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## The United States after the Third Religious Disestablishment: A Case Study of the ADF's Strategies in Prolonging Culture Wars

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**The United States after the Third Religious Disestablishment: A Case Study of the  
ADF's Strategies in Prolonging Culture Wars**

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### **Abstract**

In the early '90s, several conservative Christian legal organizations (CCLOs) sprung up in the United States in response to pluralism. These CCLOs sought to match the strategies and power of long-standing liberal public interest groups, like the American Civil Liberties Union (ACLU). Much literature has been produced on the activities of CCLOs, but few have considered the CCLOs' lasting impact on the nation. Using Willamette University College of Law Professor Steven K. Green's framework of religious disestablishments across U.S. history, this paper proposes that the country has entered a prolonged period of moral reestablishment partly thanks to CCLOs. With a focus on the Alliance Defending Freedom (ADF), this twenty-year longitudinal case study demonstrates how the powerhouse firm has used the courts, media, and educational institutions to extend culture wars in America in the aftermath of the third religious disestablishment.

*Keywords:* Alliance Defending Freedom, Alliance Defense Fund, religious disestablishment, moral reestablishment, culture wars, religious liberty

### Introduction

In 2014, the Supreme Court ruled in favor of Hobby Lobby Stores, Inc., a family-owned, for-profit corporation that was seeking a religious accommodation from the contraceptive mandate of the Affordable Care Act of 2010. This meant that female employees and female dependents of employees of religiously-objecting for-profit companies would no longer receive certain forms of birth control through their employer healthcare plan. By the end of *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682's aftermath of proceeding court cases and administrative rules, that class of employees and dependents today may or may not receive coverage at all since religiously and morally objecting corporations can now be entirely exempt from the law. The U.S. Supreme Court's decision divided legal scholars who have since debated corporate personhood, religious free exercise, and the third-party harm principle.

But the case marked something even deeper about the judiciary and religious freedom. Of the 47 other small businesses that litigated in the lower courts alongside Hobby Lobby, 60% were represented by three large and prominent conservative, Christian law organizations (CCLOs): the American Center for Law and Justice (ACLJ), Thomas More Society (TMS), and the Alliance Defending Freedom (ADF). Hobby Lobby itself was represented by a smaller CCLO, the Becket Fund for Religious Liberty (BF). The other party at the U.S. Supreme Court, Conestoga Wood Specialties, was represented by the ADF. These CCLOs provided free legal representation to the majority of litigating businesses, all the way up to the U.S. Supreme Court. They were victorious. The result was a highly controversial and deeply impactful case. This case was a marker of the fruits of a long-term plan of collaboration among CCLOs (Bennett, 2017). It also generally demonstrated the capacities of CCLOs to be incredibly influential firms in shaping law and society.

Indeed, *Hobby Lobby* was just a checkpoint in a larger timeline of CCLOs' rise to power. Since most were formed in the 1990s, they have become, as Katherine Stewart (2020) calls them, "legal juggernaut[s] of the right" (p. 188). The star among these CCLOs is the ADF. The ADF is the largest, best-resourced, and most skillful of its peers. It has been an active participant in all major religious freedom and "moral" landmark cases for over two decades now. Not only did it represent Conestoga Wood Specialties in its battle against the contraceptive mandate, but the ADF also funded representation for a Christian kids' club at public schools in *Good News Club* and represented a baker who would not bake cakes for same-sex weddings in the 2018 *Masterpiece Cakeshop* case. These high-profile and widely-covered decisions have had rippling effects on civil society. So, even though the ADF does not devote the majority of its time or resources to policy formation, it does an effective job of changing law to better fit its goals via the courts.

While there is some literature on CCLOs, none has yet considered the rise of CCLOs like ADF in the framework of religious disestablishment and moral reestablishments throughout U.S. history. This study attempts to situate ADF in the context of the centuries-long evolution of church and state relations. Particularly, it examines how the ADF used judicial strategies, narrative reshaping in the media, and attorney education to propagate its mission and prolong culture wars in America in response to the third religious disestablishment.<sup>1</sup>

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<sup>1</sup> This research focus builds on two previous semesters' worth of study in similar topic areas. Spring 2021 I investigated how the third-party harm principle has been neglected after the third religious disestablishment ([https://docs.google.com/document/d/17Cab2LK9el\\_3DRfi12RuPrWT7eT2UoaITG3zOOrTvju/edit?usp=sharing](https://docs.google.com/document/d/17Cab2LK9el_3DRfi12RuPrWT7eT2UoaITG3zOOrTvju/edit?usp=sharing)). Fall 2022 I produced an empirical study on the relationship between politics and 48 small businesses' decision to litigate in pursuit of a religious accommodation from the contraceptive mandate of the Affordable Care Act (<https://docs.google.com/document/d/1dkzQj9cMpwMBsfqyhgBIYSopxY4AD7L2s2TPmUNnIQ/edit?usp=sharing>). Both studies led me to this specific facet: the world of CCLOs. Each paper, including this one, has built on each other and revealed the evolving nature of religious liberty in America.

This work is meaningful for a number of reasons, including that it shows how the third religious disestablishment and this subsequent period of moral reestablishment differ from previous ones<sup>2</sup>. Additionally, it improves our understanding of the New Christian Right as a whole and what America's future might look like. This topic connects to and should concern scholars of multiple fields, including political science, religion, sociology, business, and philosophy.

### **Religious Disestablishments and Moral Reestablishments In American History**

Before diving into the inner workings of the ADF, it is first necessary to review the periodization timeline used in this paper. Some religion and legal scholars like David Sehat (2011) and Stephen K. Green (2010, 2019) have categorized religion's role in American history and law into three periods of disestablishment. These disestablishments denote points in time when religion was further separated from government. The disestablishments were always partial in nature – rather than the sweeping church-state separation many assume – and always went against the larger grain of a majoritarian religious society. Following each religious disestablishment was a period of “moral reestablishment” in which Christians, specifically Protestants, sought to reinstate biblical morals in culture and society.

There are some critics of the categorization of America's religious history. Gary Wills (1990), for instance, views religious periodizations in America as a result of secularist scholars' expectancy of religion to fade:

Nonetheless, every time religiosity catches the attention of intellectuals, it is as if a

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<sup>2</sup> ‘Moral reestablishment’ refers to a return to traditional, biblical values. Alternatives to the term ‘moral reestablishment’ include ‘religious reestablishment’ or ‘religious reawakening.’ I have chosen ‘moral reestablishment,’ because it emphasizes a return to another time and the expansive scope of issues concerning its proponents—a return that Moreton acknowledges in her book with its first chapter entitled “Our Father's America” (pp. 6-23). In this battle for moral reestablishment, CCLOs partake in culture wars.

shooting star had appeared in the sky. One could hardly guess, from this, that nothing has been more stable in our history, nothing less budgeable, than religious belief and practice.

Religion does not shift or waver; the attention of its observers does (p. 15-16).

As a perceptive student of American history, Wills understands that America's history can simply be read as the history of a Christian nation. Wills's sentiments rightly recognize the prominent continuity of religion in America, but this does not warrant a rejection of categorization of time. It is true that religion has remained a constant piece of society, but its political, legal, and cultural implications throughout history have varied. Sometimes the effort to make America a Christian nation is stronger than other times. Sehat (2011) and Green (2010; 2019)'s disestablishment periodization of history is beneficial because it provides a guide to understanding the evolution in conceptions of church-state relations since America's founding.

The first religious disestablishment came through the Free Exercise Clause and the Establishment Clause of the First Amendment. The ratification of the U.S. Constitution in 1787 symbolized a degree of separation between religion and the federal government. As Sehat (2011) correctly notes, the Founding Fathers did not share a uniform idea of what freedom of religion meant. They did not agree on precisely what freedom of religion meant then in their young and fragile republic let alone what it would mean 200 years later. Rather, the framers' varying conceptions stemmed from the Constitution being a partially theorized agreement that attempted to garner the most support from even those with conflicting views. Regardless of intent, the First Amendment guaranteed protection for citizens' religious beliefs and practices and prohibited the federal establishment of a church. Religion at the very least, then, would never rise to the levels of that in the Church of England.

Yet the first disestablishment did not apply to the states individually. In the time after the First Amendment but before the second religious disestablishment, states used their plenary police powers to enact Protestant laws and constitutions. States did this to exert social control directly through the law. Citizens were expected to adhere to Protestant teachings “. . . to coerce rather than persuade citizens to behave according to religious norms” (Sehat, 2011, p. 7). But social control directly through law is unachievable without teeth to enforce it. Some state constitutions very plainly expressed Protestant establishment. For example, Pennsylvania’s Constitution “promised civil rights only to any man who acknowledges the being of a God” (Sehat, 2011, p. 17). This provision effectively gave citizens the option to either accept Christianity or lose their liberties. Likewise, there were five states with constitutional provisions to fund churches after the Founding (Sehat, 2011, p. 20). So, while there was not a federally established church, there still existed some establishments throughout the states.

States used the law to ensure that civil society was deeply Protestant. Those who varied from Protestant teachings were not only “others” but also potential criminals. An 1860 Pennsylvania statute declared that fines and imprisonment would follow anyone who ““willfully, premeditatedly, and despitefully blaspheme or speak loosely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth”” (Sehat, 2011, p. 2). This law made speaking against Christianity a criminal act and punishable.

Through these efforts, mainline Protestant elites in the states worked to create an overarching “moral establishment” that was deeply influenced by Christian, and particularly Protestant Christian, teachings. Society was basically dictated by the scripture of the Bible and nonbelievers were not tolerated. Freedom of religion, then, was actually quite limited and really only applied to mainstream Judeo-Christians.



The second religious disestablishment took place from the 1880s through the 1920s. This was a period of incorporation. The Fourteenth Amendment now guaranteed citizens due process and equal protection. No longer could states explicitly establish a church or make criminals of nonbelievers. Green (2010) characterizes this partial disestablishment as an institutional one. Yet, the second religious disestablishment did not eliminate religion's, specifically Christianity's, role in American culture. Like its predecessor, the second religious disestablishment was incomplete in separation. Religion was still very much intertwined with politics, government, and culture. Even the courts recognized the importance of Christianity in the nation. In *Church of Holy Trinity v. United States*, 143 US 457 (1892) at 471, Justice David Brewer famously named the United States a "Christian nation." This reflected the strong Christian roots of the country's founding and reasserted the dominance of the Christian majority. Green (2010) believes that Justice Brewer's statement was an attempt ". . . to reconcile the positive Christian influences in the culture with a quickly modernizing state" (p. 365). Justice Brewer was attempting to keep Christianity at the forefront of American culture.

One prominent example of Protestant dominance following the second religious disestablishment was prohibition. Christians sought to reassert control over civil society and move toward a more moral nation through constitutional changes. This desire to battle individual moral choice through law reflects the Calvinist sentiment that a pure national society would quicken Christ's return (Green, 2010). J.S. Lantzer (2009) has explored how evangelical Protestants led the country to prohibition in the Eighteenth Amendment in 1919. Evangelical Protestants saw alcoholism as the crux of immorality and prohibition as an opportunity to rebuild "an orderly society" (Lantzer, 2009, p. 6). The temperance movement's desire for

government regulation contrasted their opposition, who wanted the government to stay out of this issue of morality.

The third religious disestablishment spanned from the 1940s to 1975. It was led by the U.S. Supreme Court and had deep cultural impacts. The court issued several decisions—most of which concerned education—that embraced a Jeffersonian church-state separation. Rulings like *McCullum v. Board of Education*, 333 U.S. 203 (1948), which found an optional religious program at public schools unconstitutional, *Engle v. Vitale*, 370 U.S. 421 (1962), which prohibited public schools prayers, and *Abington School District v. Schempp*, 374 U.S. 203 (1963), which prohibited scripture reading at public schools, were focused on Establishment Clause violations. These were deeply controversial. And yet cases on religious liberty were only the tip of the third disestablishment. In the background, massive change was taking place. Catholics were becoming less alienated and more accepted under the mainstream Christian umbrella. Protestants were dividing into the mainstream and evangelical tents. The Civil Rights Movement emerged and found success in the Civil Rights Act of 1964 and the Voting Rights Act of 1965. There was a second wave of the feminist movement, fighting for the passage of the Equal Rights Amendment. The gay rights movement was launched after the events at Stonewall Inn in 1969. The environmentalist movement resulted in the formation of the Environmental Protection Agency. The U.S. Supreme Court legalized elective abortions in *Roe v. Wade*, 410 U.S. 113 (1973). All of these events brought about significant departures from the cultural status quo of the past. Pluralism was now on its way to reigning supreme.

But, just as in the past, there was a countermovement dedicated to restoring what has been lost. Evangelical leaders like Billy Graham and Phyllis Schlafly rose to protest the new America they have found themselves in. Battling homosexuality, racial integration, and the ERA,

they seek a “. . . return to hegemonic evangelical Protestantism” (Brown, 2002, p. 23). They used effective tactics to connect with a network of grassroots support and pose a strong opposition to the new changes in law and society. As shown and discussed in the following section, this third period of reestablishment extends far longer than the previous two – even to today. The question is: why? How has the aftermath of the third religious disestablishment differed so greatly from those in the past?

The answer is lengthy and complicated. Surely since 1975 there has been deindustrialization and record polarization fueled by misinformation on social media, biased news outlets, and, of course, pluralism. But this period of moral reestablishment has also extended so much longer and brought lasting success because of the rise of CCLOs that emerged to promote religious and moral reform, entrenching themselves within the legal regime. The polarizing effect of CCLOs that use the judiciary to promote Christianity and reject pluralism should not be underestimated. Using the ADF as the focus of a longitudinal case study, this paper illustrates how CCLOs use the courts, media, and education to prolong culture wars, resist multiculturalism, and extend the moral reestablishment period following the third religious disestablishment.

### **The Rise of Conservative, Christian Legal Organizations (CCLOs) In the**

#### **New Christian Right: A Literature Review**

Compared to the breadth of literature on the rise of the New Christian Right, there is comparatively less work on the rise and nature of CCLOs. The first author to focus their work on CCLOs exclusively was Steven P. Brown (2002). He explored the birth of CCLOs and their religious freedom strategies inside and outside of the courtroom. Ann Southworth (2005) wrote on how CCLOs changed the very nature of what is considered “public interest” in America.

Daniel Bennett (2017) updated Brown's work but also specifically looked at the prioritization of issues within CCLOs. Amanda Hollis-Brusky & Joshua C. Wilson (2017) were first to write on the ADF in particular. Their study analyzed CCLO's participation in secular cases. Most recently, Hannah Dick (2021) demonstrated how the ADF perpetuates a Christian persecution rhetoric to justify its assault on minority persons.

Joining the ranks of these scholars, this study proposes that CCLOs have played and continue to play an integral role in prolonging culture wars after the third religious disestablishment. It endeavors to connect our current moment to a historical timeline of religious disestablishments and resulting moral reestablishments. Like Hollis-Brusky & Wilson (2017) and Dick (2021), this paper will zero in on the ADF's influence. In order to accomplish this, however, it is first necessary to review the wealth of literature these authors have produced on the history of the New Christian Right and CCLOs. This is important background information that helps tell the ADF's story.

Before the birth of the ADF and similar organizations but on the tail-end of the third religious disestablishment, the 1970s organizers of the Right were considering ways to integrate a block of politically inactive voters into the Republican party. Historically, evangelicals had not intermingled religion and politics. Paul Weyrich, one of these leaders, approached televangelists like Jerry Falwell, D. James Kennedy, and Pat Robertson, pressuring them to promote more political messages and encourage their congregants to join the Republican party (Southworth, 2005; Brown, 2002; Baylor, 2018). Urged by Weyrich and what he saw as a country declining in morals, Falwell delivered a monumental call to action at a rally in 1976: "this idea of 'religion and politics don't mix' was invented by the devil to keep Christians from running their own country" (Baylor, 2018, p. 126). As a result, morally conservative evangelical Protestants began

to organize over issues of family, church-state separation, and education. The Moral Majority was founded in 1979 for the purpose of battling abortion, homosexuality, pornography, and the ERA (Moreton, 2009, p. 116). The Christian Legal Society and Focus on the Family were also founded during the '70s. These early conservative organizations were mostly reactive. They struggled to achieve their goals, like uniting morally conservative evangelical Protestants and Catholics, and made mistakes that later waves of CCLOs attempted to fix.

By the 1980s, the New Christian Right was starting to solidly form. While the movements of the '60s and '70s had led to a pluralistic society, bringing on divisive culture wars (Hunter, 1991), one particular issue awakened politically hesitant evangelicals. The U.S. Supreme Court decided in the *Bob Jones University v. United States*, 461 U.S. 574 (1983) case to eliminate tax exemption status for private educational institutions—including religious ones—that racially discriminated against students. As several scholars studying CCLOs have noted, this ruling, rather than the traditionally supposed *Roe*, was the real flame that ignited a major shift of evangelicals to become political and join the conservatives (Brown, 2002; Baylor, 2018; Dick, 2021). Indeed, Baylor (2018) compared the decision's effect to “. . . kicking a sleeping dog” (p. 126). The evangelicals saw this ruling as an encroachment on their religious liberty. This shift led evangelicals to return to and emphasize earlier issues like abortion and gay rights. This is seen in several events of the '80s. Led by Robertson, the “Washington 4 Jesus” rallies culminated in one of the biggest rallies ever at its time (Baylor, 2018, p. 128). Robertson also founded the Christian Coalition late in the decade. Meanwhile, conservative justices begin to critique the separationism that was embraced during the third religious disestablishment (Green, 2019). By the end of the '80s, the New Christian Right had formed, but effective CCLOs did not arrive until the next decade.

The '90s only strengthened evangelicals' shift to the right. Mainline Protestantism was shrinking and morally conservative evangelical Protestants were shifting to the Republican party (Baylor, 2018). This was demonstrated by the success of the New Christian Right in the 1994 Congressional elections (Brown, 2002). The block was also starting to be more inclusive. In an effort of ecumenism, evangelical Protestant and Catholic leaders signed a document called "Together" to symbolize their collaboration in restoring a moral establishment in 1994 (Baylor, 2018). Capitalizing on the moment, today's strongest CCLOs were founded in the early-to-mid 1990s. They formed as older groups—like the Moral Majority—begin to lose influence. Robertson created the American Center for Law and Justice (ACLJ) in 1990. The same year, Mathew Staver founded the Liberty Counsel (LC). In 1993, the ADF was founded by a group of evangelical political leaders. The next year the Becket Fund for Religious Liberty (BF) was founded by Kevin Hasson. Lagging a few years behind, Tom Brejcha formed the Thomas More Society in 1997. While the activity of these CCLOs is expansive, their main focus is religious liberty and their main mode of strategy is litigation. As Brown (2002) points out, by litigating, groups need not rely on grassroots supporters as much as they would for electing temporary officials. Instead, they can bring about policy change through the courts. Unlike their predecessors from the '80s and '90s, these groups are unafraid to precisely emulate the strategies of their liberal counterparts like the American Civil Liberties Union, the National Association for the Advancement of Colored People's National Legal Defense Fund, and the American Jewish Congress (Brown, 2002; Southworth, 2005; Curriden 1994). On top of this, this group of CCLOs mostly headquartered themselves in Washington D.C., near places of power. They are proactive and on the offensive, just like the ACLU and dissimilar to earlier conservative groups (Brown 2002).

But most importantly, this wave of CCLOs was founded by what Southworth (2005) refers to as “organizational entrepreneurs.” These are individuals who have previous experience in similar organizations and, therefore, extensive knowledge, strong reputations, and valuable networks. ACLJ’s Robertson had been a key member of the New Christian Right for almost two decades at that point. The Becket Fund’s Hasson had previously worked as counsel in President Reagan’s Justice Department. Likewise, as later discussed, each of the ADF’s founders had already created a name for themselves in various related fields by the time they formed ADF. By correcting the mistakes of the earlier groups of the movement, the ‘90s CCLOs placed themselves on a path to immense power and influence.

### **Case Selection and Methods**

To test the relationship between the CCLO’s activities and the prolonging of cultural wars proceeding the third religious disestablishment, I will conduct a twenty-year longitudinal case study of the ADF from 2000-2020. Specifically, I will analyze the ADF’s strategies in the judiciary, its utilization of media, and its educational efforts.

To examine its capitalization of courts’ shifting opinions on separationism, I will present a table of every case the ADF has been involved in from 2000-2020 in the following issue areas: freedom of religion, freedom of speech, abortion, homosexuality, and parental rights. I will locate this data by using NexisUni+. By limiting my focus to participation at the U.S. Supreme Court level, the ADF’s judicial activity is more easily presented<sup>3</sup>. An analysis of this table will illustrate the ADF’s success in implementing new legal strategies to advance its mission and how it has used the judiciary to change pluralist laws. This section of the paper will emulate Brown (2002)’s table of cases from 1980-2000.

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<sup>3</sup> One might be able to form an even fuller picture of the ADF’s judicial activities by including the federal lower courts and state courts. Due to time constraints, I was unable to do so.

When it comes to the ADF's reshaping of cultural narratives in the media, I will examine its activities on its YouTube channel from 2013-2020. This will show not only how ADF's influence has grown over time in the realm of social media, but also how the organization is reshaping the narrative around moral reestablishment. This is adequate since YouTube has risen to extreme popularity, is widely accessible, and has algorithms and autoplay mechanisms that encourage viewers to watch similar videos to their previous views.

Finally, to study the ADF's seeding of a new generation of CCLO attorneys, I will consider its National Litigation Academy and Blackstone Legal Fellowship. I will find data about these educational programs from the ADF's own website and literature from other authors. Numbers on these training programs will reveal a measure of ADF's dedication to continuing its prolonging of the culture wars even decades into the future.

The ADF is the best organization for this study because it has been recognized by many as the strongest of all the CCLOs. The ADF, the master of its peers, has been especially successful at reinstating a biblically moral society and battling pluralism. It is unique in that it was originally founded in response to a lack of coordination among existing CCLOs (Brown, 2002; Southworth, 2005; Dick, 2021). It was first meant to serve as an umbrella organization that would provide funding and coaching to other CCLOs. As later discussed, that purpose shifted in 2012. Examining the organization's changing focus, scope, and effort over time, then, will be interesting.

Additionally, the ADF is a satisfactory case because of its evolving mission statement. ADF's mission statement as reported on the IRS's 990 form in 2000 was ". . . to provide strategic planning, training, and funding for the legal defense and advocacy of Religious Freedom, the Sanctity of Human Life and Traditional Family Values." The ADF stuck to the parameters of this



mission statement for over a decade. But in 2014 that mission statement had morphed into something quite a bit different and vague: “Alliance Defending Freedom is committed to transforming law and culture so true freedom can flourish.” This change reflects the growing intensity of the cultural wars and ADF’s participation in them. Rather than limiting itself to certain practice areas, the ADF’s mission statement now explicitly reflects its mission to reestablish a moral society and culture it views as having been lost. So, the ADF is a perfect case study for a CCLO that actively fights against religious disestablishment.

Before diving into the ADF’s winning judicial strategies, however, it is crucial to first explore the beginnings of this conservative legal powerhouse.

### **A Star Is Born: A Profile on the Alliance Defending Freedom**

Before it became the “legal advocacy nexus of Christian nationalism” (Stewart, 2020, p. 266), the Alliance Defense Fund was founded at the National Religious Broadcasters Convention in Washington D.C. in 1993. Like other CCLOs, the ADF was founded with the primary goal of advancing Christians’ interests in the judicial realm of freedom of religion. The ADF’s website and previous mission statement reflect the ADF’s main focuses: religious freedom, freedom of speech, life (abortion, family (gay rights), and parental rights).

Unlike other CCLOs, rather than being founded by an individual, the ADF was created by a group of evangelical and political leaders. As previously mentioned, these founders were organizational entrepreneurs who had previous experience in older groups or in government. James Dobson was the founder of Focus on the Family. Focus on the Family, created in the late ‘70s, was a champion of media and raked in over \$100 million annually (Moreton, 2009). Michael Farris founded the Home School Legal Defense Association. Farris had also been the director of Washington’s Moral Majority chapter in the ‘80s (Dick, 2021). Alan Sears was a

federal prosecutor for Attorney General Edwin Meese in the Reagan administration. Sears is best known for leading the Attorney General's Commission on Pornography in the previous decade (Dick, 2021). D. James Kennedy, a televangelist, had founded Coral Ridge Ministries. Bill Bright created the Campus Crusade for Christ. Marlin Maddoux was a Christian radio personality. Larry Burkett was an evangelical financial advisor. Each of these men was successful in building their career and credibility within the evangelical and legal communities. Together, they headquartered the soon-to-be strongest CCLO in Scottsdale, Arizona with offices in Washington D.C. and New York City as well. Sears served as President, CEO, and General Counsel of the ADF for over twenty years. He became the main personality associated with the organization, often appearing on news broadcasts and appearing in high-profile cases. Much of the ADF's promotional content still involves tributes to Sears. Once Sears reached retirement age, Farris took over in 2017, but his leadership was short-lived after he became actively involved in former President Trump's attempts to overturn the 2020 presidential election. The General Counsel reins were handed over to Kristen Waggoner in 2022.

The technical purpose of the ADF was to coordinate the efforts of already existing CCLOs that had previously acted without collaboration. Rather than having its own attorneys who represented clients, the ADF founders believed that Christian attorneys were losing religious freedom cases because their liberal opponents had more money, so fundraising for existing CCLOs became the ADF's foremost priority (Brown, 2002). Indeed, on a talk show discussing its founding, Sears explained that the primary purpose of the ADF was to "raise an adequate fund to defend religious freedom, sanctity of life, and family values" (Alliance Defending Freedom, 2019). The ADF achieved this goal quickly as it became a master of fundraising. To manage its case selection for funding, the ADF created a Grant Review

Committee composed of representatives from other CCLOs (Brown, 2002), again demonstrating its commitment to cooperation and fairness between competing organizations. In 2012, the Alliance Defense Fund officially changed its name to the Alliance Defending Freedom. This represented the ADF's shift from funding representation for other CCLOs and allied attorneys to hiring attorneys and directly representing clients themselves. Despite this major change in the organization's structure, the ADF has continued to foster collaboration between CCLOs, as seen in the *Hobby Lobby* case.

Though it is at the heart of the group, litigating is not the only activity the ADF participates in. As Brown (2002) diligently notes, a lot of the ADF's expenditures go toward public education, pre-litigation strategies, and lobbying legislators. The ADF utilizes all pathways to change by advancing its mission in multiple different arenas.

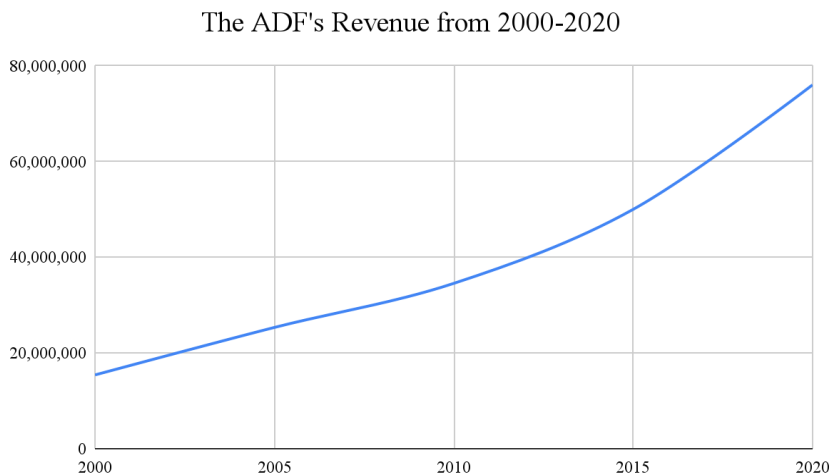
How the ADF is funded is very much a mystery. It is clear, though, that the organization is supported by a number of conservative foundations, like the Edgar and Elsa Prince Foundation, Bill & Berniece Grewcock Foundation, Richard & Helen DeVos Foundation, and the Bolthouse Foundation (Stewart, 2020). Unfortunately there is no publicly available information on exactly how much, but these foundations donate massive amounts of money to the ADF. Even so, the National Christian Foundation blows all of the other foundations out of the water in its financial support for the ADF (Stewart, 2020). Similarly, an article by David Armiak (2021) reveals that the Charles Koch Institute also donated over a quarter million dollars to the ADF in 2020. While the ADF is certainly majorly funded by other sources, it does not have to legally disclose a list of donors.

The ADF's financial muscles are demonstrated in its growth in revenue since 2000. Over a twenty-year span, the ADF increased its revenue by over \$60 million. A third of that growth

occurred in just the five-year period from 2015 to 2020, signaling its success after *Town of Greece v. Galloway*, 572 U.S. 565 (2014) and *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014).

The only other CCLO with an annual revenue within the ADF's ballpark is the ACLJ; all others cannot compete with the ADF's financial resources. Figure 1 below displays the ADF's revenue growth.

**Figure 1.**



With the ADF's growing financial resources, the organization has also grown in its number of employees and volunteers. In 2010, the ADF employed 199 full-time employees and around 840 volunteers (Internal Revenue Service, 2010). Ten years later, the ADF accumulated 338 full-time employees, almost 1,200 volunteers (Internal Revenue Service, 2020), and over 2,500 allied attorneys (Alliance Defending Freedom, 2023). As demonstrated later, the ADF is always expanding its network through educational institutions.

Having existed for only thirty years now, the ADF has risen to and perhaps even surpassed the level of the liberal firms it was created to counter. It has fanned the flames of culture wars for decades and its efforts are increasing. This reality will be illustrated by examining the ADF's activity in the courts, in the media, and in educational settings.

### **The ADF Capitalizes On A Changing Court**

“Presidents come and go, but the Supreme Court goes on forever.” -President William Taft

Since it is a law firm, the ADF devotes the majority of its time and resources to litigation. The courts, as ADF President Sears explicitly recognized in 1996, have the potential to be sources of generational change (Brown, 2002). Instead of trying to elect sympathetic political leaders, litigation gives CCLOs a fast track to changing law and, therefore, society. In order to produce desired precedents, CCLOs must be selective in what cases they choose to get behind and what their specific role will be (Brown, 2002). This ensures that time, money, and effort is well spent on potential landmark rulings, the result of which could rein in even more funding for the ADF.

Table 1 below shows all of the U.S. Supreme Court cases the ADF was involved in from 2000-2020 that involved the areas of its mission: religious freedom, freedom of speech, marriage (same-sex marriage), and family (abortion and parental rights). The leftmost column of the table denotes the name of the case with the bolded section being the party the ADF supported. The following CCLOs are included and abbreviated: ACLJ: American Center for Law & Justice, CLS: Christian Legal Society, FoF: Focus on the Family, LC: Liberty Counsel, RI: Rutherford Institute, TMS: Thomas More Society. Figure 2 shows proportionally which issue areas the ADF spent most of its litigating efforts on.

Table 1.

## U.S. Supreme Court Cases Directly Involving Questions of Religious Liberty From 2000-2020

Name of Case and Counsel	Subject	CCLO counsel or funding	CCLO amicus curiae briefs	The Court's Decision	Status of the CCLOs' position
<i>Santa Fe Independent School Dist. v. Doe</i> (2000) Jay Alan Sekulow as counsel for the petitioners.	Religious Freedom	ACLJ represented, ADF funded	CLS, LC, RI, ACLJ	By a 6-3 margin the Court rejected the argument that student-initiated prayer before football games constituted private, protected <b>speech</b> . Rather, the school's sanctioning of such a practice violated the Establishment Clause. (from <i>Trumping Religion</i> )	defeated
<i>Troxel v. Granville</i> (2000) Catherine W. Smith as counsel for the respondents.	Parental Rights	-	ADF, CLS, ACLJ	In a 6-3 decision, the Court struck a Washington law that allowed anyone to petition for time with children despite the child's parents' wishes. The Court found that the law violated parents' Due Process Clause rights.	prevailed
<i>Board of Regents of the University of Wisconsin System v. Southworth</i> (2000) Jordan W. Lorence as counsel for the respondents.	Speech	ADF funded	CLS, ACLJ, RI, LC, ADF	The unanimous Court found a University of Wisconsin policy that required all students to pay a mandatory student activity fee unconstitutional because it funded student organizations based on viewpoint.	prevailed
<i>Good News Club v. Milford Central School</i> (2001) Thomas Marcelle as counsel for the petitioners.	Religious Freedom	ADF funded	RI, LC, ACLJ, CLS, ADF	6-3 ruled that Milford Central School violated the religious club's free speech rights. The Court dismissed Milford's concerns over the Establishment Clause as	prevailed

				insufficient to justify the free <b>speech</b> violation.	
<i>Ashcroft v. American Civil Liberties Union</i> (2002) Theodore B. Olson as counsel for the petitioners.	Speech	-	ADF (FRC), ACLJ,	The Court decided 5-4 that the Child Online Protection Act was likely unconstitutional because it was not the least restrictive means of limiting speech. It remanded the case to lower courts.	defeated
<i>Scheidler v. National Organization for Women</i> (2003) Roy T. Englert, Jr. & Alan Untereiner as counsel for the petitioners.	Abortion	ACLJ represented	ACLJ, ADF, TMS, RI, LC	Ruling 8-1, the Court decided that abortion opponents and protestors did not violate the RICO Act or commit extortion under the Hobbs Act.	prevailed
<i>Lawrence v. Texas</i> (2003) Charles A. Rosenthal, Jr. as counsel for the respondents.	LGBTQ+ rights	-	ADF, ACLJ, FoF, LC,	In a 6-3 decision, the Court found a Texas law that criminalized consensual sex between two members of the same sex unconstitutional. The law violated petitioners' Due Process Clause rights.	defeated
<i>Elk Grove Unified School District v. Newdow</i> (2004) Terence J. Cassidy as counsel for the petitioners.	Religious Freedom	ADF funded	CLS, TMS, LC, RI, ADF	A unanimous Court found that the respondent lacked standing to sue his daughter's school over the recitation of the Pledge of Allegiance, which includes the words "under God," because he did not have custody of his daughter. The Court did not address the constitutional issue at hand.	defeated
<i>Van Orden v. Perry</i> (2005) Greg Abbott as counsel for the respondent.	Religious Freedom	-	BF, ADF, ACLJ, RI, TMS	Ruling 5-4, the Court found that a Ten Commandments statue in a Texas park did not violate the Establishment Clause because, though a religious symbol, it	prevailed

				wasn't promoting religion.	
<i>McCreary County v. ACLU of Kentucky</i> (2005) Matthew D. Staver & Paul D. Clement as counsel for the petitioners.	Religious Freedom	LC represented	LC, TMS, ACLJ, BF, RI, ADF	In another 5-4 decision, the Court ruled that the display of the Ten Commandments in KY classrooms and courthouses violated the Establishment Clause because it sought to promote religion.	defeated
<i>Cutter v. Wilkinson</i> (2005) David A. Goldberger as counsel for the petitioners.	Religious Freedom	-	RI, BF, ADF	The Court unanimously ruled that the RLUIPA did not violate the First Amendment.	prevailed
<i>Ayotte v. Planned Parenthood of Northern New England</i> (2006) Kelly A. Ayotte as counsel for the petitioners.	Abortion	-	ADF, TMS, ACLJ, LC	Finding that a New Hampshire abortion law that required parental notification of a minor's abortion may be unconstitutional in a very small number of cases, the unanimous Court remanded the case to lower courts for a remedy that would not invalidate the entire law.	defeated
<i>Gonzales v. Carhart</i> (2007) Paul D. Clement as counsel for the petitioners.	Abortion		CLS, ACLJ, TMS, ADF, RI	In a 5-4 decision, the Court upheld Congress's 2003 Partial-Birth Abortion Ban Act.	prevailed
<i>Hein v. Freedom for Religion Foundation</i> (2007) Paul D. Clement as counsel for the petitioners.	Religious Freedom	-	CLS, ACLJ, ADF	Ruling 5-4, the Court found that the respondents lacked standing to sue over an Establishment Clause concern: President Bush's executive orders to hold conferences promoting his new program that allowed religious non-profits gov funding. The Court found that simply being a taxpayer was insufficient to bring	prevailed



				an Establishment Clause case over an executive branch program.	
<i>Morse v. Frederick</i> (2007) Douglas K. Mertz as counsel for the respondents.	Speech (Students)	-	ADF, ACLJ, RI, LC, CLS	Ruling 5-4, the Court ruled that schools may restrict students' speech that promotes drug use.	prevailed
<i>Pleasant Grove City v. Summum</i> (2009) Jay Alan Sekulow as counsel for the petitioners.	Religious Freedom	ACLJ represented	ADF, RI, LC, BF	Unanimously, the Court held that since the city decided what monuments would be in the park, their decision to deny a religious group a statue in the public park did not violate the religious group's free <b>speech</b> rights.	prevailed
<i>Christian Legal Society v. Martinez</i> (2010) Michael W. McConnell as counsel for the petitioners.	Religious Freedom	ADF funded	LC, ACLJ, RI, CLS, ADF	Split 5-4, the Court upheld the University of California Hastings College of Law's policy to deny its Christian Legal Society chapter status as an official club because CLS would not agree to accept any and all students into membership.	defeated
<i>Salazar v. Buono</i> (2010) Elena Kagan <sup>4</sup> as counsel for the petitioners.	Religious Freedom	-	TMS, LC, BF, CLS, ACLJ, ADF	In a 5-4 decision, the Court found that the government was able to swap the national memorial of Sunrise Rock, which contained a cross statue, into private property without violating the Establishment Clause. The Court noted, once again, that the cross was not meant to promote Christianity.	prevailed
<i>Citizens United v. FEC</i> (2010)	Speech	-	ADF	The 5-4 Court decided that corporations'	prevailed

<sup>4</sup> This is when Kagan served as Solicitor General in the U.S. Department of Justice. She was representing Ken Salazar in this case, the Secretary of the Interior, whom Mr. Buono had sued.

Theodore B. Olsen & Floyd Abrams as counsel for the appellants.	(Campaign)			political expenditures and communications were protected under the Free Speech clause of the First Amendment.	
<i>Arizona Christian School Tuition Organization v. Winn</i> (2011) Paul S. Bickett as counsel for the petitioners.	Religious Freedom	ADF represented	RI, LC, BF, ACLJ, CLS, ADF	Again ruling 5-4, the Court found that Arizona taxpayers did not have standing to sue the state for a tuition tax credit program that benefitted religious schools.	prevailed
<i>Hollingsworth v. Perry</i> (2013) Charles J. Cooper as counsel for the petitioners.	LGBTQ+ Rights	ADF represented	ADF, LC, BF	Again ruling 5-4, the Court found that proponents of California's Proposition 8, which would not recognize same-sex marriage, lacked legal standing.	defeated
<i>Town of Greece v. Galloway</i> (2014) Thomas G. Hungar as counsel for the petitioners.	Religious Freedom	ADF represented	ADF, RI, BF, ACLJ	In a split 5-4 ruling, the Court held that the Town of Greece's opening prayers at town meetings did not violate the Establishment Clause, relying on a history of opening prayers at the legislatures.	prevailed
<i>Burwell v. Hobby Lobby Stores, Inc.</i> (2014) Paul D. Clement as counsel for the respondents.	Religious Freedom	BF represented Hobby Lobby; ADF represented Conestoga Wood Specialties	BF, TMS, RI, CLS, LI, ACLJ, ADF	Ruling 5-4, the Court found that RFRA does permit for-profit corporations to seek a religious accommodation from the contraceptive mandate of the Affordable Care Act. The Court found that requiring employers to provide coverage for contraceptives that violated their beliefs was not the least restrictive means to satisfy a compelling government interest.	prevailed
<i>Lane v. Franks</i> (2014) Tejinder Singh as counsel for the petitioners.	Speech		ADF	In another unanimous decision, the Court ruled that Lane, a public employee, was	prevailed

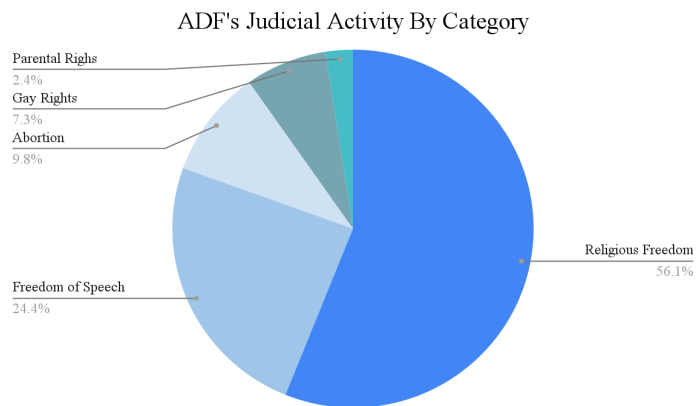
				protected by the Free Speech Clause when he testified against a coworker.	
<i>Susan B. Anthony List v. Driehaus</i> (2014) Michael A. Carvin as counsel for the petitioners.	Speech (Campaign)	-	ADF, CLS	The Court unanimously decided that SBA List did, indeed, have standing to sue over Ohio’s policy that outlawed false statements during campaigns.	prevailed
<i>Obergefell v. Hodges</i> (2015) John J. Bursch & Joseph F. Whalen as counsel for the respondents.	LGBTQ+ Rights	-	ADF, LC, BF, CLS	In a landmark 5-4 decision, the Court legalized same-sex marriage. The Court relied on the Due Process Clause and the Equal Protection Clause.	defeated
<i>Holt v. Hobbs</i> (2015) Douglas Laycock as counsel for the petitioners.	Religious Freedom	BF represented	BF, RI, CLS, ADF	The Court unanimously decided that an Arkansas prison violated RLUIPA by not allowing a Muslim inmate to grow a short beard. The Court found that the inmate had sincerely held beliefs and the prison officials were not acting in the least restrictive way.	prevailed
<i>Reed v. Town of Gilbert</i> (2015) David A. Cortman as counsel for the petitioners.	Speech	ADF represented	ADF, BF, CLS, ACLJ	In another unanimous decision, the Court struck down Gilbert’s law ordinance concerning signs that discriminated against signs based on content.	prevailed
<i>Zubik v. Burwell</i> (2016) Paul D. Clement & Noel J. Francisco as counsel for the petitioners.	Religious Freedom	ADF represented Geneva College & Southern Nazarene University;	ADF, BF, TMS, LC, ACLJ, CLS	The Court vacated and remanded the case to lower courts after the parties reached an agreement that the petitioner need not provide notification of an exemption so long as the insurance company still separately provided contraceptive coverage to employees.	prevailed

		BF represented East Texas Baptist University & Houston Baptist University			
<i>Matal v. Tam</i> (2017) John C. Connell as counsel for the respondents.	Speech	-	ADF, ACLJ, RI, BF	Unanimously, the Court struck down the Disparagement Clause because it restricted freedom of speech.	defeated
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> (2017) David A. Cortman as counsel for the petitioners.	Religious Freedom	ADF represented	ADF, LC, CLS, BF, ACLJ, Whitehead	Ruling 7-2, the Court found that excluding Trinity Church from Missouri’s Scrap Tire Program, a neutral aid program, violated Trinity Church’s Free Exercise rights.	prevailed
<i>National Institute of Family and Life Advocates (NIFLA) v. Becerra</i> (2018) Michael P. Farris as counsel for the petitioners.	Abortion / Speech	ADF represented	ADF, CLS, ACLJ	Ruling 5-4, the Court reversed and remanded the case, holding that California’s FACT Act, which required clinics to provide notices to patients, likely violated the free speech clause of the First Amendment.	prevailed
<i>Trump v. Hawaii</i> (2018) Noel J. Francisco as counsel for the petitioners.	Religious Freedom	-	BF (neither party), ADF (neither party), CLS (neither party), ACLJ	Split 5-4, the Court ruled in favor of President Trump’s Presidential Proclamation No. 9645 that restricted travel from non-U.S. citizens or refugees from eight predominantly Muslim countries. They found that the Proclamation was within President Trump’s authority and did not violate the	prevailed

				Establishment Clause.	
<i>Masterpiece Cakeshop v. Colorado Civil Rights Commission</i> (2018) Kristen K. Waggoner as counsel for the petitioners.	Religious Freedom	ADF represented	CLS, TMS, LC, BF, ADF	Ruling 7-2, the Court found that the Colorado Civil Rights Commission acted with hostility toward the baker and, therefore, violated his free exercise rights.	prevailed
<i>American Legion v. American Humanist Association</i> (2019) Neal Kumar Katyal & Michael A. Carvin as counsel for the petitioners.	Religious Freedom	-	LC, BF, RI, ACLJ, TMS, ADF	In a 7-2 decision, the Court ruled that a war memorial cross originally built by private parties on private land that was now government-owned land could remain standing since it had been there for decades without conflict and had taken on secular meaning.	prevailed
<i>Thompson v. Hebdon</i> (2019) Paul D. Clement as counsel for the petitioners.	Speech	ADF represented	ADF	In a per curiam opinion, the Court vacated and remanded the case to lower courts. The case involved a First Amendment question of Alaska law that limited political contributions.	prevailed
<i>Our Lady of Guadalupe School v. Morrissey-Berru</i> (2020) Eric C. Rassbach as counsel for the petitioners.	Religious Freedom	BF represented	BF, RI, CLS, ACLJ, FLI, ADF	Ruling 7-2, the Court ruled that the teacher respondent suing her employer for age discrimination was considered a minister since she taught faith and, therefore, subject to the ministerial exception that prevented the courts from interfering with the employment decisions of churches.	prevailed
<i>Espinoza v. Montana Dept. of Revenue</i> (2020) Richard D. Komer as counsel for the petitioners.	Religious Freedom	-	CLS, ACLJ, RI, BF, ADF	Split 5-4, the Court found that a Montana private school tuition tax credit that prohibited credits toward religious schools	prevailed

				was unequal and violated the petitioners' Free Exercise rights.	
<b><i>Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania</i></b> (2020) Noel J. Francisco & Paul D. Clement as counsel for the petitioners.	Religious Freedom	BF represented	BF, CLS, ACLJ, ADF	In a 7-2 decision, the Court ruled that departments within the Trump administration had the authority to promulgate new rules and regulations regarding the contraceptive mandate exemption and did not violate the Administrative Procedure Act.	prevailed
<b><i>March for Life Education and Defense Fund v. California</i></b> (2020) Kristen Waggoner & John J. Bursch as counsel for the petitioners.	Religious Freedom	ADF represented	ADF, CLS, ACLJ	The Court vacated and remanded the case to lower courts. The case involved California's challenge to the Department of Health and Human Service's administrative expanded rules regarding the contraceptive mandate of the Affordable Care Act.	prevailed

Figure 2.



Overall, the ADF was involved either through filing an amicus brief, funding representation, or directly representing clients in 41 cases in the five issue areas at the U.S. Supreme Court from 2000 to 2020. Its position prevailed in 31 of those. This 75.6% success rate does not widely vary from the ADF's self-proclaimed 80% win rate (Alliance Defending Freedom, 2023).<sup>5</sup> The ADF's success rate is impressive, but as Bennett (2017) notes, even defeats "can be more beneficial for raising consciousness" and money (p. 16). Since the ADF is a 'frequent flier' of the courts, it has earned credibility among networks of elite evangelicals and ordinary evangelicals who read its endeavors in the media and promotional materials.

The ADF was foremost involved in religious liberty cases, followed by freedom of speech cases. These were also the two issue areas in which the ADF was most successful. The ADF was involved in 23 out of 34, or 67.6%, total U.S. Supreme Court cases from 2000 to 2020 that directly involved questions of religious liberty. It only submitted amicus curiae briefs in twelve of those and was victorious in eleven. The ADF funded representation or directly represented clients in eleven cases and was victorious in eight. The ADF was involved in ten freedom of speech cases and was victorious in eight. It was successful in three of the four abortion cases it was involved in. It lost all three of the gay rights cases it was involved in. Its position prevailed in the one parental rights case it filed an amicus brief.

Table 1 demonstrates just how powerful the ADF has become over the past twenty years, especially after it made the move to directly represent clients in 2012. Prior to 2012, the average number of cases the ADF was involved in per year was just 1.5, compared to its post-2012 average of 3.3 cases per year. The ADF was most active in 2014 and 2020, years in which the

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<sup>5</sup> The ADF's win rate listed on its website encompasses its litigation at all levels of state and federal courts.

ADF participated in four cases. Taking a closer look at certain strategies the ADF employed in key cases will reveal how the organization took advantage of an evolving U.S. Supreme Court.

### **Weaponizing Free Speech**

The main strategy that CCLOs are acknowledged for utilizing is the free speech strategy, whether or not the case itself is prominently an issue of freedom of speech (Brown, 2002; Bennett, 2017; Stewart 2020). This option resulted from a moment of epiphany when Liberty Counsel's Staver said the tactic was the result of a lightbulb moment of "beating our heads against the wall" (Curriden, 1994, p. 88). The speech strategy was first successful in a religious freedom case in *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995). In this case that the ADF funded, students of a Christian magazine club sought additional funding from their student government. They were denied on the grounds that supporting a religious Registered Student Organization (RSO) equated an Establishment Clause violation. Rosenberger's attorneys argued to the Court that this case was simply about wrongful content speech discrimination (Brown, 2002). They emphasized how the RSO was being treated unequally because of its publication of a *religious* magazine. The 5-4 split court favored Rosenberger and the ADF. With the new millennium on the horizon, the ADF used this ruling as a launching pad for future cases.

The ADF employed the free speech strategy in three different religious freedom U.S. Supreme Court cases from 2000 to 2020. Testing the limits of the speech strategy, the ADF funded representation *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000). By funding representation, they gained authority of tactics of the case as the "legal overseer" that Brown (2002) describes. In this case, a student leader delivered an opening prayer at a football



game over the loudspeakers. Directly citing *Rosenberger* in their brief as reinforcing support, the appellants stretched the implications of that precedent to argue that the student in this case had been engaged in private speech (SANTA FE INDEP. SCH. DIST. v. DOE, 2000 U.S. S. Ct. Briefs LEXIS 213). Ruling 6-3, the Court did not buy the argument since the school had acted as a sponsor in this speech and, therefore, violated the Establishment Clause. But that did not stop the ADF from trying again.

The next year, the ADF funded representation in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). This case dealt with Milford Central School's denial to the Good News Club, a religious student club, of access to school facilities. The ADF's sponsored attorneys argued that this encroached on the club's freedom of speech. In their reply brief, they said that "Milford censored the Club's speech from its forum only because the speech was too religious" and that this was a clear case of viewpoint discrimination and not an Establishment Clause violation (GOOD NEWS CLUB v. MILFORD CENT. SCH., 2001 U.S. S. Ct. Briefs LEXIS 347, \*2). Reversing both the District Court's and Court of Appeals' rulings, the U.S. Supreme Court ruled in favor of the club 6-3. The decision found no Establishment Clause violation. This was a major victory for the ADF.

The ADF took the speech strategy to a whole new level in one of its highest-profile victories at the U.S. Supreme Court. Representing Jack Phillips in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. \_\_\_\_ (2018), the ADF argued that baking a cake was a form of expression—like creating a "temporary sculpture—and that compelling bakers to speak against their beliefs by baking cakes for same-sex weddings violated their religious rights (MASTERPIECE CAKESHOP, LTD. v. COLORADO CIV. RIGHTS COMM'N, 2017 U.S. S. Ct. Briefs LEXIS 4583, \*13). In a 7-2 decision, the Court ruled in favor of Phillips and the ADF,

in part because the CCRC did not act neutrally in resolving the situation. In her dissent joined by Justice Sotomayor, Justice Ginsburg emphasized that the case was one of a denial of services based on the customer's identity rather than the message and, thus, should not be ruled in Phillip's favor. The case resulted in a victory that the ADF would tout in the media for years to come to solicit support and donations.

### **Closing the Church-State Separation With Neutrality**

Secondly, the ADF drew upon the Court's increasing distancing from the legal concept of church-state separation. As Green (2019) aptly notes, the justices slowly moved from using terms like "secular" to focusing instead on neutrality (p. 361). This shift led to a group of cases on the government's association with religious educational institutions over the first two decades of the century. The ADF learned from two cases it had not been involved in: *Mitchell v. Helms*, 530 U.S. 793 (2000) and *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). *Mitchell* involved an Establishment Clause challenge to a government program that helped provide resources to all schools, including private, religious ones. Similarly, *Zelman* was an Establishment Clause challenge to an Ohio school voucher program that included private, religious schools. In both cases, the U.S. Supreme Court emphasized individual choice and found that both of the neutral programs in question were constitutional.

Seeing the Court's evolving opinions on separatism, the ADF advanced the neutrality argument by representing the church in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. \_\_\_\_ (2017). In this case, a church wanted to participate in Missouri's scrap tire program, which issued grants to organizations to purchase scrap tire pieces for playgrounds, but they were denied. Citing *Mitchell v. Helms* in their brief, the ADF argued that the government could not discriminate against religious groups in public benefit programs (TRINITY LUTHERAN

CHURCH OF COLUMBIA, INC. v. PAULEY, 2016 U.S. S. Ct. Briefs LEXIS 2974, \*12). Again ruling 7-2, the Court found that the program's exclusion of religious organizations was unconstitutional since the program was not neutral. In a dissent, Justice Sotomayor, joined by Justice Ginsburg, expressed that this decision might be an Establishment Clause violation and would part from the Court's history of church-state disestablishment. Nonetheless the ADF, once again, won the day. The ADF also submitted amicus curiae briefs in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) and *Espinoza v. Montana Dept. of Revenue*, 591 U.S. \_\_\_ (2020), both of which involved questions of neutrality and resulted in the Court welcoming a blurrier line between church-state relations.

The precedents of these rulings differ from the Jeffersonian separationism championed by the Warren and Vinson Courts. Unlike the Rhenquist and Roberts Courts of the period of this study, the earlier two courts erected a strong wall between church and state, especially in rulings involving the government's aid to private, religious schools. Now, with a growing conservative majority, the justices had become more open to arguments advanced by CCLOs like the ADF. Rather than focusing on two different worlds, secularism and religion, the two were slowly mixing.

Overall, the ADF has been one of the most judicially active conservative firms in its class. Focused on the issue areas of religious liberty, freedom of speech, abortion, same-sex marriage, and parental rights, the ADF has capitalized on an increasingly conservative US. Supreme Court's distance from the strict separationism of the third religious disestablishment. It has employed strategies focused on free speech and state's neutrality toward religion to obtain favorable rulings. But a sole focus on the ADF's litigation efforts would mean neglecting its mastery of storytelling in the media.

### **The ADF Reshapes Narratives In the Media**

“We need to tell stories in a winsome way” (Alliance Defending Freedom, 2016)

The art of storytelling is not just only valued in film or books. To influence public opinion, a firm must master their story and reshape narratives that uplift its mission. Like all twenty-first-century organizations and social movements, the ADF takes advantage of a variety of media forms to promote its message to a wider audience than just judges or legislators. Its media, rather, is an effort to influence civil society by speaking to the people directly.

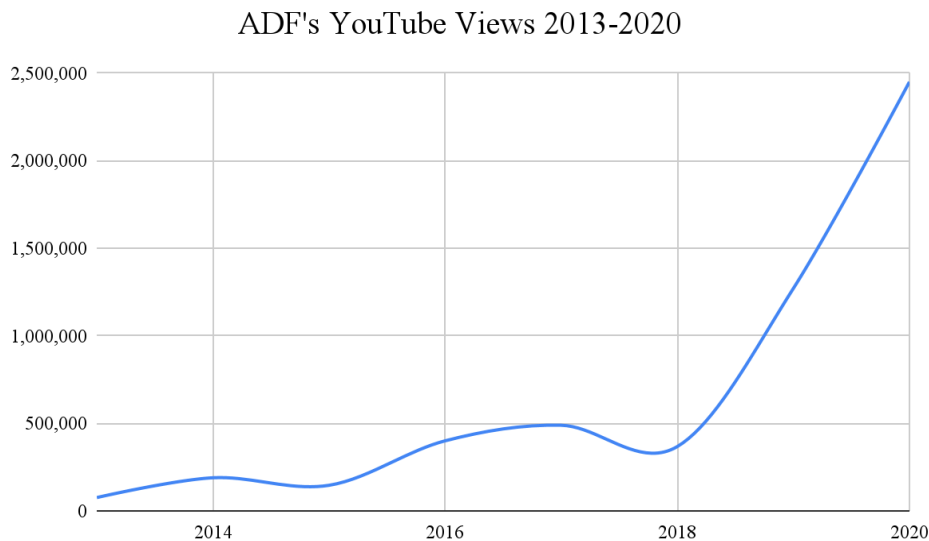
Before social media developed, the ADF used traditional modes of communication. In its earliest days, the ADF utilized evangelical radio and television programs for publicity. In 2003, ADF President Sears wrote his book *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today*. Nowadays, the ADF issues “Alliance Alerts” via email to its subscribers and publishes a quarterly magazine called *Faith & Justice*. Key figures of the ADF regularly appear on news broadcasting networks. But more importantly the ADF has turned to platforms like YouTube.

Just one year after Mark Zuckerberg’s launch of Facebook, YouTube was created in 2005. The platform allows its 2.6 billion monthly active users to watch any video they are interested in and subscribe to content creators (Ruby, 2023). While other social media applications like MySpace or Tumblr have failed, YouTube has stood the test of time. Today, it holds second—right behind Facebook—for the biggest social media platform and second—right behind Google—for the biggest search engine (Ruby, 2023). It continues to play a critical role not only in online entertainment but also in politics and the shaping of culture. With the majority of YouTube’s audience between the ages of 18 to 44, content on YouTube shapes young people’s

ideas. Though YouTube has increased its rules and restrictions, freedom of speech is widely valued on the site where virtually anyone can publish a video for others to view.

Just as CCLOs were late to the party of “public interest” litigation, so, too, were they late to embrace platforms like YouTube. The ADF created its YouTube channel in 2013. Figure 2 below illustrates the ADF’s increase in viewership over time.

**Figure 2.**



In its first year on the site, the ADF uploaded 18 videos and received a total of 76,000 views. By 2020, the organization uploaded 46 videos and received a total of 2.45 million views. During that seven-year span, the ADF honed its social media skills. For instance, in 2016 it uploaded 107 videos but only reached 400,000 views. Most of these videos were no longer than three minutes. Through experimentation, the ADF learned how to better produce a smaller number of quality videos that would reach the largest audience possible, as demonstrated by its 2020 statistics.

It’s worthwhile to note that this grassroots outreach is not organizationally necessary for the ADF; it does not rely on private donations from ordinary people. Rather, the ADF’s

communication efforts in the media reflect its seriousness in being a self-proclaimed culture wars participant (Dick, 2021). It attempts to rewrite cultural narratives and frame Christians as a threatened group in need of intense protection. This is evident when one examines the content the ADF outputs on its channel.

A common word used to communicate a theme of persecution in the titles of the ADF's YouTube videos is "forced." For example, the ADF released a video in 2016 on contraceptives called "Pharmacist forced to provide Plan B Religious Liberty Ignored." This clip features Waggoner and an ADF client on One America News's *Tipping Point* show. The title itself employs associations of discrimination against Christians. That theme is continued throughout the interview as the speakers discuss the "government forcing" a family-owned pharmacy to carry the morning-after pill, telling the family "we're gonna make you do it [sic]" (Alliance Defending Freedom, 2016). Using this language, Waggoner, the client, and the interviewer communicate a sense of oppression to viewers.

The ADF continues that tactic in a 2019 video entitled "Washington State Wants to Force This Church to Pay for Abortions." This click-bait title already conveys a message of absurdity and victimization before one even watches the video. The four-minute video focuses on ADF client Cedar Park Church and their legal crusade against Washington's Reproductive Parity Act which requires health insurance that already includes maternity care to also cover abortions. The start of the video features a narrator who alarms viewers of an urgent situation:

More and more, we are seeing our government doing things that the government shouldn't be doing. Namely, control . . . Across the U.S., there's a growing trend of the government's attempts to control churches (Alliance Defending Freedom, 2019)

Use of the word “control” compounded with the word “force” from the title frames the issue as urgent and serious. The message to viewers is that the government is persecuting Christianity, not that Washington’s state government is attempting to expand family-planning healthcare. It tells viewers that churches no longer have autonomy. Furthermore, the narrator incites fear in the viewer when she explains that members of the church could have “actual prison time” for noncompliance with the law (Alliance Defending Freedom, 2019). Rather than explain the entirety of the policy issue at hand, the ADF reshapes the narrative around the case by making it one about Christian victimization by the government instead of the denial of women’s reproductive rights.

The ADF’s channel even goes beyond storytelling; it actually instructs viewers on how to reshape a Christian-centric narrative themselves. The ADF’s 2018 “Social Media 101: Improving Your Campus” video delivers a social-media crash course in online conservative advocacy. Its 2015 video “How to respond when people say they are for “Marriage Equality”” teaches viewers to master same-sex marriage debates by refusing to accept that marriage can exist between anyone besides a man and a woman. Again published in 2015, Waggoner charges viewers in “Christians can love people but still take a stand” to “win ... culture” by “tell[ing] the stories in a winsome way” (Alliance Defending Freedom, 2015). Having developed its own narrative in other videos, viewers can turn to these selections for tips on how to participate and storytell in culture wars in their real lives. Equipped with the ADF’s tactics, viewers themselves transform into foot soldiers for the organization.

With this in mind, one might automatically assume that the ADF’s channel is just another social media echo chamber, but the reality is more complex. The ADF attracts viewers who may not have previously heard of the organization or formed their own concrete beliefs by titling

videos neutrally or as questions. For instance, the ADF published a 2020 video entitled “Should Abortion Providers Be Able to Speak for Women?” This click-bait query invites curious viewers to consider the question themselves before watching. Then, viewers are presented with a biased narrative that promotes the ADF’s story. Even more ambiguous to an ignorant viewer, the ADF released a 2011 video entitled “Planned Parenthood History.” To someone unfamiliar with the ADF, this video seems to be an unbiased recollection of facts and time—a good, trustworthy source for historical information. Once the viewer actually clicks on and watches the clip, however, a narrator retells history through an evangelical perspective. These tilting approaches invite unknowing viewers to become interested in the mission of the ADF.<sup>6</sup> And, YouTube’s algorithm ensures that similar content appears on the viewer’s feed in the future.

Just as the ADF dominates the courtroom, so, too, does it utilize media. Using the social media YouTube platform, the ADF reaches an incredibly large swath of civil society. Speaking directly to the people, the ADF reshapes cultural narratives to promote a Christian-centric worldview and messages of persecution. This recruitment has deep implications for extending decades-long culture wars over the most divisive topics.

### **The ADF Builds A New Generation of Attorneys**

“An investment in knowledge pays the best interest” -Benjamin Franklin

The previous two sections have shown how the ADF has prolonged culture wars by reigning victorious in significant moral establishment U.S. Supreme Court rulings and perpetuating and teaching how to perpetuate a Christian-centric narrative about America. While

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<sup>6</sup> Because of a lack of data privacy on the Internet, my views of several of the ADF’s YouTube videos on my personal account for the purpose of this study brought about over tens of emails encouraging me to attend Republican conferences and create conservative clubs on my college campus, like Turning Point. This is just another example of how the firm collaborates with like-minded organizations to utilize social media as effectively as possible to garner grassroots support.



each of those activities certainly has long-lasting effects, the ADF has made no greater attempt to ensure its work's continuation decades into the future than by creating educational opportunities for young attorneys and law students. These educational programs are opportunities for the ADF to build a strong infrastructure of dedicated attorneys and entrench them into places of power.

The ADF created its National Litigation Academy in June 1997. This free, four-day program is intended to educate current attorneys on legal issues the ADF is interested in. In between trainings, attorneys are invited to participate in daily worship sessions. Attorneys who complete the program must commit to provide 450 hours of pro bono work for the ADF in the future. In return, they may receive 6-8 hours of Continuing Legal Education (CLE) credit (Alliance Defending Freedom, 2023). In 2000, the academy generated 250 graduates (Brown, 2002). It has seen steady growth since. This is an important program because it widens the ADF's pool of allied attorneys and connects like-minded individuals. The Alliance Defending Freedom (2023) website itself says the academy is intended to expand a network of attorneys "impacting our legal culture to protect our fundamental freedoms." It both inspires and mandates participating attorneys to become more involved in culture wars, regardless of their practice area.

But perhaps even more effective is the ADF's Blackstone Legal Fellowship. Created in 2000, this is a summer-long program for first-year law students to be trained in leading a religious legal career. Only adherents from major Christian traditions are admitted (Alliance Defending Freedom, 2023). The program comes at no cost to students, and Fellows are seven awarded an additional \$6,300 scholarship (Alliance Defending Freedom, 2023). Since its first class of just 24 law students, the fellowship has now graduated over 2,600 since 2000 (Alliance Defending Freedom, 2023). Like the National Litigation Academy, these students receive legal instruction and participate in devotionals. The ADF has historically brought in an impressive

slate of guest faculty for the fellowship, including past Attorney General Meese, current U.S. Supreme Court Justice Amy Coney Barrett, and professors from Ivy League universities. At the end of the summer, certain Fellows are selected to receive continued support. These students gain access to a number of professional resources from the ADF, including help getting opportunities in clerkships, government, or in private firms (Alliance Defending Freedom, 2023). The Fellowship has been successful in launching young, Christian lawyers into powerful roles. Although the ADF is secretive with the identities of Blackstone alumni, an investigative report by Resnick & Coutts (2014) discovered that, among others, Carissa Mulder, special counsel at the U.S. Commission on Civil Rights, and Esther Slater McDonald, counsel to the Department of Justice's Associate Attorney General were both Blackstone graduates. These are just two examples of Fellows who have gone to build impressive careers and work in the federal government. The Blackstone Legal Fellowship, therefore, is a powerful tool for the ADF because it encourages law students to advance evangelical Christian ideology in whatever area of law they end up. Just like drafts for professional sporting franchises, the fellowship serves as an arena wherein the ADF selects and invests in future attorneys it sees as especially promising at advancing its goals.

In creating the National Litigation Academy and the Blackstone Legal Fellowship, the ADF is sidestepping a major mistake on the part of '70s and '80s religious firms. Unlike the subpar, unequipped attorneys of very early New Christian Right firms (Southworth, 2005), the ADF's current efforts ensure a well-trained and smart class of professionals for decades to come. Indeed, going far above just a standard of adequacy in training its law students and attorney students, the ADF creates opportunities for these individuals to rise to powerful positions in the legal world and implement the mission.

The ADF's educational institutions were created to guarantee the firm's long-term survival and prosperity. It is investing in a new generation of attorneys who will continue the ADF's work to disassemble the third religious disestablishment and return American culture to one of biblical morals. Even greater, these efforts reflect an entrenchment of the ADF network into influential positions, including within the federal government.

### **Conclusion**

Unlike the first two religious disestablishments in the U.S., the third was cultural. It coincided with massive social change. As a response, Republican leaders worked to incorporate evangelicalists into their party. Early CCLOs rose to the challenge of solving America's moral decline but were unsuccessful for a variety of reasons. A later wave of CCLOs in the '90s created by institutional entrepreneurs and financed by large, conservative foundations resulted in firms that could match and even excel the power of their liberal counter-organizations. Spurred by the curious length of the aftermath of the third religious disestablishment, this study set out to explore how CCLOs—particularly the ADF—have worked to reestablish a moral culture in America. Examination of the ADF's litigation strategies, mastery of media, and educational institutions reveal that the ADF has been an active agent in extending culture wars. An analysis of the ADF's activity at the U.S. Supreme Court from 2000 to 2020 showed the organization's use of the Court's new embrace of speech and neutrality as tools to advance religious liberty. This led to deeply controversial rulings. Taking their efforts outside of the courtroom, a closer look at the ADF's YouTube videos reveals its rewriting of culture war narratives into fear-mongering stories about Christian persecution and victimization. An acknowledgement of the ADF's National Litigation Academy and Blackstone Legal Fellowship illustrates how the ADF has built a network of young attorneys sympathetic to their mission and given them

resources to attain positions of power and influence. While the ADF spends a great deal of its time in the courtroom, on social media, and in the classroom, the ADF's multifaceted efforts even go beyond these three arenas. With a 2020 revenue of almost \$80 million, the ADF's role in agenda control of the culture wars cannot be understated.

This study was not without its limitations. By conducting a largely qualitative case study on just one firm, questions of direct causality or applicability to other CCLOs may arise. Additionally, this paper is just a piece of a larger puzzle. Future research might instead choose to evaluate the ADF and other CCLOs with a social movement lens, showing how it has emulated earlier successful movements like the environmentalism movement and civil rights movement. Or one might instead look at how the ADF has reconfigured the American state. There are several different frameworks and lenses that have yet to be applied to this topic.

In response to this study, some scholars might wonder why such an extensive paper is warranted: after all, is the ADF not just one of hundreds of interest groups in America working to advance its ideology? This objection is fair, but it ignores the momentous real-world consequences resulting from the ADF's work. The ADF has played an active role in a number of cases that have led to regressive rulings that indirectly harm third-parties. As a result of *Hobby Lobby* and the years of administrative rules created since, women employees and female dependents of employees at religiously- or morally-objecting for-profit businesses have restricted access to contraceptives. This is especially harmful for low-income women and women of color who may not be able to qualify for or access contraceptives outside of their health insurance plans. Likewise, *Masterpiece Cakeshop* was just one of many cases that limit gay couple's protections. While not mentioned throughout the study, the ADF has also provided model legislation to states like its 2015 Student Physical Privacy Policy which proposed a 'separate but

equal' solution to bathrooms for transgender students, its justification uncomfortably akin to that of racial segregation as Dick (2021) notes. Not much explanation is necessitated to show how transgender students are harmed by these types of policies. Though my study stops in 2020, one need to look no further than *Dobbs v. Jackson Women's Health Organization*, 597 U.S. \_\_\_\_ (2022), in which the ADF represented Mississippi. This landmark decision resulted in the prohibition of abortion for millions of women across the country. But the ADF's work against women's reproductive care did not stop at *Roe*'s overturn: it has led the current fight against Mifepristone, an FDA-approved medical abortion pill. All of these are examples of the ADF's part in expanding reactionary Christian nationalism (Stewart, 2020). It is true that the ADF is an interest group much like others, but the lengths it travels to restore a moral establishment and undo decades of social progress in the United States are uncanny.

Additionally, scholars might wonder if the ADF's influence will be impacted by the declining number of Americans who identify religiously. As Smith (2021) notes, in 2021 the number of U.S. adults that identify as Christians decreased by twelve points compared to the decade before and almost a third of all U.S. adults are religiously unaffiliated. However, although one of the main issue areas prompting the formation of the ADF was religious freedom, the firm has greatly expanded its focus. Its work on reproductive rights, gay rights, parental rights—most recently concerning banned books and COVID-19 mask and vaccine mandates—has brought in a variety of morally conservative supporters who may or may not be religious. In other words, even as the Christian population in America gets smaller, the organization will likely still be sustained by its focus on other hot-button conservative moral issues.

Freedom of religion has a long and complicated history in this country. The strict separation of church and state embraced in the third religious disestablishment has given way to

a wall of infinitely missing bricks as CCLOs like the ADF have worked in the culture wars to reinstate a moral establishment. With the most conservative U.S. Supreme Court in decades, this wall should be expected to continue crumbling.

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