

Playing for the Rules: How and Why New Christian Right Public Interest Law Firms Invest in Secular Litigation

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This article catalogues and analyzes the litigating behavior of four of the leading New Christian Right Public Interest Law Firms (NCR PILFs). Consistent with the finding from judicial politics that all PILFs seek first and foremost to have policy influence, we find that most of the litigation these PILFs invest in is either explicitly or implicitly religious or mission driven. However, we also observe a trend of increased participation in secular cases by the two largest NCR PILFs in our study. Through in-depth, qualitative content analysis of the briefs submitted in these secular cases, we show that while some of this behavior can be attributed to organizational maintenance or coalitional goals, most of this secular participation appears motivated by a desire to influence the legal rules rather than the outcome of the particular case. In doing so, this article shows how PILFs engage with an increasingly complex legal and political landscape.

INTRODUCTION

In 2007, Christian Advocates Serving Evangelism, doing business as the American Center for Law and Justice (ACLJ), filed an amicus curiae brief vigorously defending an individual's constitutional right to keep and bear arms, in what would become the most important Second Amendment Supreme Court decision in half a century—*District of Columbia v Heller* (2008). A few years later, the largest and most well-funded New Christian Right Public Interest Law Firm (NCR PILF), Alliance Defending Freedom (ADF), filed an amicus curiae brief in the landmark case of *Citizens United v FEC* (2010), urging the Supreme Court to strike down key provisions of the Bipartisan Campaign Reform Act for violating the First Amendment's political expression protections. And in 2005, the Becket Fund for Religious Liberty, a smaller NCR PILF, joined libertarian interest groups and others to file an amicus curiae brief at the Supreme Court for *Kelo v City of New London* (2005), a case involving eminent domain challenges to private property rights under the Fifth Amendment.

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At first glance, these cases seem unrelated to these NCR PILFs' central missions, all of which center, to varying degrees, around the defense of religious liberty and religious expression, the protection and promotion of family values and traditional marriage, and the antiabortion movement. This uncharacteristic litigating behavior raises some interesting questions: are these cases outliers or indicative of a broader trend of NCR PILFs engaging in secular litigation? If some or all of these PILFs do engage in secular litigation, how often, why, and to what effect do they do so?

One might expect that pursuing such off-topic issues could increase the risks of alienating, confusing, and possibly offending members and donors. They could also dilute the PILF's effectiveness by inhibiting the ability to specialize. Broadening the issue of interest, however, also stands to potentially benefit these institutions by increasing the number of new members and donors and by increasing network connections to potential allies. Engaging in secular litigation, then, could be a part of what Heinz, Paik, and Southworth referred to in their path-breaking study of conservative lawyers and legal organizations as a strategy of "product differentiation," "a need [for an organization] to distinguish itself from other, existing organizations so that it can recruit new adherents or compete for old ones" (2003, 36).

Such differentiation can be seen as necessary given the well-documented competition and rivalry for resources and adherents within the now-crowded field of NCR public interest law (Bennet 2013; Hacker 2005). This rivalry has been described by movement insiders as "internecine warfare" and "the dark side of the right-wing evangelical movement" (Southworth 2008, 31). So it would be reasonable to attribute this secular participation to a strategy of product differentiation, which is part of what judicial politics scholars refer to as organizational maintenance—the need to stay afloat financially by attracting and retaining donors (Solberg and Waltenburg 2006; Hansford 2004). Our analysis does confirm that some of this secular participation can be attributed to concerns over organizational maintenance. However, we also find that, to varying degrees, NCR PILFs are also using these secular cases to pursue related or "lateral" policy influence (Hollis-Brusky 2015; Silverstein 2009) and, in some cases, to build and maintain coalitions.

Using in-depth case studies of the litigating behavior of four NCR PILFs over time, this article represents a first effort to investigate how often and why these organizations engage in uncharacteristic litigation. Specifically, the article tracks and catalogues the litigating behavior of two larger (ADF and ACLJ) and two smaller (Becket Fund for Religious Liberty and Liberty Counsel) NCR PILFs over time. While the data reveal that these NCR PILFs are mostly mission focused in their litigation efforts, they do participate in cases—mostly as *amici curiae*—outside of their religiously defined missions. The three biggest secular issue areas attracting the attention of NCR PILFs include campaign finance and voting, nonreligious school expression, and the War on Terror.

Further, through an in-depth content analysis of all briefs submitted by these NCR PILFs in what we categorize as secular or non-mission driven cases, we attempt to tease out the possible motivations for engaging in this kind of litigation. Our analysis reveals that while the problem of organizational maintenance does appear to drive some of this litigating behavior, the desire to have policy influence and the awareness of the power of what we refer to as *lateral precedent* or *policy development* (Hollis-Brusky 2015; Silverstein 2009) actually does most of the explanatory work. We also show how some of this behavior might be driven by what judicial politics scholars refer to as "coalitional goals" (Goelhauser and Vouvalis 2014; Farber 2007; Collins 2004; Caldeira and Wright 1990; Epstein 1985).

CASE SELECTION AND METHODS

We selected four NCR PILFs for this study: the ACLJ, the ADF, the Becket Fund for Religious Liberty, and the Liberty Counsel. While Christian PILFs existed before these, they were largely hampered by small budgets, limited resources, and locations far from the seat of power. The firms selected for study here represent the far more organized and well-funded leading contemporary Christian PILFs. As such, these firms not only have distinctly religious missions and supporting litigation history, but they are also widely regarded as influential players within the litigating arm of the NCR (Bennett 2013; Southworth 2013; Wilcox and Robinson 2011; Hacker 2005). Furthermore, each of these PILFs was founded within five years of one another, from the late-1980s to the mid-1990s (Southworth 2005). This timeframe is relevant in that it both marks the period when the NCR made a concerted effort to increase its litigation resources and makes all of these firms roughly the same age in terms of institutional maturity. This means that all four of these PILFs have had the opportunity to participate in the same universe of cases for almost their entire life spans.

For all of their similarities, these four PILFs also vary in many important ways. First, while each of these PILFs aggressively pursues policy influence in service of the NCR, as Hans Hacker (2005) has noted, they each define their policy goals in slightly different ways and employ varied strategies to achieve those goals. Second, these four PILFs also vary in terms of size and resources (staff size, budgets, and number of locations) (see Table 1). This variation allows us to see how the problems of organizational maintenance and coalitional goals discussed in the literature apply to PILFs with different levels of resources and different numbers of attorneys. We briefly profile each of the four NCR PILFs, in chronological order of founding, before moving on to discuss data collection and coding.

LIBERTY COUNSEL (1989)

Founded in 1989 by Matthew Staver as a small regional operation out of Orlando, Florida, the Liberty Counsel was started with the goal of supporting NCR pro-life efforts in the Southeast. The Liberty Counsel is unique in that it had no parent organization or foundation support until 2000. For the first decade of the Liberty Counsel's existence, Staver supported the firm almost entirely with profits from his own private practice, Staver and Associates (Hacker 2005). As Hacker writes, "in 1994 the Liberty Counsel took in just over \$200,000 in donations. Staver's private practice made up the over \$1 million dollars per year extra required to conduct the litigation on the Liberty Counsel's agenda" (ibid., 58). While this arrangement constrained the Liberty Counsel in terms of available resources for litigation, Staver had complete control over the Liberty Counsel's agenda and was free to shape that agenda without external constraints or expectations from big donors or foundations.

Table 1. NCR PILFs' Organizational Histories and Revenues

	Founded	Founders/Leadership	Primary Location	2012 Revenues
Liberty Counsel	1989	Matthew Staver; Jerry Falwell (<i>after 2000</i>)	Orlando, FL	\$3,869,603
ACLJ	1990	Pat Robertson; Jay Alan Sekulow	Washington, DC	\$15,684,893
ADF	1993	Jim Dobson + 30 evangelical leaders	Scottsdale, AZ	\$38,943,749
The Becket Fund	1994	Kevin Hasson	Washington, DC	\$4,268,119

The organizational structure changed dramatically in 2000 when Staver decided to sell the private practice and enter into a partnership with the well-known evangelical leader Reverend Jerry Falwell (Bennett 2013; Hacker 2005). This relationship allowed Falwell's Liberty University School of Law to donate valuable services to Liberty Counsel and to offset a good portion of their operating costs. For example, during fiscal year 2006, Liberty Counsel reported having received "donated services valued at \$600,000 from Liberty University for services provided by attorneys and administrative personnel employed by Liberty University." This also included the use of "office facilities, furniture and equipment,"¹ the estimated value of which totaled an additional \$63,150. This financial underwriting from Falwell and Liberty University represented more than half of Liberty Counsel's total reported expenses from that same year.²

Twenty-five years after its founding, with total revenues of around \$4 million,³ Liberty Counsel now boasts offices in California, Florida, Virginia, and Washington, DC, and even does outreach in Israel. Its mission statement reflects its pro-life founding animus but also embodies a slightly more expansive agenda: "Restoring the Culture by Advancing Religious Freedom, the Sanctity of Human Life and the Family."⁴ It pursues this mission through litigation and through various other educational, training, and policy initiatives. In 2012, for example, Liberty Counsel spent \$1,449,520 on litigation efforts and had 138 cases in active litigation or presuit status.⁵ While most of these cases are settled without litigation, Liberty Counsel still averages (as shown in Figure 5) about ten to fifteen published decisions a year in state and federal court.

Educational expenses for its various outreach efforts actually exceeded its litigation costs by 40 percent in 2012, costing Liberty Counsel \$2,072,718.⁶ In addition to its well-known training program for law students at Falwell's Liberty University Law School, Liberty Counsel advances a public educational mission through publications such as *Liberty Alert* and *The Liberator*, radio programs such as *Faith and Freedom* and *Freedom's Call*, television, public speaking, conferences such as the "Awakening," and internship opportunities.⁷ As Daniel Bennett writes, despite being one of the smaller PILFs of the NCR, Liberty Counsel "has risen to prominence through strategic attention to particular issues and focusing on specific campaigns with strong appeal to the conservative Christian community at large" (2013, 54).

AMERICAN CENTER FOR LAW AND JUSTICE (1990)

In 1990, the Reverend Marion "Pat" Robertson—the leader of the Christian Coalition and, according to Hans Hacker, the "de facto President of the New Christian Right"—founded the ACLJ (2005, 17). Robertson's goal was to build a powerhouse Christian litigation organization that would work synergistically with and within his evangelical-based Regent Law School (Hacker 2005). One of Robertson's first moves was to hire attorney Jay Alan Sekulow as the ACLJ's general counsel. When hired, Sekulow had already earned a reputation within the legal community as a first-rate litigator, having already successfully argued a case on behalf of Jews for Jesus in front of the Supreme Court in 1987 (*Board of Airport Commissioners v Jews for Jesus*, 482 US 569 [1987]). Despite being a Messianic Jew, Sekulow has since been described as "the mouthpiece of the New Christian Right" (Hacker 2005, 19) and arguably "the most visible Evangelical Christian attorney in America" (Bennett 2013, 49). These are probably not overstatements. Sekulow hosts his own radio show, *Jay Sekulow Live!*, and makes regular appearances on Fox News, CNN, NPR, *Crossfire*, and Pat Robertson's *700 Club* program (Hacker 2005).

In addition to having the backing of a very influential New Christian right patron, the institutional support of Regent Law School, and a high-profile religious liberties litigator

at the helm, the ACLJ opened the doors of its Washington, DC, office in 1990 with a \$6 million budget (Hacker 2005), and its revenues have nearly tripled since then. In the 2011 fiscal year, ACLJ reported revenues of \$17,164,568, and in 2012 that figure was only slightly more modest at \$15,684,893.⁸ Liberty Counsel emphasizes the educational aspects of its mission and, indeed, devotes more resources to this aspect than to litigation. ACLJ, in contrast, reported spending 87 percent of its operating budget in 2012 on litigation and litigation-related activities.⁹

Sekulow and others have consistently described the ACLJ as a responsive organization with a fairly broad mission, evolving to tackle issues as they arise in the legal-political environment (Hacker 2005). This is reflected in the ACLJ's evolving mission statements over time. For example, in December of 1998, the ACLJ's banner slogan read, "Defending the Rights of Believers." Its "Welcome" message from Jay Alan Sekulow read as follows: "You're going to see that our interests at the ACLJ are pretty broad: we're concerned about Religious Liberty; we're concerned about the Unborn Child; and we want to protect Your Family and Your Family's Rights."¹⁰ By September of 2002, the banner slogan of "Defending Rights of Believers" had been removed and the "Welcome" message from Sekulow read as follows: "Here you will learn that we are: Protecting the US Constitution; Protecting religious liberty; Fighting to protect life; And fighting to protect the religious rights of Americans."¹¹ The focus on family had been dropped, and an emphasis on the US Constitution more generally was added. Also, "fighting to protect life" replaced the rights of the "unborn child," and this is not insignificant. It encapsulates the ACLJ's post-9/11 emphasis on national security issues and its support for and involvement with the Bush administration's policies concerning the War on Terror. As Hacker chronicles, after the attacks of September 11, 2001, Republicans in Congress and the Bush administration sought out Sekulow for legal support drafting the policies that would guide the War on Terror, including the PATRIOT ACT. In response, "Sekulow began to reformulate the ACLJ's organizational emphases toward policy making," including national security (*ibid.*, 29).

Today, the ACLJ does not have a "Welcome" message from Jay Sekulow or a clear set of mission-related bullet points on its website. When forced to articulate its mission on its IRS 990 form, here is how the ACLJ describes it: "ACLJ is committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world. By focusing on US Constitutional Law, European Union Law and Human Rights Law, the ACLJ is dedicated to the concept that freedom and liberty are universal, God-given and inalienable rights that must be protected."¹²

In service of this broader, more global mission, the ACLJ has launched two affiliate centers: the European Center for Law and Justice (ECLJ) and the Slavic Center for Law and Justice (SCLJ). In 2012, these two affiliated centers operated with budgets of \$1,111,739 and \$308,131, respectively.¹³ The ACLJ's website also claims offices in Israel, Russia, Kenya, France, Pakistan, South Korea, and Zimbabwe.¹⁴ While the ACLJ now boasts a team of eleven full-time senior attorneys litigating cases on various issues, the organization remains synonymous with and tightly tethered to the leadership of Jay Alan Sekulow.

ALLIANCE DEFENSE FUND/ALLIANCE DEFENDING FREEDOM (1993)

ADF was founded in 1993 in Scottsdale, Arizona, as the Alliance Defense Fund by a coalition of over thirty evangelical Christian activists, including Focus on the Family's Dr. James C. Dobson and Campus Crusade for Christ's Dr. Bill Bright. ADF promptly hired Alan Sears, a federal prosecutor who had worked under Attorney General Meese in the

Justice Department, as its president and chief executive officer. While at the Justice Department, Sears had gained credibility within evangelical circles as a culture warrior for spearheading the Attorney General's Commission on Pornography.

Since its founding, ADF's budget has grown at an impressive rate, from \$4.7 million in 1997 to \$18 million in 2003 to just shy of \$40 million in fiscal year 2012.¹⁵ Part of this increase can be explained by major funding from the National Christian Foundation, a Christian charitable organization that provides around \$600 million in grants to churches and religious organizations each year. And while the National Christian Foundation has provided small grants to some of the other PILFs in this study—annual grants of \$278,045 to ACLJ and \$31,550 to Liberty Counsel, for example—in 2012 it granted ADF \$10,065,726.¹⁶ This one grant accounted for more than 25 percent of ADF's reported grants and contributions that fiscal year.

ADF's impressive budget and staff size make it the largest NCR legal organization lobbying the courts (Wilcox and Robinson 2011). Its initial mission, however, was more coordination and training than it was litigation. ADF—tellingly known in its first nineteen years as Alliance Defense Fund—dedicated its efforts to identifying, coordinating, and financing the litigation efforts of various other firms and entities within the NCR as well as training Christian attorneys to engage in pro bono work on behalf of the movement (Bennett 2013). Indeed, in 1994, one reporter referred to Alan Sears as “president of the Alliance Defense Fund, an umbrella fund-raiser” (Curriden 1994, 88).

The effort to streamline and coordinate among NCR firms, however, presented some challenges for Alan Sears and ADF (Hacker 2005). So while ADF still provides roughly \$6 million a year¹⁷ in support to “Allied Organizations,” including ACLJ, Americans United for Life, and the Home School Legal Defense Fund,¹⁸ the bulk of its budget is roughly evenly divided between public education and direct litigation.¹⁹ ADF's name change in July of 2012 to Alliance Defending Freedom more accurately reflects this restructuring of organizational priorities.

In service of its training and educational efforts—an extension of its direct litigation efforts—ADF established the ADF Legal Academy in 1997 to train “Christian attorneys in constitutional law so they can provide pro bono/dedicated service to the Body of Christ” and established the Blackstone Legal Fellowship in 2000 to train “some of the best and brightest Christian law students from across the nation.”²⁰ Turning to public education, ADF began publishing *Faith and Justice* in 2008, which is part newsletter, part magazine. Released three times a year, these issues profile ADF attorneys and leaders, highlight the stories of plaintiffs in their lawsuits, and provide news and updates from the halls of Congress as well as the federal courts.²¹ ADF also delivers daily e-mails to subscribers called Alliance Alerts that provide information on cases and issues (Bennett 2013). As for direct litigation, ADF participates in more court cases that result in a decision than any of the other NCR PILFs under study here (see Figure 2). Given its size and resources, this is no surprise. In addition to the forty staff lawyers it employs, ADF has an estimated network of over 750 attorneys working on a pro bono basis on its cases (Wilcox and Robinson 2011).

BECKET FUND FOR RELIGIOUS LIBERTY (1994)

The Becket Fund for Religious Liberty was founded in 1994 by Kevin “Seamus” Hasson, a Washington, DC-based religious liberties attorney and former counsel to the Reagan Justice Department on church-state relations (Curriden 1994). Though often lumped in with and compared to the other NCR firms cited here and elsewhere (see, e.g., Southworth 2005; Curriden 1994), Becket's profile sets it apart from these other firms in

important ways. For example, having been reared professionally in mainstream conservative circles in DC alongside the founders of the Federalist Society in the Reagan Justice Department (Hollis-Brusky 2011), Hasson was not closely aligned with the evangelical movement, and thus the Becket Fund did not launch with the financial backing of wealthy, established evangelical patrons. Without access to the Christian right donor base, as one journalist explains, much of the Becket Fund's early funding, "which allowed Hasson to rent a one-room office in Washington, D.C., and hire two lawyers, came from the Knights of Columbus, the right-leaning Catholic lay organization" (Thomson-DeVeaux 2014).

As recently as 2010, the Becket Fund's total financial support was still under \$2.5 million.²² In 2011, as a result of their work and successful fund-raising to oppose the Affordable Care Act's contraceptive mandate, the Becket Fund's total revenue increased to \$4,268,119. A sizeable portion of this new funding, according to one report, came from DonorsTrust, an organization used to "funnel money from benefactors like Charles and David Koch to conservative think tanks and advocacy groups" (ibid.). With the increase in budget came an increase in the Becket Fund's caseload. From 2011 to 2014, for example, the Becket Fund's total cases litigated nearly doubled (see Figure 4). Among these, Becket won a series of important victories in federal court against the federal contraceptive mandate, most prominently as the lead litigator in the 2014 Supreme Court case, *Burwell v. Hobby Lobby* (2014).

While the Becket Fund has strong Catholic ties—it is named after Saint Thomas Becket and has attracted prominent conservative Catholic intellectuals like Mary Ann Glendon and Robert P. George to its leadership—until very recently it has taken a broad, inclusive approach to defending religious liberties (Thomson-DeVeaux 2014). As its mission statement reads, "We like to say we've defended the religious rights of people from 'A' to 'Z,' from Anglicans to Zoroastrians."²³ Hasson has also written a book calling for an end to the culture wars. In *The Right to Be Wrong: Ending the Culture War over Religion in America* (2005), Hasson mounts a philosophical and theological defense of a broad right to conscience and implores his readers to respect the religious freedom of all even if they believe everyone else to be wrong. In many ways, this book justifies and defends the Becket Fund's all-comers approach to litigating religious liberties cases.

Lately, however, some have accused Becket of abandoning its all-comers philosophy in favor of defending conservative Christian principles and positions (see, e.g., Thomson-DeVeaux 2014). These accusations have resulted in part from the Becket Fund's all-consuming court battle against the Affordable Care Act as well as its public opposition to gay marriage—two positions that put it squarely within the conservative Christian camp standing on the front lines in the culture wars. However, these accusations also coincided with the transition of leadership and power from Becket's founder, Kevin Hasson, to new President William Mumma. A former Wall Street executive and Catholic, Mumma took over as president of the Becket Fund in 2011 when Hasson stepped down for health reasons. As evidence of Becket's recent move to the Christian right, one journalist cites University of Virginia law professor and Becket Fund ally Douglas Laycock, who commented that Becket had "bought into some of the culture war, anti-Obama rhetoric from the right" (Thomson-DeVeaux 2014).

Finally, unlike the other firms in this study that expend resources on behalf of educational and training initiatives, the Becket Fund focuses almost exclusively on litigation, or what they refer to as "Public Interest Legal Activities" on their Form 990 forms.²⁴ The Becket Fund does claim to be affiliated with an educational institute at St. Hugh's College of Oxford University, but the college does not appear to provide any financial support or to underwrite costs to any significant extent.²⁵ While still relatively small, Becket Fund's

income has nearly doubled since its involvement in the Affordable Care Act litigation, and its staff has increased to eleven full-time attorneys.²⁶ With the changing of the guard from Kevin Hasson to William Mumma and with the notoriety it gained within Christian right circles for its victory in *Hobby Lobby*, Becket appears poised to move even closer to its New Christian Right counterparts in terms of agenda, budget, and litigating focus.

DATA COLLECTION AND CODING

With respect to the data collection and coding, we searched all available litigating activity for ADF (and its previous incarnation, Alliance Defense Fund), ACLJ, Liberty Counsel, and the Becket Fund for Religious Liberty at the federal and state levels using the Lexis Nexis Academic and Westlaw Campus search engines. The searches ran from the creation year for each PILF through 2014, producing 1,009 instances of PILF activity. We initially coded each case for term year, level of court (district court, circuit court of appeals, or Supreme Court), and type of participation (amicus curiae or sponsor/litigator).

Reading the case abstracts and, if these were ambiguous, further into the decision itself, we coded each case for the actual legal question (Establishment Clause, Civil Rights Act, Free Exercise, Free Speech, Second Amendment, etc.) as well as the more specific religious or secular issue implicated (abortion, public displays of religion, Affordable Care Act contraceptive mandate, pornography, gun rights, etc.). These cases were then classified as *explicitly religious* (i.e., with the legal question dealing directly with the religion clauses or religious liberty statutes such as the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act [RLUIPA]), *implicitly religious* (i.e., with the legal question concerning a nonreligious issue such as free speech or employment law but still having clear ties to religious issues such as abortion or religious discrimination), or *secular* (i.e., with legal question being nonreligious and having no clear or immediate ties to religious issues).²⁷

Both authors read through the cases and independently coded them using a shared set of instructions. The authors reached an initial agreement in all but six of the cases (an agreement rate of 99.4 percent). The authors agreed on the categorization of the six outlying cases in a collaborative additional review. The final categorization process produced 587 Explicitly Religious, 346 Implicitly Religious, and 76 Secular instances of PILF participation.

FINDINGS

In aggregating the results, we find that, despite their visible participation as amici curiae in some very high-profile Supreme Court decisions over the past decade (see Online Appendix A), these four NCR PILFs have not invested a significant amount of litigating resources participating in cases that are outside of their religiously defined mission focus. That being said, we did find that the total number of secular cases in which the two biggest NCR PILFs—ADF and ACLJ—have participated has been trending up, especially since the early 2000s. This increase has been more steady and pronounced with ACLJ. As for the two smaller PILFs in the study, Becket Fund for Religious Liberty and Liberty Counsel, their participation in secular cases has been minimal.

Even the NCR PILF most active in secular issues, ACLJ, participated at its peak in only about eight or nine nonreligious cases per year. These numbers are not huge, but they do represent more than a doubling of investment in secular litigation since the year 2000 (see Figure 1). ADF's total investment in secular litigation has also been on the rise,

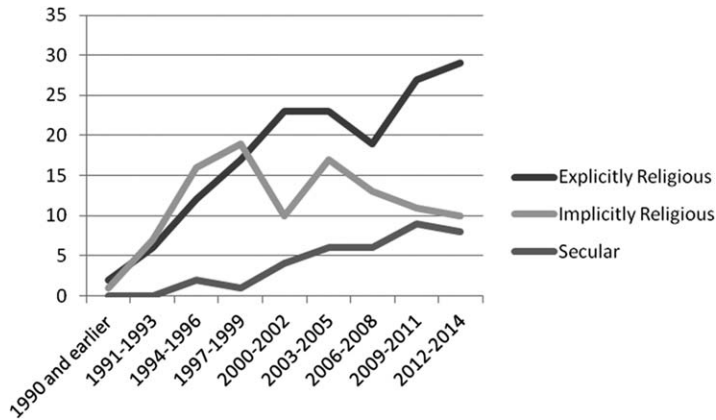


Figure 1. ACLJ Religious v. Secular as Number of Cases per Three-Year Period over Time.

but, as Figure 2 demonstrates, these numbers represent a much smaller percentage of ADF's overall litigating portfolio. Even at its peak, secular litigation represented just 7 percent of ADF's total caseload.

The remaining two NCR PILFs in this study, the Becket Fund for Religious Liberty (Figure 3) and Liberty Counsel (Figure 4), have shown very little investment in purely secular litigation over time. For Becket, this lack of secular participation has been consistent over time. The only notable exceptions include two cases involving eminent domain and the Takings Clause: a high-profile Supreme Court case, *Kelo v City of New London* (2005) and *Norwood v Gamble*, which was later consolidated with another case and is now cited as *Norwood v Horney* (2006), a case coming out of the Ohio State Supreme Court. As we discuss in the next section, these cases would seem to be important for developing lateral precedent in the area of religious land use, an issue Becket has been litigating since Congress passed RLUIPA in 2000.

Liberty Counsel, on the other hand, did have a sudden burst of secular litigating activity in 2000. Most of this litigation involved the contested 2000 presidential election. Liberty Counsel joined a host of others challenging the ballot counting in several counties of Florida, where Liberty Counsel is headquartered.²⁸ These cases were part of a larger legal battle to stop the Florida recount, the outcome of which effectively resolved the 2000

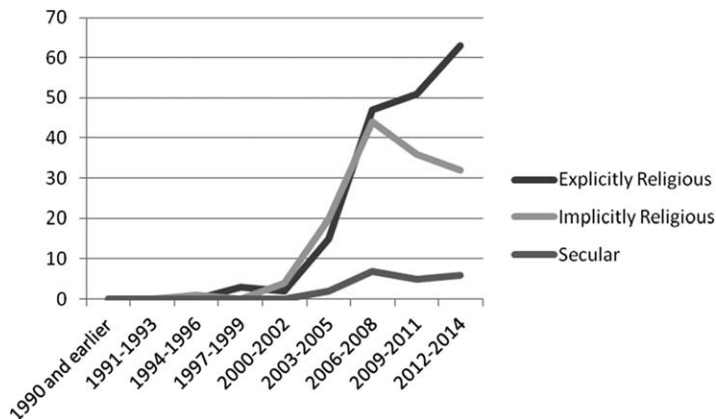


Figure 2. ADF Religious v. Secular as Number of Cases per Three-Year Period over Time.

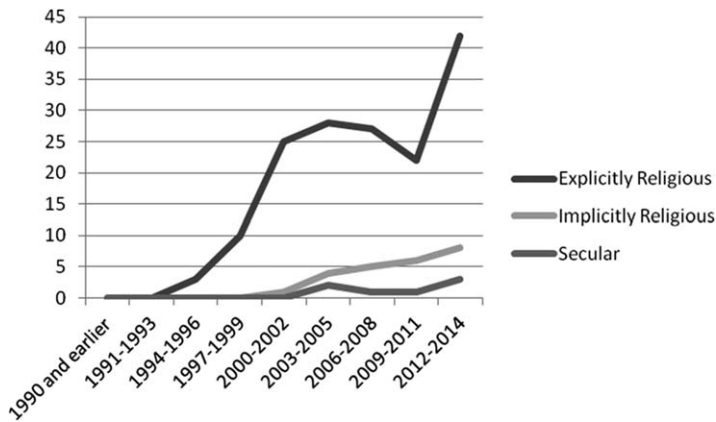


Figure 3. Becket Religious v. Secular as Number of Cases per Three-Year Period over Time.

presidential election in favor of Republican George W. Bush, whom evangelical voters strongly preferred and uniquely identified with. The *Washington Post* reported, for example, that in 2004 Bush won 79 percent of the evangelical vote (Cooperman and Edsall 2004). Whether this counts as Liberty Counsel indirectly pursuing policy influence or maintaining a viable and supportive political coalition (or both) will be explored in the next section.

While this data demonstrate that all four of the NCR PILFs in our study are mostly mission focused, engaging in secular litigation relatively infrequently, it is still of note that ACLJ and ADF, the two largest PILFs in our study, appear to be doing so more and with increasing frequency since 2000. There are several possible reasons for this. One might be economies of scale: as larger and better resourced PILFs, ADF and ACLJ can afford to broaden into non-mission focused litigation. These PILFs have larger staffs and networks of volunteer attorneys and more funding than the smaller, leaner Liberty Counsel and Becket Fund. But economies of scale do not explain why ACLJ, which is smaller than ADF, would lead the pack in secular litigation. Here we can only speculate but would point to Jay Alan Sekulow's very close relationship with more mainstream Republican politicians and elites. As we noted earlier, Sekulow was one of the chief advisors to the

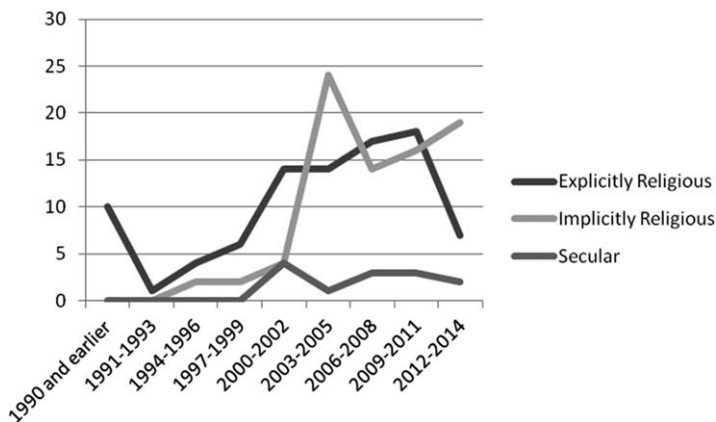


Figure 4. Liberty Counsel Religious v. Secular as Number of Cases per Three-Year Period over Time.

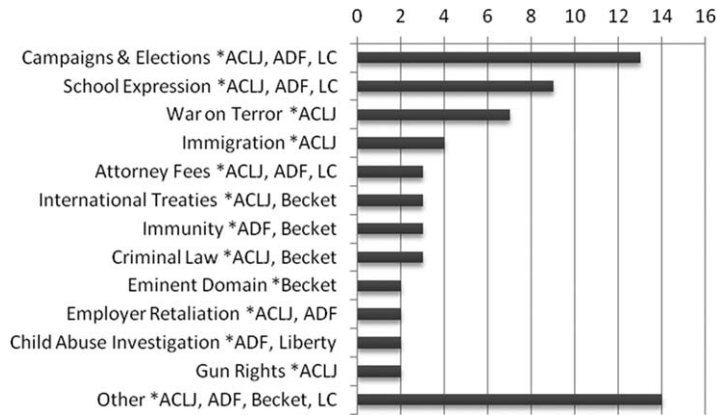


Figure 5. NCR PILF Secular Litigating Activity by Issue Focus (with 2+ Cases Represented).

*Indicates which NCR PILFs participated in cases falling under each category: ACLJ, ADF, BF, LC.

George W. Bush administration and had a hand in crafting the PATRIOT ACT (Hacker 2005). As our 2015 and 2016 interviews with stakeholders at ADF and Regent Law School confirmed, Jay Alan Sekulow also has more control over ACLJ and its priorities than any single individual at ADF, a larger organization with a more decentralized structure.

Disaggregating the *secular* category and coding both for the legal/constitutional question and for the particular issue area, we find that the First Amendment is the most frequent area of secular litigation for all NCR PILFs. Breaking this down further, political speech/voting/campaign finance is the frontrunner, with school expression—not directly related to religious expression in schools—in second place (see Figure 5).

In terms of the kind of secular participation (*amicus curiae* or counsel), Becket was roughly evenly split between bringing cases and participating as a friend of the court while Liberty favored serving as counsel by nearly two to one. ACLJ and ADF, the two most active PILFs in secular litigation, heavily favored *amicus* participation, which they used 86 percent and 75 percent of the time, respectively (see Figure 6). All PILF participation in US Supreme Court cases has been through *amicus curiae*. While producing a high-quality *amicus curiae* brief requires time and resources, it requires fewer resources than

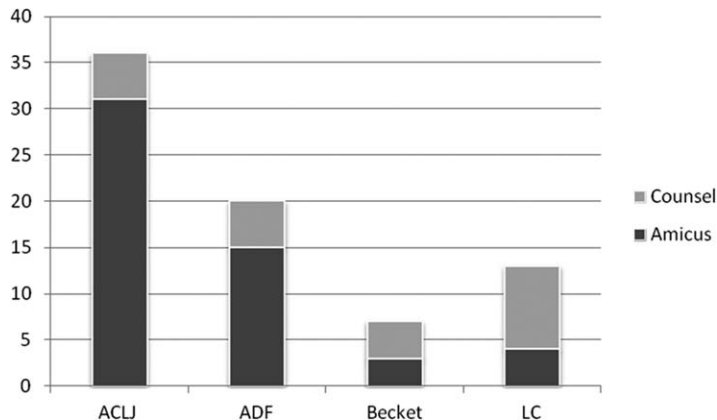


Figure 6. Breakdown of NCR PILF's Participation Type (Amicus or Counsel) in Secular Cases.

finding plaintiffs, financing, and seeing the litigation through from start to finish and therefore indicates a lower level of overall investment in the lobbying effort (Solberg and Waltenburg 2006).

Not surprisingly, these four NCR PILFs do not seem to be using these secular cases to build ties with one another or to maximize cost sharing—two advantages of “coalitional activity” (Collins 2004, 826). Apart from a few cases involving attorney’s fees,²⁹ the only secular cases attracting the participation of more than one of these NCR PILFs include a First Amendment case involving school expression,³⁰ a First Amendment case involving international aid stipulations,³¹ one First Amendment case involving ballot initiative rules and disclosure regulations,³² and a Fourth Amendment/Qualified Immunity case.³³ Moreover, we identified only one case in which any of these four PILFs collaborated on a brief—one of the principal indicators of coalitional activity. That case was *Perdue v Kenny* (2009), a Supreme Court case involving attorney’s fees for civil rights litigation. Further, only in two additional secular cases did we find any collaboration with any other conservative Christian or religious groups on brief: *Camreta v Greene* and *Rumsfeld v Forum for Academic and Institutional Rights*.³⁴

In the cases under study here, collaboration with secular groups was a bit more frequent though not significant, with six cases including briefs with secular group cosigners between the four NCR PILFs.³⁵ While all four NCR PILFs collaborated at least once on a brief with a secular group in the cases under study, ACLJ and ADF did so slightly more frequently, collaborating with secular groups in three and two cases, respectively. The Becket Fund collaborated once on a brief with the libertarian CATO Institute, and Liberty Counsel joined six other PILFs from across the conservative spectrum in *Perdue v Kenny* (2010), the case involving attorney’s fees.

ANALYSIS AND DISCUSSION

So what explains these findings? We know from the judicial politics literature that “purposive” (Salisbury 1984) interest groups such as PILFs choose to participate in litigation for three principal reasons: to influence policy (Hansford 2004; Scheppele and Walker 1991; Caldeira and Wright 1990); for organizational maintenance reasons such as attracting and retaining funding and members (Solberg and Waltenburg 2006; Hansford 2004); and to build and maintain coalitions that could serve to attract new sources of funding, new members, and new opportunities for cost sharing and collaboration (Goelhauser and Vouvalis 2014; Farber 2007; Collins 2004; Caldeira and Wright 1990; Epstein 1985).

The proposition that all organized interest groups seek to exert policy influence is fairly incontrovertible within the field of political science. While almost all judicial politics scholars use this proposition as a theoretical starting point for explaining an interest group’s decision to lobby the courts, they do not all end up there. For example, Thomas Hansford has emphasized the unique constraints that “membership-based interests” such as PILFs face in trying to exercise influence: namely, they must consider the effect their lobbying activities will have on their “ability to attract and retain membership support” (Hansford 2004, 173).

Steven Teles, citing first-generation secular conservative PILFs, notes that such constraints also exist when considering donors and foundation funding (Teles 2008). Libertarian-minded PILF leaders ran into problems with their big business donors when their principled pursuit of policy-driven litigation began to affect these business interests. Other recent sociolegal work on PILFs further suggests that these organizations are more

significantly constrained by the need to attract and maintain funding from other sources—such as state governments, the federal government, and private foundations—than by a need to expand their membership bases (Albiston and Nielsen 2014). That said, in thinking about organizational maintenance as a constraint on and a driver of litigation activity for PILFs, we should be considering the broader funding base as well as the membership base.

Finally, scholars have shown that interest groups also lobby the courts to build and maintain coalitions. As Gregory Caldeira and John Wright observe in their classic 1990 article on the subject, coalitional activity can be visible in the form of interest groups joining the same *amicus curiae* brief or cosponsoring litigation, but there are also “less visible coalitional activities,” including sharing information and resources, discussing issues and strategy, and “coordinat[ing] all manner of activities” (Caldeira and Wright 1990, 800). These less-visible forms of coalition building and maintenance could also influence an interest group’s decision to lobby the court in a particular case.

In the sections that follow, we argue that while concerns about organizational maintenance and coalitional goals are identifiable in some of this secular litigation, the desire to have policy influence—understood broadly as including long-term goals and encompassing lateral policy development—does a significant amount of the explanatory work in these cases.

POLICY INFLUENCE

If we narrowly define the desire to have policy influence as an explanatory variable—defining it, for instance, as a group’s desire to influence the outcome of cases within its well-defined mission or policy agenda—then the choice of these NCR PILFs to engage in secular litigation seems quite puzzling. If we accept an expanded definition of policy influence that includes the desire to influence “legal rules” (Wofford 2015; Hansford 2004; Galanter 1974) or takes into consideration the radiating effects of certain cases on related areas of law and lateral precedent (Hollis-Brusky 2015; Silverstein 2009), then the decision to litigate a subset of these uncharacteristic cases starts to make more sense. In assessing policy influence, we examined both the explicitly stated goals of the PILF in its brief and also examined the content of the brief for evidence tying a favorable ruling in the case to the PILF’s core policy goals as defined on its website and other publicly available documents. This slightly expanded definition of policy influence would help explain decisions to litigate in the areas of First Amendment campaign finance, secular school speech and expression, the scope and applicability of international treaties, and eminent domain. As we explain below, each of these issue areas is closely related to at least one issue that falls squarely within these NCR PILFs’ religious policy agendas.

The category of *campaigns/elections*, representing thirteen cases from three of the four PILFs in this study (ACLJ, ADF, and Liberty Counsel), was the largest category of secular litigation for these NCR PILFs. While, as we discuss in subsequent paragraphs, the litigation surrounding the 2000 presidential election was more likely undertaken in service of broader coalitional goals, the litigation in this category involving campaign finance serves important lateral policy goals for these NCR PILFs. ADF’s *amicus curiae* brief in *Citizens United v FEC* (2010) is a good example: here ADF is working a line of lateral precedent to further its core goals to protect the “speech” of pro-life and Christian organizations and to loosen disclosure laws that, ADF claims, can lead to targeted harassment of individuals holding politically unpopular opinions.³⁶

The category of *school expression*, representing eleven cases³⁷ from all four PILFs under study (see Figure 5), claimed the second spot overall in terms of secular issue type

most frequently litigated. While none of these cases involved issues of religious liberty, the logic of how precedent is used and how broadly or how narrowly the legal rules (Wofford 2015; Hansford 2004) are applied in these cases could have important consequences for future litigation in the area of religious speech and expression. After all, as previous scholarship has chronicled in great detail, it was the reframing of religious liberty claims as speech and expression claims that initially opened the door to success for religious groups that previously had been on the losing end of Supreme Court decisions (Silverstein 2009; Hacker 2005; Brown 2002). Keeping a robust line of precedent open in the area of speech and expression is thus extremely vital to the continued litigating success of these NCR PILFs.

Many of the briefs submitted in these cases exhibit an awareness of this important “lateral” relationship. For example, in *Morse v Frederick* (2007), a Supreme Court case centered on the school speech doctrine, both ADF and ACLJ highlight the consequences the ruling could and will have for religious liberty in their amicus curiae briefs. As lawyers for ADF argue in their brief, “[l]ike the speech at issue in this case, religious speech can be controversial. As such, it is often the target of censorship in our Nation’s public schools.” The brief continues, “Recognizing that this case will potentially have a profound impact on the landscape of students’ speech rights, ADF is seeking to ensure that the freedom of expression and the opportunity for rigorous debate of controversial ideas—which are essential to our democratic system—are jealously guarded within our schools.”³⁸ Similarly, Jay Alan Sekulow and the lawyers for the ACLJ draw analogies in their amicus curiae brief between the substantive issues in *Morse v Frederick* and various issues of religious liberty that might suffer under a restrictive analysis of student speech rights: “Petitioners invoke the defense of the school’s ‘basic educational mission,’ Pet. Br. at 20. While that is a worthy goal ... it is certainly not a carte blanche justification for viewpoint suppression.” The brief then draws an analogy between the issue at hand and one involving religious liberty, arguing that “while a school may teach an exclusively pro-evolution science curriculum, this does not mean that a school could suppress the student Bible Club whenever participants question Darwinian theory or advocate a Creationist point of view.”³⁹

A concern for the establishment of favorable or unfavorable legal rules (Wofford 2015; Hansford 2004; Galanter 1974) also helps explain the decision of these NCR PILFs to participate in cases involving the applicability of international treaties to criminal prosecutions that are unrelated to the substantive issues at the center of their agendas. For example, in the amicus curiae brief it submitted in the Supreme Court case *Bond v United States* (2014)—a case involving the applicability of a section of the Chemical Weapons Convention Implementation Act to a case of domestic simple assault—Sekulow and attorneys for the ACLJ explain how a ruling that broadly interpreted the reach of this treaty would promulgate a very dangerous legal rule that would give the international community *de facto* rule over areas traditionally belonging to states and local governments. It is not a coincidence that the list of areas that could be vulnerable under such a broad interpretation are also ones of substantive concern and interest to the ACLJ and to the NCR more generally:

Thus, nations could agree by treaty universally to require—or forbid—each of the following: publicly funded education vouchers for private schools; parental notice for abortion; restrictions on handgun possession near schools or churches; various regulatory limits on home businesses, home schools, or personal hobbies. These are all generally matters of choice for state and local governments. The federal government may not dictate a one-size-fits-all result in either direction. Yet it is certainly conceivable that an Administration of one viewpoint or its opposite could negotiate with a like-minded

foreign sovereign to agree to the mutual imposition of nationwide rules—in either direction—on these matters.⁴⁰

ADF's amicus curiae brief in *Medellin v Texas* (2008), another Supreme Court case involving criminal prosecution under an international treaty, echoes similar concerns about the undermining of American sovereignty but formulates its concerns in more lofty language, pointing out the connections between natural law jurisprudence and constitutional interpretation: "By the adoption of the Constitution the American people ceded certain of their inviolable natural rights to the government. The people did not, however, cede those rights to foreign judges exercising authority inconsistent with that authorized by the people's representatives and the Constitution itself."⁴¹

The Becket Fund's participation as amicus curiae in eminent domain cases, such as *Norwood v Horney* (2006) and *Kelo v City of New London* (2005), can also be understood in the context of developing and influencing lateral precedent. Specifically, the Becket Fund is lobbying the courts in these cases to adopt a narrow view of what is a permissible "taking" of private land for public use under the eminent domain doctrine. As the Becket Fund wrote in their amicus curiae brief to the Supreme Court in the *Kelo* case, which involved the use of eminent domain to take and transfer private land condemned by the city of New London, "[t]o affirm this broad expansion of eminent domain power . . . would both declare open season on the taking of religious institutions of all faiths and functions (houses of worship, schools, hospitals, soup kitchens, to name a few), and turn the Fifth Amendment [] . . . squarely on its head."⁴² While a Supreme Court majority decided in favor of the City of New London in the *Kelo* case, the Becket Fund points out on its website that Justice Sandra Day O'Connor cited their amicus brief in her dissenting opinion.⁴³ This campaign to narrow the eminent domain power also makes sense in light of Becket's extensive litigation surrounding the RLUIPA, which protects churches and religious lands against burdensome zoning laws. Despite persistent lobbying by Becket in their RLUIPA litigation, the federal courts have yet to interpret this act to include extended protections for churches and religious lands against eminent domain claims by states or municipalities.

Thus, a more expansive understanding of the desire to have policy influence—one that takes into account the desire to influence the development and preservation of legal rules and lateral areas of precedent—helps make sense of most of this uncharacteristic litigating activity by NCR PILFs. That being said, in the sections that follow we also examine the possibility that some of the rest of this litigation might be serving organizational maintenance and coalitional goals.

ORGANIZATIONAL MAINTENANCE

Purposive groups, such as PILFs, need to survive in order to have policy influence. As Solberg and Walternburg explain, "groups must be mindful of issues of maintenance because without maintenance all other goals are unattainable" (2006, 559). This concern with organizational maintenance easily explains the decision of these NCR PILFs to participate in secular cases involving the recovery of attorney's fees.⁴⁴ Preserving a financial environment favorable to PILF participation allows these groups to continue to pursue their policy agendas through litigation. If, as we advocate below, we can move beyond the conceptualization of PILFs as simple "membership" organizations and embrace a more empirically grounded understanding of how and where PILFs are receiving their funding, then the organizational maintenance variable could also plausibly explain some of this other secular participation.

Caldeira and Wright characterize PILFs as being composed of “dues paying members who can enter and exit the organization because of its activities and policy positions” (1989, 789) and thus emphasize how this institutional characteristic works to constrain the activity of PILFs. Other judicial politics scholars have followed suit (Collins 2004; Hansford 2004). This definition goes some way toward explaining the religious mission focus of these NCR PILFs but does not explain the decision, however infrequent, to litigate outside of the scope of their mission, as an investment in secular litigation could risk alienating or frustrating the membership base. However, if instead of focusing on membership we understand PILF funding sources as varied and multifaceted—that is, including grants from federal and state governments, private foundation grants, gifts from private individuals, and attorney’s fees (Albiston and Nielsen 2014)—then the decision to participate in some of these secular cases might make more sense.

As Catherine Albiston and Laura Beth Nielsen (*ibid.*) note in a recent empirical study based on a national survey of public interest law firms from all sides of the political spectrum, only one quarter of the firms under study relied on membership dues to support their activities, and even in the case of those PILFs that do rely on membership dues to fund their activities, these dues only constitute on average 5-10 percent of their overall budgets. What they found specifically with regard to conservative public interest law firms was a heavy reliance on private foundation funding (30 percent) and private contributions and gifts (30 percent) (*ibid.*).

Understood through the lens of attracting or retaining outside donors and foundation funding (rather than through the lens of satisfying members), organizational maintenance could be used to explain a PILF’s decision to diversify its litigating portfolio and to engage in uncharacteristic, non-mission focused litigation. For an NCR PILF, engaging in secular litigation could be part a strategy of “product differentiation,” which refers to the “need [for an organization] to distinguish itself from other, existing organizations so that it can recruit new adherents or compete for old ones” (Heinz, Paik, and Southworth 2003, 36). As we noted at the outset of this article, there is a well-documented competition and rivalry for resources and adherents within the field of NCR public interest law (Bennet 2013; Southworth 2005). If organizational maintenance within the NCR PILF field encompasses the need to signal differentiation or attract donor sources outside of the crowded field of abortion politics and religious liberty, then engagement in secular litigation is one way to accomplish this.

COALITIONAL GOALS

While a desire for policy influence and a concern with organizational maintenance are the two dominant explanations mobilized to explain a group’s decision to litigate or engage the judiciary (see, e.g., Solberg and Waltenburg 2006), scholars have also identified the importance of maintaining and building coalitions as an additional incentive to participate in litigation. The literature identifies this coalitional activity by joint sponsorship of cases and/or joint filing of amicus curiae briefs (see, e.g., Goelzhuaser and Vouvalis 2014; Collins 2004; Caldeira and Wright 1989). Jointly filed amicus briefs are also an opportunity for coalition building with groups that might not be like-minded on every issue but that have some common ground on a particular issue. Further, judicial politics scholars have shown how briefs that signal ideological “heterogeneity” can be particularly valuable for Supreme Court decision makers (Goelzhauser and Vouvalis 2014).

As we presented in the results section, collaboration on brief was very rare amongst these NCR PILFs. This finding is consistent with Caldeira and Wright’s (1989) findings

that, of all types of organized interests, PILFs were the least likely to collaborate on brief with other groups. Additionally, as we noted, participation in the same secular case was also a rare occurrence among this group. So if we consider only the most *visible* form of coalitional activity—collaboration on brief with other interest groups—we would have to conclude that this variable does not do much explanatory work here.

It is still possible, however, that there are “less visible” coalitional goals being served by this secular participation (Caldeira and Wright 1989). Submission of separate briefs on the same side in a case can also indicate a desire to build or maintain alliances with other groups (Collins 2004). This coalitional strategy is evident in ADF’s decision to file an amicus curiae brief in support of James Bopp, Jr., in the 2010 campaign finance case *Citizens United v FEC* (2010). Bopp, the lead attorney for the group that successfully challenged campaign finance laws in *Citizens United*, is one of ADF’s “allied attorneys,” an expansive network of volunteers and collaborators who are not directly employed by ADF but who work alongside the organization on specific issues.⁴⁵

Moreover, if we expand the definition of coalitional goals to include a desire to create an environment favorable to political allies, then we can make sense of some of these NCR PILFs’ decisions to participate in cases that would generate politically favorable outcomes for allies in the Republican Party, including cases advocating stronger voter identification laws, weaker campaign finance regulation, weaker disclosure for the state ballot initiative process, and, for lack of a category more general, the litigation in *Bush v Gore* (2000).

Further, if we downplay the requirement that the only evidence of coalition building is collaboration or joint authorship of amicus curiae briefs, then we leave open the possibility that some of this secular litigation—in particular the ACLJ’s investment in litigation surrounding the War on Terror and the Second Amendment—could represent a desire to build relationships with groups within the conservative coalition but outside the narrow scope of Christian conservative litigation. This possibility is particularly interesting when one notes the history of tension between the NCR and the rest of the contemporary conservative coalition (see Southworth 2008). As we discussed above, this could also be coupled with organizational maintenance concerns and the desire to attract or keep sources of funding from non-Christian conservative donors.

CONCLUSION

Even though these NCR PILFs have been mostly mission focused in their litigating portfolios, we have seen an uptick in participation in secular litigation since the early 2000s, especially by the two largest PILFs in this study: ADF and ACLJ. While their motivations for investing resources in these secular cases are obviously complex and multifaceted, the desire for policy influence (including lateral precedent development) along with concerns about organizational maintenance (including securing funding sources outside the group’s membership base) and concerns with coalition maintenance and building (including less visible coalitional activities such as creating an environment favorable to political allies) help us make sense of what, at first glance, might seem like a puzzling investment of resources. Speaking specifically to the NCR, this adds to what others have shown regarding the increasing political know-how of NCR PILFs (Wilson 2016; Brown 2002). Beyond the NCR, this study should also call attention to the myriad of ways in which savvy PILFs engage with an increasingly complex legal and political landscape.

NOTES

1. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2006, Statement 1.
2. *Ibid.* Total reported expenses of \$1,170,771.
3. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2012. Total revenues for 2011 listed as \$4,750,490 and for 2012 as \$3,869,603.
4. <http://www.lc.org/> (accessed November 7, 2014).
5. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2012, sec. 4b ("A total of 138 cases are currently in active litigation or pre-suit status under LC management. Although the vast majority of legal situations brought to LC are resolved without litigation, others are filed in federal and state courts across the United States.").
6. *Ibid.*
7. *Ibid.*, sec. 4a. See also <http://www.lc.org/> (accessed November 7, 2014).
8. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2012, pt. II, 2.
9. *Ibid.*, pt. III, sec. 4a (ACLJ reported spending \$13,750,552 on cases at various levels of the federal and state court systems).
10. <https://web.archive.org/web/19981206192657/http://www.aclj.org/> (accessed November 7, 2014).
11. <https://web.archive.org/web/20020913173813/http://aclj.org/about/welcome.asp> (accessed November 7, 2014).
12. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2012, at 1.
13. *Ibid.*, Statement of Activities Outside the United States.
14. <http://aclj.org/our-mission/about-aclj> (accessed November 7, 2014).
15. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2012 ("Contributions and grants" listed at \$38,943,749).
16. *Ibid.*, sch. I, pt. II, Grants and Other Assistance to Governments and Organizations in the United States.
17. *Ibid.*, pt. III, 2, 4c, cites \$6,068,634 for "Allied Support and Training."
18. <http://www.alliancedefendingfreedom.org/about/allies> (accessed November 12, 2014).
19. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2012, pt. III, 2, 4a, 4b. "Public Education," \$10,406,953 and "Direct Litigation," \$9,751,537.
20. <http://www.alliancedefendingfreedom.org/about/allies> (accessed November 12, 2014).
21. <http://www.alliancedefendingfreedom.org/faith-and-justice> (accessed November 12, 2014).
22. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2011, pt. II, 2 (total support for FY 2010 listed at \$2,413,916).
23. See <http://www.becketfund.org/our-mission/> (accessed November 17, 2014).
24. Department of the Treasury Internal Revenue Service, Form 990, "Return of Organization Exempt From Income Tax," 2011, pt. III, Statement of Program Service Accomplishments.
25. <http://www.becketfund.org/our-history/> (accessed November 17, 2014) ("Most of its academic work is accomplished under the umbrella of the Becket Institute, which was founded at St. Hugh's College of Oxford University in 1997.")
26. <http://www.becketfund.org/our-staff/> (accessed November 17, 2014).
27. As the pertinent cases for this study, all of the *secular* cases can be seen online in Appendixes A and B, listed by case name, PILF participant, year, legal question, issue area, level of court, and participation type. A complete list of the 1009 instances of PILF case participation can be obtained by contacting the authors.
28. See, e.g., *Touchston v McDermott*, 120 FSupp2d 1055; *Jacobs v Seminole County Canvassing Board*, 773 So 2d 519 (Fla. 2000); *Taylor v Martin County Canvassing Board*, 773 So 2d 517 (2000).
29. See, e.g., *Commissioner of Internal Revenue v Banks* (2004), *Perdue v. Kenny* (2009).
30. *Morse v. Frederick* (2007).
31. *Agency for International Development v Alliance for Open Society International, Inc.* (2013).
32. *Doe v Reed* (2010).

33. *Camreta v. Greene* (2011).
34. *Camreta v. Greene*, “Brief of the Family Research Council and the American Coalition for Fathers and Children as Amici Curiae in Support of the Respondents” (Alliance Defense Fund, Counsel of Record). *Rumsfeld v Forum for Academic and Institutional Rights*, “Brief Amici Curiae of Christian Legal Society and Alliance Defense Fund in Support of Neither Party” (Alliance Defense Fund and Center for Law and Religious Freedom of the Christian Legal Society as Counsel for Amici Curiae).
35. *Arizona v United States*, “Amicus Curiae Brief of Members of Congress and the Committee to Protect America’s Border in Support of Petitioner” (Jay Alan Sekulow, Stuart Roth, and Colby May of ACLJ and Garret Roe, Michael Hethmon of Immigration Reform Law Institute listed as cocounsel); *Bush v Gore*, “Brief Amici Curiae of William H Haynes, Connie Mendez, Marnee Benz, Bert Carrier, et al. Supporting Petitioners” (Griffin Bell, Paul Clement, Viet D Dinh, Jay Alan Sekulow, Thomas P Monaghan, Stuart J Roth, Colby M May, James Henderson, David A. Cortman, listed as Counsel); *Connick v Thompson*, “Brief of Amici Curiae Alliance Defense Fund and Cato Institute in Support of Respondent” (Glen Lavy, Counsel of Record for Alliance Defense Fund and Ilya Shapiro, counsel for Cato Institute); *University of Texas Southwestern Medical Center v Nassar*, “Brief of Amici Curiae The Foundation for Individual Rights in Education and Alliance Defending Freedom in Support of Respondent” (David Cortman, David J. Hacker, and Kevin H. Theriot for Alliance Defending Freedom and Greg Lukianoff, Foundation for Individual Rights in Education); *Perdue v Kenny*, “Brief Amici of Liberty Legal Institute, American Center for Law and Justice, Cato Institute, Institute for Justice, Liberty Counsel, Alliance Defense Fund, James Madison Center for Free Speech in Support of Respondents” (Jay Alan Sekulow for ACLJ, Matthew Staver for Liberty Counsel, Gary McCaleb for Alliance Defense Fund, James Bopp, Jr. for James Madison Center for Free Speech, Ilya Shapiro for Cato Institute, William H. Mellor for Institute for Justice); and *Palmer v Waxahachie Independent School District*, “Brief for Cato Institute, Institute for Justice, Becket Fund for Religious Liberty, Christian Legal Society, National Association of Evangelicals as Amici Curiae in Support of Petitioner.”
36. See <http://www.alliancealert.org/2010/02/26/adf-allied-success-stories/> (accessed February 7, 2017).
37. *Barnes v Zaccari* (2012) (ADF); *Kowalski v Berkeley County Schools* (2011) (ADF); *Enstrom v. Regents of the University of California* (2012) (ACLJ); *ACLU of Florida v Miami-Dade County School Board* (2009) (ACLJ); *Morse v Frederick* (2007) (ACLJ, ADF); *Rumsfeld v Forum for Academic and Institutional Rights* (2006) (ADF); *Frudden v Pilling* (2014) (ADF); *Dariano v Morgan Hill Unified School District* (2014)(ACLJ); *Palmer v Waxahachie Independent School District* (2009) (Becket); *Fields v Palmdale School District* (2006) (Liberty); *DeJohn v Temple University* (2006) (ADF, Liberty).
38. *Morse v Frederick*, “Amicus Brief for Alliance Defense Fund,” 2006 US Briefs 278, 2007 US S Ct Briefs LEXIS 111, at *2.
39. *Morse v Frederick*, “Amicus Brief, American Center for Law and Justice,” 2006 US Briefs 278, 2007 US S Ct Briefs LEXIS 220, at **12-13.
40. *Bond v United States*, “Amicus Brief of the American Center for Law and Justice in Support of Petitioner,” at *5.
41. *Medellin v Texas*, “Brief of the Alliance Defense Fund as Amicus Curiae Supporting Respondent,” 2004 US Briefs 5928, 2005 US S Ct Briefs LEXIS 199, at *24.
42. *Kelo v City of New London*, “Brief of Amicus Curiae the Becket Fund for Religious Liberty in Support of Petitioners” (Anthony R. Picarello, Jr, Counsel of Record), at *1-2.
43. <http://www.becketfund.org/kelo/> (accessed March 10, 2015).
44. See, e.g., *Perdue v Kenny* (2009) (ACLJ, ADF and Liberty as amici curiae) and *Fox v Vice* (2011) (ADF and Liberty as amici curiae)
45. “Congratulations to allied attorneys Jim Bopp, Tyson Langhofer, Rob McCully, Sharon Blake-ney, Mike Donnelly, Pat Trueman, Stephen Braunlich, Carissa Mulder, Ryan Dwyer, Christopher DiPompeo, Aaron Martin, Demetrios Stratis, and Andrea Williams for their recent successes listed below. Please take time to congratulate them!” <http://www.alliancealert.org/2010/02/26/adf-allied-success-stories/> (accessed February 7, 2017).

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