

# Former SG Prelogar Discusses Tenure, First Supreme Court Argument as Private Lawyer

By Jimmy Hoover

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It's the job of any U.S. Supreme Court lawyer to take incoming "fire" from the notoriously hot bench.

But when you're U.S. solicitor general, sometimes you're the one handling firearms.

"I had assembled a ghost gun with the help of the [U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives], which had procured the kit for me," Elizabeth Prelogar recently told *Law.com*, recounting her preparation for the Supreme Court's 2024 hearing on the validity of the federal government's ghost gun restrictions.

Prelogar, who recently returned to her old law firm Cooley LLP, discussed some of the highlights of her tenure as the proverbial "Tenth Justice" under former President Joe Biden in an interview last week.

"I am an incredibly not-handy person," Prelogar said. "It is not my superpower—far from it—but it was really eye opening for me to have the opportunity to put together this kit and realize that even someone like me who doesn't frequently put things together, just drilling a couple of holes, filing off a couple of tabs, you could have a functioning firearm."

Prelogar's position that internet firearm kits can be regulated like firearms ultimately prevailed, with the Supreme Court upholding the ATF's regulations of ghost guns in a 7-2 ruling in *Bondi v. Vanderstok*.

*Vanderstok* was just one of many of major hot-button issues Prelogar argued as U.S. solicitor general, from Biden's student debt relief plan, the right to abortion to the validity of firearm regulations.

It was also not the first time Prelogar got some hands-on experience with firearms through the help of the ATF during her time in the solicitor general's office.



Elizabeth Prelogar of Cooley.

Courtesy photo

"For [*Garland v. Cargill*] I went to ATF to fire a bump stock to get a better understanding of the argument there and how it effectively functioned as a machine gun," Prelogar said.

Although she would not argue the Supreme Court case over the ATF's bump stock ban, the Boise, Idaho, native earned a reputation as one of the most polished advocates to hold the position of solicitor general, facing down tough questioning from a conservative-dominated bench with rapid fire answers of her own.

Indeed, Prelogar had a front-row seat to the evolution of the Supreme Court's "major questions doctrine," standing for the idea that agencies need explicit congressional language before rolling out policies with major economic consequences.

The Supreme Court would use the doctrine to strike down Biden's student debt relief plan, the COVID-19 vaccine-or-test mandate for large businesses, as well as new greenhouse gas regulations for the energy sector.

Prelogar said the doctrine is still coming into view and that there aren't "enough data points" to know exactly

how the court will navigate competing visions of the doctrine from Justices Neil Gorsuch and Amy Coney Barrett.

One thing Prelogar seems heartened by, however, is the breathing room the Supreme Court has given to some of cases that have arisen on its emergency docket, dubbed by critics as the “shadow docket.”

The Supreme Court’s longstanding practice was to decide emergency applications solely on the basis of the parties’ written briefs. As emergency litigation over high-stakes policy questions has proliferated at the Supreme Court over the past decade, the justices have been increasingly setting these cases for public hearings.

That practice largely began during Prelogar’s tenure as solicitor general and has continued into the present term, with the court holding hearings over President Donald Trump’s emergency requests to terminate Federal Trade Commissioner Rebecca Slaughter and Federal Reserve Governor Lisa Cook.

“There have been a number of recent examples on the emergency docket where the court, I think in recognition that these can be very consequential decisions, has tried to create some more space for additional process,” Prelogar said.

Prelogar left the government on the eve of President Trump’s inauguration in January 2025. Her last argument as solicitor general came in her successful defense of a law forcing the popular social media app TikTok to be divested from its Chinese parent company or else shut down.

Having rejoined Cooley last August, she recently made her return to the Supreme Court’s lectern on April 20 to present her 36th argument to the justices.

“It was wonderful to have the chance to get back into court and have the chance to advocate on behalf of my client in that case,” she said. “It was interesting because it was my first time being in the Supreme Court not as a government lawyer.”

Prelogar was arguing in favor of reviving a federal lawsuit from a 35-year-old woman involuntarily confined to a Maryland mental health facility following a psychotic episode, where she was allegedly injected with anti-psychosis medication against her will.

The case involved the scope of the longstanding *Rooker-Feldman* doctrine limiting federal courts from hearing claims rejected by state courts.

The argument was a fascinating contrast of styles as Prelogar faced off against fellow veteran high court advocate Lisa Blatt of Williams & Connolly. As Prelogar coolly—no pun intended—encouraged the court to reconsider its “egregiously wrong” *Rooker-Feldman* doctrine, Blatt confidently poured cold water on the idea.

“Not in an April case. Not happening,” Blatt said of the chances of the court’s reconsideration so late in its term.

In most respects, Prelogar said her preparation for her first private practice Supreme Court argument was the same as the preceding three dozen she delivered as an attorney for the United States—from her standard two moot courts down to the ritual breakfast of bananas and cashews.

But arguing on behalf of an individual client also came with less constraints, Prelogar said.

“Maybe the biggest difference was not being responsible for all of the other tangential pieces that might touch on what the court is hearing in a given term,” she explained.

“When you’re counsel of record for the federal government, in every Supreme Court case, you need to be prepared to talk about any of those legal issues, even if they’re a little further afield from whatever the particular issue is the court’s considering,” she said.

Appearing at the lectern on behalf of private clients allows you to “drill down multiple layers deep in that particular case without having to necessarily be responsible for whatever positions the federal government might want to take in future cases in distinct contexts,” Prelogar added.

The Cooley firm, which was involved in five Supreme Court cases this term, has joined the recruitment race for former Supreme Court clerks, picking up a trio of recent lawyers from the chambers of Justices Sonia Sotomayor, Brett Kavanaugh and Elena Kagan.

“It gives us a third of the court with recent experience coming to Cooley,” Prelogar said.

As leader of Cooley’s practice, Prelogar said she hopes to shape the firm into one of the country’s leading Supreme Court and appellate shops or, as she describes it, a “destination issues and appeals practice for any high stakes or consequential issue that faces a client.”