



[Ilana H. Eisenstein](#)

Partner

CO-CHAIR, APPELLATE ADVOCACY PRACTICE

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Ilana H. Eisenstein is Co-Chair of the firm's Appellate Advocacy practice. As a former Assistant to the Solicitor General and a former federal prosecutor, she has seen cases through every stage of litigation – from investigation, trials, and appeals to the US Supreme Court.

- Litigation, Arbitration and Investigations
- Appellate Advocacy
- State Attorneys General

Ilana focuses her practice on appellate, complex commercial, products liability, and white-collar litigation. She is noted for her ability to unravel and address the individual threads in complicated, multi-part legal issues. She is particularly adept at developing and managing legal strategy for multi-district and government-facing litigation; and she has deep experience in life sciences, consumer goods and technology sectors.

Ilana has argued five cases before the Supreme Court, including cases involving novel questions of statutory interpretation and constitutional law and procedure. She has tried 12 federal jury trials to verdict and led more than 100 federal and state cases to resolution.

With a flexible approach to multi-faceted disputes that include civil, criminal, administrative and regulatory components, Ilana is able to help clients solve their most complex and high-exposure problems.

Ilana is a member of DLA Piper's Policy Committee.

RECENT APPELLATE AND SUPREME COURT MATTERS:

- **NetChoice v. Atty Gen. State of Florida (S.D. Fla./11th Cir.):** Representing Netchoice, a trade association of Internet and social media companies, in First Amendment lawsuit challenging a Florida statute attempting to regulate social media companies' exercise of editorial discretion on their platforms; preliminary injunction of statute granted and key provisions affirmed on appeal.
- **Twitter v. Paxton, (9th Cir.):** Represent trade associations of Internet and social media companies in amicus brief arguing that the Texas Attorney General's investigation of Twitter violated its First Amendment rights. See more here.
- **In re: Incretin-Based Therapies Products Liability Litigation, Adams v. Novo Nordisk (9th Cir. 2022):** Briefed and argued

appeal for Novo Nordisk successfully defending dismissal at summary judgment of all claims in multi-district litigation on Daubert and preemption grounds.

- **In re: Taxotere (Docetaxel) Product Liability Litigation (5th Cir. & EDLA 2019-present):** Lead appellate counsel for Sanofi handling all appeals and critical motions arising out of the multi-district litigation, including successful defense of dismissals and summary judgment on grounds of warnings causation, statute of limitations, and violations of show-cause procedure.
- **Jones v. Medtronic (9th Cir. 2021):** The Ninth Circuit affirmed dismissal of plaintiff's claims on personal jurisdiction grounds and based on the plaintiff's failure to plead facts sufficient to establish failure to warn, design and manufacturing defects, and adulteration and misbranding claims.
- **Furman v. Goodyear Tire (NM S. Ct. 2021):** Ilana argued against personal jurisdiction on behalf of Goodyear Tire in a February 2021 argument which were held before the U.S. Supreme Court's Ford decision.
- **Lawrence v. Medtronic (9th Cir. 2020):** Represented Medtronic in Ninth Circuit Court of Appeals affirming dismissal of a products liability suit against Medtronic Inc. on preemption grounds.
- **Microsoft v. United States, No. 17-2 (S. Ct. 2018):** Author of brief on behalf of amici curiae DIGITALEUROPE, Syntec Numérique, and other European national trade organizations asking the Court to consider the potential conflict between the Stored Communications Act and the GDPR
- * **Howell v. Howell, 137 S. Ct. 1400 (2017):** Briefed and argued case in US Supreme Court involving federal preemption of state-court division of military disability benefits
- * **Manuel v. City of Joliet, 137 S. Ct. 911 (2017):** Briefed and argued case finding that pre-trial detention without probable cause violates the Fourth Amendment and may give rise to a federal civil rights claim
- * **Menominee Tribe v. United States, 136 S. Ct. 750 (2016):** Briefed and argued case which clarified proper application of equitable tolling principles in a contracting dispute with the federal government on firearms by domestic abusers
- * **Ohio v. Clark, 135 S. Ct. 2173 (2015):** Briefed and argued case finding Sixth Amendment's Confrontation Clause to be inapplicable to out-of-court statements given by an abused child to his teacher

(*) – cases before joined DLA piper while in government service

MULTI-DISTRICT LITIGATION AND TRIAL COURT LITIGATION

- **In re: Generics Pharmaceutical Pricing Antitrust Litigation (ED Pa. 2019-present):** Lead counsel defending major pharmaceutical manufacturer against antitrust claims brought by state Attorneys General and private class actions in the multi-district litigation,
- **In re: Zantac (Ranitidine) Products Liability Litigation (SD Fla. and 11th Cir. 2020-present):** handling class action defense and government enforcement actions for major pharmaceutical company in the multi-district litigation and related state court proceedings.
- **Merck v. Pfizer (ED. Pa. 2020-21):** Defended Pfizer against trade-secret misappropriation lawsuit

AFFIRMATIVE GOVERNMENT LITIGATION

- **Pfizer v. Dept of Health and Human Services:** Counsel for Pfizer in administrative law and constitutional challenge to agency interpretation of the Anti-Kickback Statute as prohibiting copay assistance for patients to afford a breakthrough treatment for a rare and fatal disease.
- **Safehouse v. U.S. Department of Justice:** Lead counsel for Safehouse in declaratory judgment and constitutional litigation challenging application of federal drug laws to prevent provision of overdose prevention services.

CREDENTIALS

Admissions

- Pennsylvania

Recognitions

- *Chambers USA*
 - Band 1, Pennsylvania Litigation: Appellate (2021-2022)
 - Band 4, Pennsylvania Litigation: White-Collar Crime & Government Investigations (2022)
- *The Legal 500 United States*
 - Recommended, Corporate Investigations and White-Collar Criminal Defense (2018)
- DLA Piper Product Liability Lawyer of the Year (2021)
- DLA Piper North America Pro Bono Award (2021)

Education

- J.D., University of Pennsylvania Law School
summa cum laude, Valedictorian
- B.A., Harvard University
magna cum laude

Clerk Experience

- Eisenstein clerked for Judge Edward R. Becker of the US Court of Appeals for the Third Circuit, after which she was awarded a one-year Bristow Fellowship with the Office of the US Solicitor General.

Courts

- Supreme Court of the United States
- Supreme Court of Pennsylvania
- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Eighth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Tenth Circuit
- United States Court of Appeals for the Eleventh Circuit
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Federal Circuit
- United States District Court for the Eastern District of Pennsylvania

Other Professional Activities

- Board Member, Third Circuit Bar Association, 2021-present
- Co-Director, Appellate Advocacy Clinic, University of Pennsylvania School of Law, 2019-present
- Leo Model Foundation Public Policy Fellow, University of Pennsylvania School of Law, 2018-2019
- Board Member, Homeless Advocacy Project, Philadelphia, PA 2017-present

- Board Member, William Penn Charter School, Philadelphia, PA, 2001-present

INSIGHTS

Publications

UPDATE: Supreme Court to review government's ability to dismiss *qui tam* complaints

29 June 2022

There currently exists a three-way split on this issue.

***Dobbs v. Jackson Women's Health* : Implications for business of a post-Roe landscape**

23 June 2022

Dobbs raises a number of important questions for companies and entities.

US Supreme Court to decide whether 28 U.S.C. § 1782 includes international arbitration

24 March 2021

The intervention is likely to provide much-needed clarity.

DLA Piper: Protecting the Election

20 January 2021

Philadelphia partner Ilana Eisenstein reflects on her work protecting the 2020 vote in Pennsylvania.

- "Should Third-Party Funders Be Able to Cash in on Whistleblower Cases?" *Bloomberg Law* (November 4, 2020)
- Co-Author, "Suspending antitrust limitations periods during the COVID-19 pandemic: Constitutional and practical implications," *WestLaw*, May 19, 2020

Events

Previous

***AMG Capital Management v. FTC*: A Supreme Court oral argument preview**

6 January 2021

Webinar

- Panelist, Creating a Roadmap for Post-Albrecht Preemption Using Takeaways from This Year's Most Significant Rulings, ACI Drug & Device Conference, December 7, 2021

- Speaker, "RICO Conspiracy," PA Criminal Defense Lawyer's White-Collar Seminar, November, 2018
- Panelist, "Effective Third Circuit Advocacy," CLE, Third Circuit Bar Association, January, 2018
- Panelist, "The Fourth Amendment in the Digital Age," District of Delaware Bench-Bar Conference, May, 2015
- Panelist, "Lavender Law Conference," Supreme Court Review (2017-2018)

NEWS

DLA Piper client's dismissal of Securities Act claims affirmed by Eleventh Circuit

2 August 2022

An Eleventh Circuit panel has affirmed the dismissal of claims under Sections 11 and 12 of the Securities Act of 1933 asserted against DLA Piper client Axogen, Inc., its directors and officers, and several underwriters.

DLA Piper recognized as one of the Most Innovative Law Firms in North America by the *Financial Times*

10 December 2021

DLA Piper was named one of the Most Innovative Law Firms in North America for both the practice and business of law by the *Financial Times*.

DLA Piper team wins preliminary injunction blocking Florida's social media "deplatforming" law

1 July 2021

DLA Piper obtained a preliminary injunction yesterday blocking enforcement of Florida's social media "deplatforming" law.

DLA Piper announces its 2019-2020 Pro Bono Award winners

30 November 2020

DLA Piper's lawyers and staff across the country and around the world are committed to promoting access to justice by providing their time, talent and energy to those who cannot afford to hire a lawyer.

MEDIA MENTIONS

- "Biden Disappoints Puerto Rico in Supreme Court Benefits Case," *Bloomberg Law*, November 9, 2021
- "5th Circ. Won't Revive Sanofi Chemo Hair Loss Suit," *Law360*, June 10, 2021
- "Tech Orgs Say New Fla. Social Media Law Limits Free Speech," *Law360*, May 27, 2021
- "5th Circ. Finds Chemo Drug Hair Loss Claims Filed Too Late," *Law360*, April 22, 2021
- "Profs, Orgs Tell Justices To Review Sham Litigation Exception," *Law360*, April 20, 2021
- "5th Circ. Affirms Win For Sanofi In Chemo Hair Loss Suit," *Law360*, April 20, 2021
- "Why Biden Must Tread Carefully With U-Turns In Court," *Law360*, April 20, 2021
- "Orgs Say History, Context Favor Asylum-Seekers' Credibility," *Law360*, January 12, 2021
- "3rd Circ. Roundly Rejects Trump's Pa. Election Appeal," *Law360*, November 29, 2020
- "Pa. Certification Means Game Over For Trump, 3rd. Circ. Told," *Law360*, November 24, 2020
- "Overdose prevention network advocates for Philly safe injection site," *Pennsylvania Capital-Star*, November 19, 2020

- "One Simple Way Biden Could Prove He Regrets His Role in the Drug War," *Slate Magazine*, November 18, 2020
- "US appeals court weighs law on supervised injection sites," *The Sentinel*, November 16, 2020
- "US prosecutors take second swing at Philly supervised injection site in federal appeals court," *WHYY*, November 16, 2020
- "Grenfell Tower Fire Case Moves From Pa. To UK," *Law 360*, September 16, 2020
- "November Advocate of the Month: Ilana Eisenstein," *Legal Prescription*, November 25, 2019
- "Judge: Philly supervised injection site proposal does not violate federal law," *The Philadelphia Inquirer*, October 2, 2019
- "'Crackhouse' Or 'Safehouse'? U.S. Officials Try To Block Philly's Supervised Injection Site ," *Kaiser Health News*, September 9, 2019
- "Merck Trade Secret Suit A Ploy To Aid Patent Case, Pfizer Says," *Law360*, September 17, 2019
- "McSwain, DLA Piper's Appellate Head Spar Over Legality of Safe Injection Site," *Law.com*, September 5, 2019
- "Supporters Sue To Open Safe Injection Site In Philadelphia, Citing Religious Freedom," *WHYY*, April 13, 2019
- "Justice Department sues Philadelphia over supervised injection facility that aims to prevent fatal drug overdoses," *Washington Post*, February 7, 2019
- "U.S. sues to block Philadelphia safe drug-injection site," *Reuters*, February 6, 2019
- "What Clarence Thomas Gets Wrong About the Second Amendment," *The Atlantic*, February 22, 2018
- "Why Are There So Few Women SCOTUS Advocates?" *The National Law Journal*, October 25, 2017

PRO BONO

DLA Piper: Protecting the Election from DLA Piper on Vimeo.

- Safehouse litigation (pending): Lead counsel for Safehouse in federal district court litigation to establish the legality of its proposed overdose prevention services to combat opioid overdose deaths in the City of Philadelphia.
- "Sanctuary Cities" litigation (2017): Authored amicus brief on behalf of eight Philadelphia social services agencies in Philadelphia's successful challenge to the Department of Justice policy to withhold federal grant money.
- "Travel Ban" litigation (2017): Co-Authored amicus brief for International Bar Association filed in the Fourth and Ninth Circuits in the pending travel ban litigation.
- Filed amicus briefs in the U.S. Supreme Court in support of petitions for certiorari in two capital cases on behalf of retired Florida judges in *Eric Scott Branch v. Jones*, and on behalf of retired Missouri judges in *Lance Schockley v. Griffith*, arguing in each case that the procedure employed to determine the death penalty was unconstitutional and warranted Supreme Court review.