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## Which Federal Appeals Courts Grant Oral Argument the Most and Least Often?

Oral argument rates among the circuits may be affected by the types of cases they hear. For example, the D.C. Circuit, with the highest rate, often weighs complex administrative law issues best addressed through oral argument, said appellate attorney Mark Gidley.

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Civil Appeals



Avalon Zoppo



### What You Need to Know

- D.C., Second and Seventh circuits held oral argument in a higher percentage of appeals than other circuits from 2022 to 2023.
- Third, Fourth, Sixth and Eleventh circuits were at the other end of the spectrum.
- Circuit norms, workloads and geographical constraints explain differences between circuits, attorneys say.

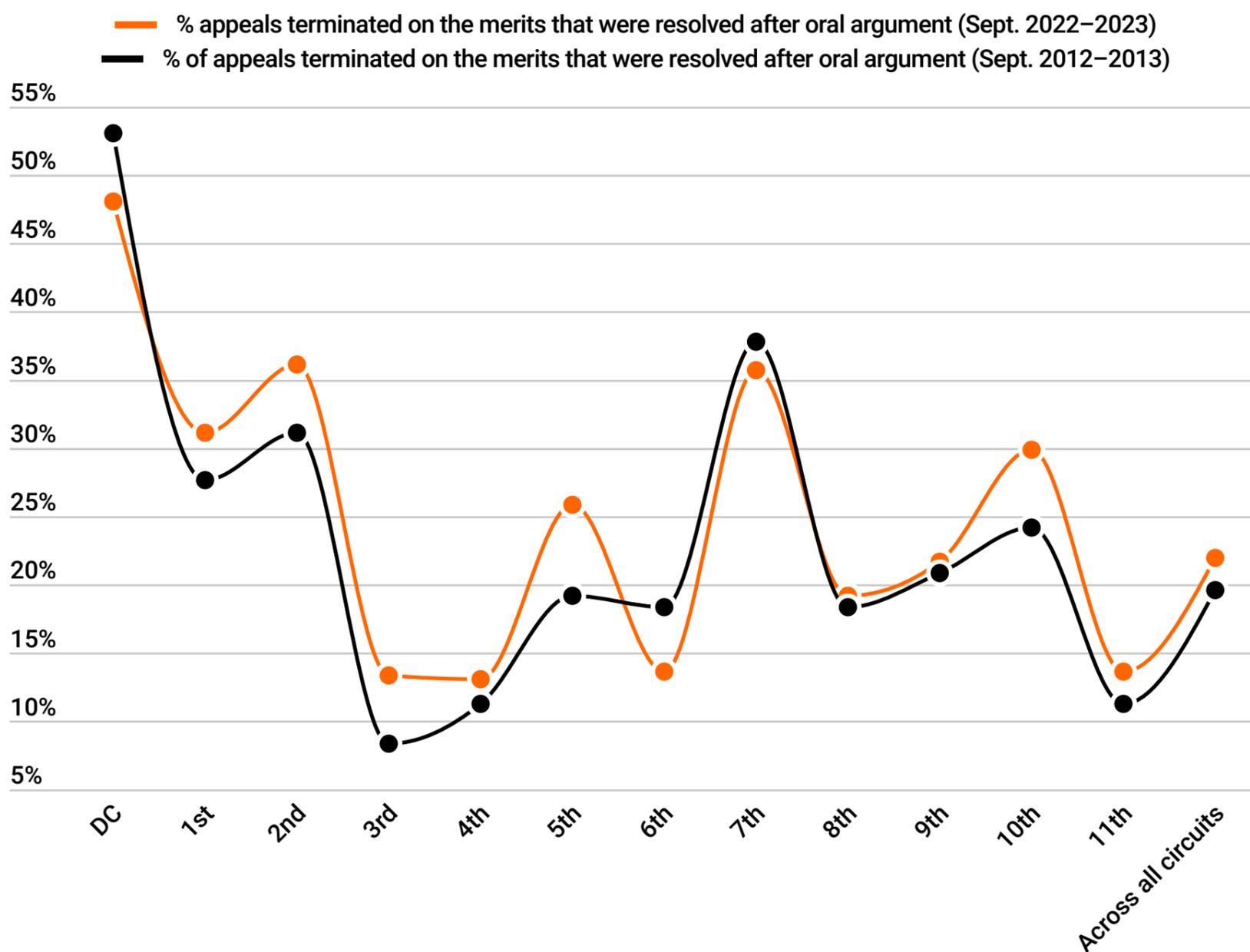
When Mark Gidley argued in a [major antitrust case](#) before a federal appeals court in 2018, he said the judges challenged him about the broader implications of his position that class certification should've been rejected in a suit accusing a drugmaker of suppressing generic competition.

"It made me really in the moment have to commit to a position that wound up in the opinion. So I think [oral argument] is super valuable," Gidley said.

The U.S. Court of Appeals for the First Circuit ended up reversing the lower court and issuing a significant holding that judges should not grant certification of class actions with uninjured members.

"The judges are communicating with one another. They may agree with your point, but they want to draw you out to make the point to another judge," Gidley said. "So it's extremely dynamic, and you're just never going to have that on the written pleadings."

The First Circuit holds oral arguments at a rate that's on the higher end compared with other federal appeals courts. Thirty-one percent of the First Circuit's appeals that were terminated on the merits were decided after oral argument between September 2022 and September 2023, according to [statistics](#) from the U.S. Administrative Office of the Courts.



The D.C. Circuit had the highest rate (48%), followed by the Second (36%), Seventh (35.7%) and then the First Circuit.

On the opposite end of the spectrum are the Fourth (13%), Third (13.4%) and Sixth and Eleventh circuits (both 13.6%).

Gidley, former head of the U.S. Department of Justice’s Antitrust Division, said oral argument rates among the circuits may be affected by the types of cases they hear. For example, the D.C. Circuit, with the highest rate, often weighs complex administrative law issues that will have far-reaching impact and involve technical knowledge best addressed through oral argument.

The Second Circuit, with the next-highest grant rate, often handles complicated securities cases, added *Gidley*, a partner at White & Case.

Most of the circuits had around the same oral argument rates from 2022 to 2023 compared with 2012 to 2013. The exceptions may be the Fifth Circuit (which saw a jump from 19% to almost 26% of appeals terminated on the merits after argument) and the Tenth Circuit (which saw a jump from 24% to almost 30%).

## Circuit Norms

William & Mary Law School professors Allison Orr Larsen and Neal Devins said each circuit has a set of norms and informal rules or practices, which become entrenched over time and are handed down from one generation of judges to the next. It’s an idea they called “circuit personalities” in a 2022 [paper](#), and they said oral argument rates are one of

those unchanging “circuit norms.”

Some judges they spoke to for the paper bragged about their court’s high rate of granting oral arguments, Larsen and Devins said.

“It takes more time, of course, to hear oral arguments and more of the judges’ attention. So that, I think, explains the bragging rights,” Larsen said.

Larsen added that circuits have different processes for determining which cases will be heard. In some, judges do an initial case screening, she said. In other circuits, judges conduct a screening only after getting a briefing from the staff attorney’s office.

Katherine Barrett Wiik, Saul Ewing’s appellate practice co-chair, said, logistically, it may be easier for some courts to schedule oral arguments than others.

For example, the D.C. Circuit covers a smaller area geographically than other circuits, so judges need not travel far to sit on panels. In contrast, judges in the Eighth Circuit are chambered in different federal courthouses across seven states and must travel to St. Louis, Missouri, or St. Paul, Minnesota, for a hearing.

Barrett Wiik said even if oral argument doesn’t change the vote outcome in a case, having in-person hearings improves institutional legitimacy and the legal reasoning behind decisions. It also helps build relationships among judges, staff and attorneys, she added.

“[Oral argument] literally brings people together, and that’s essential, I would say, for the health of the institutions and for the relationship-building between and among the various stakeholders in the appellate courts,” Barrett Wiik said. “That really can’t be replicated when everyone’s just approving things on the briefs or having remote meetings.”

## **‘Not a One Way Street’**

Paul, Weiss, Rifkind, Wharton & Garrison partner Kannon Shanmugam said, in general, busier circuits seem to have lower oral argument rates than circuits with smaller dockets.

And while there was a very slight increase in the percentage of cases resolved with arguments across all the circuits over the last decade (from about 19% to 21%), Shanmugam questioned whether those numbers paint a full picture. He said the total number of appeals terminated on the merits across the circuits decreased to 26,300 in 2023 from 37,800 in 2013, and the absolute number of appeals resolved after arguments has actually gone down by about 1,500.

“On the one hand, a higher percentage of cases are getting oral arguments. On the other hand, it’s a much smaller absolute number. And it has gone down at a time when the courts of appeals are basically fully staffed,” Shanmugam said. “So, I think those percentage numbers may mask what’s actually going on in absolute terms.”

He said that he has noticed recently a shorter wait between filing a reply brief and oral argument than in years past.

Going further back though, the percentage of cases that receive oral argument and the amount of time allocated to each argument has decreased since the late 1960s, according to an American Academy of Appellate Lawyers task force [report](#) based on statistics from the AO.

The academy noted, however, that data from the late 1960s and today are not entirely comparable partly because the number of appeals and judges has increased dramatically over the decades.

A former AAAL president and the then-chair of the group's oral argument initiative wrote in a 2018 [article](#) that the professional organization's 2015 task force report, which contained recommendations for increasing oral argument frequency, was sent to each circuit chief judge.

The recommendations included establishing a program to provide opportunities for oral argument in pro se cases, putting more stock in parties' requests for argument, issuing more focus letters where a court gives advance notice to lawyers on issues it is concerned about, and taking greater advantage of technology to account for geographic challenges to granting oral argument.

"The Academy recognizes that its call for more frequent oral arguments is not a one way street," the 2018 article stated. "The judges candidly state, across the circuits, that the greatest benefits accrue when arguments are well-presented. Some level of assurance that prepared advocates will be appearing therefore could generate a corresponding increase in the number of arguments."

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