Elizabeth A. Kiernan

Associate Attorney

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Dallas



Elizabeth A. Kiernan is an associate in the Dallas office of Gibson Dunn. She currently practices with the Firm's Appellate and Constitutional Law Practice Group.

Elizabeth is a trusted appellate advocate and counselor. She has represented clients in their most complex, high-stakes, time-sensitive matters, appearing before the U.S. Supreme Court, the Texas Supreme Court, and state and federal courts of appeals. Elizabeth has successfully argued before the Fifth Circuit and has supported arguments in various courts, including the Texas Supreme Court, the Second, Fourth, Fifth, and Ninth Circuits, the Northern District of Texas, and the Third and Fifth Texas Court of Appeals of Texas. Elizabeth has successfully litigated cases involving contracts, the Constitution, and state law.

Elizabeth's most significant victories include persuading a unanimous Fifth Circuit panel to uphold the dismissal of contractual and tort claims seeking over twelve-million dollars; securing a landmark victory at the U.S. Supreme Court to allow an insurer responsible for millions of dollars in bankruptcy claims to be heard on objections to its insureds' plan of reorganization; obtaining writs of mandamus directing dismissal of billions of dollars in personal injury and property damage claims in the Houston Court of Appeals; reversing a fourteen-million-dollar summary judgment in the Fort Worth Court of Appeals; preserving appellate victory at the Texas Supreme Court; and upholding the constitutionality of voluntary, interfaith opening ceremonies before court sessions.

Elizabeth is recognized as an Appellate "Rising Star" by Thomson Reuters's *Texas Super Lawyers* magazine, and as an "Associate to Watch" for Litigation: Appellate by *Chambers USA*.

Recent Representative Matters:

- Representing energy companies in disputes arising out of the 2021 Texas winter storm, including in appeals of rules invalidly issued by the Public Utility Commission and in multidistrict litigation of tort claims. Persuaded Houston Court of Appeals to grant writs of mandamus directing the multidistrict litigation trial court to dismiss billions of dollars personal injury and property claims on the pleadings. *E.g. In re Luminant*, No. 01-23-00097-CV (Tex. App.—Houston [1st Dist.]); *In re: Winter Storm Uri Litig.*, No. 2021-41903 (MDL Civ. Ct., Harris Cty., Tex.). Obtained other favorable resolutions for client. *See Luminant Energy Company LLC v. PUC*, No. 03-21-00108-CV (Tex. App—Austin) (obtained favorable agreement for client); *Luminant Energy Company LLC v. PUC*, No. 03-21-00126-CV (Tex. App—Austin) (same).
- Argued and obtained a complete victory on behalf of a payment brand by persuading a unanimous Fifth Circuit panel to uphold the dismissal of contractual and tort claims seeking over $12 million dollars. *See Paymentech v. Landry's*, No. 21-20447 (5th Cir.) [argued].

Capabilities

Appellate and Constitutional Law
Litigation
Mass Torts and Product Liability

Credentials

Education

University of Chicago Law School - 2017 Juris Doctor
University of Alabama - 2014 Bachelor of Arts

Admissions

Texas Bar
District of Columbia Bar

Clerkships

US Court of Appeals, 11th Circuit, Hon. William H. Pryor, 2019 - 2020
US Court of Appeals, 5th Circuit, Hon. Jerry E. Smith, 2017 - 2018

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- Overturned a $14 million summary judgment by persuading court to uphold the validity of a payment brand's security program and to revive the brand's counterclaim for fraud. *See Visa Inc. v. Sally Beauty Holdings, Inc.*, 651 S.W.3d 278 (Tex. App.—Fort Worth Dec. 9, 2021, pet. filed). Preserved victory by persuading the Texas Supreme Court to deny review after calling for full merits briefing. *Sally Beauty Holdings, Inc. v. Visa Inc.*, No. 22-0024 (Tex.).
- Persuaded a unanimous U.S. Supreme Court to hold that an insurer with financial responsibility for millions in bankruptcy claims is a "party in interest" that may object to its insureds' Chapter 11 plan of reorganization. *See Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024).
- Preserved significant appellate court victory by persuading the Texas Supreme Court to deny review after calling for full merits briefing in oil and gas case. *Nixon v. Hardaway*, No. 18-0162 (Tex.).
- Defeated challenge to Health and Human Service's rejection of former employee's eight-figure wrongful termination suit. *Frey v. U.S. Dep't of Health & Human Servs.*, No. 18-60205 (5th Cir.).
- Secured emergency stay pending appeal and ultimately persuaded the Fifth Circuit to render judgment upholding constitutionality of Justice of the Peace's practice of allowing volunteer chaplains to perform brief, optional, and interfaith opening ceremonies before court sessions. *Freedom from Religion Found., Inc. v. Mack*, No. 21-20279 (5th Cir.).
- Represented various organizations as *amicus curiae* in cases before the U.S. Supreme Court, the Fifth Circuit, the Texas Supreme Court, and the Wisconsin Supreme Court. *Kisor v. Wilkie*, No. 18-15 (U.S.) (on behalf of State and Local Government Associations); *American Legion v. American Humanist Ass.*, Nos. 17-1717, 18-18 (U.S.) (on behalf of Utah Highway Patrol Association); *Arizona v. Goodman*, No. 18-391 (U.S.) (on behalf of Arizona Voice for Crime Victims, Inc., Memory of Victims Everywhere to Rescue Justice, and The National Crime Victim Law Institute); *Shin v. Ramirez*, No. 20-1009 (U.S.) (Counsel of Record) (on behalf of two habeas scholars); *Cochran v. SEC*, No. 19-10396 (5th Cir.) (on behalf of the Texas Public Policy Foundation); *Gregory v. New Prime*, No. 21-0017 (Tex.) (on behalf of the U.S. Chamber of Commerce); *In re Walmart*, Nos. 21-0363, 21-0650 (Tex.) (on behalf of the Washington Legal Foundation); *Catholic Charities Bureau, Inc. v. State of Wisconsin Labor and Industry Review Commission*, No. 2020AP002007 (Wisc.), No. 24-154 (U.S.) (on behalf of Wisconsin Catholic Conference); *Lackie v. Stinnie*, No. (21-1756) (U.S.) (Counsel of Record) (on behalf of Alliance Defending Freedom and Americans for Prosperity Foundation); *In re Dallas County*, No. 24-0426 (Tex.) (on behalf of Texas Business Law Foundation).

Elizabeth graduated with Honors from the University of Chicago Law School in 2017. While at the Law School, she served as a Comments Editor of *The University of Chicago Law Review*. Elizabeth earned her Bachelor of Arts degree *summa cum laude* from the University of Alabama. She double majored in English and Political Science and was elected Phi Beta Kappa.

Prior to joining the Firm, Elizabeth served as a law clerk to the Honorable Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit and the Honorable William H. Pryor Jr. of the U.S. Court of Appeals for the Eleventh Circuit. She also served as Special Counsel to U.S. Senator Josh Hawley for the confirmation of Justice Amy Coney Barrett.

Elizabeth is admitted to practice in Texas and the District of Columbia. She is also admitted to practice before the Supreme Court of the United States, the U.S. Courts of Appeals for the Fifth, Seventh, Ninth, Eleventh, and Federal Circuits, and the U.S. District Courts for the Northern, Southern, and Eastern Districts of Texas.

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