

ATLANTIC LEGAL FOUNDATION 2024 ANNUAL REPORT



ALF Advocacy Makes a Difference:

“The Atlantic Legal Foundation provided crucial amicus support . . . at both the review and merit-stages, and we are immensely grateful for their sustained efforts. ALF’s briefs contributed persuasive advocacy on the import of civil justice, responsible government, and free enterprise. We appreciate their thoroughness, and the common sense reasoning presented on”

Noel Francisco

*Former Solicitor General of the United States
Partner-in-Charge, Jones Day’s Washington Office*

For other testimonials see pages 8-11

The Year in Review

Now in its 48th year following its incorporation in the Commonwealth of Pennsylvania in 1977, the Atlantic Legal Foundation (“ALF”) recounts its successes in serving the public interest in 2024 . . .

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

While ALF made excellent progress in 2024 in pursuing its nationwide mission, the challenges brought by ever encroaching governmental, financial, and socialistic demands, have intensified the need for ALF’s continuing attention, active high level advocacy, and your support.

We are gratified to report recognition of ALF’s excellence in its appellate advocacy in the testimonials received over recent years and the earlier legacy testimonials from leading practitioners and executives reported at pages 8-11 following.

In 2002, 2023 and 2024, Atlantic Legal Foundation rejuvenated its long-established tradition of Annual Awards Dinners after being constrained by the coronavirus pandemic, which prevented its annual fundraising Awards Dinners for 2019-2021. We were privileged to honor Michael D. Rich, the President Emeritus of the RAND Corporation, as ALF’s annual awardee for 2022 and as ALF’s Lifetime Achievement Honoree, Dr. Thomas Sowell, famous author, economist, teacher and celebrated independent wiseman widely respected throughout America and internationally. ALF Director, Jonathan Graham, EVP-GC of Amgen, Inc., served as the Dinner Chairman and Master of Ceremonies of the event at the Jonathan Club in Los Angeles, CA hosted by club member and ALF Director, Gregory J. Morrow.

In 2023, ALF honored renowned Mediator/Special Master Kenneth R. Feinberg, especially well known for managing pro bono, over 4,000 claims submitted following the tragic 9/11 Trade Center terrorist attack in NYC in 2001, among many other major disasters over the course of his professional career. Ken Feinberg was introduced by Charles T. Hagel - U.S. Senator from Nebraska (1997-2009) and U.S. Secretary of Defense (2013-2015). ALF Director Timothy E. Flanigan, served as the Dinner Chairman and Master of Ceremonies of the event held at the Metropolitan Club in Washington D.C. hosted by club member and ALF Director, Joe G. Hollingsworth.

In 2024, ALF honored Paul D. Clement, renowned leading advocate before the Supreme Court of the United States and U.S Solicitor General (2004-2008), as ALF’s annual awardee for 2024. Michael B. Mukasey, 81st Attorney General of the United States and judge for the Southern District of New York (1988-2006) introduced General Clement. ALF Director Nancie G. Marzulla, Founding Partner of Marzulla Law, served as MC of the event held in the Grand Ball Room of the Mayflower Hotel in Washington D.C. on October 28.

Paul Clement’s enlightening remarks are reproduced at page 35 in this Report.

See pages 42-43 for Atlantic Legal’s distinguished lists of Annual and Lifetime Achievement Honorees over the past 30 plus years.

Atlantic Legal Foundation’s advocacy in 2024 included the submission of persuasive *amicus curiae* briefs and other filings in furtherance of its mission areas. See In the Courts at page 12 and ALF’s website atlanticlegal.org, for more details respecting ALF’s 2024 filings, its current filings, and its archived filings over many years before the Supreme Court of the United States, federal courts of appeals, and state appellate courts, and its record of success.

In furtherance of its longstanding efforts as the leading advocate fostering sound science in judicial and regulatory proceedings, ALF has featured on its website and in its recent Annual Reports seminal articles on science and the law and other mission-critical issues, including:

- A still timely article on “Science and Laws: A Search for the Truth” published at page 20 in ALF’s 2022 Annual Report, easily accessible on ALF’s website, coauthored by ALF’s Advisory Council members — Thom Golab, President of the American Council of Science and Health and Jacob Traverse, President & CEO of the Center for Truth in Science;
- Insights on Federal Evidence Rule 702, amended in December of 2023, by Hollingsworth LLP partners Eric G. Lasker, Elyse A. Shimada and Shannon N. Proctor at page 19 of ALF’s Annual Report for 2023;
- Clamor before the California Supreme Court created by the oppressive impracticable lower court imposition of a novel new state-law duty to innovate and commercialize that innovation - addressed by the Center for Truth and Science / CEO Jacob Traverse at page 24 of ALF’s Annual Report for 2023;
- Always instructive are the insights by ALF’s Executive Vice President & General Counsel Larry Ebner on the “Three Big Amicus Brief Mistakes” to avoid at page 26 of ALF’s Annual Report for 2023. And more recently, see Larry Ebner’s current article on ALF’s successful opposition to a misguided proposed amicus filing amendment for federal courts of appeals, at page 16; and
- Especially timely for this 2024 Annual Report is the feature article by Zack Smith of the Heritage Foundation on “Rogue Prosecutors” at page 20.

We have continued our work to promote the effective education of our young students on behalf of charter schools with extensive special focus on this subject in our 2021 Annual Report, which included a then-current report on Charter School legal developments, authored by ALF’s Advisory Council member Thomas Walsh, a recently retired partner with Jackson Lewis. Presented at page 21 in our Annual Report for 2021 (posted on ALF’s website) 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. Note also, the testimonial at page 10 by Nicole Neily, President of Parents Defending Education, extolling ALF’s work.

In 2024 and early 2025, ALF advocated for effective education in two key U.S. Supreme Court cases - *Parents Protecting Our Children v. Eau Claire Area School District* and *Oklahoma Statewide Charter School Board v. Drummond* digested at page 15 following.

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

In 2024 and early 2025, we elected, appointed or elevated 7 distinguished professionals to our leadership team, including 3 new Directors, 2 new Advisory Council Members, and 2 new Officers. See pages 45-47 for the photos and bios of our newest Directors, Nancie G. Marzulla of Marzulla Law, Steven Rosenthal, partner of Loeb & Loeb LLP, and Mark Walsh, Sr. V.P. and General Counsel of Aegis Limited. Also joining our leadership team in 2024 as members of our Advisory Council - Leo Hurley, Partner of Connell & Foley LLP and early in 2025, Grant Hollingsworth, Partner of Hollingsworth LLP. See page 49 for their photos and bios. Nisus executive Gregory Baumann who moved up from the Advisory Council to the Board in 2023 was elected Assistant Treasurer in 2024 and ALF’s long time Executive Assistant, Tee Cirillo, was elected Assistant Secretary. See page 48 for their photos and bios. Our 2024 roster of Officers is presented on page 50.

Sad News...

Douglas Foster, who served the Atlantic Legal Foundation with distinction as its President from 1985-1997 and as ALF's Vice Chairman in 1998, passed away late in 2024 at the age of 94. He overcame polio at an early age despite doctors expectations that he would not walk again, to graduate from his high school as both his school's "Most Valuable Athlete" and "Valedictorian". He then graduated from both Williams College and Cornell University on the Dean's List, served in Counterintelligence in the Army, spent time in Japan, taught and coached at a boy's preparatory school in Pennsylvania, graduated from law school at Columbia U., worked as an Associate at Chadbourne, Parke, Whiteside & Wolff in NYC, was an Assistant Commissioner of NYC's Dept. of Investigation and later a partner from 1969-1984 of Lovejoy, Wasson & Ashton on Park Ave in NYC. With many civic achievements to his credit and a loving family – his wife of 61 years, Ann, and his oldest child David predeceased him while he was survived by his daughters Susan & Emily and his son James plus 11 grandchildren – he was a man of mark and is missed by many!



Doug Foster



Theodore Olson

Another man of mark and long term supporter of ALF who passed late in 2024 was nationally renowned, Ted Olson who served as Solicitor General 2001-2004 during the George W. Bush Administration and earlier as an Assistant General Counsel during the Reagan Administration. He argued over 60 cases before the Supreme Court of the U.S. and was the keynote luncheon speaker for ALF at its seminal, well attended full day conference on the "Erosion of the Attorney Client Privilege" in which other luminaries such as, Supreme Court Justice Samuel Alito, Yale law school Professor Geoffrey Hazard, and others of renown, participated as panelists. He is missed by ALF and many throughout the legal profession and his other communities.

Atlantic Legal's current distinguished Officers, Board of Directors and Advisory Council (listed at pages 52-53 following and presented on ALF's website) are steadfast in their conviction that our legal system continues to need the effective, responsible, objective, and vigorous advocacy the Foundation has provided for over 48 years. The need has been exacerbated by ongoing challenges to the rule of law and our Constitution, and by the disruption and compromises thrust upon our Republic by the pandemic, related governmental actions, and political pressures. We are especially grateful for our supporters, contributors, leadership, staff, and consultants who enable the Foundation to continue its important work during these challenging times. Because of you, we will continue to make a difference for the betterment of American Jurisprudence and America. Thank you so very much for your continuing support . . .

A black ink signature of Dan Fisk, written in a cursive style.

Dan Fisk

Chairman & President

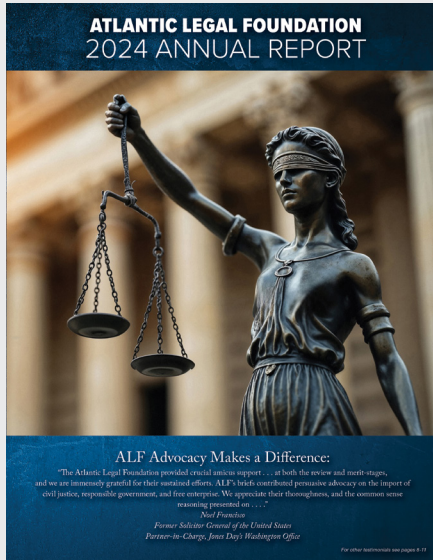


A black ink signature of Larry Ebner, written in a cursive style.

Larry Ebner

Executive Vice President
& General Counsel

Contents



The Year in Review	2
Douglas Foster Passes.....	4
Theodore Olson Passes	4
Executive Summary	6
Testimonials	8
In the Courts	12
ALF Successfully Opposes Misguided Amicus Filing Amendment.....	16
James Madison, the ‘OG’ of DOGE	18
Rogue Prosecutors: Prosecutors Who Refuse To Do Their Jobs and Protect Their Communities	20
2024 Annual Awards Dinner & Reception.....	23
Setting the Stage	24
ALF’s 2024 Reception	26
ALF’s 2024 Awards Dinner.....	28
Introduction of Honoree Paul D. Clement	32
Paul D. Clement Presents His Remarks	35
Presentation of the Award	38
History of Lady Justice	40
Annual Award Recipients 1988-2024	42
Special Lifetime Achievement Honorees	44
New Board Members in 2024.....	45
New Officers Elected in 2024	48
New Advisory Council Members in 2024	49
Officers in 2024	50
Board of Directors.....	52
Advisory Council, Other Officers, Staff and Consultants	53
Atlantic Legal Foundation 2022-2024 Supporters	54
Pro Bono Contributors.....	55
Atlantic Legal Foundation Mission and Programs.....	57

Executive Summary

About Atlantic Legal Foundation

- Atlantic Legal Foundation has been defending liberty for over 48 years, since its establishment early in 1977.
- Atlantic Legal Foundation is a national, nonprofit, nonpartisan public interest law firm with a storied history of advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in the courtroom, and effective education through school choice and parental rights.
- With the benefit of guidance from the legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, the Foundation pursues its mission primarily by participating as amicus curiae in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. The Foundation also has provided pro bono legal representation to business organizations, scientists, parents, educators and other individuals, in cases that align with its mission areas.

Constitutional Issues

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

Sound Science

Atlantic Legal is the nation's preeminent public interest law firm advocating for the admissibility of sound medical and expert testimony in toxic tort, product liability and other litigation. Atlantic Legal 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. ALF continues to be proactive in strengthening Federal Rule of Evidence 702 which codified the essence of the *Daubert Trilogy* of decisions.

Corporate Issues

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

Effective Education / School Choice

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

Position Papers, Comments and Conferences

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

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; Effective Advocacy and Brief Writing Before the U.S. Supreme Court; and otehr subjects of compelling concern in today's volatile environment. Articles and News Releases on legal issues of importance are regularly posted on the Foundation's redesigned website, atlanticlegal.org.



Recent Testimonials

“The Atlantic Legal Foundation provided crucial amicus support for our clients at both the review and merit-stages, and we are immensely grateful for their sustained efforts. ALF’s briefs contributed persuasive advocacy on the import of civil justice, responsible government, and free enterprise. We appreciate their thoroughness, and the common sense reasoning presented on behalf of our clients.”

Noel Francisco
Former Solicitor General of the United States
Partner-in-Charge, Jones Day’s Washington Office

“The Atlantic Legal Foundation provided outstanding and invaluable support to our client seeking Supreme Court review. Recognizing the importance of amicus briefs, we are grateful for ALF’s outside perspective and quality advocacy on the issue before the Court.”

Scott Burnett Smith & Schyler B. Burney
Bradley Arant Boult Cummings LLP

“ALF has become a hugely influential voice in the Supreme Court and the nation’s other appellate courts. ALF’s amicus briefs offer a unique and distinctive perspective on some of the most important issues in the American legal system.”

Kannon K. Shanmugam
Chair, Supreme Court and Appellate Litigation Practice
Paul, Weiss, Rifkind, Garrison, & Wharton LLP

Our client is grateful for ALF’s amicus brief in support of a petition for a writ of certiorari we filed in the Supreme Court this year. The case involves issues that are important for manufacturers and other commercial businesses, and it was enormously helpful to have a brief from ALF explaining the practical implications of the legal questions presented in the case. ALF’s robust experience filing cert-stage amicus briefs makes them well-positioned to understand what kind of arguments the Supreme Court may respond to when deciding whether to hear a case. Working with Larry Ebner and his team was a great experience; they brought thoughtful ideas to the table and were eager to engage in a helpful dialogue.

Sarah Harrington
Partner, Covington & Burling LLP

“The Atlantic Legal Foundation provided invaluable support to our clients in seeking Supreme Court review. ALF’s brief brought home the real-world impact of the case, cogently explaining the consequences of the other side’s position for defendants nationwide. We can’t thank ALF enough for their support.”

Lisa S. Blatt
Chair, Supreme Court & Appellate Practice
Sarah M. Harris
Partners, Williams & Connolly LLP

Recent Testimonials

“We are consistently impressed by the quality and impact of amicus briefs authored by the Atlantic Legal Foundation. As Supreme Court practitioners, we know that amicus briefs matter to the Supreme Court. Our clients are incredibly grateful for the amicus support from Atlantic Legal Foundation in crucial cases that matter in the real world.”

Neal Katyal
former Acting Solicitor General of the United States
Jessica L. Ellsworth & Katie Wellington
Partners, Supreme Court Practice, Hogan Lovells US LLP

“Atlantic Legal wrote an outstanding and valuable amicus brief focusing on the importance of sound science in regulatory proceedings. The writing and advocacy were superb – providing a credible outside perspective on the agency’s intentional exclusion of diverse scientific perspectives from a regulatory proceeding. I have no doubt that the panel gave considerable weight to Atlantic Legal’s perspective on the importance of sound science.”

Brett A. Shumate
Partner, Jones Day

“Our client is grateful for ALF’s support in an en banc Eleventh Circuit case last year. The appeal concerned whether and how an express preemption provision should apply to state-law failure-to-warn claims, with significant implications for ongoing mass-tort litigation against our client. ALF’s amicus brief helpfully explained the importance of construing Supreme Court precedent consistently with Congress’s creation of a uniform regulatory system for product labeling. The en banc Eleventh Circuit ultimately remanded to the original panel on narrow grounds, but this important issue is likely to recur in future cases.”

David M. Zions, Partner
Emily A. Vernon, Associate
Covington & Burling LLP

“ALF recently filed a compelling Fourth Circuit amicus brief supporting our clients in an arbitration-related case that involved complex issues of state and federal law. We were on a tight timeline for securing amicus support. ALF quickly digested the complexities involved and presented a Federal Arbitration Act preemption argument that powerfully and lucidly illuminated that aspect of the appeal. Having ALF as amicus on the appeal, which is known for its prowess on preemption, significantly strengthened our appellate effort by demonstrating to the court the legal and practical implications of our position. It was truly a pleasure working with ALF, and particularly with Larry Ebner, who is highly responsive, efficient, and unmatched in his legal analysis.”

Grant Hollingsworth
Partner, Hollingsworth LLP

“ALF drafted a masterful amicus brief on forum shopping in support of our clients in the Supreme Court of the United States. We truly enjoyed working with Larry Ebner and appreciate his professionalism and deep experience before the Court.”

Serge Krimnus, Partner
Bochner PLLC

Recent Testimonials

“We are deeply grateful for the Atlantic Legal Foundation’s excellent amicus brief filed in our Eighth Circuit case against an Iowa school district. The thoughtful historical analysis of both common law and Supreme Court precedent undoubtedly played a key role in the court’s favorable decision. American parents are fortunate to have such wise counsel in their corner.”

Nicole Neily
President, Parents Defending Education

“It’s not often the U.S. Supreme Court issues a unanimous decision and even more rare that the FTC abandons an enforcement action without consent decree or condition. But Axon did not achieve these remarkable results alone. I want to thank ALF for its unwavering support in filing not one, not two, but three amicus briefs supporting Axon’s constitutional claims at both the 9th Circuit and SCOTUS. These non-party briefs are critically important in protecting broader rights and detailing potentially dire consequences of unchecked government action, and we are grateful for ALF’s partnership in this endeavor.”

Pam Petersen
VP Litigation / National Appellate Counsel, Axon Enterprise, Inc

“ALF’s amicus briefs have provided pivotal support for the New Civil Liberties Alliance’s increasingly successful efforts to rein in the administrative state. Larry Ebner’s brief in support of NCLA client Michelle Cochran’s unanimous victory at the Supreme Court was quite influential. ALF’s current amicus support is helping to overturn the Chevron deference doctrine, support First Amendment challenges to government censorship, and press for a reversal of SEC’s gag policy. ALF’s advocacy has lasting effects—as a recent powerful dissent by SEC Commissioner Hester Peirce demonstrates. She cited at length an ALF brief filed years earlier in the Supreme Court in support of NCLA’s client, providing a critical boost to a renewed challenge to the SEC’s pernicious Gag Rule.”

Mark Chenoweth, President and CEO
Peggy Little, Sr. Litigation Counsel
New Civil Liberties Alliance

“Your amicus brief and support as we prepared for the Supreme Court argument were invaluable. Your expertise and dedication significantly enriched the quality and depth of the legal arguments supporting our client. Please know that your efforts are greatly appreciated by our entire legal team, and we are fortunate to count you as key allies in this important matter. Your dedication to justice and your willingness to share your expertise have made a lasting impression on all of us. Thank you for your outstanding contribution. We are immensely grateful for your support.”

Christie Herbert
Attorney, Institute for Justice

Legacy Testimonials

“Thanks to the Atlantic Legal Foundation for doing the hard, but critical and widely heralded, work of advancing liberty, limited government, free enterprise, property rights, school choice and sound science ... ALF has been singled out by the U.S. Supreme Court for its contribution to the use of “sound science” in regulatory and judicial proceedings. No other advocacy group has been so influential in this critical area, and Atlantic Legal Foundation’s clients – among them more than 20 Nobel Laureates and scores of other renowned scientists – are grateful for the Foundation’s steadfast insistence that our courts use and depend upon only scientifically sound evidence and expert opinions in their deliberations. Moreover, the Foundation’s advocacy in support of limiting overreaching and burdensome regulation is simply outstanding.”

Richard J Stephenson
Founder & Former Chairman
Cancer Treatment Centers of America®
Merchant Banker & Philanthropist

“I admire very much the work of the Atlantic Legal Foundation,
... and commend its commitment to a civil justice system
that respects free enterprise and economic liberty.”

W. James McNerney, Jr. (Ret.)
Chairman, President
The Boeing Company

“I congratulate the Atlantic Legal Foundation for its contributions to
[our] future. Its support for charter schools will assure that we have
institutions where students will get superior education in science...
The mission of the Foundation has never been more pertinent.”

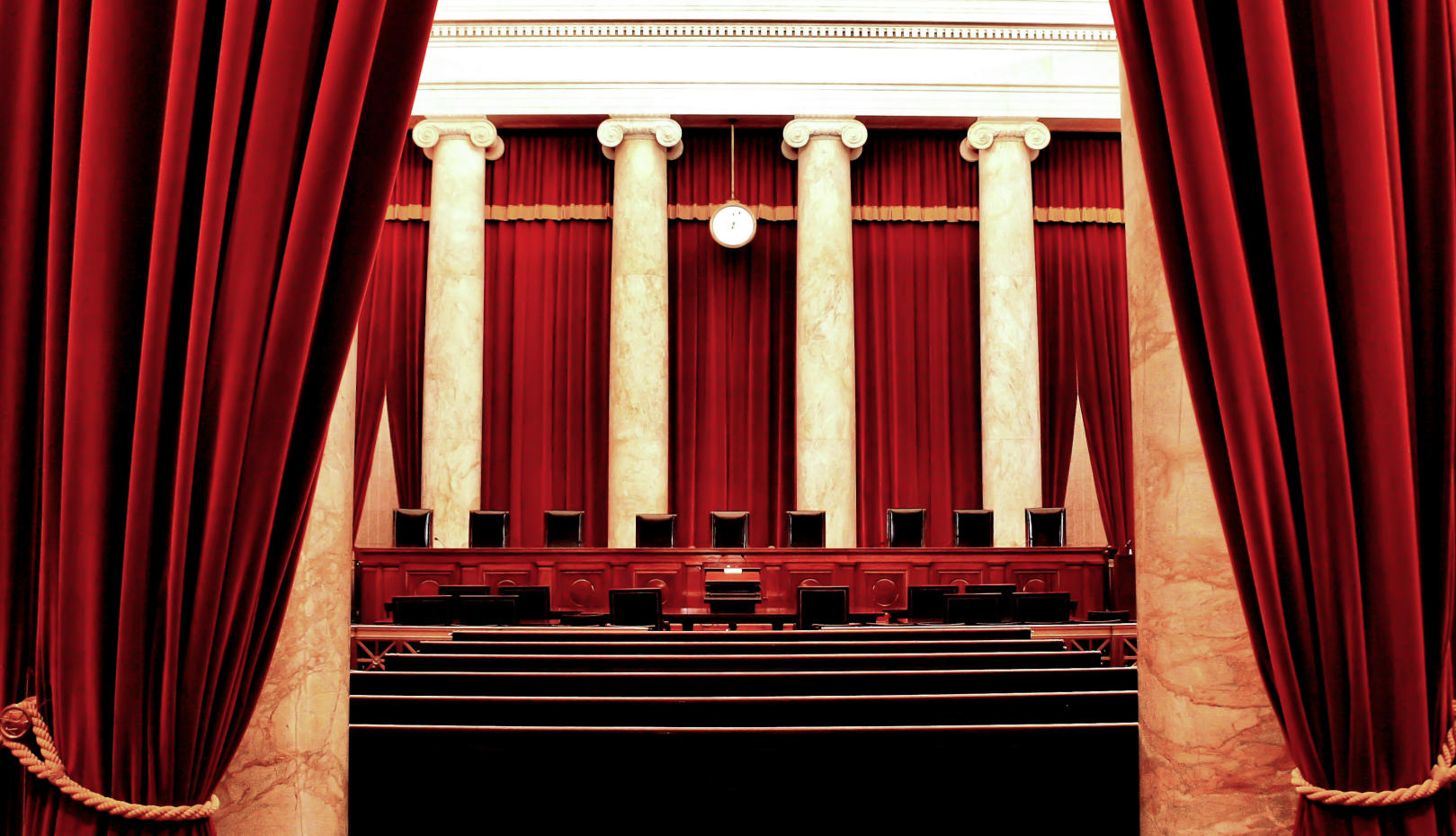
Chad Holliday (Ret.)
Chairman duPont and Bank of America

“It is truly an honor. .. to be participating in another fine program of the Atlantic Legal Foundation, an organization that does so much important work in promoting limited government, free enterprise, individual liberty, common sense, and the orderly, rational development of law. I have been a friend of the Atlantic Legal Foundation for many, many years...”

Theodore B. Olson
former Solicitor General of The United States

“I want to thank the Atlantic Legal Foundation for its
contributions to the protection of free enterprise.”

Thomas J. Donohue (Ret.)
President, U.S. Chamber of Commerce



The interior of the United States Supreme Court. Photo by Phil Roeder

In The Courts

During 2024 and continuing into the first part of 2025, ALF advanced its venerable Amicus Curiae Program by filing amicus briefs, often at the request of the nation's most prominent appellate advocates, in key Supreme Court and other cases involving cutting-edge legal issues aligned with our six mission areas. Under the leadership of ALF Chairman & President Dan Fisk, ALF Executive Vice President & General Counsel Larry Ebner, and the ALF Board of Directors and Advisory Council, the past five years have been particularly productive. Since 2020, ALF has filed approximately 80 amicus briefs, three-quarters of which have been in the Supreme Court. The amicus brief and news release archives on ALF's colorful, content-rich website (atlanticlegal.org) tell the story.

A recent statistical analysis conducted by Dr. Adam Feldman identifies ALF as one of the most **“highly successful repeat filers”** of Supreme Court certiorari-stage amicus briefs. Dr. Feldman's analysis, *The Power Players Behind Supreme Court Petitions: Who's Filing Amicus Briefs—and Who's Winning*, indicates that ALF, among dozens of organizations, is one of the **12 most frequent** Supreme Court amicus brief filers at the certiorari-petition stage. And in terms of success, ALF is one of the **top 10 filers** whose amicus briefs are associated with certiorari petitions that the Supreme Court has granted. The survey encompassed approximately 2,500 non-indigent certiorari petitions filed since June 2023.

Our national reputation for providing consistently high-quality amicus support has led to many more amicus support requests than our small legal staff, even with occasional assistance from pro bono counsel, can handle. With increased financial support, we could enhance our staff to increase our productivity even further.

The specific issues that our amicus briefs addressed during 2024 and early 2025 are summarized below. Details of the cases in which we filed, the amicus briefs themselves, and the status of each case, are readily accessible through ALF's website, atlanticlegal.org. For additional information, please contact Dan Fisk or Larry Ebner.

Fostering Sound Science

- Whether the manufacturer of a non-defective, FDA-approved pharmaceutical product has a duty to develop and commercialize, without delay, a different product that is allegedly safer for some consumers (*Gilead Tenofovir Cases*) (California Supreme Court).
- Whether a Pennsylvania trial court erred in admitting certain general causation testimony resulting in a \$ 725 million non-economic damages award to a single plaintiff for occupational exposure to gasoline (*Gill v. Exxon Mobil Corp.*) (Pennsylvania Superior Court).
- Whether a federal district court properly applied Federal Rule of Evidence 702, as amended Dec. 1, 2023, to exclude the expert testimony of the bellwether plaintiffs' general causation expert in multidistrict product liability litigation involving a widely used, federally regulated, herbicide (*In re Paraquat Products Liability Litigation: Richter v. Syngenta Crop Protection, LLC*) (Seventh Circuit).
- Whether Executive Branch officials' efforts to pressure social media companies into suppressing scientific debate about the efficacy and/or risks of COVID-19 mitigation measures conflict with sound science as well as the First Amendment right to freedom of speech (*Murthy v. Missouri*) (Supreme Court) (merits stage).

Promoting Free Enterprise & Civil Justice

- Whether a solely intrastate worker who locally delivers out-of-state goods is engaged in interstate commerce for purposes of the Federal Arbitration Act § 1 "transportation workers" exemption. (*Flowers Foods, Inc. v. Brock*) (petition stage).
- Whether a federal court of appeals must remand a fully adjudicated product liability case to state court if it concludes that the district court, exercising diversity jurisdiction, improperly dismissed a nondiverse defendant before entering judgment in favor of the diverse defendant. (*Hain Celestial Group & Whole Foods Market v. Palmquist*) (Supreme Court) (petition stage).
- Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b) (3) when some members of the proposed class lack Article III injury (*Laboratory Corp. of America Holdings v. Davis*) (Supreme Court) (merits).
- Whether the Federal Food, Drug, and Cosmetic Act's bar against private enforcement, 21 U.S.C. § 337(a), preempts a private action seeking to enforce FDA food labeling regulations by invoking a California statute that incorporates those regulations by reference. (*Sprout Foods, Inc. v. Davidson*) (Supreme Court) (petition).
- Whether U.S. manufacturers can be held liable for "social costs" allegedly incurred by a foreign government as a result of its inability to prevent its own citizens from illegally obtaining and criminally misusing products that the defendants lawfully produced, marketed, and distributed within the United States (*Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*) (Supreme Court) (petition & merits stages).
- Whether an unreliable expert opinion can satisfy the Private Securities Litigation Reform Act's pleading requirements for alleging "falsity" (*NVIDIA Corp. v. E. Ohman J:or Fonder AB*) (Supreme Court) (petition & merits stages).



- Whether a federal district court properly applied the expert testimony reliability criteria established by Federal Rule of Evidence 702 during the damages phase of patent infringement litigation (*EcoFactor, Inc. v. Google LLC*) (Federal Circuit) (en banc).
- Whether the civil action treble damages provision of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) extends to economic harm directly resulting from personal injuries (*Medical Marijuana, Inc. v. Horn*) (Supreme Court) (merits stage).
- Whether federal common law or state contract law should govern the definition of arbitration under the Federal Arbitration Act (*Great American Insurance Co. v. Crystal Shores Owners Association, Inc.*) (Supreme Court) (petition stage).
- Whether the “internal affairs” exception to the Class Action Fairness Act’s expanded removal provision should be interpreted narrowly or broadly (*Country Mutual Insurance Co. v. Sudholt*) (Supreme Court) (petition stage).
- Whether the federal Clean Air Act preempts climate change-related, state-law tort suits brought by state and local governments against fossil-fuel energy companies (*Sunoco v. City & County of Honolulu*) (Supreme Court) (petition stage).
- Whether the arbitration provisions in the Terms & Conditions accompanying the purchase of electronic tickets are enforceable against all persons who use the tickets to gain admission to sports, entertainment, or other types of events (*Naimoli v. Pro-Football, Inc.*) (4th Circuit).



Respecting the Constitution & Curbing the Administrative State

- Whether a State's refusal to enter into a charter school contract with a privately owned and operated K-12 religious school is constitutional. (*Oklahoma Statewide Charter School Board v. Drummond*) (Supreme Court) (merits stage)
- Whether the Department of Homeland Security (DHS) has authority, independent of Congress, to determine, based on its own economic, social, and other policy judgments, whether, or how long, various classes of nonimmigrant alien visa holders delineated by the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(15), can work in the United States (*Save Jobs USA v. Dep't of Homeland Security*) (petition stage).
- Whether the manufacturer and retailers of a federally regulated product can jointly challenge, in a single federal court of appeals, a final agency action that directly impairs their shared commercial interests (*Food and Drug Administration v. R.J. Reynolds Vapor Co.*) (Supreme Court) (merits stage).
- Whether the Inflation Reduction Act's "Drug Price Negotiation Program" violates the Fifth Amendment's Due Process and Takings Clauses and/or the First Amendment's Free Speech Clause (*Boehringer Ingelheim Pharmaceuticals, Inc. v. U.S. Dep't of Health & Human Services* (Second Circuit) & *Bristol Myers Squibb Co. & Janssen Pharmaceuticals, Inc. v. Becerra*) (Third Circuit)).
- Whether parents have standing to challenge a public school district's "gender identity transition policy" that keeps them in the dark about the "Gender Support Plan" that school staff has developed for transitioning their child (*Parents Protecting Our Children, UA v. Eau Claire Area School District, Wisconsin*) (Supreme Court) (petition stage).
- Whether the Securities and Exchange Commission's policy of "gagging" civil enforcement targets who enter into settlement agreements violates freedom of speech and due process of law (*Powell v. SEC*) (Ninth Circuit). 🗣️

ALF Successfully Opposes Misguided Amicus Filing Amendment

By Lawrence S. Ebner

ALF believes that federal court rules should facilitate, not deter, the filing of amicus curiae briefs that provide appellate courts with valuable perspective, legal arguments, and factual information pertinent to the legal questions presented by a case.

For nearly 50 years, the Atlantic Legal Foundation has been a frequent filer of amicus briefs in federal courts of appeals as well as in the Supreme Court. In fact, because far fewer amicus briefs are filed in courts of appeals, they may have more impact on circuit judges' decision making than in the Supreme Court. This is important because the vast majority of court of appeals decisions are either not appealed or not accepted for review by the Supreme Court.

Federal Rule of Appellate Procedure 29(a) states that during the initial consideration of a case on the merits, a court of appeals amicus brief can be filed by a private (i.e., nongovernmental) party "only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification." Almost all nongovernmental amicus briefs in courts of appeals are filed with the consent of the litigating parties (i.e., Appellants and Appellees), thereby avoiding the need to burden the court with a motion for leave to file.

Effective December 2023, the Supreme Court amended its rules to require neither leave nor consent to file a timely amicus brief. See Sup. Ct. R. 37, as amended. The Clerk of the Supreme Court explained that "[w]hile the consent requirement may have served a useful gatekeeping function in the

past, it no longer does so, and compliance with the rule imposes unnecessary burdens upon litigants and the Court."

Following the Supreme Court's lead, ALF wrote to the U.S. Judicial Conference's Committee on Rules of Practice and Procedure (commonly known as the "Standing Committee") to suggest that the Federal Rule of Appellate Procedure 29(a) be similarly amended. Instead, during 2024 the Judicial Conference's Advisory Committee on Appellate Rules wandered astray—indeed in exactly the *opposite* and *wrong* direction—by proposing a Rule 29 amendment that would require every nongovernmental court of appeals amicus brief to be accompanied by a motion for leave stating "why the brief is helpful and serves the purpose of an amicus brief." The Advisory Committee solicited submission of written public comments on this proposal (and also on a proposal to expand the amicus brief funding-related disclosure requirements). On February 14, 2025 the Advisory Committee held a public hearing on these proposed amendments.

Over the course of three hours, approximately 20 witnesses representing a broad spectrum of organizations testified at the hearing, which was moderated by Judge Allison Eid of the U.S. Court of Appeals for the Tenth Circuit. There was an overwhelming consensus among witnesses that the proposed amendments should be *rejected*. The same significant opposition to the amendments is reflected in the more than 200 written comments that have been submitted into the rulemaking docket.



I submitted written comments, and also presented oral testimony, on behalf of ALF. Our written comments, submitted in November 2024, emphasized the practical problems and inevitable mischief that eliminating filing with consent, and instead requiring a motion for leave, would engender in federal courts of appeals. Requiring amicus filers to demonstrate that the arguments and information in their already-drafted amicus briefs are “helpful” may encourage non-supported parties to oppose motions for leave in an effort to deprive courts of appeals of amicus briefs that offer persuasive arguments and/or useful information. Even more important, requiring a motion for leave would create uncertainty regarding whether a proposed (but already drafted) amicus brief will be accepted for filing—uncertainty that may deter many nonprofit organizations such as the Atlantic Legal Foundation from investing their resources in researching and drafting briefs that otherwise would be helpful to courts of appeals.

Along the same lines, my oral testimony explained the importance of court of appeals amicus briefs, and the many hours of effort that go into strategizing, researching, and drafting an amicus brief. I emphasized to the Advisory Committee that a nonprofit organization with limited resources cannot afford to invest significant effort, time, and expense in preparing a court of appeals amicus brief—while turning down other worthy amicus opportunities—if there is a risk that the brief will not be accepted for filing. The proposed elimination of filing with consent would create precisely such a risk by destroying the current

“culture of consent” among experienced appellate attorneys. This in turn would deter the filing of amicus briefs that otherwise would be beneficial to courts of appeals.

The Advisory Committee got the message. In view of the overwhelming opposition at the February 14 hearing, the Advisory Committee’s Amicus Subcommittee has changed its position and recommended that the proposed leave-to-file requirement be dropped. Instead, as ALF proposed, the Amicus Subcommittee now is recommending, among other amendments, that Rule 29 be revised to require neither consent nor a motion for leave. The Advisory Committee will consider the revised proposed amendments and hopefully recommend to the Standing Committee, as ALF has proposed all along, that Rule 29 be amended to allow the filing of timely court of appeals amicus briefs without a motion for leave or even the parties’ consent. If ultimately approved by the Supreme Court and not changed by Congress, the revised amendments would become effective in December 2026. 🏛️



Lawrence S. Ebner
ALF Executive
Vice President &
General Counsel

James Madison

the ‘OG’ of DOGE

By Donald J. Kochan,

ALF Advisory Council

First published by *The Daily Signal*

Step aside Elon Musk and make way for the “OG” of DOGE, James Madison.

This week in 1788, Madison’s Federalist No. 62 was published in The [New York] Independent Journal.

The essays we know collectively today as The Federalist Papers, each authored under the pseudonym Publius by Madison, Alexander Hamilton, and John Jay, have stood the test of time as not only fundamental to our interpretation of the Constitution, but also to identify the evils it was designed to guard against.

Federalist No. 62 was directed at a defense of the proposed Senate composition, election process, and term length.

Madison explained that the features of the Senate would guard against too voluminous and too frequently changing laws. While discussing the utility of six-year terms as a way to incentivize legislators to have a long, reflective view, Madison explained the extended term would inject stability in the production of law.

It would minimize the inevitable mutability of laws historically exhibited in systems that the Founders studied with too constant and frequent change in the personality of the legislature.

Most importantly for today is the complementary lesson from the essay on what that means for the rule of law.

Put simply, Madison in Federalist No. 62 recognized that the creation of voluminous laws and regulations, a primary effect of a too mutable set of legislators, “poisons the blessing of liberty itself.”

And here is where his warnings in 1788 mirror our concerns with the regulatory state today: Reflecting on history and prescient about the nature of humans and their institutions, Madison’s critical enduring paragraph in Federalist No. 62 explains the danger.

He wrote: “It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?”

The “laws” we have today and how they might apply are little known to Americans when they are buried in an avalanche of millions of pages of often incoherent regulatory jargon in the Federal Register that cannot be understood.

The modern regulatory state as it has evolved, especially in the past 90 years since the New Deal, has resulted in a set of legal rules for the citizenry, regularly generated by bureaucrats rather than legislators, that are impossible to comprehend because, as Madison warned, they have become, collectively “so voluminous that they cannot be read.”

Thus, even if a citizen could manage to find relevant rules, find the resources to study them, and then have the capacity to translate complex regulatory language into an understanding of the law, there’s just too much “law” to ever know what the law is.

Among others studying this phenomena, Supreme Court Justice Neil Gorsuch in his 2024 book co-authored with Janie Nitze, “Over Ruled: The Human Toll of Too Much Law,” summarized the state of affairs.

The book demonstrates that less than 100 years ago, the collected statutes of the federal government fit in a single volume. In contrast, they explain that there are now 54 volumes in the U.S. Code at around 60,000 pages.



An artist's rendering of Founding Father James Madison—who was the fourth president, serving from 1809 to 1817—was featured on a 34-cent first-class postage stamp in 2023.

New congressional production rates average 344 pieces of legislation passed annually totaling 2 million to 3 million words a year.

And that's just actual laws. We are also drowning in a sea of regulations.

While the Constitution contemplates three branches of the federal government and only one with the power to make laws, there are now more than 435 federal agencies and subagencies most of which have often significant—and at least some level of—power to create regulatory rules that effectively operate as laws.

The Code of Federal Regulations is approximately 200 volumes filled with administrative rules governing countless fields of individual behavior. And the Federal Register—where notices, new proposed regulations, and new final regulations get published—ran beyond 80,000 pages of new regulatory content in 2022 alone.

If the mission of the new Department of Government Efficiency is to highlight the problems

of the volume and complexity of law wrought by the modern administrative state and a Congress that has aggrandized federal power, it should take comfort in knowing that Madison and the other Founders sought to create a Constitution designed with a similar mission.

Federalist No. 62 is just one exposition on that goal. While we have drifted from the constitutional dock, the Founders constructed moorings to which we can return. 🦋



Donald J. Kochan

Professor Law and
Executive Director of
the Law & Economics
Center, George Mason
University Antonin
Scalia Law School

Introductory Preamble By ALF Compelling Consideration

Just as the charter school movement and parental rights have been essential for fostering effective education in America, so too is respect for and adherence to the rule of law essential for law-and-order in American society . . . both areas being critical for a productive, civilized future for America consistent with the multi-faceted mission of the Atlantic Legal Foundation. Accordingly, the following article authored by Zack Smith of the Heritage Foundation . . . summarized from his scholarly book ***Rogue Prosecutors: How Radical Soros Lawyers are Destroying America's Communities*** published on June 27th, 2023 . . . warrants consideration as a beacon for action and is respectfully included here in ALF's 2024 Annual Report as a seminal work for your consideration:

Rogue Prosecutors

Prosecutors Who Refuse To Do Their Jobs and Protect Their Communities

By Zack Smith



It's hard to believe that there are prosecutors who refuse to prosecute crimes. And yet, over the past decade, a group of radical leftists have made a concerted effort to elect local district attorneys pledging to do just that. In fact, one of those DAs, Philadelphia's Larry Krasner, had the audacity to say that he views his role as the DA as essentially "a public defender with power." Maybe that's why he's popular among the city's criminals who affectionately call him "Uncle Larry." Or consider the viral video taken inside of a California prison where inmates toasted the then-recently elected Los Angeles District Attorney, George Gascon. The inmates—not incorrectly—believed that their chances of having their sentences reduced or of being released from prison altogether increased dramatically with Gascon's election due to his soft-on-crime policies. It should be a canary-in-the-coal-mine moment when criminals become fans of the local district attorney.

What are the ideological underpinnings of the Rogue Prosecutor Movement?

To understand how the entire rogue prosecutor movement began, it's important to understand its ideological underpinnings. The roots of the rogue prosecutor movement can be found in the prison abolition movement. Yes, there's actually a group of radical academics (to put it mildly) like Angela Davis who have advocated for the idea that essentially no one should go to prison for any reason and that as a result, prisons should be abolished. These marxists or neo-Marxists have pushed the twin myths that our criminal justice system is systemically racist and that the United States has a mass incarceration problem—that is, the U.S. locks up too many people. Of course, neither of these is true—especially if you consider the number of violent crimes committed in the U.S. compared to other countries.

So, it shouldn't come as a surprise that legislators and the public rightly recoiled from the idea of abolishing prisons. So, these advocates changed tactics. They realized that they didn't need to do the hard work of changing the laws to lower, and eventually eliminate, the prison population if they could simply change who enforced the laws. So they got to work electing DAs who would help them achieve their goals.

Enter the Rogue Prosecutor Movement.

How did it get put into practice?

It's important to understand, by way of background, that most local DA races are relatively low-profile, low-dollar affairs. Often the races are uncontested and even a low six-figure campaign contribution or independent expenditure—not even a drop in the bucket by most statewide or national standards—can have a big impact.

So, in 2015, two anti-death penalty advocates—one who had worked for George Soros and various causes he supported and another who had worked for the ACLU—targeted death penalty-supporting DAs in Louisiana and Mississippi for removal from office. They instead wanted to elect DAs who would nullify these state's death penalty laws by pledging not to seek the death penalty in any case, no matter the circumstances. To aid in the effort, Soros poured over \$1 million into "Safety and Justice" PACs and other groups. And as a result, this effort proved to be largely successful.



Zack Smith

Senior Legal Fellow and Manager, Supreme Court and Appellate Advocacy Program, Edwin Meese III Center for Legal and Judicial Studies

Now having proof-of-concept, the movement expanded its goals to include electing DAs who not only wouldn't seek the death penalty, but who also would pledge not to seek bail—even for often violent offenders—pledge not to prosecute entire categories of crimes, and pledge not to seek sentences of incarceration by default, or if required to seek those sentences, to seek the lowest sentence possible, among other dangerous policy proscriptions. They targeted the Cook County (Chicago) DA race as their first big-city target. And once again, with seven figure support from George Soros (and other leftist billionaires), the movement successfully elected Kim Foxx to office. From there, the movement multiplied with other rogue DAs, like Larry Krasner in Philadelphia, Chesa Boudin in San Francisco, George Gascon in Los Angeles, Kim Gardner in St. Louis, Marilyn Mosby in Baltimore, Rachael Rollins in Boston, and Alvin Bragg in Manhattan—just to name a few—being elected to office. While the exact amount of money George Soros has contributed to the cause, both directly and indirectly, can be hard to pin down, its hundreds of millions, maybe even over a billion dollars.

And sadly, the results in many of these cities speak for themselves with murders and other violent crimes increasing and remaining much higher than before these individuals took office.

But don't prosecutors have discretion over what cases to bring and charges to file?

Often these rogue prosecutors try to justify their non-prosecutions by invoking the fig-leaf of prosecutorial discretion. Anyone who has worked in the criminal justice system is undoubtedly familiar with this term. But prosecutorial discretion has always involved an individualized determination of the facts and circumstances surrounding each criminal defendant and that individual's case.

Maybe there's a problem with the evidence, so the case should be dismissed. Maybe the defendant cooperated, and a more lenient sentence should be requested, etc. These are the types of determinations involved in exercises of prosecutorial discretion.

When prosecutors refuse to prosecute entire categories of crimes, that is not prosecutorial discretion. That is prosecutorial nullification. It's the prosecutor making himself or herself a one-man or one-woman super-legislature. It's inappropriate, and prosecutors who engage in this practice should be held accountable.

There's good news, but more work remains

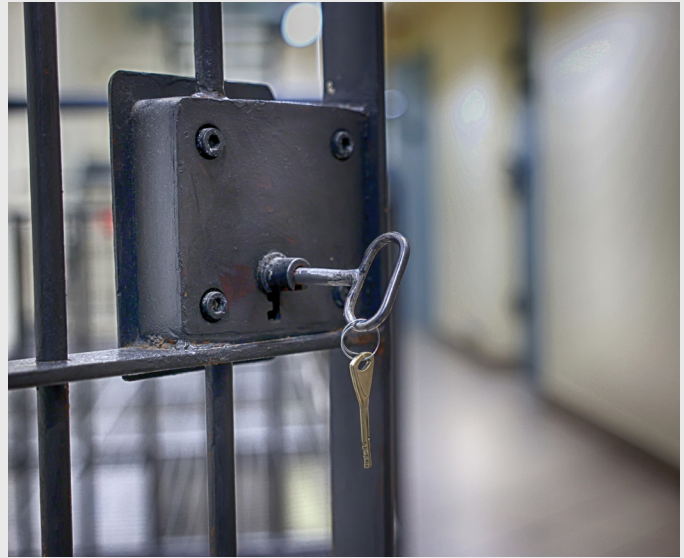
The good news is that voters—recognizing the many problems with the rogue prosecutors' approach to (non) prosecution—have started kicking them out of office. For example, San Francisco voters recalled and removed Chesa Boudin from office. Alameda County (Oakland) voters recalled and removed Pamela Price from office. And George Gascon in Los Angeles, Mike Schmidt in Portland, and Marilyn Mosby in Baltimore all lost their bids for re-election. Additionally, Kim Foxx in Chicago declined to run for re-election, and Kim Gardner in St. Louis resigned under a cloud of scandal.

And then there is Boston's Rachael Rollins who left her role as the Suffolk County DA to become the Biden-appointed U.S. Attorney for Massachusetts. Normally, the Senate confirms U.S. Attorneys in a relative straightforward process. In fact, most U.S. Attorney nominees don't even receive a hearing. But Rollins's tenure as the Suffolk County DA had been so controversial that the Senate deadlocked on confirming her nomination. But then-Vice President Kamala Harris came to her rescue and cast the tie-breaking vote to confirm her.

How did that work out? Not too well.

It turned out that once Rollins took office as U.S. Attorney she began engaging in unethical conduct. The Justice Department's Office of Inspector General investigated, concluded that Rollins had engaged in unethical conduct, and even referred her to the Justice Department for criminal prosecution because she lied to OIG agents during their investigation. She resigned from office, and the Biden Justice Department declined to pursue charges.

Still other rogues, like Larry Krasner in Philadelphia and Alvin Bragg in Manhattan, remain in office and plan to seek re-election shortly.



Understanding the important role of, and enormous power wielded by, local DAs is crucial

Fundamentally, supporters of the rogue prosecutor movement have tried to pervert the power wielded by local DAs to enact problematic policy changes that undermine the rule of law and make the communities where they have been implemented less safe.

Ask your family members. Ask your friends. Ask your neighbors. Do they know who their local elected DA is? Could they explain the role of the DA and where the DA fits into the criminal justice process? Probably not. And that's understandable in some sense. People have busy lives with many things pulling on them for time and attention.

But what communities have learned with the advent of the rogue prosecutor movement is that it doesn't really matter how many arrests police make if the DA won't prosecute the cases.

Similarly, it doesn't really matter how well judges rule in certain cases or how effective a state's sentencing laws might be, if the DA won't prosecute the cases. The judge or the jury will never see them.

The DA is the key to the criminal justice system. George Soros and other supporters of the rogue prosecutor movement realized this with devastating effect. And the deadly consequences of their soft-on-crime policies have followed.

Having a good DA in office who takes his or her oath seriously to faithfully enforce the laws is crucial to restoring law-and-order in many American cities. And more importantly, it's crucial to restoring the rule of law, and the faith we as Americans should have in it, that has been so grievously undermined by this rogue prosecutor movement. 🗝️

Welcome to the

Atlantic Legal Foundation

2024 Annual Awards Dinner



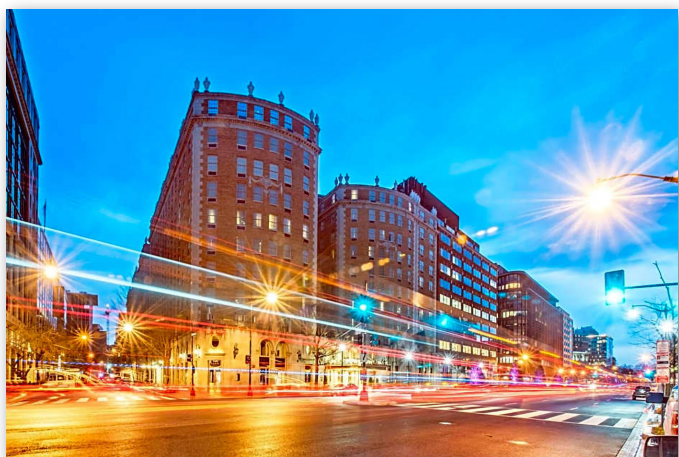
Welcome *to the* *Atlantic Legal Foundation's* 2024 Annual Awards Dinner & Reception

Dan Fisk

Chairman and President

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THE PROGRAM

ATLANTIC LEGAL FOUNDATION

*Is Proud to Honor as its 2024 Annual Award Recipient
The Honorable*

PAUL D. CLEMENT

Leading Advocate Before the U.S. Supreme Court
U.S. Solicitor General (2004-2008)

With his introduction by The Honorable
MICHAEL B. MUKASEY
*81st U.S. Attorney General
Judge of the U.S. District Court
For the Southern District of New York (1988-2006)*

**GRAND BALLROOM
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WASHINGTON D.C.**

*Dinner Chair
Atlantic Legal Foundation Director*
NANCIE G. MARZULLA

OCTOBER 28, 2024

Annual Awards Dinnner Program 2024
Honoring Paul D. Clement, Esq.



The Reception



ALF Director Marco Rossi
& ALF EVP-GC Larry Ebner



ALF Director & Dinner M/C Nancie Marzulla



Gerard Leval, Malcolm McNeil, Riyaz Dattu
ArentFox Schiff LLP



The Awards Dinner



Master of Ceremonies ALF Director
Nancie Marzulla Welcomes Guests



ALF Chairman & President, Dan Fisk
Reports on ALF's Activities



Congressional Gold Medalist &
WWII Veteran Dave Yoho Addresses Guests
as a Former Highly Awarded #1 Professional
Public Speaker in the World





THE PROGRAM

WELCOME

Dinner Chair Nancie G. Marzulla
Founding Partner of Marzulla Law, LLC
in Washington D.C.

Hayward Dan Fisk

Chairman and President
Atlantic Legal Foundation

INTRODUCTION OF THE 2024 ANNUAL AWARD RECIPIENT PAUL D. CLEMENT

Leading Advocate Before the U.S. Supreme Court
U.S. Solicitor General (2004-2008)

by

THE HONORABLE MICHAEL B. MUKASEY

81st Attorney General of the United States

Judge of the U.S. District Court

For the Southern District of New York (1988-2006)

FOLLOWING HIS INTRODUCTION

by

Dinner Chair/ALF Director

NANCIE G. MARZULLA

REMARKS ON

"Living in a Post-Chevron World"

Paul D. Clement

PRESENTATION OF AWARD

Hayward Dan Fisk

Q&A AND CLOSING REMARKS

Hayward Dan Fisk & Nancie G. Marzulla







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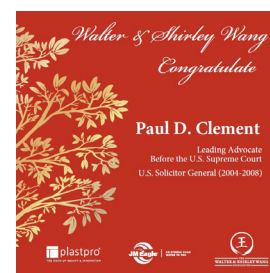


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Introduction of Paul D. Clement by Michael B. Mukasey

I want to thank Nancy Marzulla for that—my notes say kind, but it should be lavish—introduction, and the Atlantic Legal Foundation for the privilege of introducing this year's honoree, Paul Clement.

This is the second time I've benefited from being associated with Paul Clement. Tonight, of course, the benefit is both an honor and a great pleasure. And when I was in Washington, and Paul was Solicitor General, I had the benefit of being the last person to be represented by Paul Clement at government rates—and that benefit was both an honor and a pleasure as well.

Of course, Paul has had a totemic career, with more than 100 arguments before the Supreme Court and a win-loss ratio that would merit successive Cy Young Awards if he were pitching a baseball. When he first told me about this evening's event, he said he thought the immediate occasion for this honor was his win in the *Loper-Bright* case, which, as you know, put an end to the Chevron deference doctrine—or experiment, as it turned out to be.

That was the kind of victory that would be a career achievement for anyone else. But at a time when this country is experiencing a crisis of confidence in institutions generally, including those institutions we call professions—medicine, journalism, law—I think Paul's career is to be valued and honored for far more than the number or even the importance of the cases he's won.

While compiling his enviable record, Paul has embodied the principle that if you are going to practice a profession, you ought to profess something, and how you do that will bring credit or discredit on you and the profession as a whole. Paul's career has defined what a profession should be and has made it clear, for starters, that a profession is more than a job—more even than a job with special skills. It is a job with formal training, of course, and certifications beyond the training, but his career shows that it is more even than that.

A profession protects and serves the structure, the institution, that is the focus of much of its energy—hospitals for doctors, universities for academics, courts and other legal institutions for lawyers—but his career has shown that it is more even than that.

What I think Paul's career has shown is that although a profession serves a social purpose—for doctors, it is the public's physical health; for clerics, it is the public's spiritual health; for lawyers, it is a rules-based society that functions in a way that promotes justice—he has shown that the justice



the legal profession should promote is not simply one lawyer's notion of justice or even the currently dominant crowd's notion of justice—whether social justice or any other kind.

It is the straightforward idea of giving representation to every interest and point of view for which a legally defensible argument can be made, regardless of who benefits and regardless of who or how many would rather not see that interest represented, for whatever reason.

As many of you may know, Paul was the lawyer who argued for the House of Representatives in support of the Defense of Marriage Act—which opposed gay marriage—and was told by his then-law firm that they couldn't have someone there who defends that position, which some of their clients and many of the young law students they tried to recruit found objectionable. And so, he left that firm and joined a smaller firm, which in turn became part of a larger firm.

In due course, Paul was retained to represent an affiliate of the National Rifle Association in defense of Second Amendment rights, and he won. He then found out that this firm would not permit representation of Second Amendment proponents in the wake of the school shooting in Uvalde, Texas, that generated hostility to Second Amendment rights among some clients of the firm, among some young people the firm was trying to recruit, and even



among some of the lawyers at the firm.

Faced with the choice of either continuing to represent his clients or staying at his firm, he chose to continue to represent his clients, and he set up his own firm.

Paul may not be historically unique in having conducted himself in that way. The obvious historical analogy is John Adams, who defended Captain Prescott and the British soldiers charged with manslaughter for firing on a crowd in what is known as the Boston Massacre, in which a half dozen American patriots were killed. Adams won acquittals for Captain Prescott and four of the six soldiers charged, and he did so by sticking to the facts and presenting his case in a way that—despite the hue and cry against the British, and despite the revolution that followed—nonetheless allowed him to be chosen as our second president and to be regarded by the legal profession today, at least on ceremonial occasions if not always in practice, as the exemplar of what a lawyer should be.

If what Paul did is not historically unique, it is certainly rare. It is for being that kind of lawyer—the kind who makes other lawyers, and I certainly include myself, proud to be part of the same profession—that I think Paul is most deserving of recognition. And that's the reason I take such pleasure and pride in introducing him.

Paul—the podium is yours. 🗣️



Michael B. Mukasey

81st Attorney General of the United States (2007–2009)

Judge of the U.S. District Court For the Southern District of New York (1988–2006)

Michael B. Mukasey, of counsel to Debevoise & Plimpton LLP, served as Attorney General of the United States, the nation's chief law enforcement officer. As Attorney General from November 2007 to January 2009, he oversaw the U.S. Department of Justice and advised on critical issues of domestic and international law. Judge Mukasey joined Debevoise as a partner in the litigation practice in New York in February 2009, focusing his practice primarily on internal investigations, independent board reviews and corporate governance.

From 1988 to 2006, Judge Mukasey served as a district judge in the United States District Court for the Southern District of New York, becoming Chief Judge in 2000.

From 1972 to 1976, Judge Mukasey served as an Assistant United States Attorney for the Southern District of New York, and as Chief of the Official Corruption Unit from 1975 to 1976. His practice consisted of criminal litigation on behalf of the government, including investigation and prosecution of narcotics, bank robbery, interstate theft, securities fraud, fraud on the government and bribery. From 1976 to 1987 and from 2006 to 2007 he was in private practice.

2024 Annual Award Honoree Paul D. Clement

Leading Advocate Before the Supreme Court of the United States



Paul Clement is a founding partner of Clement & Murphy, PLLC. He served as the 43rd Solicitor General of the United States from June 2005 until June 2008. Before his confirmation as Solicitor General, he served as Acting Solicitor General for nearly a year and as Principal Deputy Solicitor General for over three years.

Paul has argued over 100 cases before the United States Supreme Court, including landmark cases like *Loper Bright v. Raimondo*, *Rucho v. Common Cause*, *Epic Systems Corp. v. Lewis*, *Hobby Lobby v. Burwell*, *United States v. Booker*, *Tennessee v. Lane*, and *McConnell v. FEC*. Paul has argued more Supreme Court cases since 2000 than any lawyer in or out of government. He has also argued many important cases in the lower courts, including *Walker v. Cheney*, *United States v. Moussaoui*, and *NFL v. Brady*.

Paul has undertaken substantial pro bono engagements in the Supreme Court, such as twice successfully representing the defendant in *Bond v. United States* and successfully representing the *Omaha Tribe in Nebraska v. Parker*, the guardian ad litem in *Adoptive Couple v. Baby Girl*, the defendant in *Sekhar v. United States*, a high school

football coach in *Kennedy v. Bremerton*, and the Little Sisters of the Poor. Paul has undertaken substantial pro bono work in the lower courts as well, including helping to secure injunctive relief against UCLA on behalf of students subjected to religious discrimination.

Paul is a native of Cedarburg, Wisconsin, and a graduate of its public schools as well as Georgetown University, Cambridge University, and Harvard Law School. Following law school, Paul clerked for Judge Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit and for Associate Justice Antonin Scalia of the U.S. Supreme Court. After his clerkships, he went on to serve as Chief Counsel of the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights.

Paul is a Distinguished Lecturer in Law at the Georgetown University Law Center, where he has taught in various capacities since 1998, and a Distinguished Lecturer in Government at Georgetown University. He also serves as a Senior Fellow of the Law Center's Supreme Court Institute. He is the Justice Joseph Story Distinguished Practitioner in Residence at the Gray Center at Scalia Law School. 🇺🇸



Living In a Post-Chevron World

Address by Paul D. Clement

Thank You's — Professional & Personal

First, let me start by thanking the Atlantic Legal Foundation for this honor and for all the Foundation does to support the rule of law. It is no accident that the Foundation has filed amicus briefs in many of the cases I will mention here tonight. The Foundation has played a critical role in helping the Supreme Court identify important cases and in vindicating the rule of law and trying to make the government more accountable to the people.

Second, let me thank my clients, many of whom are represented here tonight. When it comes to appellate litigation, the clients are the heroes. It is never easy to shoulder the burden of high-profile litigation, and appellate litigation in general, and Supreme Court litigation in particular, is as high-profile as it gets. And it is particularly difficult for a regulated entity to sue their regulators. We all owe a debt of gratitude to companies like Axon Enterprise and the fishermen in *Loper Bright*, who have the courage to sue their regulators, and the fortitude to take the fight all the way to the Supreme Court and establish precedents that benefit everyone.

Third, allow me to thank my colleagues at Clement & Murphy. They are an incredibly talented bunch. And it is not just anyone who is willing to leave the comforts of a global law firm and follow Erin and me across the Potomac to a start up that was still looking for office furniture when many of our colleagues joined us. And the talent is not

limited to the lawyers, as Ashley and Aviana were helping us file Supreme Court briefs before we had office space, and I am particularly grateful to Ruth for keeping my overscheduled life on track.

Finally, on a personal note, I want to give the biggest thanks of all to my family, and my much better half, Alexandra who is here tonight. I have been blessed to argue over 100 cases in the Supreme Court, but every one of those arguments represents missed weekends with the family. Alex bore the brunt of those missed weekends, and continues to keep the home front calm in the run up to the next big argument. It is no accident that when the argument is over, she is more relieved than I. For all that and more, I am eternally grateful.

Loper Bright

When I first got the call about this case, I knew instantly that it had the potential to be the vehicle to take down *Chevron*. I had previously tried to cut back on *Chevron* in cases for large multinational companies, but this case perfectly illustrated the real world costs of *Chevron* on small businesses.

The petitioners in these cases were just that—small businesspeople with small boats. Congress already imposed on them mightily by requiring them to carry federal monitors on some trips to ensure that they were complying with the myriad of federal regulations. But, without any congressional authorization, the regulators had gone one giant step further in forcing the fishermen to pay the

salaries of those monitors. Given the tight quarters on those boats and even tighter margins in commercial fishing, not only having to give up space for monitors, but also having to pay their salaries, added insult to injury and created a glaring injustice.

Having done a fair amount of Second Amendment work, I was delighted to have a chance to invoke the Third Amendment in the cert petition. Our founding fathers were justly outraged when they were forced to quarter British soldiers. But not even the British thought to single out unlucky homeowners not only to quarter the Red Coats, but also to pay their salaries.

At the petition stage, we not only cited the Third Amendment, but also offered the Court two Questions Presented and two ways for our clients to win. The details of the statutory regime well illustrated the unfairness of executive law-making. In the very few instances where Congress authorized the regulated to pay for monitoring, the regime had a certain amount of logic and reflected the kind of judgments one would expect from lawmakers facing the electorate at regular intervals. Thus, only the largest and most profitable fleets were subject to the obligation, and their burden was capped at 2 to 3 % of the value of the catch. The only fishermen subject to an uncapped obligation to pay for monitors were foreign-flagged ships allowed to fish in U.S. territorial waters. That legislative line made perfect sense. Not only were those foreign vessels in no position to complain, but the foreign fishermen were in no position to vote.

But the regulators, who never have to face the voters, showed no comparable restraint. They imposed uncapped obligations on even the smallest and least profitable fleets, where the fees could reduce the profits of a trip by 20%. We thus included a first Question Presented that focused on the DC Circuit's misinterpretation of the specific statutory regime, and then a second question asking whether *Chevron* should be overruled or sufficiently curtailed.

To my surprise the Court granted cert solely on question two, and so the focus shifted solely to *Chevron*. My own views on *Chevron* have evolved over time. I clerked on the DC Circuit in *Chevron*'s prime, where the decision still seemed like a useful antidote to the days when the DC Circuit of David Bazelon and Skelly Wright would resist any agency impulse toward deregulation. And even though I clerked during the year when the George H.W. Bush Administration turned the White House over to the Clinton Administration, the pattern of administrations employing *Chevron* to flip-flop on major issues via executive order had not yet emerged. I then went

on to clerk for Justice Scalia, who was then the Supreme Court's foremost proponent of *Chevron* deference. Like the Justice himself, I was persuaded that in a choice between unelected judges and executive agencies minimally accountable to the electorate through presidential elections, the latter were better suited to resolve ambiguities since they were not completely insulated from political accountability.

But over time, I came to realize that the focus on the executive versus the judiciary ignored the debilitating effect of *Chevron* on the third and most important branch, Congress.

I also failed to fully appreciate the debilitating effect on courts of having them ask the wrong question in every statutory construction case. Under *Chevron*, the first question a court needed to ask in a statutory construction case was not what does this statute mean or how is it best read. Instead, the first question was quite literally whether the statute is ambiguous. Of course, most statutes have some degree of ambiguity, and if courts are set off to identify ambiguity, they will often find some, and never get back to the essential question of how is the statute best interpreted. The Court in *Loper* credited many of these criticisms, and returned the courts to the business of good old-fashioned statutory construction, where the focus is on the best reading of the statute that Congress actually passed.

Litigating In a Post-*Chevron* World

Loper will have an immediate impact in statutory construction cases. The Solicitor General predicted the effect would be "convulsive," which is a word that litigants should remind the courts about whenever the government suggests that *Loper* is not a game-changer. Yesterday's Washington Post reported that there are north of 150 challenges to executive branch rulemaking filed in the wake of *Loper*, and my strong sense is that radically undercounts the number of suits invoking *Loper* to suggest that the government's hand is weaker than it was under *Chevron*.

And, of course, this dramatic impact on litigation against the government is **entirely asymmetrical**. Many government briefs have been filed claiming that notwithstanding the Solicitor General's promise of convulsive change, the government's position remains defensible in a post-*Loper* world. I am reasonably confident that the number of federal government briefs claiming that *Loper* actually strengthens the government's hand remains at zero.

To be sure, some agencies saw the writing on



the wall and stopped invoking *Chevron* when promulgating new rules. But that is where *Corner Post* comes in. *Corner Post* magnifies the impact of *Loper* by giving voice to parties newly gored by regulations issued during *Chevron*'s heyday when the federal government had no reason to be coy about invoking *Chevron*. Even apart from *Corner Post*, some rules are efforts to revive earlier rules previously justified by *Chevron*.

Importantly, administrative law is not co-extensive with *Chevron*. There are plenty of situations where an agency claim to deference does not rest on *Chevron*. But even in those other contexts, the overruling of *Chevron* will loom large. For example, in *Kisor*, the Supreme Court stopped short of overruling the so-called *Auer* or *Seminole Rock* deference agencies enjoy in interpreting the meaning of their own regulations. But as long as those regulations cannot change the meaning of statutory law, deference on the meaning of the regulations matters far less. More generally, the overruling of *Chevron* and the tone of the Chief's 6-3 opinion will have an important atmospheric effect.

And beyond *Chevron*, structural challenges will continue to be brought. *Axon* has proven an important catalyst to structural challenges to agency decision making. *Jarkesy* puts important limits on issues that can be taken away from courts and moved into administrative proceedings. And how the Major Questions Doctrine will continue to evolve in a post-*Chevron* world will be an important question that SCOTUS will wrestle with over the next few terms.

The impact on Congress will take longer to sort out, as old habits die hard and the muscles necessary to work out enduring legislation

compromises have atrophied. But this is the more important issue in the long run. Our constitutional system was designed to check a powerful legislature, Madison's "impetuous vortex," not a weak one. The framers did not go through all the trouble of creating two legislative bodies with different mechanisms of election, and specifying that revenue bills must originate in one body, with treaty ratification in the other, only to have all the hard issues decided by bureaucrats and federal judges.

The results of a system where most of the controversial legislative decisions are made via executive orders that can shift dramatically every four years can be seen in our current presidential election, which as Chris Demuth argued in the *Wall Street Journal* this past weekend is really a battle between two radically different legislative agendas, rather than a contest about who is better able to serve as head of the nation and faithfully execute the laws enacted by Congress. And the choice between those radically different legislative agendas should not come down to voters in just a handful of States. The system the framers designed for enacting enduring legislation is a far better one.

I am not naïve enough to think that overruling *Chevron* alone will be enough to get Congress to resume its rightful place at the center of our federal government. The temptation for half of Congress to cheer on its party's Executive Branch agenda, while the other half resists it, and both sides avoid the kind of compromises that bring primary challengers, will remain strong. But I do think overruling *Chevron* is an important step in the right direction, and given the stakes, every step in the right direction is well worth cheering. So thanks to the fishermen for having the wisdom to identify injustice and the courage to fight. And thanks to ALF for this honor. 🦋

Presentation of Award



M/C Nancie Marzulla

Honoree Paul Clement

Judge Michael Mukasey

ALF Chairman Dan Fisk

ATLANTIC LEGAL FOUNDATION

*Is Proud to Honor as its 2024 Annual Award Recipient
The Honorable*

PAUL D. CLEMENT

LEADING ADVOCATE BEFORE THE U.S. SUPREME COURT
U.S. SOLICITOR GENERAL (2004-2008)

Introduction by **The Honorable Michael B. Mukasey**
81st Attorney General of the United States
Judge of the U.S. District Court
For the Southern District of New York (1988-2006)

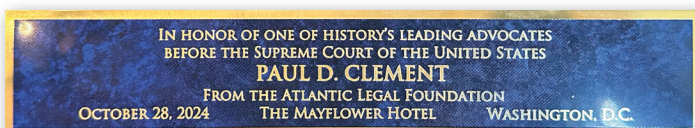
to be introduced by ALF Director and Dinner Chair
Nancie G. Marzulla, Founding Partner
Marzulla Law, LLC

In the Historic Elegant
Palm Court Ballroom - The Mayflower Hotel
1127 Connecticut Ave, NW
Washington D.C. 20036

Our Honoree will address "Living in a Post-*Chevron* World"



Annual Award Dinner Invitation 2024 Honoring Paul D. Clement, ESQ.



The Award

The Atlantic Legal Foundation's Annual Awards Dinner is a prestigious event to honor exceptional individuals for their contributions to the betterment of America. As part of this distinguished occasion, the honoree is awarded a special custom award reflecting our Honoree's interests . . . This year, reflecting Paul's excellence as a leading advocate in the history of cases presented before the Supreme Court of the United States, ALF awarded him . . . a one hundred year old exquisite statue of Lady Justice who is described on the following page. The statue now rests in Paul's office Moot Court Room as an inspiration for excellence in effective advocacy.

History of Lady Justice



Fountain of Justice (Gerechtigkeitsbrunnen) - one of the medieval fountains of Bern Old Town - Bern, Switzerland

The history and form of the great Lady spans many centuries and various forms. From her earliest origins — the goddess Maat, and later Isis, of ancient Egypt followed by the Hellenic deities Themis and Dike — she personified the divine rightness of law embodying divine order, law and custom. In Roman mythology, the origin of Lady Justice was Justitia, introduced by emperor Augustus, and was thus not a very old deity in the Roman pantheon.

Lady Justice is often depicted with a set of scales, typically suspended from one hand, upon which she balances the relative substance and value (i.e. the “weight”) of the available evidence and arguments on both sides of any bilateral dispute. The scales can therefore “tip in favor” of either side, and justice, in terms of the metaphor, can be enacted upon seeing the result.

Since the middle of the 16th century, Lady Justice has often been depicted wearing a blindfold. It was originally a satirical addition intended to show Justice blind to the injustice carried on before her, but it has been reinterpreted over time and is now understood to represent impartiality . . . the idea that justice should be applied without regard to

wealth, power, or other status. Prior to the 16th century, early Roman coins depicted Justitia with the sword in one hand and the scales in the other, but with her eyes uncovered. The first known representation of blind Justice is Hans Gieng’s 1543 statue on the Gerechtigkeitsbrunnen (Fountain of Justice) in Bern, shown above.

The sword represented authority in ancient times and conveys the idea that justice can be swift and final. And the toga as a Greco-Roman garment symbolizes the status of the philosophical attitude that embodies justice. Many Lady Justice statues depict the Lady stomping on a snake as the symbol of evil.

The large and we think exquisite Lady Justice statue presented by the Atlantic Legal Foundation to its Honoree, Paul D. Clement, was procured from Europe, has been identified as roughly one hundred years old in gilded bronze with the original foundry mark and a minor enhancement of its base to accommodate the commemorative plaque.

We understand the commemorative statute of Lady Justice now resides in the moot court room of Clement & Murphy’s offices in Washington D.C. to inspire continuing excellence in advocacy. 🦋



"Well Done"

Nathan "Gus" Siekierka

Dan Fisk



ALF is a superb organization. . .
Jacob Traverse CEO Center for Truth In Science
Greg Baumann Nisus Corporation Executive



Thanks M/C Nancie Marzulla



Thanks for your support!
Dan Fisk Larry Ebner



Annual Award Recipients 1988-2024

2024



Paul D. Clement

Leading Supreme Court of the U.S.
Advocate

2013



Bill Nuti

Chairman, CEO and President
NCR Corporation

2023



Kenneth R. Feinberg

Special Master and Mediator

2012



William H. Swanson

Chairman and CEO
Raytheon Company

2022



Michael D. Rich

President Emeritus
RAND Corporation

2011



Edward J. Ludwig

Chairman of the Board
BD

2018



Thomas N. Kendris

US Country President, Global Head
Litigation and President
Novartis Corporation

2010



W. James McNerney, Jr.

Chairman, President and CEO
The Boeing Company

2017



Richard J Stephenson

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

2009



Chad Holliday

Chairman of the Board
DuPont & Bank of America

2016



Hon. Harvey L. Pitt

Chief Executive Officer
Kalorama Partners, LLC
Chairman of the United States Securities
and Exchange Commission (2001-2003)

2008



William C. Weldon

Chairman of the Board and CEO
Johnson & Johnson

2015



Hon. Frank Keating

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

2007



Hon. Fred F. Fielding

Counsel to President George W. Bush
Former Counsel to
President Ronald Reagan

2014



H. Lawrence Culp, Jr.

President and CEO (Ret.)
Danaher Corporation
Chairman & CEO
General Electric

2006



Thomas J. Donohue

President and CEO (Ret.)
U.S. Chamber of Commerce

Annual Award Recipients 1988-2024

2005



Edward D. Breen

Chairman and CEO
Tyco International Ltd.

1996



Bruce Atwater

Retired Chairman and CEO
General Mills, Inc.

2004



Hon. George J. Mitchell

Former United States Senator
Chairman, The Walt Disney Company
Partner, Piper Rudnick LLP

1995



Alfred C. DeCrane, Jr.

Chairman and CEO
Texaco Inc.

2003



Maurice R. Greenberg

Chairman and CEO
American International Group, Inc.

1994



Malcolm S. Forbes, Jr.

President and CEO
Forbes, Inc.

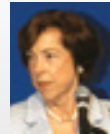
2002



Henry A. McKinnell, Jr., Ph.D.

Chairman and CEO
Pfizer Inc

1993



Amb. Carla Anderson Hills

United States Trade Representative

2001



Hon. William S. Cohen

Former Secretary of Defense
and United States Senator

1992



Paul H. Henson

Retired Chairman and CEO
Sprint Corporation

2000



Norman R. Augustine

Retired Chairman and CEO
Lockheed Martin Corporation

1991



Walter B. Wriston

Retired Chairman and CEO
Citicorp

1999



General P. X. Kelley

Former Commandant of the Marine Corps

1990



Irving S. Shapiro

Retired Chairman and CEO
DuPont

1998



Hon. Rudolph Giuliani

Mayor of New York City

1989



Edmund T. Pratt, Jr.

Chairman and CEO
Pfizer Inc

1997



Hon. Donald Rumsfeld

Former Secretary of Defense

1988

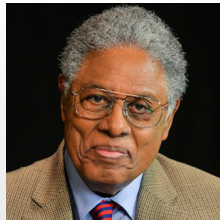


Hon. William E. Simon

Former Secretary of Treasury

Special Lifetime Achievement Honorees

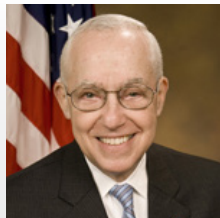
2022



Dr. Thomas Sowell

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

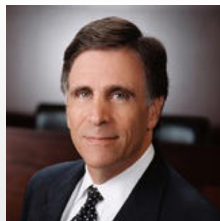
2016



The Honorable Michael Mukasey

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

2014



Evan R. Chesler

Chairman
Cravath, Swaine & Moore LLP

2013



The Late Richard Wilson

Mallinckrodt Professor of Physics, Emeritus
Harvard University

2011



Kathryn S. Wylde

President and CEO
Partnership for New York City

2009



The Late Hon. Judith S. Kaye

Retired Chief Judge
State of New York

2006



The Late Dr. Frederick Seitz

President Emeritus
The Rockefeller University



In 2024, and early 2025, we welcomed three new Directors to ALF's Board, two new Officers and two new Advisory Council Members strengthening ALF's leadership team:



Marzulla Law, LLC
Washington, DC
(202) 822-6760
nancie@marzulla.com

Education

- Diploma, Advanced International
- Legal Studies - University of the Pacific McGeorge School of Law, Salzburg Campus
- J.D., University of Colorado School of Law Boulder, Colorado
- M.P.A., University of Colorado
- B.A., University of Colorado

Admissions

- District of Columbia
- Colorado
- U.S. District Court for the District of Columbia
- U.S. Court of Federal Claims
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. Court of Appeals for the D.C. Circuit
- U.S. Supreme Court

Nancie G. Marzulla

Elected in Spring of 2024

Nancie G. Marzulla is a founding partner of Marzulla Law, LLC and is Co-Chair of the Court of Federal Claims Chief Judge's Advisory Council.

Marzulla Law is ranked as one of the nation's "Best Law Firms," and a "Tier One" environmental litigation firm by *U.S. News and World Report*. Nancie's litigation practice concentrates on water rights, federal takings claims, and contract claims in the U.S. Court of Federal Claims. She also has extensive experience in handling matters involving property, water, environmental law, Indian tribal claims, development, and natural resources in trial courts, courts of appeal, and the Supreme Court. Nancie also represents clients in enforcement or permitting disputes with federal regulatory agencies.

Nancie served as an Attorney-Advisor and litigation attorney in the Civil Rights Division at the U.S. Department of Justice. Later, Nancie joined the law firm of Verner, Lipfert (now DLA Piper), where she litigated complex airline and other civil matters. In 1991, she founded Defenders of Property Rights, where she was involved in takings cases in the Supreme Court, federal courts of appeal, and trial courts. Nancie also worked at the International Labor Organization in Geneva, Switzerland doing comparative legal research.

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

Awards & Honors

- Golden Eagle Award-U.S. Court of Federal Claims (highest award)
- James Madison Award — Bar Association (Court of Federal Claims)
- Court of Federal Claims Bar Association's Randolph W. Thrower Award
- D.C. Women's Bar Association as the environmental Lawyer of the Year
- Best Lawyers of America, Environmental Litigation

Publications & Speeches

Nancie has testified in Congress, before regulatory agencies, and in State legislatures on a variety of property (including intellectual property), water, and environmental matters. She has also authored articles on environmental and property rights for the ABA and other publications and has been interviewed on radio and television. She is a regular speaker at programs sponsored by the bar associations, the ABA, and other CLE programs. She is coauthor of *Property Rights: Understanding Government Takings and Environmental Regulation*.

Affiliations

- Advisory Council to Chief Judge of the U.S. Court of Federal Claims
- Past President of the U.S. Court of Federal Claims Bar Association
- American Bar Association
- International Network of Boutique Law Firms
- President, Board of Directors, Maryland Youth Ballet
- Court of Federal Claims and Federal Circuit Bar Associations
- Madison Club, the Federalist Society



Steven S. Rosenthal

Elected in Spring of 2024

Steven Rosenthal has extensive trial court, appellate and arbitration experience on cases involving public and constitutional law, as well as all aspects of administrative practice. He has secured victories before the U.S. Supreme Court in addition to successfully representing many government entities during his litigation career.

Partner of Loeb & Loeb,
LLP
Washington, DC
(202) 618-5034
srosenthal@loeb.com

My Services

- Litigation
- Public Sector Litigation
- Appellate

Education

- Harvard Law School,
J.D., *magna cum laude*
- Dartmouth College, B.A.,
magna cum laude

Bar Admissions

- District of Columbia
- California
- Florida

Clerkships

- U.S. Court of Appeals,
District of Columbia
Circuit

Experience

- Prior to joining Loeb & Loeb LLP, Steven was chair of the Litigation Department at an international law firm. Prolific examples of his prior work experience can be cited.

Appellate Practice

Steven has argued before the U.S. Supreme Court, a majority of the U.S. Courts of Appeals and state appellate courts throughout the United States. He appeared before the U.S. Supreme Court on behalf of the Port of the City of Los Angeles in a case involving federal law restrictions on the Port's ability to condition entry of trucks onto its property. He was victorious before the U.S. Supreme Court in a case holding that the imposition of Social Security taxes on sitting federal judges was an unconstitutional diminution of compensation, and in a case representing the predecessor of Bank of America holding that national banks have the power to sell fixed and variable annuities.

Representation of Government Entities

In addition to representing major private companies in litigation, Steven has represented government entities such as the California State Controller, the Delaware Department of Finance, the City of Los Angeles, and the Port Authority of New York and New Jersey at both the trial and appellate levels. For more than 35 years, he has represented large international airports on regulatory and litigation issues, serving as lead counsel in five landmark cases involving airport rates and charges.

Constitutional and Federal Statutory Litigation

Steven has extensive experience advising governmental entities on claims arising under the U.S. Constitution and federal statutes regulating interstate and foreign commerce. Those include damages and injunction claims under the Takings Clause, the Commerce Clause, the Due Process Clause and federal common law. In addition, he has advised the California State Controller on the successful negotiation of multistate global settlement agreements with the nation's largest life insurance companies, earning him the prestigious California Lawyer Attorneys of the Year (CLAY) Award.

He was elected to the American Law Institute in 1991 and is also listed in Benchmark Litigation, the Best Lawyers in America and numerous similar publications. He is a lieutenant colonel in the California State Guard, serving currently as Senior Advisor to the Commander of the California Air National Guard. Steven is also a member of the board of trustees of Wild Earth Allies, which protects natural habitats of wildlife and flora around the globe.



Sr. V.P., General Counsel and Corporate Secretary, Associated Electric and Gas Insurance Services Limited (AEGIS)

Mark A. Walsh

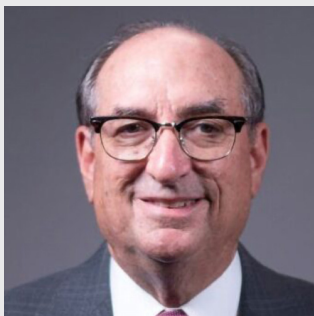
Elected in the Fall of 2024

Mark A. Walsh is the Senior Vice President, General Counsel and Corporate Secretary for Associated Electric & Gas Insurance Services Limited (AEGIS), a Bermuda Mutual insurer serving the North American utilities and energy sector. He is responsible for the management of the Company's legal, regulatory and compliance functions.

Prior to joining AEGIS, Mr. Walsh practiced law for twenty years with global law firms and represented insurance and energy industry clients in a variety of matters in federal, state, administrative and arbitration proceedings.

Mr. Walsh was educated in Dublin, Ireland and received a bachelor's degree from Trinity College. He is a graduate of Boston College Law School and a member of the bar in Massachusetts and the District of Columbia.





Greg J. Baumann

Chemical Industry Veteran Greg Baumann Elevated from ALF Advisory Council to Board of Directors in November, 2023 Assumes Officer Role as Assistant Treasurer in 2024

Greg Baumann has served as Vice President of Global Regulatory and Technical Services for Nisus Corporation, a global pest management and industrial products manufacturer based in Knoxville, Tennessee. Greg's responsibilities include oversight of regulatory compliance, global product registration, data generation, technical services, and interaction with government agencies, both domestic and international.

Prior to Nisus, Greg was Vice President of Training and Technical Services for Rollins, Inc., parent company of Orkin, Orkin Canada, HomeTeam, IFC, Western, and All Pest Australia. In that role, he was responsible for product selection, service development, and training including oversight of the live broadcast studios.

For sixteen years, Greg was with the National Pest Management Association starting as Manager of Government Affairs and rising to Vice President of Technical Services, where he was responsible for all technical and scientific activities of the organization. Prior to NPMA, Greg was a quality assurance and regulatory compliance manager at Hershey Foods Corporation.

He is a member of industry fraternity Pi Chi Omega, the American Wood Protection Association, and the Entomological Society of America and represents Nisus on the American Chemistry Council's Center for Biocide Chemistries, the Treated Wood Council, the International Code Council and was appointed as a public health advisor to the United Nations World Health organization. Greg had been a member of the Atlantic Legal Foundation's Advisory Council since 2022.

Greg is chair of the Antimicrobial Exposure Assessment Task Force of the American Chemistry Council, a coalition of forty-five companies funding and generating human exposure data for toxicological assessments of antimicrobial products with oversight by USEPA and Health Canada.

He is a published writer and is a frequent speaker at global conferences and has been a guest on the NBC Today Show, ABC Primetime, MSNBC, and dozens of local television and radio shows. Greg is a recipient of the Rollins President's Award for outstanding achievement, PCT Leadership Award, and has been inducted into the industry Hall of Fame. He holds a degree in chemistry.

Greg and his wife Jill live in Knoxville, Tennessee.



Tee Cirillo

Long Time Executive Assistant Tee Cirillo Assumes Additional Responsibility as Assistant Secretary

Tee Cirillo is the Executive Assistant at the Atlantic Legal Foundation, a role she has held since August 2007. With extensive experience in the legal field, she previously worked at several law firms in New York and Connecticut. Tee brings a wealth of administrative expertise and organizational skills to her position, supporting the Foundation's mission and daily operations. She currently resides in New York with her two children.

New Advisory Council Members

Grant Hollingsworth

Appointed in early 2025



Partner, Hollingsworth LLP

(202) 898-5887
ghollingsworth@
hollingsworthllp.com

Grant Hollingsworth litigates a wide variety of complex civil matters, with a current focus on pharmaceutical products liability, medical malpractice, and sports law. His strength is working with witnesses to develop testimony supporting the client's core defenses and case themes, particularly by distilling complex fact patterns and science into a digestible and compelling story. Grant leads fact, expert, and trial prep teams to ensure the firm develops a thoughtful and strategic approach to developing and ultimately weaving together witness testimony to win cases at summary judgment and trial.

Grant has extensive experience litigating cases in MDLs in federal courts throughout the country, including *In re Tepezza Marketing, Sales Practices, and Products Liability Litigation* (Amgen), *In re Tasigna Products Liability Litigation* (Novartis), *In re Aredia and Zometa Products Liability Litigation* (Novartis), and *In re Roundup Products Liability Litigation* (Monsanto/Bayer).

Grant has a wide variety of hobbies and interests and often calls on his personal experiences to frame his approach to litigating cases at the highest level.

Leo J. Hurley Jr.

Appointed in the Fall of 2024



Partner, Connell Foley

(201) 521-1000
lhurley@connellfoley.com

A partner at Connell Foley LLP, Leo Hurley Jr. is a seasoned litigator with a proven record of success in obtaining favorable jury verdicts, as well as guiding matters to resolution and early settlement, and is routinely called upon to represent corporations and individuals in high-stakes, high-profile and "bet the company" litigation.

An aggressive advocate in the courtroom, Leo litigates a wide variety of civil and criminal cases in state and federal courts in New Jersey, New York and across the country. His practice includes the litigation of a wide variety of complex commercial matters and white collar criminal defense and investigations, as well as employment, cannabis, securities, class actions, trade secret, and corporate dissolution/oppressed minority shareholder litigation. He serves as Co-chair of the firm's Commercial Litigation and White Collar Criminal Defense Groups.

With a deep knowledge of various industries, Leo also serves as outside general counsel for public and privately owned small to medium-sized companies in sectors such as financial services, real estate, health care, energy, cannabis and public relations.

While attending Georgetown University, Leo worked on the staff of then-Congressman Robert Menendez.

Officers in 2024



Hayward "Dan" Fisk
Chairman and President



Augustus I. duPont
Vice Chairman



Lawrence S. Ebner
Executive Vice President and
General Counsel



Nicholas W. Klitzing
Vice President — External Affairs



Hannah S. Marcley
Assistant General Counsel
& Assistant Secretary



Marco Q. Rossi
Treasurer
Founder and Principal
Marco Q. Rossi & Associati PLLC



Ana Tagvoryan
Secretary
Partner, Blank Rome



Mark D. Nielsen
Assistant Treasurer
EVP & Chief Legal Officer
Frontier Communications
Corporation



2024 Board of Directors

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Atlantic Legal Foundation*

*Senior Vice President,
General Counsel and Secretary (ret.)
Computer Sciences Corporation*

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*Vice Chairman,
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*Vice President, General Counsel and
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*Treasurer,
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*Founder & Principal,
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Ana Tagvoryan*

*Secretary,
Atlantic Legal Foundation*

*Partner
Blank Rome LLP*

Mark D. Nielsen

*Assistant Treasurer,
Executive Vice President
& Chief Legal Officer,
Frontier Communications Corporation*

Tracy A. Bacigalupo

*Partner,
Womble Bond Dickinson*

Gregory J. Baumann

*Vice President,
Global Regulatory
and Technical Services
Nisus Corporation*

Thomas E. Birsic

*Partner,
K&L Gates LLP*

John L. Brownlee

*Partner,
Holland & Knight LLP*

Kristin Calve

*Publisher,
Corporate Counsel Business Journal*

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