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## Todd M. Hughes - PENDING

## United States Court of Appeals for the Federal Circuit



On February 7, 2013, President Obama nominated Todd M. Hughes to the United States Court of Appeals for the Federal Circuit. Hughes currently serves as the Deputy Director of the Commercial Litigation Branch of the Department of Justice (DOJ), a position he has held since 2007. President Obama has said that Hughes has “displayed exceptional dedication to public service throughout [his] career[,],” stating that he is “honored to nominate [Hughes] today to serve the American people on the United States Court of Appeals” and he is “confident that [Hughes] will be [a] judicious and esteemed addition[] to the Federal Circuit.”<sup>[1]</sup> If confirmed, Hughes will be the first openly gay federal appellate judge.

» [Download AFJ Background Report on Todd M. Hughes \(pdf\)](#)

## Biography

Todd M. Hughes was born in Delaware, Ohio in 1966. He received his A.B., *cum laude*, from Harvard College in 1989 and earned both his J.D. with honors and his M.A. in English from Duke University in 1992 with honors. Upon graduation, Hughes clerked for Judge Robert B. Krupansky of the United States Court of Appeals for the Sixth Circuit. Following his clerkship he became a trial attorney with the Department of Justice, where he has served since. In 1999, Hughes was named an Assistant Director in the Commercial Litigation Branch and in 2007 he was named the Deputy Director of the Commercial Litigation Branch.

## Legal Experience

Hughes’s legal career has primarily focused on federal personnel law, veterans’ benefits, international trade, and government contracts. Throughout his tenure with the DOJ, Hughes has argued more than 40 cases before the Federal Circuit, including two heard en banc. While a trial attorney in the Commercial Litigation Branch, Hughes was deeply involved in a number of cases relating to the Harbor Maintenance Tax. In one of his most notable cases, Hughes was a lead author of a brief to the Supreme Court<sup>[2]</sup> on behalf of the United States arguing that the tax was a permissible user fee as opposed to a tax prohibited by the Exports Clause of the Constitution.<sup>[3]</sup> Though the Supreme Court held that the Harbor Maintenance Tax was impermissible, Hughes subsequently successfully defended the United States against attempts to expand that ruling, potentially saving the nation billions of dollars that went towards developing and maintaining the nation’s ports.

In another notable case, while Assistant Director of the Commercial Litigation Branch, Hughes argued before the Federal Circuit regarding the scoring standards for Administrative Law Judges.<sup>[4]</sup> Hughes successfully argued on behalf of the Office of Personnel Management (OPM), which asserted that changes to its scoring method for prospective Administrative Law Judges were permissible under the OPM Director’s regulatory authority and that the changes protected veteran applicants in accordance with the Veterans’ Preference Act. For his handling of this matter, Hughes received a special commendation from the General

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Counsel of OPM.

As Deputy Director, Hughes now spends the bulk of his time supervising the litigation work of the other lawyers in his branch. In addition to playing a role in significant cases before the Federal Circuit, he has been the supervisory attorney for approximately 2,000 cases. As a supervisor, he has reorganized staff structure with the goal of improving office efficiency and has implemented a number of new training procedures for junior attorneys.

#### Professional and Community Activities

Hughes was admitted to the Pennsylvania State Bar in 1992 and the District of Columbia Bar in 2009. Currently, he is admitted to practice before the Supreme Court of the United States (1997), the Court of Appeals for the Federal Circuit (2010), the Court of Appeals for the Ninth Circuit (2006), the Court of International Trade (1996), and the Court of Federal Claims (1994).

Hughes is a member of the Federal Circuit Bar Association, for which he was the Co-Chair of Planning Committee for the Bench and Bar Annual Conference from 2009 to 2011. He is a former member of the Gay, Lesbian, Bisexual, and Transgender Attorneys of Washington and the National LGBT Bar Association.

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[1] Press Release, The White House, President Obama Nominates Two to Serve on the US Court of Appeals for the Federal Circuit (Feb. 7, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/02/07/president-obama-nominates-two-serve-us-court-appeals-federal-circuit>

[2] *United States v. United States Shoe*, 523 U.S. 360 (1998).

[3] U.S. Const. art I § 9.

[4] *Meeker v. Merit Sys. Prot. Bd.*, 319 F.3d 1368 (Fed. Cir. 2003).

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**Nominee for the United States Court of Appeals for the Federal Circuit**

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