February 20, 2014

THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Four of the 12 seats on the Eleventh Circuit Court of Appeals are currently vacant.[1] All four vacancies are "judicial emergencies," which means that the Eleventh Circuit is now operating without enough judges to properly handle its caseload.[2] That alone creates an urgent need to fill these empty seats. But it is also vital—in the Eleventh Circuit in particular—to appoint judges with both personal and professionally diverse backgrounds who will provide justice equally to all litigants, and who will represent the diverse citizenry that appears before them.

The Eleventh Circuit is the second youngest federal court of appeals in the country. It was created in 1981 when Congress removed Alabama, Georgia, and Florida from the Fifth Circuit Court of Appeals and placed them under the umbrella of a new appellate court. (For this reason, Fifth Circuit cases decided before 1981 remain binding precedent in the Eleventh Circuit.) Because the United States Supreme Court hears so few cases, the Eleventh Circuit is effectively the court of last resort in these states, and has the final word in all areas of federal law. For most of its history, judges appointed by Republican Presidents have held a majority among the Eleventh Circuit's members (when President Barack Obama took office in 2009, Republican-appointed judges held a 7-5 majority). In addition, the party of each nominating president only partly explains the court's composition, because some judges appointed by Democrats have ruled with a conservative judicial philosophy, at least on certain issues. The result is a body of law that tends to limit the rights of those who most depend on the fair provision of justice—employees and consumers, criminal defendants, victims of discrimination—and that favors wealthy and more powerful litigants.

The court's membership also has a striking lack of racial diversity. Although 25% of people who live within the Eleventh Circuit are African American (more than any other circuit), the court has only one African American judge, Charles R. Wilson. In fact, Judge Wilson's predecessor, Judge Joseph Hackett, is the only other African American to ever sit on the Eleventh Circuit, and he had been reassigned to the court at its creation in 1981. That means that Judge Wilson is the only African American ever appointed to the Eleventh Circuit, and that the Eleventh Circuit has precisely the same number of black judges now, in 2014, that it did over 30 years ago.

In the Eleventh Circuit, the President has nominated three people so far to fill the four current vacancies: Robin Rosenbaum from Florida, and Jill Pryor and Julie Carnes from Georgia. Jill Pryor was nominated in February 2012 to a seat that has been empty since 2010, but Georgia's Republican Senators, Saxby Chambliss and Johnny Isakson, have withheld their support and stalled her

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[1] *See* Appendix A, "Judicial Vacancies in the Eleventh Circuit."

[2] On December 30, 2013, Chief Judge Edward Carnes issued an emergency order under 28 U.S.C. § 46(b) that allows the court's three judge panels to consist of more than one visiting judge from another jurisdiction. The Order is available at http://www.ca11.uscourts.gov/documents/pdfs/GO%2041.pdf.

nomination.[3] Julie Carnes, a U.S. District Judge in the Northern District of Georgia, was first appointed to the federal bench by Republican President George H.W. Bush. Her elevation to the court of appeals is part of a nomination package that includes four nominees to district court vacancies in Georgia, and that would reportedly let Jill Pryor's nomination move forward.[4] Some advocacy groups, along with members of Georgia's Democratic congressional delegation, have argued that this package lacks sufficient diversity (only one of the six nominees is African American),[5] and have publicly criticized some of the district court nominees for their records as state judges, legislators, and lawyers.[6] The fourth vacancy, for which there is not yet a nominee, is an Alabama seat that opened when Judge Joel Dubina took senior status last year.

If the President successfully fills all four vacancies, Democratic appointed judges on the Eleventh Circuit will have gone from a 7-5 minority to a 9-3 majority during his Administration. And if even one African American judge is confirmed, the court will have more black judges than it has ever had before. Of course, the ultimate impact of new judges depends in large part on the current roster of jurists they will join. Below, the Eleventh Circuit's eight active judges and their judicial records are profiled in order of seniority. The three pending nominees are also profiled in order of nomination.

A. Chief Judge Edward Earl Carnes

Chief Judge Carnes (no relation to nominee Julie Carnes) is a career public servant who was appointed to the Eleventh Circuit by President George H.W. Bush in 1992. Before taking the bench, Judge Carnes served as Assistant State Attorney General for the State of Alabama, and he led the Capital Punishment Division from 1981 until his nomination. There, he both wrote Alabama's death penalty statute and then defended it, on five separate occasions, before the U.S. Supreme Court.[7] Judge Carnes's advocacy for state executions is reflected in several of his judicial opinions. In *Waters v. Thomas*,[8] for example, Judge Carnes wrote the *en banc* opinion that overturned a three judge panel, and denied *habeas* relief to a prisoner on death

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[3] It is ultimately the President's responsibility to name candidates for the court's vacancies, but home state senators also wield significant influence during the nomination process. Following Senate tradition, Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., will not allow the Committee to advance a nominee unless both home state senators return signed "blue slips" signaling their approval. As a result of this courtesy, the White House typically consults with senators before a nomination is made in their state, especially with respect to district court vacancies.

[4] Peter Sullivan, *Civil Rights Leaders Call for Obama to Withdraw Georgia Judicial Nominees*, THE HILL, Dec. 23, 2013, *available at* http://thehill.com/blogs/blog-briefing-room/193897-civil-rights-leaders-call-for-obama-to-withdraw-ga-judge-nominees.

[5] *Id.*; *see also* Andrew Cohen, *Why Aren't There More Black Judges in Alabama, Florida, and Georgia?*, THE ATLANTIC, Nov. 12, 2013, *available at* http://www.theatlantic.com/national/archive/2013/11/why-arent-there-more-black-federal-judges-in-alabama-florida-and-georgia/281322/; Letter from Henry C. "Hank" Johnson, Sanford D. Bishop Jr., John Lewis, David A. Scott, and John Barrow, Members of Congress, to Kathryn Ruemmler, Counsel to the President (Sept. 17, 2013), *available at* http://pdfserver.amlaw.com/dailyreport/Editorial/LettertoWhiteHouseGeneralCounsel_GeorgiaFederalJudiciary.pdf.

[6] For example, in 2001, then-State Representative Michael Boggs, who has been nominated to replace Julie Carnes if she is confirmed to the Eleventh Circuit, voted to keep the Georgia state flag that contained the Confederate battle emblem. *See* Sullivan, *supra* note 4.

[7] *See*, *e.g.*, *Baldwin v. Alabama*, 472 U.S. 372 (1985).

[8] 46 F.3d 1506 (11th Cir. 1995) (*en banc*).

row claiming ineffective assistance of counsel. Judge Carnes ruled that counsel's decision to have the defendant testify and describe the gruesome murders for which he was convicted (testimony the panel opinion described as "chilling"),[9] was a "reasonable" and "calculated strategic decision." Similarly, in *Williams v. Head*,[10] Judge Carnes wrote the opinion denying *habeas* relief to a defendant sentenced to die for a crime he committed at the age of 17. In dissent, Judge Rosemary Barkett (who has since retired) argued that the defendant's counsel had been ineffective, and that, contrary to Supreme Court precedent, "the 'particularized characteristics' of [the defendant] . . . have never been considered by any judge or jury in deciding whether the death penalty would be constitutionally appropriate punishment."[11] Aside from capital cases, Judge Carnes is perhaps best known for writing the opinion that ordered Alabama Supreme Court Justice Roy Moore to remove a giant Ten Commandments monument from the state judicial building.[12] More recently, Judge Carnes issued a ruling that prevents those harmed by unjust arbitration rulings from seeking review in federal court. In *B.L. Harbert International, LLC v. Hercules Steel Co.*,[13] Judge Carnes's opinion held that an arbitrator's ruling must be upheld unless it is the result of "manifest disregard for the law," even if it contains "clear error." Further, the court warned future plaintiffs that challenges to arbitration rulings could result in monetary sanctions.

B. Judge Gerald Bard Tjoflat

Judge Tjoflat is the Eleventh Circuit's longest-serving member and one of the longest-serving members of the federal judiciary. He was nominated to the Middle District of Florida by President Richard Nixon in 1970, and then elevated to the Fifth Circuit by President Gerald Ford in 1975. In 1981, he was reassigned to the newly created Eleventh Circuit. In 2012, Judge Tjoflat joined a unanimous panel to rule against a mental health counselor who had been fired after refusing to work with a gay client.[14] The plaintiff-counselor told her client that same-sex relationships conflict with her personal views, and the client reported feeling "judged and condemned." The counselor, a federal employee, brought a First Amendment Free Exercise claim, but the court held that she was terminated for her improper treatment of the client, not her religious beliefs about homosexuality. In *Hubbard v. BankAtlantic Bancorp, Inc.*,[15] Judge Tjoflat wrote the opinion finding that an expert study was insufficient to prove "loss causation" in a shareholder class action for securities fraud. To obtain relief for securities fraud, shareholders must show that the fraud—as opposed to other market forces—was a "substantial" or "significant contributing cause" of the drop in share value. *Hubbard* raises the evidentiary bar to meet this standard, and makes it all more the difficult to hold corporate management accountable for even concededly fraudulent conduct.

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[9] *Waters v. Zant*, 979 F.2d 1473, 1495 (11th Cir. 1992), *vacated by Waters v. Thomas*, 46 F.3d 1506.
[10] 185 F.3d 1223 (11th Cir. 1999).
[11] *Id.* at 1244 (Barkett, J., dissenting).
[12] *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003).
[13] 441 F.3d 905 (11th Cir. 2006).
[14] *Walden v. CDC & Prevention*, 669 F.3d 1277 (11th Cir. 2012).
[15] 688 F.3d 713 (11th Cir. 2012).

C. Judge Frank M. Hull

President Bill Clinton appointed Judge Hull to the Northern District of Georgia in 1994, and then to the Eleventh Circuit in 1997. Judge Hull has taken a narrow view of the rights of criminal defendants, particularly those on death row who seek federal *habeas* relief. In 2011, she wrote the *en banc* majority opinion that denied *habeas* to death row prisoner Warren Lee Hill, Jr. Her opinion held that while it is unconstitutional to sentence a mentally retarded defendant to death, Georgia law may require defendants to prove retardation beyond a reasonable doubt—the law's most demanding legal standard.[16] (The term "mentally retarded" is now disfavored, but it is used here to be consistent with the case law.) Last year, Judge Hull ruled against Mr. Hill again, writing the decision that denied his attempt to introduce the opinions of seven mental health experts who all agreed that Mr. Hill had an IQ of 70 and was mentally retarded.[17] Disregarding the Eighth Amendment prohibition on executing the mentally retarded, the panel dismissed Mr. Hill's petition on procedural grounds. In her dissent, Judge Barkett rejoined that "[t]he idea that courts are not permitted to acknowledge that a mistake has been made which would bar an execution is quite incredible for a country that not only prides itself on having the quintessential system of justice but attempts to export it to the world as a model of fairness."[18] Finally, in 2009, Judge Hull joined a *per curiam* decision that refused to waive a filing deadline for a death row prisoner whose attorneys abandoned him without notice.[19] The Supreme Court later overturned that ruling in a 7-2 decision.[20] In a major ruling outside the *habeas* context, Judge Hull joined the only federal appellate decision to strike down the Affordable Care Act's mandate that every individual purchase health insurance.[21] The 2-1opinion held that the "individual mandate" did not fall within Congress's power to either levy taxes or regulate interstate commerce. This decision was overturned when the Supreme Court upheld the individual mandate under the federal government's taxing power.[22]

D. Judge Stanley Marcus

Judge Marcus first took the federal bench in 1985, when President Ronald Reagan appointed him to a newly created district court seat in the Southern District of Florida. President Clinton elevated Judge Marcus to the Eleventh Circuit in 1997. In 2002, Judge Marcus pronounced a cramped view of the civil remedies available under Title IX, the federal law that prohibits gender discrimination in education programs that receive federal assistance. His opinion held that Title IX does not provide a cause of action for individuals who suffer retaliation for reporting gender discrimination.[23] The Supreme Court later reversed that decision in an opinion by Justice Sandra Day O'Connor.[24] Judge Marcus was also on the panel that ruled on the

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[16] *Hill v. Humphrey*, 662 F.3d 1335 (11th Cir. 2011); *see also Atkins v. Georgia*, 536 U.S. 304 (2002) (holding that the Eighth Amendment prohibition on cruel and unusual punishment proscribes executing mentally retarded defendants).
[17] *In re Warren Lee Hill, Jr.*, 715 F.3d 284 (11th Cir. 2013).
[18] *In re Hill*, note 1717, *supra*, at 302 (Barkett, J., dissenting).
[19] *Maples v. Allen*, 586 F.3d 879 (11th Cir. 2009).
[20] *Maples v. Thomas*, 132 S. Ct. 912 (2012).
[21] *Florida v. U.S. Dept. of Health & Human Servs.*, 648 F.3d 1235 (11th Cir. 2011).
[22] *Nat'l Fed. of Independent Business v. Sebelius*, 567 U.S. __ (2012).
[23] *Jackson v. Birmingham Bd. of Educ.*, 309 F.3d 1333 (11th Cir. 2002).
[24] *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005).

constitutionality of the Affordable Care Act, and he dissented from the decision that struck down the individual mandate. His dissent observed: "In the process of striking down the mandate, the majority has ignored many years of Commerce Clause doctrine developed by the Supreme Court. It has ignored the broad power of Congress, in the words of Chief Justice Marshall, 'to prescribe the rule by which commerce is to be governed.' . . . [And] [i]t has ignored the Supreme Court's expansive reading of the Commerce Clause that has provided the very foundation on which Congress already extensively regulates both health insurance and health care services."[25]

E. Judge Charles R. Wilson

The only African American judge on the Eleventh Circuit (and only the second to serve in the court's history), Judge Wilson was appointed by President Clinton in 1999. He previously served as a magistrate judge and as U.S. Attorney for the Middle District of Florida. As an appellate judge, Judge Wilson has written opinions in significant cases concerning worker rights, immigration law, and the rights of capital defendants. In *Mulhall v. Unite Here Local 355*,[26] Judge Wilson wrote the opinion holding that "neutrality agreements" between employers and unions are unlawful under a 1947 anti-bribery statute. Under these agreements, employers remain neutral when unions try to organize the workforce, and the Eleventh Circuit construed such neutrality as an improper "thing of value." The Supreme Court granted *certiorari* but then dismissed the case as improvidently granted, leaving the Eleventh Circuit's anti-labor decision in place. Dissenting from the dismissal, Justice Stephen Breyer, joined by Justices Sonia Sotomayor and Elena Kagan, warned that failing to clarify this issue "could negatively affect the collective-bargaining process."[27] Judge Wilson also wrote the opinion striking down portions of Alabama's controversial immigration law—a law designed to place so many burdens on undocumented residents that they would self-deport.[28] Specifically, the Eleventh Circuit invalidated a provision that required school officials to determine the immigration status of every new student, and struck down an unprecedented ban on contracting between lawful and unlawful residents. But the court also let stand a provision that makes it a felony for an undocumented immigrant to enter into a "public records" business transaction with the State—for example, obtaining a driver's license or a non-driver's ID card. Finally, Judge Wilson dissented from Judge Hull's majority opinion in *Hill v. Humphrey*, which approved a Georgia law that requires criminal defendants facing the death penalty—which is barred for mentally retarded defendants by the Eighth Amendment—to bear the burden of proving mental retardation beyond a reasonable doubt.[29]

F. Judge William H. Pryor, Jr.

Judge Pryor, appointed to the court in 2004, was President George W. Bush's only appointee to the Eleventh Circuit. Prior to taking the bench, Judge Pryor served as Alabama's Attorney General from 1997 to 2004. Citing his public statements on abortion and other social issues, as well as his narrow view of federal powers, Senate Democrats initially blocked Judge Pryor's nomination. President Bush then made him a recess appointment in 2004 before he was confirmed in 2005 by a vote of 53-45. As Alabama Attorney General, Judge Pryor had

[25] *See* note 21, *supra*, at 1329 (Marcus, J., dissenting) (internal citations omitted).
[26] 667 F.3d 1211 (11th Cir. 2012).
[27] *Unite Here Local 355 v. Mulhall*, 134 S. Ct. 594, 595 (2013) (Breyer, J., dissenting).
[28] *United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012).
[29] See note 16, *supra*.

characterized *Miranda v. Arizona* and *Roe v. Wade* as "the worst examples of judicial activism." Furthermore, when referring to *Roe*, he remarked that "[o]n January 22, 1973, seven members of [the Supreme Court] swept aside the laws of the fifty states and created—out of thin air—a constitutional right to murder an unborn child." On the court, Judge Pryor has written several opinions that address racial equality and the scope of the Establishment Clause. In *Common Cause/Georgia v. Billups*,[30] for example, he wrote the panel opinion upholding Georgia's voter ID law—a state law that required all registered voters in Georgia to present a government-issued photo identification to vote in person. Although the record showed that nearly half of those the law prevented from voting were African American, the court found that the law placed an "insignificant burden" on voters.[31] Judge Pryor—joined by Judge Wilson—also wrote an opinion holding that sectarian prayers used to open county commission meetings do not violate the Establishment Clause.[32] In the several appeals made during the *Ash v. Tyson Foods* litigation, Judge Pryor issued rulings both limiting the ability of discrimination victims to seek relief, and protecting large corporations from paying punitive damages. In *Ash*, an African American employee of Tyson Foods won a $1.75 million jury verdict after he was denied a promotion because of his race. An Eleventh Circuit panel (of which Judge Pryor was not a part) then vacated the verdict for insufficient evidence, despite testimony that a white supervisor referred to the plaintiff as "boy." The court reasoned that "boy" was evidence of discriminatory intent only "when modified by racial classification like 'black' or 'white.'"[33] The Supreme Court rejected this reasoning and remanded,[34] and the employee again won a million dollar jury award. But Judge Pryor and Judge Carnes issued a *per curiam* decision rejecting that verdict as well, and holding that the supervisor's use of the word "boy" was simply "conversational" and among "ambiguous stray remarks" unrelated to the employment decision.[35] On re-hearing one year later, and almost fifteen years after the litigation began, Judge Pryor and Judge Carnes changed their minds on the issue of discrimination and affirmed the jury verdict.[36] But they rejected a $1 million punitive damages award against Tyson because the discriminating supervisor was too low in the corporate hierarchy.

G. Judge Beverly B. Martin

Joining the court in 2009, Judge Martin was President Obama's first appointee to the Eleventh Circuit. She previously served on the district court for the Northern District of Georgia, as United States Attorney for the Middle District of Georgia, and as Assistant Attorney General for the State of Georgia. In 2012, Judge Martin joined Judge Wilson's opinion that struck down the most controversial and burdensome provisions of Alabama's unprecedented immigration law.[37] In *United States v. Early* , she wrote a concurrence criticizing the court for showing great deference to prison sentences that go above the sentencing guideline range, while more closely scrutinizing shorter sentences.[38] She warned that the

[30] 554 F.3d 1340 (11th Cir. 2009).
[31] *Id.* at 1354.
[32] *Pelphrey v. Cobb County*, 547 F.3d 1263 (11th Cir. 2008).
[33] 129 Fed App'x 529, 536 (2005).
[34] 546 U.S. 454 (2006).
[35] 392 Fed. App'x 817, 829 (11th Cir. 2010).
[36] 664 F.3d 883 (11th Cir. 2011).
[37] *See* note 28, *supra*, and accompanying text.
[38] *United States v. Early*, 686 F.3d 1219, 1223-23 (11th Cir. 2012) (Martin, J., concurring).

court's inconsistent approach to criminal sentencing "may erode public trust in our work."[39] In the context of campaign finance, Judge Martin wrote an opinion upholding Florida election laws that require political action committees to disclose how much they spend, and to identify the sponsors of advertisements.[40]

H. Judge Adalberto Jordan

Judge Jordan, a Cuban-American who came to the United States as a child, is the most recent addition to the Eleventh Circuit, appointed by President Obama in 2012. Prior to his elevation, Judge Jordan served on the district court for the Southern District of Florida for more than a decade. Prior to his judicial service, he was an Assistant U.S. Attorney in the Southern District of Florida. After graduating from law school, Judge Jordan clerked for Judge Thomas Alonzo Clark of the Eleventh Circuit, and Justice Sandra Day O'Connor of the Supreme Court. On the Eleventh Circuit, Judge Jordan wrote the opinion in *I.L. v. Alabama*,[41] which dismissed the claims of public school children who alleged that property tax provisions in the Alabama State Constitution undermined the ability of certain rural, primarily black school districts to raise revenue. Although the district court found that several of the challenged provisions had been enacted with "racially discriminatory intent," the Eleventh Circuit held that the plaintiff school children lacked standing to sue. Writing for the panel, Judge Adalberto recognized the lingering effects of "Alabama's deep and troubled history of racial discrimination," but concluded that "[c]ourts . . . are not always able to provide relief, no matter how noble the cause."[42]

I. Nominee Jill Pryor

President Obama nominated Jill Pryor (no relation to Judge William Pryor) on February 16, 2012. Pryor has spent nearly her entire career at the law firm of Bondurant, Mixson & Elmore, LLP in Atlanta, Georgia, where she is currently a partner.[43] Pryor joined the firm in 1989 following a clerkship with Judge J.L. Edmondson on the Eleventh Circuit. She is also on the board of directors at Georgia Legal Services Program, Inc., and is a former president of the Georgia Association for Women Lawyers. At Bondurant, Pryor represents corporations and high net worth individuals in commercial disputes involving, among other issues, breach of contract, business torts, corporate governance, shareholder rights, and class actions. Since the mid-2000s, she has defended a number of claims brought under the federal Fair Credit Reporting Act (FCRA). For example, in *Campos v. ChoicePoint Inc.*,[44] she successfully blocked certification of a consumer class against ChoicePoint, Inc.—a company with $1 billion in revenue that sells personal consumer information such as insurance claim history, employment background checks, and tenant screening information. The plaintiffs alleged that ChoicePoint violated the FCRA when it required them to pay separately for each type of report that ChoicePoint compiled, rather than providing a consumer with his or her entire file for a single fee. The putative class included "adversely affected

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[39] *Id.* at 1225.
[40] *Worley v. Cruz-Bustillo*, 717 F.3d 1238 (11th Cir. 2013).
[41] 2014 U.S. App. LEXIS 503 (11th Cir. Jan. 10, 2014).
[42] *See id.*
[43] Senate Judiciary Committee Questionnaire, *available at* http://www.judiciary.senate.gov/nominations/112thCongressJudicialNominations/upload/JillPryor-PublicQuestionnaire.pdf.
[44] 237 F.R.D. 478 (N.D. Ga. Mar. 27, 2006).

consumers" who had been denied insurance or a job based on information in a ChoicePoint consumer report. On January 24, 2012, Senators Chambliss and Isakson wrote a letter to President Obama endorsing Pryor for a judgeship in the Northern District of Georgia, but he selected her for an Eleventh Circuit seat instead.

J. Nominee Judge Robin S. Rosenbaum

President Obama appointed Judge Rosenbaum to the Southern District of Florida in 2012, and then nominated her to the Eleventh Circuit on November 7, 2013. Judge Rosenbaum was previously a U.S. Magistrate Judge and spent most of her career prosecuting federal economic crimes. In 1995, Judge Rosenbaum joined the Independent Counsel investigating corruption allegations against former U.S. Secretary of Commerce Ronald Brown. The inquiry ended after one year when Secretary Brown died in a plane accident. In her short time as trial judge, several of Judge Rosenbaum's notable decisions have been to let civil rights claims survive summary judgment and proceed to trial. In *Lawson v. Plantation General Hospital*,[45] she let a jury decide whether the defendant hospital discriminated against a former secretary based on race, age, disability, national origin, and gender. Likewise, in *Peters v. Peake*,[46] she denied summary judgment on claims that the Veterans Administration retaliated against one of its physicians for complaining about a sexually hostile work environment. Finally, Judge Rosenbaum's experience prosecuting complex financial crimes proved relevant in *SEC v. Huff*.[47] In *Huff*, the SEC accused the defendant of defrauding a publicly traded company out of $130 million. Judge Rosenbaum presided over a bench trial—serving as finder of both fact and law—and ultimately ordered the defendant to disgorge $10 million and barred him from serving as officer or director of a public company.

K. Nominee Judge Julie Carnes

Judge Carnes was appointed to the Northern District of Georgia by President George H.W. Bush in 1992, and nominated to the Eleventh Circuit on December 19, 2013. Prior to joining the bench, Judge Carnes worked as Special Counsel and Sentencing Commissioner on the U.S. Sentencing Commission, and as a prosecutor in the U.S. Attorney's Office for the Northern District of Georgia. As a district judge, Judge Carnes has issued several notable rulings in the context of criminal procedure and the scope of law enforcement authority. In *Thomas v. Clayton County*,[48] she granted summary judgment in favor of a public school teacher and a police officer who strip searched an entire class of fifth grade students over a missing $26. The teacher and officer (who was in the classroom as a visitor for unrelated reasons) acted without any individualized suspicion as to who may have taken the money. Judge Carnes reasoned that while the searches violated the Fourth Amendment, the defendants were entitled to qualified immunity because the prohibition on such searches was not yet "clearly established." Conversely, in *Reyes v. Clayton County*, Judge Carnes denied qualified immunity for two police officers who obtained a warrant based on vague information from a confidential informant. The officers ended up searching the wrong apartment and handcuffing its occupants before realizing their mistake. The Eleventh Circuit reversed, conferring immunity upon and ordering judgment in favor of the officers.

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[45] Civil Docket No. 08-61826 (S.D. Fla. 2008).
[46] Civil Docket No. 08-81162 (S.D. Fla. 2008).
[47] 664 F. Supp. 2d 1288 (S.D. Fla. 2009).
[48] 94 F. Supp. 2d 1290 (N.D. Ga. 1999).

APPENDIX A: JUDICIAL VACANCIES IN THE ELEVENTH CIRCUIT

I. Pending Nominees

Nominees	Nominated To	Nomination Date	Emergency	Gender	Race	Senators
Jill A. Pryor	**11th Circuit (GA)**	**2/16/12; 1/3/13**	**Yes**	**F**	**W**	**Chambliss/Isakson**
Robin Rosenbaum	**11th Circuit (FL)**	**11/7/2013**	**Yes**	**F**	**W**	**N/A**
Julie Carnes	**11th Circuit. (GA)**	**12/19/2013**	**Yes**	**F**	**W**	**Chambliss/Isakson**
Michael Boggs	ND GA	12/19/2013		M	W	Chambliss/Isakson
Leigh Martin May	ND GA	12/19/2013	Yes	F	W	Chambliss/Isakson
Eleanor Ross	ND GA	12/19/2013		F	AfA	Chambliss/Isakson
Mark Cohen	ND GA	12/19/2013	Yes	M	W	Chambliss/Isakson
Beth Bloom	SD FL	2/5/2014	Yes	F	W	Nelson/Rubio
Darrin Gayles	SD FL	2/5/2014	Yes	M	AfA	Nelson/Rubio
Carlos Mendoza	MD FL	2/5/2014	Yes	M	H	Nelson/Rubio
Paul Byron	MD FL	2/5/2014		M	W	Nelson/Rubio

II. Current Vacancies Without a Nominee

Judicial Circuit	Vacancy	Prior Incumbent	Reason for Vacancy	Judicial Emerg.	Senators
11	**11th Circuit (AL)**	**Joel Dubina**	**Senior**	**Yes**	**Sessions/Shelby**
11	MD AL	Myron Thompson	Senior		Sessions/Shelby
11	ND AL	Lynwood Smith Jr.	Senior	Yes	Sessions/Shelby
11	SD FL	Adalberto Jordan[49]	Elevated	Yes	Nelson/Rubio

III. Future Vacancies Without a Nominee

Judicial Circuit	Vacancy	Prior Incumbent/ *Incumbent*	Reason for Vacancy	Judicial Emerg.	Controlling Senators
11	MD GA	Louis W. Sands	Senior	N/A	Chambliss/Isakson
11	ND GA	Julie Carnes	Elevated	N/A	Chambliss/Isakson
11	SD FL	Robin Rosenbaum	Elevated	N/A	Nelson/Rubio

[49] President Obama originally nominated William Thomas to this seat on 11/14/12, and then re-nominated him on 1/3/13. Thomas was returned to the White House at the end of 2013 and not re-nominated.