

They've Got Next: Appellate Fresh Face Emily Kennedy

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From L to R: Brad Garcia of O'Melveny & Myers; Sarah Harris of Williams & Connolly; David Zions of Covington & Burling; Emily Kennedy of Skadden, Arps, Slate, Meagher & Flom; and Samir Deger-Sen of Latham & Watkins.

Jonathan Hurtarte / Bloomberg Law



**Kimberly
Strawbridge
Robinson**
Reporter



Name: Emily Kennedy

Firm: Skadden, Arps, Slate, Meagher & Flom LLP

Claim to Fame: Lead brief writer in *National Labor Relations Board v. Southwest General*, a 2017 U.S. Supreme Court case involving the Federal Vacancies Reform Act. In November, teamed up with her mentor Shay Dvoretzky to launch the firm's Supreme Court & Appellate Practice in its Washington office. The justices will hear the practice's first high court case March 24, just months after establishing the group.

Location: Washington, D.C.

Age: 38

When Shay Dvoretzky asked Emily Kennedy to help him open a Supreme Court and appellate practice at Skadden, Arps, Slate, Meagher & Flom LLP in the fall of 2020, "it was a no-brainer," Kennedy said.

She'd recently returned to legal practice after taking some extended time off following the birth of her son.

"I just couldn't say no to" the chance to build a practice from scratch and shape it alongside a mentor and friend, [Kennedy](#) said.

[Dvoretzky](#) calls Kennedy one of the best lawyers he's ever worked with, noting that she's a strong strategist and writer, and that she's very efficient.

"She's exactly the kind of person you want to start a practice with," Dvoretzky said of his former colleague at Jones Day. It was there where he built his reputation as an

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elite Supreme Court advocate and where Kennedy impressed as an associate in the appellate practice.

Things at Skadden got off the ground in November, and the new practice is readying for its first U.S. Supreme Court arguments on March 24 in *Caniglia v. Strom*. It's a Fourth Amendment case involving the so-called community care taking exception. This is the doctrine that allows police to search without a warrant when acting under their community care taking duties, rather than their criminal investigatory ones.

Right Hand Woman

The case is the fourth time the former Samuel Alito clerk has assisted Dvoretzky in a high court case.

Although she's practiced in other state and federal appellate courts, Kennedy said she loves the granular nature of Supreme Court work.

"You start off at the trial level and there's a whole universe" of arguments, Kennedy said. By the time you get to the Supreme Court, the whole case is focused on "what was often a microscopic thing at the beginning."

Kennedy pointed to *National Labor Relations Board v. Southwest General*, a 2017 high court case involving the Federal Vacancies Reform Act. She played a key role, taking the lead drafting the brief.

Southwest General's argument in the Supreme Court—that the head of the NLRB had been improperly acting as head of the board while a nominee—"was about a paragraph long when it was first made in the D.C. Circuit. And you turn that into a 60-page Supreme Court brief," Kennedy said.

That case was particularly rewarding, Kennedy said, because the obscure act, passed in 1998, was interpreted the opposite way by the only three administrations that had been subject to its requirements.

But in a 6-2 decision, the Supreme Court agreed with Kennedy and Dvoretzky anyway.

Kennedy said she also enjoys the breadth of issues she gets to wade into in appellate practice.

Cases she's handled vary from bankruptcy, to administrative law, to the Fourth Amendment question in *Caniglia*.

That range allows you to dive "in at a new deep level in an area where you haven't been before," Kennedy said.

In 2016, when Kennedy was still at Jones Day, she argued a products liability case, *Pace v. Air & Liquid Systems Corporation*, in front of the Fourth Circuit. As the lead oral advocate for five corporate defendants, Kennedy secured a unanimous ruling for her clients in the case about asbestos exposure.

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Among her most recent successes: convincing the Supreme Court to ask the federal government to weigh in on whether the court should take up Skadden's case against the Omaha School District. That case deals with the education for disabled students and attorneys fees.

Kennedy helped to try to convince the Justice Department to tell the justices the case is worth their time—advice the Supreme Court almost always follows. The DOJ is likely to file its brief sometime before the end of the term, which typically ends in late-June.

Her favorite aspect of practice is writing.

A lot of people think that compelling writing comes from forceful rhetoric, Kennedy said. But something she's learned from Dvoretzky is that "really the most persuasive legal writing uses principles and authority to lead the reader to the conclusion that you want."

Stepping Out

While rejoining her former colleague was an easy call, the decision around her leave was more complex.

"Stepping out was an excruciating decision," Kennedy said, in part because "I didn't know what things would look like on the other side."

She knew she needed to take some time off as a stay-at-home parent, but the timing of a return was uncertain.

"I didn't see a ton of people who had taken that path," Kennedy said.

Some attorneys left practice but never came back. Others just stayed and tried to make the best of it.

Dvoretzky, a former Antonin Scalia clerk, said Kennedy "has been able to juggle a lot of aspects of her life in ways that I think a lot of lawyers struggle with."

Her return, in the end, appears well-timed. While the pandemic has disrupted the legal sector, it has also led to changes that supported her transition back to work.

"Everyone is a little more flexible," Kennedy said.

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