

Rising Star: Gibson Dunn's Jacob T. Spencer

By Nick Muscavage

Law360 (June 21, 2022, 2:02 PM EDT) -- Gibson Dunn & Crutcher LLP partner Jacob T. Spencer played a key role in securing a unanimous victory on behalf of the National Association of Broadcasters in a media ownership dispute before the U.S. Supreme Court, which paved the way for more efficient consolidation in the media industry, earning him a spot among the telecommunications attorneys under age 40 honored by Law360 as Rising Stars.

WHY HE'S A TELECOMMUNICATIONS ATTORNEY:

Spencer said he became a telecommunications attorney because he's fascinated by the complexities of telecommunications law. He added that through his practice, he is able to work with some of the "most innovative companies in the world."

"That combination generates cutting-edge legal issues in every case I litigate," he said.

Spencer said he may not have discovered his passion for telecommunications law if it weren't for Gibson Dunn partner Helgi Walker, who co-chairs both the firm's global litigation practice group and administrative law and regulatory practice group.

"I got the chance to work with her at the beginning of my career, and her mentorship and guidance have played a key role in making me the lawyer I am today," he said.

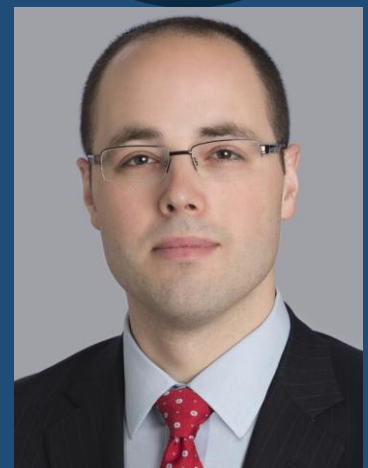
THE BIGGEST CASE OF HIS CAREER:

Spencer said the biggest case of his career was the victory before the Supreme Court in National Association of Broadcasters v. Prometheus Radio Project.

The nonprofit Prometheus Radio Project opposed the reforms made by the Federal Communications Commission, which included the easing of some rules that limited the number of media companies a single entity could own. The Third Circuit blocked the reforms from rolling out in response to

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Jacob T. Spencer
Gibson Dunn

Age: 37

Home base: Washington, D.C.

Position: Partner

Law school: Harvard Law School

First job after law school:
Law Clerk for Judge Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit

the opposition raised by Prometheus, which argued the lax rules would harm minority and female ownership in the media industry.

Spencer played a key role in persuading the Supreme Court to grant certiorari and reverse the Third Circuit's decision by coordinating multiple firms representing many different clients, including crafting the contributions from the various firms into unified briefs. He also helped prepare Walker for the argument, and coordinated amicus participation and interaction with the solicitor general's office, which handled the consolidated case, *FCC v. Prometheus Radio Project*.

"Because there was no circuit split, we had to explain just how important these reforms were to the broadcast industry — and how far the Third Circuit had strayed from Congress' goal of uprooting outdated regulations," Spencer said. "And at the end, we achieved a great result that will benefit the entire broadcast industry going forward."

After more than 20 years of litigation in the courts of appeals, Spencer and the Gibson Dunn team persuaded the Supreme Court in April 2021 to permit the FCC's reforms to go into effect.

HIS MOST INTERESTING CASE:

Spencer played an integral part in representing the cellphone industry trade association CTIA in a dispute before the Ninth Circuit with the city of Berkeley, California. The association challenged the constitutionality of an ordinance passed by Berkeley that required cellphone retailers to give their customers a message suggesting that the "radiation" from cellphones poses "safety" concerns.

Spencer drafted the complaint, a partially successful preliminary injunction motion and Ninth Circuit briefs. Following the Supreme Court's denial of certiorari, he developed the legal strategy resulting in CTIA's win.

After the Ninth Circuit sided with Berkeley, the FCC issued an order explaining that the radio frequency emissions from cellphones sold in the U.S. pose no safety concerns. Based on that FCC guidance, Spencer advised that CTIA should file a motion for judgment on the pleadings, arguing that Berkeley's ordinance was preempted. That motion prevailed in September 2020, and Berkeley declined to appeal.

Beyond the legal issue, Spencer said that "learning the science of cellphones — and how to translate that science for the courts — was fascinating."

HIS PROUDEST MOMENT AS AN ATTORNEY:

Although Spencer is intrigued by telecommunications law, he said his proudest moment as an attorney came when arguing a 14th Amendment case pro bono.

Spencer argued in the District of Utah that his clients, three people born in American Samoa, are entitled to birthright citizenship under the 14th Amendment. He said that the government's practice of "labeling them 'non-citizen nationals' is unconstitutional."

Unlike other U.S. territories, such as Puerto Rico, Guam and the U.S. Virgin Islands, residents of American Samoa are not birthright citizens to the U.S. Instead, American Samoan residents are considered "nationals," and therefore do not have the same rights afforded to citizens, such as the ability to vote if relocated to the U.S. 50 states.

Working with a team of Gibson Dunn attorneys, Spencer successfully convinced the District of Utah that

denying birthright citizenship to his American Samoan clients, who had moved to Utah, was unconstitutional.

The Tenth Circuit later reversed the lower court's opinion, and found that the duty of deliberating citizenship for territories belongs to Congress. However, Spencer said it was still a rewarding experience.

"I was proud to represent them and argue for the rights of citizenship that the Constitution confers, and that Congress cannot lawfully deny," he said. "My clients are proud passport-holding, tax-paying Americans. But because the government will not recognize their citizenship, they cannot vote, serve on juries, or exercise many other rights."

ON THE FUTURE OF THE PRACTICE:

Spencer said he sees change as one of the telecommunications industry's few constants.

"The telecommunications industry is always changing, with new companies, new products, and new statutes and regulations," he said. "To me, that means my practice will stay largely the same — figuring out how to help my clients navigate a shifting landscape by making novel legal arguments and offering advice on emerging issues."

The changing landscape of telecommunications will keep him on his toes, he said, but he's looking forward to the challenge.

"I'm a litigator at heart," Spencer said. "What motivates me each morning is that I want to win on behalf of my clients and find creative ways to help them solve the most challenging cases they face."

— *As told to Nick Muscavage*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.