



Brian Boynton

PARTNER

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Brian Boynton is an experienced civil litigator in the firm's Government and Regulatory Litigation Group. His practice focuses on complex government, regulatory and commercial litigation, including challenges to federal agency action under the Administrative Procedure Act (APA), litigation under a range of federal regulatory regimes, and constitutional and preemption challenges.

Mr. Boynton rejoined the firm in 2017 following his service at the US Department of Justice. From 2014 to 2016, Mr. Boynton was a Deputy Assistant Attorney General in the Office of Legal Counsel—the office charged with providing authoritative legal advice to the President and Executive Branch. From 2016 to early 2017, he served as a counselor to Attorney General Loretta Lynch, helping to coordinate significant civil litigation involving the department.

Prior to joining the Department of Justice, Mr. Boynton practiced at the firm for 12 years. He has substantial experience at all stages of litigation and has handled a wide range of complex government, regulatory and commercial litigation.

Mr. Boynton has extensive experience with respect to challenges under the APA. He has litigated APA challenges to regulations and administrative decisions by numerous federal agencies and represents parties challenging agency actions as well as parties intervening to help defend favorable agency actions.

Mr. Boynton also represents clients in complex regulatory litigation and commercial disputes. He has handled False Claims Act litigation and investigations in a range of industries, including health care, telecommunications and construction. He has also litigated high-profile matters under the antitrust laws, the Fair Housing Act, the Lanham Act, the Electronic Communications Privacy Act, the Wiretap Act, and the Foreign Intelligence Surveillance Act. He also has litigated patent, fraud and breach of contract cases.

In addition, Mr. Boynton has significant experience litigating constitutional and preemption challenges. He represents public universities in First Amendment matters, and he has

defended free speech challenges to federal and state laws establishing commodity promotion programs. He also has experience bringing and defending against dormant commerce clause, separation of powers and preemption challenges.

Government Experience

Counselor to the Attorney General

From 2016 until early 2017, Mr. Boynton served as a Counselor to Attorney General Loretta Lynch at the US Department of Justice. He was responsible for advising the Attorney General with respect to significant matters falling within his portfolio and helping to coordinate the department's handling of those matters. His portfolio included the Civil Division, the Office of the Solicitor General, the Office of Legal Counsel, the Antitrust Division, residential mortgage-backed securities matters, the Executive Office for Immigration Review, and matters under consideration by the Committee on Foreign Investment in the United States.

In this role, Mr. Boynton helped to coordinate the litigation of the most significant matters handled by the Civil Division. These matters included high-profile constitutional, statutory and Administrative Procedure Act challenges to government programs, significant commercial litigation, important appellate matters and affirmative litigation commenced by the Civil Division.

Deputy Assistant Attorney General – Office of Legal Counsel

From 2014 to 2016, Mr. Boynton served as a Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel (OLC), which provides authoritative legal advice to the President, the Department of Justice and other Executive Branch agencies, typically with respect to difficult and important legal issues, constitutional questions and legal disputes between different Executive Branch agencies.

During his time at OLC, Mr. Boynton provided advice on a wide range of complex constitutional, statutory and administrative law questions. He drafted and assisted in the preparation of a number of formal opinions and provided informal advice on a host of issues. He also oversaw OLC's review and analysis of the constitutionality of pending and enacted legislation.

Solutions

Litigation

Administrative Law

Life Sciences

Government and Regulatory
Litigation

False Claims Act

Appellate and Supreme Court
Litigation

Education

Experience

- **CHALLENGES UNDER THE ADMINISTRATIVE PROCEDURE ACT (APA)**
 - Successfully litigated multiple APA challenges to decisions by the Patent and Trademark Office (PTO) improperly calculating the length of patent term adjustments.
 - Successfully represented an association of property and casualty insurers in an APA challenge to a rulemaking by the Department of Housing and Urban Development that applied disparate impact analysis under the Fair Housing Act to homeowners insurers.
 - Successfully represented an association of ethanol producers in litigation brought by other industries challenging the Environmental Protection Agency's decision to permit the sale of gasoline with 15% ethanol.
 - Represented a prescription drug wholesaler in an APA challenge to a Drug Enforcement Administration decision.
 - Represented a patent holder in a successful APA challenge to a PTO decision relating to payments of patent maintenance fees.
- **COMPLEX COMMERCIAL AND REGULATORY LITIGATION**
 - Handled multiple False Claims Act matters, including investigations and litigation, in a range of industries.
 - Represented an investment bank in a putative class action under the Fair Housing Act challenging the bank's purchases of residential mortgages in the secondary market.
 - Defended a cellular equipment manufacturer in antitrust case brought by a company alleging that its technology had been excluded from industry standards.
 - Successfully defended putative class actions under the Electronic Communications Privacy Act, the Wiretap Act and the Foreign Intelligence Surveillance Act against a telecommunications company alleged to have cooperated with asserted National Security Agency surveillance.
 - Successfully appealed judgment in a Lanham Act challenge to a competitor's product label subject to regulation by the Food and Drug Administration.
 - Represented a patent licensee in the successful defense of a challenge to the validity of the patent based on the “public use” bar.
- **CONSTITUTIONAL AND PREEMPTION LITIGATION**
 - Represented public universities with respect to First Amendment matters, including litigation arising from denials of outside speaker requests.
 - Helped obtain dismissal of dormant commerce clause and preemption challenges to a California law prohibiting the sale of eggs in the state unless they were produced according to specified food safety and animal welfare standards.
 - Successfully defended the constitutionality of a provision of the FISA Amendments Act of 2008 that granted immunity to telecommunications carriers.
 - Represented a California government entity in the successful defense of a First

Amendment challenge to a state law requiring producers of California table grapes to pay assessments that fund promotion of California table grapes.

- Successfully represented the cotton industry in First Amendment challenges to the Cotton Research and Promotion Act.

Credentials

EDUCATION

JD, Stanford University Law School, 2000

Order of the Coif

BA, Dartmouth College, 1997

summa cum laude

ADMISSIONS

District of Columbia

California

CLERKSHIPS

The Hon. Vaughn R. Walker,
US District Court for the
Northern District of California,
2000 - 2001

The Hon. Douglas H.
Ginsburg, US Court of
Appeals for the District of
Columbia Circuit, 2001 - 2002