In Virus Era, Law Prof Teams With Husband as 'In-House' Counsel on SCOTUS Brief

At home together in California, amid the coronavirus outbreak, San Diego law professor Mila Sohoni and her husband Christopher Egleson, a Sidley Austin partner, worked together on a U.S. Supreme Court amicus brief defending universal injunctions.

By Marcia Coyle | April 22, 2020 at 02:51 PM

Statewide stay-at-home orders have spurred new creative endeavors for many people, and now, perhaps a first husband-and-wife amicus brief in a key U.S. Supreme Court case.

Professor Mila Sohoni testifies before the Senate Judiciary Committee in February on universal injunctions. Credit: Diego M. Radzinschi / ALM
The Supreme Court case, scheduled for telephonic arguments on May 6, is *Trump v. Pennsylvania*, consolidated with the case *Little Sisters of the Poor v. Pennsylvania*. The core issue is whether the Trump administration had authority under the Affordable Care Act and Religious Freedom Restoration Act to broaden the refusal of employers to provide contraceptive health coverage under the ACA. The cases involve other issues, including whether the appellate court was wrong to impose a nationwide preliminary injunction barring implementation of the expanded rule.

Nationwide injunctions have been the focus of research by Mila Sohoni of the University of San Diego School of Law since at least 2018. She had published “The Lost History of the ‘Universal’ Injunction” this year in the Harvard Law Review. While at Harvard in January, Sohoni learned the Supreme Court had agreed to hear the Pennsylvania cases and someone mentioned that briefing was beginning and she might want to write an amicus brief on the injunction question.

“I started to think about it more seriously when I was back in California,” Sohoni said in a recent interview with The National Law Journal. “I had never submitted an amicus brief before and wasn’t a member of the Supreme Court [bar].” But Sohoni’s husband, Christopher Egleson, is a member of that bar—he’s an appellate partner at Sidley Austin.

“He has heard about this issue continuously from me since 2018. I said to him, ‘If you can do this, I think it would be so much fun to work on this together,’” Sohoni said. Once Egleson had Sidley’s green light, he was on board as counsel of record for the amicus brief that Sohoni would submit.

Egleson’s relationship with Sohoni goes back to law school—the two met on their first day at Harvard.

“We’ve been discussing and debating legal issues like this one from the first day we met. It was just a professional continuation of the wonderful relationship we’ve had for 20 years,” Egleson said. “It really was a blast. I had a terrific team at Sidley [associate David Kanter is also on the brief] which helped us with the draft as well. It was the perfect blend of my professional and personal life.”

That’s not to say it was easy. The couple has two children, ages 6 and 10. After breakfasts and after their children were asleep, they were able to talk through the draft of the brief. “Being quarantined together definitely made it easier to talk about the draft—though homeschooling two kids in the meantime made the writing process a bit more challenging,” Sohoni said.

Sohoni, who earlier practiced law at Jenner & Block, said her vision of an amicus brief was akin to a law review article—lengthy with many footnotes. “I was glad I had competent counsel who could turn my thoughts into brief prose,” she said.

Their amicus brief responds to arguments on nationwide injunctions by the government and law professors Nicholas Bagley of the University of Michigan Law School and Samuel Bray of Notre Dame Law School. Bagley and Bray argue in their [amicus brief](https://www.supremecourt.gov/DocketPDF/19/19-431/137556/20200309165323886_19-454%20tsac%20Bray.pdf) that
universal injunctions are “inconsistent with the proper role of the federal courts” and have “no basis in traditional equity practice.” The Administrative Procedure Act, they contend, did not disturb traditional equity practice.

“The focus of our brief was really to show a long line of cases, extending even before the APA was enacted, all showing when a court is reviewing an agency rule, the court has authority to set that regulation aside as to everyone,” Sohoni said. “And it has authority to enjoin that regulation as to everyone. That is a point I think has often gotten obscured in the discussion of nationwide injunctions. The APA is statutory authority for these forms of relief from official action by the executive branch.”

Injunctive relief for nonparties, she added, is consistent with traditions of equity and that is established in her Harvard law review article.

Despite the stay-at-home order, Sohoni and her husband were able to separate physically when the writing duties required it.

“I work in our bedroom and he works in his office,” she said. “Chris has given a whole new meaning to ‘in-house counsel.’”

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