

Kyle M. Asher

Associate

Lansing

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Areas Of Practice

Administrative Law & Regulation
Government Policy & Practice
Litigation
Class Action Defense
Political Compliance, Elections &
Campaign Finance

Bar Admissions

Michigan
Ohio

Court Admissions

U.S. Court of Appeals for the Sixth
Circuit
U.S. District Court, Eastern District
of Michigan
U.S. District Court, Western
District of Michigan
U.S. District Court, Northern
District of Ohio
U.S. District Court, Southern
District of Ohio

Education

Michigan State University College
of Law, J.D., *magna cum laude*,
2015
Michigan State University, B.A.,
Finance, *with honors*, 2012

Kyle M. Asher is an associate who works closely with Dykema's government policy and litigation groups. Before joining Dykema, he served as a law clerk to the Honorable Robert Holmes Bell at the United States District Court for the Western District of Michigan.

Government Policy and Regulated Industries

Mr. Asher's government policy practice centers on education law, election law, and campaign finance compliance.

Mr. Asher represents public school academy (charter school) authorizing bodies before administrative tribunals and in court, and counsels those clients and other public universities on a broad array of matters involving academic freedom, data/student privacy, FOIA compliance, and other regulatory and legislative issues that arise. He has also assisted in the reauthorization process for dozens of public school academies.

In addition, Mr. Asher has drafted proposed legislation and administrative rules in emerging industries; counseled government bodies on government reorganization and restructuring; guided candidates and nominees for public office through campaign finance compliance issues and confirmation hearing preparation; and represented clients before administrative bodies such as the Michigan Public Service Commission, Michigan Board of State Canvassers, and Michigan Administrative Hearing System.

Litigation

Mr. Asher's litigation practice focuses on defending businesses and individuals in high stakes litigation, with an emphasis on class-action defense, election law litigation, and financial services litigation (including defense of FDCPA, TCPA, TILA, and RESPA claims). His clients include elected state officials and local government bodies; some of the country's largest automakers, financial institutions, debt collectors, insurers, and universities; and small businesses and individuals. He has represented those clients at every stage of litigation in venues across the country.

In his trial practice, Mr. Asher specializes in federal court procedure and jurisdiction, critical motion practice, and crafting strategy to defeat class certification. He is currently representing clients in some of the State's most pressing class actions, including the defense of:

- A large public university in a class action seeking tuition refunds for students whose learning transitioned from in-person to remote during the COVID-19 pandemic;

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- Numerous national insurance companies in class actions across the country seeking business interruption and civil authority coverage for economic losses stemming from the COVID-19 pandemic; and
- Numerous municipal governmental bodies and officials in class actions pending in Michigan's state and federal courts, which seek reimbursement of foreclosure proceeds following the Michigan Supreme Court's opinion in *Rafaeli v. Oakland County*.

At the appellate level, Mr. Asher has, in the past, been appointed as a Special Assistant Attorney General by Michigan Attorney General Bill Schuette to represent the State's interests before the Michigan Supreme Court. In the last year, he has achieved successful outcomes at the Michigan Court of Appeals and the United States Courts of Appeals for the Sixth and Seventh Circuits, and he is currently representing parties and amici in several cases pending before the Michigan Supreme Court.

Prior Experience

During law school, Mr. Asher was one of 20 students in his graduating class selected as a Dean Charles H. King Scholar and awarded with a full-tuition, merit-based scholarship. He was a member of the *Michigan State Law Review*, and received numerous jurisprudence achievement awards for receiving the top grade in the class. In addition, he has served as an extern for the Honorable David W. McKeague at the United States Court of Appeals for the Sixth Circuit and an extern with the Michigan Court of Appeals' Research Division.

Significant Decisions

- *Nettles v. Midland Funding LLC*, __ F.3d __, 2020 U.S. App. LEXIS 40012 (7th Cir. Dec. 21, 2020). Represented one of the country's largest debt collectors and served as primary draftsman of brief on appeal and reply brief. Obtained reversal of the District Court's denial of a motion to compel arbitration which, if left standing, would have prevented enforcement of the arbitration clause's class action waiver.
- *Gamrat v. Mich. House of Representatives*, 320 F. Supp. 3d 927 (W.D. Mich. 2018), aff'd 822 F. App'x 331 (6th Cir. July 29, 2020). Represented Michigan House of Representatives, its general counsel, and individual Representatives at the trial and appellate level, serving as primary draftsman of all dispositive briefing. Obtained dismissal on the merits and on grounds of legislative and qualified immunity of 10-count complaint filed by former State Representative, which raised constitutional and statutory challenges to the ex-Representative's expulsion proceedings.
- *In re: COVID-19 Business Interruption Protection Insurance Litigation*, MDL No. 2942, 2020 U.S. Dist. LEXIS 144446 (J.P. M.L. Aug. 12, 2020). Represented national insurance company, and assisted in persuading the Judicial Panel on Multidistrict Litigation to deny motion to consolidate 263 complaints into a single MDL.
- *Fair and Equal Michigan v. Secretary of State*, Case No. 20-000095-MM (Mich. Ct. Claims June 10, 2020). Represented ballot question committee and served as primary draftsman of Complaint and Motion for Preliminary Injunction, persuading the Court of Claims to find that the State's enforcement of statutory initiative petition signature requirements was unconstitutional as applied in light of the COVID-19 pandemic.
- *Savoie v. Nextdoor, Inc.*, Case No. 2020-181156-CZ (Oakland Cty. Cir. Ct. Oct. 30, 2020). Represented Nextdoor, Inc. and served as primary draftsman of Nextdoor's motion for summary disposition and response in opposition to plaintiff's motion for class certification. After raising defenses of immunity under Section 230 of the Communications Decency Act, achieved dismissal of putative class action brought by incumbent public officer holder, which was based on Nextdoor's alleged publication of allegedly harmful statements made by political opponents.
- *Protecting Michigan Taxpayers v. Bd. of State Canvassers*, 919 N.W.2d 677 (Mich. Ct. App. 2018). Member of Dykema team that obtained mandamus relief requiring Board of State Canvassers to certify an initiative petition relating to repeal of Michigan's 50-year-old prevailing wage law.
- *Gutierrez v. First Nat'l Bank of Am.*, No. GJH-18-479, 2018 U.S. Dist. LEXIS 162620 (D. Md. Sept. 21, 2018). Represented large financial institution and obtained dismissal of putative class action complaint raising claims under the Truth in Lending Act and Real Estate Settlement Procedures Act.

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Publications

"Continuing Jurisdiction: A Federal Court's Power to Enforce a Nationwide Class Action Settlement"
Spring 2020

American Bar Association Class Action & Derivative Suits Newsletter

Co-Author, Chapter 23, "Fair Debt Collection Practices Act," The Practising Law Institute's Consumer Financial Services Answer Book (2017)

"Revisiting Interpretive Rule Review Post-*Perez v. Mortgage Bankers Association*," 41 U. Dayton L. Rev. 1 (2016)

"Judicial Review of Agency Delays Caused by a Lack of Appropriations: The Yucca Two-Step," 2015 Mich. St. Law Rev. 371 (2015)