

Andrew G.I. Kilberg

Partner

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Washington, D.C.

Andrew Kilberg is a partner in Gibson, Dunn & Crutcher's Washington, D.C. office, where he practices in the firm's litigation department. A member of the firm's Labor and Employment, Administrative and Regulatory, and Appellate and Constitutional Law practice groups, Andrew has significant experience challenging onerous federal regulations, advising on regulatory proposals, and defending agency enforcement actions and investigations. He has represented clients in federal district and appellate courts and before the U.S. Supreme Court, as well as before various agencies, authoring dozens of briefs, comment letters, and other submissions. His matters have covered wage and hour, ERISA, occupational safety and health, anti-discrimination, whistleblower, and labor relations issues. In addition to his labor and employment expertise, Andrew in 2019 was named a "Rising Star" in Telecom by *Law360*.

Between 2019 and 2021, Andrew served as Counselor to Secretary Eugene Scalia at the United States Department of Labor. In that role, he advised the Secretary and Deputy Secretary on a wide range of matters and led teams on important regulatory and other projects for the Office of the Secretary, including matters concerning environmental, social, and governance investing, proxy voting, the U.S.-Mexico-Canada Agreement, independent contractor status, apprenticeships, religious accommodation, evidentiary standards and procedures for non-discrimination enforcement actions, and the coronavirus pandemic. He also was responsible for coordination with several other executive branch agencies.

Andrew's representative litigation matters include:

- *Murray v. UBS Securities, LLC*, No. 22-660 (U.S.) and 43 F.4th 254 (2d Cir. 2022): Representing UBS in defending decision by the U.S. Court of Appeals for the Second Circuit vacating judgment against UBS in a Sarbanes-Oxley Act whistleblower action.
- *Chamber of Commerce of the U.S.A. v. Dep't of Labor*, 885 F.3d 360 (5th Cir. 2018): Vacated U.S. Department of Labor's "fiduciary" rule, among the most controversial regulations ever adopted in the financial services industry.
- *Century Aluminum Co. v. OSHA*, No. 17-1546 et al. (8th Cir.): Negotiated rulemakings to amend the Occupational Safety and Health Administration's beryllium standard for general industry, resulting in voluntary dismissal of challenge to the standard.
- *Prometheus Radio Project v. FCC*, No. 17-1107 et al. (3d Cir.): Represented the National Association of Broadcasters in defending the Federal Communications Commission's repeal or modification of an array of restrictive and outdated local media ownership rules.
- *Mozilla Corp. v. FCC*, No. 18-1051 et al. (D.C. Cir.): Represented CTIA—The Wireless Association in defending the Federal Communications Commission's repeal of its "net neutrality" regime.
- *Cedar Band of Paiutes v. U.S. Dep't of Hous. & Urban Dev.*, No. 4:19-cv-30-DN (D. Utah): Obtained preliminary injunction against enforcement of HUD mortgagee



Capabilities

Labor and Employment
Administrative Law and Regulatory Practice
Appellate and Constitutional Law Litigation
Sports Law

Credentials

Education

University of Virginia - 2014 Juris Doctor
University of Cambridge - 2011 Master of Philosophy
Princeton University - 2010 Bachelor of Arts

Admissions

Virginia Bar
District of Columbia Bar

Clerkships

US Supreme Court, Hon. Anthony M. Kennedy, 2015 - 2016
US Court of Appeals, 4th Circuit, Hon. J. Harvie Wilkinson III, 2014 - 2015

letter on behalf of American Indian tribe and its instrumentalities.

- Won arbitration for the NFL Players Association against the NFL Management Committee that resulted in reinstatement of full disability benefits for a retired player.

In addition to his work in court, Andrew regularly authors comment letters submitted to federal agencies, including the Department of Labor, the Federal Trade Commission, and the Federal Communications Commission. He also has written position statements submitted to the National Labor Relations Board and the Equal Employment Opportunity Commission, provided extensive advice on federal and state vaccine-related rules and litigation, labor relations, anti-discrimination and anti-retaliation matters, and ERISA issues, and represented clients in agency investigations and audits.

Andrew also maintains an active pro bono appellate practice. Representative pro bono matters include:

- *McDaniel v. Syed*, No. 20-2946 (7th Cir.): Argued appeal of prisoner rights' case.
- *Synod of Bishops of the Russian Orthodox Church Outside of Russia v. Belya*, No. 22-824 (U.S.) and *Belya v. Kapral*, No. 21-1498 (2d Cir.): Wrote *amici curiae* briefs on behalf of religious liberty scholars in support of interlocutory review of important religious autonomy issues.
- Counsel of record in appeal in the U.S. Court of Appeals for the Fifth Circuit from Board of Immigration Appeals' denial of asylum to a family of Central American immigrants.
- *Biel v. St. James School*, No. 17-55180 (9th Cir.): Counsel of record for *amici curiae* Church of God in Christ, Inc. and Union of Orthodox Jewish Congregations of America in support of a Catholic school in significant ministerial exception case.
- *Lee v. Sixth Mount Zion Baptist Church of Philadelphia*, 903 F.3d 113 (3d Cir. 2018): Counsel of record for *amici curiae* Church of God in Christ, Inc., mPact Churches, Plymouth Brethren, and Bishop William H. Stokes in support of a historic African American congregation's successful use of ministerial exception to defend against claims brought by former pastor.
- *First Presbyterian Church U.S.A. of Tulsa, Okla. v. Doe*, No. 18-500 (U.S.): Wrote *amici curiae* brief on behalf of the Becket Fund for Religious Liberty and Stewards Ministries in support of a petition for certiorari posing important religious autonomy questions.

Before joining Gibson Dunn, Andrew clerked for U.S. Supreme Court Justice Anthony M. Kennedy and Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit.

He received his law degree from the University of Virginia School of Law, where he was a member of the Order of the Coif and served as Articles Development Editor of the *Virginia Law Review*. He received an M. Phil. in Historical Studies from the University of Cambridge and was graduated *magna cum laude* with an A.B. in History from Princeton University.

Andrew is a member of the District of Columbia and Virginia bars, and he is admitted to practice before the U.S. Supreme Court, U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, and D.C. Circuits, the U.S. District Court for the District of Columbia, the Supreme Court of Virginia, and the District of Columbia Court of Appeals.

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