

John M. Baker *Attorney*



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Overview

John Baker is one of the founding attorneys of Greene Espel. He has practiced law in Minnesota since 1988. After making a name for himself as an exceptional brief writer, he became an appellate advocate and trial attorney.

Other attorneys often request him to seek reversals for their clients on appeal or to protect the results obtained in the trial court. John has presented oral argument on appeal more than 30 times. While John has significant experience in private and public-sector matters, he is best known as an advocate, author, and speaker on constitutional law, land-use litigation, appellate practice, telecommunications law, and defamation. He routinely receives and accepts invitations to speak at annual state and national programs on topics related to one of these areas of focus.

John frequently assists attorneys to prepare for high-stakes appellate arguments. As part of that work he has served as a justice in moot courts for attorneys from Georgia, Wisconsin, and Texas in matters before the United States Supreme Court, and has worked with more than one dozen attorneys in preparing for arguments to the Minnesota Supreme Court.

Education

J.D., University of Michigan Law School, *cum laude*

B.A., University of Iowa, *with High Distinction*

Hancher-Finkbine Medallion Recipient

Experience

Popham, Haik, Schnobrich & Kaufman, Ltd., Minneapolis, Minnesota, Associate, Litigation Department

Law Clerk, United States District Court, Northern and Southern Districts of Iowa, The Honorable Donald E. O'Brien, Chief Judge

Representative Experience

COMMERCIAL LITIGATION

- *Fairbrook Leasing Inc. v. Mesaba Aviation, Inc.*, 519 F.3d 421 (8th Cir. 2008). Obtained ruling affirming entry of summary judgment on behalf of defendant on \$35 million claim for damages arising from alleged breach of term sheet regarding purchase of thirty jets and leasing of twenty additional jets.

FEDERAL JURISDICTION AND TAKING CLAIMS

- *Kottschade v. City of Rochester*, 319 F.3d 1038 (8th Cir.), cert. denied, 540 U.S. 825 (2003). Defeated "test case" created by property rights groups seeking to expand federal jurisdiction over ordinary claims that local regulations of land use constitute takings of property for which the owner receives compensation and attorneys fees.

FIRST AMENDMENT LITIGATION

- *Advantage Media LLC v. City of Eden Prairie*, 405 F. Supp. 2d 1037 (D. Minn. 2005), aff'd, 456 F.3d 793 (8th Cir. 2006). Obtained summary judgment against billboard company's groundbreaking effort to secure standing to invalidate entire sign code under multiple theories.
- Co-author of amicus briefs filed on behalf of the American Planning Association, International Municipal Lawyers Association, and other organizations, in the following federal appeals: *Tanner Outdoor Advertising v. Fayette County, GA* (11th Cir.), *Prime Media v. City of Brentwood, TN* (6th Cir.) *Get Outdoors II v. City of San Diego, CA* (9th Cir.), *Naser Jewelers Inc. v. City of Concord, NH* (1st Cir.), *RTM Media LLC v. City of Houston* (5th Cir.) and *Midwest Media Property LLC v. City of Erlinger, Kentucky and City of Ft. Wright, Kentucky* (6th Cir.).
- *Workman v. Serrano et al.*, 2006 WL 771580, 34 Media L. Rep. 1577, (Minn. Ct. App. March 28, 2006). Overturned jury award totaling \$625,500 in favor of an elected official and against weekly newspaper, its affiliates, and its editorial page editor, based in part on

First Amendment-protected nature of the allegedly defamatory editorial.

LAND USE AND ENVIRONMENTAL REVIEW

- *Nicollet Plaza, LLC v. City of Burnsville et al.*, 2019 WL 3410037 (Minn. Ct. App. July 29, 2019), review denied (Oct. 15, 2019). Representing a city that amended a planned unit development to enable a vacant lot in an otherwise completed development to be used to build rental apartments rather than owner-occupied condominiums, we obtained summary judgment, an affirmance on appeal, and a denial of Minnesota Supreme Court review.
- *Hoyt v. City of St. Anthony Village*, 2019 WL 2212147 (D. Minn. May 22, 2019). Obtained dismissal of claims by a disappointed housing development applicant against a city and two officials under Minnesota law, the Fourteenth Amendment to the U.S. Constitution, and the Fair Housing Act.
- *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378 (Minn. App. 2009). Representing a city, we successfully defended a negative declaration on the need for an environmental impact statement under the Minnesota Environmental Policy Act for a development plan, and upholding the City's consideration of pre-existing regulatory oversight when determining that the proposed plan does not have the potential to create significant environmental effects.
- *Iowa Coal Mining Co, Inc. v. Monroe County, Iowa*, 257 F.3d 846 (8th Cir. 2001). At summary judgment stage, and on appeal, defended County and its zoning officials from constitutional and state-law claims arising from denial of permission to create 460 acres of landfill space.

LOCAL REGULATION OR FINANCING OF TELECOMMUNICATION SYSTEMS

- *Mediacom Minnesota, LLC v. City of Prior Lake*, 2010 WL 3744638 (Minn. Ct. App. 2010). On certiorari, successfully defended city's award of a second cable television franchise.
- *Bridgewater Telephone Co. v. City of Monticello*, 765 N.W.2d 905 (Minn. Ct. App. 2009), review denied (Minn. Jun. 16, 2009). Obtained an order dismissing telephone company's lawsuit alleging that the City's plans to construct a high-speed Internet/telephone/cable system were unlawful because such a system is not a "utility or other public convenience from which a revenue may be derived," within the meaning of the relevant Minnesota statutes. The Minnesota Court of Appeals affirmed, and two weeks later, the Minnesota Supreme Court issued an expedited decision denying the telephone company's petition for review of the Minnesota Court of Appeals' decision. Following the supreme court's denial of review, Greene Espel obtained a \$1.5 million settlement in favor of the City of Monticello, based on the surety bond

order it had secured from the district court. The surety bond was conditioned for payment to the City of any loss or damage caused to the City or its taxpayers resulting from the pendency of Bridgewater's lawsuit.

OTHER CONSTITUTIONAL LITIGATION

- *McCaughtry, et al. v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013). Represented the City of Red Wing in a lawsuit brought by several landlords and tenants challenging the constitutionality of the City's rental-housing inspection ordinance. The Minnesota Court of Appeals, followed by the Minnesota Supreme Court, affirmed the district court's decision granting summary judgment in favor of the City and dismissing the plaintiffs' claims.
- *Olivier v. Willers*, 2016 WL 1275032 (D. Minn. Mar. 31, 2016). Received summary judgment on behalf of a county deputy sheriff accused of violating protest group members' First and Fourteenth Amendment rights by allegedly enabling them to use controlled substances as participants in a drug recognition training program.

PUBLIC FINANCE

- *Nielson, et al. v. City of Roseville*, No. 98-1625 (D. Minn. 1999 and 2000), and 2001 WL 1640040 (D. Minn. 2001). After partial summary judgment and a fifteen-day trial, won successful jury verdict rejecting claim that City's forgivable loan was motivated by an unconstitutional purpose, and successful court judgment affirming city's compliance with state tax-increment financing act.

PROCUREMENT LAW

- *Rochester City Lines Co. v. City of Rochester*, 913 N.W.2d 443 (Minn. 2018), on remand, 2018 WL 4956966 (Minn. Ct. App. Oct. 15, 2018). Obtained reversal of lower court ruling against the City of Rochester that had found a transit procurement was illegal because procurement evaluation committee members who had been accused of bias against an incumbent provider in 2012 participated in the 2016 evaluation (in which the same company had submitted a bid for the next contract).
- *Rochester City Lines Co. v. City of Rochester*, 2018 WL 4956966 (Minn. Ct. App. Oct. 15, 2018), on remand from *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655 (Minn. 2015), cert. denied, 136 S. Ct. 849 (2016). Defeated incumbent transit provider's state law and constitutional claims against the City of Rochester arising from the City's compliance with a federal competitive bidding requirement. The case included appeals to the Minnesota Court of Appeals and the Minnesota Supreme Court and a seven-day bench trial.

Admissions

- U.S. Supreme Court
- U.S. Courts of Appeals for the First, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits
- U.S. District Court for the District of Minnesota
- U.S. District Court for the Eastern District of Wisconsin
- U.S. Court of Federal Claims
- State Bar of Minnesota

Professional & Community Affiliations

- Eighth Circuit Bar Association, President (2018)
- Minnesota State Bar Association, Appellate Practice Section
- American Bar Association
- Hennepin County Bar Association
- American Planning Association
 - Chair, Amicus Committee
- Sensible Land Use Coalition
- University of Iowa Political Science Department, Advisory Board

Thought Leadership

PUBLICATIONS

- Co-Author of an Eighth Circuit blog on [Law.com](https://www.law.com) (2019-present)
- Co-Author of *Street Graphics and the Law*, Fourth Revised Edition (2015)
- Co-Author of *Koontz v. St. Johns River Water Management District: Trudging Through a Florida Wetland with Nine U.S. Supreme Court Justices*, 36 Zoning and Planning Law Report 5 at 1 (May 2013)
- *Dr. Strangebill (or How the Last Congress Learned to Stop Worrying and Love Substantive Due Process)*, 54 Fed. Lawyer 40 (October 2007)
- Co-Author of *Drawn From Local Knowledge . . . and Conformed to Local Wants': Zoning and Incremental Reform of Dormant Commerce Clause Doctrine*, 38 Loy. U. Chi. L.J. 1

(2006)

- *Bulldozing Their Principles*, 29 Legal Times No. 33 at 46 (August 14, 2006)
- *The Modern Tower of Babel: Defending the New Wave of First Amendment Challenges to Municipal Billboard and Sign Regulations*, 58 Planning and Environmental Law No. 10 at 3 (2006) (with Robin M. Wolpert)
- *Debunking the Urban (Planning) Legends About Kelo*, 57 Planning and Environmental Law No. 9 at 11 (2005)
- *The Minnesota Constitution as a Sword: The Evolving Private Cause of Action*, 20 Wm. Mitchell L. Rev. 313 (1994)
- *The Shrinking Role of the Jury in Constitutional Litigation*, 16 Wm. Mitchell L. Rev. 697(1990)

TEACHING AND LECTURING

Teaching

- Adjunct Professor of Land-Use Law, William Mitchell College of Law, St. Paul, Minnesota, (January 2006 - May 2014)

Lecturing

- *The Aftermath of the Janus Decision*, Minnesota Association of City Attorneys Conference (February 2019)
- *Panhandling – Constitutional Considerations*, Minnesota Association of City Attorneys Conference (February 2019)
- *Planning and Law Caselaw Update*, APA Planning & Law Division, Webinar (February 2018)
- *Successful Brief Writing Strategies and Skills, Minnesota Attorney General's Office: Mastering Appellate Practice*, Panelist (May 2018)
- *The Supreme Court Term in Preview*, Eighth Circuit Bar Association, Panelist (October 2017)
- *Using the Takings Clause to Seek Compensation for Flooding*, National Takings Conference, Presenter (October 2017)
- *Use of Rule 68 Offers of Judgment as an Effective Litigation Strategy*, League of Minnesota Cities, Co-presenter (September 2017)
- *Planning Law Review*, American Planning Association, 2017 Policy and Advocacy Conference Webinar, Presenter (September 2017)
- *Signs and Speech: Two Years after Reed*, National League of Cities Webinar, Presenter

(August 2017)

- *Alternatives to Eminent Domain*, American Planning Association National Planning Conference, Panelist (May 2017)
- *Sign Regulation after Reed v. Gilbert*, American Planning Association National Planning Conference, Panelist (May 2017)
- *Protests and Assemblies*, Minnesota City Attorneys Educational Conference, Panelist (February, 2017)
- *Panhandling, Peddling, and Other Free Speech*, Minnesota City Attorneys Educational Conference (February 2017)
- *The Supreme Court Term in Preview*, Eighth Circuit Bar Association, Panelist (October 2016)
- *Recent Developments in First Amendment Law: Panhandling and Solicitation Regulations*, International Municipal Lawyers Association National Convention, Panelist (September 2016)
- *A Sign Regulation Apocalypse? Understanding the U.S. Supreme Court's Decision in Reed v. Town of Gilbert*, American Planning Association webinar, Panelist (July 2015)
- *Signs: A Different Kind of Land Use (especially after the Reed decision)*, International Municipal Lawyers Association webinar, Panelist (July 2015)
- *The New World of Sign Regulation: Understanding the Supreme Court's Reed v. Town of Gilbert Decision*, American Bar Association webinar, Panelist (July 2015)
- *Planning Law Review*, American Planning Association webinar, Panelist (July 2015)
- *Street Graphics and the Law*, 4th Edition, American Planning Association National Conference, Panelist (April 2015)
- *Content-Neutral Sign Regulation After Reed v. Gilbert*, American Planning Association National Conference, Panelist (April 2015)
- *Damages in Inverse Condemnation and Land Use Exaction Cases After U.S. Supreme Court Case of Koontz v. St. Johns River Water Management District*, The 2015 Minnesota Conference on Land Use and Eminent Domain, Minnesota Continuing Legal Education, Panelist (February 2015)
- *Reading the Signs*, American Planning Association National Conference, Panelist (April 2014)
- *Koontz Decision and its Impact on Municipal Land Use Decisions; Development Agreements*, Minnesota Association of City Attorneys Educational Conference, Panelist (February 2014)
- *Holiday Decorations, Public Property, and the Law*, American Planning Association

Webinar, Panelist (November 2013)

- *Lessons from Koontz v. St. Johns River Water Management District: Game Changer or Just a Little Rule Refinement?*, American Planning Association Webinar, Panelist (July 2013)
- *Koontz: What Does it Mean in Minnesota?*, Minnesota Chapter of the American Planning Association and Hennepin County Bar Association Environmental Law Section, Panelist (August, November, and December 2013)
- *Preparing Your Appeal: How to Moot Your Case Effectively*, Appellate Practice Institute, Panelist (March 2013)
- *Managing Billboards in the Digital Age*, 2013 APA National Conference (Chicago), Panelist.
- *Open Minds, Closed Records & Meaningful Hearings: How 'judicial' must a quasi-judicial action be?*, Minnesota City Attorneys Educational Conference, (February 2011)
- *Protecting Your Sign Code Against Attack*, APA National Conferences, 2007 and 2008
- Bettman Symposia Panelist, APA National Conferences, 2007 and 2008
- *Appellate Issues from a District Court Perspective*, Panelist and Moderator, Annual Seminar, Minnesota Chapter of the Federal Bar Association (June 2006)
- *New Developments in Comprehensive Planning*, Real Estate Law Society of William Mitchell College of Law (March 2006)
- Panel discussion regarding *Kelo v. City of New London* before the William Mitchell College of Law chapter of the American Constitutional Society (May 2005)
- Debates before the University of Minnesota's Federalist Society Chapter regarding *Kelo v. City of New London*, against Dana Berliner of the Institute for Justice (February 2005) and Roger Pilon of the Cato Institute (September 2005)
- *Dormant Commerce Clause Attacks on Local Zoning*, International Municipal Lawyers Association Mid-Year Seminar (April 2004)
- *Ex Parte Contacts with Public-Sector Clients During Litigation*, Minnesota State Bar Association Continuing Legal Education, Developing Land: Getting Local Governmental Approval (2002)
- *Four Recurring Ethical Issues in Public Sector Litigation*, Minnesota Government Training Service – City Attorney Update (2002)
- *Defamation by Implication: Finding Falsity from Truth*, Minnesota Institute of Legal Education Defamation Law Seminar (1999)
- *Development Fees*, Minnesota Government Training Service – City Attorney Update (1998)

Recognition

- Listed in *The Best Lawyers in America* (2015-2020)
 - *Lawyer of the Year* (2020)
- *Amicus Service Award*, International Municipal Lawyers Association (2012, 2016-17, 2019)
- Selected to Super Lawyers list, *Minnesota Super Lawyers* (2003-2019)
- Selected to list of "Top 25 Appellate Law Super Lawyers," *Minnesota Journal of Law and Politics* (2005)