

AFJ NOMINEE REPORT

MARVIN QUATTLEBAUM



U.S. Court of Appeals for the Fourth Circuit

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INTRODUCTION

On May 7, 2018, President [Trump nominated](#) A. Marvin Quattlebaum, Jr. to the Fourth Circuit Court of Appeals [seat](#) currently held by Judge William Byrd Traxler, Jr. Judge Traxler is scheduled to take senior status on August 31, 2018.

Although Quattlebaum was very recently confirmed to be a U.S. District Court judge, the Senate should, consistent with its constitutional responsibilities, carefully examine Quattlebaum's record anew – including his record as a District Court judge – before confirming him to a lifetime seat on the Fourth Circuit Court of Appeals.

DISTRICT COURT NOMINATION

According to Quattlebaum's Senate Judiciary Committee [Questionnaire](#), he interviewed with the Trump Administration for a U.S. District Court position in May 2017, and "During the nomination process, I discussed my willingness to be considered for a vacancy on the Fourth Circuit should a vacancy arise."¹ In August 2017, President Trump [nominated](#) Quattlebaum to be a judge for the District Court of South Carolina. The Senate Judiciary Committee held a nomination [hearing](#) in October 2017.

When the Senate [confirmed](#) Quattlebaum for the District Court position by a [vote](#) of 69 to 28 on March 1, 2018, questions were raised regarding several highly respected African-American nominees for the same position whose nominations the South Carolina senators did not allow to advance during the Obama Administration.

President Obama had previously nominated two individuals to this seat. One was [Alison Lee](#), who was the [first](#) African-American woman to be an elected circuit judge in South Carolina. Later, President Obama nominated [Donald Beatty](#), an African-American South Carolina Supreme Court Justice, to the seat. Prior to Justice Beatty's nomination, Quattlebaum himself [described](#) Beatty – who is now the Chief Justice of the South Carolina Supreme Court – as someone who "has risen through his industriousness and talent, to a position as **one of this state's premier jurists** . . . [d]uring his entire adult life, Beatty's record of service to his community, state, and country has been impeccable . . . [h]e is justifiably respected as a man of integrity and decency."² (emphasis added).

When the South Carolina senators declined to return blue slips on Judge Lee and Justice Beatty, the Senate Judiciary Committee did not advance their nominations. When President Trump nominated Quattlebaum for the same seat in 2017, the South Carolina senators returned their blue slips, and Quattlebaum's nomination

advanced through the confirmation process.

BIOGRAPHY

Before his recent confirmation, Quattlebaum worked in private practice. As he described in his [questionnaire](#), “the majority of my practice consisted of the defense of product liability actions with an emphasis on representing tire manufacturers.”³ Quattlebaum spent most of his legal career at Nelson Mullins Riley & Scarborough LLP, first as an associate from 1989 to 1996, and then as a partner from 1997 to 2018. Quattlebaum also spent a year (1996-1997) as a partner at Robertson & Quattlebaum.

From 2003 to 2010, Quattlebaum served as the commissioner of South Carolina’s lottery, and from 2002 to 2003, he served as an appointee of then-Governor Mark Sanford to the Task Force on Government Restructuring and [Campaign Finance Reform](#).⁴ He received his J.D. from the University of South Carolina School of Law in 1989 and his B.A. from Rhodes College in 1986.

CIVIL RIGHTS

During his brief tenure as a U.S. District Court judge, [Quattlebaum](#) has already [ruled](#) on a civil rights case involving the [NAACP](#) and the Lawyers Committee for Civil Rights Under Law, [NAACP v. City of Myrtle Beach](#), No. 4:18-cv-00554 (D. S.C.

May 23, 2018). The NAACP [described](#) the case as “City and Police Accused of Separate and Unequal Treatment of Black Bikers versus White Bikers,” explaining, “The complaint alleges that there are stark differences in the treatment of African-American bikers during Black Bike Week [Bikefest] compared to the treatment of majority-White bikers during Harley Week.”

When Quattlebaum considered the NAACP’s request for a preliminary injunction to block Myrtle Beach from imposing a traffic plan for Black Bike Week that was different from the city’s plans for Harley Week, he noted that the NAACP had presented evidence arguing that “statements by various public officials and members of the public reflect racial hostility towards Bikefest.”⁵

While Quattlebaum found that “there are clear differences in the plans utilized for Harley Week and Bikefest,”⁶ he noted that the traffic plan in place for the Black Bike Week “attempts to serve a legitimate public interest in decreasing traffic congestion on Ocean Boulevard, providing a clear path for emergency response vehicles and providing for the public safety in general.”⁷ Quattlebaum determined that the NAACP was not likely to succeed on the merits of their Fourteenth Amendment equal protection and First Amendment expressive association claims, denying the request for a preliminary injunction on May 23, 2018.

In his short time on the bench, Quattlebaum has also ruled in [multiple civil rights suits](#) and prisoners’ [habeas](#)

claims, dismissing several of these cases.

CONSUMERS AND WORKERS

In several cases, Quattlebaum defended Michelin North America, Inc. against claims involving injury and death resulting from allegedly defective Michelin tires.⁸ As described in his questionnaire, Quattlebaum “handle[d] this type of litigation for tire companies in federal courts across the country.”⁹ Quattlebaum also defended Michelin from “claims of fraud, antitrust violations, and breach of dealer agreements.”¹⁰

In March 2016, South Carolina Lawyers Weekly [reported](#) that a judge denied an emergency motion accusing attorneys representing tire manufacturer Hankook Tire Company of jury tampering. Quattlebaum was part of the tire manufacturer’s defense team.

As a U.S. District Court Judge, Quattlebaum has already heard [several cases](#) involving allegations of corporate misconduct.

RULE OF LAW

Of note in today’s environment, Quattlebaum has commented frequently on the rule of law, the importance of an independent

judiciary, and the need for civility in public life. In an April 2011 speech, Quattlebaum [declared](#) that “the rule of law distinguishes our country from virtually all others,” and, “**The rule of law is one of the key principles that make the United States of America great.**”¹¹ (emphasis added) In an August 2011 [speech](#), Quattlebaum made a plea for civility: “When lawyers do not display civility, they degrade our profession. The public watches how we behave. Surveys show that the public does not like or respect rude behavior or personal attacks.”¹²

While serving as the president of the South Carolina Bar, Quattlebaum also commented on the importance of civic awareness to the continuation of democracy in America, [writing](#) in November 2011:

We have an epidemic of civic illiteracy in America. This epidemic is not only alarming, it is dangerous. As Alexis de Tocqueville pointed out, each new generation is a new people that must acquire the knowledge, learn the skills, and develop the dispositions or traits of private and public character that undergird a constitutional democracy. Those dispositions must be fostered and nurtured by word and study and by the power of example. Democracy, de Tocqueville wrote, is not a “machine that would go of itself” but must be consciously reproduced, one generation after another.¹³

Quattlebaum gave a passionate recorded [speech](#) in May 2012, where he [stated](#):

We've seen in South Carolina efforts to attack the independence of our judiciary. We've seen outside the state interest groups attempt to be involved in judicial elections. And when that has happened, this Bar has stood up and said that's not right. Our judiciary is independent. It is not the pawn of any political party or any political action committee or any special interest group. And I think we were right to do that.¹⁴

In his [notes](#) from the same speech, Quattlebaum elaborated on his previous comments, writing:

The rule of law in our country is special. It is unique. But it cannot and should not be taken for granted. It depends on there being support for our judiciary. And such support depends on the independence of the courts.¹⁵

In these same recorded [remarks](#), Quattlebaum warned about possible responses to the Affordable Care Act decision then pending before the Supreme Court, [NFIB v. Sebelius](#), 567 U.S. 519 (2012). Quattlebaum implored:

So whenever that decision comes, I would ask that we all take a deep breath when it comes out. And that we refrain from personal attacks on the justices that we might disagree with. That we refrain from calling them Reagan appointees, or Clinton appointees, or Bush

appointees, or Obama appointees. And that even if we disagree with the decision, that we respect it as being made by justices doing their best to apply the law in a difficult situation that's been put in their laps. Because that really is what's happening not just in high profile cases, but the cases we all deal with on a much smaller scale here in South Carolina, and that are dealt with across the country. And all those decisions need the respect of the rule of law, and that respect for the rule of law I believe depends on the independence of the judiciary.¹⁶

As he explained in another May 2012 [speech](#), "our judicial system, for all its greatness, is not guaranteed. It should not be taken for granted. If it is not tended, if it is not maintained, it can be lost."¹⁷

BROWN V. BOARD

Quattlebaum is on the record extolling the importance of the landmark desegregation case, [Brown v. Board of Education of Topeka](#), 347 U.S. 483 (1954), at a time when numerous Trump judicial nominees have declined to say definitively at their confirmation hearings that they believe the case was correctly decided.

In April 2011, shortly before he was [sworn in](#) as the head of the South

Carolina Bar, Quattlebaum [spoke](#) and [wrote](#) about “court decisions which helped usher the end of segregation under the rule of law.”¹⁸

Quattlebaum [noted](#) that:

Perhaps the most famous of these cases was [Brown v. Board of Education of Topeka, Kansas](#). That case overruled [Plessy v. Ferguson](#), which in 1896 had held "separate but equal" schools were permitted. As a result, states had separate schools for white people and black people. If you go down Dunbar and turn left on Calhoun, you'll see the Sterling Center. That was Sterling High School, the high school for black people in this area. In [Brown](#), the Court held that “separate education facilities are inherently unequal” and, therefore, unconstitutional.¹⁹

His discussion of the seminal decision and its history [continued](#):

You may not know how important South Carolina was to this opinion. Has anyone heard of [Briggs v. Elliott](#)? That was a case from Charleston, South Carolina challenging segregated schools in our state. It was argued by Thurgood Marshall. There was someone else important in that case. Who is this? Dr. Kenneth Clark. Dr. Clark was a sociologist who explained the sociological consequences of separating white and black children. **He did this with a study called the [Baby Doll experiments](#)**. He was a witness in

[Briggs](#) and testified about the effects of segregated schools on children. The appeal of the [Briggs](#) case from South Carolina was combined with the appeal of [Brown](#). **Without this excellent legal work by lawyers in South Carolina courtrooms, there might not have been the "evidence" for the [Brown](#) decision.**²⁰ (emphases and links added)

Quattlebaum also [spoke several](#) times about “South Carolina’s greatest civil rights lawyer,” Judge Matthew Perry.²¹ He explained that Perry “became the first African American to serve as a federal judge in South Carolina,” “believed that no citizen should be denied access to the courts of the United States, especially because of the color of their skin,” and “made sure that those who were disenfranchised and subjected to discrimination that we can hardly imagine today had access to the courts just like the rest of society.”²²

CONCLUSION

The Senate should, consistent with its constitutional responsibilities, carefully examine Quattlebaum’s record before confirming him to a lifetime appointment on the Fourth Circuit Court of Appeals.

ENDNOTES

- 1 Sen. Comm. On the Judiciary, 115th Cong., Arthur Marvin Quattlebaum Questionnaire for Judicial Nominees, 39, available at <https://www.afj.org/wp-content/uploads/2018/06/A.-Marvin-Quattlebaum-Senate-Questionnaire-report-OCR.pdf>.
- 2 A. Marvin Quattlebaum, et. al., Letter to the editor: State attorneys offer perspective on recent comments about ethics, MORNING NEWS (FLORENCE) (Jan. 6, 2014), available at <https://afj.org/wp-content/uploads/2018/06/Quattlebaum-LTE-2-3.pdf>.
- 3 Sen. Comm. On the Judiciary, 115th Cong., Arthur Marvin Quattlebaum Questionnaire for Judicial Nominees, 29.
- 4 *Id.* at 27.
- 5 *NAACP v. City of Myrtle Beach*, 2018 U.S. Dist. LEXIS 86544 1, 14 (D. S.C. May 23, 2018).
- 6 *Id.* at 9-10.
- 7 *Id.* at 25.
- 8 *See e.g., Reese v. Michelin N. Am., Inc.*, 2016 U.S. Dist. LEXIS 38554 (W.D. Ark. Mar. 24, 2016); *Demas v. Michelin N. Am., Inc.*, No. 09 L 013814; *Morro v. Michelin N. Am., Inc.*, No. 2015-CP-15-434; *see also* Sen. Comm. On the Judiciary, 115th Cong., Arthur Marvin Quattlebaum Questionnaire for Judicial Nominees, 31-33.
- 9 *Id.* at 35.
- 10 *Id.* at 32.
- 11 A. Marvin Quattlebaum, Remarks at Greenville Senior High School Academy for Law and Business Law Day: Spanning Our Nation's History to Celebrate the Rule of Law, 15-16 (Apr. 5, 2011), available at <https://afj.org/wp-content/uploads/2018/06/Quattlebaum-Spanning-Our-Nations-History-1409-1425.pdf>.
- 12 A. Marvin Quattlebaum, Speaker, Charleston School of Law: A Backbone, A Wishbone and A Funny Bone (Aug. 25, 2011), available at <https://afj.org/wp-content/uploads/2018/06/Quattlebaum-Wish-Bone-1353-1375.pdf>.
- 13 A. Marvin Quattlebaum, *Making Ourselves Fit to Live in a Free Society*, THE STATE, Nov. 16, 2011, at A11, available at <https://afj.org/wp-content/uploads/2018/06/Quattlebaum-Making-Ourselves-Fit-to-Live-in-a-Free-Society-20.pdf>.
- 14 A. Marvin Quattlebaum, South Carolina Bar House of Delegates, Outgoing President Address: A Test for an Independent Judiciary, Recording at 3:47, available at <https://www.youtube.com/watch?v=tfSnlpwH4A> (May 3, 2012).
- 15 A. Marvin Quattlebaum, Notes for South Carolina Bar House of Delegates, Outgoing President Address: A Test for an Independent Judiciary (May 3, 2012), available at <https://www.afj.org/wp-content/uploads/2018/06/A-Test-for-an-Independent-Judiciary-1.pdf>.
- 16 A. Marvin Quattlebaum, South Carolina Bar House of Delegates, Outgoing President Address: A Test for an Independent Judiciary, Recording at 7:37.
- 17 A. Marvin Quattlebaum, Speaker, Remarks to Spartanburg County Bar: No Courts, No Justice, No Freedom (May 1, 2012), available at <https://www.afj.org/wp-content/uploads/2018/06/No-Justice-No-Freedom.pdf>.
- 18 A. Marvin Quattlebaum, *Respect for the law spans our nation's history*, THE GREENVILLE NEWS (April 24, 2011), reprinted and available at <https://afj.org/wp-content/uploads/2018/06/Respect-for-the-law-spans.pdf>; A. Marvin Quattlebaum, Remarks at Greenville Senior High School Academy for Law and Business Law Day (Apr. 5, 2011).
- 19 A. Marvin Quattlebaum, Remarks at Greenville Senior High School Academy for Law and Business Law Day (Apr. 5, 2011).
- 20 *Id.*
- 21 A. Marvin Quattlebaum, Speaker, Remarks to Spartanburg County Bar: No Courts, No Justice, No Freedom (May 1, 2012); A. Marvin Quattlebaum, Speaker, Charleston School of Law: A Backbone, A Wishbone and A Funny Bone (Aug. 25, 2011).
- 22 *Id.*