

Appellate

The appellate practice at **Kirkland & Ellis LLP** scored several victories at the U.S. Supreme Court, including one case that determined Alaska Native corporations were entitled to federal COVID-19 relief and another that determined states can't use sovereign immunity to prevent gas pipelines from being built on state-owned land, earning the firm a place among Law360's 2021 Appellate Groups of the Year.

In the most recently concluded Supreme Court term, Kirkland scored favorable rulings in all five of its argued cases. According to the firm, those five arguments in the 2020 term accounted for nearly 10% of all cases the high court heard.

One of the firm's partners, Paul Clement, credited Kirkland's deep bench of former government attorneys as one of the reasons the firm has been so successful in arguing cases in front of the high court.

That was particularly evident in *Yellen v. Confederated Tribes of the Chehalis Reservation*, in which Kirkland attorneys argued on behalf of an Alaska Native corporation and secured a ruling from the Supreme Court that determined the corporations are entitled to hundreds of millions of dollars in COVID-19 relief set aside for tribal governments.

“I think part of the reason that we really enjoy our practice is that it's not really defined by any particular set of issues.”

Clement, a former U.S. solicitor general and a 2021 Law360 Appellate MVP, worked on the case and said his government experience played a big role in getting a quick and favorable ruling.

Clients often tap Kirkland once a case is in the appellate phase, but the firm handled this case from the district court to the Supreme Court. The case moved particularly quickly through the judicial system, going from district court to the Supreme Court in about a year.

“The case ended up highlighting a lot of different aspects of our practice: our ability to handle cases at all levels of the court system, our ability to work with the

[solicitor general's] office across administrations and coordinate with the SG's office,” Clement said.

The Kirkland appellate team also scored a Supreme Court win in June in *PennEast Pipeline Co. v. New Jersey*, a case in which the court found states can't use sovereign immunity to prevent gas pipelines from being built on state-owned land.

PennEast, which had Federal Energy Regulatory Commission approval in hand, wanted the high court to overturn a Third Circuit ruling that eminent domain provisions in the Natural Gas Act don't trump New Jersey's 11th Amendment sovereign immunity

from condemnation suits by private companies. New Jersey argued the Third Circuit got it right and the Natural Gas Act doesn't clearly give companies the authority to sue states.

But the majority of the justices backed PennEast and reversed the Third Circuit, saying the federal government can give pipeline companies the authority to condemn necessary rights-of-way on state land as well as private land.

The case resulted in one of the most unusual lineups of the term, with a 5-4 opinion in which Chief Justice John Roberts and Justices Stephen G. Breyer, Samuel Alito Jr., Sonia Sotomayor and Brett Kavanaugh were in the majority and Justices Amy Coney Barrett, Clarence Thomas, Elena Kagan and Neil Gorsuch were in the minority.

"You could tell from the way the case turned out that it wasn't

something that fit into a neat box for the court," said Erin Murphy, a Kirkland litigation partner based in Washington, D.C.

In another Supreme Court win, Kirkland secured a summary decision from the high court that resulted in a Ninth Circuit panel finding Alaska's \$500 campaign contribution limit was unconstitutional.

Kirkland got involved in the case, *Thompson v. Hebdon*, after the Ninth Circuit had originally held in a divided opinion that Alaska's campaign contribution limits were constitutional. In June, the Supreme Court issued a summary decision that kicked the case back to the Ninth Circuit for a reconsideration, and that time, the panel went the other way and held that the limits are unconstitutional.

"It was a pretty big victory in this area. We took the trip up and the

trip back down [and] ended up getting to the right result for the clients in the end," Murphy said.

Clement noted that the firm's appellate practice consistently brings novel, nationwide legal issues to the forefront.

"The fact that we had two cases touching on Alaska last year does really underscore the national nature of our practice," Clement said. "I think part of the reason that we really enjoy our practice is that it's not really defined by any particular set of issues."

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