



## FREDERICK R. YARGER

### Partner

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*"Exceptionally gifted . . . one of the brightest legal minds I've ever encountered."*

*—Former Colorado Attorney General Cynthia Coffman*

### EDUCATION

University of Chicago Law School, J.D. 2007, Order of the Coif, with honors, winner of the Beale & Mulroy prizes for written advocacy

Dartmouth College, B.A. 2004, Economics and Statistics, *magna cum laude*, Presidential Scholar

### GOVERNMENT SERVICE

Solicitor General of the State of Colorado

*Two-time winner of the Attorney General's Award for Exceptional Performance*

Law Clerk to the Hon. Timothy M. Tymkovich, United States Court of Appeals for the Tenth Circuit

Law Clerk to the Hon. Mark R. Filip, United States District Court for the Northern District of Illinois

### OTHER EXPERIENCE

Gibson Dunn & Crutcher LLP  
Partner

### ADMISSIONS

Colorado

**Fred Yarger, the former Solicitor General of Colorado, represents clients in high-stakes appeals and complex litigation nationwide. He has been on the front lines of dozens of precedent-setting cases in a wide range of legal areas. In the U.S. Supreme Court, Fred has litigated more than 20 cases as counsel of record and argued four separate times—including in a case described by national media as a “blockbuster” and a case listed among the “top five” most significant of a recent court term. In trial courts, Fred develops sophisticated strategies that protect his clients’ interests and seek to favorably shape the law.**

### HIGHLIGHTS

- Represented a major car maker in certiorari-stage proceedings in the U.S. Supreme Court, preserving a favorable lower court decision that precluded liability for a class of employment discrimination claims.
- Representing a temporary staffing agency in the appeal of the largest individual personal injury judgment in Colorado history.
- Represented a national market leader in cannabidiol-based wellness products in an emergency petition to the Colorado Supreme Court to reduce the scope of damages available at an impending breach-of-contract trial.
- Represented an airport fixed-based operator as amicus counsel in a Colorado Supreme Court appeal affecting tax liability for lessees on public land across the state.
- Represented a wholesale energy company in a multi-jurisdictional dispute with multiple counterparties, preserving tens of millions of dollars of contract value and a key long-term business objective for the client.
- Represented nationally recognized law professors in filing an amicus brief to the Texas Supreme Court explaining the contours of the "ministerial exception" to liability for churches in cases in which clergy sue for work-related torts or other claims.
- Advised an oil and gas company on state law regulatory issues that threatened the client's assets in a major oil and gas producing region.

### INDUSTRIES

- Oil & Gas
- Energy
- Consumer Products & Services
- Insurance

### PRACTICE AREAS

- Appellate
- Commercial Litigation
- Environmental Litigation
- Employment
- Class Actions
- Investigations & Compliance

# FREDERICK R. YARGER

## BIOGRAPHY

Fred Yarger, the former Solicitor General of Colorado, represents clients in high-stakes appeals and complex litigation nationwide. He has been on the front lines of dozens of precedent-setting cases in a wide range of legal areas. In the U.S. Supreme Court, Fred has litigated more than 20 cases as counsel of record and argued four separate times—including in a case described by national media as a “blockbuster” and a case listed among the “top five” most significant of a recent court term. In trial courts, Fred develops sophisticated strategies that protect his clients’ interests and seek to favorably shape the law.

In every case, whether at trial or on appeal, Fred partners with his clients to find creative ways to advance their business priorities. In addition to his trial and appellate successes, Fred’s government experience helps him advocate for clients before state and federal regulatory and investigative agencies.

Fred’s written advocacy has been recognized by top appellate and Supreme Court litigators; he is a three-time winner of the National Association of Attorneys General “Best U.S. Supreme Court Brief” award. In 2018, *Law Week Colorado* named Fred a Top Litigator, and the *Denver Business Journal* recognized him in its annual “Who’s Who in Energy” for his successes litigating issues affecting the oil and gas industry. Before joining WTO, Fred was a partner in an AmLaw 20 firm.

## CASES

### U.S. Supreme Court

- Represented a major car maker in certiorari-stage proceedings in the U.S. Supreme Court, preserving a favorable lower court decision that precluded liability for a class of employment discrimination claims.
- *Masterpiece Cakeshop v. Colo. Civil Rights Comm’n* (U.S.) - Argued before the U.S. Supreme Court in defense of Colorado’s anti-discrimination laws in a closely-watched case that the national media described as a “blockbuster.”
- *Texas v. New Mexico & Colorado* (U.S.) - Argued before the U.S. Supreme Court in a case involving administration of an interstate water compact governing a river system that provides drinking water and irrigation to over 6 million people in three U.S. States and Mexico.
- *New Mexico v. Colorado* (U.S.) - Won a complete victory in the U.S. Supreme Court in an interstate pollution case claiming hundreds of millions of dollars in damages. Convinced the U.S. Department of Justice to file a brief supporting the client’s position.
- *Colorado State Bd. of Educ. v. Taxpayers for Public Educ.* (U.S.) - Won a U.S. Supreme Court ruling that overturned a Colorado Supreme Court decision severely restricting local governments from pursuing school choice policies.

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- *Nelson v. Colorado* (U.S.) - Argued a challenge to state rules governing refunds of criminal fees. Helped lead a subsequent legislative effort to make Colorado a leader in granting due process rights to criminal defendants who seek refunds after reversal of their convictions.
- *Peña-Rodriguez v. Colorado* (U.S.) - Argued before the U.S. Supreme Court in a case challenging jury secrecy rules that dictate when a verdict is subject to challenge in claims of individual juror bias. National media called this a "top five" case of the term.
- *Nebraska & Oklahoma v. Colorado* (U.S.) - Successfully defended Colorado's marijuana regulatory framework before the U.S. Supreme Court and the Tenth Circuit, defeating federal preemption claims that would have prevented states from tightly regulating the supply side of the multibillion-dollar marijuana market. Convinced the U.S. Department of Justice to support the client's position before the Supreme Court.
- *Kerr v. Hickenlooper* (U.S.) - Won a ruling from the U.S. Supreme Court that vacated an adverse decision of the Tenth Circuit and opened up new legal arguments for a client on remand to the trial court.

## Other Appeals

- *Suydam v. LFI Fort Pierce, Inc.* (Colo. App.) - Representing a temporary staffing agency in the appeal of the largest individual personal injury judgment in Colorado history.
- Represented a national market leader in cannabidiol-based wellness products in an emergency petition to the Colorado Supreme Court to reduce the scope of damages available at an impending breach-of-contract trial.
- Represented an airport fixed-based operator as amicus counsel in a Colorado Supreme Court appeal affecting tax liability for lessees on public land across the state.
- *In re Diocese of Lubbock* (Tex.) - Represented nationally recognized law professors in filing an amicus brief to the Texas Supreme Court explaining the contours of the "ministerial exception" to liability for churches in cases in which clergy sue for work-related torts or other claims.
- *Oil & Gas Conservation Comm'n v. Martinez* (Colo.) - Won a unanimous decision in Colorado's highest court preserving the state's longstanding regulatory approach for the oil and gas industry.
- Successfully represented a prospective government contractor as part of a multi-firm team in the appeal of a government bid protest worth tens of billions of dollars.
- *Masters v. Sch. Dist. No. 1* (Colo.) - Successfully preserved a landmark state law reforming tenure policies for public school teachers.
- *People ex rel. Coffman v. Castle Law Group* (Colo.) - Won an emergency, eve-of-trial appeal to the Colorado Supreme Court to preserve core legal claims in a consumer protection case with tens of millions of dollars in potential monetary awards.

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- *Direct Marketing Ass'n v. Brohl* (10th Cir.) - On remand from the U.S. Supreme Court, won a judgment upholding sales tax collection rules for e-commerce companies. That judgment set the stage for a Supreme Court decision that fundamentally reshaped e-commerce tax law across the country. Also authored a Supreme Court amicus brief cited in the majority's opinion.
- *Oasis Legal Finance Group, LLC v. Coffman* (Colo.) - Won a unanimous, precedent-setting decision in the Colorado Supreme Court that required the nation's largest consumer litigation finance company to abide by state lending laws.

## **Trials & Litigation**

- Represented a wholesale energy company in a multi-jurisdictional dispute with multiple counterparties, preserving tens of millions of dollars of contract value and a key long-term business objective for the client.
- Advised an oil and gas company on state law regulatory issues that threatened the client's assets in a major oil and gas producing region.
- Advised a national distribution company on litigation strategy concerning federal regulations governing the distribution and sale of electronic tobacco products.
- Served as appellate preservation counsel in a First Amendment case challenging a major university's policies regarding the recognition of religious student groups.
- *Colorado, South Dakota, Utah & Wyoming v. U.S. Dep't of Interior* (D. Wyo. and 10th Cir.) - Won preliminary and permanent injunctions after a contested evidentiary hearing in trial court, invalidating federal oil and gas regulations that duplicated state rules and hindered resource development.
- *Waters of the United States Rule* (D.N.D. and 6th Cir.) - Served as counsel for Colorado in a multistate coalition that won the first injunction against the federal "Waters of the United States Rule."
- Defended a public company auditor at trial and on appeal in a proceeding brought by the United States Securities and Exchange Commission.
- Represented the patent holder of an antidepressant in a multistate class action raising antitrust and consumer protection claims.
- Represented a domestic company seeking to protect and enforce an international marketing and distribution agreement in simultaneous actions filed in Florida and California federal trial courts.

## **BAR & COURT ADMISSIONS**

Colorado  
District of Columbia  
U.S. District Court, D. Colorado  
U.S. District Court, D. North Dakota  
U.S. Court of Appeals, 10th Circuit  
U.S. Court of Appeals, 9th Circuit

# FREDERICK R. YARGER

U.S. Court of Appeals, D.C. Circuit  
U.S. Supreme Court

## LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

National Association of Attorneys General "Best Brief" Award for excellence in written advocacy before the United States Supreme Court

2015-2018 (three-time winner)

*Denver Business Journal*

"Who's Who in Energy," 2018

*Law Week Colorado*

Litigator of the Year, 2018

Colorado Supreme Court Standing Committee on the Rules of Professional Conduct  
Member

Tenth Circuit Historical Society

Vice President

Colorado Bar Association

Federalist Society

## ARTICLES & PRESENTATIONS

### Articles

- Co-author, "Supreme Court Reins In, But Does Not Overturn, SEC's Disgorgement Authority," *New York Law Journal* (June 2020).
- Co-author, "What to Consider Before Filing for a Rule 57 Speedy Hearing," *Law360 Expert Analysis* (September 12, 2019).
- "*Trinity Lutheran Church v. Comer*: The justices reach broad agreement, but on a narrow question," *SCOTUSblog* (June 27, 2017).

### Presentations

- Federalist Society Nationwide Teleforum: Representing Colorado: A Conversation with Solicitor General Eric Olson and Former Solicitor General Fred Yarger (April 2020).
- COVID-19: Legal Implications of Colorado's Stay-at-Home Order, Presentation for the Centennial Institute (March 2020)
- "Let Them Speak Cake: Expansion of Free Speech and *Masterpiece Cakeshop*," Keynote Speaker at the Federal Bar Association Civil Rights Section (March 30, 2018).
- "Colorado at the United States Supreme Court," Presented to the American Bar Association, Appellate Practice Regional Meeting (March 6, 2018).
- "*Masterpiece Cakeshop*: Interview with Colorado Solicitor General Fred Yarger," Presented on The University of Chicago Law Review Podcast (January 13, 2018).

# FREDERICK R. YARGER

## PERSONAL INTERESTS

Chasing after his three young sons with his wife Katie (also a full-time lawyer), skiing, and hiking Colorado's mountains.