



Update from AAJ Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

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Biden breaks barriers with judicial nominations, 75% of whom were women

WASHINGTON UPDATE

In his first year, President Biden broke barriers with his choice of judicial nominations and shattered records with the speed at which they were confirmed. Biden and the Democratic-led Senate confirmed a diverse slate of 40 district and appellate judges in 2021, more than any president in their first year since Ronald Reagan.

Biden announced his first set of judicial nominations on March 30, 2021, and followed up with new slates of nominees on a regular basis, ending the year with a total of 71 nominees. The nominees were incredibly diverse, consisting of nearly 75% women, nearly 65% people of color, and just under 50% women of color.

The nominees were also professionally diverse, fulfilling the promise made by White House Counsel Dana Remus before Biden took office. Biden has nominated 21 public defenders, 14 civil rights lawyers, 10 plaintiff-side lawyers, three former legal aid lawyers, three consumer protection lawyers, and one labor lawyer. Of the 40 nominees confirmed within Biden's first year, 22% were current or former plaintiffs' lawyers.

This significant accomplishment is because of our collective efforts to highlight the importance of professional diversity on the federal bench and support candidates who share our values of access to justice. AAJ looks forward to continuing the progress made with this historic year of judicial nominees.

Advocacy in the courts

Here are some recent highlights where AAJ has participated or will participate:

United States Supreme Court
Morgan v. Sundance (U.S. 21-328) (filed Jan. 6, 2022)

On the issue of whether the arbitration-specific requirement that the proponent of a contractual waiver defense proves prejudice violates the Supreme Court's instruction in *AT&T Mobility LLC v. Concepcion* that lower courts must "place arbitration agreements on an equal footing with other contracts."

Viking River Cruises Inc v. Moriana (U.S. 20-1573) (cert. granted Dec. 15, 2021)

On the issue of whether the Federal Arbitration Act requires courts to enforce a prospective waiver of statutory right to bring suit on behalf of the state under the California Private Attorneys General Act (PAGA). The petitioner is asking the Court to overturn the California Supreme Court's *Iskanian* rule, which bars the enforcement of arbitration contracts that prohibit employees from bringing PAGA claims.

Federal Circuit Court of Appeal

The D.C. Circuit Court of Appeals in *Atchley v. AstraZeneca UK Ltd.*, No. 20-7077, 2022 WL 30153 (D.C. Cir. Jan. 4, 2022) handed down a major victory for American service personnel and other American victims of foreign acts of terrorism seeking justice under the Anti-Terrorism Act, 18 U.S.C. § 2331, et seq., as amended by the Justice Against Sponsors of Terrorism Act (JASTA), 18 U.S.C. § 2333. The court upheld the liability of major foreign pharmaceutical and medical equipment companies who conducted business with elements of the Iraqi government, knowing that they were providing money and resources that would be used by terrorist organizations to conduct terrorist attacks.

AAJ filed an amicus brief in support of plaintiffs on appeal. AAJ focused primarily on the issue of specific personal jurisdiction, arguing that defendants' contacts with the United States were sufficient to support jurisdiction and that the district court wrongly ignored the rights of plaintiffs to a United States forum for their cause of action.

State Supreme Courts

General Motors v. Buchanan (Ga. S21G1147) (to be filed Jan. 2022)

AAJ will join a Georgia Trial Lawyers Association brief in a case where the lower court allowed the deposition of GM's CEO and rejected the "apex doctrine," a judicial construct to shield high-ranking corporate officials from the inconvenience of having to explain their company's actions or inaction.

Bridgcrest Acceptance Corp. v. Donaldson (Mo. SC99269) (to be filed Jan. 2022)

AAJ will join a Missouri Trial Lawyers Association brief on the issue of whether a valid and enforceable arbitration agreement in a used car sales agreement exists because the promise to arbitrate was illusory and precluded mutual assent.

Brandt v. Pompa (Ohio 2021-0497) (filed Oct. 5, 2021, and Dec. 14, 2021)

AAJ joined the Ohio Association for Justice as amici in this case challenging the Ohio cap on noneconomic damages in tort cases, filing an initial brief and a reply brief.

Blackburn v. Shire US Inc, No. 20-12258, 2021 WL 5563732 (11th Cir. Nov. 29, 2021)

AAJ will join the Alabama Association for Justice as amici should the Alabama Supreme Court accept the 11th Circuit certified questions regarding the scope of a drug manufacturer's duty to warn.

AAJ amicus briefs are available at <https://www.justice.org/advocacy/legal-affairs/amicus-curiae-program>. For more information about AAJ's legal affairs program, email legallaffairs@justice.org.

AAJ 2022 Winter Convention

We hope you plan to join us in Palm Springs on February 13-15 for AAJ's 2022 Winter Convention. We have over 20 hours of programming, 30 speakers, and Section, Litigation Group, and committee meetings to help you connect with your trial lawyer community. AAJ members can register now at <https://www.justicewinterconvention.org>. If you are a nonmember and would like to come to the convention, please first join AAJ by visiting www.justice.org/join. I hope to see you all there.

Fighting for you and your clients

Thank you for your continued support as we forge ahead into the new year. AAJ remains committed to fighting for access to justice for your clients. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.

