

MVP: Covington's Beth Brinkmann

By Cara Bayles

Law360 (September 7, 2021, 2:15 PM EDT) -- Beth Brinkmann of Covington & Burling LLP won two injunctions against regulatory actions by the Trump administration and defended one on appeal, earning her a title as one of Law360's 2021 Appellate MVPs.

HER BIGGEST ACCOMPLISHMENT THIS YEAR:

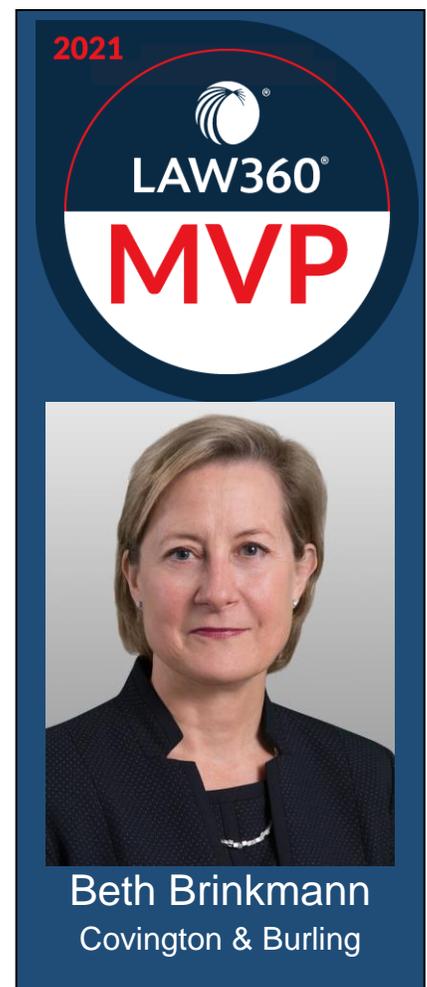
Brinkmann helped win two preliminary injunctions: one that stalled President Donald Trump's effort to block downloads of the TikTok mobile app in the U.S., and another that halted a Trump administration rule that would have linked Medicare reimbursement for dozens of drugs to lower prices paid in other countries.

Brinkmann said she expected that the nationwide injunctions against regulatory actions would be immediately appealed. She knew this from experience — her resume includes stints leading the appellate division of the U.S. Department of Justice's Civil Division and working in the Solicitor General's Office.

Because of the likelihood of appeals, and because injunction petitions rely on administrative arguments that are her bread and butter, she worked on those cases at the trial level as well.

"Litigation against the regulatory action of the government is very much like appellate work to begin with. It's government-facing litigation based on the administrative record, so that briefing itself is very appellate-like," she told Law360. "In those instances, I help lead the strategy on the legal arguments in the trial court and defend it in the court of appeals. You have arguments about administrative process, arguments about the agency exceeding its statutory authority, and equity. So you're fashioning all that to be able to defend your injunction when the government appeals it."

The pharmaceutical lawsuit was filed in December 2020 to challenge the eleventh-hour policy change by the Trump administration. U.S. District Court Judge Vince Chhabria granted a preliminary judgment later that month.



The Trump administration didn't end up appealing, and the Biden administration has indicated it will scrap the pricing rule.

But Brinkmann did get to defend the TikTok injunction before the D.C. Circuit, telling a panel that if the government was worried about the app's data security, the executive branch had options at its disposal other than using the emergency economic powers of the International Emergency Economic Powers Act. She told a panel in December that the Trump administration had exceeded the explicit limitations created by Congress on the executive's IEEPA authority, and she argued that the regulation would "restrict a robust community" of TikTokers.

The panel seemed to agree with her argument, particularly the notion that the ban ran afoul of a 1988 congressional revision to the IEEPA, which amended the act to keep it from affecting the flow of information.

But the government ceded the appeal before the court could issue an opinion, dismissing it in July.

HER BIGGEST CHALLENGE THIS YEAR:

The end of 2020 was a busy time for Brinkmann, and the pandemic continued to complicate the already difficult work of arguing in different jurisdictions with different rules.

In a matter of weeks, she says, she made oral arguments before the D.C. Circuit, the Ninth Circuit and the California Supreme Court.

"Each of them have different interim procedures for arguments. They use different platforms. They even have different processes for briefing and timing," Brinkmann said. "And they're ever-changing now in the remote world, so you're constantly checking in. You're constantly checking with the technology on platforms. The administrative offices for these courts have been so terrific at handling all this technology. But it's changing. And that has been challenging across the country."

HER PROUDEST MOMENT OF THE YEAR:

Brinkmann said her pro bono work with the NAACP of Hanover County, Virginia, was her most gratifying case of the year.

The lawsuit sought to change the names of two local schools — Lee-Davis High School and Stonewall Jackson Middle School — that glorified Confederate generals. The NAACP argued that the names violated the First and 14th Amendment rights of students, who, by attending those schools, were forced to engage in compelled speech that celebrated oppression. In May, a federal judge dismissed the case. Brinkmann was brought on for the Fourth Circuit appeal.

After Brinkmann's team filed that appeal in June 2020, the school board voted to change the schools' names and had the offending signage taken down, only to put it back up in August. Soon after that, Brinkmann and her team filed their opening brief.

In September, the board conducted its final vote, solidifying the name change. Brinkmann hopes the appeal helped usher in that resolution.

"When you're involved in this kind of litigation, and you really have your eyes on your clients' interest, the pendency of appeals does have an influence. That was something that was discussed as part of the school board's determination," she said. "That's important for appellate lawyers. It's not always about

getting a flashy ruling, it's about getting the best result for your client. We wanted to get the Confederates off the schools and to change the mascots for those schoolchildren. And that was the big win."

WHY SHE'S AN APPELLATE LAWYER:

Brinkmann started out as a trial lawyer, including a stint as a federal public defender, but appellate work felt grander to her because it can affect a client "in a way a single trial win cannot," she said.

That broader effect on a client, and possibly the law, is "really satisfying," she said.

"You experience appellate litigation in a way that decides legal issues that are of greater consequence to your client beyond that one case," Brinkmann said. "And it's really critical as you advocate on appeal also to have that broader interest in mind."

HER ADVICE TO YOUNG ATTORNEYS:

Brinkmann says the associates she works with are "so dedicated, so astute on law and procedure" that they kept her motivated during a tough pandemic year. Many of them impressed her with their ability to argue before appellate panels remotely and "not miss a beat."

She said her advice for young attorneys is "old-fashioned": to create new opportunities for themselves by working hard and showcasing their skills and ability to work in a team.

"When an associate is working for a client on an appeal with colleagues, mastering the law and the facts and the procedural aspects of the case and the court — that is what's going to make the biggest difference for an associate," Brinkmann said. "They will demonstrate their expertise. Just showing that is what will help them to best develop other opportunities in the future."

— *As told to Cara Bayles*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.