Foster Garvey

Appellate Services

Upholding justice with effective *advocacy*

We have decades of experience challenging erroneous court decisions - and defending correct ones - in state and federal appellate courts across our country, ranging from state and federal appeals to the Washington and U.S. Supreme Courts.

Our attorneys frequently appear before the Washington Supreme Court in high-profile civil cases involving the constitutionality or interpretation of legislation, the expansion or restriction of contract and common law rules, business and financial disputes, or the scope of governmental powers.

Consistently named a Seattle Tier 1 appellate law practice in the Best Law Firms annual rankings, we combine steadfast advocacy with deep legal insights to deliver exceptional results for our clients.

Our deep experience, collaborative approach, and commitment to service ensure the best chance of success both at trial and on appeal.

- Arbitration
- Commercial disputes
- Constitutional law
- Contracts
- Education
- Elections
- Eminent Domain
- Employment
- Environmental
- Insurance coverage
- Intellectual property
- Land use
- Municipal law
- Negligence and malpractice
- Public Records Act
- Tribal Governments and Enterprises

On appeal: As the cases noted below illustrate, parties regularly hire our appellate lawyers to either protect a trial court victory on subsequent appeal, or reverse or mitigate a loss through the appellate process. Our history of appellate success is based on our attention to critically analyzing the entire court record available for appeal, knowing and deploying the most favorable legal principles, formulating a winning appellate position, writing crisp appellate briefs, and persuasively presenting that winning position in oral argument

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before the appellate court judges.

Before appeal: Our appellate attorneys play a critical role in the underlying agency and lower court proceedings. Litigators handling agency and trial court proceedings often turn to our appellate team to ensure the agency and trial court record includes the factual evidence and legal arguments useful to solidify our client's position if there's a subsequent appeal.

Representative Experience

Constitutional Law

McCleary v. State, 173 Wn.2d 477, ensuing 2012-2017 Supreme Court enforcement Orders (King County Superior Court & Washington Supreme Court) (enforcing State Constitution's public education clause)

Washington State Grange v. Washington State Republican Party, et al., 552 U.S. 442, reversing 460 F.3d 1108 (9th Cir.) & 377 F.Supp.2d 907 (W.D.Wash.) (defeating First Amendment "facial" challenges to the Washington State Grange's Top-Two Primary Initiative)

Washington State Democratic Party v. Washington State Grange, 676 F.3d 784, cert. denied 133 S.Ct. 110 (W.D.Wash. & 9th Cir.) (defeating First Amendment "as applied" challenges to the Washington State Grange's Top-Two Primary Initiative)

Brown v. Owen, 165 Wn.2d 706 (original jurisdiction mandamus action in Washington Supreme Court to enforce State Constitution's majority-vote clause)

Pierce County v. State II, 159 Wn.2d 16 (King County Superior Court & Washington Supreme Court) (class refunds & constitutional contracts clause litigation)

Brown v. State, 155 Wn.2d 254 (King County Superior Court & Washington Supreme Court) (action to enforce State Constitution and portions of Initiative 732)

Washington Association of Neighborhood Stores v. State, 149 Wn.2d 359 (Thurston County Superior Court & Washington Supreme Court) (defeating constitutional challenge to Initiative 773)

City of Burien, et al. v. Kiga, et al., 144 Wn.2d 819 (Thurston, King, Kitsap, Spokane, & Skagit County Superior Courts and Washington Supreme Court) (successful constitutional challenge to Initiative 722)

Pierce County, et al. v. State I, 150 Wn.2d 422 (King County Superior Court & Washington Supreme Court) (constitutional challenge to Initiative 776)

Amalgamated Transit Union, et al. v. State, 142 Wn.2d 183 (King, Thurston, & Yakima County Superior Courts and Washington Supreme Court) (successful constitutional challenge to Initiative 695)

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Satomi Owners Association v. Satomi LLC, 167 Wn.2d 781 (King County Superior Court, Court of Appeals, & Washington Supreme Court) (enforcing arbitration clause under U.S. Constitution's supremacy clause)

Concerned Citizens, et al. v. AHS Joint Operating Board, et al., 78 Wn.App. 333, 127 Wn.2d 1024 (Skagit County Superior Court, Washington Court of Appeals, & Washington Supreme Court) (defeating constitutional, statutory, and common law challenges to Joint Operating Agency's operations)

Bonjorni v. City of Auburn, 93 Wn.App. 1002, 1998 WL 781152 (King County Superior Court, Washington Court of Appeals, & Washington Supreme Court) (defeating constitutional & statutory challenges to city's municipal court system)

Kendall, et al. v. Public Hospital District No 6, 118 Wn.2d 1 (Grant County Superior Court & Washington Supreme Court) (defeating statutory & constitutional challenges to legality of hospital district's operations)

McDonnell v. City and County of Denver, 878 F.3d 1247 (10th Cir.) (represent Airports Council International - North America as amicus curiae in reversal of preliminary injunction on First Amendment challenge to airport permit policies governing protests and demonstrations)

Skycorp v. King County, 859 Fed.Appx. 780 (W.D. of Washington and 9th Cir. 2021) (successfully defended against federal constitutional challenges to King County's flow control ordinance)

Statutory Rights & Election Law

Alaska Protein Recovery v. Puretek Corp., 2014 WL 2011235 (W.D. Wash.) (enforcing arbitration rights under the Federal Arbitration Act)

Tacoma Narrows Constructors v. Nippon Steel-Kawada Bridge, 138 Wn.App. 203, 163 Wn.2d 1011 (Thurston County Superior Court, Court of Appeals, & Washington Supreme Court) (enforcing arbitration clause under international treaty)

1000 Virginia Ltd. Partnership v. Vertec, 158 Wn.2d 566 (interpretation & application of construction claim statute)

Ballard Square Condominium Owners v. Dynasty Construction, 158 Wn.2d 603 (interpretation & application of corporate dissolution statutes)

In re Coday, 156 Wn.2d 485, Cert. Denied, 127 S.Ct. 444 (defeating original jurisdiction action in Washington Supreme Court against Secretary of State regarding Governor's election challenges)

Republican Party v. King County, et al., 153 Wn.2d 220 (Pierce County Superior Court & Washington Supreme Court) (defeating suit against Secretary of State regarding hand recounts in Governor's election)

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McDonald et al. v. Reed, et al., 153 Wn.2d 201 (defeating original jurisdiction action in Washington Supreme Court against Secretary of State regarding hand recounts in Governor's election)

Republican Party v. King County, et al., (W.D. Wash.) (defeating emergency weekend TRO suit against Secretary of State regarding machine recounts in Governor's election)

McGowan, et al. v. State, 148 Wn.2d 278 (Thurston County Superior Court & Washington Supreme Court) (action to enforce portions of Initiative 732)

Wishart, et al. v. Clallam County Housing Authority, et al., (Clallam County Superior Court & Washington Court of Appeals) (defeating statutory challenge to public housing authority's construction project)

Governor Locke, et al. v. Reed, et al., (Washington Supreme Court #75392-0), (representing Governor in original jurisdiction action in Washington Supreme Court regarding referendum measures and veto power)

City of Seattle, et al. v. "Save Our Schools" Initiative Committee, et al., 779 P.2d 726 (King County Superior Court & Washington Supreme Court) (defeating pre-election challenge to Seattle City Initiative 34)

Brower v. State of Washington/Football Northwest, 137 Wn.2d 44 (successful defense of Seattle Seahawks stadium project and legislative referendum)

City of Port Angeles v. Our Water-Our Choice!, 170 Wn.2d 1 (successful defense of municipal water fluoridation program challenged by local initiative)

Smith v. Airbnb, Inc., 316 Or.App. 378, __ P.3d __ (2021) (affirming summary judgment dismissal of claims under the Communications Decency Act of 1996, 47 U.S.C. § 230)

Contracts & Commercial

No Boundaries Ltd. v. Pacific Indemnity Co. [Chubb], 160 Wn.App. 951 (King County Superior Court & Washington Court of Appeals) (interpretation of insurance contract's code upgrade coverage)

Commonwealth Insurance Company v. Grays Harbor County, 120 Wn.App. 232 (Pacific County Superior Court & Washington Court of Appeals) (interpretation of insurance contract's code upgrade & earthquake coverage)

Pinnacle Realty v. General Security Insurance Company, (St. Louis Circuit Court & Missouri Court of Appeals; King County Superior Court & Washington Court of Appeals) (interpretation of insurance contract's punitive damage coverage)

American Hardware Insurance Group v. West One Automotive, 167 Ore.App. 244 (Klamath County Circuit Court & Oregon Court of Appeals) (interpretation of insurance contract's employment discrimination

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coverage)

Wellbrock v. Assurance Company of America, 90 Wn.App. 234 (King County Superior Court & Washington Court of Appeals) (interpretation of insurance contract's wrongful death coverage)

Mercer International v. USF&G, 938 F.Supp. 680, 189 F.3d 473, 1999 WL 594813 (W.D. Wash. & 9th) (interpretation of insurance contract's fire damage coverage)

McRory v. Catlin Specialty Ins. Co., 511 Fed.Appx. 632 (W.D. Wash. & 9th) (interpretation of insurance contract's Directors & Officers coverage)

Wright v. Safeco Ins. Co., 124 Wn.App. 263 (King County Superior Court & Washington Court of Appeals) (interpretation of insurance contract's property damage coverage)

Allstate Ins. Co. v. Forest Lynn Homeowners Association, 914 F.Supp. 408 (W.D. Wash.) (interpretation of insurance contract's rot damage coverage)

Kleinfeld v. Rand, 143 A.D.3d 524, 38 N.Y.S.3d 800 (2016) (reversing order of dismissal based on lack of personal jurisdiction)

Kim v. Francis, 184 A.D.3d 413, 125 N.Y.S.3d 411 (2020) (upholding dismissal of unfair competition and trademark claims)

Frankel v. Vernon & Ginsburg, LLP, 160 A.D.3d 528, 75 N.Y.S.3d 158 (2018) (successful appeal on behalf of executor challenging trial court's reduction of jury award and denial of fees)

Hindlin v. Prescription Songs, LLC, 182 A.D.3d 434, 122 N.Y.S.3d 278 (2020) (upholding denial of motion to dismiss claims regarding music co-publishing agreement)

Cent. Freight Lines, Inc. v. Amazon Fulfillment Servs, 861 F. App'x 154 (9th Cir. 2021) (successful appeal overturning summary judgment ruling and subsequent jury verdict relating to a transportation agreement)

Columbia State Bank v. Invicta L. Grp. PLLC, 199 Wn. App. 306, 402 P.3d 330 (2017) (upholding judgment and attorneys' fee award on loan agreement including finding of personal liability)

Monster Energy Co. v. City Beverages, LLC, 940 F.3d 1130 (9th Cir. 2019), cert. denied 141 S. Ct. 164, 207 L. Ed. 2d 1100 (2020) (successful challenge to arbitration award under the Federal Arbitration Act based on arbitrator's breach of disclosure obligations)

Seattle Times Co. v. LeatherCare, Inc., 829 F. App'x 176 (9th Cir. 2020) (upholding judgment and attorneys' fee award regarding multi-party environmental litigation)

Municipal

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Bainbridge Ratepayers Alliance v. City of Bainbridge Island, 158 Wn App. 1051, 2010 WL 4962942 (Kitsap County Superior Court & Washington Court of Appeals) (defeating challenge to validity of municipal bonds)

Community Association for Restoration of the Environment v. Washington State Department of Ecology, 149 Wn.App. 830, (successful intervention for appeal of state-wide CAFO General Permit)

Rabanco v. King County, 125 Wn.App. 794 (defeating challenge to county's solid waste management authority)

Silver Firs Town Homes, Inc. v. Silver Lake Water Dist., 103 Wn.App. 411, rev. denied 143 Wn.2d 1013 (defeating challenge to district's connection charges)

Wong, et al. v. City of Long Beach, 119 Wn.App., rev. denied 152 Wn.2d 1015, (defeating challenge to city's trail project)

City of Normandy Park v. Ecology, 1998 WL 594635 (Wash. Pol. Control Board) (securing dismissal of third-party appeal

Little Deli Marts, Inc. v. City of Kent, 108 Wn.App. 1, 107 Wn.App. 1011, rev. denied 145 Wn.2d 1030 (defeating challenge to city's local improvement district process)

Coalition of Governmental Entities v. Washington State Department of Ecology, 2009 WL 43436; 2008 WL 5510412 (Wash.Pol.Control Bd.) (successful multi-phase appeals against State Municipal Stormwater Permits)

Pierce County Housing Authority v. Washington Utilities and Transportation Commission, et al., 86 Wn.App. 138, 131 Wn.2d 1012 (Pierce County Superior Court, Washington Court of Appeals, & Washington Supreme Court) (successful housing authority challenge to State Utility & Transportation Commission's statutory interpretation)

Wright, et al. v. King County, et al., 77 Wn.App. 1074 (King County Superior Court & Washington Court of Appeals) (defeating TRO claim against County's land use decision)

Public Utility District No. 1 of Okanogan County v. State of Washington, 182 Wn.2d 519 (affirming public utility district authority to condemn easements over State lands for transmission corridor project)

HTK v. Seattle Popular Monorail Authority, 155 Wn.2d 612 (successful defense of municipal condemnation authority related to the "Sinking Ship" parking garage)

Admasu v. Port of Seattle, 185 Wn. App. 23 (successful defense of municipal airport operator against putative class action for inverse condemnation, nuisance and trespass caused by airport operations)while effectively managing labor relations challenges.

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