

How Weil Associate Josh Halpern Argued 4 Appeals in 6 Weeks

By Ross Todd

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Appellate lawyers can go their whole careers without experiencing a stretch of arguments like the one **Weil, Gotshal & Manges** associate **Josh Halpern** just wrapped up earlier this month.

In May, Halpern argued on behalf of two Rastafarian prisoners in separate cases before the Fifth Circuit and Seventh Circuit seeking damages under the Religious Land Use And Institutionalized Persons Act, or RLUIPA, against prison officials who shaved off their dreadlocks—an emerging religious liberty issue Halpern first identified bubbling up in the district courts while serving as a Bristow Fellow in the U.S. Solicitor General's office.

Then, on back-to-back days in mid-June, Halpern argued significant—and quite disparate—appeals at the Second Circuit and New York's Appellate Division, Second Department. At the Second Circuit, Halpern argued on behalf of Ateres Bais Yaakov Academy, an Orthodox Jewish girl's school, seeking to revive religious discrimination and civil rights claims related to its unsuccessful attempt to purchase a local church in Clarkstown, New

York, for its campus. At the state appellate court, Halpern argued on behalf of a criminal defendant facing a violent felony conviction for possessing a gun in a locked safe in his home after a prior conviction 20 years ago for a non-violent misdemeanor drug offense.

"One of the things that's so significant about what Josh has accomplished and having this incredible string of arguments is that these are themselves very significant arguments," said **Zack Tripp**, the co-head of Weil's appeals and strategic counseling practice, who himself was an assistant to the U.S. solicitor general while Halpern was a Bristow Fellow. "These are not case-specific appeals where you're trying to vindicate something for a single pro bono client."

So how did Halpern get this string of argument opportunities?



Josh Halpern of
Weil, Gotshal & Manges.

Courtesy photo



Courtesy photo

Zachary Tripp of
Weil, Gotshal & Manges.

The seeds for the two prisoner rights cases Halpern argued last month were sown while he and Tripp were both at the SG's office. Tripp drafted the government's cert petition in *Tanzin v. Tanvir*,

a U.S. Supreme Court case dealing with a companion religious liberty statute, the Religious Freedom Restoration Act, or RFRA. Halpern helped with merits briefing and moot courts in that case. It was through experience working on *Tanzin* that Halpern identified cases where district courts were denying plaintiffs' RLUIPA claims for damages brought against officers in their individual capacities. The court's ultimate holding in *Tanzin* authorized such claims under identical language in RFRA.

After *Tanzin* was decided, the Weil team reached out to counsel for the two prisoners, devout Rastafarians who took a vow to never cut their hair, to offer appellate counsel to help them seek to revive their damages claims. Tripp said the briefing and arguments are just the "tip of the iceberg" of the work Halpern has done for their clients. Tripp said Halpern also helped marshal religious liberty organizations and advocates "of all stripes" to garner amicus support.

"Josh was the one who reached out to all these groups—literally dozens of religious organizations," Tripp said. "He's the one who ran them down and made this all happen and drummed up this really remarkable support."

"It didn't just happen by accident. It happened because Josh made it happen," Tripp said.

Weil's work for the Jewish school in the Second Circuit case came via partner **Yehudah Buchweitz**, who has handled a number of religious liberty cases pro bono. In that case, the school saw its religious discrimination claims tossed at the lower court on a technicality. The court found the school didn't have standing to sue since the Baptist congregation it was seeking to buy the property from terminated the purchase contract before the town issued a final decision on the school's zoning application. But, with amicus backing from the **Anti-Defamation League**, the school claims the scuttled deal shouldn't foreclose its ability to challenge an alleged conspiracy to keep the school out of town.

"The fact that the town succeeded in executing this conspiracy shouldn't insulate our really significant discrimination claims from judicial review," Halpern said of the case. He said the ADL's decision to file an amicus brief at the Second Circuit shows this is "a serious real-world issue that's affecting municipalities across this region."

The criminal appeal at the Second Department, meanwhile, came to the firm via **Appellate Advocates**, a non-profit public defender organization in New York that works with the firm. Halpern said that he sees a "significant racial justice component" to the firm's work on that case.

"It is not difficult for the police to get someone to plead to a non-violent misdemeanor offense in low-income communities

and communities of color that have more frequent contact with the police who are just much more likely to be saddled with these kinds of low-level convictions,” Halpern said. “The statute is invariably going to be applied disproportionately against people of color and low-income people,” he said.

So what did Halpern do to prepare for such a busy stretch of arguments in rapid succession?

Halpern kept with the Solicitor General’s office practice of conducting at least two moot courts for each argument. For the prisoner rights cases, in addition to moots with colleagues at Weil, Halpern traveled to Harvard Law School and did a moot with religious liberty scholar **Douglas Laycock**, and students in the school’s religious freedom clinic who drafted Laycock’s amicus briefs in the cases.

“The students’ questions were really incisive and actually forecasted quite well the actual questions I got at argument,” Halpern said. “That was immensely helpful.”

For the Second Circuit case for the school, Halpern conducted a moot with the firm’s summer associates in addition to the one he did with members of the appellate group. “Much like the students at HLS, they were able to forecast a lot of the questions I got at argument,” he said. “They came to the case without too much legal baggage and just us[ed] their judgment about what troubles them.”

But Halpern said he also leaned on Tripp.

“This is all relatively new to me, and I’ve relied very heavily upon his guidance about how to proceed,” Halpern said. “For the cases

where Zack was not sort of whispering in my ear and helping me get the right answer, I asked him to be a mooter.”

Halpern said that when he was leaving the SG’s office one of the reasons he chose to go to Weil was “because every person that I talked to in the SG’s office advised me that Zack would be an incredible boss and mentor and just be immensely generous with his time.”

Halpern said he also picked up another soft skill from Tripp. Both rely heavily on their wives—neither of whom is a lawyer—to be a sounding board in the run-up to arguments.

Halpern said his wife “is someone with really good judgment and just a shrewd way of thinking about things.”

“I know that if I can convince her, I hope that I can convince appellate judges,” he said.

Regardless of the pending outcome in all four cases, Halpern isn’t likely to handle the next steps in further proceedings—at least not immediately: Halpern, who already has two federal appellate clerkships under his belt, is set to clerk for U.S. Supreme Court Justice Neil Gorsuch next term.

However, he said he’s taking a “glass-half-full approach” to his potential absence from the team in the cases’ next steps.

“It’s another opportunity for associates in our group to get potential briefing and argument experience if there’s an *en banc* petition,” he said. “I know that someone else will get to step up and do that really cool legal work like I got to for the first time and have a career-changing kind of experience.”