

ARTICLE

KINGDOMS IN CONFLICT: CONSERVATIVE CHURCHES IN COURT, 2003–2018

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I. INTRODUCTION

Legal and political controversies over abortion, LGBT rights, and religious liberty have divided Americans for decades. And as those debates have unfolded in the public sphere, churches and other religious organizations have frequently played outsized roles in driving the national conversation. But as the second decade of the twenty-first century draws to a close, some trends suggest that a combination of demographic changes and liberalizing public mores has significantly eroded the public influence of socially conservative religious institutions.¹

In light of these trends, commentators have routinely suggested that the ferocity of current culture-war debates—including some churches' controversial support for the divisive presidential candidacy of Donald Trump—reflects a kind of status anxiety on the parts of conservative churches.² Influential religious groups, this narrative runs, will not give up their cultural capital without a fight.

In today's legislatively polarized environment, courts have increasingly become the epicenters of public engagement over contentious social issues.³ This Essay accordingly considers the "status anxiety" hypothesis in the specific context of litigation, by evaluating the amicus curiae briefs filed by several of the most prominent conservative American church groups over the fifteen-year period from 2003 to 2018 (the interval for which comprehensive data was available). At bottom, this project aims to shed light on whether broader patterns of societal change are reflected in the litigation strategies adopted by leading socially conservative faith groups. This Essay also conducts a cursory assessment of these churches' respective political theologies and whether these doctrines are reflected in the churches' litigation practices.

1. See Michael Lipka, *Is Religion's Declining Influence Good or Bad? Those Without Religious Affiliation Are Divided*, PEW RESEARCH CENTER (Sept. 23, 2014), <http://www.pewresearch.org/fact-tank/2014/09/23/is-religions-declining-influence-good-or-bad-those-without-religious-affiliation-are-divided/>; Peter Beinart, *Breaking Faith*, ATLANTIC MONTHLY (Apr. 2017), <https://www.theatlantic.com/magazine/archive/2017/04/breaking-faith/517785/>.

2. See, e.g., ROBERT P. JONES, *THE END OF WHITE CHRISTIAN AMERICA* (2017).

3. See Keith E. Whittington, *The Death of the Legalized Constitution*, in *COURTS AND THE CULTURE WARS* (Bradley C. S. Watson ed., 2002) 27, 37–39.

II. WHY AMICUS BRIEFS?

Over the last few decades, amicus filings have proliferated throughout federal and state courts alike.⁴ Usefully for researchers, these briefs offer a window into the distinct perspectives of groups likely to be materially impacted by a given decision, or whose ideological interests will be significantly affected. Since many institutional religious bodies are not directly involved in political processes (and therefore refrain from commenting directly on unfolding public policy battles), amicus briefs can shed light on the connection between theological beliefs and political activation around certain issues. Moreover, analysis of relative frequency of church amicus participation can illuminate the extent to which a church's expressed value commitments are prioritized in practice—whether, for instance, a church's anti-abortion views are consistently reflected in its amicus participation.

Importantly for this project's purposes, amicus participation is not entirely costless. While joining amici may not always entail a *financial* burden, church administrators who join amicus briefs without careful consideration of their group's interests will face pushback from institutional stakeholders.⁵ The existence of such internal checks suggests—albeit inferentially—that in most cases, church amicus participation does reflect the considered and sincerely held position of an entire organization, not simply the whim of a single decision-maker.

III. CHOOSING CHURCHES

The four church groups evaluated in this study—the Lutheran Church—Missouri Synod, the United States Conference of Catholic Bishops, the Southern Baptist Convention, and the Church of Jesus Christ of Latter-day

4. REGAN WM. SIMPSON & MARY R. VASALY, *THE AMICUS BRIEF, HOW TO BE A GOOD FRIEND OF THE COURT* 8–10 (2d ed. 2004); Allison Orr Larsen & Neal Devins, *The Amicus Machine*, 102 VA. L. REV. 1901, 1902–03 (2016).

5. See Sarah Eekhoff Zystra, *Southern Baptists Back Away from Backing Mosques*, Christianity Today (Feb. 28, 2017), <http://www.christianitytoday.com/news/2017/february/southern-baptists-back-away-from-backing-mosques-imb-erlc.html> (“The trouble started last May, when several arms of the Southern Baptist Convention (SBC) reached out a legal hand to a Muslim community in New Jersey, publicly supporting their right to build a mosque. . . . [International Mission Board trustee Dean Haun] called the amicus brief an ‘unholy alliance’ with a false religion, and accused the SBC agencies of overstepping their bounds[.]”); see also John Ehrett, *The Inevitable Flagellation of Russell Moore*, CONCILIAR POST (Jan. 27, 2017), <https://conciarpost.com/politics-current-events/inevitable-flagellation-russell-moore/> (discussing the tensions faced by the ERLC).

Saints—were selected for four reasons: 1) they are traditionally viewed as theologically conservative;⁶ 2) they possess identifiable hierarchical structures that allow them to “speak with one voice” in litigation proceedings; 3) their teachings reflect diverse political theologies that address, in one way or another, the question of how their institutions ought to engage with secular culture; and 4) they regularly file amicus briefs in state and federal courts. At least on paper, these ecclesiastical organizations serve as the “theological representatives,” so to speak, of fully 28.8% of Americans (as of 2014).⁷

A. *Lutheran Church—Missouri Synod*

The LCMS is one of the two major Lutheran denominations in the United States. Following a significant theological split, the modern LCMS generally adheres to more conservative views than its mainline counterpart, the Evangelical Lutheran Church in America (ELCA).⁸ Lutheran political theology is characterized by the distinctive “doctrine of two kingdoms,” which affirms a real distinction between sacred and secular domains.⁹ In the words of theologian Hermann Sasse, “Lutheranism is opposed to any attempt to draw the kingdom of God into this world, be it the attempt of the Roman Church to *ecclesiasticize the world*, or the attempt of fanaticism and Protestantism influenced by fanaticism, to *Christianize the world*.”¹⁰

6. On conservatism in the LCMS, see Aaron D. Wolf, *The LCMS: A Triumph for Conservatism*, CHRONICLES (July 13, 2016), <https://www.chroniclesmagazine.org/the-lcms-a-triumph-for-conservatism/>. On conservatism in the USCCB, see Francis DeBernardo, *A Look Into What Drives the Conservative Public Policy of the USCCB*, NEW WAYS MINISTRY (May 6, 2016), <https://www.newwaysministry.org/2016/05/06/a-look-into-what-drives-the-conservative-public-policy-of-the-usccb/>. On conservatism in the SBC, see PAIGE PATTERSON, *THE SOUTHERN BAPTIST CONSERVATIVE RESURGENCE: THE HISTORY, THE PLAN, THE ASSESSMENT* (2012). On conservatism in the LDS Church, see Frank Newport, *Mormons Most Conservative Major Religious Group in U.S.*, GALLUP (Jan. 11, 2010), <http://news.gallup.com/poll/125021/mormons-conservative-major-religious-group.aspx>.

7. See Religion and Public Life, *Religious Landscape Study*, PEW RESEARCH CENTER (2014), <http://www.pewforum.org/religious-landscape-study/>. Roman Catholics comprise 20.8% of the population, with Southern Baptists, Mormons, and LCMS Lutherans coming in at 5.3%, 1.6%, and 1.1%, respectively. These numbers, however, do not shed light on the actual degree of religious observance among respondents.

8. See A. L. Barry, *What About. . . The Difference Between the ELCA and the LCMS*, LUTHERAN CHURCH—MISSOURI SYNOD, <http://lcms.org/Document.fdoc?src=lcm&id=1098> (accessed Apr. 7, 2018).

9. See J. M. WEIDENSCHILLING, *CHRISTIAN CITIZENSHIP* (1953).

10. Hermann Sasse, *The Social Doctrine of the Augsburg Confession and Its Significance for the Present* (1930) (Matthew C. Harrison trans., 2001), <https://www.lcms.org/Document.fdoc?src=lcm&id=662>.

B. *United States Conference of Catholic Bishops*

The USCCB is the formal body uniting members of the Catholic ecclesiastical hierarchy within the United States.¹¹ A full assessment of the complex relationship between Catholicism and political life is, obviously, well beyond the scope of this Essay: as the history of Western civilization makes abundantly clear, patterns of convergence or divergence between Catholic and secular authorities have varied dramatically over time. Current Church teaching, however, openly affirms that “the human person has a right to religious freedom. . . . in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.”¹²

C. *Southern Baptist Convention*

The SBC is the largest Baptist denomination in the United States, and the second-largest Christian denomination after the Catholic Church.¹³ Following its notable “conservative turn” in the 1990s, the SBC has emerged as one of the foremost institutions of American evangelicalism.¹⁴ At present, much of the SBC’s involvement in the legal process is modulated through its public policy arm, the Ethics and Religious Liberty Commission (ERLC).¹⁵ Across its history, Southern Baptist political theology has been influenced by two tendencies: the “Virginia tradition” of separation of church and state, and the “South Carolina tradition” favoring formal establishment of religion while rejecting state participation in ecclesiastical governance.¹⁶

D. *Church of Jesus Christ of Latter-day Saints*

The LDS Church is a non-Trinitarian Christian denomination based in Salt Lake City, Utah, and centered on the

11. See *About USCCB*, U.S. CONFERENCE OF CATHOLIC BISHOPS, <http://www.usccb.org/about/index.cfm> (accessed Apr. 7, 2018).

12. Pope Paul VI, *Dignitatis humanae*, No. 2 (Dec. 7, 1965) (available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html).

13. See *Religious Landscape Study*, *supra* note 7.

14. See PATTERSON, *supra* note 6, *passim*.

15. See *Meet Southern Baptists: Ethics and Religious Liberty Commission*, SOUTHERN BAPTIST CONVENTION, <http://www.sbc.net/aboutus/entities/erlc.asp> (accessed Apr. 7, 2018).

16. See Malcolm B. Yarnell III, *Political Theology at the Foundation of the Southern Baptist Convention*, in *FIRST FREEDOM: THE BAPTIST PERSPECTIVE ON RELIGIOUS LIBERTY* (Thomas White et al. eds., 2007) 67, 68–94.

teachings of its founder Joseph Smith.¹⁷ Early in the history of Mormonism, Smith pioneered the concept of “theodemocracy”—a “sociopolitical order that combined the virtues of government by God (theocracy) and by the people (democracy)” in order to form “an organic system of government that permeated not only earthly but also heavenly realms.”¹⁸

IV. DATA AND METHODS

Amicus brief filings by these four religious organizations were located through a combination of Westlaw docket-based searches and searches of individual churches’ online document repositories. To avoid double-counting, amicus briefs filed in cases where two or more proceedings have been consolidated into one are only counted once. However, since doctrinal frameworks differ across circuits—meaning that courts’ decisions will play out differently in practice depending on the jurisdiction—those cases raising similar *issues* but brought in different circuits are initially counted individually, even if they are ultimately consolidated by the Supreme Court. Similarly, while certiorari-stage amicus briefs and merits-stage amicus briefs are not double-counted, amicus briefs filed in circuit court and in the Supreme Court are counted separately. As previously stated, the governing principle behind these decisions is one of differing doctrinal frameworks: where the doctrinal framework being explored at one point varies meaningfully from that being explored at another point (as typically happens when a case is appealed to a higher court), the briefs should be distinguished.

V. FINDINGS

A. *Case Categories*

The court cases in which these four conservative church groups have filed amicus briefs may be divided into six categories: 1) “right to life” cases dealing with questions of abortion and euthanasia; 2) cases involving same-sex marriage and related LGBT civil rights; 3) cases where a government law or policy is challenged as an infringement upon a group’s religious liberty; 4) cases involving internal church polity or governance; 5) cases where a government law or policy denies a

17. See *Mormonism 101: What Is Mormonism?*, CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.mormonnewsroom.org/article/mormonism-101> (accessed Apr. 7, 2018).

18. Patrick Q. Mason, *God and the People: Theodemocracy in Nineteenth-Century Mormonism*, 53 J. CHURCH & STATE 349, 349 (2011).

particular state benefit to a religious group; and 6) cases involving “human rights” (e.g., labor rights, immigrants’ rights) as the term is conventionally employed by more progressive commentators.

Cases falling into Categories 3 and 5 are commonly lumped together under the umbrella concept of “religious liberty.” It is crucial, however, to disaggregate these two. Category 3 cases involve a *defensive posture* on the part of a given entity, where that entity asserts that a given governmental policy precludes it from acting in accordance with its convictions. Category 5 cases, by contrast, involve an *offensive posture*: a religious or religiously-motivated entity is alleging the denial of a benefit or privilege otherwise available to similarly situated entities. To better understand this distinction, consider the following hypothetical: A Christian college is denied eligibility for federally funded student loans over its stance on same-sex relationships. While this case implicates the *subject matter* of Category 2 (marriage/LGBT rights), and such a funding denial would certainly be labeled as a *violation* of religious liberty (Category 3), such a case is properly classified as Category 5 (benefit denial): notwithstanding any collateral consequences, such a funding denial involves a choice to withhold government resources otherwise made available. By contrast, a governmental policy directly targeting the liberty of faith-based schools outside the official educational system (a policy, incidentally, being contemplated in the United Kingdom as part of ongoing counter-extremism efforts¹⁹) would implicate Category 3.

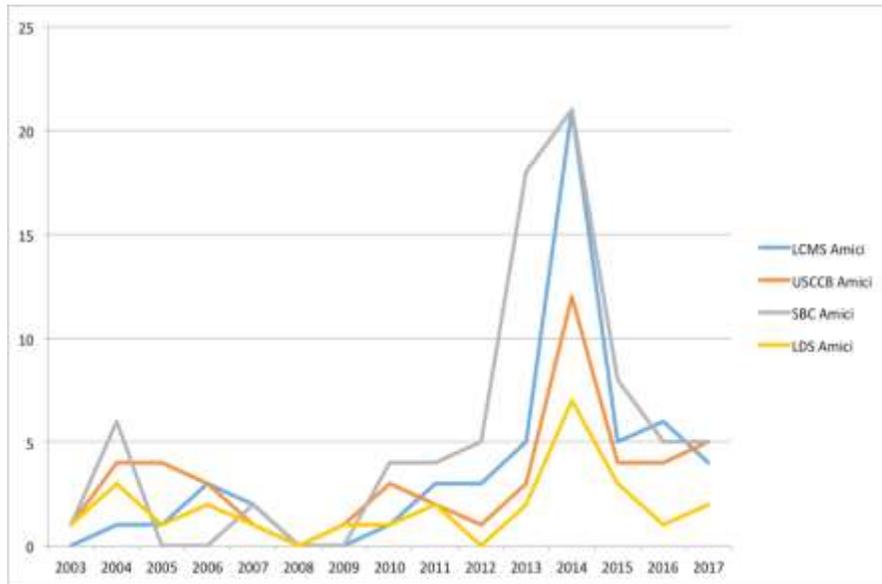
This distinction matters because the frequency of cases in each category sheds light on conservative churches’ potential motivations for amicus participation. A higher incidence of Category 5 cases would suggest that conservative churches are aiming to expand or stabilize their spheres of public influence through the court system; a higher incidence of Category 3 cases would suggest that these churches’ legal activities are primarily motivated by perceived threats to their core values and practices.

B. Activation By Denomination

Across the four denominations considered, the LCMS, USCCB, and SBC are all noticeably more activated than the LDS Church—particularly in the context of the litigation explosion

19. See Ed Thornton, *Resist Extremists in Schools, Says Head of Ofsted, Including Christian Extremists*, CHURCH TIMES (Feb. 1, 2018), <https://www.churchtimes.co.uk/articles/2018/9-february/news/uk/resist-extremists-in-schools-says-head-of-ofsted-including-christian-extremists>.

that began in 2012. In particular, LCMS and SBC amicus participation has mushroomed in recent years; USCCB involvement is up, but less dramatically so.



C. Unanimity in Amicus Participation

It is near-axiomatic that conservative American churches share many theological views and social policy goals in common. The “Religious Right” is a label for a reason.²⁰ Surprisingly, however, the data reflects *no* unanimous amicus participation prior to 2010—that is, no cases in which all four church groups here filed or joined briefs. This is particularly notable given the number of high-profile cases prior to 2010 implicating issues of seemingly common interest. For example, *Gonzales v. Carhart* hinged on the question of partial-birth abortion,²¹ and *Gonzales v. Oregon* centered on an Oregon law regarding medically assisted suicide.²² Yet despite these controversial subjects, the data indicates no conservative church amicus consensus.

20. Cf. Michael J. McVicar, *The Religious Right in America*, in OXFORD RESEARCH ENCYCLOPEDIA OF RELIGION (Feb. 26, 2018), <http://religion.oxfordre.com/view/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-97?print=pdf> (“[A]ctors in the Religious Right appealed broadly to the conservative cultural sensibilities of Americans from Protestant, Catholic, Mormon, and Jewish backgrounds[.]”).

21. *Gonzales v. Carhart*, 550 U.S. 124, 132–33 (2007).

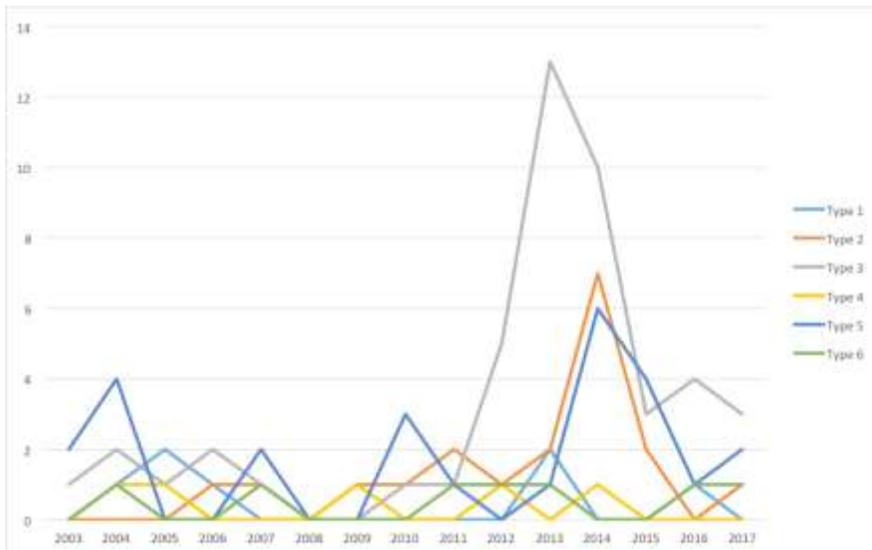
22. *Gonzales v. Oregon*, 546 U.S. 243, 248–49 (2006).

Year	LOMS Amici	USCCB Amici	SBC Amici	LDS Amici	Total Annual	Unanimous Interest	% Unanimous Interest
2003	0	1	1	1	3	0	0.00%
2004	1	4	6	3	9	0	0.00%
2005	1	4	0	1	4	0	0.00%
2006	3	3	0	2	4	0	0.00%
2007	2	1	2	1	5	0	0.00%
2008	0	0	0	0	0	0	0.00%
2009	0	1	0	1	2	0	0.00%
2010	1	3	4	1	5	1	20.00%
2011	3	2	4	2	5	2	40.00%
2012	3	1	5	0	8	0	0.00%
2013	5	3	18	2	19	2	10.53%
2014	21	12	21	7	25	7	28.00%
2015	5	4	8	3	9	3	33.33%
2016	6	4	5	1	7	1	14.29%
2017	4	5	5	2	7	2	28.57%

Since 2009, however, in approximately one out of every four cases where one of these churches is participating as amicus, all three of the others are also involved. This represents a sea change in amicus involvement patterns: conservative churches have become increasingly active in identifying areas of convergent interests and taking action accordingly.

D. Category-Based Activation

Beyond the question of unanimity, consideration of the year-by-year number of cases in each category in which at least one of these four churches participated as amicus can shed light on conservative churches' legal priorities more generally. Such consideration produces a number of intriguing findings.²³



23. Due to the comparatively small sample size at issue in this study, formal regression analyses would likely be unhelpful or misleading in this context. The sample is such that an individualized analysis of church amicus involvement is more appropriate.

Category 1 (Abortion): Despite the vehemence with which this issue is routinely debated in the public square, the data shows virtually no change in church amicus participation over time. In each year surveyed, there were only two or fewer cases where at least one church participated as amicus (indeed, the median annual number of amicus involvements is zero). This suggests that, when compared to litigation surrounding other issues, litigation involving abortion is not a paramount legal priority for churches.

Category 2 (Marriage/LGBT Rights): Church amicus participation in marriage/LGBT rights cases spiked in 2014, at the height of public debate preceding the Supreme Court's ruling in *Obergefell v. Hodges*, with seven amicus involvements. However, this topic has not consistently been a litigation priority, nor does it remain so. In all other years surveyed (including the years following *Obergefell*), there were only two or fewer cases where at least one church participated as amicus. It is not unreasonable, however, to speculate that this could change in the event of increased high-profile litigation surrounding transgender and gender-nonconforming individuals.

Category 3 (Religious Liberty/Noninterference): Overwhelmingly, Category 3 cases—many stemming from the Obama administration's "contraceptive mandate"—have sparked the most dramatic increase in church amicus participation. In each year surveyed prior to 2012, there were only two or fewer Category 3 cases where at least one church participated as amicus (with a median of one amicus involvement per year). This pattern has changed dramatically. In 2013, thirteen Category 3 cases triggered amicus involvement; in 2014, ten cases did so. And while those figures have stabilized somewhat in subsequent years, the number of Category 3 cases with at least one church participating as amicus has never again dropped to pre-2012 levels.

Category 4 (Polity): The incidence of cases involving church polity or internal governance has remained virtually unchanged over time. In each year surveyed, there was no more than one case in which a church participated as amicus (and as in the case of abortion-related cases, the median annual number of amicus involvements is zero).

Category 5 (Benefit Denial): Cases surrounding the alleged denial of public benefits to religious entities have come and gone over time, with no clear pattern underlying various churches' decisions to participate as amici. The data does reflect a slight

uptick in such amicus involvements from 2014 onward (in 2014 there were six Category 5 cases in which at least one church participated as amicus, an increase over the previous high of four Category 5 cases in 2004, and in 2015 there were four Category 5 cases). It is likely too soon to say whether this trend is likely to continue (for instance, in 2016 and 2017 there were only one and two amicus involvements, respectively, in Category 5 cases).

Category 6 (Human Rights): The incidence of cases involving human rights causes has remained virtually unchanged over time. In each year surveyed, there was no more than one case in which a church participated as amicus (and as in the case of abortion-related and church polity-related cases, the median annual number of amicus involvements is zero). Interestingly, the USCCB stands virtually alone in its participation in Category 6 cases—suggesting that while not *all* conservative churches are predominantly engaged with traditional “culture war” causes, the range of amicus concerns for many conservative churches remains fairly limited.

VI. ANALYSIS

Keeping the limitations of this study²⁴ firmly in mind, three primary insights may be inferred from these results.

First, the existing data strongly indicates that legal activation of churches is more closely keyed toward perceived infringements of the “negative liberty” of free exercise than toward any other issue. This runs counter to any narrative suggesting that conservative churches are predominantly concerned with enforcing traditional positions on abortion and same-sex marriage or with maximizing government-administered privileges. In light of these findings, the “status anxiety” hypothesis seems to hold only insofar as churches are demonstrably resistant to perceived outside interference and seek to preserve their autonomy. Where other, higher-profile cultural battlefronts exist—such as conflicts over LGBT rights or government benefits for religious groups—a desire to preserve

24. As previously mentioned, the sample sizes under consideration are quite small. Moreover, any analysis of amicus filings under churches’ own names necessarily neglects the possibility that churches are playing “behind the scenes” roles in other cases without themselves becoming brief signatories. And there may also be disparities in financial resources that impact churches’ ability to participate in the amicus process. (It bears mention, though, that sympathetic attorneys or organizations may produce some amicus briefs at little or no cost. See, e.g., Stephanie Francis Ward, *Friends of the Court Are Friends of Mine*, ABA J. (Nov. 2007), http://www.abajournal.com/magazine/article/friends_of_the_court_are_friends_of_mine.)

the status quo does not appear to be a universal driver of churches' legal involvement. If such were the case, one would presumably expect more frequent filings and greater unanimity.

Second, the data suggests a surprising disconnect between the sociopolitical salience of topics like abortion and LGBT rights and church amicus participation. This offers some inferential support for the hypothesis that legal activism in these domains by social conservatives is largely modulated through institutions outside their ecclesiastical communities (consider the proliferation of nonprofit, theologically ecumenical groups like the Alliance Defending Freedom or Americans United for Life).²⁵ Subsequent research might examine in greater depth whether, among social conservatives in the early 2000s, many of the quasi-political functions once performed by traditional religious institutions are being supplanted by the work of such specialized groups.²⁶

Third, the amicus involvement patterns of conservative churches do not consistently track individual churches' political theologies in the way a casual observer might expect. In recent years, the USCCB—a representative of the Christian denomination with perhaps the longest history of church-state integration—has noticeably trailed both the LCMS and SBC in its amicus involvements. And the LDS Church, which pioneered the concept of “theodemocracy,” has been even less active in the amicus process. On the other side of the spectrum, the LCMS—its theology of “two kingdoms” notwithstanding—has participated increasingly often in the amicus process. The SBC, for its part, has always been fairly active in this realm (and its political theology, rooted as it is in competing conceptions of

25. Cf. Daniel Bennett, *The Rise of Christian Conservative Legal Organizations*, RELIGION & POLITICS (June 10, 2015), <http://religionandpolitics.org/2015/06/10/the-rise-of-christian-conservative-legal-organizations/> (“[E]lites in the Christian Right, sensing the promise of legal advocacy for their causes, lent organizational support and resources to new legal interest groups . . . Without this early assistance from the Christian Right, many [Christian conservative legal organizations] would not exist as we now know them.”).

26. Consider, as a parallel example, the turbulent relationship between the Black Lives Matter movement and the black church community—a tension that represents a departure from the organizing model of the Civil Rights Era. See, e.g., Kenneth D. Johnson, *#BlackLivesMatter as a Secular Black Political Theology: Ethical and Practical Implications of the First New Black Social Movement of the 21st Century*, TELOSscope (Feb. 8, 2016), <http://www.telospress.com/blacklivesmatter-as-a-secular-black-political-theology-ethical-and-practical-implications-of-the-first-new-black-social-movement-of-the-21st-century/>. Perhaps in years to come, issue activism will increasingly manifest as organization around certain metaphysical (and often political) precommitments that transcend any particular formal tradition or creed.

church and state, doesn't clearly favor or deter amicus involvement).

VII. CONCLUSION

This investigation suggests that in recent years, conservative churches have participated more actively in the amicus process. Perhaps unsurprisingly, these churches' concerns tend to parallel one another's—with the exception of the USCCB's distinctive stances on human rights questions, which the other churches evaluated here may not share. Future research might examine whether similar patterns of convergence are reflected in the amicus filing practices of mainline and progressive Christian groups, many of which are active participants in the amicus process.²⁷

Most importantly, however, churches' primary concern in amicus participation appears not to be directly related to abortion or LGBT rights. Rather, their amicus participation appears to reflect an impulse that may be characterized as *defensive*—in the sense that their primary consideration seems to be whether the state can compel them to violate deeply held beliefs. Grasping this requires one to distinguish the concept of “negative” religious liberty (freedom from interference) from “positive” religious liberty (equal receipt of state-administered privileges). This distinction is essential—indeed, such a tension is built into the very fabric of the First Amendment—but often overlooked in current debates.

This point, understood broadly, has important implications for any decision-maker seeking to maximize voluntary compliance with legislation or regulatory schemes: if present trends continue, any state actors advocating measures likely to be perceived as “Category 3” religious liberty infringements will face serious pushback from the nation's largest conservative religious bodies. Such a risk calls for policymaking prudence—and, perhaps, a degree of administrative humility.

27. Interestingly, there appears to be a significant convergence between the amicus filing practices of the USCCB and the Presbyterian Church—USA (PCUSA) regarding Category 6 “human rights” cases. See Office of the General Assembly, *Constitutional Interpretation: Amicus Curiae Briefs*, PRESBYTERIAN CHURCH—USA, <http://oga.pcusa.org/section/mid-council-ministries/constitutional-services/amicus-curiae-briefs/> (accessed Apr. 11, 2018).