
Government and Regulatory Litigation

Drawing on years of experience in the public and private sectors, our lawyers handle a range of litigation involving the federal government, state and foreign governments, and complex regulatory regimes.

WilmerHale's Government and Regulatory Litigation Group combines the firm's substantive regulatory capabilities and its familiarity with litigation involving the government and regulatory organizations to handle disputes in which clients' interests intersect with government, regulatory and public policy issues. Our lawyers routinely manage litigation across a range of disciplines, including administrative, antitrust and cartel enforcement, arts and antiquities, communications, constitutional and preemption challenges, cybersecurity and privacy, defense and national security, anti-discrimination, education, energy and environment, False Claims Act, consumer financial services, government contracting, intellectual property, healthcare, technology, transportation, and international law.

We defend against major government enforcement actions and civil litigation brought by private parties under regulatory statutes, and develop affirmative strategies to align the legal landscape with our clients' business objectives, which may involve bringing litigation, engaging in negotiations or pursuing legislative options. We resolve potentially large-scale litigation at the motion to dismiss or summary judgment stage, obtain advantageous early settlements, and have a strong record of successfully litigating matters through trial when necessary.

Our lawyers have served in senior government positions in the Department of Justice (DOJ), the primary litigation arm of the United States. The team includes:

- two former Deputy Attorneys General of the United States (the second-highest position in the DOJ), as well as a former Acting Deputy Attorney General;
- a former US Solicitor General and an Assistant to the Solicitor General;
- a former Assistant Attorney General in charge of the Civil Division and two former Deputy Assistant Attorneys General in the Civil Division (for the Federal Programs Branch and for the Appellate Branch);
- a former Acting Assistant Attorney General in charge of the Office of Legal Counsel and two former Deputy Assistant Attorneys General in the Office of Legal Counsel;
- a former Principal Deputy Associate Attorney General;
- two former US Attorneys and a former State Attorney General; and

- more than 15 former Assistant US Attorneys, and other former Justice Department litigators.

Government Litigation

We routinely handle litigation against, with or for the government in a variety of contexts, including

- constitutional and preemption challenges to legislation;
- challenges to agency action under the Administrative Procedure Act;
- regulatory enforcement actions;
- False Claims Act litigation;
- government contract litigation; and
- international litigation involving the United States or foreign governmental institutions.

A successful government litigation strategy must take into account legal doctrines applicable to litigation involving the government, including sovereign immunity, ripeness, mootness, standing, the availability of pre-enforcement relief, abstention and deference. Our lawyers have experience in the constitutional, administrative and statutory law that applies uniquely to litigation with or involving governments.

Effective representation in government litigation also requires consideration of the government's institutional interests and decision-making processes. These interests and processes often differ substantially from those of private litigants. Our experience allows us to take advantage of the opportunities presented by these distinct rules, constraints, operations and motivations. By combining the group's knowledge of the issues that arise in government litigation with the substantive capabilities of the firm's regulatory practices, we are well positioned to handle complex regulatory, administrative or constitutional litigation involving a range of governments.

Regulatory Litigation

A host of federal statutes—including the antitrust, anti-discrimination, environmental, and fraud and racketeering laws, as well as the False Claims Act—create rights of action for private parties seeking to enforce federal regulatory regimes. Civil litigation brought pursuant to these private rights of action, including class actions, often occurs in parallel with enforcement or potential enforcement by federal regulators or prosecutors, or scrutiny from Congress, foreign governments or the press. A successful litigation strategy—whether offensive or defensive—must take account of opportunities and risks in all of these areas, building alliances where advantageous, finding ways to advance litigation objectives quickly or otherwise develop positive momentum, and developing creative solutions in a dynamic environment.

Our familiarity with the applicable regulatory programs and complex civil litigation, coupled with our experience handling criminal and civil government litigation, cross-border disputes and other high-profile legal proceedings, allows us to advance our clients' interests in litigation

while maximizing their position in other venues.

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Antitrust and Competition
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and Litigation
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Experience

- Represent companies in the pharmaceutical, telecommunications, office supply, entertainment, defense, insurance, oil and gas, financial institutions, and other industries in *qui tam* and government-initiated litigation under the False Claims Act.
- Represented a trade association in a successful patent preemption and dormant commerce clause challenge to District of Columbia legislation imposing price caps on patented prescription drugs.
- Represented a defense contractor in a high-stakes contract dispute involving the provision of equipment to the US military.
- Represented one of the largest US defense contractors in a Federal Circuit appeal

concerning privity rules in government contracting and the liability of the United States for subcontractor claims.

- Represented a major prescription drug wholesaler in an Administrative Procedure Act challenge to a Drug Enforcement Administration order suspending the registration of one of the company's distribution facilities.
- Represented a US energy company in litigation in federal court challenging the seizure of its business by a foreign government under the expropriation exception to the Foreign Sovereign Immunities Act.
- Represented a major aerospace company in a successful Atomic Energy Act preemption, intergovernmental immunity and constitutional challenge to a California statute that singled out one site in the state for uniquely onerous environmental cleanup regulations.
- Represented a major aerospace company in separate government contract disputes pending in the Court of Federal Claims and Armed Services Board of Contract Appeals.
- Represented a major telecommunications carrier in defending the constitutionality of the immunity provision of the Foreign Intelligence Surveillance Act Amendments Act of 2008 in consolidated class actions alleging that carriers cooperated with alleged National Security Agency counter-terrorism surveillance following the attacks of September 11.
- Represented a US petrochemical company in successful litigation to declare unenforceable foreign judgments totaling more than \$500 million.
- Represent financial institutions in Consumer Financial Protection Bureau investigations under fair lending, the Real Estate Settlement Procedures Act and other regulatory regimes.
- Represented a major insurance company in a fair lending investigation by a state regulatory authority.
- Advised a major insurance company and other financial institutions with respect to Dodd-Frank issues, including the Financial Stability Oversight Council.
- Defended numerous significant international cartel cases involving a variety of industries, including automotive components, air cargo and LCD panels.
- Successfully represented an international law firm in a civil RICO action.
- Persuaded the US Court of Federal Claims to enjoin the Coast Guard from transferring the work of an incumbent IT contractor to a competitor via an illegal, sole-sourced contract.
- Obtained on behalf of a major national mortgage lender dismissal with prejudice of a putative nationwide discrimination class action and represented an investment bank in similar litigation.
- Submitted amicus briefs for a major professional and scientific association and a major industry association in the US Supreme Court and other appellate courts.
- Challenged a federal agency's termination for default of a multi-million-dollar IT contract.

- Represent state governmental entities and individuals in defending the constitutionality of state and federal programs that support research and the promotion of agricultural commodities.
- Persuaded the Small Business Administration Office of Hearings and Appeals to reverse its previous ruling concerning a major telecommunications company's classification under the Small Business Act.