Latham & Watkins makes the Appellate Hot List in all 7 years.

A SPECIAL REPORT

APPELLATE HOT LIST

2014

DIEGO M. RADZINSCHI

GREGORY GARRE

Latham & Watkins

Led by former Solicitor General Gregory Garre, the U.S. Supreme Court and appellate practice group at Latham & Watkins takes on some of the toughest and complicated high-stakes cases—and wins.

"We leave no stone unturned when researching the facts and relevant legal principles," said Garre, who leads the 73-member team.

In *Fisher v. University of Texas at Austin*, Garre led a team of Latham attorneys who defended the portion of the school's admissions policy, which used race as a selection criterion.

Initially filed in the Western District of Texas in 2008, Latham got involved in 2012 after the U.S. Supreme Court granted certiorari.

Garre argued the case, which could have dismantled previous case law and put an end to race-conscious admissions across the country. After a 7-1 ruling by the high court in June 2013, the case was sent back to the U.S. Court of Appeals for the Fifth Circuit.

"The court's 7-1 opinion did not disagree with U.T.'s policy—it simply disagreed with the Fifth Circuit's standard of review," said Gibson Dunn partner James Ho, who represented the university when he was Texas solicitor general and remains a consultant.

Garre led the team that rebriefed the case before the Fifth Circuit on remand, arguing it last November. In July 2014, a three-judge panel upheld the constitutionality of the school's plan in its entirety. Wiley Rein partner Bert Rein, representing petitioner Abigail Fisher, has requested an en banc hearing by the Fifth Circuit. "The case is not over," Rein said.

In a separate headline-making case, partner Richard Bress joined New York office managing partner James Brandt and others representing the American Beverage Association and spearheading a plaintiffs' coalition that challenged former New York Mayor Michael Bloomberg's plan to ban sales of sugary drinks in containers of more than 16 ounces.

After losses in two New York lower courts in 2013, the city took its case to the New York State Court of Appeals. In late June, the state high court ruled, 4-2, against the plan, holding the city's board of health overreached and lacked authority to enforce such a policy under the separation of powers. Latham handled the case at all three levels. "The case dealt with fundamental questions as to how far government can invade our individual space and make personal decisions for us," Bress said.

New York City corporation counsel Zachary Carter said in a press release that the initiative was "a valid exercise of the Board of Health's authority."

—SHERRY KARABIN

THE NATIONAL LAW JOURNAL APPELLATE HOT LIST 2013

"The appellate group at Latham & Watkins undertook high-stakes, high-profile appeals across a broad swath of law in state and federal courts."

THE APPELLATE HOT LIST — A SPECIAL REPORT
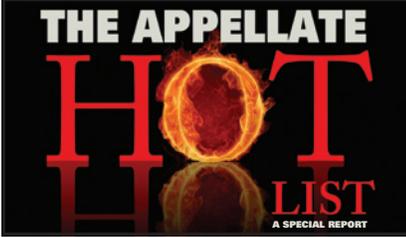
"Latham stepped in as appellate counsel in *U.S. v. Home Concrete & Supply LLC* and obtained a rare win against the Internal Revenue Service. The Supreme Court ruled on April 25 that the agency could not rely on an extended statute of limitations in pursuing actions against certain tax shelters."

THE NATIONAL LAW JOURNAL APPELLATE HOT LIST 2011

"After sitting out Supreme Court appearances for one year, as required by law, the former solicitor general was back before the justices in spring 2010. He argued two cases, just eight days apart and as different as night and day. He won both."

"The Latham team plied its appellate expertise in the lower courts as well in 2010."

THE NATIONAL LAW JOURNAL APPELLATE HOT LIST 2010

"Although fewer than 1% of petitions for review are granted overall by the Supreme Court, Latham has secured a dozen grants of certiorari during the past five years."

THE NATIONAL LAW JOURNAL 2009 THE APPELLATE HOT LIST

"In a landmark patent-exhaustion case, Latham argued that a patent owner can place conditions on a licensee's right to make or sell, but cannot authorize the licensee to sell an article without exhausting the patent monopoly in that article. The Supreme Court agreed..."

THE NATIONAL LAW JOURNAL 2008 THE APPELLATE HOT LIST

"The 40 attorneys in Latham & Watkins' Washington-based appellate practice comprise a small but effective corner of a firm that can marshal 2,100 attorneys."