

## Theodore B. Olson



### SELECTED APPELLATE LITIGATION

#### SUPREME COURT OF THE UNITED STATES

##### Cases Briefed and Argued

1. ***CIGNA Corporation v. Amara*, 563 U.S. \_ (2011). ERISA.** Whether an ERISA plan participant must prove detrimental reliance to recover benefits based on an inconsistency between a Summary Plan Description and the terms of the plan itself.
2. ***Mayo Foundation for Medical Education & Research v. United States*, 562 U.S. \_ (2011). Federal Tax; Administrative Law.** Whether the Treasury Department can categorically exclude medical residents from the student exception to the Federal Insurance Contributions Act.
3. ***Citizens United v. FEC*, 558 U.S. \_ (2010). First Amendment.** Whether, for the proper disposition of Citizens United’s First Amendment challenge to the Bipartisan Campaign Reform Act of 2003 (“BCRA”), the Court should overrule either or both *Austin v. Michigan State Chamber of Commerce* or the part of *McConnell v. FEC* that upheld Section 203 of BCRA on its face.
4. ***Polar Tankers, Inc. v. City of Valdez*, 557 U.S. \_ (2009). Tonnage Clause; Commerce Clause.** Whether the property tax that the City of Valdez, Alaska, imposes on oil tankers and other large vessels violates the Tonnage Clause or dormant Commerce Clause.
5. ***Citizens United v. FEC*, 558 U.S. \_ (2010). First Amendment.** Whether the prohibition on corporate electioneering communications in the Bipartisan Campaign Reform Act of 2003 can constitutionally be applied to a feature-length documentary film about a political candidate distributed through Video on Demand.
6. ***Caperton v. A.T. Massey Coal Co.*, 556 U.S. \_ (2009). Due Process.** Whether the Due Process Clause requires the recusal of an elected state supreme court justice who received \$3 million in campaign support from the CEO of a party challenging a multimillion-dollar verdict before his court.

7. ***Coeur Alaska Inc. v. Southeast Alaska Conservation Council*, 557 U.S. \_ (2009). Clean Water Act.** Whether a discharge of a gold mine's "fill material" is regulated by the Army Corps of Engineers under Section 404 of the Clean Water Act, or by the Environmental Protection Agency under Section 402 of the Act.
8. ***Carcieri v. Salazar*, 555 U.S. 379 (2008). Indian Law.** Whether the Indian Reorganization Act of 1934 authorizes the Secretary of the Interior to take land into trust on behalf of an Indian tribe that was not federally recognized and under federal jurisdiction at the time the statute was enacted.
9. ***Altria Group, Inc. v. Good*, 555 U.S. 70 (2008). Federal Preemption.** Whether state-law claims challenging the marketing of "light" cigarettes are expressly or impliedly preempted by federal law.
10. ***Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662 (2008). False Claims Act.** Whether the False Claims Act encompasses false claims submitted to federally funded private parties or is instead restricted to false claims submitted to the government.
11. ***Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008). Federal Preemption.** Whether federal law preempts state-law products liability claims challenging the design and labeling of medical devices that the Food and Drug Administration has found to be safe and effective.
12. ***New York State Board of Elections v. Lopez Torres*, 552 U.S. 196 (2008). First Amendment.** Whether New York's system for selecting party nominees for the office of state Supreme Court Justice violates the First Amendment.
13. ***Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007). Antitrust.** Whether vertical minimum resale price maintenance agreements should be deemed *per se* illegal under the Sherman Act or evaluated under the rule of reason.
14. ***Watson v. Philip Morris*, 551 U.S. 142 (2007). Civil Procedure.** Whether a private corporation that is delegated official government responsibilities and subject to stringent government oversight is "acting under" a federal officer and therefore entitled to remove a case to federal court under 28 U.S.C. § 1442(a)(1).
15. ***Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437 (2007). Intellectual Property; Patent Law.** Treatment of overseas copies of digital software code under federal patent laws.
16. ***DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006). Standing; Commerce Clause.** Whether franchise tax credit or property tax exemption violates the Commerce Clause and whether plaintiffs had standing to bring the challenge.

17. ***Wagon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005). State Taxation; Tribal Sovereignty.** Whether state could tax off-reservation receipt of fuel by non-tribal distributors, manufacturers, and importers.
18. ***Cheney v. United States District Court*, 547 U.S. 367 (2004). Federal Advisory Committee Act (FACA); Separation of Powers; the Presidency; Appeals of Interlocutory Orders.** Applicability of FACA to President’s National Energy Policy Development Group, consisting exclusively of Executive Branch officials; whether Vice President may appeal interlocutory discovery order implicating separation of powers issues under the doctrine articulated in *U.S. v. Nixon*.
19. ***Rasul v. Bush; Al Odah v. United States*, 542 U.S. 466 (2004). Article III Jurisdiction; Habeas Corpus; Enemy Combatants.** Whether federal courts can exercise habeas corpus jurisdiction under 28 U.S.C. §2241 with respect to aliens having no contacts with the United States held in custody by Executive Branch officials in territory not subject to U.S. sovereignty. Status of Guantanamo as non-U.S. sovereign territory. Whether *Johnson v. Eisentrager* is controlling precedent.
20. ***Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004). Establishment Clause of First Amendment; Pledge of Allegiance; Standing.** Whether public elementary school district may begin classes each day with Pledge of Allegiance containing “under God.” Standing of non-custodial parent to challenge constitutionality of school district practices over objection of custodial parent.
21. ***Ashcroft v. ACLU*, 542 U.S. 656 (2004). First Amendment; Pornography; Child Online Protection Act (COPA).** Constitutionality of criminal laws prohibiting internet transmission of sexually explicit, harmful to children, material without screening mechanism to protect against access by minors.
22. ***Engine Mfrs. Assoc. v. Southcoast Air Quality*, 541 U.S. 246 (2004). Clean Air Act; Preemption.** Whether Clean Air Act preempts regional air quality motor vehicle purchase requirements.
23. ***Locke v. Davey*, 540 U.S. 712 (2004). Religion Clauses of First Amendment.** Constitutionality under Free Exercise and Establishment Clauses of state scholarship program that denies benefits to students studying theology from a religious perspective.
24. ***SEC v. Edwards*, 540 U.S. 389 (2004). Securities Act of 1933; Securities Exchange Act of 1934; Definition of a Security.** Whether an instrument promising a fixed return is an investment contract and therefore a security.
25. ***Verizon Communications v. Trinko*, 540 U.S. 398 (2004). Telecommunications Act of 1996; Antitrust; Sherman Act, §2.** Whether violation of interconnection agreement under Telecommunications Act of 1996 may be grounds for private treble

damage action under §2 of the Sherman Act. Standing of indirect purchasers to bring antitrust treble damage action.

26. ***McConnell v. Federal Election Commission*, 540 U.S. 93 (2003).** **Elections Law; Campaign Finance; First Amendment.** Constitutionality of restrictions on contributions, and expenditures in connection with federal elections under the Bipartisan Campaign Reform Act of 2002 (BCRA) (McCain-Feingold).
27. ***Nike, Inc. v. Kasky*, 539 U.S. 654 (2003).** **First Amendment; Commercial Speech; Unfair Competition Law.** Constitutionality under First Amendment of California's unfair competition and false advertising laws (Cal. Bus. and Prof. Code §17200 et seq.) in connection with suit by non-purchaser for alleged false claims in the marketplace.
28. ***Grutter v. Bollinger*, 539 U.S. 306 (2003).** **Equal Protection Clause; Racial Discrimination; University Admissions; Affirmative Action.** Constitutionality under Equal Protection Clause of University of Michigan Law School use of racial preferences in admissions program.
29. ***Gratz v. Bollinger*, 539 U.S. 244 (2003).** **Equal Protection Clause; Racial Discrimination; University Admissions; Affirmative Action.** Constitutionality under Equal Protection Clause of University of Michigan use of racial preferences in undergraduate admissions program.
30. ***United States v. American Library Association, Inc.*, 539 U.S. 194 (2003).** **First Amendment; Spending Clause; Internet; Sexually Explicit Material.** Constitutionality under the First Amendment of Children's Internet Protection Act (CIPA), which conditions acceptance of federal funds by public libraries for internet connection on utilization of technology protection measures to screen access to visual depictions of sexually explicit material.
31. ***Demore v. Kim*, 538 U.S. 510 (2003).** **Immigration; Detention of Removable Aliens; Due Process.** Constitutionality of 8 U.S.C. §1226(c) (Section 236(c) of the Immigration and Nationality Act), which permits detention of removable aliens convicted of aggravated felonies.
32. ***Scheidler v. NOW; Operation Rescue v. NOW*, 537 U.S. 393 (2003).** **RICO; Hobbs Act; Extortion; Injunctions.** Scope of Hobbs Act; remedies available in civil actions under RICO.
33. ***Smith v. Doe*, 538 U.S. 84 (2003).** **Double Jeopardy; Sexual Offender Registry; Megan's Law.** Constitutionality under Double Jeopardy Clause of Alaska's registration and notification requirements for convicted sex offenders (Megan's Law).
34. ***Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003).** **Due Process; Sexual Offender Registry; Megan's Law.** Constitutionality under Due Process Clause of

Connecticut's registration and publication requirements for convicted sex offenders (Megan's Law).

35. ***Eldred v. Ashcroft*, 537 U.S. 186 (2003).** **Copyright Clause; First Amendment; Copyright Term Extension Act of 1998.** Constitutionality under Copyright Clause and First Amendment of Copyright Term Extension Act of 1998 (CTEA).
36. ***United States v. Ruiz*, 536 U.S. 622 (2002).** **Fifth and Sixth Amendments; Fair Trial; Guilty Pleas; Appellate Jurisdiction.** Constitutional requirements with respect to whether guilty plea is voluntary and informed.
37. ***Utah v. Evans*, 536 U.S. 452 (2002).** **Census; Statistical Sampling.** Constitutional and statutory limits on use of statistics in calculating outcome of 2000 census.
38. ***Christopher v. Harbury*, 536 U.S. 403 (2002).** **Immunity of Public Officials; Bivens.** Qualified immunity of U.S. officials in *Bivens* cases.
39. ***Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).** **First Amendment; Establishment Clause; Schools Vouchers.** Constitutionality under First Amendment Establishment Clause of public tuition aid for students attending private schools.
40. ***Tahoe-Sierra Preservation Counsel v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).** **Fifth Amendment; Takings Clause.** Challenge to temporary moratoriums on the issuance of building permits.
41. ***Ashcroft v. ACLU*, 535 U.S. 564 (2002).** **First Amendment; Pornography; Internet.** Constitutionality of Child On-line Protection Act (COPA) limits on availability to children of pornographic materials on internet.
42. ***Verizon Communications, Inc. v. Federal Communications Commission*, 535 U.S. 469 (2002).** **Telecommunications Act of 1996; Fifth Amendment Takings Clause; Just Compensation.** Constitutionality and statutory legality of FCC regulations setting compensation systems for use of established telephone switching and other facilitators by new entrant competitors under Communications Act of 1996.
43. ***Adarand Constructors, Inc. v. Slater*, 534 U.S. 102 (2001).** **Equal Protection; Justiciability; Standing.** Constitutionality under Due Process Clauses of Fifth and Fourteenth Amendments of racial set-asides in federally aided highway programs.
44. ***Bush v. Gore*, 531 U.S. 98 (2000).** **Federal Presidential Elections; Equal Protection Clause.** Constitutionality under Equal Protection Clause and Article II of the Constitution of a Florida Supreme Court decision requiring a state-wide recount of ballots in Florida's 2000 presidential election.
45. ***Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70 (2000).** **Federal Presidential Elections; Equal Protection Clause.** Constitutionality of Florida

Supreme Court decision changing deadlines and procedures for the tabulation of ballots in Florida's November 2000 presidential election.

46. ***Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2002). Eleventh Amendment; False claims Act; Actions against States; Qui Tam.** Whether a private individual may bring suit in federal court against a state on behalf of the United States under the False Claims Act. Federal False Claims Act *qui tam* action also raising the question whether a State is immune from such suits under the Eleventh Amendment.
47. ***Rice v. Cayetano*, 528 U.S. 495 (2000). Voting Rights; Equal Protection; Fourteenth and Fifteenth Amendments.** Constitutionality under Fourteenth and Fifteenth Amendment of Hawaiian legislation restricting voting in certain elections to citizens based on racial classifications.
48. ***Gasperini v. Center for Humanities, Inc.*, 518 U.S. 418 (1996). Seventh Amendment; Jury Trials; Excessive Damages; Appellate Review.** Whether the Seventh Amendment permits federal appellate courts in diversity cases to review jury verdicts for excessiveness and whether state or federal standards govern the scope of excessiveness review of such verdicts.
49. ***Koon v. United States*, 518 U.S. 81 (1996). Sentencing Guidelines; District Court Discretion; Standard of Appellate Review.** Whether district court departure from sentencing range prescribed by U.S. Sentencing Guidelines is to be reviewed under abuse of discretion standard by federal appellate courts.
50. ***United States v. Commonwealth of Virginia*, 518 U.S. 515 (1996). Fourteenth Amendment: Equal Protection Clause; Single-Sex Education; Gender Discrimination.** Whether Virginia Military Institute male-only admissions policy violates the Equal Protection Clause of the Fourteenth Amendments to the Constitution of the United States.
51. ***Plaut v. Spendthrift Farms*, 514 U.S. 211 (1995). Due Process; Judgments; Finality.** Constitutionality of statute requiring federal courts to reopen final judgments in cases dismissed with prejudice pursuant to Supreme Court's decision in *Lampf, Pleva v. Gilbertson*, 501 U.S. 350 (1991).
52. ***Musick, Peeler & Garrett v. Employers Insurance of Wausau*, 508 U.S.286 (1993). Securities; Securities Exchange Act of 1934; Securities Fraud Contribution.** Contribution right of defendants in federal securities fraud cases under § 10(b) of the Securities Exchange Act of 1934.
53. ***Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). Securities Act of 1934; Private Actions; Statute of Limitations.** Whether federal courts must apply federal securities law one year/three year statute of limitations rather

than forum state statutes of limitations in cases arising under § 10(b) of the Securities Exchange Act of 1934.

54. *State of California v. ARC Cement Corp.*, 490 U.S. 93 (1989). **Antitrust; Federal Preemption.** Whether federal antitrust laws preempted state actions.
55. *Bankers Life and Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988). **Eighth Amendment; Excessive Fines; Due Process; Punitive Damages.** Constitutionality under the Excessive Fines Clause of the Eighth Amendment and Due Process Clause of the Fourteenth Amendment of Mississippi punitive damage laws.
56. *California Federal Savings & Loan Association v. Guerra*, 479 U.S. 272 (1987). **Sex Discrimination; Pregnancy; Federal Preemption.** Whether California's pregnancy leave statute was preempted under the Supremacy Clause by Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978.
57. *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986). **Due Process; Eighth Amendment; Excessive Fines; Contract Clause; Punitive Damages.** The constitutionality under the Eighth Amendment Excessive Fines Clause, the Contracts Clause, and the Fourteenth Amendment Due Process Clause of \$3.5 million punitive damage award by Alabama courts.
58. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). **Tenth Amendment Federalism; Fair Labor Standards.** Constitutionality under the Tenth Amendment of the application of the minimum wage and other employment standards of the Federal Fair Labor Standards Act to wages paid by the City of San Antonio to municipal transit workers.

## SUPREME COURT OF THE UNITED STATES

### Selected Cases Briefed But Not Argued

59. *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). **Separation of Powers; Presentment Clause.** Constitutionality of legislative veto devices by which Congress reserved to itself or some component of Congress the power to reverse or alter Executive Branch actions without enacting substantive legislation.
60. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). **First Amendment; Freedom of Speech; Commercial Speech.** Constitutionality under the First Amendment the City of San Diego's ordinance prohibiting billboard advertising. *See also Metromedia, Inc. v. City San Diego*, 26 Cal. 3d 848 (1979).

## OTHER — FEDERAL AND STATE

### Appellate Court Cases

1. ***ASCAP v. THP Capstar Acquisition Corp.* (2d Cir. argued June 16, 2011).** Whether the district court set an unreasonably low rate for a license authorizing a background music services provider to publicly perform copyrighted musical works in the ASCAP repertory.
2. ***Brady v. National Football League* (8th Cir. argued June 3, 2011).** Whether (i) the Norris-LaGuardia Act prohibited the district court from enjoining the NFL's lockout of players; (ii) the non-statutory labor exemption to the Sherman Act shields the NFL from antitrust liability for the lockout and other concerted employment practices even though the players are no longer members of a labor union; and (iii) the district court should have abstained from enjoining the lockout until the NLRB rules on the NFL's claim that the disclaimer of the union was a sham.
3. ***Perry v. Brown* (9th Cir. argued Dec. 6, 2010).** Whether Proposition 8, which stripped gay and lesbian individuals of the right to marry under California law, violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment.
4. ***United States v. Science Applications International Corporation*, 626 F.3d 1257 (D.C. Cir. 2010).** Whether a contractor that submits concededly accurate claims for payment to the government can be held liable under the False Claims Act for purportedly making "implied" certifications of compliance with background conflict-of-interest obligations.
5. ***NML Capital, Ltd. v. Banco Central de la Republica Argentina*, \_ F.3d \_ (2d Cir. 2011).** Whether the central bank of Argentina is Argentina's alter ego, and whether the assets of the central bank are therefore subject to attachment by Argentina's creditors.
6. ***NML Capital, Ltd. v. Republic of Argentina*, 621 F.3d 230 (2d Cir. 2010).** Whether the Republic of Argentina must honor its agreement to pay a floating interest rate on certain bonds.
7. ***Allied Orthopedic Appliances, Inc. v. Tyco Health Care Group L.P.*, 592 F.3d 991 (9th Cir. 2010).** Whether an alleged monopolist's improvement in product design can ever constitute a violation of Section 2 of the Sherman Act.
8. ***Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120 (2d Cir. 2009).** Whether after the Argentine government nationalized its citizens' pension assets in 2008, the Foreign Sovereign Immunities Act permitted Argentina's creditors to seize pension assets held in New York bank accounts to satisfy claims arising out of Argentina's 2001 bond default.

9. ***Masimo Corp. v. Tyco Healthcare Group, LP*, 350 F. App'x 95 (9th Cir. 2008).** Whether Tyco Healthcare Group's sole-source agreements with Group Purchasing Organizations, bundled discounts, and/or market-share discounts constituted anticompetitive exclusive dealing arrangements in violation of Section 1 of the Sherman Act or Section 3 of the Clayton Act, and/or constituted an unlawful monopoly broth in violation of Section 2 of the Sherman Act.
10. ***Lebron v. Gottlieb Memorial Hospital*, 930 N.E.2d 895 (Ill. 2008).** Whether the Illinois legislature violated the state constitution when it adopted several medical malpractice reforms, including a cap on non-economic damages.
11. ***Kensington International Ltd. v. Itoua*, 505 F.3d 147 (2d Cir. 2007).** Whether a foreign state-run oil company is immune from suit under the Foreign Sovereign Immunities Act.
12. ***In re Sealed Case*, 310 F.3d 711 (U.S. Foreign Intelligence Surveillance Ct. of Rev. 2002).** Legality of restrictions imposed on law enforcement and intelligence officials under Foreign Intelligence Surveillance Act.
13. ***Nextwave Personal Communications, Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001).** Authority of the FCC to cancel licenses for non-payment of debts under United States Bankruptcy Code.
14. ***Jimenez v. Daimler-Chrysler*, 439 F.3d 439 (4th Cir. 2001).** Appeal of a \$259 million product liability personal injury verdict against the DaimlerChrysler Corporation.
15. ***California Federal Bank, FSB v. United States*, 245 F.3d 1263 (Fed. Cir. 2001).** Recoverability of contract damages in connection with the enactment by Congress of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Mr. Olson was lead counsel for California Federal Banks.
16. ***Touchston v. McDermott*, 234 F.3d 1133 (11th Cir. 2000) (en banc).** Constitutionality under Equal Protection Clause and Article II of the Constitution of Florida's procedures for recounting ballots cast in the 2000 presidential election.
17. ***Nippon Steel Corp. v. United States*, 219 F.3d 1348 (Fed. Cir. 2000).** Legality of U.S. Court of International Trade preliminary injunction prohibiting the Department of Commerce from conducting an anticircumvention inquiry under the Trade Act of 1974, as amended.
18. ***United States Telecom Ass'n v. FCC*, 227 F.3d 450 (D.C. Cir. 2000).** This petition challenged an order of the Federal Communications Commission involving surveillance capabilities that telecommunications companies must provide to law enforcement agencies under the Communications Assistance for Law Enforcement Act. Mr. Olson

was lead counsel for the Cellular Telecommunications Industry Association and the Center for Democracy and Technology.

19. ***MMAR Group, Inc. v. Dow Jones & Co., Inc.*, Civil No. 95-1261 (S.D. Tex., appeal to 5th Cir.)**. Appeal from a \$220 million verdict against *The Wall Street Journal* and its publisher, Dow Jones, Inc., the largest libel verdict against a publisher in United States history. On April 8, 1999, the District Court, 987 F. Supp. 535, vacated the jury's verdict as obtained through misconduct and misrepresentations by the plaintiffs, and ordered a new trial. The case was subsequently settled with the defendants paying nothing.
20. ***Hotel Employees & Restaurants Employee Internat'l Union v. Wilson*, 21 Cal. 4th 585 (1999)**. Challenge to the constitutionality of Proposition 5, California's Indian Gaming Initiative, adopted by California voters in November of 1998.
21. ***United States v. Dispoz-o-Plastics*, 172 F.3d 275 (3d Cir. 1999)**. Mr. Olson was lead counsel for appellants in this decision overturning a conviction for violation of federal antitrust (price-fixing) laws.
22. ***Berry v. Funk*, 146 F.3d 1003 (D.C. Cir. 1998)**. Mr. Olson represented the successful appellant in a ground breaking case concerning the availability of civil damages against government officials for violations of federal wiretapping laws (Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2521).
23. ***Deloitte & Touche v. Weller*, 976 S.W.2d 22 (Tex. App.-Amarillo 1998, writ denied)**. Court of Appeals for the Fourteenth District of Texas No. 14-95-00581 CV. Appeal of judgment against Deloitte & Touche for \$78 million in compensatory and punitive damages for alleged negligence in preparing tax returns for tax shelter limited partnership. In April of 1998, the Texas appeals court awarded judgment for Deloitte & Touche. Mr. Olson was co-counsel for the successful appellant.
24. ***Gregory v. Beverly Enterprises, Inc., et al.*, Case No. 5376, California Superior Court, County of Siskiyou**. Post-trial motions and appeal of a \$95 million verdict against a health care provider in a California State Court case. The trial court granted various post trial motions and reduced the jury's verdict to \$3.2 million, a reduction of 97%.
25. ***Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331 (4th Cir. 1998)**. Mr. Olson was counsel for amici curiae ATL International, Inc., Blimpie International, Burger King, McDonald's Corporation, Mobil Oil Corporation, and others in support of appellants, in an appeal of a \$390 million judgment in a case involving class action and franchising issues. The appeals court reversed the trial court and set aside the verdict.
26. ***Commonwealth of Virginia v. EPA*, 108 F.3d 1397 (D.C. Cir. 1997)**. Appeal by American Association of Automobile Manufacturers, the International Association of

Automobile Manufacturers and the Commonwealth of Virginia of Environmental Protection Agency rulemaking concerning the regulation of vehicle emissions in 13 northeastern states.

27. ***Continental Trend Resources, Inc. v. OXY USA, Inc.*, 101 F.3d 634 (10th Cir. 1996).** The Court of Appeals reduced a \$30 million punitive damage award to \$6 million after a petition for certiorari was granted by Supreme Court of the United States, an earlier Tenth Circuit decision was vacated and the case was remanded for further consideration. Mr. Olson was co-counsel for the prevailing appellant, OXY USA Inc. Petitions for rehearing and for certiorari after reduction of the punitive damage judgment were denied.
28. ***Illinois Public Telecommunications Association v. FCC*, 117 F.2d 555 (D.C. 1997).** Challenge by the Personal Communications Industry Association (paging companies) of Federal Communications Commission's rule concerning payphones, which resulted in a decision vacating the FCC's rule.
29. ***Energy Association of New York State v. Public Service Commission of the State of New York*, 169 Misc. 2d 924, 653 N.Y.S.2d 502, Albany County 1996.** Litigation involving a multi-billion dollar challenge to administrative orders deregulating and restructuring the electric utility industry in New York.
30. ***Johnson v. Life Insurance Company of Georgia*, No. 1940357 (Ala. 1997).** Appeal of \$15 million punitive damage verdict against insurance company. Mr. Olson was co-counsel for appellant Life Insurance Company of Georgia. The Alabama Supreme Court initially reduced the punitive damage award to \$5 million. Petition for certiorari in the United States Supreme Court granted, judgment below vacated, and case remanded for further consideration by Alabama Supreme Court. On August 15, 1997, the Alabama Supreme Court reduced the punitive damage award to \$3 million.
31. ***Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997).** Mr. Olson was counsel to *amicus curiae* Independent Women's Forum in that organization's support for the constitutionality of a state-wide initiative measure banning state-supported discrimination on the basis of race.
32. ***Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).** Petition for certiorari denied. Holding that University of Texas School of Law admissions policies violate Fourteenth Amendment to the Constitution of the United States. Mr. Olson was counsel of record for students denied admission under law school admission policy which discriminated on the basis of race and ethnicity.
33. ***In re Oliver L. North (Reagan Fee Application)*, 94 F.3d 685 (D.C. Cir. Spec. Div. 1996).** Attorney's fees awarded to former President Ronald Reagan in connection with Iran-Contra investigation. Mr. Olson represented former President Ronald Reagan in connection with all aspects of Iran-Contra investigation including fee application.

34. ***Wilson v. Eu*, 1 Cal. 4th 707, 4 Cal.Rptr.2d 379, 823 P.2d 545 (1992)**. Upholding California's 1990 decennial reappointment and redistricting of its congressional and legislative districts. Mr. Olson was counsel to California Governor Pete Wilson in this successful original proceeding in the California Supreme Court.
35. ***Johnston v. CIGNA Corp.*, 14 F.3d 486 (10th Cir. 1993)**. Section 27A of the Securities Exchange Act of 1934, enacted by Congress in 1991 to overrule in part the Supreme Court's decision in the *Lampf* case and to disrupt final, unappealed judgments in certain cases, violates the constitutional separation of powers. Mr. Olson was co-counsel on the brief for the successful appellees.
36. ***Gray v. First Winthrop Corp.*, 989 F.2d 1564 (9th Cir. 1993)**. Upholding the constitutionality of § 27A of the Securities Exchange Act of 1934. Mr. Olson represented Price Waterhouse, the prevailing party on summary judgment issues.
37. ***United States v. Pollard*, 959 F.2d 1011 (D.C. Cir. 1992)**. Appeal of conviction and sentencing of Jonathan J. Pollard on grounds of government violation of plea agreement. Mr. Olson represented Mr. Pollard. The Court ruled 2-1 in favor of the government.
38. ***Robertson Oil Company, Inc. v. Phillips Petroleum Company*, 14 F.3d 373 (8th Cir. 1993)**. Constitutionality of \$8 million punitive damage award and Arkansas punitive damage system.
39. ***Hopkins v. Price Waterhouse*, 920 F.2d 967 (D.C. Cir. 1990)**. Whether title VII of the Civil Rights Act of 1964 authorizes a federal court to order an individual admitted to a partnership in an accounting firm as a remedy for alleged sex discrimination.
40. ***Bettius & Sanderson v. National Union Fire Insurance Co.*, 839 F.2d 1009 (4th Cir. 1988)**. Challenge to \$5 million punitive damage award for alleged bad faith breach of a professional liability insurance contract.
41. ***Ticor Title Insurance Co. v. Federal Trade Commission*, 814 F.2d 731 (D.C. Cir. 1987)**. Challenge to the constitutionality of the law enforcement powers of the Federal Trade Commission on constitutional separation of powers grounds.
42. ***Schlumberger Limited v. Superior Court*, 115 Cal. App. 3d 386 (1981)**. Attorney-client and attorney work product privileges in legal malpractice claims against a client's former counsel.
43. ***Brown v. Petrolane*, 102 Cal. App. 3d 720 (1980)**. Issues connected with the operations of liquefied petroleum gas facility.
44. ***Gibson, Dunn & Crutcher v. Superior Court*, 94 Cal. App. 3d 347 (1979)**. Whether attorneys retained to prosecute a professional malpractice action against a client's former law firm may be sued for equitable indemnification.

45. ***In re the Commission on the Governorship of the State of California (Brown v. Curb)*, 26 Cal. 3d 110 (1979).** Constitutionality (under the California Constitution) of actions by the Lt. Governor of California during the absence from the State of the Governor. Mr. Olson represented Lt. Gov. Curb, who prevailed in this original proceeding in the California Supreme Court on the broad principles asserted in the case.
46. ***Church of Scientology of California v. Adams*, 584 F.2d 893 (9th Cir. 1978).** Defense of a libel suit against *St. Louis Post Dispatch* arising out of a series of newspaper articles regarding a religious organization.
47. ***Chavez v. Citizens for a Fair Farm Labor Law*, 84 Cal. App. 3d 77 (1978).** Defense of agriculture interests against claims for alleged fraud and election campaign misconduct arising out of opposition to a farm labor initiative. Mr. Olson represented the prevailing party.
48. ***California Newspaper Publishers Association, Inc. v. City of Burbank*, 51 Cal. App. 3d 50 (1975).** This case challenged the constitutionality of an ordinance restricting the placement of newspaper racks in the City of Burbank. Mr. Olson represented the prevailing California Newspaper Publishers Association.
49. ***Warfield v. McGraw Hill*, 32 Cal. App. 3d 1041 (1973).** Defense of McGraw Hill and *Aviation Week and Space Technology* magazine in a libel action. Mr. Olson represented the prevailing party.