him who has done this be removed from among you.

1 Corinthians 5:1-2.

Jesus himself established a system of church discipline that would increase in intensity until the wayward person either repented or was excluded from the church:

If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every charge may be established by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church. And if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector.

Matthew 18:15-17. To be treated like "a Gentile and a tax collector" means to be excluded from the fellowship of the church and considered an outsider.

C. Interpretation and application of the moral commands of the Bible to the present

Among evangelical Christians there is some disagreement about the way in which many commands given in the Old Testament apply (or do not apply) to Christians today. But there is widespread consensus among evangelicals that the explicit moral commands about sexual conduct

written to the New Testament churches are directly applicable today.

D. Not based on animosity

There is no animosity or malice toward any group of people (such as adulterers or homosexuals) that has played any role in the formulation of the CLS Statement of Faith and its interpretation, or in the practice of similar policies by Christian groups throughout history, or in the inclusion of these moral standards in the Bible in the first place. Indeed, animosity toward any such group would be contrary to the Bible itself, for it would violate the command of Jesus to “love your neighbor as yourself” (Matthew 22:39) and even to “[l]ove your enemies, do good to those who hate you, bless those who curse you, pray for those who abuse you” (Luke 6:27).

Therefore it would not be surprising that a student who was known to engage in homosexual conduct would nonetheless be regularly welcomed at CLS meetings at Hastings College of Law, though not invited to become a voting member. This is exactly what one would expect from Christian students seeking to be obedient to both the biblical standards of sexual conduct for leaders and members and the biblical commands to love one’s neighbor.

E. A distinction between desires and conduct is common in evangelical ethical thinking.

CLS’s interpretation of its Statement of Faith stipulates that “unrepentant *participation in* or *advocacy of* a sexually immoral lifestyle is inconsistent with an affirmation of the Statement of Faith and consequently may be regarded by CLS as disqualifying such an individual from CLS membership.” (emphasis added). The CLS interpre-

tation focuses on conduct and verbally expressed belief, but does not exclude anyone from membership on the basis of internal desires.

Such a distinction between inward desires and outward conduct is a common one in evangelical thinking and would apply in many areas of moral conduct. Here is one recent explanation, taken from the section “Biblical Ethics: An Overview” in the 2008 *ESV [English Standard Version] Study Bible*, which is widely used by evangelicals:

Though all sin is wrong and brings legal guilt before God (*cf.* James 2:10-11), a distinction between wrongful desires and wrongful actions can be made with regard to many areas of life. Hatred of another person is wrong in God’s sight, but murdering the person is far more harmful. Coveting a neighbor’s farm animals is wrong, but actually stealing them is much more harmful. And lustful desires for adultery are wrong, but actually committing adultery is far more harmful. Similarly, homosexual desires are wrong in God’s sight, but actually committing homosexual acts is far more harmful.³

Such a distinction is proper in establishing criteria for membership in an organization, for actions and verbal affirmations of belief can be determined with sufficient accuracy. By contrast, attempting to determine someone’s inward desires would be excessively difficult. Such a distinction is also consistent with the New Testament, because the

³ *ESV [English Standard Version] Study Bible* (Wheaton, Illinois: Crossway Books, 2008), pp. 2548-49. Ninety-five experts in various fields of study contributed to its notes and essays. The ESV translation was first published in 2001.

New Testament character qualifications for church leaders noted in Part B *supra* emphasize a person's actions and observable pattern of life.

F. The Bible's teaching on sexual conduct

The Bible consistently teaches certain moral standards for sexual conduct: it forbids fornication, adultery, and homosexual conduct (all of which are set forth in the CLS interpretation), as well as other acts (prostitution, incest, etc.). CLS's interpretation of its Statement of Faith is consistent with mainstream evangelical biblical interpretation on sexual morality.

Regarding the specific sexual sins mentioned by the CLS interpretation, namely, "fornication, adultery, and homosexual conduct," these are regularly considered to be immoral by evangelical groups. The following summary of arguments for these biblical moral standards for sexual conduct, again from the *ESV Study Bible*, represents mainstream orthodox evangelical thinking:

Sexual Intimacy and Moral Standards for Marriage

The Bible views sexual intimacy in marriage as a blessing from God. God said to Adam and Eve, "Be fruitful and multiply and fill the earth" (Gen. 1:28), which implies that God created them so that they would have sexual intercourse together and thereby bear children (cf. Gen. 1:31). Sex is seen within the context of marriage ("his wife," Gen. 2:24) from the very beginning of creation. After the fall, sexual intimacy in marriage is still

viewed positively (see Prov. 5:15-19; Song of Solomon; 1 Cor. 7:2-5).⁴

The article then discusses adultery, which is specified in the CLS interpretation:

Why is adultery wrong? (1) Because God says it is wrong: “You shall not commit adultery” (Ex. 20:14) [several other reasons follow] . . . (6) Adultery is thus frequently and understandably pictured in Scripture as destroying a person’s life: “He does not know that it will cost him his life” (Prov. 7:23; cf. 5:3-14; 6:27-29, 32-33; 7:21-23).⁵

Next, the article discusses sexual intercourse between unmarried persons (what is technically called “fornication,” also specified by CLS):

Sexual intercourse between unmarried persons is also consistently viewed as morally wrong throughout Scripture, from the laws of Moses (Ex. 22:16-17; Deut. 22:13-21) to the teachings of Jesus, who implicitly rebuked the woman at the well for living with someone to whom she was not married (John 4:16-18; cf. also Gen. 38:24; Matt. 15:19 [*porneia* or “sexual immorality” is distinguished from adultery, and the 1st-century understanding of the word would certainly include any sexual intercourse outside of marriage]; John 8:41; Acts 15:20; 1 Cor. 6:18; 7:2, 9; 1 Thess. 4:3; note the imagery in 2 Cor. 11:2).⁶

⁴ *Ibid.*, p. 2544.

⁵ *Ibid.*

⁶ *Ibid.*

Then the article discusses homosexual conduct, the third action specified by CLS. First, the teachings of the Old Testament are considered:

Homosexual conduct is also viewed as a sin (something contrary to God's will) in several passages of the Bible. Leviticus 18:22 says, "You shall not lie with a male as with a woman; it is an abomination [Hb. *to'ebah*, actions that are extremely displeasing to God]." Similarly, "If a man lies with a male as with a woman, both of them have committed an abomination" (Lev. 20:13; cf. Genesis 19; also Jude 7). These absolute Levitical prohibitions are grouped with other relevant sex proscriptions (incest, adultery, bestiality) and are considered first-tier sexual offenses that are grouped together in Leviticus 20:10-16.⁷

Next, teachings from the New Testament are considered, beginning with Romans 1:

In the NT, Paul speaks of homosexual conduct:

For this reason God gave them up to dishonorable passions. For their women exchanged natural relations for those that are contrary to nature; and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error (Rom. 1:26-27).

The phrase "contrary to nature" means that homosexual conduct does not represent what God intended when he made men and women with

⁷ *Ibid.*, p. 2548.

physical bodies that have a “natural” way of interacting with each other and “natural” desires for each other. (See note on Rom. 1:26-27; cf. also Rom. 1:19-20, that the truth about God and his moral law is visible and apparent in the material creation.)⁸

The article also discusses other New Testament verses, especially 1 Corinthians 6:9 and 1 Timothy 1:10:

In a long list of sins, Paul also includes “men who practice homosexuality” (1 Cor. 6:9). This phrase translates two different Greek terms: *malakos* means “soft” or “effeminate” and was commonly used in the Greco-Roman world to refer to the “passive” partner in homosexual acts, while *arsenokoitēs* is a combination of Gk. *arsēn* (meaning “man”) and *koitē* (here meaning “sexual intercourse”). The term *arsenokoitēs* was apparently coined by Paul from the Septuagint (Greek translation) of Leviticus 20:13, and means (in plural) “men who have intercourse with men.” In 1 Timothy 1:10 Paul uses the same word *arsenokoitēs* in the midst of vices derived from “the law” (here, the second half of the Ten Commandments), which means that this verse also should be interpreted as an absolute prohibition of male-with-male intercourse, in keeping with Leviticus 18:22; 20:13. Early Jewish interpretation of Leviticus 18:22 and 20:13, and early Christian interpretation of 1 Corinthians 6:9 and 1 Timothy 1:10, also show that these verses were understood as absolute prohibitions against all types of homosexual conduct

⁸ *Ibid.*

It is important that the Christian community always show love and compassion toward those engaged in homosexual conduct, and also extend friendship toward them where opportunities arise, though not in a way that signals approval of homosexual practice.⁹

Finally, the article considers alternative interpretations that have been proposed in recent years:

Numerous objections have been presented against the view that homosexuality is morally wrong . . . [One] objection is to say that the biblical passages concerning homosexuality only prohibit certain kinds of homosexual conduct, such as homosexual prostitution or pedophilia, or unfaithful homosexual relationships . . . But there is no legitimate evidence in the words of any of these verses, or their contexts, or in evidence from the ancient world, to prove that the verses were referring to anything less than all kinds of homosexual conduct by all kinds of people. Two biblical counterarguments against . . . [this] “exploitation argument” may be briefly mentioned: (1) In Romans 1:23-27 Paul clearly echoes Genesis 1:27, indicating that Paul viewed any sexual relationship that did not conform to the creation paradigm of “male and female” to be a violation of God's will, irrespective of whether the relationship is loving. (2) Paul's absolute indictment against all forms of homosexuality is underscored by his mention of lesbian intercourse in Romans 1:26, since this form of intercourse in the ancient world was not typically characterized by sex with adolescents, slaves, or prostitutes . . .

⁹ *Ibid.*

Some object that the phrase “contrary to nature” in Romans 1:26-27 shows that Paul is only talking about people who “naturally” feel desires toward a person of the opposite sex but who then practice homosexuality. Paul says, “For their women exchanged natural relations for those that are contrary to nature; and the men likewise gave up natural relations with women and were consumed with passion for one another” (Rom. 1:26-27). According to this view, Paul is not saying anything about people who “naturally” feel desires for a person of the same sex, for such desires would not be “contrary to that person’s nature.” However, this is reading into the text a restriction that has no basis in the actual words that Paul wrote. He does not say “contrary to their nature,” but “contrary to nature” (Gk. *para physin*), a phrase that is used several times in literature outside the Bible to speak of all kinds of homosexual conduct as something contrary to the natural order of the world. In other words, Paul is not saying in Romans 1:24-27 that some people switched their innate heterosexual urges for contrived homosexual urges, but rather that people exchanged or left behind sexual relations with a true sexual complement (someone of the other sex) to gratify their inward urges for sex with members of the same sex. Paul sees such people as choosing to follow their desires over God-ordained creation structures . . .¹⁰

The conclusion for this section on homosexual conduct is as follows:

¹⁰ *Ibid.*, pp. 2549-50.

Homosexual conduct of all kinds is consistently viewed as sin in the Bible, and recent reinterpretations of the Bible that have been raised as objections to that view do not give a satisfactory explanation of the words or the context of the relevant verses. Sexual intimacy is to be confined to marriage, and marriage is to be only between one man and one woman, following the pattern established by God in creation. The church should always act with love and compassion toward homosexuals, yet never affirm homosexual conduct as morally right. The gospel of Jesus Christ offers the “good news” of forgiveness of sins and real hope for a transformed life to homosexuals as well as to all sinners.¹¹

G. Agreement among evangelical groups

Evangelical churches and organizations widely (and uniformly) agree regarding these standards for sexual morality among leaders.

This agreement among evangelicals becomes evident in the tragic situations where a high-profile leader of a large church or evangelical organization is caught in sexual sin, and consequently dismissed from a leadership position.

For example, televangelist Jim Bakker was forced to resign as head of his organization, PTL, and to leave his nationwide television broadcast on March 19, 1987, because of allegations of sexual misconduct with Jessica Hahn (who claimed that he had raped her), as well as financial misconduct. Bakker allegedly gave Hahn \$279,000 to silence her about their

¹¹ *Ibid.*, p. 2550.

affair.¹² He was sentenced to 45 years in prison, a term that was eventually reduced.¹³

Also in 1987, Gordon MacDonald resigned from the presidency of InterVarsity Christian Fellowship (a nationwide evangelical ministry to college and university campuses) because of disclosure of an adulterous affair.¹⁴

In November, 2006, Ted Haggard had to resign as pastor of New Life Church in Colorado Springs, Colorado, and from the presidency of the National Association of Evangelicals, because of media disclosure of his soliciting a male prostitute.¹⁵ He later also admitted to an inappropriate relationship with a 20 year old male volunteer.¹⁶

While these examples involved evangelical leaders with national visibility, they could be multiplied many times over in stories of individual pastors or youth leaders in local churches and parachurch organizations. (Gordon MacDonald had

¹² Richard Ostling, "Jim Bakker's Crumbling World," *Time*, December 19, 1988. <http://www.time.com/time/magazine/article/0,9171,956551,00.html>.

¹³ George James, "Bakker's 45 Year Prison Term Set Aside," *New York Times*, February 13, 1991. <http://www.nytimes.com/1991/02/13/us/bakker-s-45-year-prison-term-set-aside.html>.

¹⁴ Marc Fisher, "Clinton's Pastor with a Past," *Washington Post*, September 28, 1998. <http://www.washingtonpost.com/wp-srv/style/daily/clinpastor0928.htm>.

¹⁵ "Church Forces Out Haggard for 'Sexually Immoral Conduct,'" *CNN.com*, November 4, 2006. <http://www.cnn.com/2006/US/11/03/haggard.allegations/index.html>.

¹⁶ "Disgraced Pastor Haggard Admits Second Relationship with Man," *CNN.com*, January 30, 2009. <http://www.cnn.com/2009/US/01/29/kl.ted.haggard/>.

to step down from leadership in a parachurch organization, InterVarsity Christian Fellowship, and Ted Haggard from another parachurch organization, the National Association of Evangelicals.) Sexual misconduct of the type specified in CLS's interpretation of its Statement of Faith regularly disqualifies a person from leadership positions in evangelical churches and organizations. In the vast majority of cases where such a dismissal from leadership has occurred, it has been for heterosexual, not homosexual, relations, but both types have occurred.

H. CLS's belief concerning the Bible leads to its Statement of Faith and its interpretation of the Statement.

The requirement to uphold these standards of belief and conduct is an entirely proper consequence of belief in the Bible as the "inspired Word of God." If CLS believes in the Bible as "the inspired Word of God" and follows the approach to interpreting the Bible most commonly accepted by evangelicals (what is commonly called "grammatical-historical exegesis"), CLS has no other exegetically responsible choice than to uphold its standards.

I. An attempt to compel disobedience to the Word of God

The Hastings College of Law, in attempting to require CLS to accept officers and voting members who violate its biblical standards of sexual morality, is attempting to compel CLS to disobey what it sincerely believes to be the Word of God, and specifically the moral commands of God found in the Bible. Hastings is attempting to compel CLS to recant, and betray its deepest core beliefs.

J. Evangelical Christian churches and organizations cannot comply with such a nondiscrimination policy.

Not only CLS, but all other evangelical organizations which similarly hold the Bible as the inspired Word of God, will find it impossible to comply with a nondiscrimination policy like the one in the case at bar, and thus they will be forced to suffer exclusion from recognized status as a student organization. For orthodox Christians, God's commands are prior to positive law. This is so widely known as to appear in the first paragraph of James Madison's *Memorial and Remonstrance Against Religious Assessments* (1785):

religion or the duty which we owe to our Creator . . . is unalienable also, because what is here a right towards men, is a duty towards the Creator . . . The duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.¹⁷

K. Broader implications

The implications of this case go far beyond CLS. If this policy of Hastings College of Law to exclude CLS from recognition as a campus organization is upheld, it will allow every public college and university in the United States to exclude all evangelical Christian organizations (such as Campus Crusade for Christ, InterVarsity Christian Fellowship, the Navigators, the Reformed University Fellowship, Baptist Campus Ministries, and others), from recognition for a similar reason. This will

¹⁷ http://religiousfreedom.lib.virginia.edu/sacred/Madison_m&r_1785.html.

effectively remove evangelical organizations from state college and university campuses throughout the United States. This would be seen by most evangelicals (15 to 30 percent of the U.S. population) as a deeply troubling result – a policy permitting access to many diverse viewpoints but censoring the evangelical Christian viewpoint.

CONCLUSION

The decision of the court below should be reversed.

Respectfully submitted,

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FEBRUARY 2010

APPENDIX

The names of the current officers and former presidents of the Evangelical Theological Society are as follows. Institutional affiliations are added for identification purposes only and do not imply endorsement by the institutions named.

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Norman L. Geisler, Ph.D.
Provost and Distinguished Professor of Apologetics,
Veritas Evangelical Seminary, Murrieta, CA
1998 President

George W. Knight III, Ph.D.
Adjunct Professor of New Testament and Chairman
of the Board, Greenville Presbyterian Theological
Seminary, Taylors, SC
1995 President

Gerry Breshears, Ph.D.
Professor of Theology, Western Seminary,
Portland, OR
1993 President

Gordon R. Lewis, Ph.D.
Senior Professor of Philosophy and Theology,
Denver Seminary, Littleton, CO
1992 President

H. Wayne House, Ph.D.
Distinguished Research Professor of Biblical and
Theological Studies,
Faith Evangelical Seminary, Tacoma, WA
1991 President

Robert L. Thomas, Ph.D.
Professor of New Testament, The Master's Seminary,
Sun Valley, CA
1990 President

James A. Borland, Th.D.
Professor of Theology, Liberty University,
Lynchburg, VA
1989 President

W. Haddon Robinson, Ph.D.
Harold John Ockenga Professor of Preaching,
Gordon-Conwell Theological Seminary,
South Hamilton, MA;
Former General Director of the Christian Medical
and Dental Associations
1984 President

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Professor of New Testament Studies and Christian
Ethics, Emeritus, Wheaton College and Graduate
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1982 President

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Former Academic Dean, Capital Bible Seminary,
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1981 President

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President Emeritus, Gordon-Conwell Theological
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1977 President

Robert L. Saucy, Ph.D.
Distinguished Professor of Systematic Theology,
Talbot School of Theology, La Mirada, CA
1972 President

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Seminary, South Hamilton, MA
1970 President

Roger Nicole, Ph.D.
Emeritus Professor of Theology,
Reformed Theological Seminary, Orlando, FL
1956 President