

Top Judicial Advocacy Wins for the Construction Industry

#1 – U.S. Supreme Court [Shields](#) Contractors from Unfair NPDES Permit Liability

- ✓ **Court Victory** – U.S. Sup Ct (5-4) ruled in favor of AGC in *City and County of San Francisco v. EPA*.
- ✓ **Eliminates "Backstop" (End Result) Provisions** – Prevents unfair liability for receiving water quality.
- ✓ **Protects Contractors** – Ensures costly enforcement and severe penalties don't apply if contractors comply with their National Pollutant Discharge Elimination System (NPDES) runoff permit (i.e., Permit Shield).
- ✓ **AGC's Role:**
 - Filed construction-specific amicus brief, cited by the Court.
 - Successfully argued that permits must clearly define compliance requirements; numeric limits not needed.

#2 - EPA Commits to [Clarify](#) "Waters of the United States" Jurisdiction

- ✓ **Trump Administration Acts** – EPA pledged to simplify WOTUS definition to reduce permitting confusion. WOTUS triggers federal control, risk of costly enforcement and severe penalties for noncompliance.
- ✓ **AGC's Role:**
 - Filed amicus brief in *Sackett v. EPA* – Supreme Court ruling reshaped WOTUS.
 - Filed lawsuits and secured temporary injunction blocking Biden's WOTUS rule in 27 states.
 - Testified before Congress for a durable, commonsense definition.
- ✓ **Next Steps** – Feds solicit public input. AGC-led litigation paused pending new rule; Biden's rule still blocked.

#3 - FHWA [Drops Court Appeals](#), Commits to Rescind GHG Measurement Rule

- ✓ **Court Victory** – Federal courts (TX, KY) sided with AGC, striking down FHWA's greenhouse gas performance measure rule that would've diverted highway funds to non-construction uses like EV charging stations.
- ✓ **Mandate Declared Illegal** – Courts ruled no authority; gov't dropped court appeals.
- ✓ **AGC's Role:**
 - Fought the rule in Congress, at FHWA, and in courts.
 - Highlighted concerns in a letter to President-elect Trump to push for repeal.
- ✓ **Next Steps** – FHWA readies proposed rule to officially rescind Biden's GHG rule.

#4 - Treasury [Halts Corporate Transparency Act Enforcement](#), Commits to Narrow Rule

- ✓ **Enforcement Suspended** – Treasury won't impose penalties and plans to limit rule to foreign entities. Law requires small businesses (fewer 20 employees) to disclose their "beneficial ownership information" (BOI).
- ✓ **AGC's Role:**
 - Protected small contractors from burdensome reporting requirements that mandate disclosure of personal identification documents, ostensibly to prevent money laundering – but increasing identity theft risks.
 - Supporting legal challenges to permanently overturn the law.
 - Engaging with Congress to push for permanent legislative changes.
- ✓ **Nex Steps** – Continue fighting in courts. CTA is still law—future administrations could reinstate enforcement.

#5 - Court [Strikes Down](#) Fed Gov't Mandate for Project Labor Agreement (PLA) Use

✓ **Court Victory** – U.S. Ct. Fed. Claims ruled in favor of AGC members in bid protest litigation, striking down Biden's mandate for federal contractors' use of PLAs as a condition of bidding/work on large-scale federal projects.

✓ **Mandate Declared Illegal** – Court held PLA requirement violates the Competition in Contracting Act—by excluding responsible offerors capable of performing contract—and lacked Congressional authorization.

✓ **AGC's Role:**

- Developed novel bid protest strategy—fast, effective challenge.
- Used in AGC-members' protests (12 projects), which resulted in the removal of PLA mandates.
- Feds Begin to Drop PLAs – DoD and GSA pull mandates.
- AGC of America neither supports nor opposes contractors' voluntary use of PLAs.

✓ **Next Steps** – Awaiting court decision on permanent nationwide injunction to stop the gov't PLA mandate entirely; ruling expected soon. Urging Trump administration to revoke PLA executive order and FAR rules.

#6 - Court [Blocks](#) DOL's Davis-Bacon Expansion

✓ **Court Victory** – Federal court blocked enforcement of AGC-challenged provisions of DOL's Davis-Bacon rule; saying AGC likely to succeed on merits.

✓ **AGC's Role:**

- Filed lawsuit challenging DOL's rule that unlawfully extends Davis-Bacon Act coverage.
- Secured temporary injunction after AGC members testified in court. DOL appealed but injunction remains in effect pending appellate review.
- Fighting expanded coverage to:
 - Truck drivers spending any “**non-de minimis**” time onsite.
 - Material suppliers owned/operated by contractors, thereby narrowing exemption.
 - Project contracts lacking explicit Davis-Bacon terms.

✓ **Next Steps** – Litigation has been paused while new leaders assess each case and determine whether to proceed or change course. AGC continues to fight for permanent relief.

AGC's [Judicial Advocacy](#) is protecting contractors from unnecessary federal overreach!

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