

## Edward D. Burbach

### Partner

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Austin

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Edward “Ed” Burbach chairs Foley & Lardner’s Government Solutions Practice Group, co-chairs Foley’s State Attorneys General and FTC Consumer Practices, and is managing partner of the Austin office.

Ed leverages his experience as both a litigation lawyer and a leading state regulator/enforcer to handle high-stakes regulatory claims for clients. With this unique background, he counsels corporations, individuals, and governmental entities in matters involving local, state, and federal governments – with emphasis on state attorneys general and the Federal Trade Commission (FTC). He and his team members maintain strong relationships with all state attorneys general and their staffs and regularly attend major NAAG, AGA, RAGA, & DAGA state attorneys general meetings. Most recently, Ed led an interdisciplinary Foley team throughout a 7 ½ year investigation (3 1/2 years) and litigation (4 years in Chicago, Trenton, & Dallas federal courts) resulting in a complete September, 28, 2023, federal trial court victory in *FTC v. Neora* which the media has labeled as “Historic”. *Am Law* honored Ed by naming him and two other Foley trial partners as “Litigators of the Week” in the U.S. (October 6, 2023).

Over the past three decades Ed has handled Unfair & Deceptive Acts and Practices (UDAP), Medicaid fraud, FTC, price gouging, FOIA/State Public Information Act litigation, and attorney general opinions. He has advised clients on strategy and programs related to environmental, social, and governance (ESG)- related issues and transactions, including, but not limited to state anti-boycott statutes. He has litigated significant government, pharmaceutical, health care provider, retailer, direct sales/multilevel marketing companies, insurance, energy, maritime, financial services, corporate, multistate, and class action claims.

Appointed by now-Texas governor, Greg Abbott, as his original deputy attorney general for litigation, Ed served as Texas’ lead litigator and directly supervised all of Attorney General Abbott’s 11 civil litigation divisions including 250 attorneys, over 600 employees and a US\$35 million budget. Ed also served as Texas’ main litigation liaison with the National Association of Attorneys General during Attorney General Abbott’s first and second terms. Ed maintained a heavy litigation docket representing the state and its leadership in high-

profile litigation such as Medicaid fraud, energy, financial services, environmental, Public Information Act, the historic Texas Tobacco Settlement, school finance, congressional redistricting, and election law challenges brought by major political candidates. Upon announcing Ed's return to private practice Governor Abbott advised:

"Ed Burbach has been a trusted advisor whose expert legal skills and careful management have yielded real results for the state of Texas."

"Under Ed's leadership, our Consumer Protection Division obtained tens of millions of dollars in restitution for Texas consumers, and our Civil Medicaid Fraud Division uncovered more than a hundred million dollars in fraudulent Medicaid overpayments. Ed also guided the State through its most difficult legal disputes, including lawsuits challenging the Texas Tobacco Settlement and the state's school funding plan. We all appreciate Ed's distinguished service to this agency..."

– Governor Greg Abbott, State of Texas

## Representative Experience

- Lead Counsel, Consumer Protection, Medicaid Fraud, & Antitrust investigations and litigation brought by numerous State Attorneys General and the FTC (2003-present).
- Lead Counsel, *FTC v. Neora & Olson* (Sept. 28, 2023, Judgment): Represented clients in 7 ½ year investigation (3 1/2 years) and litigation (4 years in Chicago, Trenton, & Dallas federal courts) resulting in complete Dallas trial victory on all 5 of FTC's claims. First time that a direct selling company has ever defeated the FTC's pyramid scheme claims in a court trial and the first significant victory of its kind since Amway's 1979 administrative law defeat of the FTC. Leading industry publication *Direct Selling News* described the win as "Historic". Direct Selling Association argued in its amicus brief that had the FTC been successful in pursuing its new and vague "overemphasis on recruiting" test, it would have had "a profound impact on the state of the law and negatively impact[ed] operations of a sizable portion of the United States economy."
  - [Am Law named Burbach and 2 other Foley trial partners as "Litigators of the Week" in the U.S.](#) (October 6, 2023).
- Lead Counsel, In *State of Texas v. Petroleum Wholesale, et al.*, defended claims brought by the state of Texas alleging \$200 million in civil penalties for allegedly misrepresenting the amount of fuel delivered at retail gasoline and diesel pumps in Texas.
- Co-Lead Counsel, Texas Congressional Redistricting Litigation (three-federal-judge-panel trial through U.S. Supreme Court).
- Lead Counsel, *Texas v. Brown & Williamson* (suit seeking payment for 7 billion cigarettes).
- Co-Lead Counsel, Texas School Finance litigation (challenge to Texas' US\$31bn system).
- Co-Lead Counsel, Texas 10 Commandments case (trial through U.S. Supreme Court).
- Lead Trial & Appellate Counsel, *Nader v. Texas* and *Strayhorn v. Texas* (state and federal court challenges to constitutionality of Texas Election Code).

- Lead counsel, defense of various state Multidistrict Litigation Panel and purported class action litigation.

### **Awards and Recognition**

- *Am Law* “Litigator of the Week” in the U.S. (October 6, 2023) for *FTC v. Neora* litigation
- *Chambers USA: Nationwide State Attorneys General Legal Rankings* – Band 2 (2021-2025)
- *The Best Lawyers in America*® – Administrative/Regulatory Law (2013-2024)
- *Texas Super Lawyers*®
  - Government Relations
  - Business Litigation
  - Energy & Natural Resources
- Top 50 In-House Counsel in Texas – *Texas Lawyer Magazine*
- Peer review rated as AV Preeminent®, the highest performance rating in the Martindale-Hubbell® Peer Review Ratings™ system
- *Spirit of Texas Award* – Houston Channel 11 KHOU

### **Affiliations**

- Austin Bar Association – Past board member, Civil Litigation Section
- State Bar of Texas
- American Bar Association
- Austin Bar Association
- College of the State Bar of Texas
- The University of Texas at Austin, Advisory Board and Faculty Member – Petroleum Extension Service
- Maritime Law Association of the United States – Past member
- Association of Average Adjustors (United Kingdom) – Past member
- Houston-Abidjan Partnership in Trade Committee – Past member
- Texas Association of Defense Counsel – Past member
- Houston Bar Association – Past member

### **Community Involvement**

- Seedling Foundation, Mentor
- Rob Roy Homeowners Association, Past board member
- Westlake Lacrosse, Past board member
- Greater Houston Harvest – Founder, chairman and president (Greater Houston Harvest is a charitable organization that collected and delivered in excess of 600,000 pounds of food, free of charge, to the hungry of Houston)
- Coach
  - Westlake Pop Warner Football
  - West Austin Youth Association Volleyball

- Neighborhood Sports Flag Football
- Westlake Youth Basketball Association
- Westlake Youth Soccer Association
- Jewish Community Center Flag Football

## Presentations and Publications

- Moderator, *Navigating the Currents, State Pro- & Anti- ESG Laws* (Chicago, May 18, 2023)
- Featured guest speaker, National Association of Manufacturers (NAM) Regulatory Policy Committee (Milwaukee, August 31, 2021)
- Addressed President Biden's executive order on competition policy and potential FTC antitrust actions or regulations in response to the order
- Featured speaker, numerous State Attorney General webinars (2007-present)

## Languages

- English
- German

## Sectors

- Consumer Products
- Energy & Infrastructure
- Environmental & Product Stewardship
- Health Care & Life Sciences
- Innovative Technology
- International Trade & National Security
- Manufacturing
- Medical Devices
- Oil & Gas
- Pharmaceuticals
- Retail

## Practice Areas

- Corporate
- Environmental, Social, and Governance (ESG)

## Education

- The University of Texas School of Law (J.D.)
  - Manager, *International Law Journal*
- The University of Texas at Austin (B.B.A., magna cum laude)
  - Finance and International Business
  - Member, Beta Gamma Sigma

- The University of Texas at Austin (B.A., with honors)
  - German
  - Member, Phi Beta Kappa
- Represented University of Texas in National Judo Championship, Honolulu, Hawaii
- Foreign Exchange Student: Weissenburg, Germany/Whitefish Bay, Wisconsin H.S. program

## **Admissions**

- U.S. Supreme Court
- U.S. Court of Appeals
  - Fifth Circuit
  - Sixth Circuit
- U.S. District Court
  - Eastern District of Texas
  - Northern District of Texas
  - Southern District of Texas
  - Western District of Texas
- Supreme Court of Texas
- All Texas State Courts