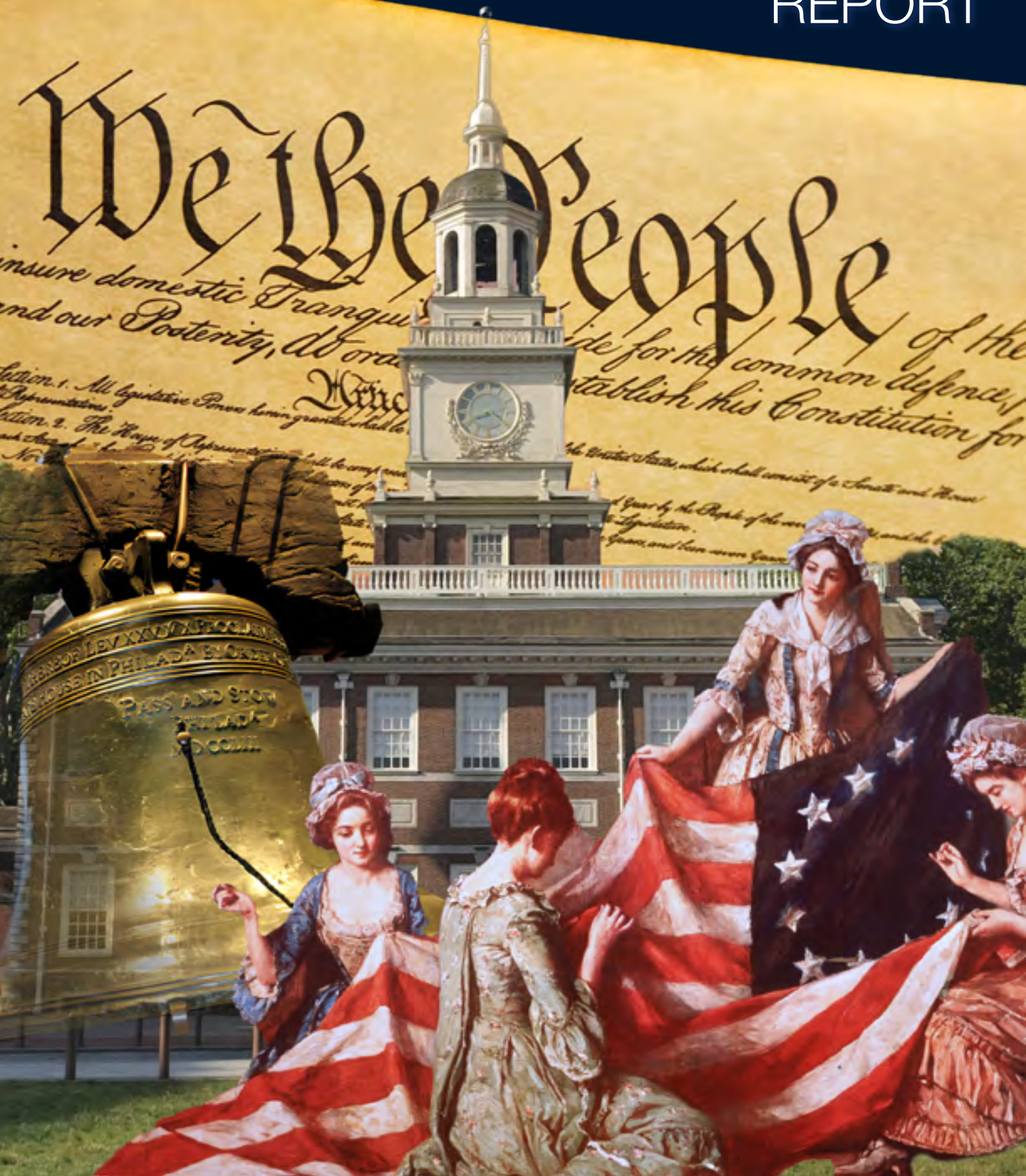


ATLANTIC LEGAL FOUNDATION  
2022 ANNUAL  
REPORT



# THE YEAR IN REVIEW

Now in its 46th year following its incorporation in the Commonwealth of Pennsylvania in 1977, the Atlantic Legal Foundation (“ALF”) reflects back on 2022 and recounts its successes in serving the public interest...

- As the nation’s leading advocate for sound science in judicial and regulatory proceedings,
- As a champion for parents’ rights to choose the schools and types of educational instruction best suited for their children, and
- As a strong proponent for free enterprise, limited and responsible government, property rights, individual liberty, civil justice, and the rule of law under America’s Constitution.

While ALF made excellent progress in 2022 in pursuing its nationwide mission, the challenges brought by ever encroaching governmental and socialistic demands, have intensified the need for ALF’s continuing attention, active high level advocacy, and your support.

Atlantic Legal Foundation rekindled its long-established tradition of Annual Awards Dinners in 2022 after being constrained by the coronavirus pandemic, which prevented its annual fundraising Awards Dinners for 2019-2021.

We were privileged to honor Michael D. Rich, the President Emeritus of the RAND Corporation, as ALF’s annual awardee for 2022 and as ALF’s Lifetime Achievement Honoree, Dr. Thomas Sowell, famous author, economist, teacher and celebrated independent wiseman widely respected throughout America and internationally. Michael Rich was introduced by renowned Mediator/Special Master Ken Feinberg, a Trustee of RAND. Dr. Sowell was extolled by his *Maverick* biographer - Jason L. Riley, celebrity journalist with the Wall Street Journal and the Manhattan Institute. ALF Director, Jonathan Graham, EVP - General Counsel and Corporate Secretary of Amgen Inc. served as the Master of Ceremonies of the event at the Jonathan Club in downtown Los Angeles — a first West Coast event for the Foundation. Mr. Rich addressed the critical subject of “Truth Decay” in America and Jason Riley highlighted the interesting and prolific work of Dr. Sowell, now well into his 90’s, as his biographer. Their remarks are presented or highlighted beginning at pages 39 and 45 in this Report.

See pages 60-62 for Atlantic Legal’s distinguished list of Annual and Lifetime Achievement Honorees over the past 30 plus years.

Atlantic Legal Foundation’s advocacy in 2022 included the submission of persuasive *amicus curiae* briefs and other filings in furtherance of all six of its mission areas. See *In the Courts* at page 7 and ALF’s



website [atlanticlegal.org](https://atlanticlegal.org) for more details respecting ALF's 2022 filings, its current filings, and its archived filings over many years before the U.S. Supreme Court, federal courts of appeals, and state appellate courts. A brief overview of our new website is presented at page 7 in ALF's Annual Report for 2021.

In furtherance of its longstanding efforts as the leading advocate fostering sound science in judicial and regulatory proceedings, ALF has featured on its website seminal articles on science and the law and other mission-critical issues. One such article, written by California Proposition 65 legal specialist Ann Grimaldi, and reproduced at page 15 in ALF's Annual Report for 2021 (posted on ALF's website, [atlanticlegal.org](https://atlanticlegal.org)), discusses an important Ninth Circuit decision affirming, on First Amendment grounds, a preliminary injunction against enforcement of a state-compelled warning concerning alleged human health risks about which there is significant scientific controversy. More recently, ALF's new Advisory Council members — Thom Golab, President of the American Council of Science and Health and Jacob Traverse, President & CEO of the Center for Truth in Science — see their bios at pages 69 and 67 — co-authored the timely article on “Science and Laws: A Search for the Truth” published at page 20 following.

We have continued our work to promote the effective education of our young students on behalf of charter schools with special focus on this subject in our 2021 Annual Report, which included a then-current report on Charter School legal developments, authored by ALF's Advisory Council member Thomas Walsh, a recently retired partner with Jackson Lewis.

Presented at page 21 in our Annual Report for 2021 (posted on ALF's website, [atlanticlegal.org](https://atlanticlegal.org)) is a guest article on The Case for Education Freedom and Protecting Charter Schools by nationally renowned scholar and spokeswoman, Virginia (Ginny) Gentles, a senior fellow of the proactive Independent Women's Forum and the first Director of the newly founded Education Freedom Center.

In 2022 we suspended the publication and distribution of ALF's *Leveling the Playing Field* series of state-specific guides for charter school leaders. Uncertainty in the law pending possible federal preemption of state regulation caused Atlantic Legal to temporarily postpone the updating and publication of new editions of these state-specific guides. These uncertainties were protracted into 2022 as reported in a seminal article, published on ALF's website and reproduced at page 14 in this Report. The article is authored by ALF's Advisory Council member Thomas Walsh, a nationally recognized expert on the subject.

From 2021 into early 2023, we have elected or appointed 19 distinguished professionals to our leadership team, including 12 new Directors, 6 Advisory Council Members, and a new Officer. See page 63 for the photo and bio of our newest Director, Dean Martinez, and pages 66-70 for those of our new Advisory Council members since our 2021 Annual Report. Our current Officers are presented on page 65, with the latest addition being Nick Klitzing to the new office of Vice President-External Affairs. See page 65 for his photo and bio.

In late 2022, we received the resignations of two of our longstanding directors — David Wood, who with his wife, Elizabeth are concentrating their pro bono efforts on a new organization for grieving parents who have lost children, as they lost a son, and Jonathan Graham who being promoted at Amgen with additional responsibilities in public and political affairs deemed it wise to devote his time to Amgen’s priorities, notwithstanding ALF’s nonpartisan political posture. We wish David and Jonathan well and thank them for their many years of valuable service to ALF.



*David Wood*

Atlantic Legal’s current distinguished Officers, Board of Directors and Advisory Council (listed at pages 64, 71 & 72 following and presented on ALF’s website) are steadfast in their conviction that our legal system continues to need the effective, responsible, objective, and vigorous advocacy the Foundation has provided for over 45 years. The need has been exacerbated by ongoing challenges to the rule of law and our Constitution, and by the disruption and compromises thrust upon our Republic by the pandemic, related governmental actions, and political pressures. We are especially grateful for our supporters, contributors, leadership, and staff, enabling the Foundation to continue its important work during these challenging times. Because of you, we will continue to make a difference for the betterment of American Jurisprudence and America. Thank you so very much for your continuing support. . .



*Jonathan Graham*



**Dan Fisk**

Chairman & President



**Larry Ebner**

Executive Vice President  
& General Counsel

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## EXECUTIVE SUMMARY

### About Atlantic Legal Foundation

- Atlantic Legal Foundation has been defending liberty for over 46 years, since its establishment early in 1977.
- Atlantic Legal Foundation is a national, nonprofit, nonpartisan public interest law firm with a storied history of advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in the courtroom, and effective education through school choice and parental rights.
- With the benefit of guidance from the legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, the Foundation pursues its mission primarily by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. The Foundation also has provided pro bono legal representation to business organizations, scientists, parents, educators and other individuals, in cases that align with its mission areas.

### Constitutional Issues

Through its renowned amicus program, Atlantic Legal Foundation advocates for the rule of law and strict adherence to the Constitution's Bill of Rights, separation of powers, and principles of limited government and federalism, as well as for judicial conservatism, impartiality, and civil justice.

### Sound Science

Atlantic Legal is the nation's preeminent public interest law firm advocating for the admissibility of sound medical and expert testimony in toxic tort, product liability and other litigation. Atlantic Legal

fighting the admissibility of “junk” science, and fosters the use of sound science principles in judicial and regulatory proceedings. Our amicus briefs on behalf of several Nobel Laureates and numerous other prominent scientists were cited and relied on by the majority in the landmark *Daubert Trilogy* of U. S. Supreme Court cases. ALF continues to be proactive in strengthening Federal Rule of Evidence 702 which codified the essence of the *Daubert Trilogy* of decisions.

## Corporate Issues

Atlantic Legal advocates for responsible corporate governance and against intrusive regulation of business. The Foundation was an early and vigorous proponent of preservation of the attorney-client privilege against compulsory waiver of that essential protection where corporate misconduct has been asserted. It has challenged abuse of class action procedures and has strongly advocated for the enforcement of arbitration agreements and the limitation of personal jurisdiction over out of state corporate defendants.

## Effective Education / School Choice

Atlantic Legal promotes effective education by advocating for parental rights, including school choice. Its work in this area is primarily focused on supporting charter schools. A major part of this effort has been publishing a series of state law guides, written by nationally known labor law attorneys, to educate charter school leaders about what they need to know to deal with efforts by public employee unions to burden charter schools with intrusive union work rules that stifle innovation, as well as scholarly articles on the latest legal and political uncertainties impacting the regulatory environment for charter schools.

## Position Papers, Comments and Conferences

Atlantic Legal publishes papers and files comments on legal issues of public concern, such as: the need to strengthen federal judges’ expert testimony gatekeeper role under Federal Rule of Evidence 702, eliminating counterproductive rules requiring party consent or Court permission to file an amicus brief, inadequate judicial compensation and its impact on the New York economy, the need for a restructuring of New York’s court system, correcting weaknesses in law school curricula, and the need for and benefits of parental choice and influence in K through 12 education. Of note, we have published a series of state-specific guides for charter school leaders entitled ***Leveling the Playing Field: What Charter School Leaders Need to Know About Union Organizing***, as well as professional articles on the current legal and political landscape impacting charter school leaders.

The Foundation sponsors conferences on topics of importance to the business and legal communities, such as: Science and Public Policy Implications of the Health Effects of Electromagnetic Fields; the Attorney-Client Privilege – Erosion, Ethics, Problems and Solutions; Corporate Litigation – How to Reduce Corporate Litigation Costs and Still Win Your Case. Articles and News Releases on legal issues of importance are regularly posted on the Foundation’s newly redesigned website, [atlanticlegal.org](http://atlanticlegal.org).





# IN THE COURTS

*The Birch Bayh Federal Building and U.S. Courthouse  
Indianapolis, IN*

During 2022, and into 2023, ALF continued advancing its advocacy missions by filing *amicus curiae* (friend of the court) briefs on cutting-edge legal issues in the Supreme Court and federal courts of appeals throughout the United States. In fact, ALF's amicus program has been busier than ever. We are on many leading law firms' and nonprofit advocacy organizations' "go to" lists for high-quality amicus support. As ALF's national reputation for outstanding appellate advocacy continues to grow, our amicus briefs are increasingly cited and quoted in legal media such as Law360, which frequently publishes expert analyses written by ALF Executive Vice President & General Counsel Larry Ebner and recently appointed him to its Appellate Editorial Advisory Board.

Larry, a Fellow of the highly selective American Academy of Appellate Lawyers, is a nationally recognized appellate specialist with more than 50 years of litigation experience. He personally authors most of ALF's amicus briefs. On some briefs we have enlisted the assistance of a growing cadre of appellate attorneys who contribute valuable pro bono time to ALF (see page 72 of this Annual Report).

ALF's pipeline of amicus support requests and docket of future amicus filings already extends well into 2023. For example, we will be filing amicus briefs in Supreme Court appeals challenging the *Chevron* judicial deference doctrine, the constitutionality of the federal Consumer Financial Protection Bureau's self-funding mechanism, the judicial standing of plaintiffs who file Internet-based "informational injury" damages suits, and the Department of Homeland Security's broad interpretation of its foreign-student visa authority. In the Ninth Circuit, we will be filing a brief discussing the manner in which Federal Rule of Evidence 702 applies to class-certification decisions that rely on expert testimony.

Our amicus filings during 2022 and the first quarter of 2023 are summarized below. Additional details, and the amicus briefs themselves, are easily accessed through ALF's website, [atlanticlegal.org](https://atlanticlegal.org).

# Amicus Filings

## **MISSION: ADVOCATE FOR SOUND SCIENCE**

**Federal Preemption of Failure-To-Warn Claims** — We filed an amicus brief urging the en banc Eleventh Circuit to hold that federal law preempts state-law damages claims alleging that the manufacturer of Roundup® (glyphosate) herbicide failed to include on its product labeling, a cancer warning that the U.S. Environmental Protection Agency (EPA) has determined is both scientifically unwarranted and false and misleading. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) expressly prohibits a State from imposing pesticide labeling requirements that are “in addition to or different from” those required under FIFRA. ALF’s brief explains that a cancer-related label warning would be “in addition to or different from” EPA’s requirements for Roundup® labeling, and therefore, expressly preempted. (*Carson v. Monsanto*)

**Fair Balance on Federal Advisory Committees** — We filed an amicus brief in the D.C. Circuit arguing that the EPA Administrator’s deliberate exclusion of all industry-affiliated scientists from the statutorily created Clean Air Scientific Advisory Committee (CASAC) violates the Federal Advisory Committee Act (FACA) requirement that all federal advisory committees be “fairly balanced in terms of the points of view represented and the functions to be performed.” CASAC advises EPA on adoption and revision of Clean Air Act national ambient air quality standards, which directly affect a multitude of industrial operations. ALF’s brief discusses why FACA’s “fairly balanced” membership requirement promotes sound science, which is undermined if the viewpoints of well-qualified scientists with first-hand knowledge of how environmental regulations impact industry are deliberately excluded. (*Young v. EPA*)

**Removal of Climate-Change Damages Suits From State Courts** — We filed an amicus brief asking the Supreme Court to address the question of whether numerous climate-change damages suits that have been filed by state and local governments against fossil-fuel energy companies can be removed from state to federal court. ALF’s brief argues that federal courts are the proper forum for adjudication of suits seeking damages for the local effects of the fossil fuel industry’s alleged “alteration of the climate.” Our brief explains that because climate change is a borderless, global phenomenon, liability for this alleged tort of nationwide and worldwide dimensions cannot be divided into potentially tens of thousands of local bits and pieces of liability, each subject to the vagaries of one of 50 States’ differing tort law standards. Instead, claims for alteration of the climate unavoidably implicate uniquely federal interests that require a uniform rule of decision. (*Suncor Energy v. Boulder County, Colorado*)

**Keeping Junk Science Out of Courtrooms** — We filed an amicus brief requesting the Supreme Court to reinforce federal judges’ “gatekeeper” role under Federal Rule of Evidence 702. More specifically, we asked the Supreme Court, in the context of medical device product liability litigation, to decide whether the Eighth Circuit’s (i) lax standard for admissibility of expert scientific testimony, and (ii) insufficiently deferential standard for appellate review of district court decisions that exclude expert testimony, conflict with Supreme Court precedent (including the *Daubert* trilogy) and Rule 702. ALF’s brief explains that Rule 702, which establishes the criteria for admissibility of scientific,



technical, and other expert testimony primarily is intended to prevent juries from being exposed to “junk science” testimony. The brief argues that when a trial judge shirks his or her Rule 702 gatekeeper responsibility by allowing a jury to be influenced by junk science testimony—or where courts of appeals, such as the Eighth Circuit, have adopted lax interpretations of Rule 702—a defendant can be deprived of a fair trial and due process of law. (*3M Company v. Amador*)

### **MISSION: ADVOCATE FOR EFFECTIVE EDUCATION**

**Parental Rights** — We filed an Eighth Circuit amicus brief arguing that a public school district’s transgender student policy violates parents’ rights to guide the care, custody, and control of their children. Regardless of parents’ wishes, or even knowledge, the policy expressly allows young teenage (and perhaps preteen) boys and girls to choose their own “names/pronouns, restroom and locker facilities, overnight accommodations on school trips, and participation in activities,” and to decide how to “dress in accordance with their gender identity.” Under the school district’s policy, a student not only can request school officials to develop and implement an individualized “Gender Support Plan,” but also direct them to conceal this information from his or her parents. ALF’s brief explains that a long line of Supreme Court cases, as well as English and American common law, establish that parents are best qualified to make decisions concerning the upbringing and education of their children. This now applies to transgender-related issues. (*Parents Defending Education v. Linn-Mar Community School District*)

### **MISSION: ADVOCATE FOR FREE ENTERPRISE**

**Primacy of Federal Arbitration Act** — We filed an amicus brief in the Supreme Court addressing the frequently recurring question of whether federal district court proceedings must be stayed while, as authorized by the Federal Arbitration Act (FAA), an interlocutory appeal of denial of a motion to compel arbitration is being pursued in a federal court of appeals. ALF’s brief explains that unless a stay of trial-court proceedings is mandatory rather than discretionary, the purpose of the interlocutory appeal authorized by the FAA would be defeated, and the significant benefits of arbitration as an alternative to litigation would be lost. (*Coinbase, Inc. v. Bielski*)

**Federal Preemption of California Regulatory Overreach** — We filed an amicus brief asking the Supreme Court to decide whether a State can ban the sale of a federally regulated and approved agricultural food product merely because it does not like how, where, or by whom it is produced or grown. The litigation challenges California’s statutory ban on sale of USDA-approved foie gras — fattened duck or goose liver — which can be produced only by force-feeding ducks and geese. ALF’s amicus brief argues that federal law preempts the California sales ban statute, in part because the force-feeding process that the California sales ban statute prohibits is the very same force-feeding process that federal law requires if a poultry product is to be sold as foie gras. Our brief also contends that the sales ban violates the principles of interstate federalism because it encroaches upon other States’ sovereign rights to regulate, subject to federal law, agricultural and other products that are produced within their own borders. (*Association des Éleveurs de Canards et d’Oies du Québec v. Bonta*)

**Applicability of Attorney-Client Privilege to Dual-Purpose Communications** — We filed a Supreme Court amicus brief addressing an attorney-client privilege question that often confronts in-house counsel, as well as attorneys in law firms. More specifically, ALF’s brief argues that a “dual-purpose” communication, such as a communication involving both legal and business advice, is protected by the attorney-client privilege where obtaining or providing legal advice was one of the significant purposes, even if not the sole purpose, of the communication. (*In re Grand Jury*)

**Removal of COVID-19 Liability Suits From State Courts** — We filed an amicus brief urging the Supreme Court to address the question of whether COVID-19-related liability suits against hospitals, nursing homes, and healthcare workers are removable from state to federal court when they implicate the immunity-from-suit provisions of the federal Public Readiness and Emergency Preparedness (PREP) Act. ALF’s amicus brief argues that healthcare facilities and workers will be deterred from volunteering for essential, frontline duty during public health emergencies if they are subjected to the threat of being haled into the very type of high-stakes, state-court liability suits that the PREP Act expressly and unequivocally prohibits. (*Glenhaven Healthcare, LLC v. Saldana*)

**State-Court Jurisdiction Over Corporations** — We filed amicus briefs in two different cases arguing the Supreme Court should hold that due process is violated if a corporate defendant’s registration to do business in a State where it is not “at home” is deemed consent to, or some other basis for, exercise of the State’s general (“all-purpose”) personal jurisdiction over the corporation. Modern Supreme Court cases establish that a court can assert general jurisdiction over a corporation only in a State where the corporation is “at home,” typically where the corporation is incorporated and/or has its principal place of business. General jurisdiction (as distinct from minimum-contacts-based “specific” or “case-linked” jurisdiction) means that a corporation can be sued in that State for any and all claims, no matter where the plaintiff’s cause of action arose. The Supreme Court, however, never has explicitly overruled a century-old opinion which held that a corporation’s appointment of a state-government agent to accept service of process as a requirement for the corporation to conduct business in a State is deemed consent to the State’s general jurisdiction. ALF’s brief argues that overturning this old precedent not only would be consistent with modern personal jurisdiction case law, but also would deter forum shopping. (*Mallory v. Norfolk Southern Railway Co. and Cooper Tire & Rubber Co. v. McCall*)

**Enforcement of Employer-Employee Arbitration Agreements** — We filed an amicus brief urging the Supreme Court to hold that the Federal Arbitration Act (FAA) preempts California from prohibiting enforcement of individual arbitration agreements that expressly waive an employee’s right to file a representative action under the California Private Attorney’s General Act (PAGA). In June 2022 the Court issued a favorable decision holding that the FAA preempts California’s “*Iskanian* rule,” which had invalidated waivers of PAGA representative claims. (*Viking River Cruises v. Mariana*)

## **MISSION: ADVOCATE FOR PROPERTY RIGHTS**

**Governmental “Home Equity Theft”** — We filed an amicus brief in a Supreme Court case presenting the question of whether a state or local government violates the Fifth Amendment’s Takings Clause (also known as the Just Compensation Clause) by keeping the surplus proceeds after

seizing and selling a home to satisfy a delinquent tax debt. To satisfy the elderly plaintiff's \$15,000 tax debt, a Minnesota county seized and sold her condominium for \$40,000 and retained the \$25,000 surplus. ALF's brief explains that a state legislature cannot "redefine" private property as public property to circumvent the Just Compensation Clause, and that the Eighth Circuit misunderstood and misapplied Supreme Court precedent on seizure and sale of private property to satisfy debts owed to the government. In 12 States, the government not only can seize a home for missing property tax payments, but can keep all profit, including the homeowner's excess equity. Between 2014 and 2021, at least 6,200 U.S. homeowners have lost more than \$860 million in home value due to some State governments' ability to keep the entire property sales proceeds after foreclosure for unpaid taxes. (*Tyler v. Hennepin County / Minnesota*)



#### **Federal Regulation of Private "Wetland"**

**Property** — We filed an amicus brief in a Supreme Court case concerning the proper test for determining whether wetlands are "waters of the United States" under the Clean Water Act. More specifically, the question presented is whether private property — in this case, a residential lot that has no physical surface connection to any navigable body of water — is a "wetland" that is part of "the waters of the United States" for Clean Water Act regulatory and permitting purposes. This issue is important because of the expansive and intrusive manner in which EPA and the U.S. Army Corps of Engineers have defined "waters of the United States." ALF's amicus brief argues that the Court should reject any broad definition that would effect an uncompensated taking of private property in violation of the Fifth Amendment. (*Sackett v. EPA*)

### **MISSION: ADVOCATE FOR LIMITED & RESPONSIBLE GOVERNMENT**

**Constitutionality of Mass Student Loan Debt Cancellation** — We filed amicus briefs in two coordinated Supreme Court cases challenging the validity of the Biden Administration's announced mass cancellation of more than \$400 billion in student loan debt owed to the federal government by more than 20 million borrowers. Rather than addressing the questions of whether the state and individual plaintiffs have standing to sue, or whether the mass cancellation is authorized by statute, ALF's amicus brief raises the fundamental issue of whether the program is constitutional. More specifically, our brief argues that the mass cancellation of student loan debt violates the



Appropriations Clause of the Constitution, U.S. Const. art. I, § 9, cl. 7. This Clause, which is fundamental to the separation of powers, vests Congress with exclusive control over “the power of the purse,” meaning that every Executive Branch expenditure must be authorized by a congressional appropriation. Our brief contends that the Executive Branch’s abrogation of a half-trillion dollars in student loan debt receivables held by the Treasury is an unappropriated expenditure of federal financial assets, and thus, violates the Appropriations Clause and is unconstitutional. (*Biden v. Nebraska & Department of Education v. Brown*)

**Constitutionality of SEC & FTC Administrative Enforcement Proceedings** — We filed amicus briefs in two coordinated Supreme Court cases involving the question of whether federal district courts have subject-matter jurisdiction to consider constitutional challenges to the structure of Securities and Exchange Commission (SEC) and Federal Trade Commission (FTC) “in-house” civil enforcement proceedings conducted by tenure-protected administrative law judges. On April 24, 2023, the Court unanimously held district courts have such jurisdiction. The Court rejected the SEC’s and FTC’s contention that under Supreme Court precedents, their organic statutes impliedly “strip” district courts of federal question jurisdiction to consider structural constitutional claims, and that instead, those claims can be considered only by a federal court of appeals following completion of an administrative enforcement proceeding and issuance of an adverse administrative judgment. Consistent with the Court’s opinion, ALF’s briefs argued that justice delayed is justice denied; that judicial review cannot be meaningful if a civil enforcement respondent must defer a structural constitutional challenge until after he or she incurs the burdens, costs, and reputational harm of the administrative proceeding claimed to be unconstitutional. Our briefs also contended, consistent with the Court’s opinion, that the SEC and FTC lack any special expertise to rule on their own constitutionally (*SEC v. Cochran & Axon Enterprise Inc. v. FTC*)

## **MISSION: ADVOCATE FOR INDIVIDUAL LIBERTY**

**Freedom of Speech On Social Media** — We filed a Sixth Circuit amicus brief addressing the question of whether the Surgeon General’s alleged efforts to suppress social media “misinformation” that questioned or criticized the scientific bases for the federal government’s COVID-19 policies and messaging violates the First Amendment right to freedom of speech. The plaintiffs allege that the federal government, primarily through the Office of the Surgeon General, pressured Twitter and other social media to censor them and other individuals who “question the wisdom, efficacy, and morality of government responses to the [COVID-19] pandemic, specifically lockdowns and mask and vaccine mandates.” ALF’s amicus brief, filed in support of no party, argues that use of social media to criticize or question the scientific bases for the government’s pandemic messaging and policies fosters sound science, and that the First Amendment prohibits the government from abridging freedom of expression by pressuring social media companies to censor critics of the government’s policies. (*Changizi v. Department of Health and Human Services*)

**Constitutionality of SEC “Gag” Orders** — We filed an amicus brief on behalf of six prominent First Amendment and Constitutional Law Scholars urging the Supreme Court to address the question of whether the SEC violates the First Amendment by imposing a requirement that any party with

whom it settles must agree to a lifelong prior restraint barring any statement, however truthful and whenever and however expressed, that even suggests that any allegation in an SEC Complaint is unsupportable. ALF's brief, authored primarily by Professor Rodney Smolla, President of the Vermont Law School, argues that (i) the SEC Gag Rule is a presumptively invalid prior restraint; (ii) the SEC Gag Rule is a presumptively unconstitutional exercise in content and viewpoint discrimination; (iii) the SEC Gag Rule is an unconstitutional condition; and (iv) the SEC Gag Rule is paternalistic and violates the First Amendment rights of the public to receive information. (*Romeril v. SEC*)

**Freedom of Speech** — We joined a coalition amicus brief requesting the Supreme Court to review the question of whether the First Amendment prohibits a State from compelling attorneys to join and fund a state bar association that engages in extensive political and ideological activities. The brief explains that a significant number of mandatory bar associations engage in pervasive political and ideological activities, and that compulsory payment of dues that help fund such activities require exacting scrutiny under the First Amendment. (*McDonald v. Firth*)





# Does the Federal Government Have Authority Over Public Charter Schools?



**Thomas V. Walsh**

Advisory Council Member  
Atlantic Legal Foundation  
Ret. Principal,  
Jackson Lewis PC

## ***What Charter School Leaders Need to Know***

The Atlantic Legal Foundation has long supported school choice and the charter school movement in particular. Some years ago the Foundation published a series of books discussing labor relations in charter schools. Entitled *Leveling the Playing Field*, each book focused on certain states' specific labor laws applicable to charters and their effect on sound teacher labor relations. A sea change in the laws since those books were published has caused the Foundation to plan for updates to these publications, starting with New York.

Revision, however, is proving difficult. While state law has yielded to federal law as controlling labor relations affecting charter schools, application and interpretation of federal law is undergoing wholesale change by the agency responsible for administering that law. As a result, it is presently impracticable to provide clear information to charter school operators.

Why is this? In a word, politics. Political partisanship permeates charter school law, policy, and operation. Moreover, labor law itself is incessantly buffeted by political winds. Herewith, a few illustrations.



Charter schools exist only to the extent permitted by state legislation. The charter movement began in the 1990's when Minnesota passed the first charter school law. Since then, 44 states have enacted charter laws (and also the District of Columbia, Puerto Rico, and Guam). Passage of these laws often was difficult, despite the fact that charters have enjoyed wide support among parents.

Charters are necessary due to widespread dissatisfaction with public education. Critics blame bureaucratic state and local school boards for hidebound regulation that stifle teaching innovation and creativity. Perhaps more common is criticism of teachers unions for inhibiting change. Collective bargaining agreements restrict – or prohibit – change. As a result, the status quo in public education seems institutionalized and immutable. The architecture of public education is perceived, even by many state legislatures, as too politically entrenched, and too calcified, for transformation.

Charters offer a better alternative. Charter schools are start-up educational institutions founded by individuals desiring to make a difference in children's education. Generally, the founders apply to the state (or designated state educational agency) for a charter. Applicants must prepare plans for curriculum, identify likely student populations, and obtain buildings appropriate for a school. They must be ready to commence operations. This is a significant undertaking. These schools are not private schools, but (upon granting of a charter) are publicly funded and usually part of the free, public educational system. They are not-for-profit institutions. Although they must meet baseline state education, health, and safety requirements, they are free to create their own educational programs. Schools are subject to periodic renewal of their charters. If a charter school is failing, its charter will not be renewed and it will be closed.

In general, charter school laws free these institutions from rigid regulation by school boards and from collective bargaining agreements. Typically, a charter school opens with a non-union staff (although employees may subsequently choose to unionize). Charter school laws permit an alternative form of education, one that fosters new approaches to instruction, smaller classes, responsiveness to community needs, and an emphasis on student learning and achievement.

The rise of charter schools has created a curious dichotomy. There is the traditional public school system, still by far the most common school system. But then there are the charters – many of which are very successful, often more successful than nearby traditional public schools. Plainly stated, where public schools are floundering, the success of charters raise embarrassing questions.

Why can't the traditional schools compete? Why are the teachers' unions – who often style themselves as guardians of child education – so opposed to charter schools?

School boards and the unions until now held a monopoly on public education. Lack of success spotlights the rigid structure of public education: pedagogical methods, adherence to curriculum, absence of accountability, not to mention the high cost of union rules, salaries, and pensions. Unions often oppose passage of charter laws and charter applications.

Where charters are allowed, legislative compromise often restricts their size and number.

While unions have failed to prevent the passage of charter laws, they may still organize teachers and staff on a school-by-school basis. Many unions devote significant resources to this goal. Because of the flexibility it permits, charter school operators generally view remaining non-union as a pillar of school success.

How do unions go about organizing charter schools? How can school leadership address the threat? These are the questions addressed by *Leveling the Playing Field*.

Because charter schools are “public” schools created by state laws, school labor relations were governed by individual state public sector labor laws. These laws also regulated union organizing and the means for expressing employee choice, as well as restrictions upon employer actions. Some states allowed for secret ballot employee elections. Some relied on card check. Some had no specific rules. No “one size fits all.”

Federal labor law, the National Labor Relations Act, covers employers nation-wide, but expressly exempts employees of states and their political subdivisions. The NLRA is administered by the National Labor Relations Board. The NLRB can issue formal labor law rules, but mostly relies on individual case decisions to establish policy under the NLRA. For many years, the Board deemed charter school employees to be public employees, which seemed logical. However, about ten years ago, in a case involving a Chicago charter school, the NLRB revisited the issue. Relying upon unrelated Supreme Court precedent, the Board reconsidered whether individual charter schools under Illinois law were truly “public” employers and their employees exempt from the federal Act’s coverage. It decided that when a school (or a union) asked the Board to decide whether state or federal labor relations law should apply, it would analyze the manner in which the charter was founded and the amount of control the state retained over school management once a charter was granted. Where the charter school was initiated by private (non-governmental) parties, and its management was left largely free of state regulation, the school would not be considered a “political subdivision” of the state. The NLRB therefore would assert jurisdiction over the school and its employees under the NLRA. Applying this analysis, the Board found that the Chicago charter school was not a political subdivision. <sup>(1)</sup>

In 2014, a regional office of the NLRB asserted jurisdiction over a New York City charter school after considering its relationship to New York State and the city Department of Education. The regional director determined that the school was founded by private parties and that the government played virtually no role in its management. Thus, the regional director held, under federal law, the charter school at issue was not a “political subdivision” of the state and its employees were not exempt from coverage of the NLRA. Preferring to be regulated by union-friendly state labor law, the union appealed the decision to the full NLRB in Washington, D.C. In 2016, the NLRB upheld the regional director. <sup>(2)</sup>

This was a sea change for New York charter schools. According to the NLRB, charters were now seen as akin to private contractors engaged by the state to provide services to its citizens, and so, subject to the NLRA. Among other things, this protected the right to a secret ballot election, and conferred on parties a uniform national body of law for determining employee, employer, and union rights.

On a state-by-state basis, the Board (or its regional offices) began holding that other charter schools which were created and administered privately also were covered by federal labor law, including those in Arizona, California, Connecticut, District of Columbia, Illinois, Louisiana, Michigan, Ohio, Oregon, Pennsylvania, Tennessee, as well as additional charters in New York. <sup>(3)</sup>

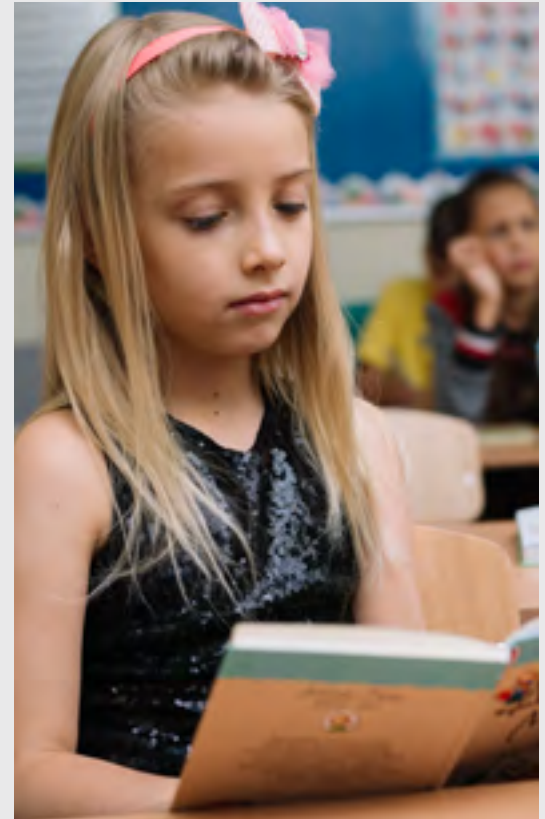
These decisions meant that the discussion of charter school labor law and employer rights in the New York *Leveling* publication (and others) was now out of date.

However, the battle over federal jurisdiction was not over.

The NLRA authorizes the NLRB to delimit the extent of its own jurisdiction; specifically, the Board, in its discretion, may decline jurisdiction over entire industries where it finds their effect on interstate commerce is not substantial, even though it has statutory jurisdiction under the Act. 158 U.S.C. § 14(c) (1). The Board exercises this authority rarely. Nonetheless, in 2018, relying on the dicta of one Board member, the New York union which had been involved in Hyde asked the NLRB in another case to relinquish federal agency jurisdiction over charter schools.

After deliberating for two years, the NLRB declined to grant this request. <sup>(4)</sup>

The future of NLRA coverage of charter schools seemed assured. Nevertheless, the 2020 presidential election meant that the reworking of *Leveling* had to wait. Potential changes in NLRB membership and caselaw following a change of administration could frustrate any early revision. Those changes began taking place. While the “Biden” Board has appeared content to retain jurisdiction over charter schools and their employees, its approach to construing the NLRA and its agenda for addressing particular policies, all of which affect charters, has beset our work with uncertainty.



The National Labor Relations Board consists of five members appointed by the President and confirmed by the Senate. Traditionally, three members are of the President’s party. However, their terms are staggered, so the Board’s majority party does not flip immediately with every election.

The NLRB interprets the Act. As a practical matter, that means it determines whether conduct by unions and by employers comports with the law. It does this almost entirely by deciding individual cases. A violation of the NLRA is called an “unfair labor practice” (ULP). Remedies for violations include backpay and reinstatement for employees, rescission or revision of work rules, and in union organizing settings, a possible rerun election. In extreme cases, the NLRB may order an employer to recognize and bargain with a union without an election. Most complaints are issued against employers rather than unions.

The Board adjudicatory procedure can be lengthy. When a ULP charge is filed alleging a violation of the Act, the regional office determines if there is merit to the allegations; if so, a complaint is issued and the matter is set for trial before an administrative law judge (ALJ). Most charges are settled, but NLRB settlement terms are virtually the same as remedies ordered after a respondent loses at trial. However, employers usually settle cases rather than face the expense of trial (with mounting backpay and interest). If a case goes to trial, the ALJ conducts a formal hearing and issues a decision. Aggrieved parties may appeal to the full Board in Washington. Obtaining an NLRB ruling can take years.

The General Counsel (GC) of the NLRB acts as the prosecutor for the Board. When a ULP charge is



investigated, the GC (acting through regional personnel) directs the process. The GC prioritizes cases and determines the legal theories to advocate at trial. Most significantly, this includes proposing reversals of, or changes to, prior Board decisions. By so doing, the General Counsel effectively tees up the cases and legal theories presented to the NLRB.

Few agencies are as sensitive to politics as the NLRB. Over the years, alternating Democrat and Republican majorities have caused NLRB decisions to tilt first to employees and unions, then to employers, and then back again to employees and unions. This “wobble” has usually been modest in scope. But no longer does this seem to be the case. The NLRB majority under President Trump was clearly pro-employer. The Board under President Biden (who campaigned asserting that he would be “the most pro-union president ever”) has lurched sharply in the opposite direction. The current General Counsel of the NLRB, Jennifer A. Abruzzo, outspokenly advocates for pro-union interpretations of the NLRA. Since taking office in 2021, she has been prosecuting cases urging the Board’s Democrat majority to recast the law in ways detrimental to employers.

These cases profoundly affect many aspects of workplace relationships. With regard to charter schools and their leadership, they raise issues ranging from the continued existence of the right to a secret ballot election and the validity of employer work rules, to all manner of employer communications with employees on labor matters. These include:

- Holding secret ballot elections among employees only where their employer can provide evidence of “good faith doubt” that a union card majority is valid – a dauntingly high threshold.
- Scrutinizing employer policies and work rules for any limitations which could be construed as restricting employee pro-union speech, activity, or sentiments.
- Effectively banning an employer’s right to speak with employees in a group setting with regard to unionization.
- Greatly expanding remedies against employers for NLRA violations, including almost limitless consequential damages (and more).
- Limiting an employer’s ability to prohibit access by union representatives to school property.
- Broadening the scope of statutorily protected conduct by employees; requiring employers to condone pro-union employee conduct otherwise deemed abusive.

... and many more. The number and scope of well-established precedents which are at risk of significant change may be unprecedented. These cases are winding their way through lengthy Board litigation. Until these cases are decided – or until a new Administration takes office and the NLRB changes course – providing practical information to charter school employers is perilous.

The purpose of the *Leveling* series is to help charter school operators learn about labor relations law affecting their schools and to encourage them to engage in proactive education of their teachers and employees on labor issues and unionization. The books also provide a generalized guide to effective communications. Although the books do not offer legal advice — charters should consult with knowledgeable legal counsel to address particular labor relations law issues they may face — the information in *Leveling* is premised on policies and practices that have been generally recognized as lawful by the NLRB over time. However, historically lawful activity described today

could be a violation of federal law tomorrow. The Atlantic Legal Foundation will avoid publishing guidance while so many long-held principles of lawful employer conduct are subject to change in the foreseeable future.

The Foundation will keep an eye on the evolution of the NLRA. When a reliably stable body of law is attained, we will issue revisions.

#### Endnotes

1. *Chicago Mathematics & Science Academy*, 359 NLRB 455 (2012), applying *NLRB v. National Gas Utility District of Hawkins County*, 402 U.S. 600 (1971), in which the Supreme Court set forth its analysis for determining if an employer entity was a private party or was a “political subdivision” of the state.
2. *Hyde Leadership Charter School—Brooklyn*, 364 NLRB 1137 (2016).
3. The only state in which no NLRA jurisdiction was found is Texas, as state charter school law reserves public authority over the school to such a degree that it was deemed exempt from the Act as a political subdivision. *LTTS Charter School*, 366 NLRB No. 38 (March 15, 2018). 4. *KIPP Academy Charter School*, 369 NLRB No. 48 (March 25, 2020).





# Science and Law: A Search for the Truth

By Atlantic Legal Foundation Advisory Council Members:  
Thom Golab and Jacob Traverse



**Thom Golab**  
President, American  
Council of Science  
and Health



**Jacob Traverse**  
President & CEO, Center  
for Truth in Science

Science and law are both relatively recent human creations.

Applied science made its appearance well before its written version. Between 2600 and 2500 B.C. there was significant science activity. The people of the British Isles erected Stonehenge and the Egyptians built the pyramids. The science of that time was goal directed, finding a better way to live in the world and connect with the controlling powers of their gods. Today, science has taken on new roles, especially in understanding those controlling powers and seeking ways to better predict and manage them.

Time has proven that there is good science and bad science - often called junk science. Junk science began to rise in the 1960s and 1970s, mostly promoted by organizations and individuals that were looking to profit from the public's fears. Bad science doesn't seek the truth, it seeks fame and fortune.



Written law didn't appear until between 2100-2050 B.C., the Code of Ur-Nammu, created in Ur a city in Mesopotamia. For the most part these laws and the subsequent and more humane Code of Hammurabi were administered by kings and their appointees, the ancient "State." The scales of justice represent truth and fairness in today's legal systems. The law searches for the truth by weighing evidence, balancing the evidence of one party in relation to another without any other intervening forces. The party with the more complete and convincing evidence will have more "weight" on justice's scale.

There have been good law and bad law. Sometimes bad law are enactments - The Jim Crow Laws of the South, the redlining in the North both come to mind. Sometimes it is bad court decisions - Buck v. Bell where the SCOTUS ruled that the State may sterilize an individual merely because they have "intellectual disabilities," which parenthetically is a decision still not overturned. Bad law again doesn't seek the truth, it seeks to oppress and profit.

But science and law share a commonality in searching for truth. Science searches for the truth in our physical world. Law searches for truth in our social world.

**"We follow the science."** - Fictional Dr. Grissom of CSI: Crime Scene Investigations

Science has played an ever increasing and evolving role in criminal law for nearly a century and a half. Leaving behind phrenology we have developed fingerprinting and now DNA matching all made possible by science. Science has helped the legal system find the truth; for prosecutors to convict wrongdoers and for defense attorneys to exonerate those who are innocent. Sometimes they are at odds, but following the Daubert trilogy of cases\* as codified in Federal Rule of Evidence 702, all as to which Atlantic Legal Foundation has been instrumental, it is becoming rare for junk science and scaremongering to make their way into court proceedings.

Science has played an increasing role in civil litigation as well. With billions of dollars at stake in large class action suits, the science of risk and safety has become increasingly contentious.

Science was used by the plaintiffs in a class action suit against the makers of asbestos, showing exposure leads to an increased risk of developing mesothelioma.

**"The importance of scientific accuracy in the decision of such cases reaches well beyond the case itself. ... we must search for law that reflects an understanding of the relevant underlying science, not for law that frees companies to cause serious harm or forces them unnecessarily to abandon the thousands of artificial substances on which modern life depends."** - Associate Supreme Court Justice Stephen Breyer

And for more than a century, science has played a critical role in the **creation** of laws. Science is routinely used in the creation of regulations meant to further the Clean Air Act. Under this act the EPA began limiting exceedingly small air particles, particulate matter 2.5, PM<sub>2.5</sub>. Over the last 20 years, these regulations have reduced PM<sub>2.5</sub> in the US by 37 percent. Satellite images show America has the cleanest air outside of Siberia and Antarctica. Sound science, produces beneficial law.

Some scientists and regulators think that the EPA needs to make the PM<sub>2.5</sub> levels even lower. A very costly undertaking. Why make this demand if PM<sub>2.5</sub> levels are continuing to drop, even below the EPA's current standard the EPA set? The reason given by these advocates is data showing PM<sub>2.5</sub>-related ailments have risen over the past 22 years.

**“Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action.”** - The American Cancer Society Cancer Prevention Study I

This was the significant data underlying the Smoking and Health: Report of the Advisory Committee to the Surgeon General in 1964. It was another 26 years before the incidence of lung cancer peaked in the US. Biological impacts often lag months and in this case years behind exposure. In the face of declining levels of  $PM_{2.5}$ , but rising incidents of  $PM_{2.5}$  associated disease, ignoring lag intervals is just one way in which faulty, “bad” science, can influence regulation.

**The research the EPA is using to validate their stricter  $PM_{2.5}$  policy is not open for the public to examine the underlying methodology, data, or the results leading to their conclusion.** The scientific “method” recognizes that you can never prove something true, only that something is false. So, a form of skepticism is built into the philosophic approach. The opacity of the underlying science runs counter to the scientific method and it is here where regulatory science goes from bad to worse. Public health, the EPA’s focus, requires evidence-based science. But that requires that we know the evidence. The scientific method is based upon an understanding that evidence is what we know and what we know can change as we learn more. So, perhaps we should call it evidence-informed science. A lack of transparency in regulatory science brings the words of President Dwight Eisenhower into a new perspective:



**“The prospect of domination of the nation’s scholars by Federal employment, project allocations, and the power of money is ever present and is gravely to be regarded .... Yet, in holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that *public policy could itself become the captive of a scientific technological elite.* ... It is the task of statesmanship to mold, to balance, and to integrate these and other forces, new and old, within the principles of our democratic system-ever aiming toward the supreme goals of our free society.”**

Thus, it is within the courtroom walls and legislative halls where science and law come together to shape our world. The judicial professionals and experts who oversee our courts and legal system increasingly serve as gatekeepers who determine what science and specifically what evidence can be used to determine the truth in cases where harm is alleged. The

Atlantic Legal Foundation has worked for many years to ensure that evidence and expert witness testimonies are based on sound science and pushed back on the use of junk science and the toxic tort industry.

Recently, there are examples of judges and jurists taking this role seriously and pushing back against financially incentivized lawsuits based on flawed or intentionally biased scientific evidence. In the case of the popular antacid medicine Zantac falling under scrutiny in 2019 for potential harm caused by the presence of a known carcinogen, U.S. District Court Judge Robin Rosenberg issued a 341-page “smackdown” of faulty science and contrived evidence put forth by the plaintiffs

and their expert witnesses. Judge Rosenberg thoroughly debunked the scientific claims by providing a detailed assessment of how the methods and evidence were created or manipulated by the plaintiffs to fit their claims and did not indicate causation. This resulted in dismissal of the multidistrict litigation based on the U.S. Supreme Court's standard for experts set in its 1993 decision now reflected by the Daubert\* trilogy and Federal Rule of Evidence 702, in which the Atlantic Legal Foundation was recognized by the Court for its helpful amicus brief on behalf of the Court and ALF's amici including Nobel laureates and other renowned scientists.

**“Here, there is no scientist outside this litigation who concluded [Zantac] causes cancer, and the plaintiffs’ scientists within this litigation systemically utilized unreliable methodologies with a lack of documentation on how experiments were conducted, a lack of substantiation for analytical leaps, a lack of statistically significant data, and a lack of internally consistent, objective, science-based standards for the evenhanded evaluation of data,”**

**- U.S. District Court Judge Robin Rosenberg**

So, science and law have much in common. Science, as we know it, is merely natural laws. And law, as we know it from law-making bodies, the criminal and civil trial and appellate courts, often have deep roots or jurisprudence in science.



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\* *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)





# Welcome you to the Atlantic Legal Foundation's 2022 Annual Awards Dinner & Reception



**Dan Fisk**

Chairman and President

**Larry Ebner**

Executive Vice President &  
General Counsel



**The Jonathan Club**  
**Los Angeles, California**  
*(A first for ALF on the West Coast)*  
**September 28, 2022**

Founded in 1895, the Jonathan Club began as a modest social Club in the heart of Los Angeles, a city boasting a population of around 70,000 at the time. Named after Brother Jonathan, a caricature predecessor of the iconic Uncle Sam, Jonathan Club has established itself over the past century as the flagship of the west coast. Generations of members have included some of the most influential figures in American and California history, shaping our city into the modern pillar of culture, production, and worldwide influence that it is today. With a private slice of the Santa Monica Beach and a 12-story facility in the heart of downtown LA, members continue to deepen the great American Legacy that is Jonathan Club.



The Robert Leatherbarrow Jazz Trio

# The Reception in the Jonathan Club's Florentine Lounge



Dan Fisk, Dominique Woods, Matt Newman,  
Diane Fisk, Sean Casey



Giovanna Brasfield, Chris Lovrien, Eric Helland,  
Jaime Morikawa, Sylvia Dsouza and Nick Pace



Dennis Smith with ALF's Director, Jonathan Graham EVP  
General Counsel & Secretary of Amgen, Inc.  
Chairman of ALF's Annual Awards Committee and the  
Master of Ceremonies for the Evening





Debra Granfield and Nick Pace



Dennis and Peggy Tong Lee



Diane Fisk, Lori Barth, Wendy Fisk and Connie Miranda



Joe Lasher



Atlantic Legal Foundation Reception



ALF Vice Chairman, Gus duPont greets guests, Lori Barth, Wendy Fisk, Connie Miranda and Diane Fisk as guest, Vic Miranda and Chairman Dan Fisk bear witness





Vic Miranda, Diane Fisk, Lori Barth, Wendy Fisk  
& Connie Miranda



ALF Director Malcolm McNeil (with ALF Executive Assistant  
Tee Cirillo and guests)



Brandon Baker and Sylvia Dsouza  
of the RAND Corporation



Caitlin Sanders



Chris Lovrien, Eric Helland, Jaime Morikawa,  
Sylvia Dsouza and Nick Pace



Dan Fisk and ALF benefactor Frank Broidy



ALF Chairman Dan Fisk & Vice Chairman Gus duPont



Hudson Fisk and Wendy Fisk



The Fisk Family - Hudson, Wendy, Diane and Dan



Thomas Watson and Kevin Mayer



ALF Director Tom Evans



Vic Miranda, ALF Director Sean Casey, Hudson Fisk and Frank Broidy





Jeffrey Shane, Jennifer McNeil Lozano, ALF Director  
Malcolm McNeil, Barbara Morrow and Edgar Park



Howard and Carol Knee



ALF Advisor Greg Baumann, and ALF Directors  
Sean Casey and Lee Cheng



Elena Danielson, Antonella Rossi and Svetlana Furlotti



Elena Danielson, Antonella Rossi, Barbara Morrow and  
Kelle Che



Elena Danielson, Alex Furlotti and Svetlana Furlotti





ALF Advisor John Kalas and Rick Norris



Karen Ventura and Dan Fisk



Jen and Joe Lasher



Kelly Che and Pietro Bellinghieri



Kristen Hart and Susanne Boniadi



ALF EVP-GC Larry Ebner and friend Michael Tenenbaum



Larry Ebner, Dan Flisk and Thomas Watson



Larry Ebner, ALF's Director David Axelrad and Frank Falzetta



Father & Daughter Malcolm McNeil and Jennifer McNeil Lozano



Mark Cramer and Robert Cooper



Melissa Pastrana, Diane Mendez, Wendy Whiteford and Will Diaz



Natalie Alameddine and Dennis Lee





Nice Pace, Chris Lovrien, Eric Helland, Ken Feinberg, Jaime Morikawa and Carolyne Duhl



Nicolas Sonnenburg and Samuel Tobin



Rachel Lerman, John Taylor, and ALF Director David Axelrad



ALF Directors Sean Casey and Lee Cheng



Serra Aladag and Jason Riley



Steve Platt and ALF Advisor Greg Baumann





Jim Richman & Susan Geller



Eric Helland, Giovanna Brasfield, Sylvia Dsouza  
and Brandon Baker



Frank Broidy, Hudson Fisk and Dan Fisk



Greg Baumann, Sean Casey and Lee Cheng



Sylvia Dsouza, Jaime Morikawa, Ken Feinberg,  
Michael Rich, Debra Granfield and Brandon Baker



Michael Rich, Debra Granfield and Brandon Baker





# The Awards Dinner



## THE PROGRAM

### WELCOME

**Dinner Chairman Jonathan Graham**

Executive Vice President, General Counsel &  
Corporate Secretary, Amgen, Inc.

**Hayward Dan Fisk**

Chairman and President, Atlantic Legal Foundation

### INTRODUCTION OF 2022 ANNUAL AWARD

#### RECIPIENT

**MICHAEL D. RICH**

President, Emeritus  
RAND Corporation

*by*

**KENNETH R. FEINBERG**

Renowned Mediator / Special Master

#### FOLLOWING HIS INTRODUCTION

*by*

**ALF DIRECTOR**

**JOE G. HOLLINGSWORTH**

Partner  
Hollingsworth LLP

### REMARKS ON

“Truth Decay”

**Michael D. Rich**

### INTRODUCTION OF JASON RILEY

Biographer of Lifetime Achievement Honoree

**DR. THOMAS SOWELL**

*by*

**JONATHAN GRAHAM**

EVP-GC & Corporate Secretary, Amgen Inc.

### PRESENTATION OF AWARDS

**Hayward D. Fisk**

### CLOSING REMARKS

**Jonathan Graham**

## DINNER HOST COMMITTEE

### ————DIAMOND————

**RICHARD J STEPHENSON  
& DR. STACIE J. STEPHENSON**

### ————PLATINUM————

**AMGEN**  
**Buchalter**

### ————SILVER————

**BLANKROME**

**MARCO Q. ROSSI & ASSOCIATI, PLLC**

### ————BRONZE————



**ArentFox**  
**Schiff**



**CHARLES R. WORK &  
VERONICA A. HAGGART**

**DIANE & DAN FISK FAMILY**



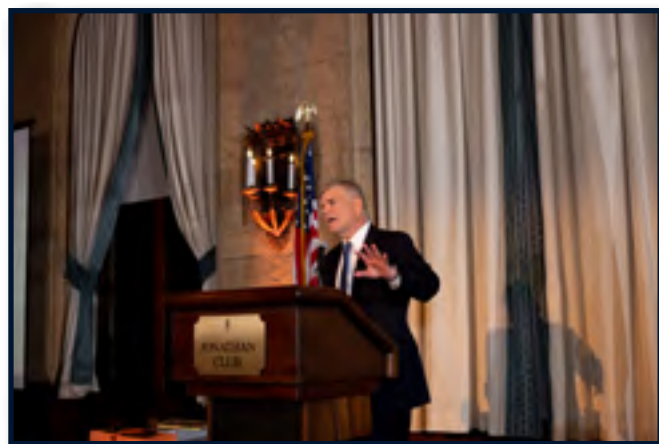
**HORVITZ & LEVY**

**JAY B. STEPHENS**





Master of Ceremonies Jonathan Graham  
 ALF Director & Chair of ALF's Annual Awards Committee  
 Executive Vice President, General Counsel & Secretary Amgen, Inc.



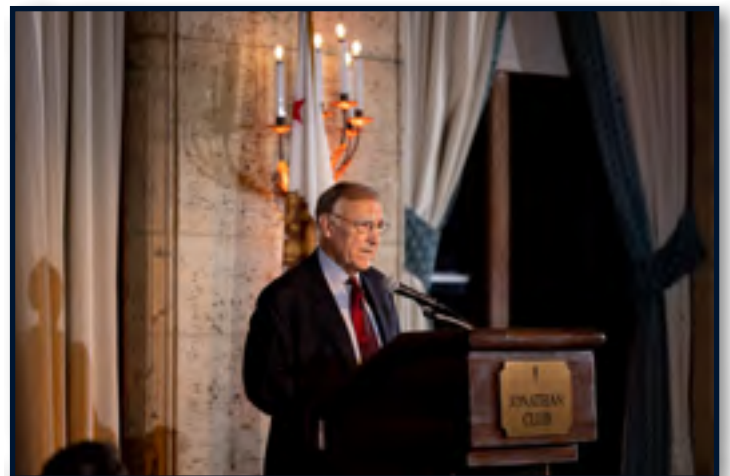


M/C Jon Graham introducing ALF  
Chairman & President Dan Fisk



Dan Fisk welcoming guests and reporting on the  
mission and achievements of ALF









Dan relinquishing the podium to Jonathan who introduced Jason Riley, renowned columnist for The Wall Street Journal, Senior Fellow of the Manhattan Institute and biographer for ALF's Lifetime Achievement honoree Dr. Thomas Sowell... extolled by Jason who later accepted the award in his behalf. Dr. Sowell is now in his 90's and consequently an infrequent traveler.

In introducing Dr. Thomas Sowell's biographer, Jason L. Riley ... Master of Ceremonies, Jonathan Graham, highlighted Jason's tenure as a senior fellow at the Manhattan Institute and as a highly read, frequent columnist for the Wall Street Journal.

An author in his own right, in addition to ***Maverick*** the first biography of Dr. Thomas Sowell, Sowell himself an author of over 30 books, Jason has written several previous books, including ***Please Stop Helping Us: How Liberals Make It Harder for Blacks to Succeed*** and ***False Black Power?***

In extolling Dr. Sowell as one of the great social theorists of our age, Jason shared a video highlighting Dr. Sowell's life and his career spanning more than a half century. Sowell's books cover topics from economic history and social inequality to political philosophy, race, migration, and culture. Notably, as Jason observed, Dr. Sowell's bold and unsentimental assaults on liberal orthodoxy endeared him to many but enraged many of his fellow intellectuals, the civil-rights establishment and much of the mainstream media. Candidly, he acknowledged that as a result, critics preoccupied with political correctness have demeaned, ignored, and downplayed Sowell's important contributions. Responding to Dr. Sowell's detractors, Jason highlighted why Sowell should be celebrated and honored by the Atlantic Legal Foundation for being an iconic thinker and a prolific author who achieved greatness from his early life as a black orphan born in the Jim Crow South, being introduced at a very young age to the benefit of being a voracious reader and student, going on to graduate from Harvard, earn a PhD under also famous economist Milton Friedman at the University of Chicago, teach economics at Cornell and UCLA, and spend the past four decades as one of America's foremost public intellectuals.

Attendees at ALF's Award Dinner received complimentary hard bound copies of Jason Riley's biography of Dr. Sowell, **Maverick**, which has received outstanding praise as reflected on the book's jacket:

*"Thomas Sowell is among the most brilliant thinkers in the world today—deep, original, creative, fearless, intimidatingly erudite. His gripping and improbable life story can only magnify one's awe at this astonishing man's accomplishments."*

—STEVEN PINKER, Johnstone Professor of Psychology, Harvard University, and the author of **How the Mind Works** and **Enlightenment Now**

*"Maverick is a brilliant intellectual biography of one of the most important thinkers of our time. Jason Riley writes lucidly and engagingly, illuminating ideas of Sowell's that are more timely today than ever, dispelling many myths along the way."*

—AMY CHUA, professor, Yale Law, and author of **Battle Hymn of the Tiger Mother** and **Political Tribes: Group Instinct and the Fate of Nations**

*"Enlightened opinion has it that the views of conservative Black thinkers are boilerplate canards dismissible with a few statistics. Enlightened opinion is also uninformed by—and quite dismissible in the light of—the life's work of Thomas Sowell. At last a biography that shows how and why."*

—JOHN McWHORTER, professor of linguistics, Columbia University, contributing editor at the Atlantic, and host of Slate's Lexicon Valley

*"With the publication of Maverick, Jason Riley has rendered an enormous service by providing a compelling, informed, and elegant intellectual biography of the great Thomas Sowell. It was obviously a labor of love. As a professional economist and Windy City native, I especially appreciated Riley's nuanced, deeply researched account of Sowell's roots in the Chicago school of economic thought, as it was led by Milton Friedman and George Stigler in the 1950s and 1960s."*

—GLENN LOURY, professor of economics, Brown University







Jason Riley extolls Dr. Sowell

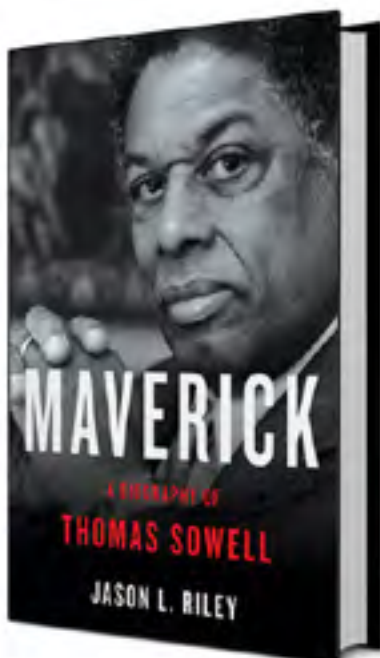


## Dr. Thomas Sowell

Author Economist Teacher Intellectual

Thomas Sowell is one of the great social theorists of our age. In a career spanning more than a half century, few scholars have matched his range and accessibility. He has written more than thirty books, covering topics from economic history and social inequality to political philosophy, race, migration, and culture. His bold and unsentimental assaults on liberal orthodoxy have endeared him to many but enraged fellow intellectuals, the civil-rights establishment, and much of the mainstream media. As a result, critics preoccupied with political correctness have demeaned, ignored, and downplayed his important contributions.

In the first-ever biography of Sowell, Wall Street Journal columnist Jason L. Riley gives this iconic thinker his due and responds to the detractors. ***Maverick*** showcases Sowell's most significant writings and traces the life events that shaped his ideas and resulted in a Black orphan from the Jim Crow South going on to graduate from Harvard, earn a PhD under Milton Friedman at the University of Chicago, teach economics at Cornell and UCLA, and spend the past four decades as one of America's foremost public intellectuals.







ALF Director Joe Hollingsworth of Hollingsworth LLP in Washington D.C. Introduces famous Mediator/Special Master, Ken Feinberg, A Trustee of RAND to Introduce  
ALF's 2022 Honoree Michael Rich  
President Emeritus of the RAND Corporation

## Kenneth Feinberg



Kenneth Roy Feinberg is an American attorney specializing in mediation and alternative dispute resolution. He served as the Chief of Staff to Senator Ted Kennedy, Special Master of the U.S. government's September 11th Victim Compensation Fund and the Special Master for TARP Executive Compensation. Additionally, Feinberg served as the government-appointed administrator of the BP Deepwater Horizon Disaster Victim Compensation Fund. Feinberg was also appointed by the Commonwealth of Massachusetts to administer the One Fund—the victim assistance fund established in the wake of the 2013 Boston Marathon bombings. Feinberg was also retained by General Motors to assist in their recall response and by Volkswagen to oversee their U.S. compensation of VW diesel owners affected by the Volkswagen emissions scandal. Feinberg was hired by The Boeing Company in July 2019, to oversee distribution of \$50 million to support 737 MAX crash victim families. Feinberg is also an adjunct professor at the Columbia University School of Law, University of Pennsylvania Law School, Georgetown University Law Center, New York University School of Law, the University of Virginia School of Law and at the Benjamin N. Cardozo School of Law. He is a Trustee of the RAND Corporation.



Dynamic and intense... Michael Feinberg... introduces ALF's 2022 Annual Honoree Michael Rich, Esq.







## Michael D. Rich, Esq.

President Emeritus  
RAND Corporation

Michael D. Rich is President Emeritus at the RAND Corporation, a nonprofit, nonpartisan research organization that helps improve policy and decisionmaking through research and analysis. For nearly 50 years, he helped RAND become a leading source of expertise, analysis, and evidence-based ideas in an increasingly complex and polarized policymaking environment.

During his tenure as President and CEO from 2011 to 2022, Rich focused on extending the impact of RAND's work. He challenged the organization to broaden its legacy of innovation and help decisionmakers stay ahead of the curve on the issues that matter most. Rich is the coauthor of **Truth Decay**, the first study in an ongoing series of research that examines how the diminishing role of facts and analysis in public life has caused an erosion of civil discourse and political paralysis, among other problems.

In 2020, Rich launched the ongoing fundraising campaign Tomorrow Demands Today, the most ambitious such effort in RAND's history. Philanthropic support enables RAND researchers

and students at the Pardee RAND Graduate School to bring bold thinking, analytical rigor, and cross-cutting perspectives to the most critical issues of our time.

Rich began his RAND career as a summer intern in 1975, joining the organization full-time the following year as a researcher focused on U.S. national security issues. He served in a variety of senior leadership positions at RAND and was instrumental in the creation of the RAND National Defense Research Institute, a federally funded research and development center that provides research and analysis to the Office of the Secretary of Defense, the Joint Staff, the Unified Commands, the Navy, the Marine Corps, the defense agencies, and the Intelligence Community. He also helped lead RAND's diversification and expansion into international markets—including Europe and Australia. Throughout his career, Rich has been an enthusiastic supporter of Pardee RAND, the world's largest public policy Ph.D. program, where he has taught and advised graduate students and has chaired numerous committees.



# Michael Rich presents his special remarks on Truth Decay



I am breaking one of my cardinal rules tonight.

I have had the privilege many times of introducing Ken Feinberg, but I made a promise to myself to never, ever speak after him.

I took a chance tonight because these days, when you see Ken Feinberg's name on something, it might be Ken or it might be Michael Keaton, who played Ken in **Worth**, the terrific movie based on Ken's book about his experience with the 9/11 Victims Fund.

It was definitely worth it this one time. Thank you, Ken, for that generous introduction.

This recognition is especially meaningful to me for several reasons.

First, my respect for Dan Fisk, who was a member of our Institute for Civil Justice Advisory Board a few decades ago, as well as Chuck Work, whose flight out of Florida was cancelled. I hope that he and his family and everyone else in the path of Hurricane Ian are safe.

The second reason has to do with my respect for the illustrious list of past ALF awardees, which includes three former RAND trustees I worked with — Carla Hills, Don Rumsfeld, and Walter Wriston — and several others I have been fortunate to know.

Third, to be recognized alongside Professor Sowell. For more than 60 years RAND has published a calendar with twelve quotations from notable thinkers, past and present, on topics that are central to RAND's mission. Selecting those quotations each year was one of the best parts of serving as the President of RAND.

Last summer, long before I learned about tonight, I selected a quotation from Professor Sowell that users of the calendar will see when they turn it over to December this year.<sup>1</sup> I won't read it now, but I hope that coincidence helps explain why it means so much to be recognized along with him.

The fourth reason is the alignment of the Atlantic Legal Foundation's purpose with the purpose of the institution to which I dedicated my entire professional life, the RAND Corporation.

I realize that there is often mystery surrounding RAND, perhaps because of our national security

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<sup>1</sup> "Where intellectuals have played a role in history, it has not been so much by whispering words of advice into the ears of political overlords as by contributing to the vast and powerful currents of conceptions and misconceptions that sweep human action along." From *A Conflict of Visions: Ideological Origins of Political Struggles*, 2007.

credentials. Let me try to clear some of that mystery away because it is relevant to my main topic tonight.

RAND's purpose is elegantly simple. In my words, it is to help ensure that the most important decisions--I am referring to the decisions that affect the most people ... that involve the most public resources ... that directly affect public trust and confidence in our most hallowed institutions. In other words, the decisions with the most enduring consequences.

RAND's purpose is to help ensure that those kinds of decisions are made on the basis of the best possible evidence. Without political spin, without partisan ideology, without commercial bias. It's what I've referred to as the "RAND Idea."



RAND is now in its eighth decade and it's shown over and over again the power of the "RAND idea." It's enabled my colleagues to:

- Create the foundations for the American space program
- Devise the strategy and many of the programs that contained and ultimately defeated the Soviet Union
- Track the evolution of terrorism and evaluate the effectiveness of different counterterrorism strategies and tactics
- Invent and extend analytical methods like dynamic programming, linear programming, and game theory
- Provide the analytical basis for the international treaty that banned ozone-depleting substances around the world
- Build the tools for defining and measuring the quality of health care, tools that are now commonly accepted and widely used to narrow the gap between what science says about the best health-care practices ... and the care that most Americans actually receive.

The list goes on and on.

RAND has tackled many challenges over the years, and continues to do so now, but nearly 20 years ago, I began to notice that facts and analysis were becoming less and less important in public discourse and public-policymaking. Discussions about issues of national and global importance were increasingly being guided by ideology ... and propelled by emotion. Not by facts. Not by evidence.

Obviously, there is no shortage of complex policy challenges ahead but over time I came to believe that the most serious and challenging of all is the diminishing role of facts and analysis in public life. More specifically:

- The heightened disagreement about objective, verifiable, observable facts and analytical interpretation of data.
- The blurring of the line between fact and opinion.
- The huge and growing volume of opinion relative to facts, which means that opinions often drown out facts.
- The decreasing trust in institutions, particularly those that have traditionally been looked to as sources of factual information and scientific knowledge, such as the government, the media, academia.

These trends make up what I have been calling, ‘Truth Decay.’ More about why I began using that term in a moment.

Truth Decay is antithetical to the proposition on which the RAND Corporation was founded. But, beyond that, it is dangerous in the extreme.

I confess that my initial worry back in 2005 was strictly parochial: If people were going to rely less and less on facts and analysis to make important policy decisions ... I figured that it didn’t bode well for the RAND business model.

**But, I eventually came to see the trends as something larger and more ominous ... a threat to effective and efficient governance.**

**That’s because the inability to agree on a single set of facts erodes civil discourse: The ability to have a respectful, productive discussion about a significant issue with someone with whom you disagree.**

**When this happens in government, as we see over and over again, it leads to dysfunction and sometimes even gridlock.**

**Without civil discourse, tackling a nation’s most serious and chronic problems is virtually impossible.**

Sure, one political party or the other can enact something when it is in the majority.

Usually. And later, when the other party inevitably reclaims the majority, it can repeal and replace what its predecessor has enacted. Usually. And, this zig-zag can repeat itself over and over again.

But, has any vital, complex policy problem ever been solved that way? Nowadays, no major policy problem can be solved in the span of a four-year Presidency, much less a





two-year Congress. That's just not enough time to reform an entitlement program, or plan and execute a major infrastructure project, or for that matter, defeat an insurgency.

**The most difficult challenges require compromise and consensus over long periods of time and that's impossible if different factions can't agree on a single set of facts. This was the realization that led me to finally reject terms like "post-truth era" and "post-fact era." Those are descriptions of end states, as if things couldn't get any worse.**

I've encountered many people who ask whether—or how much of—this Truth Decay is really new? I've been asked, haven't politicians always been "masters of spin?" What about that old saw that "a lie can travel around the world before the truth can get its pants on"? That line has been around in various forms since the 1920s. Haven't there been periods like this before. Well, around yes and no.

There have been at least three periods in American history that were similar to today: The 1880s and 1890s, a period when income inequality and populism were also on the rise. That's when "yellow journalism" flourished. Then, the 1920s and 1930s, when radio completely upended the information landscape. And again in the late 1960s and early 1970s—the era of the Vietnam War and Watergate—a period of deep distrust in government and other institutions.

Those three periods were indeed similar to today, but they weren't as dangerous. What we didn't see in any of those earlier periods was the growing disagreement about facts and analytical findings. Why not? The explanation is complex. The information environment; the unprecedented recent changes in speed and scope of the information flow. More sophisticated disinformation techniques. The failure of our education system to keep pace with these developments. The social, economic, and political polarization that enables information bubbles to form and persist.

To give you a sense of how complicated and dangerous this is: Truth Decay isn't limited to any one region of the country, it's not limited to one demographic, it's not limited to one political party, and it's certainly not limited to one politician. It's truly not a systemic problem and it certainly can get worse.

**Of course the justice system is not immune from the threat of Truth Decay, it's already been affected, which is why I admire the commitment of the Atlantic Legal Foundation to ensuring the use of sound science and expert testimony.**

**The President of the National Center for State Courts, Mary McQueen, has called court-related disinformation campaigns "the biggest attacks that we've seen on the justice system." One of my RAND colleagues, Elina Treyger, working in the Institute for Civil Justice, has noted that "at the same time, the civil justice system is becoming the 'new front in the war against misinformation,' as courts are being asked to handle more and more suits from victims of disinformation, suits against technology companies alleging facilitation of disinformation or misinformation, and shareholder suits alleging disinformation-related fraud."**

But it could get even worse. Just as other institutions known as fact-based authorities have seen their levels of public trust erode, so could our system of justice and the institutions that comprise it. And: Just imagine if Truth Decay engulfs and weakens the jury system, charged with separating fact from opinion.

**But, here is why that trend is even more worrisome. The more that government can't get things done, the more that public trust in essential components of our civic infrastructure will erode. And, as that happens, the more likely it will be that citizens will begin disengaging and becoming alienated from the civic processes and institutions upon which healthy democracies depend. There are some signs that this is already occurring and perhaps even accelerating.**

I've been fortunate in my career at RAND to get to know some truly inspiring figures in public service. Chief among them is Newton Minow of Sidley & Austin. Newt, of course, was chair of the Federal Communications Commission in the Kennedy Administration and he was later chairman of the RAND Board of Trustees.

Newt reminded me that RAND was created nearly 75 years ago to help address the existential threat of that time – nuclear weapons in the hands of the Soviet Union. He went on to say that “Truth Decay is the existential threat of our time.”

So, what started as a parochial worry for me has turned into a passion, or maybe an obsession.

That is why I recruited a colleague, Jennifer Kavanagh, to join me in writing a book<sup>2</sup> that defined Truth Decay; established a conceptual framework of causes, consequences, and linkages among them; compared and contrasted similar periods in American history; and laid out an analytical plan for countering Truth Decay.

I am pleased that RAND is continuing to lead the fight against Truth Decay. My fellow trustees and other RAND supporters have donated and raised more than \$5 million to establish a Chair at RAND to lead the program on Countering Truth Decay. That will help RAND continue to develop the strategies and tools necessary to restore facts and rigorous, objective analysis to their rightful place as the centerpiece of civic discourse and the foundation for sound decisionmaking about major public policy problems.

**The recognition tonight from the Atlantic Legal Foundation reinforces my commitment to that cause. It's why I am so moved and so grateful for the award. And, it is why I am so grateful for the Atlantic Legal Foundation's own long-standing commitment to sound science and expert testimony.**

Thank you again for the recognition and for joining me in this fight.



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<sup>2</sup> Jennifer Kavanagh and Michael Rich, *Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life*, RAND Corporation, 2018. Can be downloaded at [https://www.rand.org/pubs/research\\_reports/RR2314.html](https://www.rand.org/pubs/research_reports/RR2314.html). Additional reports, summaries, tools and videos produced by RAND's Countering Truth Decay project can be downloaded at <https://www.rand.org/research/projects/truth-decay.html>



Presentation of the Awards by ALF Chairman & President Dan Fisk







# The Awards

The Atlantic Legal Foundation's Annual Awards Dinner presents a prestigious event to honor exceptional individuals for their contributions to the betterment of America. As part of this distinguished occasion, each honoree is awarded a special custom award — This year, an entitlement to \$3,000 worth of custom clothing from the renowned *Tom James*. This exclusive opportunity allows the honorees to indulge in the finest tailoring and craftsmanship, ensuring that they are dressed impeccably for their professional pursuits. With *Tom James'* reputation for delivering exquisite garments tailored to individual preferences, the recipients can confidently embrace their distinctive style and present themselves with elegance and sophistication at any occasion. This generous custom clothing entitlement further signifies the Atlantic Legal Foundation's recognition of excellence and serves as a memorable tribute to celebrate the remarkable achievements of these exceptional individuals.



Dr. Thomas Sowell



Michael D. Rich, Esq.





Master of Ceremonies Jonathan Graham brings the celebration to a close as attentive guests look on and finish their gourmet dessert...



Natalie Alameddine



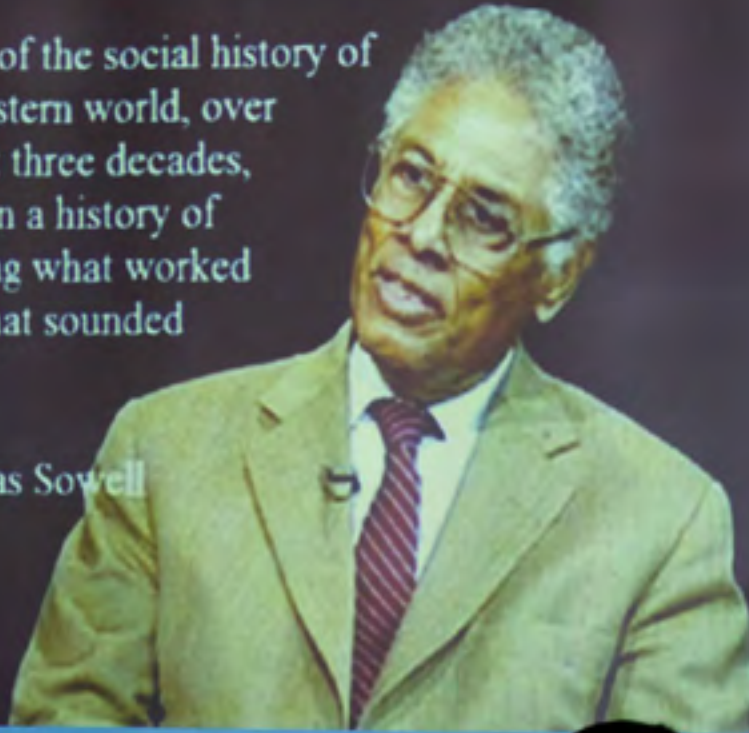
Madeline & Victor Lindenheim



# Dr. Thomas Sowell

"Much of the social history of the Western world, over the past three decades, has been a history of replacing what worked with what sounded good."

- Thomas Sowell



Connie Miranda   Frank Briody   Bob Leatherbarrow   Lori Barth  
Greg Morrow   Hudson Fisk   Wendy Fisk   Jeanie Hayes







Howard Knee   Arash Beral   Harrison Brown



Karen Ventura



Greg & Barbara Morrow  
Jonathan Club Member Hosts





Joe Hollingsworth and Ken Feinberg

Elizabeth & Jonathan Graham, M/C engaged with  
ALF Chairman & President Dan Fisk



Earth Shaw ALF Director Malcolm McNeil Kristen Hart



Kristen Hart



Brad DeJardin



Susan Geller, Serra Aladag  
& Jim Richman







Gloria Castellanos &  
ALF Director Steve Matthews



John Leftwich



ALF Director / Secretary Ana Tagvorian  
flanked by friends



Matt Newman & Dominique Woods



Dan & Larry

# Annual Award Recipients 1988-2022

2022



**Michael D. Rich**  
*President Emeritus  
RAND Corporation*

2019, 2020 & 2021

*Deferred due to Coronavirus  
pandemic*

2018



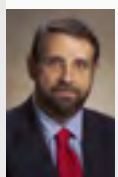
**Thomas N. Kendris**  
*US Country President, Global Head  
Litigation and President  
Novartis Corporation*

2017



**Richard J Stephenson**  
*Founder and Chairman of the Board  
Cancer Treatment Centers of  
America® & CEO International  
Capital Investment Company*

2016



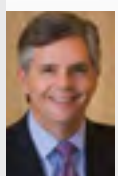
**Hon. Harvey L. Pitt**  
*Chief Executive Officer  
Kalorama Partners, LLC  
Chairman of the United States  
Securities and Exchange  
Commission (2001-2003)*

2015



**Hon. Frank Keating**  
*President and CEO (Ret.)  
American Bankers Association  
Governor of Oklahoma (1995-2003)*

2014



**H. Lawrence Culp, Jr.**  
*President and CEO (Ret.)  
Danaher Corporation  
Chairman & CEO  
General Electric*

2013



**Bill Nuti**  
*Chairman, CEO and President  
NCR Corporation*

2012



**William H. Swanson**  
*Chairman and CEO  
Raytheon Company*

2011



**Edward J. Ludwig**  
*Chairman of the Board  
BD*

2010



**W. James McNerney, Jr.**  
*Chairman, President and CEO  
The Boeing Company*

2009



**Chad Holliday**  
*Chairman of the Board  
DuPont & Bank of America*

2008



**William C. Weldon**  
*Chairman of the Board and CEO  
Johnson & Johnson*

2007



**Hon. Fred F. Fielding**  
*Counsel to  
President George W. Bush  
Former Counsel to  
President Ronald Reagan*

2006



**Thomas J. Donohue**  
*President and CEO (Ret.)  
U.S. Chamber of Commerce*



# Annual Award Recipients 1988-2022

2005



**Edward D. Breen**  
*Chairman and CEO*  
*Tyco International Ltd.*

2004



**Hon. George J. Mitchell**  
*Former United States Senator*  
*Chairman, The Walt Disney Company*  
*Partner, Piper Rudnick LLP*

2003



**Maurice R. Greenberg**  
*Chairman and CEO*  
*American International Group, Inc.*

2002



**Henry A. McKinnell, Jr., Ph.D.**  
*Chairman and CEO*  
*Pfizer Inc*

2001



**Hon. William S. Cohen**  
*Former Secretary of Defense*  
*and United States Senator*

2000



**Norman R. Augustine**  
*Retired Chairman and CEO*  
*Lockheed Martin Corporation*

1999



**General P. X. Kelley**  
*Former Commandant of*  
*the Marine Corps*

1998



**Hon. Rudolph Giuliani**  
*Mayor of New York City*

1997



**Hon. Donald Rumsfeld**  
*Former Secretary of Defense*

1996



**Bruce Atwater**  
*Retired Chairman and CEO*  
*General Mills, Inc.*

1995



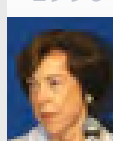
**Alfred C. DeCrane, Jr.**  
*Chairman and CEO*  
*Texaco Inc.*

1994



**Malcolm S. Forbes, Jr.**  
*President and CEO*  
*Forbes, Inc.*

1993



**Amb. Carla Anderson Hills**  
*United States Trade Representative*

1992



**Paul H. Henson**  
*Retired Chairman and CEO*  
*Sprint Corporation*

1991



**Walter B. Wriston**  
*Retired Chairman and CEO*  
*Citicorp*

1990



**Irving S. Shapiro**  
*Retired Chairman and CEO*  
*DuPont*

1989



**Edmund T. Pratt, Jr.**  
*Chairman and CEO*  
*Pfizer Inc*

1988



**Hon. William E. Simon**  
*Former Secretary of Treasury*

# Special Lifetime Achievement Honorees



2022

**Dr. Thomas Sowell**

*One of the Great Social Theorist &  
Iconic Thinkers of our Age*



2016

**The Honorable Michael Mukasey**

*Retired Attorney General  
United States of America  
U.S. District Court Judge for  
the Southern District of New York*



2014

**Evan R. Chesler**

*Chairman  
Cravath, Swaine & Moore LLP*



2013

**The Late Richard Wilson**

*Mallinckrodt Professor of Physics, Emeritus  
Harvard University*



2011

**Kathryn S. Wylde**

*President and CEO  
Partnership for New York City*



2009

**The Late Hon. Judith S. Kaye**

*Retired Chief Judge  
State of New York*



2006

**The Late Dr. Frederick Seitz**

*President Emeritus  
The Rockefeller University*



# Dean Martinez

## New Board Member

### Elected in early 2023

We are especially pleased to count twelve new Directors added to the Board of Directors of the Atlantic Legal Foundation from 2021 to date . . . six elevated from ALF's Advisory Council and six new directors to our Leadership Team. The newest addition to that influx effective by action of the Board at its Annual Meeting on March 31, 2023:



### **Dean Martinez**

Chief Executive Officer  
DRI - The Voice of the  
Defense Bar

Dean Martinez is the CEO of DRI, the largest association for civil defense attorneys and in-house counsel. Dean is an outcome-driven attorney executive with a long track record in a full range of strategic management operations, marked by a successful career comprised of numerous leadership roles in professional societies and nonprofit organizations. He joined DRI in the spring of 2020, his innovative vision, proactive leadership and entrepreneurial spirit has led DRI to adjust its programming strategy to not only include the highest quality of on-person programming but to include dynamic virtual content that make networking easy, to meet current and future needs of DRI members.

Prior to joining DRI, Dean served as the General Counsel (GC) and Chief Operating Officer (COO) for APICS/Association of Supply Chain Management (the largest supply chain association in the world) Illinois Deputy Governor, Secretary of the Illinois Department of Financial and Professional Regulations, Chief Legal Counsel of the Illinois Department of financial Institutions, and Assistant Cook County State's Attorney. He holds a J.D. from Loyola University Chicago School of Law and a B.A. from DePaul University, and lives in Illinois with his wife and three children.

# Officers



**Hayward "Dan" Fisk**  
*Chairman and President*



**Augustus I. duPont**  
*Vice Chairman*



**Lawrence S. Ebner**  
*Executive Vice President and  
General Counsel*



**Nicholas W. Klitzing**  
*Vice President — External Affairs*



**Nevin Sanli**  
*Treasurer*



**Ana Tagvoryan**  
*Secretary*



**Marco Q. Rossi**  
*Assistant Treasurer*



## New Officer Elected in 2023



### Nicholas W. Klitzing Vice President – External Affairs [nick.klitzing@atlanticlegal.org](mailto:nick.klitzing@atlanticlegal.org)

Nick Klitzing is Vice President of External Affairs at Atlantic Legal Foundation. As a member of the ALF leadership team, Nick works to expand ALF's network of supporters in furtherance of our mission to advance the rule of law by advocating for individual liberty, free enterprise, property rights, limited and efficient government, sound science in judicial and regulatory proceedings, and effective education.

As a tested public affairs and communications professional with nearly two decades of experience at the intersection of public affairs, communications, law, and government, Nick has earned the trust of corporate executives, philanthropists, and high-ranking elected officials for his ability to achieve strategic objectives by activating grassroots networks, framing compelling media narratives, and leading record-breaking fundraising campaigns to support issue advocacy efforts.

A licensed attorney, Nick served as a prosecutor in St. Clair County, Illinois, early in his career, trying multiple felony cases and rising to the position of supervisor of the Juvenile Unit of the Children's Justice Division. During law school, he served as a part-time law clerk for Illinois Supreme Court Justice Lloyd Karmeier. Nick has also worked for Senator John McCain and Governor Mitt Romney's presidential campaigns and as a program assistant at the International Republican Institute, a nonpartisan, nongovernmental organization that promotes democracy worldwide where McCain served as Chairman for 25 years.

He has extensive experience in his home state of Illinois, where he served as Executive Director and Special Counsel for the Illinois Republican Party, Deputy Campaign Manager & Special Counsel for former Governor Bruce Rauner, and a senior team member on multiple statewide, Congressional, and issue advocacy campaigns. Nick earned a B.A. and M.A. in political science and civic leadership from the University of Illinois at Urbana-Champaign and a J.D. from Saint Louis University School of Law. He is a member of the American Enterprise Institute (AEI) Leadership Network and active in the McCain Alumni Club and McCain Institute at Arizona State University.

# New Advisory Council Members

## Appointed in 2022



### Federal Takings Expert Nancie Marzulla Appointed To ALF Advisory Council

A founding partner of Marzulla Law, LLC in Washington, D.C., is recognized as one of the leading federal takings lawyers in the country. She represents property owners, developers, water districts, Indian tribes, and business owners and others in litigating money damages claims in the U.S. Court of Federal Claims, where she is Co-Chair of the Court of Federal Claims Chief Judge's Advisory Council.

Nancie has extensive experience in handling matters involving property, water, environmental law, Indian tribal claims, development, and natural resources in trial courts, courts of appeal, and the Supreme Court. She also represents clients in enforcement or permitting disputes with federal regulatory agencies.

Nancie is also President of the Washington Chapter of INBLF, a network of highly credentialed law firms across the United States, Canada, and around the globe.

Nancie has teamed with ALF Executive Vice President & General Counsel Larry Ebner on ALF's Supreme Court amicus brief supporting the pending certiorari petition in *Sackett v. EPA*, a case which involves the scope of the Clean Water Act's land-use permitting requirements. ALF's amicus brief urges the Court to define the Act's operative phrase, "the waters of the United States," in a way that does not raise Fifth Amendment regulatory takings issues.

More recently Nancie took the lead with Larry in an amicus filing before the Eleventh Circuit Court of Appeals in a "home equity theft" case involving the question whether a state or local government violates the Constitution's just compensation clause by keeping the surplus proceeds after seizing and selling a home to satisfy a delinquent tax debt in the case of 94 year-old woman *Tyler v. Hennepin County*, Minn. in which the county kept her surplus after the sale proceeds substantially covered her tax debt as trumped up with penalties and interest.

# New Advisory Council Members

## Appointed in 2022



### Newly Elected Center For Truth In Science CEO Jacob Traverse Appointed to ALF Advisory Council

Jacob Traverse succeeded Joe Annotti as the President & CEO of the Center for Truth in Science and as its representative on ALF's Advisory Council. The Center shares ALF's mission for sound science in American jurisprudence. While having accepted another challenging CEO position, Joe remains on the Board of the Center.

In his appointment of Traverse to ALF's Advisory Council, Chairman Fisk affirmed: "I'm especially enthusiastic re your joining our ALF team and expect significant synergy will derive from our organizations having joined forces in collaboration ... excellence and integrity in research and communications on critical science issues from the Center's perspective and high level effective litigation expertise and experience from ALF's ... a dynamic combination at the intersection of science, justice, and the economy."

Before joining the Center, Traverse built a career finding ways to translate scientific discoveries from the lab into new products for emerging bio-based value chains which supply food, fuel, chemicals, and medical products that improve lives around the world. He spent the first half of his career as a scientist and business professional in the biotech, pharmaceutical development, and crop research industries, applying his technical and commercial expertise to bring complex and highly regulated products to market.

His career has been a nonstop effort to support research, develop emerging industry sectors, drive innovation, and foster strategic collaborations between diverse stakeholders and decision makers at the intersection of health, life science, food and nutrition, and agriculture—all in the name of helping our growing world stay fed, fueled, and healthy. Traverse earned an MBA, Professional Science Masters of Microbial Biotechnology (PSM-MMB), and bachelor's degree in botany from North Carolina State University and remains a member of his alma mater's College of Agriculture & Life Science Alumni Board and Masters of Microbial Biotechnology (MMB) Industry Advisory Board. He currently resides in North Carolina with his family including two young and infinitely curious kids.



# New Advisory Council Members

## Appointed in 2022



### Jamie Belcastro, RPh., Appointed To ALF Advisory Council

Jamie Belcastro a registered pharmacist, is President of Belmora LLC, a Virginia-based pharmaceutical company that develops, markets, and distributes nonprescription pain-relief medicines to Hispanic and other minority communities throughout the United States. Belmora's mission is to provide safe and effective pharmaceutical products and related health information to underserved consumers. "Not only brings an additional area of expertise to ALF's cadre of scientists and healthcare professionals, but also the unique perspective of a small business owner who is dedicated to making nonprescription pharmaceuticals more readily available to the nation's minority communities."

Jamie's career has focused on the development of healthcare treatments that meet the needs of diverse patients in a culturally relevant manner. He addresses healthcare deficiencies in various communities through the development of pharmaceutical treatments and product packaging (such as bilingual packaging) in order to meet the needs of the communities in which they are distributed. He has a relationship with Direct Relief, a California nonprofit organization that provides medicine to the medically indigent throughout the world. He also is actively involved with the National Hispanic Medical Association.

Jamie spent the first half of his career practicing pharmacy both as a retail and hospital pharmacist. He served as a retail pharmacy manager and later became the pharmacy manager at Sibley Memorial Hospital in Washington, D.C. While he was practicing pharmacy, he became an Ambulatory Care Board Certified Pharmacist. During this time, he was also a member of the National Council on Patient Information and Education, which provides guidance to the pharmaceutical industry and government concerning the deployment of healthcare information to patients.

Jamie has a Bachelor of Science Degree in Pharmacy from the State University of New York at Buffalo, where he graduated in the Rho Chi Pharmaceutical Honor Society and remains a member of his alma mater's College of Pharmacy Alumni Association.

# New Advisory Council Members

## Appointed in 2022



### Chemical Industry Veteran Greg Baumann Appointed To ALF Advisory Council

Greg Baumann is Vice President, Global Regulatory and Technical Services for Nisus Corporation, an American-owned chemical manufacturer headquartered in Rockford, Tennessee.

Greg has more than four decades of experience with federal and state regulation of pesticides and other types of chemicals. He serves on the Executive Committee of the American Chemistry Council Center for Biocide Chemistries and is also chair of the Antimicrobial Exposure Assessment Task Force, a forty-plus company coalition of manufacturers, which generates toxicological studies to satisfy data requirements required by American and Canadian regulatory agencies.



### Thom Golab, President of the American Council on Science and Health, Appointed To ALF Advisory Council

Thom Golab, President of the American Council on Science and Health, joined the Advisory Council of the Atlantic Legal Foundation in December 2022. We expect synergy to follow from collaboration in the pursuit of the complementary missions of our organizations, as with ALF's addition of Jacob Traverse, President of the Center for Truth in Science, Jamie Belcastro, President of Belmora LLC, a Virginia-based pharmaceutical company focused on serving minority communities, and Greg Baumann, Vice President, Global Regulatory and Technical Services, Nisus Corporation, to our team earlier this year.

Prior to serving as President of the American Council on Science and Health, Thom worked in development for public policy organizations promoting truth and liberty for the last 40 years. He has held positions at the Heritage Foundation, the Competitive Enterprise Institute, the Capital Research Center, Citizens for a Sound Economy, National Center for Policy Analysis, and the Cato Institute. At Capital Research Thom helped write four books on corporate philanthropy.

# New Advisory Council Member

## Appointed in 2023



## Constitutional Law Expert Herbert L. Fenster, Appointed To ALF Advisory Council

Herbert Fenster focuses his practice on litigation, particularly against the United States, and on the subjects of procurement, environmental, administrative, and tort law. He has extensive experience in the negotiation, interpretation, and litigation of contracts for major weapons systems, as well as the procurement of research and development.

Mr. Fenster has had key involvement in critical legal and regulatory issues arising in the award and termination of major weapons programs. He has lectured and testified multiple times on the subject of government finance and accounting from both industry and government perspectives, and also had major involvement in contracting for “Stability Operations and Expeditionary Support” starting in the early years of the Vietnam War.

Mr. Fenster’s additional achievements include:

- A.B./B.S. Architecture and Civil Engineering, University of Pennsylvania; MS Economics, University of Pennsylvania
- J.D., University of Virginia
- Counsel to Reagan-Bush Campaign 1979-1982
- Counsel to Jamestown Foundation
- Counsel to National Defense University Foundation
- Board of Directors, U.S. Chamber of Commerce, National Chamber Litigation Center (30 years)
- Co-Founder and Board of Directors, ATLAS Institute (University of Colorado)
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- General Counsel, Congressional 809 Commission
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**We are delighted that Nancie Marzulla, Greg Baumann, Jacob Traverse, Jamie Belcastro, Thom Golab, and Herb Fenster have joined ALF’s Advisory Council team and cadre of outstanding professional lawyers and scientists. As part of ALF’s distinguished leadership team — its Board of Directors, Advisory Council, and highly accomplished executive staff and consultants — these professionals join a dynamic organization dedicated to improving American jurisprudence and the American experience through the effective pursuit of its mission:**

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The end of law is not  
to abolish or restrain,  
but to preserve and  
enlarge freedom.

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JOHN LOCKE

*English philosopher who argued that freedom  
was an ingrained human right.*

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