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## **Q&A With Hunton & Williams' F. William Brownell**

F. William Brownell is a partner with Hunton & Williams LLP in the firm's Washington, D.C., office and chair of the firm's environmental practice group.

His practice focuses on environmental litigation, regulation and counseling, including climate change regulation and litigation, clean air regulation, environmental licensing and auditing, waste transportation and management, dangerous substances testing and labeling and water quality regulation.

Brownell represents clients in both the United States and Europe. In the U.S., his practice involves proceedings before federal and state agencies, courts and Congress; in Europe, it involves advice on European Community law.

### **Q: What is the most challenging case you've worked on, and why?**

A: Two cases come to mind, and both involved significant administrative law and constitutional issues.

The first is *American Trucking Association v. Whitman*, which I argued in 1998 and again in 2001 (on remand from the U.S. Supreme Court) before the D.C. Circuit. The case involved the scope of the Environmental Protection Agency's authority under the Clean Air Act to revise national ambient air quality standards, and then to implement those revised standards.

The case was initially decided by the D.C. Circuit on constitutional nondelegation grounds regarding the EPA's standard-setting authority, and on statutory grounds regarding the EPA's implementation authority.

While the Supreme Court overturned the nondelegation portion of the D.C. Circuit's decision, it upheld the court's decision on implementation authority. Ultimately, the case led to a more focused debate regarding the EPA's authority to revise and to implement air quality standards, which continues to influence EPA rulemaking today.

The second case is *Tennessee Valley Authority v. EPA*, which I argued before the Eleventh U.S. Circuit Court of Appeals in 2001 (on jurisdictional matters) and 2002 (on substantive matters). It involved a challenge to an EPA administrative enforcement order issued against the Tennessee Valley Authority (TVA) under the Clean Air Act.

The Eleventh Circuit ultimately found the order null and void, after finding the provision of the Clean Air Act under which it had been issued unconstitutional. While the EPA petitioned the Supreme Court for certiorari, the Supreme Court decided not to review the Eleventh Circuit's decision, leaving TVA's victory intact.

**Q: What accomplishment as an attorney are you most proud of?**

A: I'm particularly proud of having helped build one of the pre-eminent environmental practice groups in the country. We have brought together a group of talented attorneys with expertise on all substantive environmental issues, and skills in handling everything from administrative and judicial proceedings to enforcement defense, legislative advocacy and international environmental work.

Public service and pro bono service are also an important part of our work at Hunton & Williams, and I'm proud of the work I've done with the National Park Trust. In the early 1990s, after being asked to sit on the board by the executive director, I became involved in a project to create a new national park.

Among other things, this new unit of the National Park System — the Tallgrass Prairie National Preserve in Kansas — required the passage of legislation by Congress to allow this unit of the national park system to be held by a private organization. It has been gratifying to have a hand in preserving an important part of the country's natural heritage.

**Q: What aspects of law in your practice area are in need of reform, and why?**

A: There is a critical need for greater clarity in how environmental regulations are written, interpreted and enforced. Environmental regulation has become so extensive and complex that regulations, like enabling legislation, may be written without necessary precision in order to defer tough decisions.

This can create difficulties both for government enforcers and regulated entities. My experience is that industry wants to do all it can to comply with environmental rules. When regulations are not written clearly, we all lose.

**Q: Where do you see the next wave of cases in your practice area coming from?**

A: One wave of new environmental cases will come in the climate change area. There are already a number of cases around the country involving climate change issues, including litigation over the permitting of industrial facilities, and the role of the Clean Air Act, the Clean Water Act and the Endangered Species Act in climate regulation. There have also been a number of nuisance suits related to alleged climate change impacts.

I also expect an increase in citizen suit litigation regarding enforcement of environmental laws. This is particularly true where regulations are not written clearly, a problem I noted earlier.

**Q: Outside your own firm, name one lawyer who's impressed you and tell us why.**

A: I always had great admiration for Sheldon Zabel, the former partner-in-charge of Schiff Hardin's environmental group, who passed away last year. He was a driving force in the development of environmental law and one of the early practitioners in this area.

I knew Sheldon for more than 25 years, and worked with him on a number of cases involving the Clean Air Act and other environmental issues. He was a wonderful advocate, with a wry sense of

humor. Sheldon mastered the delicate balance among outside interests, family and the practice of law. He was a well-rounded individual as well as a wonderful lawyer.

**Q: What advice would you give to a young lawyer interested in getting into your practice area?**

A: Success in this area of practice requires not only an interest in environmental law, but also in administrative and constitutional law, and in federal courts and procedures. Besides having an interest in the law, it's important to be involved in public service and to save time for outside interests. Keeping that balance is the key to a long and enjoyable career.