



Thomas W. Kirby

Senior Counsel



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Tom serves as senior counsel to Wiley. He handles complex, policy-oriented trial and appellate matters nationwide. Counsel in more than 70 published cases, he focuses on copyright, constitutional, and election law. Notable verdicts he has secured for his clients include one of the largest statutory damages copyright verdicts in U.S. history, an award recognized in the "NLJ 100." He has obtained a series of judgments holding laws unconstitutional under the First Amendment and the Commerce Clause. Following his successful constitutional challenge to a statute limiting Internet speech, a federal judge said of Tom, "There have been few attorneys before the court as accomplished, trained, experienced, intelligent, and skilled....He is quite unique in his ability to combine the theoretical and the clinical." *PSINet v. Chapman (W.D.Va.)*

Representative Matters

- Appellate experience ranges from constitutional issues to bet-the-company class action and commercial matters in the Supreme Court of the United States and many federal and state appellate courts.
- Jury trial experience ranges from winning one of the largest copyright verdicts in U.S. history to a "not guilty" verdict for a client wrongfully accused of murder.
- Recent matters include:
 - *Center for Individual Freedom v. Madigan* (N.D. Ill. 2010) - Constitutional challenge to Illinois statutes burdening independent issue advocacy.
 - *Lisa McConnell, Inc. v. Idearc, Inc.* (S.D. Cal. and N.D. Tex (Br.)) - Won dismissal of copyright infringement suit

Practice Areas

Copyright
Election Law & Government Ethics
Litigation

Credentials

Education

J.D., Georgetown University Law Center
B.A., Louisiana State University

Law Journals

Editor, *Georgetown Law Journal*

Clerkships

Law Clerk for the Honorable Myron Bright,
U.S. Court of Appeals for the Eighth Circuit
(1975-1976)

Bar and Court Memberships

District of Columbia Bar
Supreme Court of the United States
U.S. Courts of Appeals for the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits
U.S. District Courts for the Central District of Illinois, District of Columbia, District of Maryland, Eastern District of Arkansas, and Western District of Arkansas

demanding hundreds of millions of dollars from publishers of on-line yellow pages.

- *Warren Communications News, Inc. v. Warrantech Corp.* (D.D.C. 2009) - Half-million dollar copyright settlement for electronic newsletter publisher.
- *Center for Individual Freedom v. Ireland* (S.D. W.Va 2009) - Preliminary injunction striking down limits on speech near elections.
- *Center for Individual Freedom v. Corbett* (E.D. Pa 2009) - Judgment condemning attempt by Pennsylvania's Attorney General to suppress speech and awarding legal fees.
- *National Association of Manufacturers v. Taylor* (D.C. Cir. 2009) - First Amendment challenge to lobbying disclosure statute.
- *AFP v. Google* (D.D.C. 2008) - Defending right of Google News to use headlines, leads and thumbnail photos from copyrighted news sources.
- *Lowry's Reports Inc. v. Legg Mason*, 221 F.Supp.2d 737 (D. Md. 2003) - Won a \$20 million jury award for copyright infringement; appeal dismissed.
- *Newsletter copyright infringement cases* - Many six-figure and seven-figure confidential settlements of copyright infringement claims against corporate and other institutional infringement.
- *PSINet v. Chapman*, 2004 U.S. App. LEXIS 5599 (4th Cir. 2004) - Successful use of First Amendment and Commerce Clause to overturn a Virginia statute restricting commercial Internet speech.
- *McConnell v. FEC*, 540 U.S. 93 (2003) - Represented Senator McConnell and the U.S. Chamber of Commerce in a First Amendment challenge to the McCain-Feingold Act.
- *Center for Individual Freedom v. Carmouche* (5th Cir.) - Constitutional ruling narrowing vague limits on election speech.
- *Alcohol Advertising Class Actions* - Dismissal of all claims against American manufacturers and distributors of alcoholic beverages in six class action lawsuits alleging that industry advertising is to blame for underage drinking.
- *Homier Dist. Co. v. New Bedford*, 2002 WL 1586996 (D. Mass. 2002) - Judgment that law favoring local business violated the Constitution's Interstate Commerce Clause.
- *In re Sealed Case* - Defending a foreign telecommunications company in a grand jury investigation of alleged criminal price fixing.
- View a list of Mr. Kirby's reported cases.

Recognitions

- Named by *The Legal 500 US* a "recommended lawyer" in Copyright Law (2011, 2015-2017)
- AV Peer Review Rating, Martindale-Hubbell's highest ranking by peers for general ethical standards and legal ability