

# Kasdin Miller Mitchell



Kasdin Miller Mitchell of Kirkland & Ellis LLP was counsel to Facebook, now Meta Platforms Inc., and PennEast Pipeline Co. in two cases before the U.S. Supreme Court, earning her a spot among the appellate law practitioners under age 40 honored by Law360 Rising Stars.

## **Biggest case of her career:**

The biggest case of Mitchell's career so far has been PennEast Pipeline v. New Jersey, which made its way to the Supreme Court. The case involved a provision of the Natural Gas Act that allows pipeline companies to acquire property needed to build a Federal Energy Regulatory Commission-approved interstate pipeline.

That specific provision had been understood to allow companies to obtain state property for 70 years, but New Jersey argued it violated the state's sovereign immunity.

Mitchell worked on the case during a time in her career when she was really hitting her stride working directly with the client, she told Law360 in an interview.

She was the principal drafter of the certiorari petition, coordinated the amicus effort, did the case's media briefings, and held a more senior role than in other cases at that level, she said.

"It was just challenging to learn a new area of law in an industry ... it wasn't just an academic exercise; it really impacted real people," Mitchell said.

She and the Kirkland team on the case secured a 5-4 win for PennEast, with the high court ruling that states gave up their sovereign immunity from the exercise of federal eminent

domain power when they ratified the Constitution. The Natural Gas Act delegates that power to private parties, meaning states cannot use sovereign immunity as a defense.

"It was a lot of work, a lot of learning and a lot of fun along the way, and we were glad to prevail in the Supreme Court," Mitchell said.

## **The most interesting case she's worked on lately:**

Mitchell said the most interesting case she's worked on was for Facebook

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involving a class action lawsuit under the Telephone Consumer Protection Act of 1991.

The case related to text messages Facebook would send users to let them know someone had logged onto their account, especially from an unrecognized location or new device, Mitchell said.

The suit — *Duguid v. Facebook* — argued those texts were essentially robocalls.

“It was an interesting statutory interpretation question about the meaning of a provision of the TCPA,” Mitchell said. “It was really interesting because at the time the act was passed, technology looked a lot different.”

Mitchell said one of the questions in the case was whether, in order to be covered by the act, the equipment at issue had to be able to store or produce real telephone numbers that could be called using a random or sequential number generator, and had to be able to dial those numbers.

“What’s interesting about it is every single day Americans walking around in their pocket have a device that can store a number and automatically dial it,” Mitchell said. “If you have an iPhone, you can say, ‘Hey Siri, dial X person,’ and anytime you use that, you would kind of be a walking, talking violation of the Telephone Consumer Protection Act, and that couldn’t be right.”

Mitchell and the Kirkland team prevailed 9-0, with the justices finding that under a statutory interpretation of the TCPA, Facebook’s dialing system did not qualify as an automatic telephone dialing system.

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Mitchell said that thinking about a statute that isn’t that old and how it applies to technology today was really fascinating to her.

### **Her proudest moment as an attorney:**

Mitchell said she wouldn’t necessarily say “proud” was the right word to describe the moment that came to mind, but she called it “really neat.”

The Supreme Court usually hears two cases a day, she said, and on one particular day, both of the cases were being handled by Kirkland, and she worked on both.

The first case was *Maine Community Health Options v. U.S.*, for which Mitchell had worked on the briefing and argument preparation, while the other was *Holguin-Hernandez v. U.S.*, for which she was the second chair.

The truly unique part? The attorney in the first case was arguing his 99th case before the Supreme Court, while the attorney in the second case was arguing his first.

“I was the one overlap on the two cases,” Mitchell said. “I felt a real privilege to be able to support both of them in those particular moments in their career, in a room where I spent a lot of time as a clerk, but I had never been at the counsel table until that moment. I don’t know that I’ll ever be able to replicate that moment again, but it was really special.”

### **What motivates her:**

Mitchell describes herself as “obsessed” with finding the right answer.

“When I was clerking, it was finding the right answer in a particular set of cases that would drive the right outcome in a case, and then for clients, it’s finding whatever the answer is to their problem, whether it’s a creative legal solution, or an

off-ramp, or thinking about ways to structure a settlement,” she said. “I just really go all in on trying to find whatever the answer is we’re looking for and not stopping until I do.”

**How she thinks her practice and the legal industry will change:**

Mitchell thinks there’s a space for deep legal thinking in all stages of a

case, something she’s already seeing but expects to see more of.

She’s also seen clients involving focused legal thinkers early in the case, including those with more of an appellate focus.

“I think when you bring in appellate specialists early ... they can help find off-ramps, they can help narrow with a case, they can make sure that you’re dotting every i and crossing

every t along the way, which can help you obtain a victory in a trial court,” Mitchell said.

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