

RICHMOND, VIRGINIA

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William H. Hurd

MEMBER

Bill Hurd specializes in federal and state appellate litigation, complex and high-stakes issues, and government and internal investigations. He served as the first solicitor general of Virginia (from 1999-2004), and Bill has represented businesses under investigation by state attorneys general across the nation.

During his career, Bill has appeared on brief in more than 130 appellate cases and argued more than 50 times before federal and state appellate courts. His appellate victories covered a wide array of legal issues, including reversing the denial of a multimillion-dollar tax credit, securing educational benefits for children with disabilities, upholding statutory procedures for restoration of voting rights, and upholding "minute of silence" law for public schools, among many others.

In the U.S. Supreme Court, Bill has argued three cases, including the landmark decision in *Virginia v. Black*, 538 U.S. 343 (2008), upholding Virginia's anti-Klan statute banning cross-burning with intent to intimidate, and another ruling that upheld the trespass policy of the Richmond Redevelopment & Housing Authority.

Bill also maintains a robust practice representing companies under investigation by state attorneys general. He helps companies resolve actual and threatened investigations in a broad spectrum of industries, including pharmaceuticals, biotechnology, debt buying, home service contracts, nationwide retailing, and tobacco manufacturing, among others.

Widely recognized as a leading election law attorney, Bill previously served as chief counsel in the statewide election recounts for the Attorney General of Virginia in 2005 and 2013. He served as legal counsel to Virginia's 2011 independent, bi-partisan Advisory Commission on Redistricting. He is also well versed in federal and state constitutional law.

In addition to practicing law, Bill is an adjunct professor at the Scalia Law School of George Mason University, where he teaches a course on the Establishment Clause and Free Exercise Clause.

REPRESENTATIVE MATTERS

Appellate Experience

- Argued before the Virginia Court of Appeals, winning writ of actual innocence and exonerating man who spent 25 years in prison after a wrongful conviction.
- In the U.S. Supreme Court, Bill has appeared on brief (both party

PRACTICE AREAS:

Commercial Litigation

Appellate

Antitrust & Competition Law

STATE ADMISSIONS:

Virginia

COURT ADMISSIONS:

U.S. District Court for the Eastern District of Virginia

U.S. District Court for the Western District of Virginia

U.S. District Court for the Western District of Michigan

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for the First Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Ninth Circuit

Supreme Court of the United States

EDUCATION:

J.D., University of Virginia School of Law, 1977

B.A., University of Virginia, Echols Scholar, 1973

and amicus) in more than 30 cases, serving as principal author in more than 25 cases and personally arguing three cases before the Court. Altogether, he has appeared on brief in more than 130 appellate cases and has argued more than 50 times before federal and state appellate courts.

- *Virginia v. Black*, 538 U.S. 343 (2003) (upholding state statute that prohibits cross burning with intent to intimidate).
- *Virginia v. Hicks*, 539 U.S. 113 (2003) (upholding public housing project trespass policy).
- Served as the supervising attorney in the successful U.S. Supreme Court original jurisdiction case brought by Virginia to establish its right to build improvements into the Potomac River and withdraw water. *Virginia v. Maryland*, 540 U.S. 1 101 (2004).
- Argued before the Court representing parents in the special education case, *Schaffer v. Weast*, 546 U.S. 49 (2005) (allocating burden of proof at administrative hearings under federal special education law).
- Appealed and won decision upholding sovereign immunity for arms of federally- recognized Indian tribe. *Williams v. Big Picture Loans, LLC* 929 F.3d 170 (4th Cir. 2019)
- Appealed and overturned state trial court decision denying multi-million-dollar conservation easement credits to landowners (2017).
- Appealed and overturned state trial court decision exempting corporation from accountability under trust law, leading to preservation of historic women's college (2015).

State Attorney General Investigations and Litigation

- Represented financial services companies in attorney general investigations/litigation involving lending practices.
- Co-leader of team representing nationwide retailer in multistate investigation, achieving settlement with 50 States following intensive four-day mediation.
- Co-leader of team representing nationwide home service contract company in response to inquiries and investigations from 17 States.
- Represented national debt buyer in multistate investigation, achieving settlement with 42 States.
- Represented Indian tribe in connection with tobacco escrow demands by multiple state attorneys general.
- Represented major utility in developing support among state attorneys general for amicus briefs and other multistate actions on environmental regulatory issues.
- Represented national pharmaceutical company in state attorneys general investigations involving off-label marketing.
- Represented agricultural biotechnology company in connection with coordinated federal/state antitrust investigation.
- Represented pharmaceutical trade association in inquiry related to marketing and pricing issues, conducted by National Association of Attorneys General (NAAG).
- Represented specialty drug and medical device company in state regulatory matters.

Election Law

- Lead counsel in two statewide election recounts for Attorney General of Virginia (2013 and 2005).
- Legal Advisor, Independent Bipartisan Committee on Redistricting (2011).
- Represented non-partisan Military Voters Protection Project in obtaining landmark injunction requiring Maryland election officials to extend deadline for receipt of absentee ballots from overseas and military voters (2010).
- Represented non-partisan civic group in obtaining injunction requiring Virginia election officials to make voter history lists available for purpose of encouraging voter participation (2010).
- Represented McCain-Palin campaign in obtaining injunction requiring preservation and accounting of "late" military absentee ballots (2008).
- Lead counsel in statewide election recount for Governor of Virginia (1989).
- While in Virginia attorney general's office, served as lead counsel in other major election law cases, including successful defense of referenda on state constitutional right to hunt and fish, and referenda on regional sales tax issues. Participated in successful defense of legislative re-districting.

Education Law

- Counsel to Saving Sweet Briar, Inc. in school closure dispute that resulted in preservation of historic women's college.
- Represented state university in assertion of sovereign immunity as defense to lawsuit alleging breach of contract and patent infringement.
- Represents parents of children with disabilities in disputes with local school divisions over special education programs. Practice includes IEP meetings, administrative hearings and federal appeals.
- Represented disabled child unlawfully restrained and verbally abused by school personnel, achieving settlement following successful litigation before Fourth Circuit Court of Appeals.
- Represented disabled child in highly publicized case requiring school system to abide by decision of administrative hearing officer.
- Represented disabled child in appeals to Fourth Circuit Court of Appeals, securing reimbursement for parents for private educational services.

Other Experience

- Worked with multiple clients and Better Business Bureau (BBB) to obtain improved BBB grades and accreditation.
- Represented small tobacco companies in First Amendment lawsuit against Food & Drug Administration, winning agreement from FDA not to enforce regulation limiting product names against clients (2010).
- Co-counsel in successfully defending constitutionality of state

dealer protection law against challenge under federal Commerce Clause (2006).

- Successfully argued on behalf of internet protocol television company in (a) opposing attempt by municipality to shut down television service and (b) referring dispute to Federal Communications Commission (2008).

Public Service

- While in the Office of the Attorney General of Virginia, Bill provided representation in a wide variety of issues, including the following:

    - Lead counsel in successful defense of major Virginia statutes, including "minute of silence" law, parental notice law, and law prohibiting use of state computers for sexually explicit material.
    - Lead counsel in successful effort to deny class certification in class action lawsuit challenging new rules governing eligibility for welfare benefits.
    - Lead counsel for Virginia in successfully defending federal law that prohibits the District of Columbia from imposing income tax on non-residents working in the District.
    - Lead counsel in successfully defending statutory reduction of personal property tax against court challenge.
    - Lead counsel for Virginia in matters relating to the Jack Kent Cooke Foundation, a multi-million dollar charity created by the will of the late business leader.
    - Provided representation on issues relating to challenge of the will, sale of the Washington Redskins football team, and mediation of dispute over executors' fees, resulting in savings of more than $20 million in fees for the charity.
    - Lead negotiator in successful effort to stop ill-advised sale of daily newspaper by charitable trust, resulting in a new sale that doubled the purchase price from $19 million to $38 million.
    - Lead negotiator for Virginia Attorney General in developing landmark agreement between Virginia and U.S. Department of Education, Office for Civil Rights (OCR). OCR gave a clean bill of health to Virginia's formerly white institutions of higher education, finding no vestiges of discrimination, and Virginia undertook additional enhancements of two historically black institutions.
    - Lead negotiator for Virginia in developing agreement with U. S. Department of Justice, successfully resolving civil rights investigation of four troubled mental health/mental retardation facilities, while spurring improvements in patient care. Settlements won praise from federal judge and families of patients.
    - Lead counsel for Virginia in special education case, securing right of States to discipline students for misconduct unrelated to their disabilities.

PROFESSIONAL AFFILIATIONS

- American Bar Association
- Virginia Bar Association
- Richmond Bar Association
- American Bar Foundation
- Supreme Court Historical Society

COMMUNITY INVOLVEMENT

- Member, Third Church; Volunteer at FeedMore

AWARDS AND RECOGNITION

- Recognized in Best Lawyers in America 2024 – 2027 for Appellate Practice; Commercial Litigation; and Education Law
- Named a 2023 'Go To Lawyer' for Appellate Law by Virginia Layers Weekly.
- Selected for inclusion in Virginia Business magazine's "Legal Elite" for Appellate Law.
- Virginia Litigation: Appellate and General Commercial.
- Recognized as a Virginia Super Lawyer in Appellate Law (since 2006).
- Recognized in Best Lawyers in America for Appellate Practice and Education Law (since 2007).
- Named to Virginia Business magazine's Legal Elite in Appellate Law (since 2011).
- Named "Appellate Practice Lawyer of the Year" by Best Lawyers (2011, 2014).
- Named "Education Law Lawyer of the Year" by Best Lawyers (2012, 2015, 2017).
- Recipient of the Best Brief Award for "Outstanding Legal Writing" before the U. S. Supreme Court, given by the National Association of Attorneys General (2004).

NEWS AND INSIGHTS

PUBLICATIONS

- "Does Congress Have the Constitutional Authority to Codify *Roe?*" Bloomberg Law, May 2022.
- "What the Biden Administration Can Expect From State AGs," Law360, December 2020.
- "Let's Keep Electoral Votes – And No Compact," Richmond Times Dispatch, July 2020.
- "The "Big Picture" on Tribal Immunity: Tribal Lending Business Wins on Appeal in Fourth Circuit," The Federal Lawyer, March/April 2020.
- "Why Electoral Votes Matter," Richmond Times Dispatch, December 17, 2016
- "2009 Annual Survey on Special Education Law," co-author,

University of Richmond Law Review.

- "Legal Consequences of Tuition Assistance Grant Program for Students with Disabilities," Thomas Jefferson Institute for Public Policy (2009).
- "The Virginia Supreme Court: Court of Error or Court of Law?" Virginia State Bar Litigation News, Winter 2008.
- "Autism, the IDEA and Recent Developments in Virginia," co-author, Critical Issues in Education Law and Policy, Commonwealth Educational Policy Institute, Virginia Commonwealth University, April 2007.
- "Dealer Protection Statutes Level the Playing Field for Heavy Equipment Dealers," co-author, Equipment Leasing Newsletter, August 2006.
- "Federalism and Separation of Powers: The Federalism Aspect of the Establishment Clause," co-author, ENGAGE, Vol. 5, Issue 2, 2004. An analysis of how the Establishment Clause protects the discretion of States from congressional interference on those questions of religious accommodation not governed directly by the Constitution.
- "Gone With the Wind? VMI's Loss and the Future of Single-Sex Public Education," 4 DUKE J. OF GENDER LAW & POLICY 27, 1997. An analysis of how public, single-sex education (e.g., all-girl math classes) may be defended after the Supreme Court decision striking down the all-male policy at Virginia Military Institute.
- "Guidelines Concerning Religious Activity in the Public Schools." A widely acclaimed document guaranteeing religious liberty and freedom of expression to Virginia public school students, adopted in 1995 by the Virginia State Board of Education.

MEDIA COVERAGE

- "How VA. Appellate Overhaul Is Shaking Up The Old Dominion," Law360, February 7, 2023.
- "Several states with 'trigger laws' move to ban abortion," Fox News Media Mention, June 2022.

SPEAKING ENGAGEMENTS

- "Supreme Court Term in Review," Virginia Bar Association, 2010-2019, 2021.
- "Defending the Tribes," ABA State and Local Government Section, August 2021 webinar.
- "2021 Virginia Local Redistricting and Election Law," Virginia State Bar, June 2021 webinar.
- "TLE Litigation, Past and Future," Conference of Tribal Lending Commissioners, Las Vegas, Nevada, March 2020.
- "A Big Victory for Tribal Sovereignty," Wiring the Rez-2020, O'Connor College of Law, Arizona State University, January 2020.
- "Fourth Circuit Upholds Tribal Immunity Under Arm-of-the-Tribe Doctrine," Conference of Tribal Lending Commissioners, Dallas Texas, September 2019.
- "Federalism in the Obama/Trump Era," American Bar Association Annual Meeting, Chicago, Illinois, August 3, 2018.