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Introduction

We are entering a cultural civil war.
—Mat Staver, Liberty Counsel

On the morning of April 28, 2015, the justices of the US Supreme Court took their seats to hear oral arguments in *Obergefell v. Hodges*. Two years earlier, James Obergefell had asked state officials in Ohio to list him as the surviving spouse on his husband’s death certificate since they had been legally married in Maryland. Officials had refused to recognize the relationship in accordance with the state’s ban on same-sex marriages. When a federal appeals court upheld the ban and ruled against Obergefell, the Supreme Court was asked to decide whether state bans on same-sex marriage were constitutional.

The debate over the definition of marriage was not new to the justices. In 2013, the Court had struck down the federal Defense of Marriage Act, which prohibited the federal government from recognizing marriages between people of the same sex. It had also heard arguments regarding California’s prohibition on same-sex marriage but had avoided the substantive question of whether this prohibition was unconstitutional. *Obergefell* was different in that it demanded that the justices take a position on the merits of the marriage question in the states.

Less than two months after the arguments in *Obergefell*, on a cloudy June day in the nation’s capital, the justices issued their ruling: by a 5–4 vote, the Court held that bans on same-sex marriage violate the Fourteenth Amendment’s guarantees of due process and equal protection of the laws. Anthony Kennedy wrote the decision, arguing that the Constitution must provide “equal dignity in the eyes of the law” for same-sex couples. Each dissenting justice authored his own opinion, with Chief Justice John Roberts chastising the Court for prematurely ending debate on the issue and Antonin Scalia famously comparing the majority’s reasoning to that of a fortune cookie. Despite these objections, same-sex couples were now free to marry in any state.

The ruling was an unequivocal victory for proponents of marriage equality in the United States and a marked blow to those defending the definition of marriage as a union of one man and one woman. President Obama hailed
the decision from the White House Rose Garden: “In my second inaugural address, I said that if we are truly created equal, then surely the love we commit to one another must be equal as well. It is gratifying to see that principle enshrined into law by this decision.” On the other side of the issue, Ryan Anderson, a fellow at the conservative Heritage Foundation and a vocal supporter of traditional marriage, tweeted his frustration immediately following the ruling: “Judicial activism. Plain and simple. Nothing in the Constitution required the redefinition of marriage. Doesn’t change the truth.”

Also discouraged by the decision were Christian conservative legal organizations (CCLOs), several of which had participated in Obergefell and other marriage cases across the country. Jim Campbell, an attorney with Alliance Defending Freedom, said, “The Supreme Court has stripped all Americans of our freedom to debate and decide marriage policy through the democratic process.” Similarly, Liberty Counsel’s Mat Staver decried the ruling as “illegitimate.” Indeed, CCLOs, the most visible and active members of the Christian legal movement (CLM) in the United States, were universal in their condemnation of the Court’s decision on same-sex marriage.

However, these legal interest groups had other reasons to be wary of the Court’s decision besides opposition to same-sex marriage. Specifically, in critiquing the Obergefell decision, CCLOs frequently raised concerns about the future of religious liberty in a post-Obergefell society. Kelly Shackleford, president of First Liberty, predicted that legalizing same-sex marriage would inevitably clash with the religious freedom of those who disagree with it: “This is going to be a direct attack on religious freedom everywhere in the country and no one will escape it.” Similarly, Alliance Defending Freedom’s Doug Wardlow argued, “The Supreme Court had mandated a new definition of marriage that contradicts the core religious convictions of tens of millions of Americans. The ruling pits faith against law, forcing Americans to choose between their God and their government.” Staver offered a bold prediction: “The assault against Christians will increase, but the resistance will also increase. We are entering a cultural civil war.”

Defending Faith: The Politics of the Christian Conservative Legal Movement shows how the CLM and its affiliated organizations arrived at this moment in time. It explains how CCLOs advocate for issues that are central to Christian conservatives, highlights the influence of religious liberty on the CLM’s broader agenda, and shows how the Christian Right has become accustomed
to the courts as a field of battle in the culture wars. On one level, it is about how the Christian Right mobilized and organized an effective presence on an unavoidable front in the battles over social policy: the courtroom. It is also about how interest groups pursue common goals while maintaining unique identities. Ultimately, though, it is a story of the growth and development of an influential legal community in the United States, reinforcing the power of legal advocacy as a tool of political engagement.

Through an analysis of primary sources, secondary sources, and original interviews with movement attorneys—including those on staff with these organizations and those working in an affiliated, pro bono capacity—I argue that CCLOs, despite sharing much of the same broader agenda, differ in the pursuit of this agenda both substantively and strategically. These differences have roots in many factors, including varying levels of organizational resources, the group's own sense of purpose and mission, and whether a CCLO views its work through a principled or pragmatic lens. Moreover, these differences affect the cooperative and competitive dynamics of the larger movement, leading to occasional tensions between otherwise like-minded groups.

Furthermore, regardless of the issue, the CLM frames its work as defending and promoting religious liberty in the United States. Not satisfied with defending religious liberty in “traditional” contexts—most notably against groups such as the Freedom from Religion Foundation and Americans United for the Separation of Church and State—CCLOs’ recent advocacy has taken them into other policy areas, including opposition to abortion and to expanding rights for lesbian, gay, bisexual, and transgender (LGBT) people. This strategy, while not new to the CLM, has become integral to how these organizations portray their interests and the interests of their clients and constituents. Indeed, CCLOs emphasize their efforts as benefiting society as a whole rather than limiting the rights of certain groups, such as LGBT and pro-choice Americans. In framing its advocacy in this way, the CLM characterizes itself as defending religious freedom from hostile forces throughout American society while at the same time downplaying its consistent attention to the issues traditionally associated with the culture wars, choosing instead to portray its advocacy as favorable to the country as a whole. In this sense, it truly embraces the language and framing of rights.

I was motivated to write this book for several reasons. First, CCLOs are active in some of the most visible legal controversies in American society today,
including many high-profile Supreme Court cases on abortion, religion, LGBT rights, and more. Their brisk rise and steady proliferation demand intensive examination. By delving deeply into the operations and behavior of an understudied yet increasingly influential community of legal interest groups, the reader will learn a great deal about what motivates these groups—and, specifically, their attorneys—to do the work they do. Moreover, the reader can begin to understand what makes these groups different from one another and how they view their legal advocacy as uniquely necessary in an otherwise crowded community of like-minded organizations.

Second, while CCLOs are rightly seen as legal interest groups, they must also be associated with an enduring movement in American politics: the Christian Right. Even a casual observer of this subject will note the sustained influence of the Christian Right—comprising individuals, interest groups, media networks, and even universities—since the middle part of the twentieth century. Although that influence has arguably waned in recent years, its efforts to shape American politics and society remain largely unchanged. In this book the reader can see how CCLOs further the mission of the Christian Right through the courts and legal system, making it a more complete movement in terms of its advocacy efforts. The reader will notice that CCLOs have taken up many traditional Christian Right issues and have begun to recast them in ways that may make them more acceptable to a culture fatigued with fighting familiar battles in the culture wars.

Similarly, the proliferation of CCLOs over the years points to the evolution of the Christian Right and its responsiveness to changes in law and society. The CLM has gone from just a couple of CCLOs in the 1980s to at least ten today. While losing battles in the larger culture wars, the Christian Right has come to recognize the value of legal advocacy in making gains in policy, and although the legal groups comprising the CLM are, for the most part, independent of any larger organization, connections to the broader Christian Right are undeniable.

This book shows that couching its agenda in terms of protecting constitutional rights—religious liberty in particular—has helped the Christian Right adapt to changes in the culture wars by capitalizing on the success of the conservative legal movement and utilizing its tools effectively. This strategy of emphasizing religious liberty as a sort of cure-all for other culture-war conflicts is particularly relevant today, given the Court’s recent decisions on same-sex marriage and ambiguity on other issues. The CLM’s increasing presence is not
evidence of the traditional Christian Right’s demise or inevitable resurgence but rather is a natural development in the Christian Right’s advocacy in the face of an uncertain future.

Considering the CLM’s presence across a range of salient issues, and with the future of religious liberty law in the United States very much up for grabs, it is imperative to understand the motivations, strategies, and visions of the groups within this network. Furthermore, given the Christian Right’s continued presence in American politics, it is helpful to draw an accurate picture of how this movement is embracing legal advocacy and the language of rights through CCLOs. By drawing on a trove of primary sources unique to this movement, on a variety of secondary sources highlighting key moments from this movement’s history, and on the perspectives of lawyers at the heart of Christian legal advocacy, Defending Faith attempts to do just that.

THE CONTEXT OF CHRISTIAN LEGAL ADVOCACY

I am not the first to study Christian conservative legal advocacy in the United States. Steven Brown’s *Trumping Religion* presents how Christian legal groups took to adopting free-speech arguments in defense of religious exercise, despite the arguments’ uncertain consequences for other areas of law. Importantly, Brown found differences among these groups in their willingness to make these kinds of arguments. Hans Hacker’s *The Culture of Conservative Christian Litigation* expanded on the role of Christian legal advocacy in American law and politics, focusing in depth on three major legal interest groups. Hacker also distinguished between principled and pragmatic approaches to litigation among these groups, rightly noting that not all CCLOs share the same broader legal strategies. Moreover, Kevin den Dulk and Andrew Lewis have each written on how Christians engage the legal system for the purpose of advancing constitutional change in some way. Past scholarship from Steven Teles, Ann Southworth, and Amanda Hollis-Brusky discussed the development and evolution of the broader conservative legal movement, of which the CLM is a major (if not sometimes uncomfortable) element.

As previous research has shown, understanding Christian legal advocacy requires attention to and familiarity with several broader topics. These topics include the Christian Right in the United States, the role of its lawyers in
the legal profession, and the evolution and maintenance of social movements, to name just three. Although these topics have been exhaustively studied in previous research, the work of CCLOs and the broader CLM has not received the scholarly attention that it warrants. This book seeks to address this paucity of previous attention while arguing that studying the CLM and its affiliated groups provides answers to persistent questions on each of these broader topics.

As a matter of substance and policy, Christian legal advocacy is best understood as at least related to the Christian Right in American politics. The Christian Right has been a mainstay of American politics for several decades, hitting its stride in the 1980s with the establishment of Jerry Falwell’s Moral Majority, Pat Robertson’s Christian Coalition, the increased politicization and activism of the Southern Baptist Convention, and much more. While much has been made about the gradual demise of the Christian Right since its ascendance in the 1980s, the continued presence of Christian conservative elites and interest groups on the stage of American politics is undeniable. Furthermore, though Christian Right activism has traditionally focused on direct political engagement and grassroots lobbying, CCLOs provide a bridge to a specialized front in the so-called culture wars.

The culture wars have traditionally emphasized social issues—especially abortion, marriage and the family, and religion in the public square—as a way of highlighting divisions in the public on these contentious issues. Although there is evidence that the culture wars have little influence on the day-to-day activities of the Christian conservative rank-and-file, they still provide effective mobilizing and framing devices from political elites within the broader movement. Therefore, despite their lack of appeal for the vast majority of Americans, the culture wars have nevertheless come to dominate political discourse in a variety of ways, with CCLOs capitalizing on the resulting debates and divisions.

Though there have been questions as to its recent efficacy as well as accounts of divisions and rivalries among competing camps, the Christian Right is still a formidable movement in American politics. What is more, scholars have suggested that it is most effective in marginal positions where it can shape the dialogue from the outside and present its efforts as befitting an embattled minority. Stuart Scheingold, writing in the second edition of *The Politics of Rights*, described this situation as beneficial to Christian legal
advocacy, especially relative to other members of the conservative legal community. My book explores this claim further, investigating the ways in which CCLOs frame their advocacy in favor of Christian conservatives. I also explain how these groups are reacting to fundamental shifts in public opinion on key culture-war issues, such as rights for LGBT Americans.

For the Christian Right, advocating for religion’s place in the public square has always been a priority. As I argue, arguments for religious liberty bleed into most aspects of CCLO advocacy, providing a useful and principled frame for the CLM as it moves to rein in the expansion of legal rights for certain segments of the population. What is more, because the Christian Right is arguably not as strong as it once was, these groups have seized the opportunity to shape the culture in a different—but, they hope, still effective—way: through interaction with the legal system and appeals to established constitutional rights.

Of course, given its association with the Christian Right, the CLM is itself a subset of a larger social movement in the United States. In the 1960s and 1970s, several scholars conducted pioneering research on social movements, describing them as organized preferences for changing elements of the established social structure. Given that the social structure is the dominant arrangement or distribution of power in a given society, a social movement is tasked with adapting or changing the social structure for the benefit of its constituents. John McCarthy and Mayer Zald further described the importance of organizations and industries within social movements, arguing that these entities are largely responsible for the heavy lifting within a particular movement. The CLM, then, is an industry within the broader movement (the Christian Right), and CCLOs are the organizations acting on behalf of the movement’s preferences.

In addition to outlining and describing different elements of social movements, this early research was instrumental in developing resource mobilization theory. This theory offers an explanation for the divergence of views and actions among like-minded groups belonging to the same movement, attributing these differences to a finite pool of resources available to these groups. Simply put, finite resources breed competition and encourage groups to establish niche identities for the sake of their survival and maintenance. But what does this look like in practice? One of the findings in this book is that, despite sharing much of the same broad issue agenda and agreeing on fundamental policy ends, CCLOs differ meaningfully in their advocacy for specific issues.
Resource mobilization theory helps explain this finding and accounts for the occasional competition and disagreement among CCLOs. By examining the CCLOs central to Christian legal advocacy, this book sheds light on how organizations within the same movement compete with one another. Moreover, through interviews with movement attorneys, I am able to consider how this competition is seen by these groups themselves.

The CLM is situated at the intersection of two mainstays of American political culture: law and religion. Due to the specialized nature of the legal profession, CCLOs employ strategies and skills largely foreign to other interest groups, including those active in the Christian Right. At the same time, though, CCLOs are not simply legal mercenaries: the fundamental role of each group’s faith commitment gives them—and their attorneys—a sense of purpose and, as previous research put it, “something to believe in.” As such, CCLOs are best understood as in legal culture but not necessarily of it.

Research in the sociolegal tradition includes studies focusing on legal mobilization and advocacy as a tool of political participation. In *The Politics of Rights*, Scheingold showed that despite law’s serious limitations in securing rights, the American people’s lofty perception of law promotes political organization and consciousness when a movement makes rights claims. Similarly, Frances Zemans argued for legal mobilization to be understood as an essential element of political engagement, particularly for marginalized groups and populations. And in *Rights at Work*, Michael McCann found evidence that legal mobilization increases public consciousness of the law and has the potential to bring victories to a movement, even when suffering defeat in the courtroom. Richard Thompson, a busy actor within the CLM, told me that CCLOs are so active because of deficiencies in the current distribution of political power, saying, “The political system is not working.” That, in a few words, explains the essence of legal mobilization and advocacy—it offers an alternative form of engagement to those otherwise shut out of or marginalized by “traditional” politics.

Of course, where legal mobilization and advocacy are effective, there are bound to be attorneys present. With specialized training and skill sets, lawyers are often the catalysts behind legal advocacy campaigns and movements. But these lawyers do not embrace the traditional norms and expectations of the legal profession, such as being responsible solely to the client and compartmentalizing personal and professional identity. Instead, as Austin Sarat and
Stuart Scheingold described, these attorneys are identified as cause lawyers, or attorneys for whom support for a movement or political cause is the highest priority.\textsuperscript{35} While a client’s interest may coincide with the movement’s goals, a cause lawyer’s principal allegiance is to the movement itself.

CCLO attorneys are, in many ways, quintessential cause lawyers: just as cause lawyers are dedicated to a set of ideological goals above all else, CCLO attorneys are called upon to support and defend issues grounded in their faith and to make those issues central to their professional identities.\textsuperscript{36} At the same time, not all lawyers in this movement are comfortable viewing their work through the lens of cause lawyering. During an interview with one attorney, I used the term Christian legal movement to describe the community to which his organization belonged. He responded, “I don’t want to be a Christian legal movement person. I want to be a good lawyer,” and then added, “I’m more a lawyer than an ideologue.”\textsuperscript{37}

Whether because he associated legal advocacy with undesirable opportunism or because of the negative connotations associated with cause lawyering among some in the legal profession, this attorney was clearly conflicted about conflating his personal and professional identities.\textsuperscript{38} This theme appeared to some degree in many of the interviews I conducted, suggesting that, for whatever reason, some movement attorneys are not comfortable identifying as cause lawyers. This discomfort is further evidence that, although belonging to the same movement and supportive of the same goals, the lawyers and groups at the heart of Christian legal advocacy are different in meaningful ways.

When studying Christian legal advocacy, it is therefore necessary to keep several related yet distinct topics in mind. Christian legal groups are key actors in an influential social movement, with their collective presence only growing over the past thirty years. Thus, CCLOs can tell us a great deal about the proliferation, evolution, and survival of social movements and their associated groups. Moreover, those interested in sociolegal questions will benefit from an improved understanding of Christian legal advocacy. Not only are these groups active agents in legal advocacy but their specific brand of advocacy tends to be understudied in law and society circles. Lastly, CCLOs are ultimately religious interest groups bent on changing policy through law. Observers of religion and politics in the United States can learn from the work of these organizations and their efforts to engage the political system through the courts. With the culture wars undergoing an important transformation
centered on religious liberty and the venue for these battles shifting to the
courtroom, the next stages of this conflict in many ways begin with the legal
groups defending Christian conservatives—put simply, Christian legal advo-
cacy demands greater investigation.39

OUTLINE OF THE BOOK

Chapter 1 offers a thorough introduction to the CLM, including a history of
the movement and an overview of the CCLOs populating it. In this chapter
I explain how the CLM found support from various sources, including the
broader conservative legal movement and Christian Right institutions and
elites. I also identify the traits characteristic of CCLOs and discuss how these
traits differentiate CCLOs from other interest groups in various ideological
communities. Specifically, distinguishing CCLOs from other Christian Right
actors allows for a more nuanced and robust discussion of advocacy within the
movement overall.

With the movement’s history in mind and its organizations introduced, in
chapter 2 I turn to the issues central to CCLO advocacy. Relying on an original
data set of several thousand CCLO press releases, I demonstrate that three is-

sues dominate the movement’s advocacy: religious freedom, traditional mar-
riage, and the sanctity of life. At the same time, the data point to a lack of con-
formity in CCLO advocacy, with some groups clearly prioritizing other issues
at the expense of these three. This variability suggests that although the CLM
largely adopts the same advocacy focus, its groups are hardly homogenous or
monolithic.

The next several chapters provide an in-depth analysis of CCLO advocacy
on a range of issues, as introduced in chapter 2. According to these data, the
most prevalent issue in Christian conservative legal advocacy is religious free-
dom—it is, across the board, the issue that dominates CCLOs’ agendas. How-
ever, these groups do not advocate for religious freedom in a uniform fashion.
Relying on interviews with movement attorneys and in-depth examinations of
CCLOs’ relevant press releases, chapter 3 shows that religious freedom means
different things to different groups, which has the potential to create challenges
for collaborative advocacy within the CLM. Despite these differences, though,
reverence for religious liberty emerges as the tie that binds CCLOs together.
Press releases show that traditional marriage and the family are popular issues in CCLO advocacy. But what does this advocacy look like, especially in light of recent court decisions favorable to same-sex marriage? Again relying on primary sources and interviews with CCLO attorneys, chapter 4 examines the state of CCLO advocacy in defense of traditional marriage and the family, showing that the CLM is a diverse body of like-minded yet independent organizations. This chapter also illustrates the importance of religious liberty claims across issues in CCLO advocacy, demonstrating that arguments in favor of religious freedom have become central to the CLM’s advocacy on marriage—especially after hostile legal rulings on the issue.

To at least some degree, opposition to abortion and support for the sanctity of life are present in each CCLO’s advocacy. However, how does this advocacy look in practice? And what happens when there is disagreement among CCLOs in their sanctity-of-life advocacy? Using the same methods as the previous two chapters, chapter 5 explores the sanctity of life as a major issue in Christian conservative legal advocacy. It becomes clear that although CCLOs may be committed to a shared goal, they sometimes depart from one another in advocating for that goal. Furthermore, arguments for religious liberty protections consistently permeate CCLOs’ sanctity-of-life advocacy, continuing the theme established in earlier chapters: religious liberty is central to CCLO advocacy across the board.

While chapters 3, 4, and 5 analyze CCLO advocacy on three issues of major concern to Christian conservatives, chapter 6 takes a slightly different tack: examining niche issues unique to individual groups. In addition to religious freedom, traditional marriage, and the sanctity of life, CCLOs also advocate for other issues—and, as chapter 2 discusses, some do more of this than others. It is therefore valuable to examine these issues and ask what niche advocacy can tell us about the range of advocacy in the CLM movement. In this chapter I highlight some of these other issues, which suggest that although CCLOs share many characteristics, their niche advocacy suggests a great deal about their identities and organizational maintenance. This, in turn, affects the dynamics of the broader movement while also speaking to the role that religious liberty plays in keeping these groups connected in spite of inevitable competition.

In the concluding chapter, I bring together the book’s main findings and restate its central argument: the CLM and its groups advocate for much of the same broader agenda while at the same time diverging on specific strategies...
and niche issues. Additionally, the principle of religious liberty serves as a unifying issue across most of the issues for which these groups work, providing a positive frame for their advocacy. These results are helpful in explaining how groups engaging in similar forms of advocacy function in a crowded field in addition to shedding light on how Christian conservatives currently view law and legal advocacy in helping to achieve their policy goals.

SUMMARY

While acknowledging a constitutional right to same-sex marriage in *Obergefell v. Hodges*, Justice Kennedy also acknowledged the right to religiously object to same-sex marriage:

> It must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.40

His words were of little immediate consolation to the CLM, but they did reveal a glimmer of hope for its future. Even though the fight over marriage is over, the fate of those objecting to participating in same-sex marriage ceremonies (e.g., wedding photographers, bakers, and even government officials41) is only beginning. In fact, one attorney told me, “our hope is that, now that the marriage issue has been settled, Kennedy will come back to the side of religious freedom.”42 Despite losing the battle over marriage, CCLOs are already turning the page.

Kennedy’s statement in *Obergefell* on the importance of religious liberty was not accidental—for years, CCLOs have been linking opposition to same-sex marriage with support for religious freedom, among other things. As I argue in this book, this link is true for most issues important to the CLM. For these groups and attorneys, religious freedom is the foundation on which the rest of their advocacy is based. This focus allows them to paint their advocacy in the broadest terms possible while downplaying criticism from their
opponents. But this advocacy for religious freedom is not uniform across the movement. In the pursuit of issues important to Christian conservatives, there is considerable divergence concerning an ideal approach to legal advocacy, both strategically and substantively. In the chapters that follow, Defending Faith examines this divergence and determines what it means for the future of the CLM as an influential movement in American law and politics.