

David Fotouhi

Partner

dfotouhi@gibsondunn.com

T: +1 202.955.8502

Washington, D.C.

David Fotouhi is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. He practices in the firm's Litigation Department and is a member of the firm's Environmental Litigation and Mass Tort practice group. David previously served as Acting General Counsel and Principal Deputy General Counsel at the U.S. Environmental Protection Agency (EPA).

The National Law Journal recognized David as a "Trailblazer" in environmental and energy law, and *Law360* named David a "Rising Star" in environmental law for his work "on game-changing regulations and litigation." *Lawdragon* named David to the 2024 edition of the "Green 500: Leaders in Environmental Law" guide, recognizing his work in environmental and mass tort litigation and administrative law. *Chambers USA* recognized David as a leading environmental lawyer in the District of Columbia. According to *Chambers USA*, clients praised David as a "sophisticated lawyer" with "in-depth knowledge of the dynamics of a case and its interaction with the authorities" and "unique experience and expertise from his work at the EPA."

David combines his expertise in administrative and environmental law with his litigation experience and a deep understanding of EPA's inner workings to represent the firm's clients in enforcement actions, regulatory challenges, and other environmental litigation. He has provided legal counsel and managed defensive litigation under the Administrative Procedure Act (APA) and every major environmental statute, including the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), Emergency Planning and Community Right-to-Know Act (EPCRA), Oil Pollution Act (OPA), Toxic Substances Control Act (TSCA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Endangered Species Act (ESA).

David's representative matters include:

- Representing a Fortune 500 company in a Department of Justice and EPA investigation under TSCA and other various authorities.
- Representing a major manufacturer in an investigation by state attorneys general related to air emissions and consumer protection claims.
- Challenging an EPA action purporting to amend regulations governing coal combustion residuals under RCRA on behalf of a major energy generator.
- Defending a major pulp and paper manufacturer against tort claims related to PFAS contamination.
- Represented various clients in developing substantial regulatory comments to major EPA proposed regulations under TSCA, the CWA, and the CAA.
- Counseled a multinational manufacturing company on overhauling its environmental permitting and compliance practices at multiple U.S. facilities.



Capabilities

Environmental Litigation and Mass Tort
Administrative Law and Regulatory
Practice
Litigation

Credentials

Education

Harvard University - 2010 Juris Doctor
Vanderbilt University - 2007 Bachelor of
Arts

Admissions

Texas Bar
District of Columbia Bar

Clerkships

US Court of Appeals, 8th Circuit, Hon.
Raymond W. Gruender, 2010 - 2011

- Successfully prosecuted a \$250 million Superfund cost recovery action against the United States on behalf of a major aerospace and defense contractor.
- Successfully defended a paper company against a government statutory penalty action seeking billions of dollars for past waste disposal practices.
- Obtained a favorable settlement for a major government contractor in a long-running RCRA enforcement action with related False Claims Act allegations pursued by the United States.
- Successfully resolved a longstanding CAA enforcement matter brought by the United States against a pulp and paper company.

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At EPA, David led an office of 245 attorneys and staff. He led the EPA legal team that defended the repeal of the Clean Power Plan (CPP) and promulgation of the Affordable Clean Energy Rule to replace the CPP, an action that the Supreme Court later vindicated in *West Virginia v. EPA* (2022). He also played a critical role in developing the litigation strategy to defend other agency actions from judicial challenge, including leading successful efforts to defend EPA's Risk Evaluation Rule under TSCA, the Superfund financial assurance rule for the hardrock mining industry, annual volumetric rules under the Renewable Fuel Standard Program, EPA's guidance on reclassification of major sources under CAA section 112, and various pesticide registration decisions under FIFRA. In each of these matters, David worked directly with DOJ's Environment and Natural Resources Division.

David played a crucial leadership role in developing the legal rationale underpinning major EPA regulatory initiatives. He worked directly on EPA's repeal of the regulatory definition of "Waters of the United States" under the Clean Water Act and promulgation of a replacement definition, known as the "Navigable Waters Protection Rule." Due in part to David's efforts, EPA defeated motions to preliminarily enjoin the rule in the Northern District of California, District of Oregon, and Tenth Circuit Court of Appeals (reversing district court injunction), thus allowing the rule to come into effect nationwide.

David also played a central role in the development of the legal rationale for a number of other agency actions, including final rules governing fuel economy and carbon dioxide emissions standards for light duty vehicles, greenhouse gas emissions from aircraft, methane and VOC and methane emissions from the oil and natural gas industry, effluent from steam electric powerplants, levels of lead and copper in drinking water, the state water quality certification process, and the management of coal combustion residuals. David also lead attorneys working on major EPA initiatives including the National Ambient Air Quality Standards (NAAQS) reviews for ozone and particulate matter and EPA's PFAS Action Plan and positive regulatory determination for the chemicals PFOA and PFOS under SDWA.

While at EPA, David worked to develop EPA's positions in two significant environmental cases heard during the October 2019 Supreme Court term, *County of Maui, Hawaii v. Hawaii Wildlife Fund* and *Atlantic Richfield v. Christian*. David also led teams of attorneys supporting DOJ's Civil Division in defending the United States in significant cases under the Federal Tort Claims Act, including *In re FTCA Flint Water Cases* (E.D. Mich.) and *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (D.N.M.).

Before joining EPA, David practiced in Gibson Dunn's Environmental Litigation and Mass Tort practice group. In that role, David was a member of litigation teams on a broad range of environmental matters, including CERCLA cost recovery actions, Clean Air Act enforcement cases, and environmental mass tort litigation in state and federal courts. In addition, David represented clients as part of internal investigations, agency adjudications, and petitions for review of final agency actions.

David is a member of the bars of the District of Columbia and Texas. Prior to entering private practice, David served as a law clerk to the Honorable Raymond W. Gruender of the United States Court of Appeals for the Eighth Circuit. David received a B.A. *summa cum laude* from Vanderbilt University and a J.D. from Harvard Law School.