

Ephraim McDowell

Partner



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Issues and Appeals
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Ephraim is a partner in Cooley's issues and appeals practice. He represents clients in high-stakes litigation, with a particular focus on appellate and US Supreme Court matters. He has argued five cases before the Supreme Court, as well as multiple cases before federal and state appellate courts. He previously served in the Office of the Solicitor General at the US Department of Justice, where he represented the federal government before the Supreme Court in roughly 80 cases, including in the areas of securities, financial regulation, healthcare, tax, free speech, administrative law and foreign affairs. He was a principal architect of the government's litigation strategy in major constitutional cases implicating the Affordable Care Act (ACA), Dodd-Frank Act and American Rescue Plan. Ephraim also served in the Office of the White House Counsel, where he provided legal advice and strategic counseling to senior White House and agency officials on economic regulatory issues.

While serving in government, Ephraim gained extensive experience litigating and advising on financial regulatory and healthcare issues. He served as the principal drafter of successful Supreme Court merits briefs in significant cases – like *CFPB v. Community Financial Services Association* (upholding the Consumer Financial Protection Bureau's funding structure against a constitutional challenge), *Moore v. United States* (upholding a key income tax law against a constitutional challenge) and *Advocate Christ v. Becerra* (upholding a Department of Health and Human Services Medicare regulation against a statutory challenge). He advised Treasury Department and White House officials on legal issues arising from the debt limit crisis, Infrastructure Investment and Jobs Act and American Rescue Plan, along with advising and litigating on behalf of HHS in a case challenging the ACA's preventive services provision.

Ephraim clerked for Justice Elena Kagan of the US Supreme Court and Chief Judge Merrick Garland of the US Court of Appeals for the DC Circuit. He graduated summa cum laude from Harvard Law School, where he received the Fay Diploma (awarded to the graduate with the highest grade point average) and served as a Supreme Court Chair on the Harvard Law Review.

Ephraim's representative Supreme Court matters:

- *Advocate Christ v. Becerra* (Supreme Court): Successfully briefed and argued case upholding a HHS Medicare regulation*
- *Poliselli v. IRS* (Supreme Court): Successfully briefed and argued case upholding an IRS summons practice*
- *NRA v. Vullo* (Supreme Court): Successfully briefed and argued case involving a government regulator's alleged First Amendment violation*
- *Macquarie Infrastructure Corp. v. Moab Partners* (Supreme Court): Briefed and argued case concerning

the scope of the Rule 10b-5 securities fraud cause of action*

- *CFPB v. Community Financial Services Association* (Supreme Court): Successfully briefed case upholding the CFPB's funding structure against an Appropriations Clause challenge*
- *Moore v. United States* (Supreme Court): Successfully briefed case upholding an income tax provision of the Tax Cuts and Jobs Act against a 16th Amendment challenge*
- *Turkiye Halk Bankasi v. United States* (Supreme Court): Successfully briefed case upholding the federal government's authority to prosecute a foreign-owned bank*

Ephraim's other representative matters:

- Successfully briefed an appeal in the US Court of Appeals for the Ninth Circuit on behalf of a technology company, persuading the court to reject a foreign corporation's immunity defense*
- Successfully briefed an appeal in the US Court of Appeals for the Seventh Circuit on behalf of a financial services company, persuading the court to substantially reduce a punitive damages award*
- Successfully briefed multiple appeals on behalf of insurers, persuading courts to accept defenses to coverage*
- Successfully briefed and argued a case in the Louisiana Supreme Court overturning a criminal defendant's 60-year sentence*

*Representation handled before joining Cooley

Education

Harvard Law School
JD, summa cum laude

Hamilton College
BA, summa cum laude

Admissions & Credentials

District of Columbia

New York

Court Admissions

US Supreme Court

US Court of Appeals for the District of Columbia Circuit

US Court of Appeals for the First Circuit

US Court of Appeals for the Second Circuit

US Court of Appeals for the Fourth Circuit

US Court of Appeals for the Fifth Circuit

US Court of Appeals for the Seventh Circuit

US Court of Appeals for the Ninth Circuit

US Court of Appeals for the Eleventh Circuit