



## → David A. Schwarz

### Partner

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David Schwarz is a partner in the Business Trial Practice Group in the firm's Century City office.

### Areas of Practice

David Schwarz represents clients in a broad range of complex commercial disputes and appeals, class actions and corporate governance matters, and in state and federal regulatory proceedings.

David's most recent appellate experience includes his successful defense against a union challenge to one of the largest decertification elections in California agricultural labor history. Recognized as a 2017 "MVP" in *Law360's* nationwide survey for his representation of agricultural growers, David prevailed in a constitutional challenge to AB 1513, a 2015 California wage and hour statute which, (among other things), excluded certain agricultural employers from the benefits of that legislation.

Acknowledged by *The Legal 500* as a leading trade secret litigator, David's prior representations in anti-competition, idea submission and misappropriation disputes include Space Exploration Technologies Corporation (SpaceX), Eclipse Aviation, Marquez Brothers International, Williams-Sonoma, Elon Musk and the founders of Google. He also represents clients in a wide range of intellectual property disputes, including his successful defense of KFC Corporation's right to maintain control over brand advertising jointly funded by KFC franchisees and the company.

After clerking for Alex Kozinski, former chief judge of the U.S. Court of Appeals for the Ninth Circuit (1988-1989), David served as special assistant to Ambassador Morris B. Abram, the U.S. Permanent Representative to the European Office of the United Nations (1989-1991). In that capacity, he advised U.S. delegations at various international conferences, including the UN Human Rights Commission, the World Intellectual Property Conference and the International Labor Conference. In 2001, President George W. Bush appointed David as a public member delegate to the UN Human Rights Commission.

David served two terms (2007-2016) as a gubernatorial appointee to the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, an independent, bi-partisan government oversight board. He also has an active pro bono practice and was named "Advocate of the Year" by Public Counsel for his work in the area of elder law advocacy.

## Honors

The Best Lawyers in America - Securities Litigation, *Best Lawyers*, 2020-2023

Food and Beverage MVP, *Law360*, 2017

## Experience

- *Gerawan Farming, Inc. v. ALRB*, 40 Cal.App.5th 241 (September 24, 2019), *petition for review pending*. Constitutional challenge to ALRB's decision and order denying public attendance or observation of the on-the-record, interest arbitration hearings as prescribed under California Labor Code Section 1164 et seq., otherwise known as "Mandatory Mediation and Conciliation." Petition for review and decision can be found [here](#).
- *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019): On behalf of the former California Governor Arnold Schwarzenegger and current Maryland Governor Lawrence J. Hogan Jr., filed an amicus brief in the U.S. Supreme Court in support of Common Cause's constitutional challenge to partisan gerrymandering schemes in Maryland and North Carolina.
- *Gerawan Farming, Inc. v. Agricultural Labor Relations Board (ALRB)*, 23 Cal.App.5th 1129 (2018). Mr. Schwarz was lead appellate counsel in a landmark decision reversing the ALRB's nullification of a 2013 union decertification election at Gerawan. For additional information, see the Court of Appeal's opinion and media coverage in the *Wall Street Journal*, the *Los Angeles Times*, and *The Fresno Bee*.
- *Fowler Packing Company, Inc. v. Lanier*, 844 F.3d 809 (2016). The U.S. Court of Appeals for the Ninth Circuit held unanimously that two California agricultural employers successfully alleged that newly enacted wage and hour legislation (AB 1513) violated the Equal Protection Clause of the U.S. Constitution. The decision was recognized as one of five "Top Appellate Reversals of 2016" by the *Daily Journal*. For additional information, see the Ninth Circuit opinion and media coverage from the *Los Angeles Times*, *Politico*, *Fresno Bee* and *Courthouse News*.
- *Gerawan Farming, Inc. v. ALRB*, 236 Cal.App.4th 1024 (2015), *rev'd*, 3 Cal.5th 1118 (2017), *cert. denied*, 139 S.Ct. 60 (2018). Lead counsel for the nation's largest grower of peaches in a landmark case challenging the constitutionality of forced contracting procedures under the California Agricultural Labor Relations Act. For more, see the decision and related press coverage in *The New York Times*, the *Los Angeles Times*, the *San Francisco Chronicle*, the *OC Register* and *California Lawyer*.
- *Gerawan Farming, Inc. v. ALRB*, 247 Cal.App.4th 284 (2016). Lead counsel in precedent-setting litigation which held unconstitutional the jurisdiction stripping provisions of the California Labor Code. For more, see the decision and related press coverage in the *Los Angeles Times*.
- Obtained an order under the California Public Records Act (PRA) compelling the ALRB to produce *ex parte* communications concerning the board's failed attempt to obtain an injunction against Gerawan in Fresno Superior Court. The Superior Court held that the ALRB's claim of an attorney-client relationship with the ALRB's General Counsel "would raise serious due process concerns in the administrative case" pending before the board. For more, please see the Court of Appeal decision and press coverage in the *Fresno Bee*. Mr. Schwarz also successfully litigated a PRA matter in Superior Court against the California Labor and Workforce Development Agency to compel the state to produce records relating to its "closed door" negotiation of AB 1513, a 2015 wage and hour statute.

- *El Dabe v. Calavo Growers, Inc.* Mr. Schwarz represented the largest U.S. publicly-traded grower of avocados in securities litigation relating to Calavo's January 2015 restatement of its audited financials. The district court twice dismissed the complaint—the first time with leave to amend and the second time with prejudice in February 2016. The U.S. Court of Appeals for the Ninth Circuit unanimously affirmed the lower court in late 2017.
- *PDL BioPharma, Inc. v. Genentech, Inc. and F. Hoffmann-La Roche.* Mr. Schwarz was part of the Irell team which represented PDL BioPharma, a publicly-traded company, in Nevada state court contract litigation alleging the breach of a 2003 settlement that, among other things, barred Genentech from taking any action to challenge the validity of certain PDL patent rights. The case was stayed by agreement of the parties pending defendants' interlocutory appeal to the Nevada Supreme Court of a precedent-setting order compelling production of documents withheld under Swiss and U.S. law on grounds of privilege. The case settled during the appeal, with Genentech entering into amended license agreements with PDL. Certain details about the settlement can be found in PDL's public disclosures.
- *Sapien v. City of San Jose.* Together with Richard A. Epstein, the Laurence A. Tisch Professor at New York University School of Law, Mr. Schwarz defended San Jose in an appellate proceeding concerning the city's 2012 landmark pension reform referendum (Measure B).
- *Consumer Financial Protection Bureau (CFPB) v. Chance Gordon.* Filed amicus briefs in the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court on behalf of the Cato Institute arguing that enforcement proceedings brought by the CFPB prior to the valid appointment of that agency's director violate the Appointments Clause of the U.S. Constitution.
- *Friedrichs v. California Teachers Association.* On behalf of the Milton and Rose Friedman Foundation for Educational Choice, filed an amicus brief in the U.S. Supreme Court addressing whether compulsory public employee union "agency fees" violate the First Amendment of the U.S. Constitution.
- *Fry v. City of Los Angeles.* Amicus brief on behalf of the League of California Cities concerning a fundamental question under state constitutional law—whether the Los Angeles City Council irrevocably delegated to its Fire and Police Pension Board the power to adjust retiree healthcare subsidies paid by the city. Citing Irell's brief, the California Court of Appeal unanimously held in Los Angeles' favor.
- *California Charter Schools Association v. Los Angeles Unified School District.* Represented former Los Angeles Mayor Richard J. Riordan before the California Supreme Court concerning the LAUSD's use of districtwide "norming ratios" in determining the number of classrooms to offer to charter schools.

## Articles

- "Compelled Consent: Wolff Packing and the Constitutionality of Compulsory Arbitration," *NYU Journal of Law & Liberty* (January 2019)
- "The FCC's Radio Sweetheart," *The Weekly Standard* (November 2017)
- "Decision Clarifies Damages Available For NDA Breach," *Daily Journal* (April 30, 2014)
- "Private, Public Sectors Could Deliver More Together," *Los Angeles Business Journal* (February 17, 2014)

## Speaking Engagements

David's past speaking engagements include the Practicing Law Institute, the California Society of CPAs and the Class and Derivative Litigation Institute. He was a featured panelist at the Directors' Education Institute at Duke University and the Smith School of Business Corporate Governance Program (University of Maryland).

## Memberships

Program Affiliate Scholar, NYU Classical Liberal Institute (2018-2020)

Gubernatorial appointee and vice chairman of the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, an independent, bipartisan government oversight board (2007-2016)

Past member, City of Beverly Hills Pension Reform Task Force

Past member, advisory board of the Duke University Global Capital Markets Center

Past member, board of trustees, Washington Institute for Near East Policy

Member, board of directors of the Los Angeles Metropolitan Debate League, which brings competitive debate to inner-city schools

Board member, LDOS Media Lab, a nonprofit dedicated to the development of science curriculum in public schools

## Practices

Litigation

Appellate

Class Action Defense

Securities Litigation

Appellate

## Industries

Food and Beverage

## Education

J.D., Duke University School of Law, 1988, *with high honors*; *Order of the Coif*; Articles editor, *Duke Law Journal*; Bidlake Award

B.A., Columbia University, 1983

## Clerkships

Law Clerk for the Hon. Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit.

## Admissions

California

U.S. District Court for the Central, Eastern, Northern and Southern Districts of California

U.S. Supreme Court