

spotlight

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THE N.C. SUPREME COURT

A look at the inner workings

KEY FACTS: • A review of North Carolina Supreme Court cases from 2006 to 2010 shows that the Court has been issuing fewer opinions in recent years. In 2006, the Court heard 78 cases; in 2010, it heard only 59 cases.

- Most of the cases the Court heard were “cases by right,” which means the Court was required to hear the cases.
- The Court affirmed more North Carolina Court of Appeals decisions than it reversed or remanded (61 percent to 39 percent).
- The Court was much more likely to reverse discretionary-review cases from the Court of Appeals (cases that the Supreme Court was not required to hear) than cases it had to hear from the Court of Appeals.
- The overwhelming majority of Court opinions were unanimous decisions.
- Based on the trend from 2006, the number of unanimous decisions has dropped sharply. In 2006, 81 percent of the decisions were unanimous; whereas in 2010, 63 percent of the decisions were unanimous.
- There were two distinct voting blocs in the Court from 2007 to 2010. One voting bloc consisted of Justices Brady, Edmunds, Martin, and Newby, with no combination of two justices agreeing less than 73 percent of the time in cases where there were split decisions. The other voting bloc consisted of Justices Hudson and Timmons-Goodson, who agreed with each other 79 percent of the time in cases where there were split decisions.
- These two voting blocs often disagreed with each other. There were no two justices from the separate blocs who agreed more than 36 percent of the time in split-decision cases.
- Chief Justice Parker was more likely to be in the four-justice bloc than the two-justice bloc, but her votes were the most difficult to predict with respect to her agreement with the other justices.

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the North Carolina Supreme Court, the highest state court, issues legal opinions that have a critical impact on North Carolinians. Nevertheless, very little information is made widely available about the Court’s work.

This *Spotlight* report provides useful information about the Court’s work that is probably unfamiliar even to most attorneys in the state. It includes how often justices agree with each other and the reversal rate of Court of Appeals decisions. The goal of this report is not to draw broad conclusions, but to present this information to readers and make some objective observations based on it.

The Court’s Workload

Table 1 shows the total number of merit opinions from 2006 to 2010. A “merit opinion” does not necessarily have a formal definition, but for this report, it covers the number of cases where the Court issued an opinion answering a legal question in a case (as opposed to, for example, cases that are dismissed on procedural grounds).

Table 1: N.C. Supreme Court Workload, By Year (2006–10)

	2006	2007	2008	2009	2010
Total Merit Opinions	78	78	80	64	59

Merit opinions in this report include the total number of cases listed in the Court’s own annual list of opinions. In any given year, a very small number of cases have been excluded; for example, cases dismissed as moot and other opinions that did not address a legal question in a case.¹

Over the five-year period studied (2006–10), the North Carolina Supreme Court’s productivity significantly declined in terms of merit opinions. Scott Gaylord, an associate professor of law at Elon University, calculated (using different methodology from that used in this report) that the Court’s productivity between 2007 and 2009 “actually has gone down significantly since 1998–2000.”²

The Basis for the Court Hearing Cases

The North Carolina Supreme Court can hear a case “by right” (the Court is required to hear the case by statute)³ or it may choose to take a case that it is not required to hear (discretionary review).⁴ The most common reason the Court is required to hear a case is when the North Carolina Court of Appeals issues a split decision on the case. If the North Carolina Court of Appeals issues a unanimous opinion, the North Carolina Supreme Court may, upon its own discretion and within statutory limits, hear the case.

Table 2: The Reasons the N.C. Supreme Court Heard Cases, By Year (2006–10)

	2006	2007	2008	2009	2010
Total Merit Opinions	78	78	80	64	59
Cases by right	62	56	70	47	39
Cases by discretionary review	16	22	10	17	20

The Court mostly hears cases by right; however, the number of cases by right went down significantly over the five-year period studied (see Table 2). This decline suggests that the Court of Appeals is issuing fewer split decisions. During this same time, there is no trend showing an increase in the number of cases the Court is taking upon discretionary review.

In other words, the Court has not been making up for the fewer cases by right by hearing more cases by discretionary review. That explains the reduction in total merit opinions.

Results of Cases by Right Compared with Discretionary-Review Cases

Table 3 examines the results of cases by right and discretionary-review cases. Specifically, the table breaks down whether the cases were affirmed, reversed, or remanded (“remanded” means a case was sent down to a lower court for reconsideration), or whether there was a “partial” decision where the case was both affirmed in part and reversed or remanded in part.

Discretionary-review cases were much more likely to be reversed than cases by right. That likely is a result of how the Court addressed Court of Appeals decisions, as discussed below.

Table 3: Results of All Cases, By Year and Reason Heard (2006–10)⁵

	2006	2007	2008	2009	2010
Cases by right	62	56	70	47	39
<i>Affirmed</i>	42	35	38	28	23
<i>Reversed / Remanded</i>	14	12	20	16	10
<i>Partial</i>	6	9	12	3	6
Cases by discretionary review	16	22	10	17	20
<i>Affirmed</i>	2	5	3	5	2
<i>Reversed / Remanded</i>	9	7	5	10	12
<i>Partial</i>	5	10	2	2	6
Total Cases	78	78	80	64	59

Results of Supreme Court Review of Court of Appeals Decisions

One of the more intriguing questions is what happens when the North Carolina Supreme Court hears appeals of Court of Appeals decisions (see Figure 1 and Table 4). During the period studied, significantly more cases were affirmed than reversed or remanded (61 percent to 39 percent). Those figures do not include the “partial” decisions in which cases were both affirmed and reversed or remanded.

The Supreme Court was much more likely to reverse discretionary-review cases than cases by right from the Court of Appeals (split-decision cases). As stated earlier, most cases by right are Court of Appeals split-decision cases.

A likely reason for this result is that the Supreme Court is more apt to take discretionary cases from the Court of Appeals that it wants to reverse. If the Supreme Court agrees with a Court of Appeals ruling, it can simply let the lower court’s decision stand and not take up the case.

**Figure 1: N.C. Supreme Court Review of Decisions
By the Court of Appeals, 2006–10**
Affirmed vs. Reversed / Remanded Cases

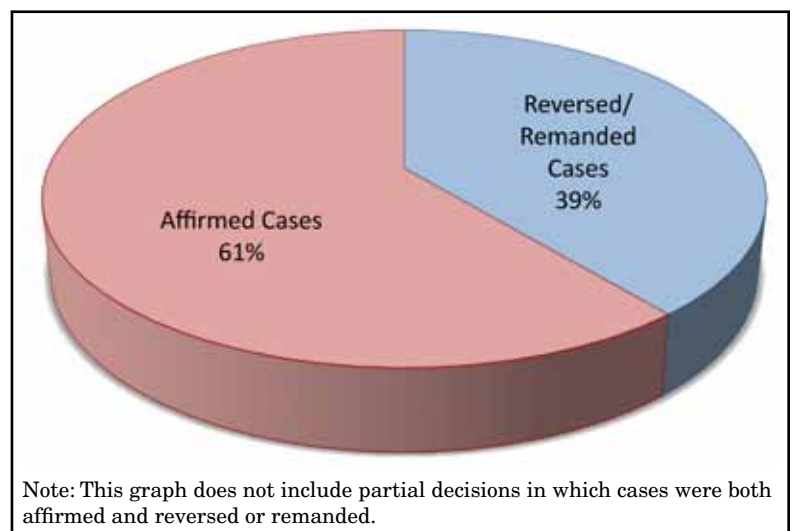


Table 4: Results of Supreme Court Review of Court of Appeals Decisions (2006–10)⁶

	Discretionary (unanimous)	Percentage discretionary	By right (split decision)	Percentage by right
Affirmed	16	21%	150	59%
Reversed/Remanded	38	49%	67	26%
Partial	24	31%	36	14%
Total	78	24%	253	76%

Vote Splits

An overwhelming majority of opinions in the Court were unanimous decisions. This finding may come as a surprise to many, demonstrating the importance of informing the public about the nature of the Court's work. While the number of unanimous decisions was still far greater than the number of split decisions, the trend indicates a significant drop in the percentage of unanimous decisions (see Table 5).

Table 5: Vote Splits by Year (2006–10)⁷

	2006	2007	2008	2009	2010
Unanimous	81%	79%	85%	66%	63%
Total split decisions	19%	21%	15%	34%	37%
(6-1)	4%	4%	4%	5%	5%
(5-2)	4%	8%	6%	11%	10%
(4-3)	6%	1%	3%	14%	20%
(3-3)	5%	9%	3%	5%	2%

Frequency in the Majority

Tables 6 and 7 show how often each Supreme Court justice ruled in the majority (there are seven justices on the Court). Table 6 examines frequency in the majority for all cases, and Table 7 examines frequency in the majority for split cases only. Since there are so many unanimous decisions, Table 7 is more instructive for getting a sense of the differences in voting patterns among the justices. These tables (and Tables 8 and 9 below) exclude cases from 2006 because two justices left the court prior to the 2007 term.

Justices Edmunds and Martin were in the majority most often during the four-year period examined, while Justices Hudson and Timmons-Goodson were in the majority least often.

Voting Blocs

Table 8 shows how often, in all the Court's decisions from 2007 to 2010, each justice agreed with each other justice. Table 9 shows how often each justice agreed with each other justice in split-decision cases only. Since there were so many unanimous cases, Table 9 reveals more about the dynamics on the Court.

Table 9 shows two distinct voting blocs. One

Table 6: Frequency in the Majority, By Justice (All Cases, 2007–10)⁸

	2007	2008	2009	2010
Brady	96%	95%	87%	100%
Edmunds	100%	100%	98%	95%
Hudson	62%	91%	82%	71%
Martin	99%	99%	97%	100%
Newby	97%	96%	89%	95%
Parker	92%	99%	92%	83%
Timmons-Goodson	81%	88%	77%	69%

voting bloc consists of Justices Brady, Edmunds, Martin, and Newby, with no combination of two justices agreeing less than 73 percent of the time. The other voting bloc consists of Justices Hudson and Timmons-Goodson, who agreed with each other 79 percent of the time.

These two voting blocs often disagreed with each other. There were no two justices from the separate blocs who agreed more than 36 percent of the time (Justices Martin and Hudson). The greatest level of disagreement occurred between Justices Newby and Timmons-Goodson, who agreed only 12 percent of the time.

Chief Justice Parker voted significantly more often with the four-justice bloc than with the two-justice bloc. Her level of agreement with the justices in the four-justice bloc was not, however, enough to consider her part of that bloc. While Chief Justice Parker agreed with Justice Edmunds 70 percent of the time, she agreed with Justice Martin only 63 percent of the time, Justice Newby only 57 percent of the time, and Justice Brady only 55 percent of the time.

As for agreement with the two-justice voting bloc, Chief Justice Parker agreed with Justice Hudson 40 percent of the time and Justice Timmons-Goodson 40 percent of the time. All of these numbers show that Chief Justice Parker is

Table 7: Frequency in the Majority, By Justice (Split Cases Only, 2007–10)⁹

	2007	2008	2009	2010
Brady	80%	60%	63%	100%
Edmunds	100%	100%	95%	86%
Hudson	40%	60%	42%	19%
Martin	90%	100%	89%	100%
Newby	80%	80%	63%	86%
Parker	60%	90%	74%	52%
Timmons-Goodson	30%	20%	42%	14%

Table 8: Agreement Between Justices — All Cases (2007–10)¹⁰

	Parker	Martin	Edmunds	Brady	Newby	Timmons-Goodson	Hudson
Parker		92%	93%	90%	90%	86%	86%
Martin	92%		98%	96%	96%	82%	85%
Edmunds	93%	98%		94%	94%	84%	84%
Brady	90%	96%	94%		94%	82%	83%
Newby	90%	96%	94%	94%		80%	83%
Timmons-Goodson	86%	82%	84%	82%	80%		95%
Hudson	86%	85%	84%	83%	83%	95%	

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Table 9: Agreement Between Justices — Split Cases (2007–10)¹¹

	Parker	Martin	Edmunds	Brady	Newby	Timmons-Goodson	Hudson
Parker		63%	70%	55%	57%	40%	40%
Martin	63%		90%	81%	80%	24%	36%
Edmunds	70%	90%		75%	73%	30%	32%
Brady	55%	81%	75%		75%	25%	30%
Newby	57%	80%	73%	75%		12%	26%
Timmons-Goodson	40%	24%	25%	25%	12%		79%
Hudson	40%	36%	32%	30%	26%	79%	

more likely to be in the four-justice bloc, but her votes are the most difficult to predict with respect to her agreement with the other justices.

Conclusion

North Carolina has seen a renewed focus on greater transparency in government, but often that focus has not extended to the judicial branch. This report aims to help make the work of the judicial branch more understandable and accessible to North Carolinians.

Much work along these lines still remains to be done, including analyzing the individual cases before the North Carolina Supreme Court in order to assess the impact and rationale of decisions. As more information becomes available and is compiled and presented in a meaningful manner, the public is better able to hold justices accountable for their work on behalf of North Carolina and her citizens.

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End Notes

1. To calculate the number of total merit opinions in each year, we counted the total number of opinions listed in each year by the Court on its web site, *appellate.nccourts.org/opinions*. Since we wanted to include only cases in which the Court issued an opinion answering a legal question in a case, certain cases were excluded. These exclusions in any given year were very small in number.
We decided not to include cases dismissed as improvidently granted and cases dismissed as moot because in those cases the Court never addressed any legal questions. We also excluded cases forwarded from the Judicial Standards Commission because in those cases the Court served its regulatory function over the judiciary.
We also excluded the five cases remanded or reconsidered after United States Supreme Court review between 2006 and 2010, for two main reasons. First, while the North Carolina Supreme Court in some of those cases applied legal principles to a set of facts (and therefore answered a legal question or questions), the Court generally followed clear directives of the United States Supreme Court with results that were often a foregone conclusion (all those cases were unanimous). Second, as a practical matter, several tables in this report include data comparing cases by right to discretionary-review cases. Since remanded or reconsidered cases after United States Supreme Court review do not fall into either category, including them would have required either categorizing them, without any statutory basis, in one of these two categories, or including them in some tables but not others.
Finally, we included per curiam opinions in our analysis. Those decisions are very brief and provide no detailed explanation as to how the Court reached its holdings; however, we included those cases because the Court does answer legal questions in them.
We do not dispute that reasonable arguments could be made to include or exclude certain types of cases when determining total merit opinions. Our need for a consistent methodology here required us to draw certain, reasonable lines concerning what cases to consider or not.
2. Scott W. Gaylord, "The North Carolina Supreme Court in 2010: Is It Time for Reform?" The Federalist Society, October 2010, pp. 4-5, *www.fed-soc.org/publications/pubid.1988/pub_detail.asp*.
3. "Routes of Appeal," North Carolina Court System, *www.nccourts.org/Courts/Appellate/Supreme/Routes.asp*. For the relevant statutory sections addressing cases by right, see, e.g., N.C. Gen. Stat. § 7A-27, § 7A-30, § 7A-376, and § 120-2.5.
4. "Routes of Appeal," North Carolina Court System, *www.nccourts.org/Courts/Appellate/Supreme/Routes.asp*. For the relevant statutory sections addressing discretionary review, see N.C. Gen. Stat. § 7A-31 and § 7A-32.
5. For the purposes of this study, cases were not deemed to be affirmed if they were affirmed only in part. Cases were not deemed to be reversed or remanded if they were reversed or remanded only in part. Cases the Court affirmed in part or reversed or remanded in part were listed as "partial."
There was a small number of cases (15) that included a combination of issues heard as a matter of right and issues heard based on discretionary review. In those instances, to avoid double counting, this study considered the case a case by right. Given that the case had to be heard regardless of the discretionary review of an issue, it was a logical choice of how to classify it.
6. The only cases by right included are those that were split-decision cases in the North Carolina Court of Appeals because Table 4 shows the results of cases that were heard by the Court of Appeals.
7. In 2007, there were two cases that included two votes on issues within the cases. In each case, there was a 3-3 decision and a 6-0 unanimous decision. As a result, the total number of vote splits exceeds the number of total merit opinions by two cases.
Since some cases are heard by fewer than all seven justices, there are cases that do not have a total of seven votes. For the purposes of this study, a unanimous decision includes 6-0 and 5-0 votes; 6-1 cases also include 5-1 cases; and 5-2 cases also include 4-2 cases.
8. This table excludes 3-3 decisions since those decisions had no majority.
9. *Ibid.*
10. This table analyzes how often two justices agreed with each other in the cases in which both justices rendered decisions. Cases in which one of the two justices recused himself or herself were excluded because the two justices had no opportunity to agree or disagree with each other.
If a justice concurred in an opinion's result only, even if disagreeing with the majority's rationale, this concurrence was deemed to be agreement with the justices in the majority. If a justice who concurred in part only was not considered to be in agreement with the justices in the majority.
All 3-3 decisions were excluded in this figure because the votes of the justices were not revealed in the opinion of those decisions.
11. *Ibid.*