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001	Report	Candidate Report: Henry Franklin Floyd [6 PAGES RELEASED IN PART FOR (b)(6) ON PRA REVIEW 08/27/2025 JLS]	6	05/12/2003	b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

[United States District Court for the District of South Carolina]

FRC ID:

9633

RESTRICTION CODES

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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**ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT,
AND DELIBERATIVE PROCESS PRIVILEGED
May 12, 2003**

**CANDIDATE REPORT: HENRY FRANKLIN FLOYD
Candidate for the U.S. District Court for the District of South Carolina**

**Prepared For The White House Pursuant To
The White House's Request For Views On The Candidate**

Summary: Henry Franklin Floyd is an experienced professional who is accomplished in the private practice of law and in government and community service. He currently sits on the 13th Judicial Circuit Court of South Carolina, a state court of general jurisdiction.

Judge Floyd graduated the University of South Carolina in 1973, then started his own law practice with a partner, where he practiced small-scale civil, criminal, and domestic litigation for several years. His small firm merged with a larger firm in January 1978, creating the firm of Acker, Acker, Floyd & Welmaker ("Acker"). At Acker, Judge Floyd's practice remained centered on small-scale litigation, as well as probate litigation, real property litigation, and representation of regulated utilities and local government entities. In 1992, Judge Floyd was elected by the state Legislature to be a Circuit Court Judge for the 13th Judicial Circuit of South Carolina, which is made up of Pickens and Greenville counties in the northwestern part of the state. Judge Floyd's court oversees most criminal cases (including capital cases) and all civil matters except for probate and domestic litigation. Judge Floyd has been asked by the state Supreme Court to specially preside over statewide complex civil litigation matters. Judge Floyd is universally recognized for running an efficient and professional courtroom, and has been rated as one of the state's top Circuit Judges by the South Carolina Bar.

During his interview, Judge Floyd stated that, among the past and present Justices of the U.S. Supreme Court, he most admired the late Justice Lewis F. Powell Jr., whose opinions Judge Floyd "has always enjoyed reading." He also greatly admires Judge William B. Traxler, Jr. of the U.S. Court of Appeals for the Fourth Circuit and Chief Judge Joseph Anderson of the U.S. District Court for the District of South Carolina.

Judge Floyd received praise from all of the judges, co-counsel, and opposing counsel interviewed, who believed Judge Floyd to be bright, well-prepared, and well-suited for the bench. There is no reason to believe that any individual or group would oppose Judge Floyd's nomination, but one should prepare for the unlikely possibility that two reversals by the state Supreme Court in high-profile cases handled by Judge Floyd could cause some contention during the nomination and confirmation process.

I. General Background/Legal Career

Henry Franklin Floyd was born on (b)(6) in Brevard, North Carolina. He enrolled at Wofford College in Spartanburg, South Carolina in 1966, where he majored in history and ultimately graduated in 1970 with a Bachelor of Arts degree. At Wofford, Judge Floyd participated in the Reserve Officers Training Corps program of the U.S. Army. After graduation, he enrolled at the University of South Carolina Law School, earning his J.D. in May 1973. He was an active Army Reservist during law school, and also worked part-time as an administrative assistant to Lieutenant Governor Earle E. Morris. In addition to his other activities during law school, Judge Floyd was elected to the South Carolina House of Representatives in December 1972 (he served in the House until December 1978). Upon graduation from law school, Judge Floyd had three months of active service in the Army Reserves at Fort Benjamin Harrison in Indianapolis, IN; he then took Inactive Reserve status, in which he remained until 1978, when he was honorably discharged from the Reserves.

Upon completion of active military duty, Judge Floyd and his law partner started the small law firm of Floyd & Welmaker in Pickens, SC. Floyd & Welmaker was predominantly involved in small-scale civil, criminal, and domestic litigation, as well as wills, estates, and real property closings. His small firm merged with a larger firm in January 1978, creating the firm of Acker, Acker, Floyd & Welmaker. At Acker, Judge Floyd's practice remained centered on small-scale civil, criminal, and domestic litigation, as well as probate litigation, real property litigation, and representation of regulated utilities and local government entities. His largest clients included the Blue Ridge Electric Cooperative, Pickens County (SC), and Duke Power Company. In 1981, Mr. Floyd made an unsuccessful run for the State Senate.

In 1992, Judge Floyd was elected by the state Legislature to be a Circuit Court Judge for the 13th Judicial Circuit of South Carolina, which is made up of Pickens and Greenville counties in the northwestern part of the state. Judge Floyd's court is one of general jurisdiction, overseeing most criminal cases (including capital cases) and all civil matters except for probate and domestic litigation. During his tenure on the bench, Judge Floyd has been recognized as an expert in handling complex civil litigation, and has been asked by the state Supreme Court to specially preside over such matters in all corners of the state. He also has been designated to sit as an Acting Justice on the state Supreme Court on several occasions. Judge Floyd recently completed special service in the 5th Judicial Circuit, where he was asked by the state Supreme Court to administer a pilot program designed to ease the backlog of cases in state courts. Judge Floyd is universally recognized for running an efficient and professional courtroom. In 2001, the South Carolina Bar had its members grade the performance of state court judges, based on 11 criteria. Judge Floyd had the fourth-highest rating amongst the 33 state Circuit Court judges evaluated. See Cindi Ross Scoppe, "Evaluations Show Toal, Other Judges Doing a Pretty Good Job," THE STATE (COLUMBIA, SC), Jan. 2, 2001 at A8.

II. Noteworthy Litigation

In private practice, Judge Floyd handled the types of cases typical for a small-town general practitioner. He successfully defended the first dog owner criminally charged with manslaughter under South Carolina's Vicious Dog Act for violent acts committed by his dog, *see State v. Crunkleton*, No. 90-GS-37-1179 (S.C. March 26, 1991), successfully defended the first capital murder defendant charged in Pickens County after the reinstitution of the death penalty, *see State v. Cox*, 287 S.C. 260 (S.C. App. 1985), and unsuccessfully represented Blue Ridge Electric Cooperative in a dispute concerning an eminent domain statute that specially provided for public utility acquisition of electric cooperative property, *see Blue Ridge Electric Cooperative, Inc., vs. Combined Utility System of the City of Easley*, 3030 S.E.2d 91 (1983).

As a Circuit Court Judge, a vast majority of Judge Floyd's decisions have been upheld on appeal by state appeals courts; of the cases not entirely upheld, only two are of particular note. In *State v. Martin and Wilson*, 533 S.E.2d (S.C. 2000), two defendants were convicted of murder based on circumstantial evidence (they were not sentenced to death). At the conclusion of the state's case, the defense moved for a directed verdict; Judge Floyd denied the motion. The state Supreme Court reversed, holding that "the trial court erred by not directing a verdict" because "the State's evidence failed to place either defendant inside the apartment" where the crime took place. *See id.* at 602-03. Judge Floyd was not in any way taken to task in the Supreme Court's opinion, although he noted during his interview that the GREENVILLE NEWS wrote an unfavorable article (unavailable electronically) about the Supreme Court's decision. Judge Floyd defends his denial of the motions, noting that he is generally very cautious in granting such motions because double jeopardy prevents the state from ever appealing such a decision.

In the mid-1990s, Judge Floyd was called on by the state Supreme Court to handle all pre-trial matters in the state concerning breast implant litigation. Judge Floyd ultimately denied the defendant health providers' motions to dismiss strict liability and warranty causes of action (but dismissed other causes of action). However, Judge Floyd took the unusual step of certifying questions to the state Supreme Court concerning his rulings, which the Court addressed in an interlocutory appeal in the form of a petition for certiorari by the defendants. The state Supreme Court reversed, holding that the providers could not be held liable under such theories of action. *See In re Breast Implant Product Liability Litigation*, 503 S.E.2d 445 (S.C. 1998). The Court based its decision on similar decisions by courts in other states, many of which were rendered after Judge Floyd's action in the South Carolina cases. *See id.*

Judge Floyd's published and unpublished reports and opinions are generally concise, well-written, and straightforward. For example, in *Bakala v. Bakala*, 576 S.E.2d 156 (S.C. 2003), as an acting state Supreme Court Justice, Judge Floyd wrote an opinion in a divorce appeal holding, inter alia, that the husband was not prejudiced by a post-divorce hearing ex parte communication between the trial court and the wife's attorney regarding valuation of marital stock, and that a finding of contempt against the husband was valid. In *Glover by Cauthen v.*

Suitt Const. Co., 93-CP-23-2159 (S.C. 13th 1992), *affirmed*, 458 S.E.2d 535 (S.C. 1995), a claimant sought payment of workers' compensation benefits in lump sum, and alternatively requested that his attorneys be paid a lump sum contingency fee of one third of his award. Judge Floyd affirmed a decision of the Workers' Compensation Commission declining to permit the claimant to receive a lump sum payment, but approving payment of his attorney's fees in lump sum to be deducted from the end of his award of lifetime benefits. *See id.*

III. Publicity/Public Record

Apart from his published opinions, Judge Floyd has one published writing. *See, e.g., The Criminal Trial Benchbook for New Circuit Judges*, S.C. COURT ADMINISTRATION (2000). He has also delivered eight Continuing Legal Education seminars, all of which had accompanying printed materials. All of these writings are apolitical and do not contain any controversial passages, and his comments at the seminars were also non-controversial.

Apart from the *State v. Martin* and breast implant cases, Judge Floyd has presided over several other matters that garnered significant media attention, involving several cases in which the death penalty was imposed (please see section IV *infra*). The media coverage was either positive in nature or neutral (i.e., simply reporting that he was the presiding jurist). One murder case where Judge Floyd presided was covered on the Court TV cable network (the defendant was acquitted). *See* "Court TV Library: *South Carolina v. Mathis*," <<http://courttv-web1.courttv.com/archive/casefiles/verdicts/mathis.html>> (undated).

As a Democratic state legislator in the 1970s, Judge Floyd commented on several political issues during debate; none of these statements appear to have been memorialized. He remembers voting in favor of the state Equal Rights Amendment, as well as the state death penalty statute. In his unsuccessful bid for the state Senate, Judge Floyd recalls telling voters that "adoption was a better course of action than abortion," though he never specifically commented on the *Roe v. Wade* decision.

IV. Miscellaneous Other

There are other items worthy of consideration and mention:

- Judge Floyd has presided over two cases in which he imposed the death penalty after a recommendation for such a sentence was offered by a jury. Neither of the two defendants have yet been executed. According to Judge Floyd, the defendant in *State v. Humphries*, 479 S.E.2d 52 (S.C. 1996) (affirming sentence of death), is the defendant that is "closest" to having a scheduled execution. The defendant in *State v. Council*, 515 S.E.2d 508 (S.C. 1999) (affirming sentence of death), is likewise on death row. The defendant in *State v. Beckham*, 513 S.E.2d 606 (S.C.

1999) (affirming sentence) was also death-eligible, but the jury in the case only recommended a sentence of life (which Judge Floyd imposed), even though it found several aggravating circumstances.

- Judge Floyd is a member of his local and state bar associations, the American Bar Association, and the South Carolina Association of Circuit Judges (he was President of the SCACJ in 1996-97). He is also a former member of the Board of Directors for the South Carolina Trial Lawyers Association. Judge Floyd is a member of the Pickens County Country Club and the Commerce Club (a local boosterism organization), neither of which have or had discriminatory policies or practices. He also did occasional pro bono work when he was in private practice (of a typical small-town variety), and served as a member of the local Public Defender Board.
- Judge Floyd was once the subject of a complaint brought against Pickens County for an alleged violation of the Americans With Disabilities Act. He presided over a trial in which the victim was hard of hearing, and refused to permit the victim's daughter to interpret for her while testifying. The daughter was also a key state's witness. The matter involved an alleged theft, and the central issue was what was said between the victim and the defendant. Judge Floyd gave the state an opportunity to obtain a neutral interpreter; the state declined to do so. The victim did testify without the aid of an interpreter and did respond to questions. The ADA complaint was later summarily dismissed, on the ground that Judge Floyd's action was a totally appropriate balancing of the victim's rights and the defendant's right to a fair trial. Judge Floyd suspects that the complaint was filed because of the victim's disappointment with the defendant's acquittal by the jury.
- Judge Floyd has also been the subject of three formal complaints by *pro se* civil litigants. The complaints were dismissed by the state Supreme Court committee handling such matters, and Judge Floyd was not informed of the nature of the allegations (indeed, he only learned of the complaints upon being told of their dismissal).
- Judge Floyd received unanimous praise from all of the judges, co-counsel, and opposing counsel interviewed, who believed Judge Floyd to be bright, well-prepared, and well-suited for the bench. The Hon. Sol Blatt of the U.S. District Court for the District of South Carolina calls Judge Floyd "a great judge" and "a great person" and "would feel blessed to be able to serve with" Judge Floyd. The Hon. G. Ross Anderson, Jr., also from the U.S. District Court for the District of South Carolina, believes that Judge Floyd has "an exceptional knowledge of the law" and that he would be "an excellent choice" for this vacancy. Suzanne Coe, an attorney practicing in the 13th Judicial Circuit, calls Judge Floyd the "most highly thought of [amongst] all the local judges" and believes he would be an

"unbelievable federal judge."

V. Confirmation Issues

There is no reason to believe that any individual or group would oppose Judge Floyd's nomination. However, one should prepare for the unlikely possibility that two reversals by the state Supreme Court in high-profile cases handled by Judge Floyd could cause some contention during the nomination and confirmation process.