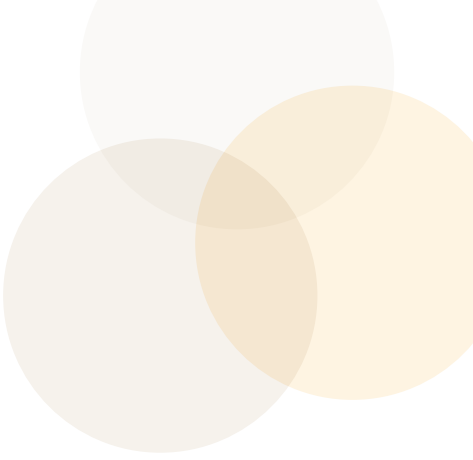


A History of the United States Court of Appeals for the Sixth Circuit

**Ohio, Kentucky,
Michigan, and Tennessee**

M. NEIL REED, TOM VANDERLOO,
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Supreme Court Justice Potter Stewart may have best explained the importance of the Sixth Circuit when he wrote, “The Sixth Federal Judicial Circuit is a cross section of the nation. Extending from the tip of Michigan’s Upper Peninsula to the Mississippi border, it spans the heartland of our country. So it is that the United States Court of Appeals for the Sixth Circuit is not a regional court but in every sense a national one. Its workload reflects the pluralism and diversity of our national life.”¹

Congress first implemented the constitutional provision that “[t]he judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish,”² with the Judiciary Act of 1789.³ “Although subsequent legislation altered many of the 1789 Act’s specific provisions,” Russell Wheeler and Cynthia Harrison wrote in *Creating the Federal Judicial System*, “[t]he basic design established by the 1789 Act has endured: a supreme appellate court to interpret the federal Constitution and laws; a system of lower federal courts, separated geographically by state boundaries and exercising basically the same jurisdiction; and reliance on state courts to handle the bulk of adjudication in the nation.”⁴

The Judiciary Act created 13 district courts that served mainly as courts for admiralty cases, forfeitures and penalties, petty federal crimes, and minor civil suits initiated by the United States. Each district was placed into one of three circuits. These circuit courts served as trial courts for most federal criminal cases, suits between citizens of different states, and major civil suits initiated by the United States. The circuit courts were also courts of appeal for some of the larger civil and admiralty cases in the district courts, but most of the appellate duties lay with the Supreme Court. Rather than creating separate judgeships, Congress stipulated that each circuit court panel would consist of the two Supreme Court justices assigned to the circuit and the local district court judge.

To lessen the burden of an ever-expanding backlog of cases, the Federalist-controlled Congress passed the Judiciary Act of 1801,⁵ establishing six numbered judicial circuits and creating new circuit judgeships, thereby relieving the Supreme Court justices of circuit court responsibility. A single circuit judge, Hon. William McClung, and the district judges for Kentucky and Tennessee, Hon. Harry Innes and Hon. John McNairy, respectively, formed the first panel for the U.S. Circuit Court for the Sixth Circuit. The Democratic-Republican-controlled Congress again reorganized the federal court system with the Judiciary Act of 1802,⁶ which preserved the six numbered circuits but abolished the separate judgeships, thereby returning circuit court responsibility to the Supreme Court justices.

As the nation grew and new states entered the union, Congress periodically realigned some of the circuits. The boundaries of the Sixth Circuit underwent some shifting changes before their final realignment after the Civil War. With the Judiciary Act of 1866,⁷ Congress reorganized the states into nine circuits and established the geographical outline that has remained unchanged except for the inclusion of new states within existing circuits and the division of two circuits.⁸ The Judiciary Act of 1869⁹ created a judgeship for each of the nine circuits, thus lessening the demands of circuit riding among the Supreme Court justices as they were required to attend each circuit court within their assigned circuit only once every two years. Congress approved the appointment of circuit judges, who exercised the same authority as the justices in all matters related to the circuit courts.¹⁰ Court could be held by “the justice of the Supreme Court allotted to the circuit, or by the circuit judge of the circuit, or by the district judge sitting alone, or by the justice of the Supreme Court and circuit judge sitting together, . . . or in the absence of either of them by the other, . . . and the district judge.”¹¹ The Act authorized the circuit courts to sit simultaneously in different districts of the same circuit. In 1870, President Ulysses S. Grant appointed Halmor Hull Emmons to the office of circuit court judge for the Sixth Circuit.

As part of the continuing effort to ease the caseload burden on the Supreme Court while dealing with a dramatic increase in federal filings, Congress passed the Circuit Court of Appeals Act of 1891.¹² The “Evarts Act,” as it was popularly known, established nine intermediate courts of appeals for the existing circuits, including the U.S. Circuit Court of Appeals for the Sixth Circuit, thus creating the first federal courts designed exclusively to hear cases on appeal from trial courts. The existing circuit judges and a newly authorized judge in each circuit sat on the courts of appeals. The circuit justice and district judges within the circuit were also authorized to sit on the three-judge panels.

The U.S. Circuit Court of Appeals for the Sixth Circuit, designated to sit in Cincinnati, reviewed federal district court and circuit court decisions from Kentucky, Michigan, Ohio, and Tennessee. Circuit Judge Howell Edmunds Jackson, previously appointed as circuit judge by President Grover Cleveland, was reassigned to the U.S. Circuit Court of Appeals for the Sixth Circuit by the “Evarts Act,” thus becoming the first judge of the newly created court. The organizational session for the Court was held in Cincinnati on June 16, 1891.¹³ In attendance were Circuit Justice Henry Billings Brown of Michigan, Circuit Judge Jackson, and District Judge George R. Sage of the Southern District of Ohio, sitting by designation. As its first order of business, the new Court adopted 34 rules of procedure. Walter S. Harsha of Detroit was appointed Clerk of the Court and Thomas Claiborne of Tennessee was appointed Marshal. On June 16,

1891, John W. Herron, the United States Attorney for the Southern District of Ohio and father-in-law of William Howard Taft of Cincinnati, became the first attorney admitted to practice before the Sixth Circuit Court of Appeals.¹⁴

As the caseload of the U.S. Circuit Court of Appeals for the Sixth Circuit expanded, so did its number of judges. On March 17, 1892, a second circuit judge, Taft, was appointed by President Benjamin Harrison; and in 1893, President Grover Cleveland appointed Horace H. Lurton to the Court. With President William McKinley's appointment of William R. Day in 1899, the U.S. Circuit Court of Appeals for the Sixth Circuit no longer had to wait for the Circuit's assigned Supreme Court justice to travel to Cincinnati, or call on district judges, in order to make up a full panel. As a result, the court was able to schedule its cases more efficiently.

The court continued with three judges for nearly three decades. But as federal criminal and civil case filings increased over time, additional judgeships were authorized by Congress. In 1928, in 1938, and again in 1940, new judgeships were added to the court, doubling the number of active judges assigned to the Sixth Circuit.¹⁵ The court continued with six judges until the 1960s, when Congress added three more judgeships.¹⁶ The rapid increase in federal criminal offenses led to Congress creating two judgeships in the 1970s¹⁷ and four in the 1980s.¹⁸ One additional judgeship, authorized by Congress in 1990, brought the circuit's authorized judgeships to the current total of 16.¹⁹

The Judiciary Act of 1948²⁰ changed the official name of the court to the United States Court of Appeals for the Sixth Circuit.²¹ The act also created the position of chief judge for the courts of appeals. As the U.S. Code currently states, "The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who are 64 years of age or under; have served for one year or more as a circuit judge; and have not served previously as chief judge."²² Hon. Xenophon Hicks was the circuit's first chief judge, serving in the position from 1948 until he assumed senior status in 1952. Hon. Florence E. Allen, the first Article III female judge to serve on a U.S. Court of Appeals, was appointed chief judge of the Sixth Circuit in 1958, making her the first woman to assume this position. Judge Allen served as chief judge for four months before she took senior status. In 2014, Hon. R. Guy Cole Jr. became the 17th chief judge and first African-American chief judge of the Sixth Circuit.

Throughout its 125 years of existence, the U.S. Court of Appeals for the Sixth Circuit has been called upon to decide cases of great significance, and that tradition continues today. In recent years, the court's caseload has dealt with issues of national importance such as same-sex marriage, the Affordable Care Act, and the Clean Water Act, to name just a few. Justice Stewart's vision of the national influence of the Sixth Circuit has continued to the present and will presumably extend far into the future. ☺

Sixth Circuit Notable Cases

United States v. Addyston Pipe & Steel Co.

Six cast-iron pipe manufacturers were charged with unlawfully restraining interstate commerce through entering into an agreement to artificially raise the price of pipe. Tennessee district court Judge Charles D. Clark dismissed the complaint, only to have the Sixth Circuit reverse the decision. In the court's opinion of Feb. 8, 1898,¹ Chief Judge William Howard Taft wrote that an agreement with the sole purpose to artificially set prices violated the Sherman Act, and the combination of pipe manufacturers was ordered dissolved. Taft's reasoning, which applied the common law of restraints to the Sherman Act, was later affirmed as modified by the Supreme Court. Credited with laying the foundation for the "trust busting" policies of the early 20th century, *Addyston Pipe* is considered one of the landmark decisions in America's antitrust jurisprudence.

Detroit Housing Commission v. Lewis

A class action was brought against the Detroit Housing Commission, claiming the agency's practices of maintaining separate white-only and black-only public housing projects, as well as maintaining separate lists of eligible white and black applicants for public housing, were unlawful discrimination on the basis of race and color in violation of the Constitution. The U.S. District Court for the Eastern District of Michigan ruled in favor of the class and issued a permanent injunction, finding that the agency's practices violated the Constitution and deprived plaintiffs of the equal protection of the laws as guaranteed by the 14th Amendment. The Detroit Housing Commission appealed. Judge Florence Allen authored the Sixth Circuit's Oct. 5, 1955, opinion² affirming the district court's judgment.

United States v. Hoffa

Jimmy Hoffa, president of the International Brotherhood of Teamsters, and three other defendants, filed an appeal of their conviction for jury tampering. In *U.S. v. Hoffa*,³ decided July 29, 1965, the Sixth Circuit affirmed the lower court's decision, finding "no error which affected the substantial rights of the Appellants."⁴ The U.S. Supreme Court subsequently upheld the conviction. Hoffa, who was found guilty of fraud in another case, ultimately spent four years in prison before being pardoned by President Richard M. Nixon in 1971. Hoffa disappeared in July 1975 and is believed to have been murdered. He was declared legally dead in 1982, although his body has never been found.



M. Neil Reed, Tom Vanderloo, and Stephanie Woebkenberg all work for the Sixth Circuit Court of Appeals Library. Reed is court historian; Vanderloo is a digital services librarian; and Woebkenberg is a reference librarian. (Pictured left to right: Tom Vanderloo, Neil Reed, Stephanie Woebkenberg) © 2016 M. Neil Reed, Tom Vanderloo, and Stephanie Woebkenberg. All rights reserved.

Endnotes

¹Potter Stewart, *The Sixth Circuit Review, 1968-69: Preface*, 2 U. Tol. L. Rev. 49 (1970).

²U.S. CONST. art. III, § 2 (1789), available at http://www.archives.gov/exhibits/charters/constitution_transcript.html (last visited May 11, 2016).

³Act of Sept. 24, 1789, 1 Stat. 73.

⁴RUSSELL WHEELER & CYNTHIA HARRISON, *CREATING THE FEDERAL JUDICIAL Sys.* (Federal Judicial Center, 3d ed. 2005), available at [http://www.fjc.gov/public/pdf.nsf/lookup/creat3ed.pdf/\\$file/creat3ed.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/creat3ed.pdf/$file/creat3ed.pdf) (last visited May 11, 2016).

⁵Act of Feb. 13, 1801, 2 Stat. 89.

⁶Act of Apr. 29, 1802, 2 Stat. 156.

⁷Act of July 23, 1866, 14 Stat. 209.

⁸Reorganization of the Judicial Circuits: 'An Act to fix the Number of Judges of the Supreme Court of the United States, and to change certain Judicial Circuits,' July 23, 1866," *History of the Federal Judiciary*, FEDERAL JUDICIAL CENTER, available at http://www.fjc.gov/history/home.nsf/page/landmark_09.html (last visited May 11, 2016).

⁹Act of Apr. 10, 1869, 16 Stat. 44.

¹⁰*Id.*, § 2, 16 Stat. 44.

¹¹The Judiciary Act of 1869: 'An Act to amend the Judicial System of the United States,'" *History of the Federal Judiciary*, FEDERAL JUDICIAL CENTER, available at http://www.fjc.gov/history/home.nsf/page/landmark_10.html (last visited May 11, 2016).

¹²Act of Mar. 3, 1891, 26 Stat. 826.

¹³JOURNAL OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT, vol. A, 1 (1891).

¹⁴*Id.* at 3.

¹⁵Act of May 8, 1928, 45 Stat. 492; Act of May 31, 1938, 52 Stat. 584; Act of May 24, 1940, 54 Stat. 219.

¹⁶Act of Mar. 18, 1966, 80 Stat. 75; Act of June 18, 1968, 82 Stat. 184.

¹⁷Act of Oct. 20, 1978, 92 Stat. 1629.

¹⁸Act of July 10, 1984, 98 Stat. 333.

¹⁹Act of Dec. 1, 1990, 104 Stat. 5089.

²⁰Act of June 25, 1948, 62 Stat. 871.

²¹28 U.S.C. § 43(a).

²²28 U.S.C. § 45(a) (internal formatting omitted).

Thomas More Law Center v. Obama

Thomas More Law Center and four individual plaintiffs challenged the constitutionality of the Patient Protection and Affordable Care Act's (PPACA) minimum coverage provision. Citing Congress's authority under the Commerce Clause, the U.S. District Court for the Eastern District of Michigan upheld the constitutionality of the provision and denied the plaintiffs' motion for a preliminary injunction. On June 29, 2011, the Sixth Circuit affirmed the lower court's decision,⁵ becoming the first appellate court to issue an opinion on PPACA. When the Supreme Court subsequently upheld the health care law, Chief Justice John Roberts largely followed the rationale outlined in Judge Jeffrey Sutton's concurring opinion.⁶

DeBoer v. Snyder

The consolidated case *DeBoer v. Snyder* challenged the constitutionality of same-sex marriage bans in Michigan and Kentucky, and same-sex marriage recognition bans in Ohio and Tennessee. With its decision of Nov. 6, 2014,⁷ the Sixth Circuit became the first federal appeals court to declare such bans constitutional. The court's break from previously unanimous appellate rulings created a division among the circuits. In 2015, the U.S. Supreme Court agreed to hear the issue, granting *certiorari* in four cases originating in the Sixth Circuit, consolidating them as *Obergefell v. Hodges*. On June 26, 2015, the Supreme Court reversed the Sixth Circuit's decision, effectively making same-sex marriage legal nationwide. ☺

Endnotes

¹85 F. 271 (6th Cir. 1898) *aff'd as modified*, 175 U.S. 211, 20 S. Ct. 96, 44 L. Ed. 136 (1899).

²226 F.2d 180 (6th Cir. 1955).

³349 F.2d 20 (6th Cir. 1965) *aff'd*, 385 U.S. 293, 87 S. Ct. 408, 17 L. Ed. 2d 374 (1966).

⁴349 F.2d 20, 53.

⁵651 F.3d 529 (6th Cir. 2011) *abrogated by Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012).

⁶*Thomas More L. Ctr. v. Obama*, 651 F.3d 529 (6th Cir. 2011) (Sutton, J., concurring).

⁷772 F.3d 388 (6th Cir. 2014), *cert. granted sub nom.*, *Obergefell v. Hodges*, 135 S. Ct. 1039, 190 L. Ed. 2d 908 (2015), and *cert. granted sub nom.*, *Tanco v. Haslam*, 135 S. Ct. 1040, 190 L. Ed. 2d 908 (2015), and *cert. granted*, 135 S. Ct. 1040, 190 L. Ed. 2d 908 (2015), and *cert. granted sub nom.*, *Bourke v. Beshear*, 135 S. Ct. 1041, 190 L. Ed. 2d 908 (2015), and *rev'd sub nom.*, *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

Sixth Circuit Notable Judges

The Sixth Circuit has a long and storied past that includes many notable judges, as well as several important federal judiciary “firsts,” including:

Hon. William Howard Taft

Appointed to the court by President Benjamin Harrison at the age of 34, Taft was the youngest judge ever appointed to a federal appeals court. Eight years later, Taft resigned his seat on the Sixth Circuit upon his appointment by President William McKinley to serve as president of the U.S. Philippine Commission and, later, as governor-general of the Philippines. In addition to his service to the federal judiciary, Taft served as solicitor general (1890-92), as secretary of war (1904-08), and as the 27th president of the United States (1909-13). He then served as professor of law at Yale until President Warren G. Harding appointed him chief justice of the United States in 1921. He is the only person to have served as both president and chief justice of the United States.

Hon. Florence E. Allen

In 1922, Florence E. Allen was elected justice of the Supreme Court of Ohio, the first woman elected to the highest court in any state. She became the first woman to serve on an Article III federal court when she was appointed to the Sixth Circuit by President Franklin D. Roosevelt in 1934. Judge Allen then became the first woman to serve as chief judge of the Sixth Circuit in 1958. She assumed senior status in 1959, continuing to serve the court until her death in 1966. At the time of Judge Allen’s appointment, the federal courthouse did not have a private restroom for a female judge, and it took several weeks for Washington to grant special permission to convert a men’s restroom for her use. Allen knew that none of the judges of the Sixth Circuit had favored her appointment to the court, but she gradually won them over with her conscientious work ethic, eventually leading a colleague to call one of her decisions “a damn fine opinion.” Her male colleagues’ acceptance never extended to lunch, however, as the other judges typically ate at the University Club of Cincinnati or some other establishment where women were not admitted.

Hon. Potter Stewart

Although a Cincinnati native, Potter Stewart was born in 1915 in Jackson, Mich., while his family was on vacation. After naval service during World War II, he practiced law in Cincinnati and was active in local politics until President Dwight D. Eisenhower appointed him to the U.S. Court of Appeals for the Sixth Circuit at the age of 39. In 1959, Eisenhower nominated Stewart to the U.S. Supreme Court, where he served for nearly 23 years, retiring in 1981. Justice Stewart famously used the phrase “I know it when I see it” in 1964 to describe his threshold test for obscenity in *Jacobellis v. Ohio*. He wrote, “[C]riminal laws in this area are constitutionally limited to hard core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.”¹

Hon. Wade Hampton McCree Jr.

Wade McCree was born in 1920 in Des Moines, Iowa. After serving in the U.S. Army during World War II, McCree earned his law degree and practiced law in Detroit from 1948 to 1952. McCree became the first African-American to be appointed to the Circuit Court for Wayne County, Mich., and served on that court from 1954 to 1961, when he was appointed to the U.S. District Court for the Eastern District of Michigan by President John F. Kennedy.

In 1966, President Lyndon B. Johnson appointed McCree to the U.S. Court of Appeals for the Sixth Circuit, where he served as a Circuit Judge until his resignation in 1977 to assume the position of solicitor general of the United States under President Jimmy Carter. During his tenure, McCree argued 25 cases before the Supreme Court. After stepping down as solicitor general in 1981, McCree joined the University of Michigan Law School faculty. He died in 1987. McCree was the first African-American appointed to the federal bench in the Eastern District

of Michigan and the first African-American appointed to the Sixth Circuit. He was the second African-American to serve as solicitor general of the United States.

Hon. Damon Jerome Keith

Judge Keith, a Detroit native, was appointed in 1967 to the U.S. District Court for the Eastern District of Michigan by President Lyndon B. Johnson, becoming the first African-American chief judge of that court in 1975. Two years later, President Jimmy Carter appointed Judge Keith to the U.S. Court of Appeals for the Sixth Circuit.

In 1985, Chief Justice Warren E. Burger appointed Judge Keith as chairman of the Bicentennial of the Constitution Committee for the Sixth Circuit. Then, in 1987, Judge Keith was appointed by Chief Justice William Rehnquist to serve as the national chairman of the Judicial Conference Committee on the Bicentennial of the Constitution. Bill of Rights plaques bearing his name are in federal courthouses and government buildings across the United States and in Guam, including the Thurgood Marshall Federal Judiciary Building and the J. Edgar Hoover Building, headquarters of the FBI.

Judge Keith assumed senior status in 1995, and continues to serve the court today. He holds the distinction of being the longest serving judge in the history of the Sixth Circuit. Judge Keith earned a J.D. from Howard University School of Law and an L.L.M. from Wayne State University Law School. He has received more than 40 honorary degrees, including one from Harvard University, and he is the recipient of countless awards and distinctions, including the Spingarn Medal from the NAACP (the association’s highest honor) and the Edward J. Devitt Distinguished Service to Justice Award—the highest award that can be bestowed on a member of the federal judiciary. ☺

Endnote

¹*Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (footnote omitted).

Cincinnati Federal Courthouse: The Sixth Circuit's Seat of Court

Throughout its history, the Sixth Circuit has sat in Cincinnati, which is conveniently accessible from all parts of the circuit. The original federal courthouse in Cincinnati, which stood at the southwest corner of Fourth and Vine streets, was completed in 1857.

In 1885, Cincinnati's second federal courthouse was built on Fifth Street between Main and Walnut streets. The act authorizing the building's construction was signed by President Ulysses S. Grant in 1872, and the demolition of existing structures was completed in 1874. Excavating the foundation by hand took another year. Without modern power tools, the total construction time was just over 11 years, and the project's total cost exceeded \$5 million. The building housed 27 government departments, including the U.S. District Court and the U.S. Circuit Court of Appeals.

In the 1930s, growth of the federal government required another building to house the newly created offices providing services to the public. A decision was made to build the new courthouse on the site of the old one. Due to the robustness of the hand-built courthouse, it took workers over a year to demolish the old structure. Completed in 1939, the new Potter Stewart U.S. Courthouse was designed by Treasury Department architects to house the post office as well as the courts and other federal agencies. Upon completion, the building was occupied by 51 federal agencies. Again, in the 1950s, the need for more federal office space resulted in plans for another federal building to be built. The new federal building was completed on the northeast corner of Fifth and Main streets in 1964. Nonjudicial federal agencies also migrated to that building, now named the John Weld Peck Federal Building.

Today, the Potter Stewart U.S. Courthouse is occupied almost entirely by federal court offices. When the post office left in 1992, the major tenants became the U.S. Court of Appeals for the Sixth Circuit and the U.S. District Court for the Southern District of Ohio.¹

Endnote

¹"Potter Stewart U.S. Courthouse, Cincinnati, OH," *Historic Buildings*, U.S. GEN. SERVS. AGENCY, <http://www.gsa.gov/portal/ext/html/site/hb/category/25431/actionParameter/exploreByBuilding/buildingId/067> (last visited May 15, 2016).

