

Fourth Circuit Year in Review: The Most Important – *and Interesting* – Decisions

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McGUIREWOODS

Our Panel

- Matt Fitzgerald = clerked on 11th Circuit (Carnes) and then with Justice Thomas on U.S. Supreme Court
- Katherine Mims Crocker = clerked on 4th Circuit (Wilkinson) and then with Justice Scalia on U.S. Supreme Court
- Grayson Lambert = clerked on 4th Circuit with Judge Shedd

Road Map

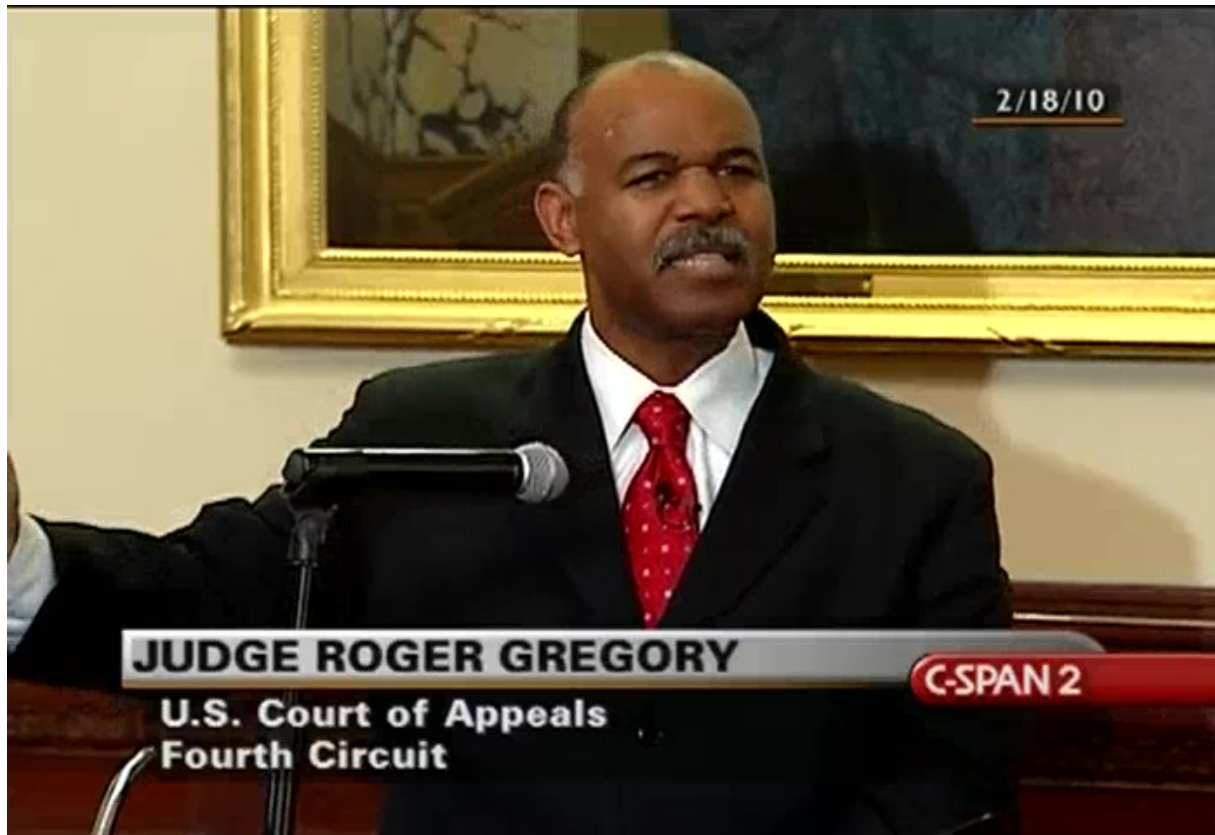
- Introduction and Overview of Fourth Circuit
- Recent trends in the 4th Circuit's operation and rulings
- An overview of the most significant and most interesting recent decisions and the practical implications of those decisions.
- Commentary on the direction the court may be heading in the future.



The Fourth Circuit

- District of Maryland
- Eastern District of North Carolina
- Middle District of North Carolina
- Western District of North Carolina
- District of South Carolina
- Eastern District of Virginia
- Western District of Virginia
- Northern District of West Virginia
- Southern District of West Virginia

Changes Since Last Year – New Chief Judge



Fourth Circuit Judges

#	Title	Judge	Duty station	Born	Term of service			Appointed by	
					Active	Chief	Senior		
40	Chief Judge	Roger Gregory	Richmond, VA	1953	2000–present	2016–present	—	Clinton/G.W. Bush[Note 1]	
29	Circuit Judge	J. Harvie Wilkinson III	Charlottesville, VA	1944	1984–present	1996–2003	—	Reagan	
32	Circuit Judge	Paul V. Niemeyer	Baltimore, MD	1941	1990–present	—	—	G.H.W. Bush	
37	Circuit Judge	Diana Gribbon Motz	Baltimore, MD	1943	1994–present	—	—	Clinton	
38	Circuit Judge	William Byrd Traxler, Jr.	Greenville, SC	1948	1998–present	2009–2016	—	Clinton	
39	Circuit Judge	Robert Bruce King	Charleston, WV	1940	1998–present	—	—	Clinton	
41	Circuit Judge	Dennis Shedd	Columbia, SC	1953	2002–present	—	—	G.W. Bush	
42	Circuit Judge	Allyson Kay Duncan	Raleigh, NC	1951	2003–present	—	—	G.W. Bush	
43	Circuit Judge	G. Steven Agee	Salem, VA	1952	2008–present	—	—	G.W. Bush	
45	Circuit Judge	Barbara Milano Keenan	Alexandria, VA	1950	2010–present	—	—	Obama	
46	Circuit Judge	James A. Wynn, Jr.	Raleigh, NC	1954	2010–present	—	—	Obama	
47	Circuit Judge	Albert Diaz	Charlotte, NC	1960	2010–present	—	—	Obama	
48	Circuit Judge	Henry Franklin Floyd	Pickens, SC	1947	2011–present	—	—	Obama	
49	Circuit Judge	Stephanie Thacker	Charleston, WV	1965	2012–present	—	—	Obama	
50	Circuit Judge	Pamela Harris	Greenbelt, MD	1962	2014–present	—	—	Obama	
24	Senior Judge	James Dickson Phillips, Jr.	inactive	1922	1978–1994	—	1994–present	Carter	
28	Senior Judge	Robert F. Chapman	inactive	1926	1981–1991	—	1991–present	Reagan	
33	Senior Judge	Clyde H. Hamilton	Columbia, SC	1934	1991–1999	—	1999–present	G.H.W. Bush	
44	Senior Judge	Andre M. Davis	Baltimore, MD	1949	2009–2014	—	2014–present	Obama	

**Who was the MVP
of the Fourth Circuit in the last year?**

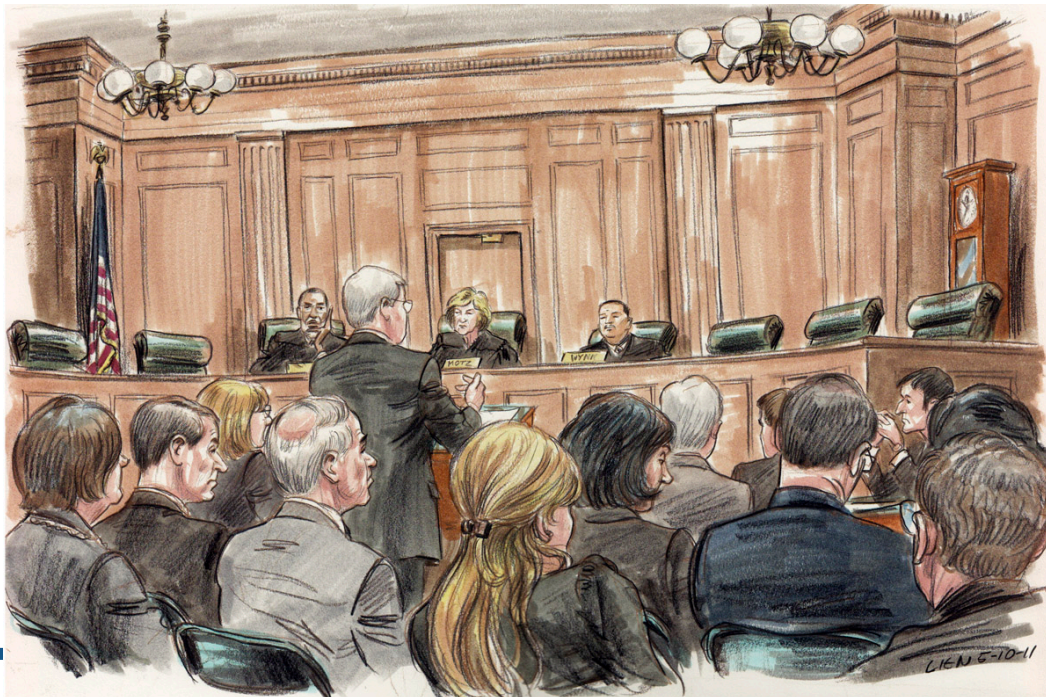


Judges Harris, Motz, and Diaz



By the Numbers

- 4,644 Appeals filed in Fourth Circuit in 2015
- Almost 5% lower than the prior year
- 4,768 Appeals were terminated in 2015
- 2,149 appeals were pending at the beginning at 2016.



Judicial Caseload

- Each active judge on the Fourth Circuit was responsible, on average, for 603 appellate terminations on the merits in 2015.
- For each active judge on the Fourth Circuit, there were 198 written decisions in 2015.



Highest Percentage of Unpublished Decisions

- Fourth Circuit = 93.8%
- Eleventh Circuit = 92.4%
- Third Circuit = 92.8%
- Fifth Circuit = 91.8%
- Overall, 87.7% of decision are unpublished in federal circuit courts.

Lowest Percentage of Cases With Oral Argument

- Fourth Circuit = 9.2%
- Third Circuit = 10.4%
- Compare to D.C. Circuit at 56.4% and Seventh Circuit at 39%.
- National average is 20.5%.



6 Trends about the Fourth Circuit

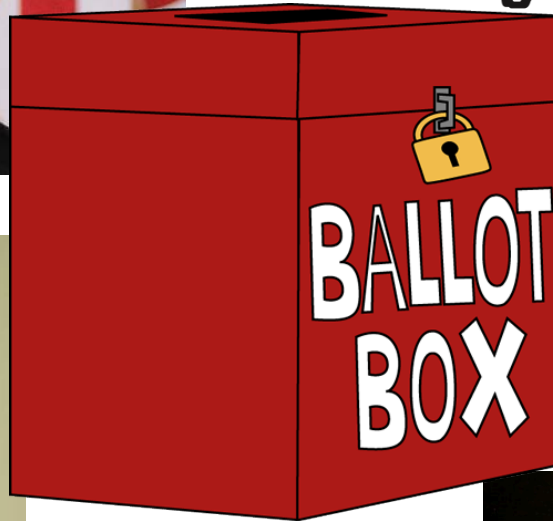


6 - The Most Interesting Court in the World?





Topics



5

The Fourth Circuit's favorite subject matters?



The relationship between employers and employees

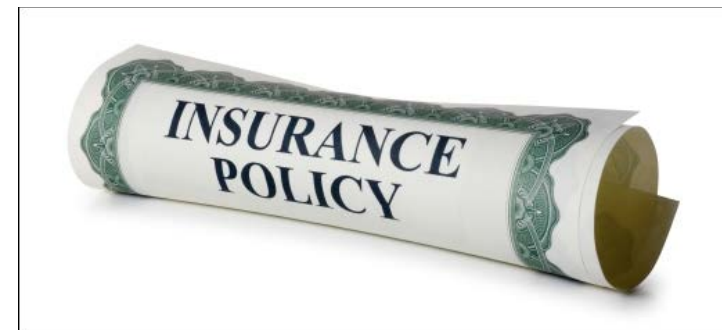


Employee-Employer cases

- *Deltek v. U.S. Dep't of Labor*
- *Nestle Dreyer's Ice Cream Co. v. NLRB*
- *Harbout v. PPE Casino Resorts Maryland LLC*
- *Lisotto v. New Prime Inc.*
- *Rishell v. Computer Sciences Corp.*
- *Fox v. Leland Volunteer Fire/Rescue Dep't Inc.*
- *NLRB v. Bluefield*
- *Geico General Ins. Co. v. Calderon*
- *McFeeley v. Jackson Street Entertainment LLC*
- *Carlson v. DynCorp International LLC*

Insurance

- *Travelers Indemnity Co. of America v. Portal Healthcare Solutions, LLC*
- *St. Paul Mercury Ins. Co. v. Am. Bank Holdings Inc.*
- *QBE Ins. Corp. v. Cobb.*



4

Good track record in U.S. Supreme Court over last 6 years

- Only circuit that has had more cases affirmed (12) than reversed (11) over the last 6 years.



3

Getting Along?

- One of lower rates of dissents over last 12 months among major circuits – only 61 total
- Over the same period, the Ninth Circuit had 332 dissents and the Sixth Circuit had 170.



Conflict?

Already 4 En Bancs This Year Alone!

Case Name	En Banc Argument	En Banc Decision
2016 En Banc Arguments		
United States v. Shaquille Robinson, 814 F.3d 201, 2016 (4th Cir. 2016), rehearing en banc granted (April 25, 2016) (No. 14-4902)	09/22/16 14-4902 (MP3)	
Stephen Kolbe v. Lawrence Hogan, Jr., 813 F.3d 160 (4th Cir. 2016), rehearing en banc granted (March 4, 2016) (No. 14-1945)	05/11/16 14-1945 (MP3)	
United States v. Aaron Graham, 824 F.3d 421 (4th Cir. 2016), (No. 12-4659)	03/23/16 12-4659 (MP3)	05/31/16 124659A.P
United States v. Raymond Surratt, Jr., 797 F.3d 240 (4th Cir. 2015), rehearing en banc granted (December 2, 2015) (No. 14-6851)	03/23/16 14-6851 (MP3)	
2014 En Banc Arguments		
Boyer-Liberto v. Fontainebleau Corp., 752 F.3d 350 (4th Cir. 2014) (No. 13-1473)	09/18/2014 13-1473 (MP3)	05/07/15 131473A.P
Whiteside v. United States, 748 F.3d 541(4th Cir. 2014) (No. 13-7152)	09/18/2014 13-7152 (MP3)	12/19/2014 137152A.P
Barlow v. Colgate Palmolive Co., 750 F.3d 437 (4th Cir. 2014) (No. 13-1839)	09/18/2014 13-1839 (MP3)	11/25/2014 131839A.P
2013 En Banc Arguments		
United States v. Aparicio-Soria, 740 F.3d 152 (4th Cir. 2014) (No. 12-4603)	12/12/2013 12-4603 (MP3)	01/14/2014 124603A.P
Blakely v. Wards, 738 F.3d 607 (4th Cir. 2013) (No. 11-6945)	05/16/2013 11-6945 (MP3)	10/21/2013 116945A.P

2

Courteously Deferential

- One of lowest reversal rate of trial court decisions amongst the circuits.
- The rate is 4.5% -- almost 4 times lower than the Seventh Circuit.
- National rate is 8.3%.

CALVIN and HOBBS



1 – Ridiculously Efficient

- The Fourth Circuit is the most efficient circuit court in the nation.
- It had the lowest median time from filing to disposition = 5.3 months.



Roundtable

Where is this Court headed?

- What is the best way to describe this Court, and what direction do we expect it to move in the future?



Conservative bastion?

- The Fourth Circuit was once called:
 - “the boldest conservative court in the nation,”
 - The “shrewdest, most aggressively conservative federal appeals court in the nation,” and
 - “not only conservative but also bold and muscular in its conservatism.”



Have Obama's judges transformed the court?

- President Obama has placed 7 judges on the Court, six of whom are still active.
- A majority of judges on the Court were appointed by Democrats.



Commentators Recently

- “What [Obama’s appointees have] brought, in the eyes of court observers, is a slow but not yet steady shift leftward – to the center.” NC Policy Watch article
- “I do think it’s a less conservative court – there’s not dispute about that. But whether it’s liberal is much less clear.” *Id.* (quoting Prof. Carl Tobias).
- “There’s no doubt that the 4th Circuit has fundamentally changed; the court has shifted dramatically as a result of appointments.” Times Dispatch article (quoting Prof. Kevin Walsh)
- “I wouldn’t call it a liberal federal court of appeals but I would call it much more of a moderate court of appeals now.” *Id.* (quoting Prof. Blume).

Recent Article

- Prof. Brian S. Clarke, “ObamaCourts?: The Impact of Judicial Nominations on Court Ideology,”
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2493773
- Prof. Brian S. Clarke, “The Clash of Old and New Fourth Circuit Ideologies: Boyer-Liberto v. Fontainebleau Corp. and The Moderation of the Fourth Circuit,”
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2627343
- According to his research, the Fourth Circuit has become demonstrably more worker-friendly than it was, and that this trend began in 2010.
- “[B]ased on this study, the data supports the conclusion that the overall judicial ideology of the Fourth Circuit has indeed shifted toward the ‘liberal’ end of the ideological spectrum.”

Ideological Makeover?

- “[B]ased on this study, the data supports the conclusion that the overall judicial ideology of the Fourth Circuit has indeed shifted toward the ‘liberal’ end of the ideological spectrum as President Obama’s nominees have taken their seats on the court beginning in 2010.” *Id.*
- “[Obama has] actually achieved an ‘ideological makeover’ of the Fourth Circuit, at least in the labor and employment realm.” *Id.*
- “While the court’s ideological shift remains most apparent in the high profile, politically charged cases it hears, that shift is regularly changing the outcome of cases.”

Fourth Circuit Cases



Lewis F. Powell, Jr.
United States Courthouse

***ACLU of North Carolina v. Tennyson*, 815 F.3d 183 (4th Cir. 2016)**

Background: North Carolina offers a variety of personalized license plate themes. Among them are “Choose Life,” an anti-abortion theme. The state refused to create an opposite theme for pro-choice folks.



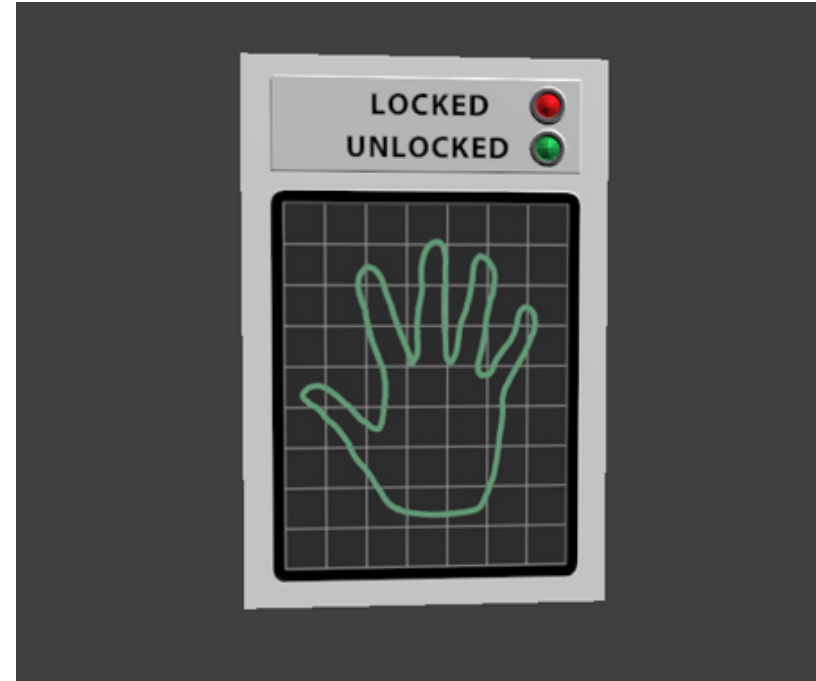
Holding: By 2-1, North Carolina won. Following the Supreme Court’s decision in *Walker v. Sons of Confederate Veterans*, license plate themes are **government speech**, not citizen speech. So, the government can control its message and need not offer both opposing viewpoints.

Takeaways: Judge Wynn’s surprising dissent (remarkably cheeky in the face of the Supreme Court; he largely adopted the arguments of the 4 in dissent above)

Is the license plate issue entirely settled? Looks like probably so.

EEOC v. Consol Energy, Inc.

- **Pending case:** Briefing is underway
- **Background:** A mining company adopted a policy in which employees would have to scan their right hand upon entering and exiting the mine, which was supposed to be a more accurate means of tracking employees' hours. The employee claimed that the scanner could give him the Mark of the Beast, as described in Revelation 13 and 14. He brought a Title VII religious discrimination claim. The jury found for the EEOC and awarded about \$600,000 in damages.
- **Arguments on Appeal:**
 - **Consol Energy:** The employee admitted that the scanner did not actually give him the Mark of the Beast, and the employee was not subject to any discipline.
 - **EEOC:** The jury was entitled to credit the employee's testimony about his fears, and the mining company could have offered accommodations.



What to Watch:

- Did Consol Energy raise too many issues on appeal by raising eleven issues?
- Will the EEOC continue bringing cases based on religious liberty?

***Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016)**



Background: Since Oct. 2013, Maryland has outlawed possession of (1) “assault weapons” including AR-15 and AK-47s, and (2) magazines that hold more than 10 rounds.

Holdings (2-1):

- (1) These weapons are covered by the 2d Amendment.
- (2) Strict scrutiny applies.

Takeaways:

- Argued en banc in May 2016- expect a decision in the next few months.
- All admit the Fourth Circuit has disagreed with other Circuits, which settled on intermediate scrutiny- no court had yet ever so clearly set strict scrutiny to guns.
- Nasty words from Judge King in dissent, threatening the Court with responsibility for future violence.
- 29 states participated (9 supporting Maryland, 20 against)

NC State Conference v. McCrory

- **Background:** The plaintiffs challenged NC's new voter ID law, which (1) required a photo ID to vote, (2) shortened the early-voting period, (3) eliminated same-day registration, (4) eliminated out-of-precinct voting, and (5) eliminated preregistration for 16 and 17 year olds.
- **Holding:** The Fourth Circuit held that the law was passed with discriminatory intent and thus violated the Equal Protection Clause and the Voting Rights Act. The court permanently enjoined the challenged parts of the law



Takeaways:

- This case isn't over yet...NC is seeking Supreme Court review.
- The legal challenges to voter ID laws continue to be one of the most significant types of cases in federal court.

United States v. Graham, **-__ F.3d __ (May 31, 2016)**

Background: In investigating armed robberies, the Government obtained cell-phone location information from the suspects' cell phone company.



Holding: 12-3, en banc: There was no 4th Amendment “search” here. The 4th Amendment does not protect information voluntarily handed over to third parties (such as cell phone location pings), and there can be no reasonable expectation of privacy in information contained in cell phone company business records. The Government’s action was legal.

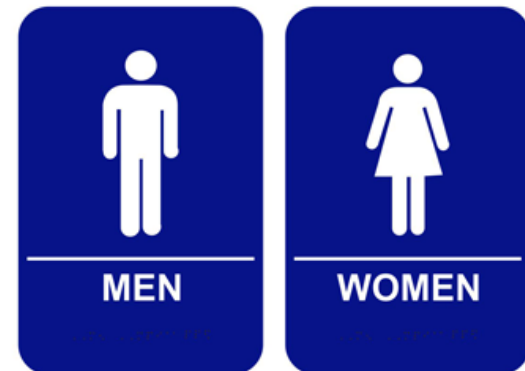
Takeaways:

- This outcome agreed with all other Circuits
- Straight-forward, but creepy, application of the 4th Amendment to modern society
- On the bright side, 18 U.S.C. § 2703 requires the Government to go to court with probable cause or “reasonable grounds” to get permission to access these records, which are “non-content” (just location)

G.G. v. Gloucester County School Board

822 F.3d 709 (2016)

- **Background:** A transgender boy with the initials G.G. began using the boys' restrooms at his high school. The school board then passed a policy disallowing him from doing so. As relevant, G.G. sued under Title IX.
- **Holding:** Judge Floyd's majority opinion held that the district court erred in dismissing G.G.'s claim and denying a preliminary injunction. The court held that a regulation involving sex-segregated bathrooms was ambiguous as applied to transgender students. This meant that an administrative opinion saying that schools should act on the basis of gender identity controlled. Judge Niemeyer dissented.
- **Takeaways:**
 - A very hot-button issue: a district court in Texas last weekend enjoined the Obama administration from putting this kind of interpretation into effect nationwide.
 - This case is likely heading to the Supreme Court, which voted 5-3 to block the Fourth Circuit's mandate.



Belmora LLC v. Bayer Consumer Care AG

819 F.3d 697 (2016)

- **Background:** Bayer has used the FLANAX trademark for a painkiller in Mexico since the 1970s. Belmora has used that name in the United States since 2004 for allegedly deceptive purposes.

- **Holding:** Judge Agee's opinion reversed the district court, holding that Bayer had certain causes of action under the Lanham Act despite having never registered or used the trademark in the United States.

- **Takeaways:**

- This case was closely watched by trademark specialists. Both the U.S. Patent and Trademark Office and the American Intellectual Property Law Association backed Bayer.
- In its unsuccessful en banc petition, Belmora argued that the decision makes the Fourth Circuit a “world trademark court” for vindicating the “bordertown rights” of foreign trademark holders.



Belmora



Bayer

Travelers Indemnity Co. v. Portal Healthcare Solutions

--- F. App'x ---, 2016 WL 1399517 (2016)

- **Background:** Portal faced a class-action complaint alleging that it caused private medical records to appear on the Internet for several months. Travelers insured Portal and sought a declaratory judgment that it was not required to defend the suit.
- **Holding:** Affirming, the panel held that the alleged data breach was a “publication” requiring defense even though there was no evidence that third parties accessed the information.
- **Takeaways:**
 - Although the opinion was per curiam and unpublished, many experts agreed that it resolved an important open question about coverage for cyber-security incidents under traditional commercial insurance policies.
 - The court also took an interesting procedural detour, inquiring sua sponte about the district court’s jurisdiction and allowing the parties to supplement the record to offer new evidence showing complete diversity.



***U.S. v. McDonnell*, 792 F.3d 478 (4th Cir. 2015), vacated, 579 U.S. ____ (2016)**

- How did the Fourth Circuit do: Not bad.
- **Government owes the Fourth Circuit a status update on Monday, August 29.** (Quite possible they will seek another 30 days; McDonnell should be in no hurry either).
- Under the new rule, “official act” is a decision or action that must involve a formal exercise of government power. Simply setting up a meeting or participating on a phone call does not qualify. So the question is whether the Government can shoehorn their old evidence into a tougher standard.



Regardless of what you think of the outcome at the Supreme Court, remember: it is never the worst-case outcome for the Court to say that a specific act is *not* outlawed by a specific federal criminal statute. To say “no conviction” in a murky case is never a catastrophe— the laws can be amended.

Class v. Towson University

- **Background:** Gavin Class suffered a heatstroke during football practice and was in a coma for nine days and required more than a dozen surgeries. He wanted to rejoin the football team, but Towson's doctors would not clear him to play, despite his proposed accommodations.
- **Holding:** Towson did not violate the Americans with Disabilities Act. Giving deference to the doctors' determination, the doctors made a reasonable decision that Class was not fit to return to football and that his proposed accommodations were unreasonable.



Takeaways:

- Deference to decisionmakers (extra deference to medical decisionmakers?).
- Debate over objective v. subjective analysis.

Appendix

- See Tables for other statistics.

Percentage of Cases Unpublished

Table B-12.
U.S. Courts of Appeals—Types of Opinions or Orders Filed in Cases Terminated on the Merits, by Circuit,
During the 12-Month Period Ending September 30, 2015

Circuit	Total	Disposed of by Consolidation	Last Opinion or Final Order								
			Total	Oral	Written Opinion or Order						
					Signed ¹		Reasoned, Unsigned ¹		Unsigned, Without Comment		Percent Unpublished
					Published	Unpublished	Published	Unpublished	Published	Unpublished	
Total	34,244	2,622	31,622	1	3,794	5,667	290	17,741	30	4,099	87.0
DC	797	286	511	-	241	-	12	257	-	1	50.5
1st	993	79	914	-	346	26	5	525	-	12	61.6
2nd	2,914	286	2,628	-	234	2,346	47	1	-	-	89.3
3rd	2,185	67	2,118	-	150	1,325	2	527	-	114	92.8
4th	3,363	169	3,194	-	196	310	2	2,686	-	-	93.8
5th	4,743	698	4,045	-	288	82	43	3,617	1	14	91.8
6th	3,305	158	3,147	1	300	668	12	2,163	1	2	90.1
7th	1,739	151	1,588	-	562	-	28	996	-	2	62.8
8th	2,394	118	2,276	-	518	2	54	495	2	1,205	74.8
9th	6,898	347	6,551	-	497	4	34	3,341	26	2,649	91.5
10th	1,301	34	1,267	-	254	863	2	148	-	-	79.8
11th	3,612	229	3,383	-	208	41	49	2,985	-	100	92.4

NOTE: This table does not include data for the U.S. Court of Appeals for the Federal Circuit.

¹ Includes only those opinions and orders that expound on the law as applied to the facts of each case and that detail the judicial reasons upon which the judgment is based.

Percentage of Cases Reversed

Table B-5. (September 30, 2015—Continued)

Circuit and Nature of Proceeding	Total Cases Terminated	Terminated on the Merits									
		By Consolidation	Percent of Total Terminated	Total	Affirmed/ Enforced ¹	Dismissed	Reversed	Remanded	Other	Certificate of Appeal-ability	Percent Reversed ²
2nd	4,942	286	53.2	2,628	1,503	651	182	45	1	246	7.4
Criminal	700	91	67.1	470	281	139	29	21	-	-	6.2
U.S. Prisoner Petitions	371	6	40.7	151	14	28	5	1	-	103	3.3
Other U.S. Civil	255	20	58.0	148	63	67	16	2	-	-	10.8
Private Prisoner Petitions	563	11	60.4	340	63	114	18	2	-	143	5.3
Other Private Civil	1,631	116	49.5	808	488	224	86	9	1	-	10.6
Bankruptcy	86	16	51.2	44	32	9	3	-	-	-	6.8
Administrative Agency Appeals	1,003	21	44.5	446	355	61	20	10	-	-	4.5
Original Proceedings and Miscellaneous Applications	333	5	66.4	221	207	9	5	-	-	-	-
3rd	3,315	67	63.9	2,118	1,443	51	142	36	3	443	6.9
Criminal	464	15	72.4	336	309	4	17	6	-	-	5.1
U.S. Prisoner Petitions	401	4	74.3	298	114	5	16	1	-	162	5.4
Other U.S. Civil	142	2	64.1	91	73	3	12	2	1	-	13.2
Private Prisoner Petitions	633	5	64.6	409	117	2	9	-	-	281	2.2
Other Private Civil	967	32	49.8	482	415	11	52	4	-	-	10.8
Bankruptcy	52	1	59.6	31	24	1	6	-	-	-	19.4
Administrative Agency Appeals	262	4	58.4	153	110	5	13	23	2	-	8.5
Original Proceedings and Miscellaneous Applications	394	4	80.7	318	281	20	17	-	-	-	-
4th	4,499	169	71.0	3,194	2,202	152	138	36	2	664	4.5
Criminal	1,131	76	78.3	886	754	79	44	9	-	-	5.0
U.S. Prisoner Petitions	754	6	78.0	588	190	11	13	-	-	374	2.2
Other U.S. Civil	217	9	70.5	153	129	17	7	-	-	-	4.6
Private Prisoner Petitions	901	7	62.7	565	245	13	16	1	-	290	2.8
Other Private Civil	810	56	58.9	477	415	19	39	4	-	-	8.2
Bankruptcy	54	6	64.8	35	33	1	1	-	-	-	2.9
Administrative Agency Appeals	251	6	61.8	155	116	5	10	22	2	-	6.5
Original Proceedings and Miscellaneous Applications	381	3	87.9	335	320	7	8	-	-	-	-

Median Time Intervals

Table B-4.

U.S. Courts of Appeals—Median Time Intervals in Months for Cases Terminated on the Merits, by Circuit, During the 12-Month Period Ending September 30, 2015

Circuit	Terminated on the Merits													
	Total	By Consolidation	Median Time Intervals From											
			Filing of Notice of Appeal or Docket Date to Filing of Appellee's Last Brief		Filing of Appellee's Last Brief to Oral Argument or Submission on Briefs		Oral Argument to Last Opinion or Final Order		Submission on Briefs to Last Opinion or Final Order		Filing of Notice of Appeal or Docket Date to Last Opinion or Final Order ¹		Filing in Lower Court to Last Opinion or Final Order in Appeals Court	
			Cases	Interval	Cases	Interval	Cases	Interval	Cases	Interval	Cases	Interval	Cases	Interval
Total	34,244	2,622	13,993	5.8	13,993	3.7	6,496	2.1	25,126	0.4	31,622	8.5	24,783	27.8
DC	797	286	327	8.2	327	4.7	288	3.7	223	0.7	511	13.8	341	36.2
1st	993	79	597	8.1	597	3.0	289	3.0	625	2.0	914	13.0	769	34.8
2nd	2,914	286	1,373	7.0	1,373	4.1	786	0.5	1,842	0.2	2,628	10.2	1,961	31.2
3rd	2,185	67	959	5.8	959	2.0	221	3.4	1,897	0.7	2,118	8.4	1,647	35.1
4th	3,363	169	888	5.1	888	2.9	293	2.4	2,901	0.2	3,194	5.3	2,704	23.5
5th	4,743	698	1,860	5.2	1,860	3.6	801	1.2	3,244	0.4	4,045	9.4	3,377	22.5
6th	3,305	158	1,660	4.9	1,660	3.4	526	2.7	2,621	1.1	3,147	8.6	2,490	28.2
7th	1,739	151	870	5.6	870	2.2	613	2.9	975	0.3	1,588	7.2	1,282	28.2
8th	2,394	118	886	3.8	886	4.7	427	3.5	1,849	0.2	2,276	5.3	1,869	24.2
9th	6,898	347	2,136	8.9	2,136	14.5	1,507	1.3	5,044	0.3	6,551	14.1	4,450	34.7
10th	1,301	34	790	4.7	790	3.0	347	3.7	920	1.1	1,267	7.8	1,083	26.0
11th	3,612	229	1,647	4.6	1,647	2.7	398	2.1	2,985	0.9	3,383	7.4	2,810	24.8

NOTE: This table does not include data for the U.S. Court of Appeals for the Federal Circuit. Beginning in March 2014, data include miscellaneous applications not included previously. Cases terminated include appeals, original proceedings, and miscellaneous applications.

¹ Docket date is used when computing the median time intervals for original proceedings, miscellaneous applications, and appeals from administrative agencies.

Length of Time Appeals Under Submission

Table B-20.

**U.S. Courts of Appeals—Appeals Under Submission More Than Three Months
on September 30, 2014 and 2015**

Circuit	2014 Total	2015				
		Total	3 - 5 Months	6 - 8 Months	9 - 11 Months	12 Months or More
Total	761	764	361	154	112	137
Federal	19	26	18	6	0	2
DC	6	6	2	2	2	0
First	37	32	21	5	1	5
Second	231	239	69	31	53	86
Third	62	69	33	22	10	4
Fourth	0	3	2	1	0	0
Fifth	23	16	11	3	2	0
Sixth	60	51	35	10	3	3
Seventh	71	72	38	13	14	7
Eighth	4	7	6	1	0	0
Ninth	120	101	53	21	14	13
Tenth	78	70	31	23	9	7
Eleventh	50	72	42	16	4	10

Percentage of Cases With Oral Argument

Table B-10.

U.S. Courts of Appeals—Cases Terminated on the Merits After Oral Arguments or Submission on Briefs, by Circuit, During the 12-Month Period Ending September 30, 2015

Circuit	Total	Disposed of by Consolidation	Total Excluding Consolidated Cases	After Oral Hearing				After Submission on Briefs			
				Total	Percent of Total	En Banc	Per Panel	Total	Percent of Total	En Banc	Per Panel
Total	34,244	2,622	31,622	6,496	20.5	39	6,457	25,126	79.5	4	25,122
DC	797	288	511	288	56.4	1	287	223	43.6	1	222
1st	993	79	914	289	31.6	1	288	625	68.4	-	625
2nd	2,914	288	2,628	788	29.9	-	788	1,842	70.1	-	1,842
3rd	2,185	67	2,118	221	10.4	2	219	1,897	89.6	-	1,897
4th	3,363	169	3,194	293	9.2	3	290	2,901	90.8	-	2,901
5th	4,743	698	4,045	801	19.8	5	796	3,244	80.2	-	3,244
6th	3,305	158	3,147	526	16.7	2	524	2,621	83.3	-	2,621
7th	1,739	151	1,588	613	38.6	3	610	975	61.4	-	975
8th	2,394	118	2,276	427	18.8	2	425	1,849	81.2	-	1,849
9th	6,898	347	6,551	1,507	23.0	17	1,490	5,044	77.0	3	5,041
10th	1,301	34	1,267	347	27.4	1	346	920	72.6	-	920
11th	3,612	229	3,383	398	11.8	2	396	2,985	88.2	-	2,985

NOTE: This table does not include data for the U.S. Court of Appeals for the Federal Circuit.

Sources

- Scotusblog
- Law360
- SSRN
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2493773
- Howappealing blog

Questions, Comments, or Concerns?

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