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Judge William H. Pryor Jr.

Judge William H. Pryor Jr. has served on the U.S. Court of Appeals for the 11th Circuit since 2004. Following a contentious nomination in 2003, in which Senate Democrats blocked his confirmation, he was appointed by President George W. Bush during a congressional recess. Judge Pryor was confirmed by the Senate in 2005, with a vote of 53-45. He is a graduate of Northeast Louisiana University and Tulane University Law School. Following law school graduation, Pryor clerked on the 5th Circuit Court of Appeals for Judge John Minor Wisdom, worked in private practice, and served as Alabama's deputy attorney general (under now-Senator Jeff Sessions) and attorney general (taking Sessions' place when he was elected to the Senate).

Judge Pryor is thought to be very conservative on issues related to constitutional law and civil rights, and was highly criticized by Democrats prior to his confirmation for calling *Roe v. Wade* the "worst abomination in the history of constitutional law," and for, in his capacity as Alabama Attorney General, submitting an amicus brief in *Lawrence v. Texas* arguing that Texas' so-called "anti-sodomy" law should be upheld. Since joining the 11th Circuit, his jurisprudence has remained loyal to his conservative, federalist viewpoints, with some outlying cases.

In the criminal context, Judge Pryor has referred to *Miranda v. Arizona*, which protects a person's rights under the Fifth and Sixth Amendments, as one of "the worst examples of judicial activism," and is inclined to find in favor of the government in the majority of cases alleging constitutional violations in the criminal context, including habeas and death penalty cases.

In *U.S. v. Phillips*, No. 14-14660 (11th Cir. August 23, 2016), a writ of bodily attachment was issued for Ted Phillips, for failing to pay child support. While pursuing the writ of bodily attachment – a civil writ – the officer discovered a firearm on Phillips, who was a convicted felon. Phillips was ultimately convicted of being a felon in possession of a firearm. On appeal, Phillips argued that the civil writ was not the same as a criminal warrant, and therefore that the search was an unlawful violation of his Fourth Amendment rights. Judge Pryor held that "nothing in the original public meaning of 'probable cause' or 'Warrants' excludes civil offenses," and allowed the search to stand.

In *U.S. v. Bautista-Silva*, 567 F.3d 1266 (11th Cir. 2009), Judge Pryor held that a border patrol agent had a reasonable suspicion to support stopping six apparently Hispanic adults riding in an SUV. The stop later resulted in an arrest for human trafficking. In his opinion, Judge Pryor relied on *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975), to find that although the district court stated that the factors on which the agent based his decision to stop the vehicle did not create a reasonable suspicion of illegal activity "even when added together," the district court erroneously reviewed those factors in isolation and rejected most of the factors because each was susceptible to innocent explanation. Judge Pryor held that "the Supreme Court had rejected this kind of 'divide-and-conquer analysis' and made clear that reasonable suspicion may exist even if each fact 'alone is susceptible of innocent explanation.'" In *Bautista-Silva*, the

dissent argued that the evidence "even when viewed together, supports nothing more than impermissible racial profiling."

Judge Pryor has been unsympathetic to arguments alleging discrimination against minorities in other cases as well. In *Common Cause/George v. Billups*, 554 F.3d 1340 (11th Cir. 2009), Judge Pryor upheld a Georgia statute requiring a photo identification for voters, despite arguments by the NAACP that the law had a disproportionate impact on African Americans. Citing the Supreme Court's decision in *Crawford v. Marion County Election Board*, 128 S. Ct. 1610 (2008), Judge Pryor held that Georgia was not required to show evidence of actual voter fraud in order to justify the identification requirement. He questioned the validity of the data provided by the NAACP of 289,000 and 505,000 voters who lacked a photo identification issued by the Department of Driver Safety, and refused to consider whether the statute was "narrowly tailored" to prevent fraud because he found that strict scrutiny analysis was inappropriate.

In *Ash v. Tyson Foods*, 664 F.3d 883 (11th Cir. 2011), Judge Pryor rejected a jury verdict in favor a a plaintiff alleging denial of a promotion based on race, finding that a supervisor calling the African American plaintiff "boy" was "conversational" speech unrelated to the lack of promotion. And in *Greene v. Upton*, 644 F.3d 1145 (11th Cir. 2011), Greene argued "that the state used peremptory challenges to remove black members of the jury venire on the basis of their race." Reviewing each member of the jury venire, Judge Pryor's opinion held that "the record supports as reasonable the determination of the Supreme Court of Georgia that the prosecutors exercised a peremptory challenge against [each black member of the jury venire] for reasons that were racially neutral."

Despite his amicus brief in *Lawrence*, Judge Pryor joined the majority in *Glenn v. Brumby*, 663 F.3d 1312 (2011), which found an equal protection clause violation when Georgia officials fired an employee for being transgender.

With Judge Pryor again joining (but not writing) the majority opinion, the 11th Circuit in *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir. 2011), rejected a First Amendment claim brought by a graduate student in a counseling program who was required to undertake a remediation plan before continuing her program when she indicated an intent to convert clients from homosexual to heterosexual (an approach contrary to that endorsed by the American Counseling Association). Judge Pryor separately concurred, indicating that, while the school could enforce the remediation plan with respect to school-sponsored activities, "we have never ruled that a public university can discriminate against student speech based on the concern that the student might, in a variety of other circumstances, express views at odds with the preferred viewpoints of the university." He also wrote that, "[a]s the First Amendment protected the professionals who successfully advocated against the then-prevailing view of the psychiatric profession [speaking about the past view in which homosexuality had been seen as a treatable mental disorder], so too does it protect Keeton should she decide to advocate that those professionals got it wrong."

Pryor wrote for the 11th Circuit in *Carver Middle School Gay-Straight Alliance v. School Board of Lake County, Florida*, No. 15-14183 (11th Cir. December 6, 2016), a case brought by a group of students and teachers who wanted to form a gay-straight alliance at a middle school but were denied by the school based on the argument that the club did not have an "allowed purpose." Judge Pryor found that the Equal Access Act applied to the school and therefore that the school must give the club equal access to the school's resources.

In *Mech v. School Bd. of Palm Beach County*, 806 F.3d 1070 (11th Cir. 2015), another First Amendment case, Judge Pryor rejected a student's challenge to a school's removal of banners advertising a tutoring business (whose owner used the same address for a pornography production business as for the tutoring service), holding that schools exercised substantial control over messages conveyed by banners hung on school fences and thus banners were government speech, unprotected by the First Amendment. Judge Pryor also rejected a First Amendment claim in *First Vagabonds Church of God v. City of Orlando, Florida*, 610 F.3d 1274 (11th Cir. 2010) (allowing for city to require permit, and limit number of permits, to provide food for large groups within a downtown park, as a valid time, place, and manner restriction).

Finally, in *Eternal World Television Network, Inc., v. Secretary, U.S. Dept. of Health & Human Services*, Judge Pryor wrote in concurrence that he believed a challenge to the birth control mandate under the Affordable Care Act violated the Religious Freedom Restoration Act, substantially burdening the plaintiff's First Amendment rights by requiring the plaintiff to fill out a form in order to opt out of the contraceptive mandate.