

Malcolm Seymour

Principal

100 Wall Street
20th Floor
New York, NY 10005-3708

T 212.965.4533
F 212.334.1278
malcolm.seymour@foster.com



Malcolm is a versatile litigator and negotiator whose practice focuses on trade secrets and IP litigation, political and election law, and commercial disputes.

Trade Secret/IP Litigation

In today's fast-evolving information economy, it is critical for businesses to thoroughly assess, understand and protect their trade secrets. Leveraging more than a decade of experience working with clients across the financial and renewable energy sectors, Malcolm diligently counsels clients on best practices for trade secret protection and last-resort enforcement. Malcolm has litigated trade secret cases relating to customer pricing, financial analytics, vendor and supply chain information, proprietary business processes, and employee compensation data.

Malcolm has represented clients in mediation, domestic and international arbitration, and litigation across dozens of state and federal jurisdictions. He recently represented a leading global language services provider in a high-stakes dispute against a major competitor under the federal Defend Trade Secrets Act. He has defended online content creators against copyright infringement claims and identification subpoenas issued under Digital Millennium Copyright Act.

Political and Election Law

Bernie Sanders Presidential Campaign

Services

Litigation
Intellectual Property
Litigation
Environment & Natural
Resources
Environmental Litigation
Election and Political Law,
Public Policy & Lobbying
Alternative Dispute
Resolution

Admissions

New York, 2007
U.S. District Court, Eastern
District of New York
U.S. District Court, Southern
District of New York
U.S. Court of Appeals for
the 2nd Circuit
U.S. Court of Appeals for
the 9th Circuit
U.S. Court of Appeals for
the 11th Circuit
U.S. Court of Appeals, D.C.
Circuit
U.S. Supreme Court

Malcolm was a member of the team representing Bernie 2020, the presidential campaign vehicle of Senator Bernie Sanders. He was a member of the legal team responsible for the emergency election lawsuit that restored New York State's canceled 2020 presidential primary to the ballot. Malcolm was also a key member of the litigation team for Bernie 2016. He was a core strategist, drafter and negotiator in Bernie 2016's lawsuit against the Democratic National Committee, challenging suspension of the campaign's access to a party voter database. He advised the campaign on parliamentary procedure and drafted resolutions for the 2016 Democratic National Convention.

Voting Rights Act and Campaign Finance Laws

Malcolm has helped spearhead lawsuits against election laws in New York, Ohio and Arizona under the Voting Rights Act and Fourteenth Amendment. He has represented campaigns in connection with challenges to political communications and advertisements, mass communications to prospective voters, enforcement of limits on individual contributions, and receipt of in-kind contributions, including volunteer labor. In addition to representing political committees, Malcolm provides outside general counsel services to grassroots organizing groups, including Our Revolution, a § 501(c)(4) entity formed to continue the progressive movement catalyzed by Senator Sanders' 2016 presidential bid.

Malcolm has worked on impact litigation aimed at rehabilitating federal campaign finance laws and improving electoral transparency, including: litigation seeking to overturn a D.C. Circuit decision, issued in the shadow of Citizens United, that removed limits on individual contributions to SuperPACs; and defense of anticipated challenges to an electoral ordinance enacted by the City of St. Petersburg, limiting individual contributions to independent expenditure committees and preventing interference by foreign-influenced PACs in city elections.

Commercial Litigation and Project-Based Disputes

As a commercial litigator, Malcolm combines technical knowledge with an understanding of project methodologies and their pitfalls, helping engineers, contractors, project owners and developers diagnose the causes of project delays, overruns and failures. By disentangling these technical problems, he is able to bring timely and cost-effective closure to challenging cases. With specific expertise in the renewable energy sector, he assists lenders, contractors, engineers and owners through the problems that commonly arise on bespoke engineering and construction projects: change orders; equitable adjustments; liquidated damages; loan workouts; and last-resort litigation. Malcolm harnesses his legal background in the financial services sector to guide these clients through disputes that arise out of project financing agreements.

Pro Bono

Malcolm is the Co-Chair of the Pro Bono and Public Service Committee, which incubates and sponsors pro bono and community service projects for staff and attorneys. At the Yale Law School, Malcolm was Editor-in-Chief of the *Yale Human Rights and Development Law Journal* and Director of the Lowenstein Human Rights Project. As a student, he participated in several newsworthy cases involving extraordinary rendition and indigenous land rights.

Education

J.D., Yale Law School, 2004

B.A., State University of New York at Buffalo (*summa cum laude*), Political Science, 2000

Experience

Represented YouTube publisher in asserting fair use defense

Represented YouTube publisher in asserting fair use defense to avoid enforcement of identification subpoena issued under Digital Millennium Copyright Act.

Represented leading global language services provider in trade secrets litigation

Represented leading global language services provider in litigation against company's largest competitor and its private equity parent company under federal Defend Trade Secrets Act.

Represented employer in emergency litigation under Defend Trade Secrets Act

Represented employer in emergency federal lawsuit to enjoin competitor, who had received client's employee census reports under non-disclosure agreements, from using those reports to solicit client's employees.

Defended notable Seattle landmark in insurer's lawsuit

Defended notable Seattle landmark in insurer's lawsuit seeking to force landmark to litigate business interruption insurance claims in New York.

Advised national and local campaigns on ballot access issues

Advised national and local campaigns on ballot access issues in Pennsylvania, New York, New Jersey and Rhode Island for 2020 primary elections.

Represented presidential campaign in emergency federal litigation

Represented presidential campaign in emergency federal litigation to restore canceled presidential primary to New York primary ballot in 2020.

Managed New York ballot access work and defended ballot challenges for presidential campaign

Managed New York ballot access work and defended ballot challenges for presidential campaign and more than 130 of its delegates, in 2020 presidential primary.

Defended broker-dealer against claim for commissions

Successfully defended broker-dealer against claim for commissions brought by former employee.

Defended controlling member of a renewable energy project against governance claims

Defended controlling member of a renewable energy project against governance claims brought by hostile minority member.

Defended foreign technology company, its holding company and its primary owner against multiple lawsuits

Successfully defended foreign technology company, its holding company and its primary owner against multiple lawsuits to enforce a \$60 million foreign arbitral award, foreign judgment and guarantees against company, holding company, owner and affiliates.

Drafted Supreme Court *amicus curiae* brief on behalf of foreign sovereign

Drafted Supreme Court *amicus curiae* brief on behalf of foreign sovereign, urging application of bilateral and multilateral treaty mechanisms to claims arising out of cross-border pollution.

Obtained dismissal of successive state and federal lawsuits against private equity fund's newly acquired mining company

Obtained dismissal of successive state and federal lawsuits against private equity fund's newly acquired mining company, by advisor that had rendered services to company's pre-foreclosure owners and managers.

Represented owner of a renewable biomass energy facility in securing and maintaining indemnification

Represented owner of a renewable biomass energy facility in securing and maintaining indemnification against general contractor's arbitration claims, saving project owner more than \$10 million in damages and defense costs.

Represented strategic investor and engineer in litigation against owner of geothermal energy facility

Represented strategic investor and engineer in litigation against owner of geothermal energy facility that failed and filed for Chapter 7 during project development.

Defended an international custom software developer against litigation brought by a disgruntled New York customer

Defended an international custom software developer against litigation brought by a disgruntled New York customer, seeking damages of nearly \$2 million. By pinpointing critical path delays and scope of work enlargements caused by the customer, forced a settlement resulting in a payment by the customer to the developer.

Defended NYSE-listed borrower against loan acceleration litigation brought by global investment bank

Defended NYSE-listed borrower against loan acceleration litigation brought by global investment bank, successfully avoiding foreclosure on client's billion-dollar interest in unexplored natural gas reserves in Papua New Guinea.

Helped a 501(c)(3) organization defend its service mark

Helped a 501(c)(3) organization defend its service mark against infringement by a large New York City restaurant conglomerate. Facilitated a pre-answer settlement terminating the infringement and recovering payment to the client.

Represented group of 17-year-old voters, who would be 18 at the time of the general election

Represented group of 17-year-old voters, who would be 18 at the time of the general election, in lawsuit to enjoin repeal of their right to vote in related primary contests.

Represented presidential campaign in litigation against party's governing body

Represented presidential campaign in litigation against party's governing body, requesting fair and equitable treatment under contract administering voter file database.

Supported a marine construction contractor in negotiating an equitable adjustment claim with a state department of transportation

Successfully supported a marine construction contractor in negotiating an equitable adjustment claim with a state department of transportation, resulting in recovery of nearly \$1 million of costs incurred because of agency-caused delays.

News

The Road to Safety: Teaming With NWIRP to Defend the Rights of a Mother and Her Children
Escaping a World of Violence

Foster Garvey Newsroom, 3.6.24

My Time Inc. – Creating Vital Support Systems for Special Needs Families Across New York City

Foster Garvey Newsroom, 7.19.23

Foster Garvey Releases 2021 Pro Bono Report, Celebrates Nearly 4,000 Hours Donated
Foster Garvey Newsroom, 4.4.22

Foster Garvey Joins Free Speech For People in Supreme Court Petition to End Super PAC
Spending in U.S. Elections
Foster Garvey Newsroom, 6.18.20

Malcolm Seymour Quoted in *The Hill* About Reinstating Candidates to the New York Primary
Ballot
The Hill, 5.6.20

Foster Garvey Celebrates 25 Years as Pro Bono Challenge® Charter Signatory Firm; Continues
Tradition of Pro Bono
Foster Garvey Newsroom, 2.6.20

Working to Reform Campaign Finance Systems
Foster Garvey Newsroom, 2019

Free Speech for People and Legal Team of Foster Garvey Lawyers and Contributors
Spearhead Potentially Transformative Campaign Finance Litigation
Foster Garvey Newsroom, 5.17.19

Legal Alerts

Washington State COVID-19 Benefits FAQs
3.18.20

Publications

Can SafeHer, a Women-For-Women Ridesharing Company, Overcome the Challenges of Anti-
Discrimination Laws?
Garvey Schubert Barer, Duff on Hospitality Law Blog, 5.6.16

Supreme Court to Decide Important Issue In Class-Action Litigation
Westlaw Journal Environmental, 6.10.14

Dram Shop Laws: What You Need to Know
Duff on Hospitality Law Blog, 4.10.13