

# ATLANTIC LEGAL FOUNDATION 2021 ANNUAL REPORT



## THE YEAR IN REVIEW

As it progresses into its 45th year, the Atlantic Legal Foundation (“ALF”) reflects back on 2021 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 of free enterprise, limited and responsible government, property rights, individual liberty, civil justice, and the rule of law under our Constitution.

While ALF made good progress in 2021 in pursuing its missions, the challenges brought by the pandemic and ever encroaching governmental and other demands, have heightened the need for ALF’s continuing attention, active advocacy, and your support.



Atlantic Legal was challenged by the continuing coronavirus constraints preventing its annual fundraising Awards Dinner during both 2020 and 2021. We managed to survive and thrive, notwithstanding. With Larry Ebner joining Atlantic Legal's leadership team mid-year 2020 as ALF's new Executive Vice President and General Counsel, ALF now has a Washington D.C. office at 1701 Pennsylvania Ave., NW, Suite 200, Washington D.C. 20006, in addition to ALF's office at 500 Mamaroneck Ave., Suite 320 in Harrison, NY 10528 and the Chairman's office at StoneBridge in Bel Air, 1527 Stone Canyon Road, Los Angeles, CA 90077.

See ALF's 2020 Annual Report for the tribute to Larry's predecessor, retired Marty Kaufman, and for Larry Ebner's extensive bio, all easily accessed on ALF's newly revamped website, [atlanticlegal.org](http://atlanticlegal.org).

Atlantic Legal Foundation's advocacy in 2021 included the submission of persuasive *amicus curiae* briefs and other filings in furtherance of sound science, school choice, free enterprise, and civil justice. See *In the Courts* at page 10 and ALF's website for more detail respecting ALF's 2021 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 following.

In furtherance of its longstanding efforts as the leading advocate fostering sound science in judicial and regulatory proceedings, ALF is featuring 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 following, discusses an important recent 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.

We have continued our work to promote the effective education of our young students on behalf of charter schools with distribution of our *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 state-specific guides. These uncertainties were protracted into 2021 as reported extensively in Atlantic Legal's prior Annual Reports, which are easily accessible on ALF's website. A current report on Charter School legal developments, authored by ALF's Advisory Council member Thomas Walsh, a partner with Jackson Lewis is published at page 26. The latest edition of ALF's *Leveling the Playing Field Guide* for charter school leaders in New York is in process and expected to be published and distributed later in 2022. The 3rd edition of ALF's guide for charter school leaders in California was printed and distributed in June 2017 with high praise from the California Charter Schools Association.

Presented at page 21 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.

Unfortunately, government restrictions imposed to mitigate further coronavirus contagion has prevented Atlantic Legal from holding an Awards Dinner to recognize another great American early in 2022 for 2021. See pages 38-40 for Atlantic Legal Foundation's distinguished list of Annual and Lifetime Achievement Honorees over the past 30 plus years. We are optimistic conditions will allow a deferred Awards Dinner late in 2022 or early 2023. In the meantime, at pages 29-35, we are republishing the remarks of our Foundation's 2012 Award Honoree -- William Swanson, former Chairman and CEO of the Raytheon Company on "Business' Critical Role in STEM\* Education for U.S. Competitiveness"... the criticality clearly having been exacerbated by the pandemic over the past two years...as well as the remarks of ALF's 2012 Lifetime Achievement Honoree, the late Professor Richard Wilson, the Mallinckrodt Professor of Physics, Emeritus at Harvard University on "Scientists Need to Recognize the Importance of the Law; Without the Atlantic Legal Foundation This Would Not Have Happened." See pages 36 and 37 following.

In 2021 and early 2022, we elected or appointed 13 distinguished professionals to our leadership team including 11 Directors and 2 Advisory Council Members. See pages 41-46 for the photos and bios of our new Directors and pages 49 & 50 for those of our new Advisory Council members. In early 2022 Chairman Fisk and ALF's Board of Directors commended Director David Wood for his distinguished service as Treasurer for over seven years and congratulated Director/Assistant Treasurer, Nevin Sanli for his elevation to Treasurer succeeding Director Wood in the interest of sharing and broadening experience within the leadership team. Director Marco Rossi was elected Assistant Treasurer, succeeding Director Sanli. Their photos & bios are provided at page 47 following. Our current Officers are presented on page 48.

In late 2021 and early 2022, we received the resignations of two of our longstanding directors — Philip R. Sellinger, Co-managing Shareholder - New Jersey of Greenberg Traurig, LLP, who was obligated to resign from his firm and directorships to serve as the U.S. Attorney for New Jersey, and Frank R. Jimenez, Vice President, General Counsel and Corporate Secretary of Raytheon Technologies Corporation, who resigned from Raytheon and from his directorships to serve as the Global General Counsel of GE's new healthcare unit and, as a former General Counsel of the Navy, to join the Board of Directors of Huntington Ingalls, the largest military ship builder in America. We wish Phil and Frank well and thank them for their many years of valuable service to ALF.



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\* Science, Technology, Engineering and Math

We were saddened to learn of the passing on June 30, 2021 of ALF's 1997 Honoree, the Honorable Donald Rumsfeld, the Defense Secretary who became the face of U.S. foreign policy under President George W. Bush while the administration's troop deployments toppled hostile regimes in Afghanistan and Iraq. Earlier, he was the youngest-ever Defense Secretary, at age 43, in President Gerald Ford's administration; at the end of his tenure under Bush, he was the oldest American ever to hold the job. And at age 30, he was the youngest House member. Among other high level government and business positions, he was chief of staff to President Ford, Ambassador to NATO and the CEO of G. D. Searle & Co. He and his foundation have been long time supporters of ALF. Our condolences to his wife, 3 children and friends... He was a great American patriot and one of the most outstanding public leaders of our time.



Atlantic Legal's current distinguished Board of Directors and Advisory Council (introduced at pages 51 and 52 following and presented on ALF's website) remain convinced 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 and related governmental actions. We are especially grateful for the loyal support of our contributors, leadership and staff, enabling the Foundation to continue its important work during these critical times. Because of you and your continuing support, we will continue to make a difference for the betterment of American Jurisprudence and America. Thank you so very much . . .

**Larry Ebner**  
Executive Vice President &  
General Counsel



**Dan Fisk**  
Chairman & President

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## EXECUTIVE SUMMARY

### About Atlantic Legal Foundation

- Atlantic Legal Foundation has been defending liberty for over 45 years, since its establishment early in 1977.
- Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm with a storied history of advocating for individual liberty, free enterprise, property rights, limited and efficient government, sound science in the courtroom, and school choice.
- 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 in the Supreme Court of the United States, federal courts of appeals, and state appellate courts. The Foundation also has provided pro bono legal representation, without fee, 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 fights 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.

## 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.

## School Choice

Atlantic Legal supports parental school choice. Its work in this area is primarily focused on supporting charter schools. A major part of this effort is 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.

The Foundation also provides legal counsel for charter schools and charter school advocates at no cost and fosters effective traditional education.

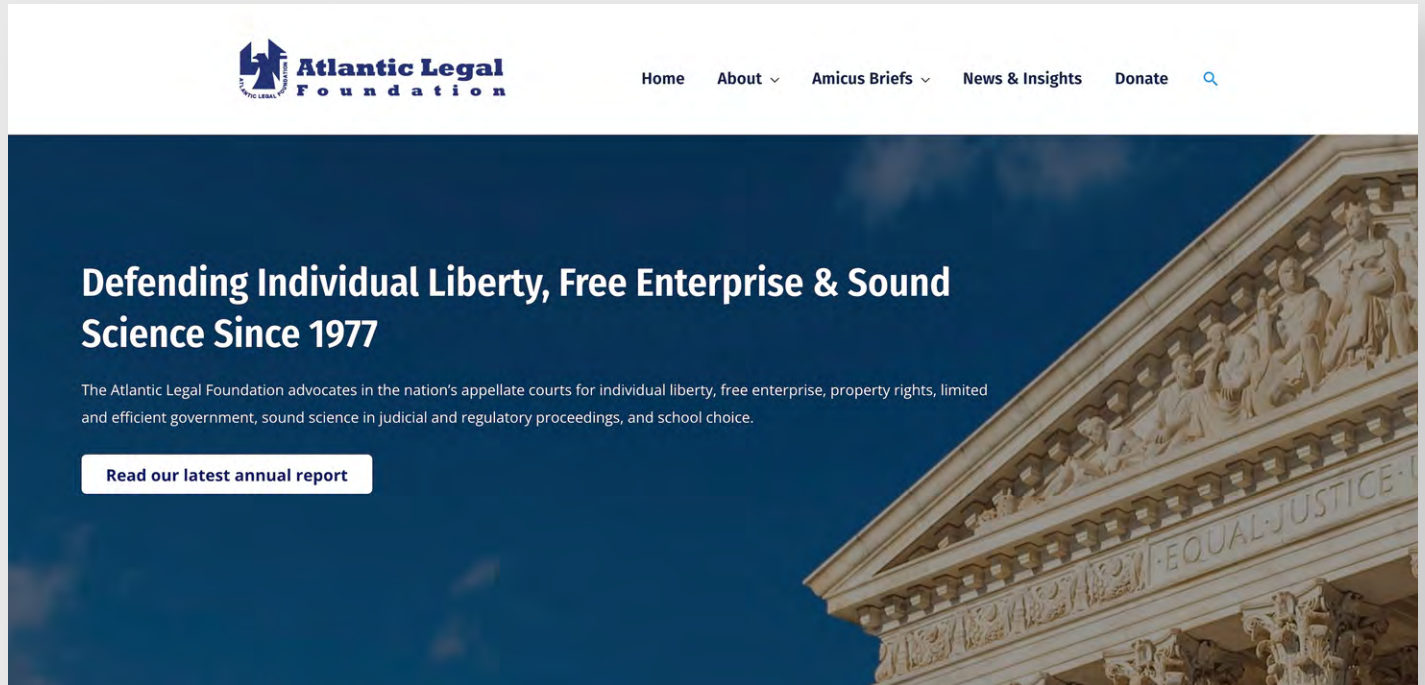
## Position Papers, Comments and Conferences

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 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."

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).

# New Website Launched in 2021

In 2021, Atlantic Legal Foundation launched a completely redesigned website—atlanticlegal.org—to further its mission of advancing the rule of law across our six mission areas. Notably, the new website features a customized platform for accessing ALF’s amicus briefs along with summaries of the cases in which they have been filed.



*The new AtlanticLegal.org*

Additional website improvements and new features include:

- Pages dedicated to each of ALF’s six mission areas, with links to corresponding amicus brief summaries
- A Board of Directors bio page
- An Advisory Council bio page
- A growing archive of ALF’s amicus brief filings from the past 25+ years
- A regularly updated News & Insights section about ALF’s ongoing activities and areas of interest
- A repository of ALF’s past Annual Reports

The new website is the result of collaboration between ALF's executive and legal staff and our website and digital consultant, Nick Kosar of Open Road Digital, who has over 20 years of experience working with law firms in digital marketing and communications. This collaboration has resulted in numerous "behind the scenes" search engine optimization (SEO) improvements, a more robust expression of ALF's visual brand identity, and an improved presentation of the experience and diversity of ALF's leadership team, including it's highly accomplished and valued Board of Directors, Advisory Council, staff and consultants.

Thus far, the relaunch of our website has helped spur additional activity to promote the Foundation's mission, including a new email News Release program and an expanded social media presence that is enhancing ALF's visibility in the legal community and with collaborators such as other foundations, scientists, academics, corporate and private-practice lawyers.

Visit the new website at: **[atlanticlegal.org](http://atlanticlegal.org)**

### Latest Amicus Briefs from Atlantic Legal Foundation



**ALF Urges Supreme Court To Avoid "Takings" Issues When Interpreting Scope Of Clean Water Act**



**Amicus Brief Urges Supreme Court To Keep "Junk Science" Away From Juries**



**ALF Challenges California Supreme Court Rule Blocking Arbitration Agreement Enforcement**



**Amicus Coalition Again Urges Supreme Court To Review Mandatory Bar Dues That Fund Political Speech**



**ALF Urges Supreme Court To Explicitly Overrule Century-Old Decision That Gave States All-Purpose Jurisdiction Over Nonresident Corporations**



**ALF Brief Argues That Covid-19 Negligence Suits Belong—If Anywhere—In Federal, Not State, Courts**

*View our latest Amicus Briefs*



## Amicus Curiae Program

For more than 45 years, the Atlantic Legal Foundation has filed *amicus curiae* (friend of the court) briefs in key Supreme Court, federal court of appeals, and state appellate court cases involving legal issues that align with one or more of the Foundation's core advocacy areas: [individual liberty](#), [free enterprise](#), [property rights](#), [limited government](#), [sound science](#), and [school choice](#).

The Foundation continuously monitors appellate cases for possible amicus participation, and frequently is requested by litigating parties' counsel to consider filing an amicus brief. Counsel who wish to request or recommend Atlantic Legal Foundation amicus support in a particular case should complete our [Amicus Support Request](#) form and submit it by email to ALF Executive Vice President & General Counsel [Larry Ebner](#).

*Our Amicus Curiae Program webpage*







# IN THE COURTS

During 2021, and continuing into 2022, ALF participated as *amicus curiae* or amicus counsel in a significant number of Supreme Court and other appellate cases involving legal issues that implicate one or more of our advocacy mission areas. These cases are summarized below and more fully discussed in the ALF website's Amicus Briefs section, which also provides easy online access to our amicus brief archives.

In addition, ALF submitted comments to the Clerk of the Supreme Court endorsing the Court's recent proposal to eliminate the requirement for obtaining the parties' consent, or the Court's permission, to file an amicus brief. Drawing on its 45 years of experience filing hundreds of Supreme Court amicus briefs, ALF's comments discuss why, as a practical matter, obtaining consent serves no useful purpose and can impede submission of amicus briefs that provide helpful legal arguments, non-adjudicatory factual information, or perspective relevant to the legal issues in a case.

ALF also submitted comments to the U.S. Judicial Conference on proposed amendments to Federal Rule of Evidence 702. If adopted, the amendments would clarify and strengthen Rule 702's requirements that for medical, scientific, and other types of expert testimony to be admissible, it must be reliable.

Consistent with serving the public interest, including providing continuing legal education for attorneys who become involved in civil appeals, ALF Executive Vice President & General Counsel Larry Ebner was called upon by the Beverly Hills (CA) Bar Association and King County (WA) Bar association to conduct webinars on preparation and use of amicus briefs. Larry also organized and participated in a webinar for the DuPage (IL) County Bar Association on written advocacy before the U.S. Supreme Court.

# Amicus Filings

## **MISSION: ADVOCATE FOR SOUND SCIENCE IN JUDICIAL AND REGULATORY PROCEEDINGS**

**Keeping “Junk Science” Out of Courtrooms** — We filed an amicus brief urging the Supreme Court to hear an appeal challenging federal courts’ failure to fulfill their “gatekeeper” duty under Federal Rule of Evidence 702 to prevent juries from hearing “junk science” testimony. This ongoing problem is especially acute in multidistrict product liability and toxic tort litigation, where a single judge’s admissibility rulings can have nationwide impact affecting tens of thousands of individuals’ claims. ALF’s brief explains that allowing juries to hear unreliable scientific testimony deprives defendants of a fair trial, and due process of law, and results in unwarranted jury verdicts or settlements. (*3M Co. v. Amador*)

**Federal Preemption of Failure-To-Warn Product Liability Claims** — We filed an amicus brief asking the Supreme Court to address the question of whether federal law preempts thousands of pending, multi-district product liability suits alleging that the manufacturer of a widely used herbicide (Roundup®) failed to provide users with a warning that the product allegedly can cause a particular type of cancer. ALF’s brief argues that these failure-to-warn claims are federally preempted, including because the U.S. Environmental Protection Agency, following careful scientific review, has determined that providing the cancer warning that plaintiffs claim was required by state tort law not only is scientifically unwarranted, but also would be false and misleading and a violation of federal law. The Supreme Court has requested the views of the Solicitor General as to whether review should be granted. (*Monsanto Co. v. Hardeman*)

**Federal Preemption of State “Consumer Protection” Failure-To-Warn Suits** — We filed an amicus brief asking the Supreme Court to decide whether a state attorney general can bring a consumer protection action seeking enormous monetary penalties for the alleged failure of the manufacturer of Johnson’s Baby Powder® to provide an ovarian cancer warning. Our brief explains that Mississippi’s consumer protection suit is preempted by federal law because the Food and Drug Administration has determined that such a warning is scientifically unwarranted. (*Johnson & Johnson v. Mississippi ex rel. Fitch*)

**Climate Change Litigation** — During 2020 we filed a Supreme Court amicus brief arguing that climate-change damages suits brought by state or local governments against fossil fuel energy companies belong, if anywhere, in federal, not state, court. The Supreme Court issued a favorable, but procedurally technical, ruling in the case, *BP v. Baltimore*, 141 S. Ct. 1532 (2021), holding that federal courts of appeals have broad jurisdiction to address the question of whether such suits can be removed from state to federal court. We are monitoring these ongoing federal courts of appeals cases. If again appealed to the Supreme Court, ALF will file additional amicus briefs arguing that due to the borderless nature of “man-made climate change,” federal courts are the only appropriate forum to consider whether such suits are justiciable.



## **MISSION: ADVOCATE FOR SCHOOL CHOICE**

**Parents' Freedom to Choose Schools that Provide Religious Instruction** — In a case that the Supreme Court has agreed to decide, we joined an amicus brief arguing that exclusion of schools from a state-funded student aid program, because part of their curricula includes religious instruction, violates the First Amendment right to freedom of religion. The case directly implicates parents' rights to choose for their children the schools that are best suited for their educational needs and family values. (*Carson v. Makin*)

Also, in light of recent developments in the educational field, ALF continues to update its series of *Leveling the Playing Field* guidebooks for charter school leaders. The next updated edition will focus on New York charter schools.

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

**State-Court Jurisdiction Over Corporations** — We filed a Supreme Court amicus brief arguing that a non-resident corporation's registration to do business in a State should not be deemed consent to be sued in that State's courts for claims that do not arise in the State. ALF's petition-stage brief explains that allowing a State to assert such expansive "general personal jurisdiction" over out-of-state corporations deprives corporate defendants of a fair trial and due process of law by promoting plaintiff forum shopping and undermines interstate federalism. (*Cooper Tire & Rubber Co. v. McCall*). The Court recently granted certiorari in *Mallory v. Norfolk Southern Railway Co.*, which raises the same issue, although in the context of a Pennsylvania statute that expressly places corporations on notice that registration to do business in Pennsylvania is deemed consent to that State's general personal jurisdiction. ALF anticipates filing a merits-stage amicus brief in *Mallory*.

**Immunity From Covid-19 Liability Suits** — We filed an amicus brief in the U.S. Court of Appeals for the Second Circuit arguing that Covid-19-related wrongful death and personal injury suits against hospitals, nursing homes, and medical professionals unavoidably implicate the immunity-from-suit-and-liability provision of the federal Public Readiness and Emergency Preparedness ("PREP") Act. As a result, ALF's brief explains that no matter how artfully these suits are drafted in an attempt to avoid federal law, they belong, if anywhere, in federal court. We anticipate that one or more circuit courts of appeals rulings that have held to the contrary will be appealed to the Supreme Court, and we again will provide amicus support on this significant civil justice issue. (*Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*)

**Enforcement of Employer-Employee Arbitration Agreements** — We filed amicus briefs in two cases urging the Supreme Court to hold that the Federal Arbitration Act preempts California from prohibiting enforcement of individual arbitration agreements that expressly waive an employee's right to file a representative action under the onerous California Private Attorneys General Act ("PAGA"). The briefs argue that the California Supreme Court's ruling to the contrary conflicts with U.S. Supreme Court precedent concerning the Federal Arbitration Act's preemption of state law. The Court has granted certiorari and agreed to address the issue in the *Viking River* case. (*Viking River Cruises v. Moriana*; *Coverall North America v. Rivas*)

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

**Federal Regulation of Private Property Under the Clean Water Act** — In a closely watched case that the Supreme Court has agreed to hear, we filed an amicus brief in what may become a landmark environmental law case involving the question of what types of “wetlands”—including private residential property—qualify as “waters of the United States” and thus are subject to costly, time-consuming, and often unjustifiably restrictive, Clean Water Act permitting requirements. ALF’s amicus brief argues that too expansive implementation of these permitting requirements would effect an uncompensated “taking” of private property in violation of the Constitution’s Fifth Amendment. (*Sackett v. EPA*)

**Use of “Precautionary Principle” in Environmental Regulation** — We filed an amicus brief supporting a certiorari petition that challenged, on constitutional grounds, a Puget Sound Shoreline Management Program requiring property owners to set aside vegetation buffers and conservation easements to protect the shoreline from the supposed ecological impacts of residential construction, landscaping, and recreational activities. Rather than allowing the property owners to present expert scientific testimony, state courts unjustifiably relied on the “precautionary principle.” ALF’s amicus brief explains that this “better safe than sorry” approach to environmental regulation is predicated on the lack of adequate scientific information. As a result, precautionary principle assumptions about the nature and extent of environmental risks cannot be substituted for reliable scientific information that is readily available. (*Preserve Responsible Shoreline Management v. City of Bainbridge Island, Washington*)

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

**FTC Administrative Enforcement Proceedings** — In a case that the Supreme Court has accepted for review, we are filing an amicus brief on behalf of a former FTC Commissioner discussing the structural unfairness of FTC administrative enforcement proceedings. The issue in the case is whether a corporation should be required to endure the substantial costs and burdens, and significant reputational harm, imposed by a civil administrative enforcement proceeding that the FTC chooses to pursue before its own administrative law judge—and then suffer an adverse judgment—in order to obtain judicial review of claims that the entire administrative proceeding is structurally unconstitutional. The brief contends that justice delayed is justice denied. We also filed amicus briefs in earlier phases of this case (*Axon Enterprise v. FTC*), and in support of a certiorari petition raising the same issue in connection with Securities and Exchange Commission administrative enforcement proceedings (*Gibson v. SEC*).

**Department of Labor “Guidance” In Wage & Hour Disputes** — We filed an amicus brief asking the Supreme Court to decide whether judicial deference should be given to a Department of Labor internal, unauthoritative, interpretation of an unambiguous wage & hour regulation that implements an unambiguous Fair Labor Standards Act provision. Our amicus brief discusses recent Supreme Court jurisprudence reaffirming that deference only applies to agency interpretations of ambiguous statutes and regulations. (*AMN Services, LLC v. Clarke*)

**California Interference with Liability Insurers** — We participated in a joint amicus brief challenging, on constitutional grounds, a California Insurance Code provision that prohibits liability insurers from covering a corporation’s cost of defending against unfair competition or false advertising claims brought by the California Attorney General. The brief argues that California cannot interfere in this manner with private insurance contracts and that the California law deprives insureds of the ability to defend themselves. (*Adir INT’L LLC v. Starr Indemnity & Liability Co.*)

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

**Freedom of Speech** — We filed an amicus brief on behalf of prominent First Amendment law professors supporting a certiorari petition that challenges the Securities and Exchange Commission “gag rule.” Under this policy, any individual or corporate defendant that settles an SEC civil enforcement complaint must agree to refrain from ever denying the allegations in SEC’s complaint, or creating the impression that the alleged conduct did not occur. The constitutional law professors’ amicus brief argues that this SEC gag rule is a presumptively invalid prior restraint and exercise in content and viewpoint discrimination, that it is an unconstitutional condition, and that it is paternalistic and violates the public’s First Amendment right to express or receive information. (*Romeril v. SEC*)

**Freedom of Speech** — We joined amicus briefs in three separate appeals urging the Supreme Court to rule on the constitutionality of state bar associations’ use of compulsory member dues to fund political and ideological speech. The briefs argue that using member dues in this manner should be subject to “exacting scrutiny” under the First Amendment. (*McDonald v. Firth*; *Schell v. Darby*; and *Crow v. Oregon State Bar*)

**Freedom of the Press** — We filed a Supreme Court amicus brief supporting a First Amendment challenge to a State governor’s selective exclusion of members of the press from news briefings. ALF’s brief argues that online technology has expanded the meaning of “media,” and that discriminating against reporters because of their political views is unconstitutional. (*John J. MacIver Institute for Public Policy v. Evers*)

**Freedom of Association** — We participated in a joint amicus brief challenging a California law requiring charitable organizations to disclose the identities of significant donors. The U.S. Supreme Court ruled favorably, holding that the California law was unconstitutional because it violated the First Amendment right to freedom of association. (*Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021))

**Right to Privacy** — We filed a petition-stage amicus brief urging the Supreme Court to address the relationship between First Amendment freedom of expression and an individual’s state-law “right of publicity.” The case involved a video game company’s unauthorized transformation of an individual’s physical characteristics into a violent video game character. (*Hamilton v. Speight*)



# Guest Article by California Proposition 65 Expert Ann G. Grimaldi



**Ann G. Grimaldi** of Grimaldi Law Offices in San Francisco maintains a diverse practice centered on chemical regulation, with primary focus on Proposition 65, the federal Toxic Substances Control Act (TSCA), the California and federal Hazard Communication Standards, and other state and federal chemical regulations. Her client base consists of entities operating at every point across supply chains, from chemical manufacturers to consumer product retailers, and in a variety of industries including pesticides, life sciences, art materials, furniture, plumbing products and more.

Ann is a frequent speaker and writer on chemical and product regulation topics, and since 2004, has been named a Northern California Super Lawyer, a rating service of outstanding lawyers. Prior to opening Grimaldi Law Offices, Ann was a partner at McKenna Long & Aldridge LLP (now Dentons), where she advised clients on compliance with chemical and product laws and defended them in enforcement.

## Ninth Circuit Holds That California Cannot Compel False Speech About a Chemical's Alleged Cancer Risks

**Ann G. Grimaldi**

In a significant victory for the California Chamber of Commerce (“CalChamber”) and the regulated community at large, the Ninth Circuit has upheld a preliminary injunction prohibiting the filing of enforcement actions under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as Proposition 65), if those actions allege exposures to the chemical acrylamide in foods and beverages. Noting the considerable scientific controversy regarding acrylamide’s actual role in increasing cancer risk from exposures to the chemical from the diet, the Ninth Circuit opinion in *California Chamber of Commerce v. Council for Education and Research on Toxics* reinforced First Amendment principles

prohibiting compelled false speech. The preliminary injunction prohibits enforcement not only by public enforcers like the California Attorney General, the defendant in the action, but all persons in privity with the Attorney General including private enforcers.

The Ninth Circuit opinion is not the end of the road, unfortunately, either for CalChamber or for suppliers of foods and beverages seeking certainty about their obligations, if any, to warn for acrylamide. Intervenor Council for Education and Research on Toxics (“CERT”) continues its relentless opposition in this case, which includes tactics such as subpoenaing the lower court’s presiding judge’s husband and his business. Itself a prolific Proposition 65 enforcer and the party that filed the appeal, CERT has filed a petition for rehearing in the Ninth Circuit as well as a motion to vacate the original preliminary injunction in the district court.

### ***What is Proposition 65?***

Codified at California Health & Safety Code sections 25249.5 et seq., Proposition 65 requires the State of California to maintain, and regularly update, a list of chemicals known to the State to cause cancer and reproductive harm. Currently there are nearly 1,000 chemicals on the Proposition 65 list.

The law also prohibits “persons in the course of doing business” from knowingly and intentionally exposing individuals to those listed chemicals without a clear and reasonable warning. Warnings are required when exposures to a listed chemical would exceed the regulatory level established by Proposition 65. In a twist specifically intended to promote compliance – and enhance enforcement leverage – Proposition 65 requires the alleged violator to prove the negative, i.e., that no warnings are required for the alleged exposure.

Proposition 65 regulations establish the requirements of a “safe harbor warning,” i.e., a warning that meets the statutory “clear and reasonable” standard. While use of the safe harbor warning is not mandatory, deviations from its requirements present an enforcement risk should a warning be deemed to fall short of the statutory standard.

Through the law’s citizen’s suit provision, any person acting in the public interest may sue to enforce Proposition 65. The alleged violator faces civil penalties of up to \$2,500 per day of violation, 25% of which is awarded to the successful plaintiff. The successful plaintiff also is separately entitled to attorneys’ fees under the California private attorney general statute.

With these financial incentives, private Proposition 65 enforcement is a robust cottage industry in California. In the most recently available summary of Proposition 65 settlements prepared by the California Attorney General for 2019, 898 settlements resulted in payments of nearly \$30 million dollars, 76% of which were attorneys’ fees paid to plaintiff’s attorneys. Last year alone, private enforcers issued 3,185 Notices of Violation – nearly 9 per day, including weekends and holidays.

### ***What is acrylamide?***

Acrylamide was listed as a Proposition 65 carcinogen in 1990 based on laboratory studies in rats and mice. The International Agency for Research on Cancer has classified the chemical as a likely human carcinogen. The US Environmental Protection Agency has classified acrylamide as a probable human carcinogen.

Although acrylamide is not naturally found in food, it can form through a natural process when food is cooked. Yet, scientific evidence does not demonstrate that consuming acrylamide in foods and beverages actually increases cancer risk in humans. The National Cancer Institute (“NCI”) has stated that there is no consistent evidence that dietary acrylamide is associated with increased cancer risk. The American Cancer Society (“ACS”) has stated that dietary acrylamide is not likely to be related to cancer. The Food and Drug Administration (“FDA”) has stated that “warning labels based on the presence of acrylamide in food might be misleading.”

Notwithstanding these organizations’ statements, acrylamide in foods and beverages is among the top Proposition 65 enforcement targets, with a total of almost 1,400 Notices of Violations issued to date. These Proposition 65 enforcers allege that the identified foods and beverages must carry warnings stating that the products can expose consumers to a carcinogen. According to surveys undertaken by CalChamber, California consumers understand the Proposition 65 warning to mean that eating foods containing acrylamide would increase their own risk of cancer, contrary to the studies reviewed by NCI, ACS, and the FDA.

### ***The underlying lawsuit***

This disconnect between the wording of the Proposition 65 warning and available scientific evidence created the controversy leading to CalChamber’s First Amendment challenge. In 2019, CalChamber brought suit in the US District Court of the Eastern District of California (Case No. 2:19-cv-02019-KJM-JDP) for declaratory and injunctive relief against the California Attorney General, seeking to stop the tidal wave of enforcement actions alleging exposures to acrylamide in foods and beverages, and asserting its members’ right not to be compelled to provide false and misleading warnings for their food products. CERT, having issued several Notices of Violation for acrylamide in foods and targeting dozens of companies (including in a lawsuit alleging exposure to acrylamide in coffee), intervened as a defendant, arguing that the lawsuit would impose an unconstitutional prior restraint on its own First Amendment rights.

In March 2021, CalChamber secured a preliminary injunction prohibiting the filing of new Proposition 65 enforcement lawsuits by public and private enforcers. 529 F.Supp.3d 1099 (E.B. Cal. 2021). In a lengthy opinion and order, Judge Kimberly Mueller first addressed CERT’s argument that an injunction would constitute an unlawful prior restraint of speech. Judge Mueller noted that CalChamber was not seeking to prohibit pre-suit demand letters, settlement negotiations, or Notices of Violations, which could be considered “communications” to be protected under the First Amendment. Rather, CalChamber sought a prohibition on future lawsuits, a matter squarely within the court’s authority. Although an injunction would indeed prevent CERT from filing a lawsuit, Judge Mueller observed, “The court is aware of no authority interpreting the First Amendment as preserving a person’s right to enforce a state law that contradicts the Constitution, which is the effect of CERT’s argument here.”

Turning next to CalChamber’s request for a preliminary injunction and its likelihood of success on the merits, Judge Mueller applied the standard articulated in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). Under that standard, the court must evaluate whether the warning—which the parties agreed constitutes compelled speech—(1) requires the disclosure of purely factual and uncontroversial information only, (2) is justified and not unduly burdensome, and (3) is reasonably related to a substantial government interest.



The court undertook its evaluation in the context of the Proposition 65 safe harbor warning set forth in the regulations, which for acrylamide in foods would state: “Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. For more information go to [www.P65warnings.ca.gov/food](http://www.P65warnings.ca.gov/food)”. Given the substantial scientific controversy regarding acrylamide’s actual role in increasing cancer risk, the warning could not be considered “purely factual and uncontroversial” and therefore is properly considered unconstitutional. The same outcome would result using the “intermediate” level of scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), according to the court.

In analyzing the balance of harms and the public interest, Judge Mueller further observed that, notwithstanding the strong state interest in enforcing its own laws, there is a “significant public interest in upholding First Amendment principles.” This significant interest outweighed the other considerations presented by the Attorney General. The court also noted that the use of alternative warning language, as the Attorney General suggested, would not eliminate enforcement risk and actually contravened the safe harbor warning regulations.

On balance, all the relevant factors weighed in favor of issuing the preliminary injunction. CalChamber won. The preliminary injunction stated:

While this action is pending and until a further order of this court, no person may file or prosecute a new lawsuit to enforce the Proposition 65 warning requirement for cancer as applied to acrylamide in food and beverage products. This injunction applies to the requirement that any “person in the course of doing business” provide a “clear and reasonable warning” for cancer before “expos[ing] any individual to” acrylamide in food and beverage products under California Health & Safety Code § 25249.6. It applies to the Attorney General and his officers, employees, or agents, and all those in privity or acting in concert with those entities or individuals, including private enforcers under section 25249.7(d) of the California Health & Safety Code. This order does not alter any existing consent decrees, settlements, or other agreements related to Proposition 65 warning requirements.

But CERT did not let the matter rest. Several months after the preliminary injunction issued, CERT filed a motion demanding that Judge Mueller recuse herself based on alleged financial conflicts of interest. The motion included extensive amounts of Judge Mueller’s personal information, some of which was incorrect according to Judge Mueller. CERT even subpoenaed Judge Mueller’s husband and his business. Citing these “scorched earth” tactics, Judge Mueller did recuse herself, stating:

In sum, I do not believe CERT’s motion to recuse provides a legitimate reason for my recusal. I am very concerned that CERT and [proposed intervenor] HLF are motivated not by a fear I might be swayed by prejudice or bias, but rather by a hope they will have greater success before a different judge. At this stage, however, I could not be faithful to the oath I took if I continued presiding over this action.

Notably, all other judges in the Sacramento Division of the Eastern District also recused themselves, and the case was transferred to the Fresno Division.

## **The appeal**

CERT, not the California Attorney General, appealed the preliminary injunction order. CERT sought, and obtained, a stay on the preliminary injunction while the appeal was pending. Ultimately, the Ninth Circuit affirmed in March 2022, finding, after reviewing the record, that the district court had not abused its discretion in issuing the prohibition on Proposition 65 enforcement.

The Ninth Circuit agreed with the district court’s application of the *Zauderer* standard, and concluded that the safe harbor warning is controversial because of the “robust disagreement by reputable scientific sources” about the actual cancer risk presented by dietary acrylamide. The appellate court also agreed that the warning is misleading: The word “known” as used in a Proposition 65 safe harbor warning “carries a complex legal meaning that consumers would not glean from the warning without context.” CalChamber’s own survey demonstrated that consumers read the warning to mean that consuming the food products create a risk of cancer in humans, even though acrylamide was listed as a carcinogen solely on the basis of animal studies.

The Ninth Circuit also agreed with the district court that the Proposition 65 enforcement mechanism “creates a heavy litigation burden on manufacturers who use alternative warnings” and that “only the safe harbor warning is actually useable in practice”—meaning that using alternative wording that would provide appropriate context likely would be considered to run afoul of the statutory “clear and reasonable” standard. The appellate court noted the legal, business and financial risks that businesses face upon receipt of a Notice of Violation, finding that the compelled disclosure appeared unduly burdensome. On balance, the equities weighed in favor of CalChamber, especially here, where the Ninth Circuit has “consistently recognized the significant public interest in upholding First Amendment principles.”

Then the appellate court addressed CERT’s prior restraint argument. While enjoining a lawsuit could be considered prior restraint of speech, the doctrine does not apply where the lawsuit itself has an illegal objective. Ultimately, the Ninth Circuit concluded that CERT was precluded from claiming protection under this doctrine because Proposition 65 acrylamide-in-food claims are, at this preliminary injunction stage, likely unconstitutional. As the court put it, “Thus, we hold that the preliminary injunction against *likely unconstitutional* litigation is not an unconstitutional or otherwise impermissible prior restraint” (emphasis in original).

Ironically, CERT also argued that the scope of the preliminary injunction, by including private enforcers, was so overbroad that CERT could not be bound by it. The Ninth Circuit put the kibosh on that in these two sentences: “As an intervenor...CERT brought itself into active concert and participation with the Attorney General in the context of this litigation. It would defy logic to now hold that the injunction as applied to CERT as a private enforcer is overly broad.”

## **What’s next?**

Before the broader regulated community could fully celebrate this victory, CERT filed a petition for rehearing *en banc*. It also has filed a motion in the lower court to vacate the preliminary injunction based on Judge Mueller’s alleged “unwaivable conflict of interest.” That motion is set to be heard on May 17, 2022. Seeking multiple bites at the apple, CERT’s motion requests that CalChamber’s

original motion for preliminary injunction be scheduled for a new hearing. Given CERT's aggressive positioning to date, it is not difficult to imagine that it would file a petition for certiorari to the US Supreme Court if things do not go its way.

This complicated litigation dance, whose steps CERT appears to be dictating, reinforces what businesses face when confronted with a Proposition 65 claim. Fees and costs for a full defense on the merits can reach into the seven figures. The average Proposition 65 settlement lives south of \$50,000. It is no wonder that the vast majority of Proposition 65 cases settle, and it is no wonder that consumer product warnings are so prevalent, for warnings are the only way to prevent enforcement actions, however unmeritorious, from being filed.

In the meantime, the regulated community affected by these particular proceedings is being whipsawed. There is little incentive to undertake the substantial costs of re-tooling packaging to remove acrylamide warnings until this matter is resolved for good. As victories emerge and then recede, nor can most food suppliers so quickly pivot from removing warnings to replacing them on labels even if cost otherwise were not an obstacle. The true casualties here, however, are the consumers who are being misled by unnecessary – and unconstitutional – acrylamide cancer warnings on their foods and beverages, and are suffering increased product prices as a consequence of the imposition of such unwarranted and counterproductive costs in labeling, legal entanglements and abusive industry settlements.







# Effective Education of Our Next Generation(s) of Americans

Parents have awakened, in the wake of pandemic driven virtual educating, to the woke indoctrination being imposed on their children in many of our public schools. A proactive movement is gathering strength to restore traditional American values and focus on STEM (see William Swanson's remarks at page 29 following), as well as history, languages, physical education, civics and the more constructive curriculum conducive to a progressive and productive next generation of producers and leaders in our disparate American society. Effective education is a critical part of the foundation of our republic.

Virginia (Ginny) Gentles is the Director of the Education Freedom Center at the Independent Women's Forum. She is also a contributor to the Independent Women's Network and a long time school choice advocate, as well as a former state and federal education policy leader. Her work has appeared in National Review, Newsweek, City Journal, Real Clear Education and Townhall.

Gentles served as a senior political appointee in the U.S. Department of Education under President George W. Bush. She led the Florida Department of Education's Office of Independent Education and Parental Choice, managing the state's school choice programs. While living in Canada, she worked for the Fraser Institute and the Ontario Ministry of Education. She began her career on Capitol Hill as a legislative assistant and House Budget Committee analyst.

A Florida native, Gentles is a graduate of Wake Forest University and the Maxwell School of Citizenship and Public Affairs at Syracuse University. She lives in Virginia with her two daughters.

Ms. Gentles has kindly composed the following article for the Atlantic Legal Foundation's 2021 Annual Report providing a current perspective on the educational crisis in America and the inspired efforts afoot to restore effective education in our classrooms . . .

# Guest Article by Virginia (Ginny) Gentles

## Director of the Education Freedom Center



## The Case for Education Freedom and Protecting Charter Schools

**Virginia Gentles**  
**Director, Education Freedom Center**  
**Independent Women's Forum**

Children are Covid's lowest-risk demographic, but American elementary and secondary students have suffered the most throughout the pandemic because of pandemic-era school closures and abysmal remote instruction. Negligent school district leaders endangered children academically, emotionally, and physically by closing and refusing to open schools, decisions that led to devastating learning loss, significant mental health issues, and higher rates of suicide and obesity. *The New York Times* reported that, "Children fell far behind in school during the first year of the pandemic and have not caught up." Michael Petrilli, president of the Thomas B Fordham Institute observed that, "We haven't seen this kind of academic achievement crisis in living memory."

Policymakers must expand education freedom and protect charter schools in order to provide parents and students with a path out of the learning loss crisis created by traditional public school districts.

### **SCHOOL DISTRICTS CREATED A LEARNING LOSS CRISIS**

Throughout the pandemic, many areas have experienced extended school closures, disastrous remote learning, misspent "emergency" federal funding, refusal to meet the needs of children with disabilities, lowered academic standards, and school boards determined to ignore the impact of learning loss on students from low-income households. Study after devastating study reveal the widespread academic and emotional harm school district bureaucrats, teachers unions, and union-supported school board members inflicted on America's children.



Declining California math scores have been described as a “five-alarm fire,” with 8th grade students testing on average at the 5th grade level on the 2021 state standardized math test. While standardized test scores have plummeted for students across the country, minority and low-income students in areas that persistently closed schools - including California - have lost the most academically. Children who had not learned to read before schools closed in March 2020 are still struggling to acquire reading skills. Students with special needs are suffering academically, behaviorally and emotionally because school districts refused to fulfill their federal obligation to provide assistance, accommodations and therapies to students with IEPs.

Parents know their children deserve a better education than the one provided to them for the last two years. Parents know they deserve power over their children’s education, but unfortunately school districts and unions hold all of the power in areas without education freedom. For too long, the existing education system in our country prioritized the needs and desires of its employees. The teachers unions ensured that *union*-backed school board candidates were elected into office in order to implement *union* goals.

For too many years, children have suffered under this adult-centered regime. Even before the pandemic, nearly two-thirds of U.S. students were unable to read at grade level and only 15% of 8th graders were proficient in U.S. History.

## EXPANDING EDUCATION FREEDOM

No child should be trapped in a failing system. Policies must be in place that enable parents to take their children’s taxpayer-funded education dollars to the education providers of their choosing—whether it be a public, private, charter, or homeschool.

Historically large numbers of families are now leaving traditional government assigned schools. Traditional public school enrollment decreased by over 3% (1.5 M students) last school year. Homeschooling rates doubled. Families in areas with perpetually closed public schools, but fully open private schools, eagerly transferred their children. And public charter school enrollment increased by 7.1% (240,000 students). Even when schools reopened, ongoing frustrations with over-zealous quarantine policies, mask mandates, sexually explicit books in school libraries, and lessons focused on CRT and gender ideology, fueled a continued exodus from traditional public schools.

Thankfully, in 2021, state legislators recognized the soaring demand for educational options, and expanded or created new private school choice programs in 20 states. School choice policies empower parents, rather than distant bureaucrats, to direct their children’s education. School choice programs give families purchasing power to direct their children’s educational path, rather than remain beholden to central government negligence. Education freedom policies also send a wake up call to school districts: **serve students well, or the students will leave.**

Clearly, it’s time to fund students, not systems, and develop policies that allow a wide variety of education options to flourish. **Our country must prioritize parental rights and education freedom rather than bureaucratic systems and union control.** Parents whose eyes are now open to the power imbalance between parents and school districts must become school choice advocates in their communities and states.



## PROTECTING CHARTER SCHOOLS

In addition to continuing to create and expand private school choice options, states policymakers should support charter school policies and federal policymakers should protect the Charter Schools Program from the Biden Administration's administrative attacks. Currently 44 states and Washington, D.C., have charter schools— public schools that operate mostly or entirely outside of the traditional school-district system. There are approximately 7,700 charter schools operating in the United States, serving 3.4 million students. For over a quarter of a century, the federal Charter Schools Program (CSP) has channeled essential startup funding to nonprofits launching charter schools. This valuable and important federal program should be continued and strengthened, rather than weakened by the Biden Administration's proposed changes to the program.

The original CSP law created a federal program to provide small, competitive grants to charter school developers, including “teachers, administrators and other school staff, parents or other members of the local community in which a charter school project will be carried out.” The program's creators hoped that funding new charter schools would expand freedom for communities to innovate, test a variety of educational approaches and provide educational opportunities to students poorly served by their neighborhood school.

Soon after the first state charter school law passed in Minnesota in 1991, advocates proposed creating a federal startup funding source for these new, innovative, autonomous public schools. The idea received bipartisan backing, including substantial support from Democrats in Congress and the White House. Republican Sen. Dave Durenberger of Minnesota developed a proposal to provide competitive federal grant funding and build awareness of the charter idea among other states' legislators and governors. Democratic Sen. Joe Lieberman of Connecticut co-sponsored the bill and Democratic Rep. Dave McCurdy of Oklahoma introduced the bipartisan House companion bill. The Democratic Leadership Council and its affiliated think tank, the Progressive Policy Institute, worked to expand support for the proposal among members of Congress and governors.

Then-President Bill Clinton included charter funding in his administration's Elementary and Secondary Education Act reauthorization proposals, and charter proponent Sen. Ted Kennedy, Democrat of Massachusetts, oversaw the reauthorization conference committee. The federal Public Charter Schools Program was signed into law in 1994 as part of the comprehensive Improving America's Schools Act in the reauthorization and received a \$6 million appropriation for fiscal year 1995.

For years, CSP expanded due to support from congressional advocates. The Obama administration, under Secretaries Arne Duncan and John King, initiated a significant funding spike for the program and, due to bipartisan support, it has grown considerably. In FY 2022, CSP received an annual appropriation of \$440 million for the fourth consecutive year. As recently as February 2020, Democratic Rep. Rosa DeLauro of Connecticut stated that “with regard to charter schools, there is a place for them. They have a role in education.”

Unfortunately, the United States Department of Education's proposed new rules for the Charter Schools Program (CSP) would create insurmountable bureaucratic hurdles for most applicants, and lower-income communities that desperately need alternatives to failing traditional public schools

would be denied CSP funding. Perhaps by design, the delay in the application process caused by the proposed rules would deter potential grantees from applying for CSP grants in 2022, and prevent the creation of new educational options for communities and families who are poorly served by the traditional public school system.

The rules' plan to require charter schools to describe "unmet demand for the charter school" by showing "over enrollment of existing public schools" is irrational in an era of declining traditional public school enrollment and unfair to parents. Parents choose charter schools based on the educational opportunities, academic program, and environment the school offers their children. Parents should not lose access to educational options because the local school district is not "over enrolled."

The proposal to require charter schools to demonstrate plans to "establish and maintain racially and socio-economically diverse student and staff populations" would prevent charter schools from opening and serving students in urban environments with high minority populations. Charter schools have a long history of serving Black and Hispanic students in urban areas effectively, in stark contrast to the failing traditional public schools in the same areas. Teachers, parents and education entrepreneurs hoping to open charter schools in areas that are not racially or socio-economically diverse, like Native American reservations, would not be able to access CSP funding. It is cruel to deprive historically underserved students of high-quality education options.

The Biden Administration plans to require states to prioritize funding for charter applicants that have found a school district to "partner" with them. School districts have little to no incentive to partner with independently-operated charter schools, so the CSP funding would automatically be directed to district-authorized charter schools. This proposal would empower districts to prevent innovative and entrepreneurial charter schools from opening.

The federal charter grant program effectively uses small amounts of federal power and funding to encourage a variety of innovative approaches to public education. Many schools launched with CSP funds serve disadvantaged students. Rather than proposing rules to weaken the program, the U.S. Department of Education should explore opportunities to further strengthen the program. Rather than making the already lengthy CSP application even more onerous and complicated, it should be streamlined to avoid discouraging smaller charter developers and community organizations from applying.

The Charter Schools Program is an important investment in educational opportunity that should not be undermined by these bureaucratic rule changes. The CSP was designed to encourage nonprofits to open a diverse array of charters that fit the needs of their local communities. The program should be strengthened, rather than attacked, ensuring that flow of federal charter school funds align with the program's original goals. Demand for charter schools is growing with overall charter enrollment increasing by seven percent this year. Federal funding should be accessible to charter school founders who seek to meet the growing demand. Students and families will benefit from an expanded education marketplace.



# CHARTER SCHOOL ADVOCACY



**Thomas V. Walsh**

Principal, Jackson Lewis PC  
Advisory Council Member  
Atlantic Legal Foundation

The Atlantic Legal Foundation continues its support of charter schools, which are the vanguard of campaigns for both improvement in public education and school choice. The charter school movement continues to thrive, albeit with constant political headwinds.

Charter schools exist only where enabled by state legislatures. At present, 45 states and the District of Columbia have passed charter school legislation. Only Montana, Nebraska, North Dakota, South Dakota, and Vermont have yet to enable charter schools. There are today over 7,700 charter schools nationwide, educating 3,400,000 students and employing 206,000 teachers.

The Foundation is at work on a new draft of the New York charter school labor law guide ***Leveling the Playing Field***. The new volume has been oft delayed due to the political upheaval at the National Labor Relations Board (NLRB), whose holdings directly affect labor law in these institutions.

Not surprisingly, an NLRB majority comprised of President Trump appointees differs greatly from that appointed by President Biden. Mr. Biden wasted no time in placing his stamp on the NLRB. Within hours of taking office he summarily discharged Peter Robb, the Trump Board's General Counsel despite the fact that he had eight months left in his term. This was unprecedented (its legality is still being litigated). The General



Counsel (GC) acts as the NLRB's prosecutor, determining which cases to bring and which legal theories to propound. This is a pivotal role in shaping federal labor policy. President Biden replaced Robb with Peter Sung Ohr for the remainder of Robb's term. Biden nominated Jennifer A. Abruzzo to a full term in the position; she has now been duly confirmed by the Senate.

Mr. Biden has prominently said he intends to be "the most pro-union president in history," which is underscored by his appointment of both Ohr and Abruzzo who have track records that are reliably pro-union. GC Abruzzo has announced her intentions to broadly revamp interpretations of the National Labor Relations Act, not just seeking to rescind the generally pro-employer decisions under the Trump administration, but encouraging the NLRB to take aggressively pro-union stances on issues thought to have been well settled for many years.

The Board itself has undergone a sea change. Comprised of five members with staggered terms; the NLRB traditionally has a majority which are of the same party as the President. Biden's appointees, also reliably union-leaning, flipped the Board to a Democrat majority last August. The NLRB can only address the cases it is presented; there is lag time between a case being brought by the GC and an ultimate ruling by the NLRB in Washington (and most cases are settled before reaching the Board). While relatively few have reached the Board for decision, those that have reflect the new direction.

Notably, it is not just the NLRB that is a concern of charter schools. The U.S. Department of Education has proposed regulations to make it more difficult to open charters. Democratic leaders in Congress seek to cut federal funding as well.

It is no secret that the primary opponents of charter schools are the teachers' unions across the country. Charters, mostly non-union, are free from collective bargaining agreements that curtail innovation and school flexibility. It is also no secret that the teachers' unions have significant political clout at both the local and national levels.

What does this have to do with ALF's *Leveling* publications? The process of union organizing in New York (and elsewhere) is controlled by the applicable labor law. Although charter schools are all creatures of state law, there has been a question of whether their unique public-private nature means they are covered by *federal* labor law. In New York, for the first 20 years of the existence of charter schools, it was unquestioned that charter schools were governed by New York public sector labor law. After all, charters are "public schools" funded by tax revenues and subject to regulation by public education officials.

Among the differences in New York between federal labor law (the NLRA) and state public sector labor law is that state law allows unions to organize through "card check" – meaning that if a majority of employees sign cards manifesting interest in the union, the school is unionized without there ever being a secret ballot vote. In a landmark NLRB case a few years ago we successfully argued that New York charters may be "public schools" on paper, but their inception and management control was sufficiently non-governmental so that state labor law did not apply, the federal NLRA did.

However, following that, unions challenged the Board's conclusion in case after case. In cases arising in every state but one, the NLRB held that the state charter school law did not preempt the National Labor Relations Act. The sole state law which retains adequate government control to exclude the NLRA (somewhat surprisingly) is Texas (note that no cases have been litigated in most states, but the probability of NLRA jurisdiction is likely).

Eventually, the Board contemplated sidestepping its legal analysis and exercising its statutory right to refrain from asserting jurisdiction over all charter schools. Interestingly, the NLRA enables the Board to “decline to assert jurisdiction over ... any class or category of employers, where, in the opinion of the Board, the effect ... on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.” (NLRA, § 14(b)).

This was worrisome as it threatened to upend charter school labor law. However, the issue was met head on in a 2020 decision in which the Board held it would not withdraw jurisdiction “at this time.” Since then, the Board has gone through its political transformation. Given the continued strident union opposition to charter schools, we were concerned about this threat arising anew. At this time, it does not appear that this issue is one that is slated for re-argument.

We are editing the book now to reflect NLRB jurisdiction and how that affects the election process. While the current state of the law benefits both charter schools and the rights of employees in New York (and some other states), there is a flip side. The NLRA extends protections to employees from any sort of retaliation for exercising their rights to engage in “protected concerted activity” regarding working conditions. “Protected concerted activity” is not limited to merely union organizing. It is a broader protection than employees would have under state laws. Labor lawyers are seeing a definite increase in allegations being filed (called “unfair labor practice” charges) against charter schools alleging violations unrelated to union organizing. Often these charges are filed by individual employees. Or they can be assisted by a union, waiting in the background to exploit an organizing opportunity. We are revising the publication to address this.







# ANNUAL AWARDS DINNER

Deferred is the word over the past two years under the clouds of COVID which appear to be lifting as we progress into 2022. Hopefully we'll hold an awards dinner later in 2022. Preliminary plans are underway.

The pains of the pandemic manifested most poignantly with our young students who faced much heavier challenges in progressing their education handicapped by the constraints of virtual out of the classroom or masked in the classroom teaching and learning.

A dominant theme of ALF's 2021 Annual Report springs to the repressed need to accelerate the effectiveness of the education of our young students on such most compelling subjects for their futures, and the future of America, as among others, notably and especially: science, technology, engineering and math or STEM.

In 2012, Atlantic Legal honored William Swanson, the then chairman and CEO of the Raytheon Company who spoke passionately to **"Business' Critical Role in STEM Education for U.S. Competitiveness."** His remarks are especially gripping and timely in today's post pandemic challenged environment. Mr. Swanson's remarks and those of the recipient of ALF's 2012 Lifetime Achievement Award, the late Professor Richard Wilson, the former head of the Physics Department at Harvard University, are republished for your consideration following. Dr. Wilson addresses **"Scientists Need to Recognize the Importance of the Law; Without the Atlantic Legal Foundation This Would Not Have Happened".**



## Remarks by William Swanson Chairman and CEO of Raytheon Company



### Business' Critical Role in STEM Education for U.S. Competitiveness

**William Swanson**  
**Chairman and CEO of Raytheon Company**

It is an honor to be here tonight, and to be recognized by the Atlantic Legal Foundation with its Annual Award. Thank you for this tremendous recognition.

Reading through the names of the past award recipients, it really means a lot to me to be in such esteemed company.

I'd also like to congratulate Dr. Wilson on his Lifetime Achievement Award.

I realize I'm outnumbered as an engineer in a room full of lawyers, but we're really not all that different.

In fact, engineers and lawyers have a lot in common.

- We take the complicated and make it simple
- We seek truth and logic
- We enjoy a good argument or debate on the merits of things

That's why I really value what lawyers do. And I especially want to thank those of you here who have done work for Raytheon. These are important partnerships. You help us be successful and grow as a company, by providing expertise, resources and global access.

And within Raytheon, I really appreciate the value of good general counsel, which is why we're blessed to have Jay Stephens on our leadership team.

Jay is someone I can count on to tell me what I need to hear.

And I want to personally thank Jay for all that he does for Raytheon, for me, our Board, and most importantly our customers.

I also want to thank the Atlantic Legal Foundation for its consistent support of the principles of public policy that benefit industry and the private sector.

Under the leadership of its Chairman, Dan Fisk, the Foundation is at the forefront of advancing the rule of law and free enterprise with programs supporting sound science in the courtroom and corporate governance.

Atlantic Legal also supports something near and dear to my heart: educating the next generation as a leader advocating for school choice and charter schools.

In our free-enterprise system, education is vitally important, especially science, technology, engineering and math, or STEM, education.

We take it for granted, but STEM fields have long been drivers of U.S. economic growth. And they're the foundation of innovation in this era of global competitiveness. Yet in this new century, our leadership position is being challenged by:

- Increased Global Competition
- The "Baby Boomer" generation now entering retirement
- Waning student interest in STEM

This is something I see firsthand as the head of a technology and innovation company, and I'd like to spend the balance of my time talking about "Business' Critical Role in STEM Education for U.S. Competitiveness."

Now I could read you pages of stats and figures to frame our nation's STEM challenge, but I thought it would be more interesting to present them in a short video, and thanks to the Raytheon team, I can do that. Can we please roll the video.

***("Our STEM Challenge" video is shown)***

I think that frames our STEM challenge nicely. The takeaway is that while there are challenges, we all have a part to play, working together, to strengthen STEM education to make a difference.

Yet, the truth is that for various reasons, one of the players, the business community, isn't always as engaged as it should be.

I hear business leaders complain about the system and the issues they're having finding qualified people. Well, I was taught that you can't complain about the system if you don't try to change it.

Business and the private sector have an obligation, and I've always believed that they need to be part of the solution.

Since virtually every business is dependent on technology today, we all have a stake in replenishing the STEM pipeline with new talent for the future.

Businesses certainly see the benefits of a stronger STEM pipeline, with a highly skilled workforce driving innovative new products, systems and solutions. This in turn fosters job growth and increases the competitiveness of our country.

Fortunately, many in the business community are already engaged.

However, I've been challenging those businesses still on the sidelines to put on their helmets and pads, and get onto the field. If ever there was a moment, this is the moment.

Join us in strengthening and deepening our collective efforts and impact. Let's give a competitive advantage to our youth, our businesses and our country.

We need everyone's help to inspire today's students at all levels to develop an interest in STEM so they'll be excited and prepared to pursue STEM education.

Once they're in the pipeline, we need to sustain that interest so that they stay on track to rewarding STEM careers.

So, what can businesses do? The business community and private sector have much to contribute, including:

- Visibility into workforce trends and needs
- Results-oriented focus
- Marketing skills
- Public-policy advocacy
- Corporate philanthropy
- Volunteerism - employee volunteers who use science, technology, engineering and math every day, and who very much WANT to help!

Whether the steps are big or small, we can all do something.

One area where business engagement is needed is helping improve workforce alignment. Too many students and adults are training for jobs in which labor surpluses exist and demand is low, while high-demand jobs, particularly those in STEM fields go unfilled.

As job creators, businesses are on the frontlines of this supply/demand dynamic. So, they have a tremendous opportunity to work together with academia to identify and address the structural misalignment between education and workforce needs.

This is something we've been focused on at the Business-Higher Education Forum (where I've been Chair and I'm currently a member of its executive committee). Our goal of improving alignment is to better develop and maintain the employee skills that will keep our companies competitive in the 21st century.

Another area businesses can play in is providing role models and volunteers. I am proud to be an engineer. Those of us in STEM careers know how exciting our professions are. We need to share that excitement and passion every chance we get.

Sometimes all it takes is a single moment or spark to inspire a future engineer or scientist to pursue a STEM career, and many times this inspiration comes from eager volunteers and mentors.

Raytheon employees love working with students, and it's so inspiring to hear the stories from our volunteers, and to see the excitement on their faces.



And they're having quite an impact. Last year, our employees logged 200,000 volunteer hours on activities that include mentoring and tutoring, science fairs and math team coaching, school visits, and so forth.

I was talking to U.S Secretary of Education Arne Duncan at a White House Roundtable on business and education, and he mentioned three big ways business can engage in the STEM Agenda. They are:

- Advocate for standards in the states
- Help parents be more active and engaged
- Make sure corporate giving has a return on investment

Excellent insight; simple, strategic, and they reinforce accountability, and I think they're things business and the private sector can get behind.

The important thing is to get engaged - as part of the team. Don't do it alone. Become partnered and aligned with other like-minded organizations and groups.

As with any great team, we're more successful when we're working together. A lot of groups are doing well-intentioned activities, but if they aren't aligned, they may be missing an opportunity to have an even greater impact.

I've told you some of the things businesses can do. Let me now briefly sketch out some of the things we are doing at Raytheon to show that there's a range of different ways to plug into the need.

At Raytheon, our research helped us to focus on the STEM challenge from the perspective of math and science education in the crucial middle-school years.

We set as a goal to encourage students to develop and sustain an interest, so they would be prepared and confident to pursue STEM disciplines later.

We wanted our approach to be interactive, experiential and exciting - to reflect the scientific and engineering culture of our company - to inspire the volunteerism of our employees.

From that vision, our MathMovesU® initiative was born. Created in 2005, it began as a virtual, Web-based experience through MathMovesU.com that engages students on their own terms to show how math and science can be used in exciting ways to pursue exciting goals.

Today, MathMovesU now has several facets, and we've teamed with others who share our passion and our vision.

- It's a sports experience with the New England Patriots and the Kraft family at The Hall at Patriot Place Presented by Raytheon with an interactive football game that uses math called "In The Numbers."
- MathMovesU is a competitive experience through MATHCOUNTS, which is the equivalent of the National Spelling Bee for Middle School math competitors, and during the national-level competition, over 200 of the best "Mathletes" from across the country compete. We're honored to be title sponsor through 2018.

- And it's a *ride experience at Walt Disney World®* called *Sum of all Thrills™*, where children of all ages - and the children in all of us - can design their own ride, from smooth to most challenging, using mathematical and engineering principles, and then to experience the ride. To date, nearly 2 million Epcot guests have experienced the ride.

In total, the MathMovesU program has touched the lives of millions of students, teachers and parents.

As our impact has grown in numbers, it's also broadened, from a middle school focus, to today, when we're involved in every aspect of the STEM pipeline up through higher education.

This growth has added new dimensions to our efforts that include:

- Leveraging the skills of our engineers
- Tapping into community colleges
- Strengthening our partnerships

Raytheon engineers have gotten involved by drawing upon their systems engineering skills to model the U.S. STEM education system at a national level.

More than 75 Raytheon engineers spent three years and more than 12,000 hours to examine student capabilities and interest in STEM - as students move from grade school, through high school, college, and into the workforce.

It's never been a lack of ideas that prevented a solution. But can a great idea be scaled? Can it be evaluated before experimenting on students?

To answer these kinds of questions, the STEM Modeling Tool contains hundreds of variables, and it can review and assess different scenarios to see what would happen.

After demonstrating the proficiency of the model, Raytheon donated it to Business-Higher Education Forum. Since then, BHEF has worked with partners to develop enhancements to the model and promote its use by U.S. educators and policymakers.

Now, Version 2.0 is being released with the support of the Office of Naval Research to answer the question framed by the President's Council of Advisors on Science and Technology:

- How can we develop the workforce we need by graduating an additional 1-million STEM college graduates by 2020?

In the area of higher education, one of my concerns, as I mentioned earlier, is workforce alignment. Another concern I have as a leader is the inner city, and are we doing enough there.

Pairing these two concerns led us to take a closer look at another new dimension for us: community colleges. I'm a member of the Massachusetts Competitive Partnership leadership and the organization has started a "Learn and Earn" Co-op program linking our community colleges with businesses in the state ... and Raytheon is part of this exciting effort.

We ran a successful pilot last spring, and we now have a full, semester-long program up and running with 35 students in the program at State Street, BJ's, Suffolk Construction, EMC, Bank of America, Fidelity and Raytheon.

Another organization we partner with is the Museum of Science, Boston. In working with them, we saw what an impact they were having in supporting the training of STEM teachers through its Engineering is Elementary® program.

This program taps into the natural curiosity of elementary-school students and their ability to solve problems, and it helps foster engineering and technology thinking through hands-on, storybook-based learning in math and science.

We wanted to help them expand the program, and in 2011, we made \$2 million in donations to:

- Accelerate teacher training by establishing professional development hubs in Boston, Phoenix, Ariz., Huntsville, Ala., and here in Washington.
- Fund teacher scholarships to expand program access for teachers from inner-city, rural and disadvantaged areas.

MathMovesU, the STEM Modeling Tool, Community College “Learn and Earn,” and the Museum of Science—these are just four of the ways we’re excited to be involved in STEM education and outcomes. So in the interest of time, I’d like to play my last short video that summarizes these and the many more ways Raytheon is engaged in STEM education.

***(“Raytheon and STEM Education” video is shown)***

I wanted to mention that the last initiative we showed, MathAlive!™, debuted last year at the Smithsonian. It’s an interactive museum experience that explores exciting math-powered activities, and Raytheon is proud to sponsor its multi-year tour of science centers and museums across the country.

It’s already been a huge success with total attendance of more than half-a-million during its first year (with stops in Washington, Phoenix, Huntsville and now Houston).

As I close, I’ve told you why business should be engaged, how they can be engaged, and how my business is engaged.

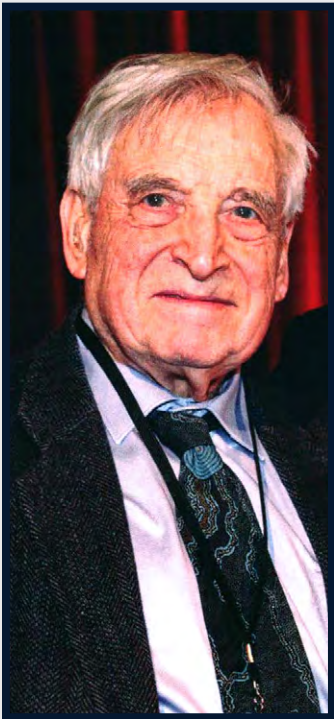
Now let me repeat my challenge to those businesses still on the STEM education sidelines: “Put on your helmets and pads, and get on the field.” It’s the right thing to do for business, and it’s the right thing to do for our country.

If we seize this opportunity, I’m confident that together we can contribute to the strong STEM talent pipeline that is so critical for our nation; that is so critical for us to continue to be a leader in technology and innovation in this era of global competitiveness.

Thank you for the opportunity to speak about this important subject, and thank you again for this outstanding honor.



## Remarks by the late Professor Richard Wilson Mallinckrodt Professor of Physics, Emeritus Harvard University



### Scientists Need to Recognize the Importance of the Law; Without the Atlantic Legal Foundation This Would Not Have Happened

**Professor Richard Wilson**  
**Mallinckrodt Professor of Physics, Emeritus**  
**Harvard University**

*Professor Richard Wilson delivered the following address at the Atlantic Legal Foundation's Annual Award Dinner on March 11, 2013 as the recipient of the Atlantic Legal Foundation's fourth Lifetime Achievement Award.*

*Professor Wilson is past Director of the University's Regional Center for Global Environmental Change. He also served as Chair of the Department of Physics at Harvard and was Chair and is currently a Member of the visiting committee to the Department of Radiation Medicine at Massachusetts General Hospital.*

*Professor Wilson is a founder of the Society for Risk Analysis and is a pioneer in the field of risk analysis. His areas of expertise include elementary particle physics, radiation physics, chemical carcinogens, air pollution, groundwater pollution by arsenic, and human rights. He has been a consultant to the United States government and the governments of numerous foreign countries on matters of nuclear safety, toxicology, epidemiology, public health and safety, and risk assessment.*

*Professor Wilson is the author or co-author of more than 930 published books and papers and is the recipient of numerous awards.*

I would like to thank the Atlantic Legal Foundation for this award. I do want to make one correction. It implies that I have been a strong supporter of the Foundation. It's really the complete reverse of that. The Foundation has done a great deal to support something I've been trying to push for 40 years, which is that scientists need to recognize the importance of the law. Without the Foundation, this would not have happened.

Most scientists don't realize the importance of the law. It is clear that they think that their work is important, which it probably is, and they write scientific papers which someone looks at occasionally -- and they might even get politicians to accept them. They often say that scientific truth is what matters. I didn't realize for quite a long time that what matters is not always what the scientists say in their papers, but what the courts say. The implication of that realization is that you've got to persuade the court to reach the right result.

Back in 1960, there was a realization that two things were quite dangerous -- one of these was cigarette smoking, and my father died of that, and the other was exposure to asbestos. A leading physician named Irving Selikoff wrote a scientific paper (which has been corrected and modified over the years) with a man named Herbert Seidman that pointed out that lung cancer is not very common if you don't have exposure to one or other of these things.

In their paper, Selikoff and Seidman mentioned that a heavy cigarette smoker has ten times the chance of lung cancer; that nonsmokers exposed to asbestos have three times the risk of lung cancer; and that the risk for those who are exposed to both rises to thirty times. It is clear that cigarette smoking is much more dangerous by itself than asbestos is. That's the risk assessment. However, there is a fundamental distinction between risk assessment and risk management. Thus, the outcomes for companies managing those risks can be quite different. Johns Manville which was responsible for managing a lesser risk (asbestos) sank into bankruptcy, while Philip Morris which managed a greater risk (cigarettes), is still going strong.

In some situations, the risk assessment of the American public plays an important role. This is illustrated by its shifting attitudes about nuclear power. Up to about 1970, it enjoyed strong public support, but then public opposition began to grow even though nuclear power was becoming sensible and economic. I then focused my life on trying to persuade people that nuclear power was a better alternative than power generated by fossil fuels, which create more air pollution.

About 1985 I was introduced to the Atlantic Legal Foundation. I worked with Atlantic Legal in developing a brief directed against Governor Mario Cuomo's efforts to shut down the Shoreham nuclear power plant, which was then operating at very low power and had been given a license by the Nuclear Regulatory Commission to go full power. Although this brief failed in the New York Court of Appeals three-to-two, and led to abandonment of the plant, it led to other things, particularly the Foundation's role in discussing the role of expert witnesses in court cases. Normally, a witness can only testify with respect to something he or she has personally seen and/or heard. An expert witness can use his or her expertise to diverge from what he or she actually personally experienced. This came up in the Supreme Court in three different cases, and I was very honored to be able to help the Foundation draft the brief in each one of those three and find distinguished scientists to support us. The fact that Foundation did this was absolutely fantastic.

Other cases followed and in the last twenty years we (Atlantic Legal and I) developed a procedure of submitting a brief *amicus curiae* on behalf of distinguished scientists, often with Nobel prizes, in about twenty cases where an expert witness abused his privilege and used "junk science". It takes work, which of course I do *pro bona*, but I am proud of it and hope Atlantic Legal is, too.

# Annual Award Recipients 1988-2021

2019, 2020 & 2021

**TBD**

*Deferred due to Coronavirus*

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®*

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*

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*

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*

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*



# Annual Award Recipients 1988-2021

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



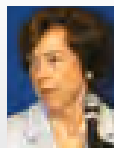
**Alfred C. DeCrane, Jr.**  
*Chairman and CEO*  
*Texaco Inc.*

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

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



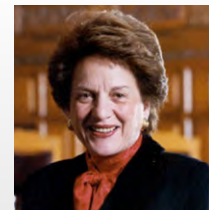
**The Late Richard Wilson**  
*Mallinckrodt Professor of Physics, Emeritus  
Harvard University*

2011



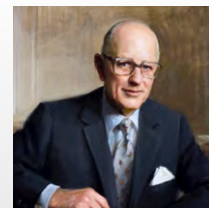
**Kathryn S. Wylde**  
*President and CEO  
Partnership for New York City*

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*

# New Board Members

The following Directors assumed responsibility in early 2021

We are especially pleased to announce that seven new Directors were added to the Board of Directors of the Atlantic Legal Foundation at its Annual Meeting on March 31, 2021 . . . four elevated from ALF's Advisory Council and three new to our Leadership Team:



**Kristin Calve**

Publisher of the Corporate Counsel Business Journal

Kristin Calve is Co-founder of Law Business Media and Publisher of Metropolitan Corporate Counsel Business Journal, an integrated digital and print media platform, that celebrated its 30th year of providing cutting-edge news and analysis to corporate law departments, executives and board members in 2017. Law Business Media also publishes In-House Tech and In-House Ops, and hosts a number of webinars for lawyers and legal professionals. Kristin is a former ALM executive where she helped launch the Daily Deal and created and led the VerdictSearch division of the NLJ Litigation Network. Prior to ALM, Kristin held key leadership positions at other media companies, including A&E / The History Channel International. She is the founder of Topstone Angels, which focuses on funding and advising early-stage companies. Kristin lives in Darien, CT with her husband Joe, four children, Freddy, Jack, Frankie & Charlie and their four dogs.



**Sean Casey**

Intellectual Property Partner at Buchalter, P.C.

Sean Casey is an Intellectual Property attorney specializing in several distinct areas of intellectual property law with a strong background in mechanical and electro-mechanical design engineering, as well as software engineering. He has more than 25 years of experience in managing worldwide patent and technology portfolios in both law firms and large corporate law departments.

His intellectual property experience includes preparation, prosecution, post-grant proceeding, and litigation of technologies that include advanced aerospace technologies, complex computer hardware and software systems and components; Internet and e-commerce related systems; intra- and extracorporeal medical devices including minimally invasive surgical instruments, biotechnological systems and processes, compositions, and devices, related to many different industries, including steel, automotive, mining, rail, petroleum, agriculture, food preparation and processing, medical device, cell culturing and testing, material handling, and consumer products.

Prior to joining Buchalter, Sean served Brooks Kushman and earlier as in-house counsel for a large Fortune 50 aerospace and manufacturing company for 10 years. Previously, he was a managing director for a Midwest regional law firm. Before becoming a patent attorney, he served as an aerospace design engineer for the McDonnell Douglas Aerospace Space and Defense Systems Division (now Boeing) where he was responsible for the design, analysis, integration, and testing of a variety of components, structures, and mechanisms for a national and defense engineering project including various launch vehicles and the International Space Station, where several of his components and systems are now on orbit. There he expanded his expertise in additional engineering disciplines including the analyses of strength, thermal, and electrical properties of materials, components, and mechanisms.

Sean received a Bachelor of Science degree cum laude in aerospace engineering from the Boston University College of Engineering, where he was elected to Tau Beta Pi. He received his Juris Doctor degree from Southwestern University School of Law in Los Angeles. He is active in a number of local and national bar associations.



# New Board Members

## 2021 Continued



### **Steve Mathews**

Shareholder at Haynsworth  
Sinkler Boyd

Steve A. Matthews is a Shareholder of Haynsworth Sinkler Boyd, P.A. in Columbia, South Carolina. He is experienced in a wide range of practice areas including corporate and government finance, mergers and acquisitions, intellectual property, complex litigation, and government and administrative law. He is recognized in *The Best Lawyers in America*® - Appellate Practice. Much of his current practice is concentrated in the area of entrepreneurial start-ups where he represents both developers and licensee-purchasers of software, hardware and other innovative technology. He is also an active litigator in complex corporate, IP, information technology and appellate matters involving mission critical aspects of his firm's clients' businesses. Mr. Matthews is also a certified mediator for civil court actions in South Carolina.



### **Marco Q. Rossi**

Founder & Principal of Marco  
Rossi & Associati, PLLC

Marco Q. Rossi is the founder and principal of Marco Q. Rossi & Associati, PLLC, a boutique innovative international law firm with a singular focus: assisting international enterprises and globally minded individuals with strategic legal and tax advice on cross-border business transactions and international legal and tax matters.

Marco was born and educated in Italy, where he received his law degree from the University of Genoa in 1990 and started practicing international maritime law working primarily as local counsel for major UK – based law firms and U.S. – based clients. In 2002, he earned an international tax LL.M. degree from New York University School of Law and in 2005 he established Marco Q. Rossi & Associati as a U.S. – Italy cross-border practice with offices in Italy and New York. In 2016, Marco opened an office in Los Angeles, through which his firm operates out of both coasts of the United States while being seamlessly integrated with its E.U. based offices in Italy.

Marco is licensed in Italy, New York and California and assists international clients with strategic global tax planning services, foreign companies on U.S. inbound investments and business transactions, U.S.-based companies operating in foreign markets, and executive and managerial workforces employed internationally. In Italy, he maintains a sophisticated Italian international tax practice advising U.S. business and private clients on Italian international legal and tax matters.

# New Board Members

## 2021 Continued



**David M. Axelrad**

Appellate Litigation Partner at  
Horvitz & Levy LLP

David Axelrad advises clients, including numerous Fortune 500 companies, with the benefit of over 40 years specializing in civil appeals. He regularly counsels clients on toxic tort and personal injury cases, and guides clients through the process of preserving the record in the trial court, attacking judgments in the trial court through post trial motions, staying enforcement of judgments, and perfecting an appeal. David is also a leader in providing value added briefings and educational seminars to clients on a wide variety of topics, and writes extensively on topics related to the civil appellate process.

David is a partner at the firm, where he has practiced since 1982. He is a California State Bar Certified Appellate Specialist, and has handled hundreds of civil appeals in state and federal courts, including cases in the California Supreme Court. Prior to joining Horvitz & Levy, David was an Assistant to the Director of the Bureau of Consumer Protection, Federal Trade Commission in Washington, D.C. David also served as a Staff Attorney for the U.S. Court of Appeals for the Ninth Circuit. Mr. Axelrad has been an Adjunct Professor of Law at the University of La Verne College of Law and Loyola Law School in Los Angeles.



**Malcolm S. McNeil**

International Litigation  
and Transactional Partner  
at Arent Fox LLP

Malcolm McNeil has over 35 years of litigation and commercial experience in a wide variety of matters including business/commercial, construction (defect and coverage issues), employment disputes, administrative proceedings, trade secrets, probate, media and entertainment, intellectual property, partnership dissolutions, and real estate. Malcolm has 25 years of experience resolving civil disputes as a mediator and is a panel mediator for the United States District Court, Central District of California.

Malcolm has litigated issues for a wide variety of businesses including those in the venture capital formation, retail, entertainment, textile, manufacturing, import/export, real estate investment, aviation, and publishing. He is keenly aware of the legal and business needs of his clients, and provides strategic solutions to commercial disputes that help enable his clients' businesses to keep moving forward. He also has experience in cross-border negotiations and has an established network of colleagues globally assisting foreign countries as needs arise. Malcolm's practice has included representation of clients in most forums, including a range of administrative forums, statewide and nationally. Known for his leadership and accomplishments, particularly for clients with business interests in China, Malcolm is a panel member on the Shenzhen Court of International Arbitration, the Beijing International Arbitration Commission, and the Harbin Arbitration Commission. Malcolm serves as the co-leader of ArentFox Schiff's International Group, and is the President Elect of the Beverly Hills Bar Association.

With many bar admissions and professional activities, he is a JD law graduate of the Loyola Law School in Los Angeles and Antioch University, BA. Among his many awards and recognitions, he is a member of the Screen Actors Guild (SAG) and the British Academy of Film and Television Artists (BAFTA) in LA. He is a recognized expert on all things Bond . . . James Bond.

# New Board Members

## 2021 Continued



### **Mark D. Nielsen**

Executive Vice President &  
Chief Legal Officer of Frontier  
Communications Corporation

Mark D. Nielsen is Executive Vice President and Chief Legal Officer of Frontier Communications, a national telecom company headquartered in Norwalk, Connecticut with 2020 sales of 7.2B. In this position, Nielsen has leadership responsibility for the Company's legal and regulatory affairs, real estate operations, and corporate communications.

Nielsen started his legal career in 1990 as an associate lawyer at the Hartford law firm of Murtha, Cullina, Richter & Pinney. From 1993 to 1999, he served in the Connecticut Legislature, one term in the House followed by two terms in the Senate. Later, Nielsen served as Mitt Romney's legal counsel, and then Chief of Staff, when Romney was Governor of Massachusetts (2003-2007).

Before joining Frontier in 2014, Nielsen served as Vice President and Associate General Counsel at Raytheon Company from 2007 to 2009, and Vice President and Associate General Counsel at Praxair, Inc. from 2009-2014.

Nielsen is an honors graduate of Harvard College and Harvard Law School. He serves as a member of the adjunct faculty of Columbia Law School.





# New Board Members

The following Directors assumed responsibility in early 2022



**Alex G. Romain**

Partner, Millbank

Alex is a partner in the Los Angeles office of Milbank LLP and a member of the firm's Litigation and Arbitration Group. He is a leading national trial lawyer with more than 20 years of experience representing individuals and corporations in high-stakes complex commercial litigation, white collar defense, and internal investigations. He was a member of the trial team that exonerated the late Sen. Ted Stevens, playing a key role in pursuing the exculpatory evidence that ultimately led to the senator's exoneration. The American Lawyer described his team's work on the case as "one of the best criminal defense performances in memory, resulting in a heightened scrutiny of prosecutors that will affect the Justice Department for years to come." He successfully represented the Baltimore Ravens and several of its senior personnel in connection with the independent investigation conducted by former FBI Director Robert Mueller into the National Football League's handling of the Ray Rice domestic violence incident.

As lead counsel, Mr. Romain represented a leading global professional services company in an \$830 million actuarial malpractice and breach of contract lawsuit brought by the City of Houston in connection with the city's \$6.2 billion pension crisis. Mr. Romain also successfully represented the former Chairman and CEO of Fannie Mae against securities fraud claims in which the plaintiff sought more than \$2 billion in damages, and the court awarded his client summary judgment on all counts. He has been avidly engaged in children's rights and learning. Prior to moving to California, Mr. Romain spent 10 years as a litigation partner at Williams Connolly LLP in Washington, DC. He has successfully defended numerous law firms, accounting firms, and actuarial firms against claims of professional negligence and malpractice and on conflicts issues. He has also defended individuals and corporations against allegations of campaign finance violations, obstruction of justice, bank fraud, environmental pollution, theft, fraudulent misappropriation, and attempted murder. Mr. Romain currently serves on Law360's 2021 Trials Editorial Advisory Board. He is a classically trained pianist and serves on the boards of the Los Angeles Master Chorale and the Alliance for Children's Rights.



**Ana Tagvoryan**

Partner & Co-Chair of  
Litigation and Class Action  
Defense – BlankRome

Ana Tagvoryan is a Partner at the law firm of Blank Rome, LLP. She serves as the Vice Chair of Blank Rome, LLP's corporate litigation practice group and Co-Chair of its Class Action Defense team. She has more than a decade of experience defending companies and principals against complex consumer individual and class action claims, fighting abuses of the class action system, and achieving significant results in appellate courts. In fact, she is one of only a handful of attorneys successfully petitioning the United States Supreme Court for review of an appellate ruling affecting separation of powers and judicial deference in federal class action litigation. Her complex corporate litigation practice concentrates on litigating and advocating for fair interpretation of laws as they pertain to consumer fraud, data privacy, online and telephone marketing, false advertising, e-commerce, and regulatory and statutory compliance issues, across various industries.

Ms. Tagvoryan earned a B.A. from Loyola Marymount University and a J.D. from Pepperdine University School of Law. Before joining Blank Rome, Ana was a corporate litigation attorney at DLA Piper. Ms. Tagvoryan is an ardent indoor cyclist and coffee enthusiast, always looking for the newest and best trends in the two things that help her give her best to her three kids, husband, and clients.

# New Board Members

## 2022 Continued



**Lawrence G. McMichael**

Chairman-Dilworth Paxson

Lawrence G. McMichael is a Senior Partner and Chairman of the practice of law at Dilworth Paxson LLP in Philadelphia. He is a permanent member of the Firm's Executive Committee. He has practiced bankruptcy and commercial litigation for more than 40 years. He is the former Chairman of the Firm's Litigation Department and its Bankruptcy Group. Mr. McMichael has extensive trial experience in federal, state, and bankruptcy courts and has served as lead counsel in many high profile bankruptcy cases, civil and criminal cases and appeals.

Mr. McMichael is one of only a handful of attorneys in the U.S. to be elected as a Fellow of both the American College of Trial Lawyers and the American College of Bankruptcy. He is a member of the American and Philadelphia Bar Associations and the American Bankruptcy Institute.

Mr. McMichael earned his J.D. from Duke University (1978) and his B.A. from Duke, summa cum laude, Phi Beta Kappa (1975).



**Thomas E. Evans**

North American Transportation,  
Senior Vice President, Legal  
Counsel - XPO Logistics

Thomas Evans is Senior Vice President and General Counsel for the North American Transportation and Less Than Truckload business units of XPO Logistics, Inc., (NYSE) and is based in XPO's Charlotte, North Carolina operation headquarters. Tom joined XPO in 2019 and previously served as of counsel to the Conner Winters law firm and Vice President and General Counsel of Merchandising, Marketing & Supply Chain for Walmart Stores, Inc. Prior to Walmart he was Associate General Counsel at McLane Company, Inc. Tom received his bachelor's degree from Trinity University where he currently serves on the Board of Trustees and holds a Juris Doctor from Washington & Lee University.

Congratulations to each of these new Directors, whose respective photos and fulsome bios are presented in our Atlantic Legal Foundation website, which has been upgraded. The Board of Directors and Advisory Council provide important guidance to the Foundation, including on emerging legal issues and pending cases in connection with the Foundation's *amicus curiae* program.

# Treasury Officers Succession in Early 2022

Chairman Fisk and ALF's Board of Directors have commended Director David Wood for his distinguished service as Treasurer for over seven years and congratulated Director/Assistant Treasurer, Nevin Sanli for his elevation to Treasurer succeeding Director Wood in the interest of sharing and broadening experience within the leadership team. Director Marco Rossi was elected Assistant Treasurer, succeeding Director Sanli.



**David Wood**

David Wood has more than three decades of experience in insurance practice, devoting himself exclusively to advising and representing publicly and privately owned corporations in disputes with their insurance companies. David provides corporate policyholders with a keen understanding of how insurance companies work, applying his knowledge of their pressure points to achieve client objectives.

Mr. Wood is a frequent speaker on insurance policy enforcement matters and is often quoted in national media on significant insurance cases and issues. He has been interviewed on CNBC Television, Bloomberg Radio, USA Today, Forbes, and Forbes.com and most recently on Fox Business News: America's Nightly Scoreboard.



**Nevin Sanli**

Nevin Sanli is President and Founder of Sanli Pastore & Hill, Inc. He is responsible for the overall management of the firm, including client engagements, litigation support, expert witness testimony, strategic planning and relationship management.

Mr. Sanli, a member of the American Society of Appraisers, is an accredited Senior Appraiser, Business Valuation Discipline, and has been a financial consultant for over 30 years specializing in expert testimony & litigation opinions, forensic accounting, finance & economics, business, brand & IP valuations, fairness & solvency opinions and transaction advisory services. Mr. Sanli has extensive experience in developing cash flow statements and financial projections, conducting industry and market research, analysis of financial statements and valuing businesses.



**Marco Rossi**

Marco Q. Rossi is the founder and principal of Marco Q. Rossi & Associati, PLLC, a boutique innovative international law firm with a singular focus: assisting international enterprises and globally minded individuals with strategic legal and tax advice on cross-border business transactions and international legal and tax matters.

Marco was born and educated in Italy, where he received his law degree from the University of Genoa in 1990 and started practicing international maritime law working primarily as local counsel for major UK – based law firms and U.S. – based clients. In 2002, he earned an international tax LL.M. degree from New York University School of Law and in 2005 he established Marco Q. Rossi & Associati as a U.S. – Italy cross-border practice with offices in Italy and New York. In 2016, Marco opened an office in Los Angeles, through which his firm operates out of both coasts of the United States while being seamlessly integrated with its E.U. based offices in Italy.

Marco is licensed in Italy, New York and California and assists international clients with strategic global tax planning services, foreign companies on U.S. inbound investments and business transactions, U.S.-based companies operating in foreign markets, and executive and managerial workforces employed internationally. In Italy, he maintains a sophisticated Italian international tax practice advising U.S. business and private clients on Italian international legal and tax matters.



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# New Advisory Council Member

## Appointed in 2021



## Center For Truth In Science President & CEO Joseph Annotti Appointed to ALF Advisory Council

Atlantic Legal Foundation Chairman & President Dan Fisk is especially pleased to announce the appointment of Joseph Annotti to ALF's distinguished Advisory Council. Joe is the President and CEO of the Center For Truth In Science, which shares ALF's mission for sound science in American jurisprudence.

In his letter of appointment to Mr. Annotti, Chairman Fisk, affirmed: "I'm especially enthusiastic re your joining our ALF team and expect significant synergy will derive from our organizations joining forces in collaboration . . . excellence in research and communications on critical science issues from your perspective and high level effective litigation expertise and experience from ours . . . a dynamic combination."

Mr. Annotti graduated with honors from the English program at the University of the Pacific in Stockton, California in 1979. He grew up in an entrepreneurial family with a successful tomato cannery enterprise. Following graduation from the University, he worked in prominent positions in public affairs and public policy for the property/casualty insurance industry and later as the CEO of a national life insurance trade group. He was appointed president and CEO of the Center for Truth in Science upon its founding in 2020. The Center is an independent, non-profit organization with a vision of becoming a well-respected champion of fact-based science. Among other activities, it commissions research projects on complex issues at the intersection of science, justice, and the economy conducted by independent scientists without political, cultural, technical, or ideological bias.

Collaborating with the nonpartisan Atlantic Legal Foundation (long recognized as America's leading organization for fostering sound science in judicial and regulatory proceedings), the Center's and the Foundation's shared objective and expectation is that by working together, synergistic progress will be made toward achieving a healthy and balanced system in which judicial and regulatory decisions are based on objective, unbiased, sound, and comprehensive analyses of scientific evidence. This in turn will provide an environment in which America's free enterprise and judicial systems can thrive in the public interest.

Among complementary pursuits, the Center is focused on advocating through publications and educational audio / video presentations to apprise leaders and professionals of the need for consistent and accurate methodology for regulators and litigators to effectively determine the probability that exposure to a particular substance caused an adverse health outcome. Decisions on the probability of causation have been wildly divergent — and often conflicting — from regulatory agency to regulatory agency and courtroom to courtroom. The landmark Daubert trilogy of decisions by the U.S. Supreme Court in which Atlantic Legal was influential by filing briefs on behalf of a cadre of Nobel Laureates, serving as amici, and recognized by the Supreme Court for its helpful amicus curiae, or friend of the Court, submissions, have helped greatly, but more needs to be done to guide lower courts and regulatory agencies. Efforts are underway to modify and update Federal Rule of Evidence 702 to move closer to assuring more reliable sound science in federal judicial proceedings. This focus and continued participation in key judicial and regulatory proceedings and related scientific research are expected to be engaging for the Center and the Foundation in frequent collaborations.

The Atlantic Legal Foundation's Board of Directors, Advisory Council and Executive Staff welcome Joe Annotti to its leadership team and look forward to working together with him and his colleagues at the Center for Truth in Science in the public's interest by fostering sound science to more effectively serve our free enterprise, judicial, educational and professional communities in America. Better American jurisprudence should follow.

# New Advisory Council Member

## Appointed in 2022



## Executive Director of DRI John Kouris Appointed to ALF Advisory Council

John Kouris served as the Executive Director of DRI – a 20,000 member organization of civil defense lawyers, corporations, and corporate counsel – for twenty-two years. Currently he is a Special Advisor to the DRI Center for Law and Public Policy, which addresses a variety of issues critical to the modern law practice and judicial system.

He also served as the Secretary-Treasurer of the National Foundation for Judicial Excellence (NFJE) for fifteen years, and he still plays an active advisory role to the foundation's board of directors and executive committee. The NFJE conducts judicial education for the nation's state appellate and supreme court judiciary.

Prior to joining DRI, John served as Chief Operating Officer of the National Institute for Trial Advocacy, University of Notre Dame Law School. There he was the chief administrative officer responsible for the successful operation of an international litigation training institute.

John also engaged in the private practice of law in Hammond and Munster, Indiana, including service as attorney for the Lake County, IN Coroner's Office.

As his avocation, John was a football official for the Big Ten Conference for 25 years. Among his accomplishments were two national championships and 15 bowl games. He speaks frequently on officiating and leadership-related topics. John is also a former Division I college football player. He is a graduate of the Loyola University School of Law, Chicago, Ill J.D. and Western Michigan University, Kalamazoo, MI. BA.

He is the recipient of the Product Liability Advisory Committee Award (PLAC) in 2007. In 2008 the NFJE created the John R. Kouris Endowment Fund in his honor. John is an Inductee into the Hammond (IN) Sports Hall of Fame (2015), and he received the Richard T. Boyette Award for Excellence in Judicial Education in 2016. ORI honored John in 2019 with the Creation of the ORI John R. Kouris President's Award (Inaugural Recipient), and he received the Veterans Network Meritorious Service Award in 2020.



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The Board of Directors, Advisory Council and Staff of the Foundation thank you for your continued support.



# Atlantic Legal Foundation: Mission and Programs

The Atlantic Legal Foundation is a nonprofit, nonpartisan, public interest law firm with a distinguished, 45-year record of advancing civil justice and the rule of law by advocating for individual liberty, free enterprise, protection of property rights, limited and efficient government, sound science in judicial and regulatory proceedings, and school choice. To accomplish these goals, the Foundation conducts a renowned and robust amicus curiae program in the U.S. Supreme Court, federal courts of appeals, and state appellate courts. Our amicus brief program has helped achieve many favorable outcomes for businesses, nonprofit organizations, and individuals on some of the most important legal issues confronting Americans today. Esteemed appellate attorneys and free-enterprise and other nonprofit advocacy organizations from around the United States continually seek our amicus support.

The Foundation also undertakes advocacy and educational efforts in the form of a resource-rich website ([atlanticlegal.org](https://atlanticlegal.org)), presentation and participation in webinars and conferences with other nonprofit or professional organizations, and publication of seminal articles on legal matters, as well as handbooks, such as our *Leveling The Playing Field* series on charter schools, primarily for charter school leaders.

Atlantic Legal Foundation's Board of Directors and Advisory Council include the active and retired chief legal officers of some of America's most respected corporations, distinguished scientists and academicians, and members of national and international law firms.

Please visit [atlanticlegal.org](https://atlanticlegal.org), where the Foundation's most recent activities are detailed and its rich history of achievements is archived.

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