National Partnership for Women & Families

Overview of Judge Terrence Boyle's Record
Nominee to the U.S. Court of Appeals for the Fourth Circuit

The National Partnership for Women & Families strongly opposes the nomination of Judge Terrence Boyle to the U.S. Court of Appeals for the Fourth Circuit. During his twenty year tenure on the trial court bench, Judge Boyle has handled more than 10,000 cases, the vast majority of which are unpublished and unavailable for review. What we do know about Judge Boyle's record, however, is cause for alarm. With a disproportionately high reversal rate, his analyses and interpretations of the law too often have been flawed and incorrect, frequently harming individual plaintiffs seeking to vindicate their rights.

Examples from Judge Boyle's Record:

- **Gender Discrimination.** Judge Boyle twice refused to approve a settlement involving gender discrimination in hiring and promotions practices by the North Carolina Department of Corrections. The Fourth Circuit ultimately ordered him to approve the settlement, in an opinion highly critical of how he handled the case. In another case, Judge Boyle dismissed a sexual harassment case, concluding that the plaintiff was unreasonable for not filing a complaint given that the company manual included a sexual harassment policy. He paid little attention to the surrounding facts, such as the company's alleged history of not believing staff complaints, or whether the company's harassment policy was communicated effectively. The mere existence of a policy on paper, without more, should not be enough to justify dismissal of the entire case.
- **Race Discrimination.** Judge Boyle dismissed the claim of an African American health technician who sued her employer, the state of North Carolina, for racial discrimination after she was dismissed from her job. The Fourth Circuit summarily reversed his decision, rejecting Judge Boyle's apparent view that the state was immune from suit.
- **Age Discrimination.** Judge Boyle dismissed an age discrimination complaint because the plaintiff failed to attach the official letter allowing him to file suit, even though the letter had been submitted with an earlier filing. On appeal, the Fourth Circuit reversed, finding that Judge Boyle should have allowed plaintiff to amend the complaint by simply attaching the letter.
- **Voting Rights.** Judge Boyle was reversed twice by the Supreme Court for rejecting a North Carolina congressional district drawn to have a population that was approximately half African-American. In both cases, he was criticized for failing to extend proper deference to the state legislature.
- **Disability rights.** Judge Boyle tried to limit the reach of the Americans with Disabilities Act, the law that protects disabled workers from discrimination. While "disability" is defined in the law to cover impairments that substantially limit major life activities, such as walking or working, he refused to include working as a major life activity. The Fourth Circuit expressly rejected this conclusion, and criticized Judge Boyle's eagerness to defer to the employer's business expertise in determining a reasonable accommodation of a disability.

As these and other alarming examples demonstrate, Judge Boyle's elevation to the Fourth Circuit would put many critical women's rights and civil rights protections at risk. We urge the United States Senate to reject his nomination.

Statement of Opposition to the Nomination of Judge Terrence W. Boyle to the Fourth Circuit Court of Appeals

The National Partnership for Women & Families strongly opposes the nomination of Judge Terrence Boyle to the U.S. Court of Appeals for the Fourth Circuit. With a disproportionately high reversal rate, Judge Boyle, who currently sits as a district court judge on the United States District Court for the Eastern District of North Carolina, has amassed a record that is troubling and disconcerting. His analyses and interpretations of the law too often have been flawed and incorrect, frequently to the detriment of individual plaintiffs. His decisions consistently have revealed a clear hostility to critical women's rights and civil rights protections, and his elevation to the Fourth Circuit would put many of these rights at risk. We urge the United States Senate to reject Judge Boyle's nomination.

Overview of Record

During his twenty year tenure on the trial court bench, Judge Boyle has decided a wide array of legal issues, handling more than 10,000 cases. The vast majority of his decisions are unpublished and have not been made available for review. The limited information that is available, however, raises serious concerns about his record on important issues affecting the rights of women and people of color. Many plaintiffs seeking protections from discrimination – whether based on sex, race, disability, or some other factor – have not fared well before Judge Boyle. His interpretation of relevant anti-discrimination legal principles has been overly narrow and restrictive, thus hindering the ability of many plaintiffs to remedy violations of the law and vindicate their rights. Too often, he has used procedural or technical grounds to dismiss cases prematurely, and as a result, deny plaintiffs full consideration of their claims. Given this track record, the fact that thousands of his opinions have not been produced only heightens concerns that the United States Senate could be asked to move forward on his nomination based on a record that is incomplete and wholly inadequate. The National Partnership believes it is crucial to ensure that only nominees with a demonstrated commitment to equal justice and an unflinching respect for the rule of law are confirmed by the Senate. We believe that Judge Boyle falls far short of meeting this high standard.

A. Employment Discrimination

Several of Judge Boyle's decisions in employment discrimination cases raise serious questions about his attitude toward job discrimination plaintiffs, and whether his rulings are driven by his personal views rather than the unbiased application of the law.

1. Gender Discrimination

Judge Boyle has dismissed numerous gender discrimination claims at the earliest stages of the case, often in favor of the defendant. Several of these cases raise serious questions about his analysis of critical employment law protections of particular importance to women.

a. Sexual Harassment and Hostile Work Environment

- In *Mills v. Brown & Wood,*[1] the plaintiff was sexually harassed by her immediate supervisor for fifteen months. The harassment included being plagued with unwanted love notes

[1] 940 F. Supp. 903 (1996).

and cards, attempted hugs and kisses, repeated invitations to lunch, and profane and sexually themed conversations. She endured the harassment for a year before reporting the harasser to others in the company, and she left shortly thereafter. She sued the employer for discrimination, and the case was assigned to Judge Boyle. The employer asked the judge to dismiss the case by filing a motion for summary judgment – a motion that asks a judge to end a case before it even goes to trial. In considering such a request, the judge is supposed to look at the evidence most favorable to the plaintiff and determine whether a valid legal claim has been presented and there are legitimate facts in dispute. But Judge Boyle granted the employer's motion and dismissed the case. In doing so, he questioned the plaintiff's reasons for not complaining about the harassment sooner, pointing to the fact that she received an employee handbook with a sexual harassment policy shortly after being hired. Although plaintiff explained that she feared complaining because other female employees told her that managers never believed staff complaints, he concluded that her reluctance to complain was unreasonable. But it is precisely these types of contemporaneous facts, along with a real assessment of whether the company's harassment policy was communicated effectively to staff , that raise questions of fact about the company's conduct and overall climate. The mere existence of a policy, without more, should have been insufficient to justify dismissal of the entire case.[2]

b. Promotions and Hiring

- In *United States v. North Carolina,*[3] Judge Boyle twice refused to approve a settlement involving gender discrimination in hiring and promotions practices by the North Carolina Department of Corrections. A lengthy investigation by the United States Department of Justice during the administration of President George H. W. Bush found that the North Carolina Department of Corrections had the smallest percentage of female corrections officers (8%) of any state corrections department, and that restrictions on assignments for female corrections officers limited their job placement and advancement opportunities.[4] Further investigation, including information gathered through discovery, also uncovered 37 women with credible sex discrimination claims against the Corrections Department. DOJ filed a "pattern or practice" complaint against the state and, after more than a year of negotiations, they agreed to settle the case. Their comprehensive settlement agreement required the state to undertake corrective measures in hiring women, and to provide compensation to women who demonstrated they were victims of the state's practices within a specified time period.

Judge Boyle's written decision in the case makes clear his skepticism about the discrimination allegations, and his resistance to imposing concrete remedies to expand job opportunities for women. He first refused to accept the settlement, vacating the agreement, holding that the court lacked subject matter jurisdiction over the case, and ordering the federal government to demonstrate why the case was properly within the court's jurisdiction. Fifteen months later, Judge Boyle reconsidered the government's papers and concluded that the court did in fact have subject matter jurisdiction, but he still refused to approve the agreement. He explained that the passage of time (caused by his initial refusal) rendered the agreement out-dated and irrelevant to the current employment situation in the state's correctional facilities. The government appealed to the Fourth Circuit and the Fourth Circuit reversed, ordering Judge Boyle to enter the

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[2] Indeed, the Supreme Court later made clear in a different case, *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), that employer liability for sexual harassment by supervisors hinges on whether the employer took reasonable care to prevent and remedy harassment, and not simply whether it had a policy on paper.
[3] 914 F.Supp. 1257 (E.D.N.C. 1996), *rev'd and remanded* 180 F.3d 574 (4th Cir. 1999).
[4] United States v. North Carolina, 180 F.3d 574, 578 (4th Cir. 1999) (discussing DOJ's investigation).

agreement.[5] The circuit court ruled that Judge Boyle erred in his subject matter jurisdiction analysis and abused his discretion by refusing to enter the settlement agreement.[6]

The arguments put forward by Judge Boyle to justify his rulings in this case are particularly revealing. While on the surface his analysis focused on whether he had proper jurisdiction, he used his opinion to criticize the merits of DOJ's case. He systematically questioned the terms of the settlement agreement, disputing whether statistics showing low numbers of female guards constituted evidence of discrimination. He attacked the settlement provisions requiring additional hiring and promotions of female guards, characterizing them as quotas;[7] and largely dismissed the persuasive value of DOJ's evidence. Rather than voicing support for efforts to open up more jobs to women interested in correctional jobs, he focused on explaining why women might have no interest in such jobs for "cultural" reasons.[8] Also, as discussed further below, he rejected the viability of DOJ's claims alleging discrimination based on the disparate impact of the state's policies on women. If his decision had been allowed to stand, he effectively would have derailed efforts to tackle discriminatory practices within North Carolina's corrections system and, as a result, would have succeeded in denying valuable jobs to women.

2. Race Discrimination

- In *Ellis v. North Carolina*,[9] Judge Boyle considered the claim of an African American health technician who sued her employer, the state of North Carolina, for racial discrimination after she was dismissed from her job. He granted summary judgment to the state defendant, apparently taking the remarkable view that the state was immune under the Eleventh Amendment from actions invoking Title VII of the Civil Rights Act of 1964. His ruling mirrors a trend evident in many of his decisions to use procedural and technical mechanisms to deny protections to plaintiffs. In this case, the Fourth Circuit summarily reversed, noting that the Supreme Court determined more than 25 years earlier that Congress properly waived states' immunity from lawsuits when it enacted Title VII.

- In *Whiting v. Ski's Auto World Paint & Body Shop, Inc.*,[10] the plaintiff filed a race discrimination claim against his employer after the employer lied to the plaintiff about whether an open position had been filled. Judge Boyle dismissed the case because the plaintiff's right-to-sue letter from the EEOC was not sworn, even though it was otherwise verified by an EEOC official. Judge Boyle's decision conflicted with EEOC regulations and was later reversed by the Fourth Circuit. The appeals court determined that the plaintiff's complaint was sufficient to establish a prima facie case.

3. Age Discrimination

- In *Beach v. Wake County Public School System*,[11] Judge Boyle dismissed an age discrimination complaint as frivolous and untimely because the plaintiff failed to attach the right-to-sue letter to his complaint. He refused to allow the plaintiff to attach the letter, even though

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[5] *Id.* at 578.
[6] *Id.* at 580-82.
[7] 914 F. Supp. at 1272.
[8] *Id*.
[9] *See* 50 Fed. Appx. 180 (4th Cir. 2002) (unpublished) (*citing* Fitzpatrick v. Bitzer, 427 U.S. 706-755-57 (1976)).
[10] *See* 194 F.3d 1307 (4th Cir. 1999) (unpublished).
[11] 176 F.3d 475 (4th Cir. 1999) (unpublished).

the plaintiff had previously submitted the letter with an informal brief he filed with the court. On appeal, the Fourth Circuit reversed, finding that Judge Boyle should have allowed plaintiff to amend the complaint by simply attaching the right-to-sue letter.

4. First Amendment Rights

- In *Piver v. Pender County Board of Education,*[12] the plaintiff, a teacher, alleged he was retaliated against at work for speaking out in favor of his school principal. Judge Boyle granted summary judgment to the school board, concluding that the plaintiff's speech was not a matter of public concern and thus, not protected by the First Amendment.[13] The Fourth Circuit reversed, finding that the teacher's statements were "clearly" a matter of public concern and a unique benefit that only teachers can provide to the school community, and stating:

> [Plaintiff's] support was simply the informed viewpoint of a concerned faculty member. This sort of speech must not be chilled. Teachers should have an important voice in decisions about the employment of school officials, because teachers are in one of the best positions from which to judge the officials' competence. The district court erred in holding that Piver's speech did not address an issue of public concern.[14]

5. Disparate Impact

One particularly troubling aspect of Judge Boyle's record is his resistance to certain legal principles critical to redressing discrimination. This problem is clearly evident in his discussion of disparate impact discrimination claims. He repeatedly rejects the idea that policies or practices with uneven, but unintentional, effects on protected groups can be deemed discriminatory and, thus, illegal. Such discrimination is often termed "unintentional" discrimination because the policies or practices at issue appear neutral and do not treat groups differently on their face. Instead, the discrimination occurs when the policy or practice affects one group differently than it affects another – such as a height requirement for a job that disproportionately excludes women because they statistically are shorter than men, or a requirement that a job candidate have a specialized educational degree that women or people of color statistically are less likely to acquire. Judge Boyle, however, largely rejects this basic conception of disparate impact, arguing that there is no such thing as discrimination without intent.[15] He asserts a much narrower interpretation of how the law works by twisting the relevant case law to mirror his own views on discrimination. In the process, he effectively circumvents the real purpose of the law and makes it much harder for victims of discrimination to vindicate their rights in court.

One clear example of the potential harm caused by Judge Boyle's constrained views on disparate impact can be found in his analysis in *United States v. North Carolina*.[16] In initially refusing to approve the proposed settlement between the United States and the state of North Carolina, he argued that the government's case was flawed because it failed to demonstrate a specific,

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[12] 835 F.2d 1076 (4th Cir. 1987).
[13] *Id.*
[14] *Id.* at 1080.
[15] United States v. North Carolina, 914 F. Supp. at 1269; see also Glenna Musante, *"Judge Hints That He Won't Stop Johnston Policy,"* Raleigh News & Observer, Aug. 19, 1997 (quoting Judge Boyle as saying "there is no discrimination without intent," in response to case filed by parents of minority students challenging the disproportionate effects of a school testing policy).
[16] 914 F. Supp. at 1257.

intentionally discriminatory practice that caused a discriminatory disparate impact.[17] But a close examination of his analysis reveals that it so distorts the relevant case law, it suggests his simple unwillingness to apply the law as enacted. First, Judge Boyle argues that the analysis of a disparate impact claim "begins with the identification of an intentionally discriminatory practice that is demonstrably the cause of the complained impact."[18] This assertion misstates the applicable law in at least two fundamental ways. The Civil Rights Act of 1991 requires the identification of a particular employment practice, if possible, that caused the alleged discrimination.[19] The law makes clear, however, that there may be situations where it may not be possible to separate the different practices involved in a decision making process.[20] Judge Boyle cites the relevant statutory language, but largely ignores the point that there may be situations where a specific practice cannot be identified.[21] Next, he alters the requirement to identify a *particular* employment practice by stating that a disparate impact claim requires the identification of an *intentionally discriminatory* practice.[22] Requiring a showing of intentional discrimination, however, directly contradicts Supreme Court precedent and the relevant statutory language. The Supreme Court has held numerous times that a facially neutral practice shown to have a disparate impact on a particular group may constitute illegal discrimination without a showing of discriminatory intent.[23] Judge Boyle tries to get around these clear statements of the law, alternatively by putting forward a series of arguments that lack legislative authority and have no case law support.

He states that Title VII places a special obligation on the Attorney General to demonstrate intent, even in disparate impact cases. But the courts, in interpreting Supreme Court precedent, have imposed no such requirement in other disparate impact cases involving government agencies like the Department of Justice or the Equal Employment Opportunity Commission.[24] He also asserts that cases contradicting his analysis either have been overruled or are inapplicable. His main line of attack is to focus on *Griggs v. Duke Power*, the seminal Supreme Court case that established the principle that a neutral practice with a disproportionate impact can constitute unintentional

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[17] *Id*. at 1268.

[18] *Id*. at 1264.

[19] Specifically, the Civil Rights Act of 1991 amended Title VII of the Civil Rights Act of 1964 by adding a new subsection (k) to 42 USC 2000e-2, which reads in part:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if –

> (i) a complaining party demonstrates that a respondent uses a *particular employment practice* that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; . . . .
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> (B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, *except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice*." (emphasis added).

[20] *Id*. at 42 U.S.C. §2000e-2(k)(B)(i).

[21] United States v. North Carolina, 914 F. Supp. at 1265.

[22] *Compare* United States v. North Carolina, 914 F. Supp. at 1264 *with* 42 U.S.C. §2000e-2(k)(A)(i).

[23] *See* Griggs v. Duke Power, 401 U.S. 424, 431-32 (1971); Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 988 (1988).

[24] *See* U.S. v. Delaware, 2003 WL 21183641, *6 (D. Del.) (recognizing that discriminatory motive is not an issue in a disparate impact case); *see, e.g.,* EEOC v. Joe's Stone Crab, Inc., 220 F.3d 1263, 1273(11th Cir. 2000) (stating no proof of intent needed for disparate impact cases).

discrimination in violation of Title VII. While acknowledging its holding, he tries to dismiss the controlling nature of *Griggs* by erroneously arguing that the case was overruled by the Supreme Court *sub silentio*.[25] He then tosses out a mix of arguments as support for his view, none of which are compelling. He first simply insists that the "concept of 'unintentional discrimination' is logically impossible," refusing to accept *Griggs'* basic holding.[26] Next, he implies that the *Griggs* holding conflicts with other Title VII provisions, ignoring the fact that the Supreme Court clearly saw no conflict that would prevent *Griggs* broad application when it ruled in the case.[27] He also cites cases brought under other theories where a showing of intent is required – such as discrimination claims alleging disparate "treatment" – to deceptively but inaccurately imply that a showing of intent is required in the disparate "impact" context.[28] He then argues that the employer in *Griggs* had a prior history of overt discrimination, thus the intent to discriminate had been demonstrated at some point. He uses this fact to conclude that an intent showing at some point is "a required element of all Title VII complaints, including those based on disparate impact theory,"[29] selectively ignoring case law directly contradicting his conclusion.[30]

The length to which Judge Boyle goes to reject the relevant case law on disparate impact in order to reach a conclusion consistent with his own views is deeply troubling. Far from being merely a legalistic distinction of no real consequence, the fact that he sought to impose an intent requirement in disparate impact cases raises serious obstacles for plaintiffs. Requiring a showing of "intent" by a plaintiff alleging discrimination adds a special burden to demonstrate a particular act was intended to be discriminatory or motivated by discrimination. In a case involving disparate impact, however, the main point is that the practice is neutral, thus by definition, there is no discriminatory intent.[31] Plaintiffs alleging discrimination based on disparate impact who are also forced to prove discriminatory intent would rarely, if ever, succeed. Judge Boyle's tortured analysis aimed at resisting the clear intent of the law speaks volumes about his ability to apply the law in a fair, unbiased, and even-handed manner. Rather than implementing the law, he sought to redefine it in a way that undermined its original purpose.[32] It is precisely this type of reasoning

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[25] United States v. North Carolina, 914 F. Supp. at 1265.

[26] *Id*.

[27] Subsections (k)-(n) of Title VII were added after *Griggs*, as part of the Civil Rights Act of 1991. None of these provisions make any mention of overruling *Griggs*, or creating an intent requirement in disparate impact cases. Indeed, subsection (k) largely was enacted to return the state of the law on disparate impact to encompass the rule of *Griggs* and its progeny. Civil Rights Act of 1991. Pub. L. No. 102-166, §§2-3 (setting out findings and purposes for 1991 amendments).

[28] United States v. North Carolina, 914 F. Supp. at 1266 (arguing that *McDonnell Douglas,* 411 U.S. 792 (1973), illustrates a "retreat" from *Griggs* without acknowledging the fact that case involved a disparate treatment claim rather than a disparate impact claim).

[29] *Id*. (citing Lorance v. AT&T, 490 U.S. 900 (1989)). Judge Boyle's citation to *Lorance* for support is misplaced. While *Lorance* requires a showing of discriminatory intent, the decision applies solely to seniority systems, which are treated differently under Title VII because the statutory language specifically requires an intent showing.

[30] *See*, *e.g.*, Watson, 487 U.S. 977 at 988 (affirming the principle that "some facially neutral employment practices may violate Title VII even in the absence of discriminatory intent," and specifically noting that this principle is "not limited . . . to cases in which the challenged practice served to perpetuate the effects of pre-Act intentional discrimination.").

[31] Griggs v. Duke Power, 401 U.S. at 432 (unless a practice is justified by business necessity, "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds'"); Watson, 487 U.S. at 1002 (describing disparate impact claims as unique because they focus on the effect of the employment practice).

[32] One of the purposes of the Civil Rights Act of 1991 was to makes clear that facially neutral policies or practices with a disparate impact on protected groups violate Title VII. *See* sec. 3, "The purposes of this

that suggests an ideological agenda antithetical to real enforcement of civil rights laws – and it is reasoning that has no place on the court.

B. Other Critical Civil Rights Issues

1. Voting Rights

Judge Boyle's reluctance to recognize and remedy discrimination in cases brought by women and people of color contrasts his willingness to discover race discrimination in cases brought by white plaintiffs and to reject purportedly racially motivated legislative districts. These rulings are frequently overturned on appeal.

- In *Hunt v. Cromartie*, the Supreme Court twice reversed Judge Boyle's rejection of a North Carolina congressional district drawn to have a population that was approximately half African-American. The first Supreme Court reversal, a unanimous decision written by Justice Clarence Thomas, concluded that granting summary judgment for the white plaintiffs was inappropriate because Judge Boyle failed to extend proper deference to the state legislature's assertions. After remand, the Court again reversed Judge Boyle on the same grounds, holding that Judge Boyle again erroneously based his ruling on circumstantial evidence.[33]

- In *Cannon v. North Carolina State Board of Education*,[34] Judge Boyle ruled that the school board districts at issue were unconstitutionally drawn as "black" and "white" districts. He was asked to hear the case because the judge assigned to the matter was temporarily unavailable. Judge Boyle quickly wrote an "advisory opinion" documenting his conclusions based largely on the plaintiffs assertions, without the benefit of an evidentiary hearing. Upon his return, the judge actually assigned the case disagreed with Judge Boyle's analysis, concluding that the districts were legitimately created. The Fourth Circuit upheld this decision.

2. Disability Rights

Judge Boyle's restrictive views on civil rights laws can be seen in his analysis of disability rights. Some of his disability decisions have been the subject of sharp criticism and summary reversals by both the Fourth Circuit and the Supreme Court.

- In *Williams v. Channel Master Satellite Systems, Inc*, the Fourth Circuit expressly rejected Judge Boyle's failure to include work as a major life activity covered under the ADA.[35]

Act are – . . . (3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 . . . .". 42 USC 1981 note.

[33] For the original district court proceedings, *see* 34 F. Supp.2d 1029 (E.D.N.C. 1998) (order permanently enjoining state from operating under current redistricting plan); 34 F. Supp.2d 1030 (order denying defendants' request for a stay of injunction); 1998 U.S. Dist. LEXIS 7767 (order setting out district court panel's factual and legal findings). The grant of summary judgment and injunction was vacated by the Supreme Court, in a unanimous decision, *see* Hunt v. Cromartie, 526 U.S. 541 (1999). On remand, a three judge district court panel (with Boyle again) concluded that plaintiffs were entitled to summary judgment and the state should be enjoined from using this redistricting plan. *See* 133 F. Supp.2d 407 (E.D.N.C. 2000). This ruling was also reversed by the Supreme Court, *see* 532 U.S. 234 (2001).

[34] 917 F. Supp. 387 (E.D.N.C. 1996).

[35] 101 F.3d 346, 349 (4th Cir. 1996). The ADA protects individuals with a disability who are qualified for employment or benefits and are denied such due to discrimination based solely on disability. The ADA defines disability as a physical or mental impairment that substantially limits one or more major life

The appellate court also criticized Judge Boyle's willingness to defer to an employer's business expertise in cases involving a dispute about what is a reasonable accommodation.[36] The court admonished that an objective analysis is always used to determine reasonableness, and that deference to the employer is "particularly inappropriate" in the summary judgment context, where the court views evidence in a light most favorable to the non-moving party.[37]

- In *Pierce v. King*,[38] Judge Boyle ruled that state prisons were not covered by the ADA, striking down an equal protection claim by a disabled prisoner seeking accommodations so that he could work and earn good time credit. Judge Boyle concluded that a state prison could rationally assign work based on prisoners' ability, or lack thereof, to perform certain jobs.[39] Two years after Boyle's decision, the Supreme Court held unanimously that the ADA is applicable to inmates in state prisons,[40] and the Court vacated *Pierce* for this reason.[41]

C. Federalism and States' Rights

One consistent theme in many of Judge Boyle's decisions is his deference to state autonomy, and his willingness to exempt states from federal nondiscrimination obligations.[42] This "state's rights" philosophy gives maximum freedom to states for them to operate as they see fit, with little or no accountability. But the states' rights rationale also has been used to shield states from federal rules for more troubling reasons – namely, as a mechanism for protecting entrenched discrimination at the state level, and immunizing states from compliance with civil rights laws. As a result, the framework of states' rights too often is employed as a "trump" card for states to limit Congressional authority, and circumvent the proper constitutional role of Congress to enact laws. The Supreme Court has set forth specific parameters governing state immunity, making clear that state autonomy has limits, particularly in the area of discrimination.[43] Judge Boyle overlooks these legal requirements in favor of giving states protection from liability – and effectively allowing discrimination to continue unchecked. As a result, plaintiffs who experience discrimination and seek to vindicate their rights often face tougher hurdles before Judge Boyle, thus raising serious questions about his ability to follow the law, even when he disagrees with the outcome.

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activities. Major life activities include caring for oneself, walking, seeing, hearing, speaking, breathing, learning, and "working."

[36] 101 F.3d at 349-350.

[37] *Id.* at 350.

[38] 918 F.Supp. 932 (E.D.N.C. 1996).

[39] *Id.* at 942.

[40] Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206 (1998).

[41] Pierce v. King, 525 U.S. 802 (1998) (citing *Yeskey*).

[42] *See e.g.*, United States v. North Carolina, 914 F. Supp. 1257 (refusing to bind state of North Carolina to settlement agreement); Pierce v. King, 918 F. Supp. 932 (arguing that state prison is exempt from coverage under the Americans with Disabilities Act); Ellis v. North Carolina, 50 Fed. Appx. 180 (Fourth Circuit finding on appeal that Judge Boyle erred in holding that the state was immune from coverage under Title VII of the Civil Rights Act of 1964).

[43] *See*, *e.g.*, Nevada Dep't of Human Resources v. Hibbs, 538 U.S. 721 (2003) (finding that Congress, pursuant to the equal protection guarantees of the 14th amendment, properly waived state immunity to allow individuals to sue state employers for violating the Family and Medical Leave Act).

D. Conclusion

The National Partnership believes that Judge Terrence Boyle should not be elevated to the Fourth Circuit Court of Appeals. He has issued thousands of opinions over the course of twenty years on the bench, and the bulk of these decisions are unpublished and unavailable. No nominee should be confirmed to the courts of appeal without an adequate, comprehensive review of his or her record. What little we do know about Judge Boyle's record is cause for grave concern. He has been reversed numerous times because he has misinterpreted antidiscrimination legislation and case law – and if his decisions had been permitted to stand, they would have undermined the ability of women and people of color to vindicate their rights. We urge you to reject his nomination.