

Appellate Group Of The Year: Gibson Dunn

By Sarah Jarvis

Law360 (November 30, 2020, 3:48 PM EST) -- Gibson Dunn & Crutcher LLP's appellate practice represented Dreamers before the Supreme Court and helped secure them an injunction halting the termination of the Deferred Action for Childhood Arrivals program, earning the firm a spot among Law360's 2020 Appellate Groups of the Year.

Appellate practice co-chair Mark Perry defines attorneys in the practice group — which he said is the largest in the country — as those who spend more than half their time on appeals, adding that all the group's attorneys work in other areas as well.

The firm has 20-odd partners and 50 to 60 associates doing appellate work, with about half of the group's attorneys working in Washington, D.C., and the other half working at Gibson Dunn's offices in New York, Dallas, Denver, Los Angeles and San Francisco, he said.

Perry said a highlight of the past year was Gibson Dunn's three Supreme Court victories, noting that for the second year in a row, the firm had four partners argue five cases before it. He said more than 20 partners at the firm have argued cases there.

Among those Supreme Court victories, he said the DACA case stood out for its human impact and for "that fundamental principle of liberty and administrative regularity that will transcend the individual issue in the case."

Gibson Dunn represented six DACA recipients in obtaining — and defended on appeal — the first nationwide preliminary injunction halting the termination of the program, which offers deportation relief and work permits to young immigrants brought to the U.S. as children. The Supreme Court found in June that the U.S. Department of Homeland Security's decision to terminate the program was arbitrary and capricious.

"The tone and tenor of the Supreme Court's opinion in the challenge are very important for holding the government to its promises and ensuring that all people, citizens and non-citizens, get a fair shake from the government," Perry said.



In another case before the high court, Gibson Dunn represented Comcast in obtaining a largely unanimous decision that sent a Black-owned production studio's \$20 billion discrimination case against the telecommunications conglomerate back to the Ninth Circuit.

In the March decision, the justices mandated that courts use the "but-for" test to evaluate allegations of racial bias under Section 1981 of the Civil Rights Act, meaning accusers must prove discrimination was the defining factor in a contracting decision.

"We don't doubt that most rules bear their exceptions. But, taken collectively, clues from the statute's text, its history, and our precedent persuade us that [Section 1981] follows the general rule," Justice Neil Gorsuch wrote on behalf of the court. "Here, a plaintiff bears the burden of showing that race was a but-for cause of its injury."

In another Supreme Court victory, Gibson Dunn represented victims of the 1998 embassy bombings in Kenya and Tanzania, and helped secure a decision in May that cleared the way for \$4.3 billion in punitive damages.

The 8-0 ruling overturned a D.C. Circuit ruling holding that Congress changed the Foreign Sovereign Immunities Act to allow punitive damages in 2008, it did not make it retroactive to previous terror attacks.

Perry said that while money can't replace "lost limbs and shattered lives," providing redress for victims of horrific acts of terrorism is a small way to make the world a better place.

"Holding governments responsible when they sponsor terrorism — and using American courts as appropriate to provide what relief is available — is doing something," he said. "Lawyers can't change the world in every way, but we can try to make the world better."

Perry said the appellate practice group has expanded over the last decade and will continue to do so in the future, through a mix of internal promotions and lateral hires. He said Gibson Dunn aims to spread its appellate work among different generations and offices, rather than focusing it on one or two partners.

That spirit of collaboration is foundational to a good appellate team, he said, whether it's with the firm's partners, other law firms or a client's in-house lawyers. Appellate lawyers, whom he said are generalists by training and disposition, can't do this job alone.

"There's one person at the podium at the end of the day, but behind him or her is a very, very large team," Perry said.

--Additional reporting by Suzanne Monyak, Anne Cullen and Jimmy Hoover. Editing by Adam LoBelia.