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APPENDIX 4

CHART OF SIXTH CIRCUIT VOTING IN TENNESSEE CAPITAL HABEAS CASES

Republican Appointed Judges

REPUBLICAN APPOINTED JUDGES	DATE APPOINTED TO 6TH CIRCUIT	VOTES TO <i>DENY</i> RELIEF	VOTES TO <i>GRANT</i> RELIEF (or remand)
Batchelder	1991	8	1
Boggs	1986	12	1
Cook	2003	10	1
Gibbons	2002	4	1
Griffin	2005	3	0
Guy	1985	0	1
Kethledge	2008	1	0
McKeague	2005	2	0
Nelson	1985	2	0
Norris	1986	7	0
Rogers	2002	6	0
Ryan	1985	3	3
Siler	1991	11	0
Suhrheinrich	1990	4	1
Sutton	2003	4	0

White	2008	2	2
TOTALS		79 (88%)	11 (12%)

Democrat Appointed Judges

DEMOCRAT APPOINTED JUDGES	DATE APPOINTED TO 6TH CIRCUIT	VOTES TO <i>DENY</i> RELIEF	VOTES TO <i>GRANT</i> RELIEF
Clay	1997	3	8
Cole	1995	4	7
Daughtrey	1993	1	3
Donald	2011	0	1
Gilman	1997	2	4
Keith	1977	0	2
Martin	1979	0	5
Merritt	1979	0	9
Moore	1995	3	6
TOTALS		13 (22%)	45 (78%)

**Sixth Circuit Capital Habeas Cases from
Tennessee
Final Dispositions in the Court of Appeals¹**

CASE	VOTES TO <i>DENY</i> RELIEF	VOTES TO <i>GRANT</i> RELIEF (or remand)
Houston v. Dutton 50 F.3d 381 (6th Cir. 1995)		Guy (R) Merritt (D) Ryan (R)
Austin v. Bell 126 F.3d 843 (6th Cir. 1997)		Martin (D) Merritt (D) Suhrheinrich (R)
Rickman v. Bell 131 F.3d 1150 (6th Cir. 1997)	Suhrheinrich (R)	Keith (D) Ryan (R)
Groseclose v. Bell 130 F.3d 1161 (6th Cir. 1997)	Suhrheinrich (R)	Keith (D) Ryan (R)
Coe v. Bell 161 F.3d 320 (6th Cir. 1998)	Boggs (R) Norris (R)	Moore (D)
Carter v. Bell 218 F.3d 581 (6th Cir. 2000)	Clay (D) Gilman (D) Nelson (R)	
Workman v. Bell	Batchelder (R) Boggs (R) Nelson (R) Norris (R)	Clay (D) Cole (D) Daughtrey (D) Gilman (D)

¹ The cases included in this chart are the final Sixth Circuit Court of Appeals dispositions of Tennessee capital habeas cases. This chart does not include other decisions that addressed collateral issues or that were superseded by subsequent Sixth Circuit Court of Appeals decisions.

227 F.3d 331 (6th Cir. 2000) (en banc) ²	Ryan (R) Siler (R) Suhrheinrich (R)	Martin (D) Merritt (D) Moore (D)
Abdur'Rahman v. Bell 226 F.2d 696 (6th Cir. 2000)	Batchelder (R) Siler (R)	Cole (D)
Caldwell v. Bell 288 F.3d 838 (6th Cir. 2002)	Norris (R)	Clay (D) Merritt (D)
Hutchison v. Bell 303 F.3d 720 (6th Cir. 2002)	Cole (D) Moore (D) Siler (R)	
Alley v. Bell 307 F.3d 380 (6th Cir. 2002)	Batchelder (R) Boggs (R) Ryan (R)	
Thompson v. Bell 315 F.3d 566 (6th Cir. 2003)	Moore (D) Suhrheinrich (R)	Clay (D)
Donnie Johnson v. Bell 344 F.3d 567 (6th Cir. 2003)	Boggs (R) Norris (R)	Clay (D)
House v. Bell 386 F.3d 668 (6th Cir. 2004) (en banc) ³	Batchelder (R) Boggs (R) Cook (R) Gibbons (R)	Clay (D) Cole (D) Daughtrey (D) Gilman (D)

² In *Workman v. Bell*, 160 F.3d 276 (6th Cir. 1998), Judges Nelson, Ryan, and Siler, all Republican appointees, voted to affirm the district court's denial of habeas relief. In *Workman v. Bell*, 227 F.3d 331 (6th Cir. 2000) (en banc), the seven Democrat appointees voted to remand the case for further proceedings, while the seven Republican appointees voted to affirm the district court. Because the vote was evenly split, the district court's denial of habeas relief was affirmed. Mr. Workman was executed.

³ The United States Supreme Court overturned the Sixth Circuit's en banc decision. *House v. Bell*, 547 U.S. 518 (2006).

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	Norris (R) Rogers (R) Siler (R) Sutton (R)	Martin (D) Merritt (D) Moore(D)
Bates v. Bell 402 F.3d 635 (6th Cir. 2005)		Batchelder (R) Merritt (D) Moore (D)
Harbison v. Bell 408 F.3d 823 (6th Cir. 2005)	Cook (R) Siler (R)	Clay (D)
Harries v. Bell 407 F.3d 631 (6th Cir. 2005)		Boggs (R) Cook (R) Gibbons (R)
Payne v. Bell 418 F.3d 644 (6th Cir. 2005)	Cook (R) Rogers (R) Sutton (R)	
Henley v. Bell 487 F.3d 379 (6th Cir. 2007)	Cook (R) Siler (R)	Cole (D)
Cone v. Bell 505 F.3d 610 (6th Cir. 2007) ⁴	Batchelder (R) Boggs (R) Cook (R)	Clay (D) Cole (D) Daughtrey (D)

On remand from the Supreme Court, the district court granted relief on Mr. House's claims relating to actual innocence, and the state then dismissed the charges—resulting in Mr. House's exoneration.

⁴ In *Cone v. Bell*, 243 F.3d 961 (6th Cir. 2001), Judges Norris (R), Merritt (D), and Ryan (R) voted unanimously to grant relief. The United States Supreme Court overturned that decision in *Cone v. Bell*, 535 U.S. 685 (2002). On remand, Judges Ryan and Merritt voted for relief, while Judge Norris (R) dissented. *Cone v. Bell*, 359 F.3d 785 (6th Cir. 2004). Again, the Supreme Court overturned the decision. *Bell v. Cone*, 543 U.S. 447 (2005). Then on remand, Judges Norris and Ryan voted to deny habeas relief, while Judge Merritt dissented. *Cone v. Bell*, 492 F.3d 743 (6th Cir. 2007). On Mr. Cone's petition for rehearing en banc, seven Democrat appointees dissented from the denial of rehearing en banc. *Cone v. Bell*, 505 F.3d 610 (6th Cir. 2007). The remaining judges, all

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	Griffin (R) McKeague (R) Norris (R) Rogers (R) Ryan (R) Sutton (R)	Gilman (D) Martin (D) Merritt (D) Moore (D)
Cecil Johnson v. Bell 525 F.3d 466 (6th Cir. 2008)	Batchelder (R) Gibbons (R)	Cole (D)
Owens v. Guida 549 F.3d 399 (6th Cir. 2008)	Boggs (R) Siler (R)	Merritt (D)
West v. Bell 550 F.3d 542 (6th Cir. 2008)	Boggs (R) Norris (R)	Moore (D)
Irick v. Bell 565 F.3d 315 (6th Cir. 2009)	Batchelder (R) Siler (R)	Gilman (D)
Smith v. Bell 381 F. App'x 547 (6th Cir. 2010)	Cole (D) Cook (R) Griffin (R)	
Wright v. Bell 619 F.3d 586 (6th Cir. 2010)	Cole (D) McKeague (R) Rogers (R)	
Nicholus Sutton 645 F.3d 752 (6th Cir. 2011)	Boggs (R) Daughtrey (D)	Martin (D)
Strouth v. Colson 680 F.3d 596 (6th Cir. 2012)	Cook (R) Kethledge (R) Sutton (R)	
Cauthern v. Colson	Rogers (R)	Clay (D)

Republican appointees, either voted to deny rehearing en banc or acquiesced in the denial. (These opposing positions on the en banc petition are counted as votes in the chart.) Then, again the Supreme Court overturned the Sixth Circuit, *Cone v. Bell*, 556 U.S. 449 (2009), and remanded the case to the district court. Mr. Cone died on death row while his case was pending.

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726 F.3d 465 (6th Cir. 2013)		Cole (D)
Hodges v. Colson 727 F.3d 517 (6th Cir. 2013)	Batchelder (R) Cook (R)	White (R)
Van Tran v. Colson 764 F.3d 594 (6th Cir. 2014)	Cook (R) Rogers (R) White (R)	
Middlebrooks v. Bell 619 F.3d 526 (6th Cir. 2010) Middlebrooks v. Carpenter 843 F.3d 1127 (6th Cir. 2016)	Clay (D) Gilman (D) Moore (D) White (R)	
Miller v. Colson 694 F.3d 691 (6th Cir. 2012)	Gibbons (R) Siler (R)	White (R)
Morris v. Carpenter 802 F.3d 825 (6th Cir. 2015)	Boggs (R) Clay (D) Siler (R)	
GSutton v. Carpenter 617 F. App'x 434 (6th Cir. 2015)	Boggs (R) Cook (R) Gibbons (R)	
Thomas v. Westbrook 849 F.3d 659 (6th Cir. 2017)	Siler (R)	Merritt (D) Donald (D)
Black v. Carpenter 866 F.3d 734 (6th Cir. 2017)	Boggs (R) Cole (D) Griffin (R)	

Further notes:

Split Decisions: Of the 37 cases charted above, 21 (or 57%) resulted in split decisions. In these split decision cases, 92% of the Republican appointee votes were *against* relief, while 92% of the Democrat appointee votes were *for* relief. The votes according to party affiliation of the judges were:

Republican Appointee Votes *Against* Relief = 50 (93%)

Republican Appointee Votes *For* Relief = 4 (7%)

Democrat Appointee Votes *Against* Relief = 3 (7%)

Democrat Appointee Votes *For* Relief = 37 (93%)

Since 2005, no Republican appointee majority has voted for relief.

En Banc Opinions: We have identified six Sixth Circuit en banc opinions in capital cases from Tennessee. Three are included in the chart because those en banc decisions resulted in final disposition of the petitioners' habeas claims in the Sixth Circuit Court of Appeals. The other three are not included in the chart because they decided collateral issues that were not dispositive of the petitioners' habeas claims. The en banc opinions are as follows:

O'Guinn v. Dutton, 88 F.3d 1409 (6th Cir. 1996) (en banc) (per curiam) (7-6 decision resulting in a remand to state court, in which 4 Democrat appointees and 3 Republican appointees voted favorably for the petitioner; while 5 Republican appointees and 1 Democrat appointee voted unfavorably against the petitioner) (not included in the chart);

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Workman v. Bell, 227 F.3d 331 (6th Cir. 2000) (en banc) (a tie 7-7 vote strictly along party lines, effectively denying habeas relief) (included in the chart);

Abdur'Rahman v. Bell, 392 F.3d 174 (2004) (en banc) (in a 7-6 decision on a habeas procedural issue, all 6 Democrat appointees and 1 Republican appointee voted in favor of the petitioner, and 6 Republican appointees and no Democrat appointees voted against the petitioner—i.e., the single swing Republican appointee vote enabled the case to continue) (not included in the chart);

House v. Bell, 386 F.3d 668 (6th Cir. 2004) (en banc) (8-7 vote, strictly along party lines, denying habeas relief) (included in the chart);

Alley v. Little, 452 F.3d 620 (6th Cir. 2006) (en banc) (8-5 vote rejecting method-of-execution claim, in which 7 Republican appointees and 1 Democrat appointee voted against the petitioner, and 5 Democrat appointees voted for the petitioner) (not included in the chart);

Cone v. Bell, 505 F.3d 610 (6th Cir. 2007) (all 7 Democrat appointees dissented from denial of en banc review, while all 9 Republican appointees supported denial of en banc review—resulting in denial of habeas relief) (included in the chart).

Among these en banc opinions, Republican appointees cast 42 of their 46 votes (91%) against the petitioners, while Democrat appointees cast 36 of their 37 votes (97%) in favor of the petitioners.

