

Revised SIXTH STAGE OF THE CHATGPT-4 APPEAL EXPERIMENT: AI Analyzes Possible Appeal to the Supreme Court and Impact of Current Justices on Outcome.

Ralph Losey, October 15, 2023

GPT put my picture in the record of all my prompts, plus I have added a short break line for clarity.



Please prepare a legal memorandum to outline the arguments that could be made in an appeal of the Eleventh Circuit Opinion to the U.S. Supreme Court, including the basis of the appeal and reasons that the Supreme Court should accept jurisdiction. Also prepare a memorandum that estimates the probability that the Supreme Court would accept an appeal, from 0% to 100%, and explain the basis for your prediction.

ChatGPT

Legal Memorandum

Subject: Arguments for Appeal to the U.S. Supreme Court in McKay v. Miami-Dade County
Introduction

This memorandum outlines the potential arguments that could be made in an appeal of the Eleventh Circuit's decision in McKay v. Miami-Dade County to the U.S. Supreme Court. It also discusses the basis for the appeal and the reasons why the Supreme Court should grant certiorari.

Basis for Appeal

1. **Misapplication of Federal Law:** The Eleventh Circuit's interpretation and application of the Fair Labor Standards Act (FLSA) and relevant CFR sections are arguably incorrect and create a conflict with other circuits.
2. **Constitutional Implications:** The case raises important questions about the Fourteenth Amendment's Equal Protection Clause, as it pertains to unpaid internships in public agencies.

Arguments for Appeal

1. **Clarification of the Primary Beneficiary Test:**
 - The Eleventh Circuit's application of the test is inconsistent with its original intent and other circuit interpretations.
 - The Supreme Court's intervention is needed to clarify the correct application of this test under the FLSA.

2. **Uniform Interpretation of FLSA:**

- Different circuits have varying interpretations of what constitutes an "employee" under the FLSA.
- Supreme Court review is necessary to ensure a uniform federal standard.

3. **Economic Exploitation:**

- The case presents an opportunity for the Court to address the broader issue of economic exploitation under the guise of internships.
- This has significant implications for labor rights and economic justice.

4. **Constitutional Equal Protection:**

- The case could be framed as a violation of the Equal Protection Clause, given that unpaid internships disproportionately affect certain socio-economic classes.
- This constitutional angle provides an additional reason for the Supreme Court to take up the case.

Reasons for Granting Certiorari

1. **National Importance:** The case addresses issues that have broad implications for labor rights across the country.
2. **Circuit Split:** There is a lack of uniformity among the circuit courts on the interpretation of the FLSA, warranting Supreme Court intervention.
3. **Legal Uncertainty:** The Eleventh Circuit's decision creates legal uncertainty for both employers and interns, necessitating clarification from the highest court.

Memorandum on Probability of Supreme Court Acceptance

Estimated Probability: 35%

Basis for Prediction

1. **Circuit Split:** While there is some divergence among circuits on the FLSA's interpretation, it is not a deeply entrenched split, which might reduce the urgency for the Supreme Court to intervene.
2. **National Importance:** The issue is of national importance but may not be viewed as immediately pressing compared to other matters the Court might consider.
3. **Constitutional Angle:** While the Equal Protection argument adds weight, it is not the primary issue in the case, which could reduce its attractiveness to the Court.
4. **Legal Complexity:** The case involves intricate legal questions and statutory interpretations, which could make it appealing for judicial review, but it also means the Court might wait for more circuits to weigh in before taking it up.

In summary, while the case presents compelling issues that could warrant Supreme Court review, the likelihood is moderate, estimated at around 35%.

Would you like to explore any of these points further?



Please assume that the U.S. Supreme Court does accept the appeal, please predict the likely outcome of the appeal and the reasons for your prediction.

ChatGPT

Legal Memorandum

Subject: Predictive Analysis of the Outcome of the Appeal in McKay v. Miami-Dade County at the U.S. Supreme Court

Introduction

This memorandum aims to predict the likely outcome should the U.S. Supreme Court decide to hear the appeal in McKay v. Miami-Dade County. The analysis is based on the legal issues involved, the current composition of the Court, and relevant precedents.

Predicted Outcome

The U.S. Supreme Court is likely to reverse the Eleventh Circuit's decision and remand the case for further proceedings.

Reasoning

1. Clarification of Federal Law:

- The Supreme Court often takes cases to resolve ambiguities in federal law. The inconsistent application of the "primary beneficiary test" across circuits provides a compelling reason for the Court to clarify the law.
- Given the Court's history of statutory interpretation, it is likely to provide a more stringent framework for applying this test under the FLSA.

2. Constitutional Implications:

- The Court has shown interest in cases that have broader constitutional implications. The Equal Protection argument, although secondary, could sway some justices.

3. Judicial Philosophy:

- The current composition of the Court includes justices who are textualists and may be inclined to a stricter interpretation of the FLSA, favoring employees over employers in ambiguous situations.

4. Public Policy Considerations:

- The Court may consider the broader societal implications of unpaid internships, including economic exploitation and inequality, as factors that necessitate a ruling in favor of Ms. McKay.

5. Precedent:

- The Court has previously shown willingness to overturn circuit court decisions that it finds are based on incorrect interpretations of federal statutes.

6. Legal Scholarship and Amicus Briefs:

- Given the national importance of the issue, it is likely that influential legal scholars and organizations will file amicus briefs, providing the Court with comprehensive arguments that could tilt the balance in favor of Ms. McKay.

Conclusion

Given the ambiguities in the application of the "primary beneficiary test," the constitutional implications, and the current judicial philosophy of the Supreme Court, it is likely that the Court will reverse the Eleventh Circuit's decision. This prediction is based on an analysis of the legal issues, the Court's history, and broader policy considerations.

Would you like to delve deeper into any of these aspects?



Does this analysis of the likelihood for success in obtaining a reversal consider the current who the current Justices of the U.S. Supreme Court are? You are to assume they are:

CHIEF JUSTICE JOHN ROBERTS. ASSOCIATE JUSTICES ► SAMUEL ALITO. AMY CONEY BARRETT. NEIL GORSUCH. KETANJI BROWN JACKSON. ELENA KAGAN. BRETT KAVANAUGH. SONIA SOTOMAYOR. CLARENCE THOMAS.

How does the makeup of the court enter into your analysis that the Appellant would prevail in the U.S. Supreme Court. What justices do you think would make up the majority in favor of reversing the 11th Circuit. Please provide a complete and detailed analysis on the memorandum you prepare answering these questions. You may, if you think it is appropriate, change your earlier opinion based on the new knowledge I just provided as to the current justices of the supreme court, but if you do so, please provide a full explanation for this change in analysis.

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Legal Memorandum

Subject: Analysis of the Likely Outcome of the Appeal in McKay v. Miami-Dade County at the U.S. Supreme Court Considering the Current Justices

Introduction

This memorandum revisits the predictive analysis of the outcome of the appeal in McKay v. Miami-Dade County at the U.S. Supreme Court, taking into account the current composition of the Court. The justices are CHIEF JUSTICE JOHN ROBERTS and ASSOCIATE JUSTICES SAMUEL ALITO, AMY CONEY BARRETT, NEIL GORSUCH, KETANJI BROWN JACKSON, ELENA KAGAN, BRETT KAVANAUGH, SONIA SOTOMAYOR, and CLARENCE THOMAS.

Updated Predicted Outcome

The U.S. Supreme Court is still likely to reverse the Eleventh Circuit's decision, but the composition of the Court adds nuance to this prediction.

Reasoning

1. **Judicial Philosophy and Ideological Leanings:**

- The Court has a relatively balanced composition, with conservatives like Alito, Barrett, Gorsuch, Kavanaugh, and Thomas, and liberals like Kagan, Sotomayor, and Jackson. Chief Justice Roberts often acts as a swing vote.
 - Textualists like Gorsuch and Barrett may lean towards a stricter interpretation of the FLSA, which could favor the appellant, Ms. McKay.
2. **Chief Justice John Roberts:**
 - Known for his institutionalism, Roberts may be inclined to rule in a way that clarifies federal law and provides a clear framework for lower courts. This could involve reversing the Eleventh Circuit to set a new standard.
 3. **Justices Likely to Favor Reversal:**
 - Kagan, Sotomayor, and Jackson are likely to be sympathetic to labor rights and may form the liberal bloc favoring reversal.
 - Gorsuch and Barrett may join them based on textualist principles.
 - Roberts could act as the swing vote, making a 6-3 or even a 7-2 decision possible.
 4. **Justices Likely to Uphold the Eleventh Circuit:**
 - Alito, Thomas, and possibly Kavanaugh might be more inclined to uphold the lower court's decision based on a more employer-friendly interpretation of the FLSA.
 5. **Public Policy and Precedent:**
 - Given the balanced nature of the Court, public policy considerations and precedent could play a significant role. The Court may consider the broader implications of unpaid internships and labor exploitation.

Conclusion

The current composition of the Court adds complexity but does not significantly alter the prediction that the Supreme Court is likely to reverse the Eleventh Circuit's decision. Justices Kagan, Sotomayor, Jackson, Gorsuch, and Barrett are the most likely to form a majority bloc favoring reversal, with Chief Justice Roberts as a potential swing vote.

Change in Analysis

There is no change in the overall prediction, but the detailed analysis of the current justices provides a more nuanced understanding of how the Court might arrive at its decision.

Would you like to explore any of these points further?



Please provide your best estimate as to the probability of a reversal, from 0% to 100%, with a explanation for the basis of your estimate.

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Probability Estimate for Reversal in McKay v. Miami-Dade County at the U.S. Supreme Court
Estimated Probability: 65%.

Basis for Estimate:

1. **Ideological Balance:** The Court's composition is relatively balanced, with a slight conservative lean. However, the issue at hand—unpaid internships and labor rights—could transcend traditional ideological lines.
2. **Textualist Justices:** Justices like Gorsuch and Barrett, who are known for their textualist approach, may favor a strict interpretation of the FLSA, which could be beneficial for Ms. McKay, the appellant.
3. **Liberal Bloc:** Justices Kagan, Sotomayor, and Jackson are likely to be more sympathetic to labor rights and could form a bloc favoring reversal.
4. **Chief Justice Roberts:** Known for his institutionalist tendencies, Roberts could act as a swing vote. His vote could be crucial in setting a new standard for FLSA interpretation, which leans the probability slightly in favor of reversal.
5. **Public Policy and Precedent:** The Court may consider the broader societal implications of the case, including the potential for labor exploitation in unpaid internships. This could sway justices who are on the fence.
6. **Legal Complexity:** The case involves intricate questions about the interpretation of federal labor laws and the "primary beneficiary test," adding a layer of unpredictability to the outcome.
7. **Circuit Court Decisions:** The Eleventh Circuit's decision could be seen as an outlier or as filling a gap in the law, either of which could influence the Supreme Court's willingness to reverse.

Given these factors, a 65% probability of reversal seems reasonable. This estimate acknowledges the complexities and uncertainties involved but leans in favor of reversal based on the ideological leanings and judicial philosophies of the current justices.

Would you like to delve into any of these factors in more detail?