

How Cooper & Kirk Became One of the Most Influential Firms in Washington

BY BRUCE LOVE

What You Need to Know

- Storied Washington firm Cooper & Kirk turns 25 this year.
- The firm has been at the center of many of the most historic moments in the nation.
- In January, co-founder Chuck Cooper will argue at the U.S. Supreme Court, representing former associate Ted Cruz.

When Chuck Cooper takes the podium of the U.S. Supreme Court in January, it will be the ninth time he has made oral arguments in the highest court in the

land. For Cooper, who first came to Washington as a clerk for U.S. Supreme Court Justice William Rehnquist in the 1970s, the case holds special significance. Not only will it be yet another opportunity to defend a client's freedom of speech, but Cooper will also be arguing on behalf of the first person he

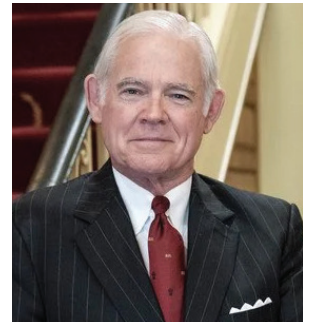


Photo: Sarah Silbiger

Charles Cooper, with Cooper & Kirk in Washington, D.C., on October 27, 2021.



Sen. Ted Cruz, R-Texas, speaking during a Senate Judiciary Committee hearing, on October 6, 2021.



Noel Francisco, partner in charge with Jones Day, speaking at a panel discussion during the "Law Symposium: Justice Thomas's Thirty-Year Legacy on the Court," co-hosted by The C. Boyden Gray Center for the Study of the Administrative State and The Heritage Foundation, in Washington, D.C., on October 21, 2021.



Sen. Tom Cotton, R-Arkansas, introduces Ninth Circuit nominee Kenneth Lee during his the Senate Judiciary Committee confirmation hearing, on March 13, 2019.



Judge James Ho, of the U.S. Court of Appeals for the Fifth Circuit, speaking at a panel discussion during the "Law Symposium: Justice Thomas's Thirty-Year Legacy on the Court," co-hosted by The C. Boyden Gray Center for the Study of the Administrative State and The Heritage Foundation, in Washington, D.C., on October 21, 2021.



Rachel Brand testifies before the Senate Judiciary Committee during her confirmation hearing to be associate attorney general at the U.S. Department of Justice on March 7, 2017.



Howard Nielson Jr. testifies before the Senate Judiciary Committee during his confirmation hearing to be a judge on the U.S. District Court for the District of Utah, on January 10, 2018.

Photos: Diego M. Radzinski/ALM

hired when he founded his own law firm in 1996. A man he views as like a son. The case is *Federal Election Commission v. Ted Cruz for Senate*. And the client—and former colleague—is Sen. Ted Cruz.

FEC v. Ted Cruz will also be the 26th time a lawyer from Cooper's firm has represented a client in America's sacred temple to the Rule of Law. That count is just one measure of the success and stature of Cooper's firm. In a town filled to the brim with lawyers, few firms in Washington, D.C., can lay claim to being as influential on a national stage as Cooper & Kirk.

Cooper's boutique litigation firm—which celebrated its 25th anniversary in October—has been a player in many of the major events in American history over the past quarter-century.

When the George W. Bush campaign challenged the 2000 election results in Florida, Cooper & Kirk lawyers were there. When Californians challenged their state's decision to prohibit same-sex marriage, Cooper & Kirk lawyers led the defense. It has represented two former U.S. attorneys general, five senators, and a former national security adviser to the president in matters that have often captured the attention of the nation—and many more that the public has never known about.

Outsized Influence

Cooper & Kirk may have a track record and client base that an Am Law 100 firm would covet, but its head count is surprisingly small. With 19 lawyers, it is currently the biggest it has ever been—and it actually has more Supreme Court appearances under its belt than it does litigators.

And perhaps because of the combination of its size—with a roughly one-to-one partner-to-associate ratio—and the high-profile work it attracts, this small but influential firm is a prized destination for major talent in the legal community. Its latest hire, Megan Wold, just joined after clerking for Justice Samuel Alito. Wold brings to seven the number of former Supreme Court clerks now at Cooper & Kirk—an extraordinary number for any firm, but especially for a 19-lawyer firm.

Associates who join Cooper & Kirk are likely to be client-facing and thrown into the deep end much faster than they would at an Am Law 200 firm. Chances are also good that their career will be turn out to be noteworthy.

Within eight months of joining Cooper & Kirk, young associate Ted Cruz was already making oral arguments for what at the time was one of the firm's most important cases—*Ford Motor v. United States*.

Cooper & Kirk ranks among its alumni two sitting U.S. senators (Cruz and Tom Cotton); three current Federal Court judges (James Ho, Howard Nielson and Victor Wolski); former U.S. Solicitor General Noel Francisco; and former U.S. associate attorney general (and current head of global corporate governance at Walmart), Rachel Brand. Current partner Adam Laxalt is widely touted as the next Republican nominee for an upcoming U.S. Senate seat for Nevada. And this term, six former interns or associates of Cooper & Kirk are serving as U.S. Supreme Court clerks—widely thought to be a track record that bests even the biggest Am Law 100 firms. Next term, five former interns or associates of Cooper & Kirk have been selected to serve as U.S. Supreme Court clerks.

Champions of the Cause

If there is a conservative value that needs championing or defending, there is little doubt in the minds of people in the know who to call. Over the years, Cooper & Kirk has challenged the constitutionality of myriad government and private actions in First, Second and Fifth amendment cases, in voting rights challenges, separation of powers conflicts, and matters involving the interstate commerce clause. Name an issue on the national stage, and Cooper & Kirk has likely helped make, or clarify, the law regarding that issue.

"Politics are impossible to isolate from a D.C. firm," said Cooper, characterizing his firm's "sweet spot" as helping clients who have problems with the federal government and litigating against federal departments and agencies. "Public policy, government and politics are to D.C. what money is to New York. It dominates everything in the Washington legal community."



Michael Kirk of Cooper & Kirk.



Attorney Ted Olson of Gibson, Dunn & Crutcher in Washington, D.C.

Yet while Cooper & Kirk is rich in D.C.'s coin of the realm—making many of its headlines as advocates for conservative causes—the firm is also one of the most successful and versatile litigation specialists in the country, in a broad range of civil and commercial matters. Over the years, it has counted on its client roster the likes of Ford, Shell Oil, Boeing, Bank of America, Citizens Federal Bank, Verizon and Novell. It has gone up against corporate America in cases against Google, Microsoft, Sears and Blue Cross Blue Shield, to name but a few household names. And, it has won over \$10 billion for clients in trial verdicts, settlements and injunctive relief.

“No other firm as small as us has clients like we have and is involved in matters so unique and exciting,” co-founder Michael Kirk said in an interview with *The National Law Journal*. “What built our firm has been our ability to win cutting-edge cases that every lawyer in America wants to work on. That, in turn, leads to attracting the best and smartest lawyers and young law students, which in turn lets us tell clients that exceptional people will be working on their case.”

Cooper puts it succinctly: “We’re litigators, A to Z.”

“We bring lawsuits, defend lawsuits and try lawsuits,” he added, guessing the firm has “probably had more trials over the course of the last couple of decades than many big law firms.”

“We try cases, and we rarely settle,” agreed Kirk, explaining that what sets Cooper & Kirk apart is that most lawyers who do appellate work, don’t do trial work. “But we do it all, from the start of the matter to the very finish.”

A Seminal Case—for the Firm, and the Country

The firm’s tendency to take cases through the trial and onto appeals is often, said Kirk, a product of the type of matters in which his firm is regularly engaged.

“Often what is in dispute is something that cannot be settled—frequently because the parties have differences that are political, ideological, or matters of principle that either side can’t settle,” said Kirk, adding the firm also handles a “disproportionate” number of cases against the U.S. government. “And those cases just don’t settle.”

The case that launched the firm is a good case in point: *United States v. Winstar*. In the early 1990s, Cooper and his team shepherded the matter through multiple trials and appeals as lawyers at Shaw Pittman (a forerunner to Pillsbury Winthrop Shaw Pittman), eventually making it all the way to the Supreme Court in 1996.

“That case gave us a base on which we could go out on our own,” said Kirk, explaining that the Supreme

Court’s ruling—that the federal government had breached its contractual obligations to savings and loans companies—led to years of work collecting multimillion-dollar payouts to plaintiffs.

Cooper himself credits the case for establishing his firm on the Washington legal scene.

“If we had lost *Winstar*—and the overwhelming handicapping odds had us losing—that would have ended the major volume of potentially well-paying work and the solid client base we needed,” said Cooper in an interview for this piece. “If we had lost, it would have delayed—and maybe even ended—our dream of starting our own litigation boutique.”

Yet win they did, immediately establishing the firm as a force to be reckoned with, and go-to litigators for long and complex matters.

A Unique Place in the Nation

Francisco, a partner at Jones Day since stepping down as solicitor general in July 2020, sees his time at Cooper & Kirk as formative to his career.

“I went to law school not having come from a family of lawyers, and I had no idea what it meant to be a lawyer. Even after a clerkship, it’s only when I started working with Chuck and Mike that I began to understand how you translate all of that [law school] theory into actually handling cases for actual clients—cases that had an impact not just on your particular clients, but on the world,” Francisco said in an interview for this article. “I didn’t go into law thinking I would develop a practice primarily based on litigation involving the government. I initially went into law thinking I would be a products liability lawyer. It’s only when I joined up with Chuck that I really came to understand what it meant to be a Washington lawyer.”

Francisco was the second associate Cooper & Kirk hired. Cruz was the first. Brand was the sixth (and was also the firm’s first summer intern whilst at Harvard Law).

In those early years, Francisco and the other brand-new associates not only worked on *Winstar*, but also the Clinton impeachment and the Florida recount of the 2000 presidential election.

“*Winstar* kept the lights on, but we were doing a whole range of really interesting things where it felt like we were in the middle of every major issue of the day,” he said.

Francisco sees Cooper & Kirk as consistently holding a unique place in the Washington legal scene. And it is a view held not only by former colleagues, but those who have sat across the table from Cooper & Kirk lawyers as well.

“The firm writes very solid briefs,” said former Solicitor General Ted Olson—one of the most successful appellate litigators in Washington, and a partner at Gibson, Dunn & Crutcher. “All the lawyers I have encountered from that firm have been very strong, hardworking and very careful lawyers.”

Big Questions Need the Best Lawyers

Olson sat across the table from Cooper in *Hollingsworth v. Perry*—the case that decided same-sex marriage was protected by the Constitution.

When arguing high-level, important constitutional questions, Olson said having “skilled opposition that goes right to the heart of things” is of the highest importance.

“When the other side is writing good briefs and making good strong arguments, it takes your very best to counter,” he said. “If you’re hearing potent arguments from the other side, you better come up with potent arguments in response.”

Cooper echoes his rival’s views, providing an insight into how he and his lawyers think about cases.

“With these big issue cases, you need lawyers who are supremely experienced and talented. But it’s not just about verbal and writing skills as an advocate, it’s something that’s rarer, more elusive,” said Cooper. “It’s the tactical and strategic judgment that comes with seasoning.”

Cooper explains that with many of the cases his firm takes on, “it’s not just about how are we going to win the case in the district court [or court of first instance]—that may be the least important question. It’s how are we ultimately going to win the case at the end of the day.”

It is because of this long view that Cooper & Kirk lawyers are often called on to shepherd cases from the first instance to the very end of the appeals process.

“I cannot tell you how many times I’ve told clients that the prospects of winning a case in the district court border on zero, however, we like our chances in the court of appeals,” said Cooper.

He puts forward *Hollingsworth* as an example.

“All the lawyers on both sides of that case knew there was only one thing that mattered. It wasn’t the district court. It wasn’t the appellate court. It wasn’t even the Supreme Court. It was Justice Anthony Kennedy,” he said, adding that all along the way, his team

focused not only on winning in each venue, but also maximizing their chances in the next.

Clients First

Ultimately, Olson won the day in *Hollingsworth*, but both Kirk and Cooper—as well as Olson—believe their arguments were rigorous and tested the legal issues thoroughly.

“As a U.S. citizen, I couldn’t be happier that we lost, because I think it’s the right thing for our country and the world,” Kirk said, adding that as a lawyer, however, “we should have won,” so that the country could decide the issue democratically, rather than by judicial decree. “This is one of the things that’s hard for people who are not lawyers to understand: For lots of our cases, what you feel about the law and what you feel about the issue can be two different things.”

Yet at the same time, both Kirk and Cooper emphasize that whatever case their firm takes on, it is never about making a political or social point on the national stage, nor advancing a particular viewpoint. It is purely about winning the day for their client.

“If I felt any impulse to establish some proposition or some principle that was not in harmony or aligned directly with my client’s interest, I would judiciously sublimate that impulse, or I would withdraw,” said Cooper emphatically. “My obligation is to my client and to represent their interests. No one else.”

Cooper, 69, shows no signs of slowing down, remaining an active leader in the firm he founded 25 years ago and looks forward to his next appearance in the Supreme Court on Jan. 19. He doubts it will be his last.

He also feels confident that even beyond his tenure at the helm, the firm he and his partners have built will remain central and relevant not just to the Washington legal scene but the country more broadly.

“I am confident of the law firm continuing to thrive—confident my partners are at the peak of their powers,” he said. “As importantly, the younger talent we continue to attract is simply extraordinary.”

“Washington—and the country—needs Cooper & Kirk,” said one D.C.-based high-profile appellate litigator, choosing to remain nameless because of his position at an Am Law 100 firm. “You may disagree with their politics, but you can never question their principles, professionalism and rigor. Without Cooper & Kirk, a lot of important legal questions simply don’t get satisfactorily interrogated.”