

# Amicus

Kelley Drye's National *Amicus* Practice

## About

Federal and state courts are regularly asked to construe constitutional, statutory and regulatory provisions, and/or apply common law principles. As a result, in many instances, courts render decisions that create “new” law. Such precedential decisions – especially when issued by appellate courts including the Supreme Court of the United States – can, and frequently will, affect persons beyond the parties in the case, and impact a wide variety of individuals, businesses and industries.

If you are not a party to a case, the best means by which to apprise a court of the potential impact of its decision on you, your business, association or organization is through an *amicus curiae*, *i.e.*, “friend of the court”, brief. Typically *amicus* briefs will expand on legal and policy arguments in support of a position forwarded by a party. However, these briefs present an opportunity to focus the court’s attention on issues and scenarios not necessarily raised by the named parties but that are nonetheless pertinent to how the case should be decided in a manner favorable to the interest of the non-party.

Courts can and do put stock in *amicus* briefs. For example, a United States Supreme Court rule of procedure states that *amicus* briefs “may be of considerable help to the Court.” Indeed, according to a 2018 *National Law Journal* article, the Supreme Court referred to *amicus* briefs in 40-60% of its decisions during the period from 2010 through 2017.

Kelley Drye attorneys have filed numerous *amicus* briefs for clients and client coalitions in cases throughout the country on the federal and state trial and appellate levels, including in the Supreme Court of the United States. Our *amicus* clients have included businesses, associations and organizations in the banking, entertainment, telecommunications, food and beverage, animal-related, and commercial real estate industries, to name just a few. The matters that we tackled for these clients have concerned diverse areas of the law, such as: constitutional questions dealing with the dormant commerce clause, the Fifth Amendment and judicial takings; common law property issues; intellectual property; federal and state telecommunications laws; the Freedom of Information Act; and environmental statutes and regulations.

We look forward to discussing the propriety of preparing an *amicus* brief on your individual or your company, or association’s behalf.

## Experience

Representative cases in which Kelley Drye filed *amicus curiae* briefs:

Recent Cases in the Supreme Court of the United States

*Pavlock v. Holcomb*, \_\_\_ U.S. \_\_\_ No. 22-282 (2022)

*National Pork Producers Council v. Ross* \_\_\_ U.S. \_\_\_, No. 21-468 (2022)

*HIKMA Pharmaceuticals USA Inc., v. Vanda Pharmaceuticals Inc.*, 140 S.Ct. 911 (2020)

*Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019)

#### Recent Cases in the Federal Appellate Courts

*Public Employees for Environmental Responsibility v. EPA*. No. 21-1187 D.C. Cir. 2022)

*Sunpreme, Inc. v. United States*, 945 F.3d 1367 (Fed. Cir. 2020)

*Matheis v. CSL Plasma, Inc.*, 36 F.3d 171 (3d Cir. 2019)

#### Recent Cases in State Appellate Courts

*In the Matter of Nonhuman Rights Project, Inc., on Behalf of Happy, v. Breheny*, 2022 WL 212214, \_\_\_ N.E.3d \_\_\_, N.Y. Slip Op. 03859, (2022)

*Sutton 58 Associates LLC v. Pilevsky*, 36 N.Y.3d 297 (2020)

*Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 28 N.Y.3d 583 (2016)

#### Related Services

Litigation

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