

David M. Gossett

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Employment

Mayer Brown LLP Washington, DC
Supreme Court & Appellate Practice Group 2000–present (Partner since 2005)

Riga Graduate School of Law Riga, Latvia
Visiting Associate Professor Summers 1999 & 2000

- Taught introductory course on common-law legal reasoning and comparative law

U.S. Department of Justice, Civil Division Washington, DC
Honors Program Attorney, Civil Frauds Group 1998–2000

Hon. Diane P. Wood, U.S. Court of Appeals for the Seventh Circuit Chicago, Illinois
Judicial Clerk 1997–1998

Education

University of Chicago Law School Chicago, Illinois
J.D. with High Honors, Order of the Coif 1994–1997

- *U. Chi. L. Rev.*, Associate Editor, 1996–1997; Staff Member, 1995–1996

University of Colorado Boulder, Colorado
Graduate Studies in Social Psychology 1993–1994

- National Science Foundation Graduate Research Fellow

University of Pennsylvania Philadelphia, Pennsylvania
M.A., Psychology 1992–1993

- National Science Foundation Graduate Research Fellow

Reed College Portland, Oregon
B.A., Psychology 1987–1991

Honors and Awards

- Selected by peers for inclusion in the 2009, 2010, and 2011 editions of *The Best Lawyers in America*® in the specialty of Appellate Law.
- Named by *Washingtonian* magazine as one of the top 40 lawyers under 40 in Washington, DC (July 2006)
- Named by *Lawdragon* magazine as one of its “Lawdragon 500 New Stars, New Worlds” (July 2006)

Oral Arguments

U.S. Supreme Court

- *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (argued March 22, 2006) (question presented was whether punitive provision of IIRIRA applies retroactively to an undocumented Mexican immigrant; Court ruled 8–1 that it does) (audio and transcript of argument at <http://www.appellate.net/about/cases.asp>).

- *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004) (argued April 19, 2004) (9–0 victory, on behalf of two pension-plan beneficiaries, against their Plan (and the United States as *amicus*) in case involving the interpretation of an ERISA provision) (audio and transcript of argument at <http://www.appellate.net/about/cases.asp>).

Federal Courts of Appeals

- *Archstone Mutlifamily Series I Trust v. Niles Bolton Assocs., Inc.*, 602 F.3d 597 (4th Cir.), *pet. for cert. pending*, No. 10-103 (2010) (argued Jan. 27, 2010) (question presented was whether the Fair Housing Act and the Americans with Disabilities Act impliedly preempt state-law cross claims by owner/developer (our client) against architect that designed properties in violation of the Acts; the court held that they do).
- *In re Kalikow*, 602 F.3d 82 (2d Cir. 2010) (argued Oct. 29, 2009) (successfully argued case addressing the scope of bankruptcy court's discharge authority and power to impose sanctions).
- *In re Suprema, Inc.*, 2009 WL 382285 (2d Cir. Feb. 17, 2009) (argued Feb. 2, 2009) (successfully argued case involving interaction between bankruptcy code and New York surety law).
- *Frulla v. CRA Holdings, Inc.*, 543 F.3d 1247 (11th Cir. 2008) (argued April 18, 2007) (whether a settlement agreement requiring an ERISA employee-welfare plan to provide lifetime medical benefits for a class of retirees precluded the plan's adding a contribution requirement).
- *United States ex rel. Sharma v. U. So. Cal.*, 217 F.3d 1141 (9th Cir. 2000) (argued Feb. 15, 2000) (successfully argued False Claims Act case on behalf of the United States).

State Appellate Courts

- *Mitaro v. Medtronic, Inc.*, 73 A.D.3d 1142 (N.Y. App. Div. 2010) (argued Apr. 29, 2010) (successfully argued case addressing preemption of state law products-liability claims by 21 U.S.C. § 360k(a), the express preemption provision of the federal Food, Drug, and Cosmetic Act).
- *Ervin v. Nokia, Inc.*, No. 5-08-0223 (Ill. App. 5th Dist. Apr. 6, 2009) (argued Dec. 2, 2008) (ability of a plaintiff to seek reconsideration of an adverse ruling on a defendant's motion to compel arbitration five years after that motion was granted).
- *Muhammad v. County Bank of Rehoboth Beach, Del.*, 912 A.2d 88 (N.J. 2006) (argued Feb. 14, 2006) (enforceability of class-action prohibitions in arbitration provisions, as *amicus curiae* on behalf of the U.S. Chamber of Commerce) (video of argument at http://njlegallib.rutgers.edu/supct/args/A_39_05.php; appearance begins at 1:13:17).
- *Delta Funding v. Harris*, 912 A.2d 104 (N.J. 2006) (argued Feb. 14, 2006) (enforceability of waivers of arguably problematic provisions in arbitration agreements under the Federal Arbitration Act, as *amicus curiae* on behalf of the U.S. Chamber of Commerce) (video of argument at http://lawlib.newark.rutgers.edu/recordings/A_44_05.wmv; appearance begins at 1:32:17).
- *Ryan v. American Honda Motor Co., Inc.*, 896 A.2d 454 (N.J. 2006) (argued Jan. 18, 2006) (whether Magnuson-Moss Federal Warranty Act provides federal cause of action by which lessee of consumer good may enforce warranty under federal law) (video of argument at http://lawlib.newark.rutgers.edu/recordings/A_16_05.wmv).

Substantive Arguments in Federal and State Trial Courts

- *Karlic v. Medtronic, Inc.*, No. 06 L 1888 (Cir. Ct. Cook Cty, Ill.) (argued Sept. 10, 2009) (argued summary judgment motion in products liability lawsuit).
- *Price v. Cingular Wireless LLC*, No. MID-L-1235-05 (Sup. Ct. N.J.) (argued Jan. 4, 2007) (argued motion to compel arbitration).

- *Freilich v. Cingular Wireless LLC*, No. L-01633-05 (Sup. Ct. N.J.) (argued Oct. 21, 2005) (successfully argued motion to compel arbitration).
- *Price v. Cingular Wireless LLC*, No. MID-L-1235-05 (Sup. Ct. N.J.) (argued June 24, 2005) (argued motion to compel arbitration; judge deferred ruling pending additional discovery).
- *Franczyk v. Cingular Wireless LLC*, No. 03-CH-14203 (Cir. Ct. Cook Cty, Ill.) (argued June 13, 2005) (successfully argued motion to compel arbitration).
- *Stripling v. Head*, No 95-V-320 (Sup. Ct. Ga.) (argued April 4, 2002) (successfully argued constitutional challenge to Georgia law governing burden of proving mental retardation in criminal proceedings).
- *Pacific Precision Metals v. ADP*, No. 99-CV-5311 (C.D. Cal.) (argued Aug. 9, 1999) (successfully argued on behalf of the United States that federal statute did not allow for third-party subpoena that judge had previously authorized).
- *Pacific Precision Metals v. ADP*, No. 99-CV-5311 (C.D. Cal.) (argued July 12, 1999) (successfully argued to federal trial court that the court had previously erred in authorizing subpoena (prior to involvement of United States in case); convinced judge to allow new briefing on the question).

Briefs

U.S. Supreme Court

Federal Appellate Courts: 1st, 2d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, DC

State Appellate and Supreme Courts: Arizona Supreme Court; California Supreme Court; California Court of Appeal; Georgia Supreme Court; Illinois Supreme Court; Illinois Court of Appeals; Louisiana Supreme Court; Missouri Court of Appeals; New Jersey Supreme Court; New York Supreme Court, Appellate Division; Texas Supreme Court; Washington Supreme Court; Washington Court of Appeals

Publications

- David M. Gossett, Henninger S. Bullock, & Daniel L. Ring, '*Failure to Warn*' Claims Against Generic Manufacturers Not Preempted By Federal Law, 29(9) L.J.N.'s PRODUCT LIAB. L. & STRATEGY, at 3 (April 2010)
- David M. Gossett, Erika Z. Jones, & Adam Sloane, *Review of Administrative Agency Actions*, in MAYER BROWN ON FEDERAL APPELLATE PRACTICE (BNA 2008).
- Kenneth S. Geller & David M. Gossett, *Appeals to the Supreme Court*, Chapter 52 in BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (Robert L. Haig, ed., 2d ed. 2005; 2008 pocket part).
- Kenneth S. Geller & David M. Gossett, *Riegel v. Medtronic: A Victory for Patients and Device Manufacturers in the U.S.*, REGULATORY AFFAIRS JOURNAL: DEVICES 74 (March/April 2008).
- David M. Gossett, *In Memoriam: David P. Currie*, 75 U. CHI. L. REV. 9 (2008).
- David M. Gossett, Archis Parasharami, & Krista Lindhard, *Arbitrator, I Want My Money Back! Why the Minority View that Product Warranty Claims May Not Be Arbitrated is Wrong*, DISPUTE RESOLUTION J. 27 (Aug./Oct. 2007).
- David M. Gossett, *Friendship: Amicus Briefs in the Supreme Court*, 8 GREEN BAG 2d 363 (2005).
- David M. Gossett, *Recent Developments in Medical Device Preemption Law*, 16(2) ABA PRODUCTS LIABILITY 1 (Spring 2005).
- *Dialogue with John Sexton: Legal Education Today and Tomorrow*, 3 GREEN BAG 2d 417 (2000).
- *Dialogue with Archibald Cox: The Case for Campaign Finance Reform*, 1 GREEN BAG 2d 289 (1998).

- David M. Gossett, Comment, *Chevron, Take Two: Deference to Revised Agency Interpretations of Statutes*, 64 U. CHI. L. REV. 681 (1997).
- Co-Founder and Executive Editor, THE GREEN BAG 2d (1997–present).

Presentations, Seminars and Teleconferences

- Panel presentation, *What You Need to Know About Preemption in the Life Sciences Industries*, ACI Product Liability Boot Camp for Life Sciences (July 22, 2010).
- Panel presentation, *Federal preemption and its effect on law and policy*, Republican Attorneys General Association 2010 Summer National Meeting (June 7, 2010).
- Panel presentation for clients, *Review of Administrative Agency Decisions*, Mayer Brown Federal Appellate Practice Teleconference Series (March 10, 2009).
- Debate participant, *Gun Policy and Litigation: The Aftermath of D.C. v. Heller*, Joint ACS/Federalist Society Debate at Rutgers University School of Law – Camden (Feb. 11, 2009).
- Moderator, Panel on *Looking Ahead to 2nd Amendment Litigation After Heller*, Joint Federalist Society/ACS Symposium on *Heller* at George Mason University School of Law (Nov. 19, 2008).
- Panel presentation for clients, *Supreme Court Round-up: Recent and Upcoming Business Decisions*, Mayer Brown’s Chicago office (July 22, 2008).
- Panel presentation, *The Preemption Defense for Medical Devices After Riegel v. Medtronic*, at the American Conference Institute’s Drug & Device Preemption Conference (July 14, 2008).
- Panel presentation for clients, *The False Claims Act: Recent Developments including Allison Engine Co. v. United States ex rel. Sanders*, Mayer Brown webinar (June 25, 2008).
- Panel presentation, *The Smoking Gun: Interpreting the Second Amendment*, at the American Constitution Society’s 2008 National Convention (June 14, 2008).
- Panel presentation, *Supreme Court Round-up: Recent and Upcoming Business Decisions*, at American Lawyer Media’s General Counsel Forum (June 9, 2008).
- Panel presentation for clients, *Hot Topics in ERISA Litigation—Lessons for Plan Administration*, Mayer Brown webinar (June 3, 2008).
- Presentation, *District of Columbia v. Heller and the Recent History of Second Amendment litigation*, at the University of Chicago Law School, American Constitution Society Chapter (Feb. 26, 2008).
- Panel Presentation, *The Supreme Court’s new rules and the commenting process that preceded their adoption*, at the Edward Coke Appellate Inn of Court (Nov. 27, 2007).
- Radio interview, *Hall Street v. Mattel, Inc. and the enforceability of arbitration agreements providing for expanded judicial review*, MyTechnologyLawyer.com (Sept. 20, 2007) (available online at <http://tinyurl.com/2em7hw>).
- Presentation, *Riegel v. Medtronic, Inc., and the future of medical device preemption law*, Corporate Executive Board’s General Counsel Roundtable (July 20, 2007).
- Panel presentation, *States’ increasing efforts to tax nonresident corporations*, at the Organization for International Investment’s 2007 Tax Conference (April 28, 2007).
- Strafford Legal Briefing, *Sereboff v. Mid Atlantic Medical Services; Supreme Court Ruling’s Impact for ERISA Plans—Strategies for Obtaining Subrogation* (July 20, 2006).

- Panel presentation, *Catching the Law Up to the Science: Motions Practice*, at the *Litigating Eyewitness Identification* Conference sponsored by the Public Defender Service for the District of Columbia (June 17, 2006).
- Strafford Legal Briefing, *Class Action Waivers—A Roadmap: Navigating Risk in an Uncertain Legal Environment* (Oct. 20, 2005).
- Panel presentation, *Cherokee Nation of Oklahoma v. Leavitt, government contracts law and Indian claims*, at the United States Court of Federal Claims 17th Judicial Conference (Nov. 10, 2004).
- Panel presentation, *Recent Developments In Medical Device Preemption Law: Current Issues in Medical Device Litigation*, at a meeting sponsored by the Pharmaceuticals, Biologicals and Medical Device Subcommittee of the Products Liability Committee, Section of Litigation, American Bar Association (Sept. 23, 2004).
- Panel presentation, *Recent Developments In Medical Device Preemption Law*, at the ABA National Convention; panel sponsored by the Mass Torts Litigation and Products Liability Committees (Aug. 6, 2004).
- Panel presentation, *The Supreme Court's 2004 Term*, at the Edward Coke Appellate Inn of Court (June 22, 2004).
- Debate participant, *The constitutionality and utility of Miranda warnings*, Federalist Society Debate against Prof. Paul Cassell at Northwestern University School of Law (March 9, 1998).

PROFESSIONAL ASSOCIATIONS

- American Law Institute (ALI) (Elected Member, 2009–present)
- District of Columbia Bar, Administrative Law and Agency Practice Section (Treasurer, 2009–present; Steering Committee member, 2008–present)
- Edward Coke Appellate Inn of Court (Co-Chair of the Membership Committee, 2010–present; Membership Committee, 2007–present; Secretary, 2004–2007; Member, 2004–present)
- Americans United for Separation of Church and State (Board of Trustees, 2010–present; Legal Committee, 2010–present; National Advisory Council, 2006–present)
- The Constitution Project (Amicus Brief Advisory Committee, 2005–present)
- Anti-Defamation League (DC Region Civil Rights Steering Committee, 2010–present; Glass Leadership Institute, 2009–2010)
- American Bar Foundation (Fellow, 2007–present)
- American Constitution Society (Advocates Circle Member, 2006–present; Member, 2001–present)
- American Bar Association (Member, 1998–present)

CIVIC INVOLVEMENT

- Reed College (Board of Trustees, 2009–present; Alumni Board, 2003–2006)
- The Shakespeare Theatre (Mock Trial Committee and its predecessor, the Executive Council of The Lawyers Committee, 2004–present)
- University of Chicago Law School (Alumni Admissions Committee, 2005–present)

Bar Admissions

- *State Bars*: Illinois (1997); District of Columbia (2000)
- *Courts*: U.S. Supreme Court; U.S. Courts of Appeals for the 1st, 2d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th & DC Circuits; U.S. District Courts for the District of Columbia and Maryland Districts