

# APPELLATE HOT LIST

A SPECIAL REPORT

This year's U.S. Supreme Court term lacks the high-stakes drama of last year's row over the Affordable Care Act, which seemed to attract briefs from every appellate shop around. There's still plenty to get excited about, however, as demonstrated by the cases we highlight in *The National Law Journal's* Appellate Hot List. We've identified 20 firms doing killer appellate work before the Supreme Court, federal circuit courts of appeal and state courts of last resort. We asked our readers to nominate firms with at least one significant appellate win between May 2012 and May 2013 and that had an impressive track record overall. We supplemented this material with our own reporting to settle on the firms listed below.

GIBSON, DUNN & CRUTCHER LLP

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DIEGO M. RADZINSKI

THEODORE BOUTROUS

## Gibson, Dunn & Crutcher

Even before Gibson, Dunn & Crutcher partner Theodore Olson strode before the U.S. Supreme Court in March to argue that California's ban on same-sex marriage was unconstitutional, he'd already played a large role in shaping the political debate on the subject. A conservative legal icon who represented George W. Bush in *Bush v. Gore* and became Bush's solicitor general, Olson was leading the challenge to California's Proposition 8 four years before President Obama announced that

his own views on the matter had "evolved"—and his move gave fellow Republicans ground to follow suit. The court likely will decide the matter in June, along with a related challenge to the Defense of Marriage Act.

Olson has 60 Supreme Court arguments under his belt, but Gibson Dunn's appellate team is hardly a one-man shop. Theodore Boutrous, Miguel Estrada, Thomas Hungar and their colleagues together have presented more than 40 arguments before the court, and 30 percent of Gibson Dunn's petitions for certiorari between 2005 and 2012 found favor, by the firm's count. By comparison, the court granted just 1 percent of all cert petitions last term.

Gibson Dunn has met with particular success in challenging class actions. Before the Supreme Court, Boutrous won unanimous reversal of a putative class action in Arkansas involving client Standard Fire Insurance Co. The decision cut off one avenue plaintiffs lawyers had pursued to evade the Class Action Fairness Act of 2005, which gave federal courts jurisdiction over many class actions with more than \$5 million in controversy. Plaintiffs lawyers in the Standard Fire case had sought to keep the suit in state court by having the lead plaintiff stipulate that he would not seek more than

\$5 million—even though other class members had yet to be certified.

In a unanimous decision, the Supreme Court agreed with Boutrous that such a lead plaintiff cannot legally bind absent class members to such a cap.

Estrada scored a Supreme Court win for Comcast Corp. in a decision that is likely to continue to make it more difficult to mount class actions. The company faced massive claims involving more than 2 million current and former cable subscribers in the Philadelphia area who alleged the company increased prices through anti-competitive practices. A court majority agreed with Estrada's argument that to be certified as a class, the massive pool of subscribers had to demonstrate how they were harmed through a single theory that could be used to calculate damages.

—JASON McLURE