

The United States Supreme Court - Recent Cases and Trends

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UNITED STATES SUPREME COURT 101

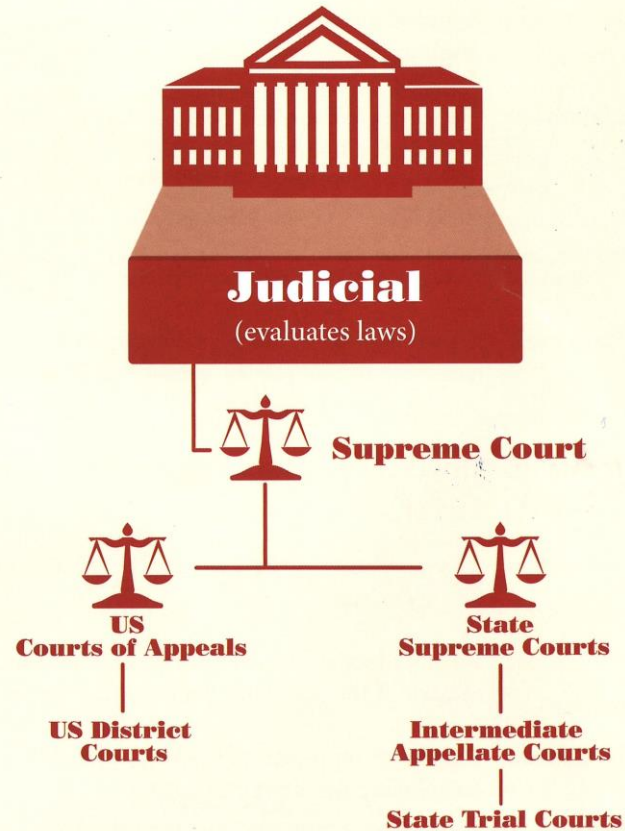


Constitutional Origin

Article III, Section 1 of the U.S. Constitution

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The Supreme Court of the United States was created in accordance with this provision and by authority of the Judiciary Act of September 24, 1789 (1 Stat. 73). It was organized on February 2, 1790.



State Court System

- The Constitution and laws of each state establish the state courts.
- A court of last resort, often known as a Supreme Court, is usually the highest state court.
- States usually have courts that handle specific legal matters, e.g., probate court (wills and estates); juvenile court; family court; etc.

Justices



Front row, left to right:

Associate Justice Stephen G. Breyer, Associate Justice Clarence Thomas, Chief Justice John G. Roberts, Jr., Associate Justice Ruth Bader Ginsburg, Associate Justice Samuel A. Alito. Back row: Associate Justice Neil M. Gorsuch, Associate Justice Sonia Sotomayor, Associate Justice Elena Kagan, Associate Justice Brett M. Kavanaugh.

Nine Justices make up the Court:

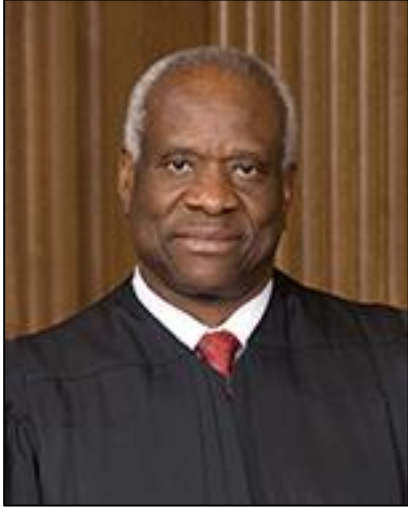
One Chief Justice and eight Associate Justices.

The Honorable John G. Roberts, Jr., is the 17th Chief Justice of the United States.
102 Associate Justices in the Court's history.



John G. Roberts, Jr., Chief Justice of the United States was born in Buffalo, New York, January 27, 1955. He received an B.A. from Harvard College in 1976 and a J.D. from Harvard Law School in 1979. He served as a law clerk for Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit from 1979–1980 and as a law clerk for then-Associate Justice William H. Rehnquist of the Supreme Court of the United States during the 1980 Term. He was Special Assistant to the Attorney General, U.S. Department of Justice from 1981–1982, Associate Counsel to President Ronald Reagan, White House Counsel's Office from 1982–1986, and Principal Deputy Solicitor General, U.S. Department of Justice from 1989–1993. From 1986–1989 and 1993–2003, he practiced law in Washington, D.C. He was appointed to the United States Court of Appeals for the District of Columbia Circuit in 2003.

President George W. Bush nominated him as Chief Justice of the United States, and he took his seat September 29, 2005.



Clarence Thomas, Associate Justice was born in the Pinpoint community near Savannah, Georgia on June 23, 1948. He attended Conception Seminary from 1967-1968 and received an A.B., cum laude, from College of the Holy Cross in 1971 and a J.D. from Yale Law School in 1974. He was admitted to law practice in Missouri in 1974, and served as an Assistant Attorney General of Missouri, 1974-1977; an attorney with the Monsanto Company, 1977-1979; and Legislative Assistant to Senator John Danforth, 1979-1981. From 1981–1982 he served as Assistant Secretary for Civil Rights, U.S. Department of Education, and as Chairman of the U.S. Equal Employment Opportunity Commission, 1982-1990. From 1990–1991, he served as a Judge on the United States Court of Appeals for the District of Columbia Circuit.

President Bush nominated him as an Associate Justice of the Supreme Court and he took his seat October 23, 1991.

The Second African American Justice in US History.

The First African American Justice was Thurgood Marshall from 1967 to 1991.



Ruth Bader Ginsburg, Associate Justice was born in Brooklyn, New York, March 15, 1933. She married Martin D. Ginsburg in 1954, and has a daughter, Jane, and a son, James. She received her B.A. from Cornell University, attended Harvard Law School, and received her LL.B. from Columbia Law School. She was a law clerk to the Honorable Edmund L. Palmieri, Judge of the United States District Court for the Southern District of New York, from 1959–1961. From 1961–1963, she was a research associate and then associate director of the Columbia Law School Project on International Procedure. She was a Professor of Law at Rutgers University School of Law from 1963–1972, and Columbia Law School from 1972–1980, and a fellow at the Center for Advanced Study in the Behavioral Sciences in Stanford, California from 1977–1978. In 1971, she was instrumental in launching the Women's Rights Project of the American Civil Liberties Union, and was the ACLU's General Counsel from 1973–1980, and on the National Board of Directors from 1974–1980. She was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1980.

President Clinton nominated her as an Associate Justice of the Supreme Court, and she took her seat August 10, 1993.



Stephen G. Breyer, Associate Justice was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received a B.A. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989.

President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.



Samuel A. Alito, Jr., Associate Justice was born in Trenton, New Jersey, April 1, 1950. He married Martha-Ann Bomgardner in 1985, and has two children - Philip and Laura. He served as a law clerk for Leonard I. Garth of the United States Court of Appeals for the Third Circuit from 1976–1977. He was Assistant U.S. Attorney, District of New Jersey, 1977–1981, Assistant to the Solicitor General, U.S. Department of Justice, 1981–1985, Deputy Assistant Attorney General, U.S. Department of Justice, 1985–1987, and U.S. Attorney, District of New Jersey, 1987–1990. He was appointed to the United States Court of Appeals for the Third Circuit in 1990.

President George W. Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat January 31, 2006.



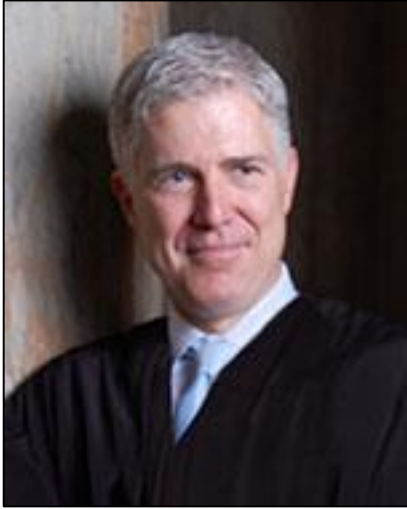
Sonia Sotomayor, Associate Justice was born in Bronx, New York, on June 25, 1954. She earned a B.A. in 1976 from Princeton University, graduating summa cum laude and receiving the university's highest academic honor. In 1979, she earned a J.D. from Yale Law School where she served as an editor of the Yale Law Journal. She served as Assistant District Attorney in the New York County District Attorney's Office from 1979–1984. She then litigated international commercial matters in New York City at Pavia & Harcourt, where she served as an associate and then partner from 1984–1992. In 1991, President George H.W. Bush nominated her to the U.S. District Court, Southern District of New York, and she served in that role from 1992–1998. She served as a judge on the United States Court of Appeals for the Second Circuit from 1998–2009.

President Barack Obama nominated her as an Associate Justice of the Supreme Court on May 26, 2009, and she assumed this role August 8, 2009.



Elena Kagan, Associate Justice was born in New York, New York, on April 28, 1960. She received a B.A. from Princeton in 1981, an M. Phil. from Oxford in 1983, and a J.D. from Harvard Law School in 1986. She clerked for Judge Abner Mikva of the U.S. Court of Appeals for the D.C. Circuit from 1986-1987 and for Justice Thurgood Marshall of the U.S. Supreme Court during the 1987 Term. After briefly practicing law at a Washington, D.C. law firm, she became a law professor, first at the University of Chicago Law School and later at Harvard Law School. She also served for four years in the Clinton Administration, as Associate Counsel to the President and then as Deputy Assistant to the President for Domestic Policy. Between 2003 and 2009, she served as the Dean of Harvard Law School. In 2009, President Obama nominated her as the Solicitor General of the United States.

In 2010, President Obama nominated her as an Associate Justice of the Supreme Court on May 10, 2010. She took her seat on August 7, 2010.



Neil M. Gorsuch, Associate Justice was born in Denver, Colorado, August 29, 1967. He and his wife Louise have two daughters. He received a B.A. from Columbia University, a J.D. from Harvard Law School, and a D.Phil. from Oxford University. He served as a law clerk to Judge David B. Sentelle of the United States Court of Appeals for the District of Columbia Circuit, and as a law clerk to Justice Byron White and Justice Anthony M. Kennedy of the Supreme Court of the United States. From 1995–2005, he was in private practice, and from 2005–2006 he was Principal Deputy Associate Attorney General at the U.S. Department of Justice. He was appointed to the United States Court of Appeals for the Tenth Circuit in 2006. He served on the Standing Committee on Rules for Practice and Procedure of the U.S. Judicial Conference, and as chairman of the Advisory Committee on Rules of Appellate Procedure. He taught at the University of Colorado Law School.

President Donald J. Trump nominated him as an Associate Justice of the Supreme Court, and he took his seat on April 10, 2017.



Brett M. Kavanaugh, Associate Justice was born in Washington, D.C., on February 12, 1965. He married Ashley Estes in 2004, and they have two daughters - Margaret and Liza. He received a B.A. from Yale College in 1987 and a J.D. from Yale Law School in 1990. He served as a law clerk for Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit from 1990-1991, for Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit from 1991-1992, and for Justice Anthony M. Kennedy of the U.S. Supreme Court during the 1993 Term. In 1992-1993, he was an attorney in the Office of the Solicitor General of the United States. From 1994 to 1997 and for a period in 1998, he was Associate Counsel in the Office of Independent Counsel. He was a partner at a Washington, D.C., law firm from 1997 to 1998 and again from 1999 to 2001. From 2001 to 2003, he was Associate Counsel and then Senior Associate Counsel to President George W. Bush. From 2003 to 2006, he was Assistant to the President and Staff Secretary for President Bush. He was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 2006.

President Donald J. Trump nominated him as an Associate Justice of the Supreme Court, and he took his seat on October 6, 2018.

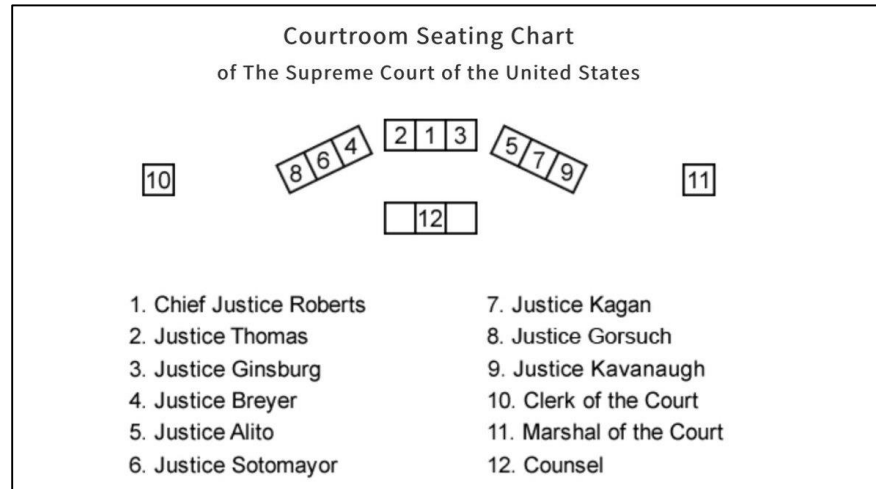
Oyez-Oyez-Oyez

At 10 a.m., the Marshall announces the entrance of the Justices into the Courtroom. Those present, at the sound of the gavel, arise and remain standing until the Justices are seated following the traditional chant:

The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court.



The nine justices are seated by seniority on the Bench. The Chief Justice sits in the center with the senior Associate Justice to the right and the second senior to the left, and so on, by alternating right and left by seniority



Political Construction of the Court

Conservative Majority

Liberal

Ginsburg

Kagan

Sotomayor

Breyer

Conservative

Roberts

Alito

Gorsuch

Kavanaugh

Thomas

Jurisdiction

Article III, Section 2 of the U.S. Constitution

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States; -between a State and Citizens of another State; - between Citizens of different States; -between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction.

In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact with such exceptions, and under such regulations as the Congress shall make.

Appellate jurisdiction is conferred upon the Supreme Court by various statutes, under the authority given Congress by the Constitution.

How Does A Case Get To The Supreme Court?

Original Jurisdiction

Petition for Writ of Certiorari

How Does A Case Get To The Supreme Court? *(cont'd)*

Original Jurisdiction

Under Article III, Section II of the U.S. Constitution

- Disputes between states-typically boundary or property disputes
- Cases involving ambassadors or other public ministers
- Heard directly without going through the process of appeal

How Does A Case Get To The Supreme Court? *(cont'd)*

Petition For Writ Of Certiorari

- Grant of Certiorari requires at least 4/9 vote otherwise denied
- Important cases typically involving controversial constitutional issues
- Plenary Review with oral arguments by attorneys (about 80 cases) v. Non-Plenary Review without oral arguments by attorneys (about 100)

How Does A Case Get To The Supreme Court? *(cont'd)*

Certiorari

Appeals of Decisions From the US Court of Appeals by Certiorari

***most common**

- 94 Federal Judicial Districts
- Divided into 12 Regional Circuits
- Court of Appeals (3 judges sit on COA, no juries)

Appeals of State Supreme Court Decisions by Certiorari

***less common**

- Involving State Court's interpretation or application of the Constitution

Original Jurisdiction under Article III, Section II of the Constitution

- Disputes between states-typically boundary or property disputes
- Cases involving ambassadors or other public ministers
- Heard directly without going through the process of appeal

***least common**

Term

By statute, the term begins on the first Monday in October to late June or July.

Term is divided between “sittings,” when the Justices hear cases and deliver opinions, and intervening “recesses,” when they write opinions and consider the business before the Court. Sittings and recesses alternate at approximately two-week intervals.

Caseload

Approximately 7,000 to 8,000 new cases filed in the Court each term but only about 80 are actually heard and decided by the Court.

Oral Arguments

30 minutes for argument by attorneys for each side - one hour total for case

No witnesses as the Court has the record of prior proceedings and written briefing

SUPREME COURT CALENDAR

OCTOBER TERM 2019

Opening conference: Tuesday, October 1, 2019

OCTOBER							NOVEMBER							DECEMBER						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
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20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28
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2020

JANUARY							FEBRUARY							MARCH						
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APRIL							MAY							JUNE						
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Argument days
marked in

RED

Non-argument sessions
marked in

BLUE

Conference days
marked in

GREEN

Holidays
Circled in

BLACK

JULY							AUGUST							SEPTEMBER						
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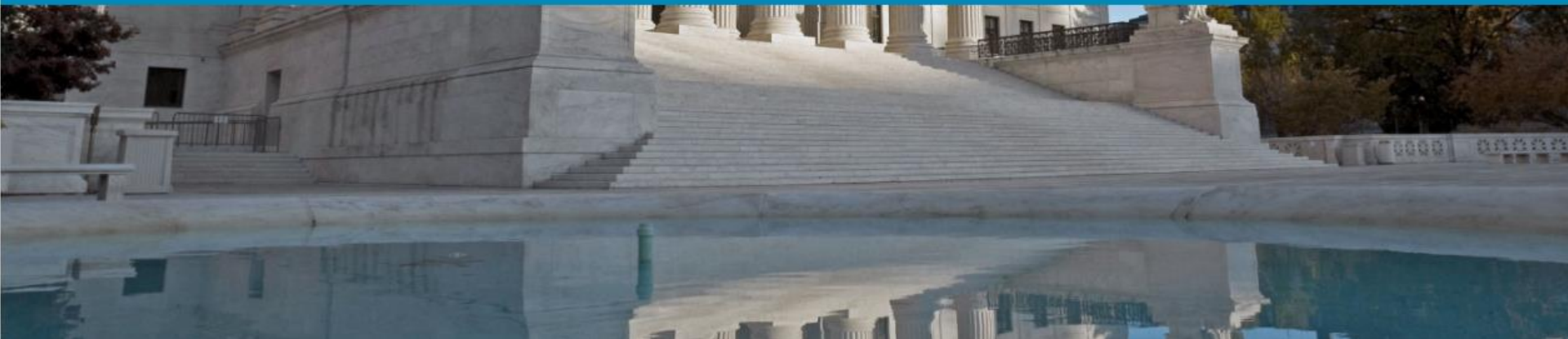
JUSTICES



TOUR



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Opinion analysis: Justices narrow bankrupts' power to rescind contracts in bankruptcy

By [Ronald Mann](#) on May 21, 2019 at 10:15 am

Yesterday's opinion in [Mission Product Holdings Inc. v. Tempnology, LLC](#) resolved a long-standing disagreement in the lower courts about what happens when a debtor exercises its statutory right to reject a contract in bankruptcy. Section 365 of the Bankruptcy Code gives the debtor an explicit right to "reject" contracts, and tells us that rejection amounts to a "breach" of the contract, which gives the nonbankrupt counterparty a right to sue the bankrupt for damages. The lower courts have struggled, though, in deciding whether the rejection's "breach" also rescinds the entire contract. In this case, for example, the contract in question is a trademark license, and the debtor not only wants to terminate its own obligations under the contract; it also wants to retract the licensee's right to use the debtor's trademark. Justice Elena Kagan's opinion for the Supreme Court gives us a clear answer: Rejection breaches but does not rescind the contract in question.



FEATURED POSTS

[Opinion analysis: Justices narrow bankrupts' power to rescind contracts in bankruptcy – Ronald Mann](#)

[Opinion analysis: Clarity on "clear evidence" of drug pre-emption? – Elizabeth McCuskey](#)

[Opinion analysis: Court rejects issue preclusion in affirming Crow Tribe's treaty hunting right – Gregory Ablavsky](#)

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ADMISSION TO THE COURT

Admission To The Court

Application

Under Supreme Court Rule 5.2 the following is required for an application of admission:

- Sponsorship by two members of the Bar of the Court
 - Must personally know the applicant
 - Unrelated to applicant
- Certificate of Good Standing and Membership of the Highest Court of the State, Commonwealth, Territory or Possession, or of the District of Columbia for at least three years prior to the application date

***note - one of the sponsors or another member of the Bar, including a relative, may move for the admission**

Admission To The Court

Qualifications

Under Supreme Court Rule 5, to qualify for admission, the applicant must meet the following requirements:

- Admitted to practice and in good standing for at least three years prior to the time of application- no disciplinary actions
- Good moral and professional character
- Submit completed application, and signature on Oath
- Pay \$200 fee
- Admission
 - By written motion - fill out paperwork without coming to the Court
 - ★ **Admission by Open Court** ★

Visiting The U.S.S.C.

Touring The Court

Attend Oral Arguments as Member of the Public

Masterpiece Cakeshop v. Colorado Civil Rights Commission
Decided On June 4, 2018, Brought Up The Question Of Artistic Expression And Civil Rights



Women On The U.S.S.C.

In 1872 in *Bradwell v. Illinois* (1872) 83 U.S.130, Myra Bradwell, a law school graduate, challenged an Illinois law blocking women from its state bar citing the 14th Amendment's Immunities and Privileges Clause. In upholding the law, the U.S.S.C. stated that:

Women were not fit to argue Supreme Court cases. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.

Id. at 141-142

Women On The U.S.S.C. (*cont'd*)

In 1876, the U.S.S.C. denied Belva Lockwood's request for admission. In denying the request, the Court held:

. . [b]y the uniform practice of the Court from its organization to the present time, and by the fair construction of its rules, none but men are permitted to practice before it as attorneys and counselors.

Women On The U.S.S.C. *(cont'd)*

From 1876 to 1879, Lockwood is lobbying Congress for a law to force the U.S.S.C. to recognize the right of women to appear before it.

On February 15, 1879, President Hayes signed a new law to admit women as members of the U.S.S.C. bar and allow them to submit and argue cases.

In 1880, Lockwood becomes the first female attorney to appear before the Court.

1981 - Sandra Day O'Connor is the first woman to sit on the U.S.S.C.

101 years later

Women On The U.S.S.C. *(cont'd)*

Justice Sandra Day O'Connor

1981-2006

Nominated by President Reagan

Justice Ruth Bader Ginsburg

1993 to the present

Nominated by President Clinton

Justice Sonia Sotomayor

2009 to the present

Nominated by President Obama

Justice Elena Kagan

2010 to the present

Nominated by President Obama

The Four Justices by Nelson Shanks at the National Portrait Gallery in Washington, D.C.



IMPORTANT RECENT CASES - CURRENT TERM 2018-2019

***Apple v. Pepper* Decided On May 13, 2019**

(Federal Antitrust Class Action)

In a 5-4 decision delivered by Justice Kavanaugh, the Court held that a lawsuit by iPhone users may proceed against Apple with the users claiming that Apple violated Federal Antitrust Laws by requiring them to buy Apps exclusively from Apple's App Store. Apple is accused of monopolizing the iPhone App Market. The Court held that customers are direct purchasers thereby permitted to pursue an Antitrust Class Action under Federal law.

- Potential far-reaching consequences for Silicon Valley and Corporate America as many corporations joined in support of Apple to block such broad antitrust claims.
- Successful antitrust plaintiffs would be entitled to triple damages, meaning Apple's exposure could be significant.

Air & Liquid Systems Corp., et al. v. DeVries, et al

Decided On March 19, 2019

(Asbestos Tort Law / Maritime Context)

In a 6-3 decision delivered by Justice Kavanaugh and joined by Chief Justice Roberts, and Justices Kagan, Ginsburg, Breyer, and Sotomayor, the Court rejected the “bare metal defense” as applied to sailors under Federal Maritime Law holding that a product manufacturer has a duty to warn when:

- its product requires incorporation of a part;
- the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses; and
- the manufacturer has no reason to believe that the product's users will realize the danger.

Franchise Tax Board of California v. Hyatt Decided

On May 13, 2019

(Sovereign Immunity)

In a 5-4 vote, a divided Court overruled a 40-year-old precedent, *Nevada v. Hall*, by holding that a state cannot be sued in the courts of another state without its consent. This 20 year old case overturned a 40 year old precedent on the principle of Sovereign Immunity in ruling that the State of California cannot be sued in a Nevada court against its will. Justice Thomas delivered the opinion in which Chief Justice Roberts, and Justices Alito, Gorsuch and Kavanaugh joined.

- Ruling is considered a major victory for conservatives.
- Justice Breyer issued a stern dissent joined by liberals Justices Ginsburg, Sotomayor, and Kagan warning that California's win could preview overturning long-established principles on abortion and other matters.
- *"Overruling a case always requires special justification," Breyer wrote. "What could that justification be in this case?"*
- *"Today's decision can only cause one to wonder which cases the court will overrule next" Breyer wrote.*

Breyer cited *Planned Parenthood v. Casey* (1992), a landmark abortion opinion that affirmed key provisions of the 1973 case *Roe v. Wade* (1973).

Emerging New State Laws Restricting Abortion in May 2019 Setting Up Expected Challenges to *Roe v. Wade*

- Alabama - Governor signs restrictive legislation banning abortion without exceptions for rape or incest with sentences up to 99 years in prison for abortion providers.
- Georgia - Governor signs legislation banning most abortions after six weeks of pregnancy.
- Missouri - Senate approved an eight week abortion ban without exception for rape or incest

UPCOMING CASES

2019-2020 TERM

Certiorari Granted

2020 Census -Trump Administration's Proposed Citizenship Question

Department of Commerce v. USDC

Oral Argument on February 19, 2020

Transgender Equality Under Title VII Of The Civil Rights Act of 1964

RG & GR Harris Funeral Homes v. Equal Opportunity Employment Commission

The Court will decide whether Title VII prohibits discrimination against transgender employees based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). The Sixth Circuit COA ruled that the employer violated the law by terminating Aimee Stephens for presenting herself as a transgender woman.

Sexual Orientation and Employment Discrimination - Equality Under Title VII Of The Civil Rights Act of 1964

Two below cases examine whether Title VII which prohibits employment discrimination “because. . . of sex” should be read to ban discrimination on the basis of sexual orientation.

Altitude Express v. Zarda

The Second Circuit COA ruled that Title VII bars such discrimination in a case where a sky diving instructor was fired because he was gay. The Circuit Court ruled that “sexual orientation discrimination is a subset of sex discrimination” because men who are attracted to men are treated differently than woman attracted to men.

Bostock v. Clayton County

Eleventh Circuit COA ruled that Title VII does not bar LGBT discrimination and denied a claim by Bostock, a child-advocate employee who was fired after joining a gay softball league.

Separation Of Church And State

American Legion v. American Humanist Association

First Amendment challenge to a cross-shaped WWII memorial on public ground in Maryland.

The Court's first major church-state case in half a decade.

Oral argument on February 27, 2020.

Federal Agency Powers

Kisor v. Wilkie

Challenges two decades of precedent under *Auer v. Robbins* where executive agencies such as the EPA and National Labor Relations Board interpret their own regulations when the regulations are ambiguous.

Insanity Defense

Kahler v. Kansas

Examines whether the Eighth and Fourteenth Amendments allow a state to abolish the insanity defense.

Second Amendment / Commerce Clause / Right To Travel

New York State Rifle & Pistol Association Inc. v. City of New York

Examines whether New York City's ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the Commerce Clause, and the constitutional right to travel.

*Related Issue - Remington to Appeal Sandy Hook case to U.S.S.C. - the gun manufacturer of the rifle used in the 2012 shooting issued a press release stating plans to appeal the Connecticut's Supreme Court's ruling reinstating a wrongful death lawsuit by the victims' families. The Court ruled that the gun manufacturer may be legally sued over the manner in which it marketed the rifle to the public in a case where the families claimed that the company marketed to young people.

Trump Administration's Request For Extraordinary Relief

The Administration is asking the U.S.S.C. to hear its appeal of various District Court orders thus bypassing decisions from the COA.

Deferred Action for Childhood Arrivals (DACA)

Transgender Military Ban

Asylum Ban – November 2018 – U.S.-Mexico Border Illegal Crossings

Old Policy- Immigrants crossing illegally may seek asylum if believe they will be persecuted if returned back to their own country and may stay in the U.S. during the pending.

New Policy- Immigrants crossing illegally are ineligible for asylum.

Trump Administration's Request For Extraordinary Relief *(cont'd)*

DACA- Deferred Action for Childhood Arrivals

Examines the legality of the Trump Administration's decision to end the program as unlawful or likely unlawful. Federal Districts in CA and NY issued preliminary injunctions to keep the program in place. The Administration requested that the U.S.S.C. bypass the COA by hearing its appeal of the Second, Ninth and DC Circuit Court Orders. The U.S.S.C. denied the request.

Ninth Circuit COA upheld a nationwide injunction that keeps the Obama-era program intact thus protecting thousands of young people who came to the country illegally as children.

Trump Administration's Request For Extraordinary Relief *(cont'd)*

Transgender Military Ban

The Administration is asking the U.S.S.C to hear its appeal of three District Court orders that have kept it from enforcing the ban.

Upcoming Petitions To Consider

Religious Liberty

Kennedy v. Bremerton School District

Examines whether teachers are permitted to overtly practice their religious faith at school functions.

Presbyterian Church in Morristown v. Freedom From Religion Foundation

Examines whether houses of worship may be excluded from government grant programs.

Capital Punishment

Shoop v. Hill

Examines the death penalty for an Ohio death row inmate with low IQ

Equal Pay

Yovino v. Rizo

Examines The Equal Pay Act of 1963- whether a salary history justifies paying women less than men for similar work.

BREAKING NEWS

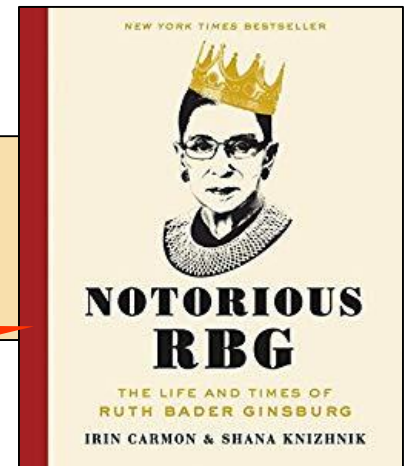
BREAKING NEWS

Justice Thomas Breaks Long Standing Silence During Oral Arguments

GASP!

Candidate Trump v. The Notorious RBG

**HE'S A
FAKER!**



President Trump v. Chief Justice Roberts

GASP!

Justice Thomas Breaks Silence During Oral Arguments

Signature characteristics

- Commitment to Originalism - constitutional interpretation
- Conservative viewpoint with opinions that are father to the right than any other justice on the bench today
- Silence during oral argument- most discussed attribute subject to significant discussion, debate, criticism

Scalia was known to ask the most questions

Scalia and Thomas allies (Scalia passed away in 2016)

Record Of Silence During Oral Argument

1991-2006 (except for 2004)- questioning throughout period

February 2006 to February 2016- a **decade** without questions

February 29, 2016 - *Voisine v. United States*, 136 S. CT. 2272

Domestic violence/gun rights case re whether a misdemeanor assault conviction for reckless conduct, as opposed to knowing or intentional conduct, permanently suspends a constitutional right by triggering the statutory firearms ban.

March 2019 - *Flowers* case- Mississippi Death Row Inmate Case

Voisine v. United States, 136 S. CT. 2272

February 29, 2016

Domestic violence/gun rights case that examined whether a Federal misdemeanor domestic assault conviction for reckless conduct, as opposed to knowing or intentional conduct, triggers the statutory ban on firearms possession thus permanently suspending constitutional right.

Justice Thomas inquired to the respondent whether counsel could give “another area where a misdemeanor violation suspends a constitutional right.”

After commenting that a ban on possessing a firearm is permanent, he renewed his question by asking “can you think of a . . . suspension of a First Amendment right that is permanent?”

He questioned the analysis by posing a hypothetical, asking whether the government could “suspend [a] publisher's right to ever publish again” if the publisher printed indecent displays of children. He questioned whether the government could impose a weapons ban on someone who committed a misdemeanor assault without using a weapon, commenting that the ban “is not directly related to the use of a weapon. It is a suspension that is actually indirectly related or actually unrelated.”

Respondent prevailed. Justice Thomas wrote the dissent.

***Flowers v. Mississippi* - Argued March 20, 2019, Decision Pending**

Curtis Flowers, an African American death row inmate had been put on trial six separate times for the 1996 murder of four employees at a furniture store in Mississippi. The state supreme court threw out the first conviction over questions about evidence. Flowers faced five more trials- two resulted in mistrials and in two others, the state courts found that the prosecutor, Doug Evans, wrongly excluded potential jurors on the basis of race.

For the first 55 minutes of argument about racial discrimination in jury selection, the justices appeared to agree that a white Mississippi prosecutor violated the Constitution by excluding black jurors from the six trials of Curtis Flowers in violation of *Batson v. Kentucky* (1986).

In *Batson*, the court carved out an exception to the long standing rule that peremptory challenges are completely discretionary and cannot be second-guessed by holding that racial discrimination in jury selection was different, and that lawyers accused of such discrimination must provide a nondiscriminatory explanation.

***Flowers v. Mississippi* - Argued March 20, 2019,**

Decision Pending (*cont'd*)

As Mr. Flowers's lawyer concluded her argument, Justice Thomas broke three years of silence since 2016 by asking whether the **defense** lawyer in the sixth trial excluded any jurors.

Q [Hon. Thomas]: Ms. Johnson, would you be kind enough to tell me whether or not you exercised any peremptories ... were any peremptories exercised by the defendant?

A [Johnson]: They were.

Q [Hon. Thomas]: And what was the race of the jurors struck there?

A [Johnson]: She (*referring to Flowers' trial attorney*) only exercised peremptories against white jurors. But I would add that ... her motivation is not the question here. The question is the motivation of Doug Evans.

Thomas asked no further questions.

Most Noted Comments In 2002 - *Virginia v. Black*

The case considered whether the criminalization of the burning of a cross violated the First Amendment. His brief comments transfixed the courtroom. A burning cross is “unlike any symbol in our society,” its only purpose “to terrorize a population,” said Justice Thomas.



Why So Silent During Oral Argument?

“One thing I've demonstrated often in 16 years is that you can do this job without asking a single question.”

- Simple courtesy
- The bench asks too many questions
- Only 30 minutes to argue v. a lifetime to discuss in chambers
- Listen to the lawyers arguing their cases and let the advocates advocate
- Unnecessary to ask so many questions and not helpful
- Did not ask questions in law school or college and was intimidated by other students
- Self-conscious about his accent

Criticisms And Comments

- Problematic detachment from the proceedings of the Court and Court tradition
- Commanding voice
- Gasps in Court when he speaks
- Powerful questioner when he chooses to speak
 - fact stickler
 - boundary tester
 - attorney respecter
 - statute parser
 - insight provider
 - plain speaker
- Requests for more questions

Justices Break Protocol By Speaking Out On Politics

Candidate Trump v. RBG

Justice Ginsburg let the country know she preferred that Donald Trump not win the next election and disparaged him in multiple media interviews.

Interview on July 7, 2016 - Associated Press

When asked what if Trump won the presidency, Ginsburg said *“I don't want to think about that possibility, but if it should be, then everything is up for grabs.”*

Interview on July 8, 2016 - New York Times

“I can't imagine what this place would be — I can't imagine what the country would be — with Donald Trump as our president. For the country, it could be four years. For the court, it could be — I don't even want to contemplate that.”

Referring to something she thought her late husband, tax lawyer Martin Ginsburg, would have said, she said *“Now it's time for us to move to New Zealand.”*

Justices Break Protocol by Speaking Out on Politics

Candidate Trump v. RBG (*cont'd*)

Interview on July 11, 2016 - CNN

“He is a faker. He has no consistency about him. He says whatever comes into his head at the moment. He really has an ego. ... How has he gotten away with not turning over his tax returns?”

“At first I thought it was funny,” she said of Trump's early candidacy. “To think that there's a possibility that he could be president”

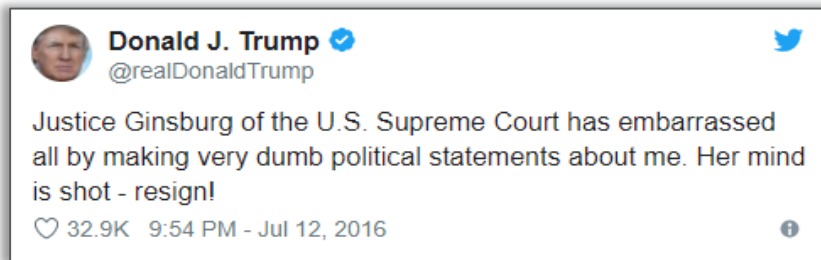
“I think he has gotten so much free publicity”

“Every other presidential candidate has turned over tax returns.”

Justices Break Protocol by Speaking Out on Politics

Candidate Trump v. RBG (*cont'd*)

On July 12-13, 2016 - Washington Post reports that the Ginsburg/Trump Feud Has Gone “Nuclear” as Trump tweets:



He continues. . . *“I think it's highly inappropriate that a United States Supreme Court judge gets involved in a political campaign, frankly, I think it's a disgrace to the court and I think she should apologize to the court. I couldn't believe it when I saw it.”*

On July 14, 2016 -The Feud Ends

Ginsburg retracts remarks stating that they were “ill-advised.”

President Trump v. Chief Justice Roberts

The chief justice of the US is reminding Donald Trump of what makes America great

By Ephrat Livni • November 21, 2018



President Trump v. Chief Justice Roberts *(cont'd)*

In November 2018, President Trump criticized a federal court ruling by Judge Tigar in California where the judge granted a TRO against the administration's proposed asylum ban.

Trump tweeted:

This was an Obama judge. And I'll tell you what, it's not going to happen like this anymore.

Chief Justice Roberts uncharacteristically fired back in response to an Associated Press question on the issue:

We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. . . “[a] independent judiciary is something we should all be thankful for.”



Donald J. Trump ✓

@realDonaldTrump



Sorry Chief Justice John Roberts, but you do indeed have "Obama judges," and they have a much different point of view than the people who are charged with the safety of our country. It would be great if the 9th Circuit was indeed an "independent judiciary," but if it is why.....

♥ 85.7K 1:51 PM - Nov 21, 2018



💬 48.7K people are talking about this



Donald J. Trump ✓

@realDonaldTrump



.....are so many opposing view (on Border and Safety) cases filed there, and why are a vast number of those cases overturned. Please study the numbers, they are shocking. We need protection and security - these rulings are making our country unsafe! Very dangerous and unwise!

♥ 86.4K 2:09 PM - Nov 21, 2018



💬 36.2K people are talking about this



Thank you

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