



## 2020 PRACTICE GROUP OF THE YEAR

# Appellate

Kirkland & Ellis LLP's appellate practice notched decisive victories at the U.S. Supreme Court this year, including one that determined the status of the Appalachian Trail and another that netted \$12 billion for health insurers, earning them a spot as one of Law360's Practice Groups of the Year.

Three of the group's principals — Paul Clement, John O'Quinn and Erin Murphy, all litigation partners — credit the group's track record partly to Kirkland's lack of hierarchy and segmentation. It's a flexible structure that allows the appellate-focused partners to deploy resources and expertise from different areas of the firm as needed.

"Part of the magic of Kirkland is we do not have these hermetically sealed departments that operate separately," O'Quinn said.

The trio estimate the firm has roughly a dozen full-time appellate attorneys, with another dozen whose practice is at least partly spent on appellate matters. Despite the lack of formal practice heads, O'Quinn said Clement "certainly headlines our Supreme Court practice," while he focuses on the circuit courts. And Murphy, with her "wide and diverse practice," is "the glue that helps hold it all together."

Clement made his 100th appearance before the Supreme Court in

February — the last sitting before the coronavirus put an end to in-person arguments — for a case he said was "near and dear" to his heart.

Clement secured a 7-2 ruling, handed down in June, determining that while the National Parks Service oversaw the Appalachian Trail, the U.S. Forest Service retained authority over it, paving the way for an \$8 billion gas pipeline to cross the path.

According to Clement, the case had wide-reaching implications for pipeline development throughout the U.S., but the argument required him and his colleagues to dive deep into the history of the Appalachian National Scenic Trail, which extends from Maine to Georgia through an array of national and state parks.

"It was just a fun case to get involved in," Clement said. "The trail is itself a great story, in a way that

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dovetailed with our legal theory: It's not something that is administered by the National Park Service in a top-down way, but from the very beginning, it was a cooperative enterprise between individual hikers and government agencies."

Plus, he said, "It didn't seem proper to argue the case without making at least one trip to the Appalachian Trail."

In another case, Kirkland represented a group of Affordable Care Act health insurers before the high court in December, where they claimed they had been fleeced out of \$12 billion in federal funds when Congress attempted to deny reimbursement through appropriations riders.

"There are a lot of different ways to measure the importance of a Supreme Court case, but I think the amount in controversy is at least one reasonable yardstick," Clement said. "And by that measure, this is one of the most consequential Supreme Court decisions ever, in terms of its financial impact."

In April, the court returned an 8-1 decision, reversing a Federal Circuit ruling and determining that the government had to make good on its statutory promises.

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"I was really interested in this case because of the basic issue of the circumstances under which Congress can make a promise to pay someone in the private sector ... and the extent to which a later Congress can then try to get out of that commitment just by not appropriating the money to live up to the promise," Clement said.

"That seemed to me like an issue that should have been resolved at least by 1820 — if not the Revolutionary War debts, then maybe the War of 1812 debts," he added. "You'd just think that this issue would be signed, sealed and delivered relatively early in the republic."

The group also scored a win for religious freedom advocates when it secured a 7-2 decision in a closely watched case that created exemptions to the ACA's birth control requirement for employers with religious beliefs. The case, brought in collaboration with the Becket Fund

for Religious Liberty, drew public attention to the policy questions it raised about reproductive access and employer rights.

"When you're making your arguments to the court, you're not making your policy arguments — those are for a different forum. And yes, they are a backdrop," Murphy said. "But I think it's just critical to keep as much focus as you can, in the presentation to the court, on [the fact that] there are legal issues here, and this is really about the resolution of those legal issues."

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