

Millett set to become second woman to argue 30 cases at the Court

BY TONY MAURO

Patricia Millett is about to share the superlative of “most Supreme Court oral arguments ever made by a woman” with Lisa Blatt.

Millett, head of the Supreme Court practice at Akin Gump Strauss Hauer & Feld, is set to argue her 30th case, *Filarsky v. Delia*, on Jan. 17. That will match the number already argued by Blatt, who heads Arnold & Porter’s Supreme Court practice. And both will have exceeded the late Beatrice Rosenberg, who was once thought to have argued 30 cases as a Justice Department lawyer, until a tally by the Court clerk’s office came up with 29.

“It’s terrific,” Blatt said of Millett joining her at the top. “The more the merrier.” The two worked together in the solicitor general’s office.

For her part Millett said she is focusing on the case she is about to argue, which is “of profound importance” to government agencies and the private lawyers who work for them.

Millett represents Steve Filarsky, a California lawyer retained by the city of Rialto, California to help investigate the facts of a dispute with a city employee. The employee eventually sued city officials and Filarsky under 42 U.S.C. 1983 for violating his constitutional rights. The U.S. Court of Appeals for the 9th Circuit ruled that the government employees enjoyed qualified immunity from suit, but



PATRICIA MILLETT

Filarsky did not, because he is a private attorney.

If the ruling is allowed to stand, Millett said the ability of government agencies to retain private representation will be severely affected. Private lawyers will be reluctant to “hold the litigation bag for the entire government,” and government agencies will be deprived of advice they need to avoid constitutional violations. She’ll go up against Michael McGill of the Upland, California firm Lackie, Dammeier & McGill.

As usual, the upcoming argument cycle will also put several former solicitors general at the lectern. On Jan. 9 Paul Clement, now with the Bancroft firm in D.C., will argue for Texas Gov. Rick Perry in the hastily scheduled case of *Perry v. Perez*, an important battle over post-Census redistricting. Latham & Watkins partner Gregory Garre will argue Jan. 17

for the respondent in *United States v. Home Concrete and Supply*, a tax dispute that has drawn interest from business groups.

Finally, Seth Waxman of Wilmer Cutler Pickering Hale and Dorr is in the lineup for *FCC v. Fox Television Stations*, a sequel to a long-running dispute exploring whether the FCC’s broadcast indecency standards violate the First Amendment. Solicitor General Donald Verrilli Jr. will argue in defense of the standards, while Sidley Austin’s Carter Phillips will represent the Fox Stations and Waxman will argue for ABC Inc.

The last time the case was argued, in 2008, the lawyers were advised by the Court clerk’s office not to actually utter the “fleeting expletives” involved in Court. Phillips, who had used the words freely in his 2nd Circuit argument, followed the advice, as did Garre who argued for the government at the time.

Asked if the advocates have received any guidance this time around, Phillips said, “We have not been advised one way or the other so far. I currently do not plan to use the words in my opening and will have to see whether the Clerk calls this week.”

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