

## Leland P. Frost

Senior Associate

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Leland P. Frost is a member of Alston & Bird's Environment, Land Use & Natural Resources Group. He focuses his practice on litigation and appeals, enforcement, risk assessment, compliance, investigations, and regulatory counseling. He has experience representing and advising clients on matters involving the Clean Water Act (CWA), Toxic Substances Control Act (TSCA), Clean Air Act (CAA), and climate change. Leland also advises clients on Superfund (CERCLA), Environmental, Social, and Governance (ESG), and COVID-19 issues, as well as Occupational Safety and Health Administration (OSHA) and Consumer Product Safety Commission (CPSC) compliance.

Leland previously practiced law in the D.C. office of a global law firm, and before that, he was the associate general counsel for the National Association of Manufacturers (NAM). At the NAM, he managed litigation matters, including environmental, international, product liability, class actions, technology, constitutional rights, labor and employment, intellectual property, and securities issues. Leland's experience includes briefs in a dozen state courts, more than four dozen U.S. Supreme Court briefs, and work in international tribunals.

Leland received his J.D. from Vanderbilt University Law School, where he served as editor-in-chief of the *Vanderbilt Journal of Transnational Law* and as an editor on the *Environmental Law and Policy Annual Review*. He received a B.A. in economics, cum laude, from Furman University.

### **Representative Experience**

- Challenged agency due process and Presidential authority for withdrawal of tariff exclusion for bifacial solar panels. The Office of the U.S. Trade Representative excluded bifacial solar panels from import tariffs but reversed course four months later and withdrew the exclusion, in violation of the Administrative Procedure Act. The Court of International Trade found that importers would likely be irreparably harmed by the government's action.
- Intervened in a challenge to the EPA's authority under the CAA for the Affordable Clean Energy (ACE) rule promulgation and 2015 Clean Power Plan Repeal. The EPA determined that Section 111 of the CAA precludes power plant fuel source generation shifting because it only authorizes the EPA to impose standards that reflect emissions reduction measures that can be applied at an individual source. The U.S. Court of Appeals for the District of Columbia Circuit held that Section 111 does not unambiguously limit emissions reductions to measures that can be taken at an individual source and vacated the ACE rule.
- Challenged the Waters of the United States (WOTUS) rule jurisdictional issue with a 9 to 0 win in the U.S. Supreme Court. The Court's decision resolved a procedural obstacle that had delayed the appropriate federal court from considering legal challenges to the EPA's 2015 WOTUS rule. This win cleared the path for the U.S. District Court for the Southern District of Texas to ultimately invalidate the rule and remand it to the EPA.

- Intervened in support of the TSCA Inventory Reset rule litigation. The EPA's rule updated the list of chemicals used in commerce and was challenged because it allowed companies to keep certain information about the chemicals confidential. The confidentiality of chemical information is critically important to chemical manufacturers, and the U.S. Court of Appeals for the District of Columbia Circuit broadly upheld the confidentiality aspects of the rule.
- Intervened in litigation over the EPA's streamlined CAA permit requirements under the New Source Review (NSR) program. A lawsuit by environmental groups sought to invalidate an EPA interpretive memorandum that identified factors to determine whether separate physical or operational changes to a facility constitute a single project under the NSR permitting program or trigger NSR requirements that mandate air pollution control technologies. After intervening as a defendant on behalf of the EPA, the environmental plaintiffs moved to dismiss the case.
- Petitioned the U.S. Court of Appeals for the District of Columbia Circuit seeking an administrative stay of OSHA's new rule regulating beryllium. Beryllium is critical to some manufacturing processes and products, and OSHA did not adequately address concerns about overly restrictive provisions of the new rule. OSHA agreed to undertake a new rulemaking to propose and implement needed changes to the regulation for companies that manufacture and use beryllium.
- Challenged the Risk Management Programs rule for chemical facilities and oil refineries under the CAA. The rule imposed costly and burdensome requirements on facilities that handle hazardous substances without improving worker or community safety. The U.S. Court of Appeals for the District of Columbia Circuit stayed the litigation after the EPA delayed enforcement of the rule and proposed a substantive replacement.
- Challenged to the EPA's Clean Power Plan rule regulating carbon dioxide emissions under the CAA. Before the rule became effective, the U.S. Supreme Court stayed the rule pending the resolution of the litigation. The U.S. Court of Appeals for the District of Columbia Circuit held the litigation in abeyance while the EPA proposed a replacement rule—the Affordable Clean Energy rule.
- Challenged the EPA's New Source Performance Standards for greenhouse gases from electric utilities. The rule's attempt to address emissions from new, modified, and reconstructed electric generating units was not supported by substantial evidence. The U.S. Court of Appeals for the District of Columbia Circuit held the rule in abeyance pending reconsideration by the EPA.

## **Publications & Presentations**

### **Publications**

- "Enviro Assessment Rule May Help Lower Buyers' PFAS Risks," *Law360*, April 29, 2022.
- "Environment, Energy, and Resources Law: The Year in Review 2020," Chapter F, *Environmental Litigation and Toxic Torts*, American Bar Association, 2021.
- "Dueling Navigable Waters Protection Rule Decisions Leave Uncertainty in Their Wake," *Trends*, Vol. 52, No. 2, American Bar Association, November/December 2020.

### **Presentations**

- "Analyzing the EPA's Proposal to List PFAS Chemicals as Hazardous Substances," The Environmental Law Institute, webinar, January 30, 2023.
- "Effectiveness of the Revised National Environmental Policy Act (NEPA)," Department of the Interior, National Association of Manufacturers, and Continental Resources, Inc., webinar, September 14, 2020.
- "Legal Trends Impacting Manufacturing," Montana Chamber of Commerce Business & the Law Conference, Helena, MT, March 14, 2018.

## ***Professional & Community Engagement***

- American Bar Association, Section of Environment, Energy, and Resources, Environment Litigation and Toxic Torts Committee, co-chair
- Environmental Law Institute

## ***Court Admissions***

- U.S. Supreme Court
- U.S. Courts of Appeals for the Tenth, Eleventh, District of Columbia, and Federal Circuits
- U.S. Court of International Trade
- U.S. District Courts for the Middle District of Alabama and District of Columbia
- District of Columbia Court of Appeals

## ***Education***

- Vanderbilt University (J.D., 2015)
- Furman University (B.A., 2012)

## ***Admitted to Practice***

- Alabama
- District of Columbia
- Georgia
- New York

## ***Related Services***

Environment, Land Use & Natural Resources | Environmental Compliance, Permitting & Transactions | Toxic Substances Control Act (TSCA) | Environmental Enforcement Defense | Environmental Litigation | Air Quality | Appellate | Environmental Appellate Litigation | Toxic Torts | Corporate Social Responsibility & Sustainability | Perfluoroalkyl & Polyfluoroalkyl Substances (PFAS) | Climate Change / Carbon Management | International Litigation | International Arbitration & Dispute Resolution | Pesticide Law and Regulation, Enforcement and Registration