



## Update to Fix the Court's May 2015 "Blind Trust" Report

July 29, 2015

Fix the Court's earlier research into the stock holdings of Supreme Court justices found that only three of them – Chief Justice John Roberts and Associate Justices Stephen Breyer and Samuel Alito – own shares in publicly traded companies, while the rest put their money into real estate, retirement accounts or mixed financial instruments like ETFs.

From Jan. 1, 2009, to Dec. 31, 2013, these three justices sided with companies who stocks they own nearly 70 percent of the time in cases in which those companies filed a "friend of the court," or amicus curiae, brief.

With the justices' 2014 financial disclosure reports released earlier this month, we are now able to update our earlier research by noting which cases argued during the last calendar year featured amici whose stocks the justices own: *ABC v. Aereo*, *Teva Pharmaceuticals USA v. Sandoz*, *Nautilus v. Biosig Instruments*, *Limelight Networks v. Akami Technologies* and *Alice Corp. v. CLS Bank International*.

This term, the justices sided with their amici **67 percent of the time**, or eight out of nine times, bringing the total amount of support for amici to **68 percent (25 of 37) since 2009**.

Fix the Court is renewing its calls for **Justices Roberts, Breyer and Alito to place their securities into blind trusts** as long as they are on the bench. We sent a petition signed by more than 2,400 activists to the court on July 20 asking just that.

### *New Features of 2014 Amici*

In years past, amicus briefs were filed by individual companies whose shares the justices own in a range of cases – class action certification, foreign immunity and civil rights among them.

In 2014, however, most of the briefs filed were in patent cases, at times when large corporations were at risk for losing their intellectual property or market domination due to smaller companies offering a similar service or product at a reduced cost.

In some cases, tech firms were fighting patent trolls, which is the general term for companies that try to enforce a patent against alleged infringers without themselves intending to manufacture the patented product or offer the patented service.

Additionally in this report, we'll note the cases argued in 2015 that will likely fall into this amicus problem, though we won't know for certain until the justices disclosure reports for this year are released next summer.

## **CASES DECIDED IN 2014:**

### ABC v. Aereo

This case featured a number of media companies suing start-up Aereo over hardware that allowed people to take broadcast TV signals from the air and watch certain channels for next to nothing. At the time of the argument, Roberts owned up to \$500,000 in shares of Time Warner, which filed a pro-broadcasters [brief](#) in *ABC v. Aereo*. The petitioners won 6-3 last June with Roberts in the majority.

### Teva Pharmaceuticals USA v. Sandoz Inc.

Breyer owned up to \$100,000 in IT services firm EMC Corp. and Roberts held up to \$50,000 in Hewlett-Packard last year as both businesses filed [briefs](#) against Teva Pharmaceuticals, which won its patent case against generic drug-maker Sandoz, 7-2, with Breyer and Roberts in the majority.

### Nautilus v. Biosig Instruments

Breyer's up to \$100,000 stake in Cisco Systems was likely what disallowed his participation in a 2015 patent case with the company as a named party (see below), though we won't know for certain until his next disclosure report comes out in about year. A different patent case from last year, *Nautilus v. Biosig Instruments*, featured Cisco as an [amicus](#) supporting the petitioners and Nokia, which Breyer also owned stock in, as an [amicus](#) supporting the respondents. Nautilus won the case, 9-0.

### Limelight Networks v. Akami Technologies

In *Limelight v. Akami*, two tech companies were battling over whether one could sue the other over an alleged patent infringement. Limelight won the case; both Cisco (Breyer) and Oracle (Alito) signed on to a [brief](#) and Microsoft (Roberts) authored [a separate one](#).

### Alice Corp. v. CLS Bank International

Microsoft (Roberts) and HP (Roberts) signed on to a [brief](#) supporting CLS Bank in its patent claim against Alice Corp. The justices didn't buy Alice's argument that the mere fact the company took an abstract idea and put it onto a computer somehow turned it into a patentable product or service.

## **CASES ARGUED IN 2015 (further analysis coming next summer):**

### Commil USA v. Cisco Systems

On March 31 of this year, Justice Breyer sat out oral argument in *Commil USA v. Cisco Systems*, likely owing to his ownership of stake of up to \$100,000 in Cisco. A number of publicly traded companies signed on to a [brief](#) on behalf of Cisco – which lost, 6-2 – including HP, whose shares are likely still owned by Roberts, and Oracle, owned by Alito.

### Obergefell v. Hodges

On April 28, the justices heard *Obergefell v. Hodges*, the result of which is that same-sex marriage is now legal in all 50 states. Some 400 businesses weighed in on the case supporting the petitioners – at least nine of which were a part of the justices' portfolios, including Cisco, with shares owned by Breyer, and Microsoft, owned by Roberts.

Seven companies listed in Alito's 2014 financial disclosure report backed marriage legalization – DuPont, Johnson & Johnson, JPMorgan Chase, MillerCoors, Oracle, PepsiCo and Procter & Gamble – though that wasn't enough to sway the justice to their side, as Alito and Roberts joined Thomas and Scalia in siding with the respondents.