

Election Law & First Amendment Litigation

Chambers USA has recognized that Wiley's Election Law & Government Ethics Practice “[f]ields a large group of expert political law practitioners whose notable litigation capabilities provide additional strength.” We successfully represent clients before federal district courts, federal appeals courts, and the Supreme Court of the United States, as well as in state courts. This representation often involves First Amendment, equal protection, and due process challenges to campaign finance and other election laws at the federal and state levels. We have vast experience representing campaigns and political parties in recounts and at other stages of the electoral process. As the trend of filing lawsuits challenging Federal Election Commission (FEC) dismissals of complaints continues to grow, we also have led the way in protecting the interests of clients who have benefited from these FEC dismissals by intervening as defendants and litigating these matters alongside, and in place of, the FEC.

Our recent federal campaign finance-related litigation experience includes:

- ***Perdue v. Kemp, No. 1:22-cv-0053-MHC (N.D. Ga. Feb. 7, 2022)***
U.S. District Court for the Northern District of Georgia
Obtained preliminary injunctive relief in litigation challenging on First Amendment and equal protection grounds the constitutionality of a state campaign-finance scheme that effectively imposed disparate contribution limits on candidates competing for the same seat.
- ***FEC v. Ted Cruz for Senate, No. 12-21***
U.S. Supreme Court
Submitted an *amicus* brief on behalf of a national political party documenting the problems with a federal law prohibiting loan repayments by a candidate in excess of \$250,000.
- ***Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021)***
U.S. Supreme Court
Submitted *amicus* briefs on behalf of a national business association successfully arguing for more rigorous First Amendment scrutiny of a state’s donor disclosure requirements, and also a nonpartisan legislative organization describing the burdens associated with compulsory disclosure.
- ***Chiafalo v. Washington, 140 S. Ct. 2316 (2020)***
U.S. Supreme Court
Submitted an *amicus* brief on behalf of a national political party that was cited favorably in the Supreme Court’s majority opinion affirming the constitutionality of state laws penalizing a presidential elector for faithlessly voting on the Electoral College ballot. The *amicus* brief was also relied upon in

The Wall Street Journal's lead editorial previewing oral argument.

- ***Citizens for Responsibility & Ethics in Washington v. FEC, Case No. 16-cv-2255***
U.S. District Court for the District of Columbia
Currently litigating a challenge to the FEC's decision to dismiss an administrative enforcement complaint alleging that a 501(c)(4) organization must register and report as a political committee.
- ***Citizens for Responsibility & Ethics in Washington v. FEC, 243 F. Supp. 3d 91 (2017)***
U.S. District Court for the District of Columbia
Obtained partial dismissal of a complaint challenging the FEC's decision to dismiss an administrative enforcement complaint filed by a third party against a 501(c)(4) nonprofit organization.
- ***Van Hollen v. FEC, 811 F.3d 486 (2016)***
U.S. Court of Appeals for the District of Columbia Circuit
Successfully appealed a district court's decision to strike down an FEC regulation limiting disclosure obligations for electioneering communications.
- ***Crossroads Grassroots Policy Strategies v. FEC, 788 F.3d 312 (2015)***
U.S. Court of Appeals for the District of Columbia Circuit
Secured the right of a 501(c)(4) organization, which was the beneficiary of a favorable decision by the FEC, to intervene as a defendant in a suit challenging the FEC's decision.
- ***American Tradition Partnership, Inc. v. Bullock, 132 S. Ct. 2490 (2012)***
Citizens United v. FEC, 558 U.S. 310 (2010)
U.S. Supreme Court
Submitted briefs *amicus curiae* to the Supreme Court on behalf of the U.S. Chamber of Commerce, with Wiley's arguments cited by the Court at oral argument and in its groundbreaking *Citizens United v. FEC* opinion.

Our state-level campaign finance and election litigation experience includes:

- ***Senator Amanda Chase v. Republican Party of Virginia, Inc. (2021)***
Richmond Circuit Court, Virginia
Won dismissal of complaint challenging state party's decision to move forward with a primary for electing statewide candidates for 2021 elections.
- ***DCCC v. Virginia State Board of Elections (2020)***
Richmond Circuit Court, Virginia
Intervened on behalf of the NRCC and two congressional district party chairs to defeat efforts to remove two duly-certified Republican candidates from the November ballot.
- ***Center for Individual Freedom v. Tennant, 706 F.3d 270 (2013)***
U.S. Court of Appeals for the Fourth Circuit
Center for Individual Freedom v. Carmouche, 449 F.3d 655 (2006)
U.S. Court of Appeals for the Fifth Circuit
Center for Individual Freedom v. Corbett, No. 07-2792 (2007)

U.S. District Court for the Eastern District of Pennsylvania

Obtained decisions favoring private organizations' First Amendment rights to run advertising

Our recent, election-related commercial litigation experience includes:

- ***Republican National Committee (RNC) v. Occupational Safety and Health Administration (OSHA), No. 21A258 (S.Ct. Jan. 24, 2022)***
U.S. Supreme Court
U.S. Court of Appeals for the Sixth Circuit
U.S. Court of Appeals for the D.C. Circuit
Successfully represented the RNC in obtaining from the Supreme Court a reinstatement of a stay of OSHA's private employer vaccinate mandate, effectively prevailing on the merits.
- ***Wreyford v. Perdue, 1:21CV02054***
On behalf of Perdue for Senate, Inc., our motion to dismiss resulted in the voluntary dismissal of Wreyford's class action Telephone Consumer Protection Act (TCPA) claim seeking hundreds of millions of dollars in damages.
- ***Erika Peterman v. Republican National Committee (RNC), 369 F.Supp.3d 1053 (2019)***
U.S. District Court for the District of Montana
Obtained summary judgment ruling against plaintiff's claim of copyright infringement when court recognized a "fair use" defense to use of a photograph on a campaign's website in the party committee's independent expenditure mailer.
- ***Karen McDougal v. American Media, Inc. (2018)***
Los Angeles Superior Court
Worked to achieve a reasonable settlement for our client in connection with a lawsuit alleging, *inter alia*, campaign finance violations by the publisher of *The National Enquirer* and various fitness magazines.
- ***Roger Nichols v. Club for Growth Action, 235 F. Supp. 3d 289 (2017)***
U.S. District Court for the District of Columbia
Successfully defended super PAC in lawsuit alleging copyright and Lanham Act violations in a televised political advertisement, and obtained dismissal of Lanham Act claims and negotiated reasonable settlement of remaining copyright claim.

Contact Us

Michael E. Toner

202.719.7545 | mtoner@wiley.law