



## Andrew Pincus

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Andrew Pincus focuses his appellate practice on briefing and arguing cases in the Supreme Court of the United States and in federal and state appellate courts; developing legal strategy for trial courts; and presenting policy and legal arguments to Congress, state legislatures, and regulatory agencies.

Andy has argued 27 cases in the Supreme Court, including most recently his victories in *Impression Products, Inc. v. Lexmark International, Inc.* (2017); *Kindred Nursing Home Centers Limited Partnership v. Clark* (2017); and *Spokeo, Inc. v. Robins* (2016). *Law360* ranked Andy's victory in *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011), as the most important Supreme Court class action decision of the last 15 years. Andy was named a 2016 "Appellate MVP" by *Law360*; was recognized in 2015 as a Litigation Trailblazer by *The National Law Journal*; and was profiled as a member of *Law360*'s 2014 Appellate A-List. Andy's work in *Concepcion* and successful defense of Chicago Mayor Rahm Emanuel's right to run for office were cited by the *American Lawyer* in its article naming Mayer Brown as one of the top six US litigation firms in the 2012 Litigation Department of the Year report.

A former Assistant to the Solicitor General in the United States Department of Justice (1984-1988), Andy co-founded and serves as co-director of the Yale Law School's Supreme Court Advocacy Clinic (2006-present), which provides pro bono representation in 10-15 Supreme Court cases each year. Andy's Supreme Court oral arguments are available here. A selection of his more than 250 appellate briefs is available here.

## SELECTED EXPERIENCE

### **Adoptive Couple v. Baby Girl (U.S. Supreme Court)**

The Indian Child Welfare Act of 1978 (ICWA), which was enacted in response to the wholesale removal of Indian children from their families, establishes federal rules to govern the adoption of Indian children.

### **Alice Corporation Pty., Ltd., v. CLS Bank Int'l (U.S. Supreme Court)**

The Supreme Court has long held that Section 101 contains implicit exceptions to the scope of subject matter that is patentable.

### **American Broadcasting Companies, Inc. v. Aereo, Inc. (U.S. Supreme Court)**

The Supreme Court granted certiorari to consider the proper construction of the "Transmit Clause" of the Copyright Act as it relates to a company that permits users to watch television programs over the Internet.

### **American Express Co. v. Italian Colors Restaurant (U.S. Supreme Court)**

We filed an amicus brief successfully arguing that the Federal Arbitration Act does not permit courts to refuse to enforce arbitration agreements based on an ad hoc assessment that individual arbitration might not be cost-effective.

### **Astrue v. Capato (U.S. Supreme Court; Third Circuit)**

The Supreme Court granted certiorari to address whether a posthumously conceived child qualifies as a “child” for purposes of Social Security survivorship benefits.

### **AT&T Mobility LLC v. Concepcion (U.S. Supreme Court)**

AT&T Mobility’s customer agreements require disputes to be resolved on an individual basis in arbitration.

### **Bowman v. Monsanto Co. (U.S. Supreme Court)**

The Supreme Court granted certiorari to consider the question of patent exhaustion in the context of patented soybean seeds.

### **buySAFE, Inc. v. Google, Inc. (Federal Circuit)**

Google retained us to defend it against patent infringement claims relating to e-commerce. buySAFE asserted claims as to third-party performance guarantees in the context of Internet commerce.

### **Carr v. United States (U.S. Supreme Court)**

The case involved the federal Sex Offender Registration and Notification Act, which requires registration of sex offenders who travel in interstate commerce on pain of substantial criminal penalties.

### **Citigroup Global Markets Inc. v. StoneMor Operating LLC (U.S. Supreme Court)**

Section 2 of the Federal Arbitration Act prohibits courts from imposing prerequisites to enforcement of an arbitration agreement that are not applicable to contracts generally, and the Supreme Court has repeatedly made clear that arbitration agreements must stand on equal footing with all other agreements.

### **DePierre v. United States (U.S. Supreme Court)**

At the time of petitioner Frantz DePierre’s conviction and sentence, federal law mandated a minimum 10-year sentence for persons convicted of drug offenses involving 50 grams or more of “a mixture or substance ...

### **Doe I v. Nestlé U.S.A., Inc. (Ninth Circuit)**

Plaintiffs sought damages from defendants under the Alien Tort Statute (ATS), alleging that defendants aided and abetted plaintiffs’ labor violations in foreign country.

### **Dunnet Bay Construction Co. v. Blankenhorn (U.S. Supreme Court)**

We filed a cert petition on behalf of a construction company denied a public contract under a discriminatory government scheme.

**Epic Systems Corp. v. Lewis; Ernst & Young LLP v. Morris; NLRB v. Murphy Oil USA, Inc. (U.S. Supreme Court)**

We drafted an *amicus* brief for the U.S. Chamber of Commerce in a Supreme Court case involving a National Labor Relations Board rule prohibiting agreements to arbitrate employment disputes on an individual basis.

**First National Bank of Wahoo v. Charvat (U.S. Supreme Court)**

Jarek Charvat used the defendant banks' automatic teller machines after accepting an on-screen notice that he would be charged a fee before being allowed to complete his transaction.

**Fitzgerald v. Barnstable School Committee (U.S. Supreme Court)**

Section 1983 permits an individual to bring a claim for a constitutional violation, including equal protection claims, against a state government official.

**Halo Electronics, Inc. v. Pulse Electronics, Inc. and Stryker Corp. v. Zimmer, Inc. (U.S. Supreme Court)**

This case addresses what standard a district court should apply in deciding whether to enhance damages for patent infringement under the Patent Act.

**Harbison v. Bell (U.S. Supreme Court)**

Federal Law (18 U.S.C. § 3559) authorizes funding to provide counsel to indigent death row inmates, including state defendants pursuing federal habeas relief.

**Hein v. Freedom From Religion Foundation, Inc. (U.S. Supreme Court)**

In *Flast v. Cohen*, the U.S. Supreme Court ruled that taxpayers had standing to challenge a law enacted by Congress that appropriated government funds in violation of the Establishment Clause.

**Highmark, Inc. v. Allcare Health Management Sys. (U.S. Supreme Court)**

Section 285 of the Patent Act permits a prevailing party to recover fees in "exceptional" cases. Attorneys' fees in patent infringement cases have grown substantially in recent years, and the threat of large fees fuels abusive claims and abusive defenses.

**Hopkins v. BCI Coca-Cola Bottling Co. of Los Angeles (Ninth Circuit)**

We filed an *amicus* brief arguing that representative actions under California's Private Attorney General Act of 2004 are subject to individual arbitration under the Federal Arbitration Act.

**Illinois Tool Works v. Independent Ink, Inc. (U.S. Supreme Court)**

In an antitrust action alleging that a defendant engaged in illegal “tying” by conditioning the sale of one product on the purchase of a second product, the plaintiff ordinarily must show that the defendant had “market power” in the former product.

#### **Impression Products, Inc. v. Lexmark International, Inc. (U.S. Supreme Court)**

The U.S. Supreme Court has granted our petition for certiorari. In our opening brief, we argue that the Federal Circuit’s decision is inconsistent with over one hundred and fifty years of Supreme Court jurisprudence regarding patent exhaustion.

#### **In re Wholesale Grocery Products Antitrust Litigation (Eighth Circuit)**

On behalf of the U.S. Chamber of Commerce, we filed an amicus brief arguing that the Federal Arbitration Act requires individual arbitration of the plaintiffs’ federal antitrust claims in accordance with the parties’ contractual agreements.

#### **Iskanian v. CLS Transportation Los Angeles, LLC (California)**

We filed an amicus brief and presented oral argument contending that California laws restricting individual arbitration of employment claims are preempted by the Federal Arbitration Act, among other issues.

#### **Johnmohammadi v. Bloomingdale’s, Inc. (Ninth Circuit)**

Plaintiff Fatemeh Johnmohammadi brought a putative class action against Bloomingdales under California law, seeking to recover unpaid overtime wages.

#### **Kerry v. Din (U.S. Supreme Court)**

In this case, a U.S. citizen, Fauzia Din, married a native and citizen of Afghanistan. After their marriage, Din petitioned for her husband to receive a U.S. visa, and his application was ultimately denied, allegedly because of his relationship to terrorist activity.

#### **Kilgore v. KeyBank, N.A. (Ninth Circuit)**

We filed an amicus brief and presented oral argument before the en banc court, arguing that the Federal Arbitration Act preempts California’s state-law rule prohibiting arbitration of public-injunction claims.

#### **Kindred Nursing Centers Limited Partnership v. Clark (U.S. Supreme Court)**

The U.S. Supreme Court granted our petition for certiorari to decide whether the Federal Arbitration Act preempts a state-law rule that singles out arbitration for disfavored treatment.

#### **King v. Burwell (U.S. Supreme Court)**

We filed an *amicus* brief explaining that federal tax credits are an essential tool for broadening the risk pool and stabilizing the health insurance market.

#### **Kiobel v. Royal Dutch Petroleum Co. (U.S. Supreme Court)**

The question presented in this case was whether suits against corporations, as opposed to natural persons, for alleged violations of international law are cognizable under the Alien Tort Statute (“ATS”).

#### **Los Angeles County v. Humphries (U.S. Supreme Court)**

In *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), the Supreme Court ruled that civil rights claims could only be made against a municipality under 42 U.S.C. 1983 if a violation resulted from the municipality’s policy or custom.

#### **Marmet Health Care Center v. Brown (U.S. Supreme Court)**

We represented one of the petitioners in its efforts to seek review of the West Virginia Supreme Court of Appeals’ holding that, as a categorical matter, agreements to arbitrate personal injury or wrongful death claims against nursing homes are unenforceable under West Virginia law.

#### **Morrison v. National Australia Bank Limited (U.S. Supreme Court)**

After the Supreme Court granted certiorari to consider the extraterritorial reach of Section 10(b) of the Securities Exchange Act, we were retained by a series of European banking associations who appeared as amici.

#### **Negusie v. Holder (U.S. Supreme Court)**

The Immigration and Naturalization Act allows for discretionary asylum for refugees, and it also limits officials’ power to deport aliens whose lives or freedom would be threatened upon deportation.

#### **Octane Fitness, LLC v. Icon Health & Fitness, Inc. (U.S. Supreme Court)**

Section 285 of the Patent Act permits a prevailing party to recover fees in “exceptional” cases.

#### **PHH Corp. v. Consumer Financial Protection Bureau (D.C. Circuit)**

We filed an amicus brief arguing that the Consumer Financial Protection Bureau’s order requiring a defendant to pay \$109 million in disgorgement violated due process.

#### **Quanta Computer, Inc. v. LG Electronics, Inc. (U.S. Supreme Court)**

This case presented the questions whether the patent-exhaustion doctrine applies to method patents and to the first authorized sale of a component that substantially practices the patent.

#### **Quicken Loans Inc. v. Brown (Supreme Court)**

On behalf of the Chamber of Commerce of the United States of America, we filed an amicus brief arguing that state courts should not be able to insulate their decisions from Supreme Court review by disingenuously finding waiver of federal constitutional claims or defenses.

#### **Raniere v. Citigroup Inc. (Second Circuit)**

On behalf of a coalition of business groups, we filed an amicus brief successfully arguing that the Fair Labor Standards Act does not evince a congressional intent to preclude individual arbitration of wage-and-hour claims.

#### **Raymond J. Lucia v. Securities and Exchange Commission (U.S. Supreme Court)**

We filed an amicus brief for the US Chamber of Commerce in a Supreme Court case involving the question of whether SEC administrative law judges must be appointed in accordance with the Constitution's Appointments Clause.

#### **Rothstein v. UBS AG (Second Circuit)**

The Anti-Terrorism Act (ATA) creates a private cause of action against entities that engage in acts of terrorism.

#### **Salahuddin v. United States (U.S. Supreme Court)**

The question presented in this case is whether a conspiracy conviction under the Hobbs Act requires proof of an overt act.

#### **Schuette v. Coalition to Defend Affirmative Action (U.S. Supreme Court)**

Michigan voters approved a ballot initiative that banned the use of affirmative action in state universities and colleges.

#### **Sino Legend v. ITC (Federal Circuit)**

The International Trade Commission instituted a Section 337 investigation against Sino Legend, pursuant to a complaint that it misappropriated a competitor's trade secret in China.

#### **Spencer v. United States (Eleventh Circuit en banc)**

The question presented in this en banc rehearing was whether an improper application of the career offender enhancement under the Sentencing Guidelines—an enhancement that typically doubles any give sentence—is “a fundamental defect which inherently results in a complete miscarriage of justice.”

#### **Spokeo, Inc. v. Robins (U.S. Supreme Court)**

Under Article III of the U.S. Constitution, a plaintiff must allege that he or she has suffered an “injury-in-fact” to establish standing to sue in federal court.

#### **Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc. (U.S. Supreme Court)**

Petitioners sued our client, Scientific-Atlanta, Inc., seeking to hold it liable for the purported Securities Act violations of another corporation with which our client did business.

#### **Trump v. International Refugee Assistance Project; Trump v. Hawaii (U.S. Supreme Court)**

In these consolidated cases, the International Refugee Assistance Project and the State of Hawaii are challenging President Trump's second executive order barring nationals of six countries from entering the United States.

**United States v. Castleman (U.S. Supreme Court)**

The Supreme Court granted the United States' petition to review the question whether James Castleman's Tennessee conviction for misdemeanor domestic assault by intentionally or knowingly causing bodily injury to the mother of his child qualifies as a conviction for a "misdemeanor crime of domestic violence" within the meaning of 18 U.S.C. § 922(g)(9).

**United States v. Rodriguez (U.S. Supreme Court)**

The Armed Career Criminals Act requires that offenders who have been previously convicted of three or more serious offenses receive an enhanced sentence.

**Universal Health Servs., Inc. v. United States ex rel. Escobar (U.S. Supreme Court)**

We filed an amicus brief arguing that the False Claims Act does not authorize implied-certification liability.

**Williams-Yulee v. The Florida Bar (U.S. Supreme Court)**

We filed a petition presenting the question whether a rule of judicial conduct that prohibits candidates for judicial office from personally soliciting campaign funds violates the First Amendment. The Court granted the petition, and the case has been argued.