

# FIFTH CIRCUIT UPDATE

**DAVID S. COALE**

28<sup>th</sup> Annual Conference on State and Federal Appeals

University of Texas School of Law

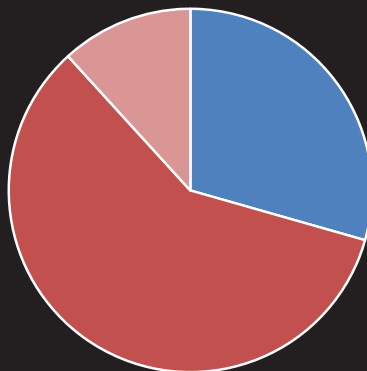
Austin, Texas

June 15, 2018

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## Active Judges



■ Democ. Presidents   ■ Repub. Presidents   ■ Repub. Nominations

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“[W]e conclude that if the Plaintiffs prove that the Defendants operated a fraudulent pyramid scheme, a jury may reasonably infer from the Plaintiffs' payments to join . . . that they relied on Ignite's implicit representation of legitimacy, when in fact it was a fraudulent pyramid scheme.”

***Torres v. S.G.E. Management*, 838 F.3d 629 (5th Cir. 2016) (en banc)**

**JUDGES IN MAJORITY**

Wiener\*  
Costa\*  
Stewart  
Davis  
Smith  
Dennis  
Prado  
Elrod  
Southwick  
Graves  
Higginson

**JUDGES DISSENTING**

Jolly  
Jones  
Clement  
Owen  
Haynes

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“[[J]essica Jauch was indicted by a grand jury, arrested, and put in jail where she waited for 96 days to be brought before a judge and was effectively denied bail. . . A pre-trial detainee denied access to the judicial system for a prolonged period has been denied basic procedural due process ....”

***Jauch v. Choctaw County*, 837 F.3d 425 (5th Cir. 2017)**

**JUDGES VOTING AGAINST  
EN BANC REVIEW**

Stewart  
Dennis  
Clement  
Prado  
Elrod  
Haynes  
Graves  
Higginson  
Costa

**JUDGES VOTING FOR EN BANC  
REVIEWG**

Jones  
Smith  
Owen  
Southwick  
Willett  
Ho

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# APPELLATE PROCEDURE

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*Cooper Indus. v. Nat'l Union Fire Ins. Co.*,  
876 F.3d 119 (5th Cir. 2017)

- **Judgment ≠ Opinion.** “National Union is conflating the district court’s opinion (i.e., the order) with its judgment. Appellate courts review judgments, not opinions. . . . ‘[A]n appellee may urge any ground available in support of a judgment even if that ground was . . . rejected by the trial court.’”
- **Rights ≠ Reasoning.** “Here, there is no adverse judgment against National Union, such that it might need to protect its rights—just some adverse reasoning”
- **These distinctions matter.** “A cross-appeal filed for the sole purpose of advancing additional arguments in support of a judgment is “**worse than unnecessary**”, because it disrupts the briefing schedule, increases the number (and usually the length) of briefs, and tends to confuse the issues.’ . . . (giving National Union over four thousand words of additional briefing).”

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First appeared as part of the conference materials for the  
28<sup>th</sup> Annual Conference on State and Federal Appeals session  
"U.S. Fifth Circuit Update"