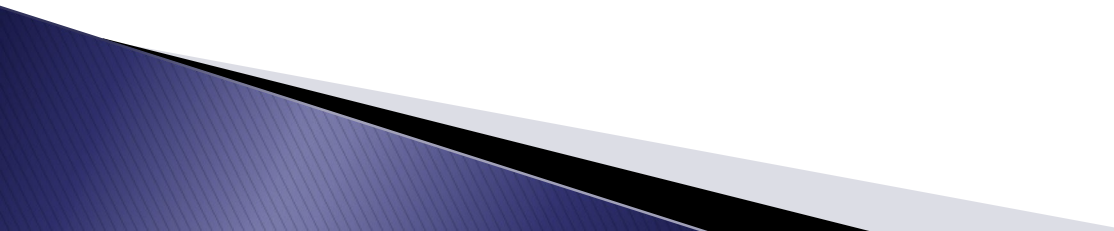


# **Overview of 2019 Supreme Court Term**

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# Observations and Highlights

- ▶ Exit Kennedy enter Kavanaugh
  - ▶ Court moves to the right?
  - ▶ Roberts as the swing?
  - ▶ Supremes Go Remote
  - ▶ The Trump Impact (so far)
  - ▶ Will RBG hold on?
- 

## Nice Work If you Can Get It: Comparing the 2018 and 2019 Docket

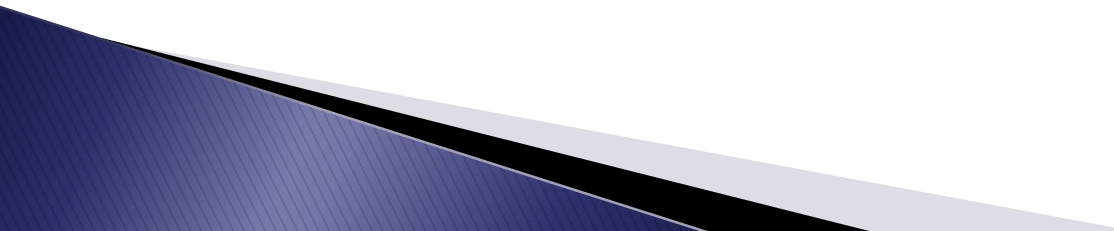
### ► 2018 Term

- 72 Merit opinions released
- 66 opinions after orals
- 1 per curiam
- 5 summary reversals

### 2019 Term

61 Merit opinions released  
53 Opinions after orals  
2 per curiam  
5 summary reversals

# Case Composition

- ▶ 100% certiorari
  - ▶ 82% from US Court of Appeals/18% from state courts
  - ▶ 87% paid/13% in-forma pauperis
  - ▶ 79% civil/17% criminal/3% habeas
- 

# Case Dispositions

Jurisdiction	Affirmed	Reversed	Affirmed Percentage
CA1	0	1	0%
CA2	2	6	25%
CA3	2	2	50%
CA4	3	1	75%
CA5	1	6	14%
CA6	3	0	100%
CA7	0	1	0%
CA8	1	0	100%
CA9	1	9	10%
CA 10	3	2	33%
CA 11	1	4	43%
CA DC	1	2	33%
CA Fed	1	3	25%
State	3	8	27%
Total	22	45	33%

# Fastest (and slowest) Justice in the East

- Fastest:
  - Ginsburg, *Shular v. United States*, 36 days
- Slowest
  - Gorsuch, *Bostock v. Clayton County*, 251 days.

# Chatter from the Bench:

## Average Numbers of Questions Per Orals

Justice	Average
Roberts	12.6
Thomas	0
Ginsburg	9.4
Breyer	19.7
Alito	13.8
Sotomayor	21.2
Kagan	15.4
Gorsuch	14.2
Kavanaugh	16.7

# 2019Term Voting % Agreement: Split Decisions (full/partial/judgment)

	Thomas	Ginsburg	Breyer	Alito	Sotomayor	Kagan	Gorsuch	Kavanaugh
Roberts	55%	55%	61%	63%	53%	68%	76%	89%
Thomas		21%	26%	87%	13%	22%	68%	66%
Ginsburg			89%	24%	82%	78%	42%	50%
Breyer				29%	76%	84%	47%	55%
Alito					16%	30%	66%	68%
Sotomayor						81%	45%	47%
Kagan							49%	57%
Gorsuch								82%
Kavanaugh								



# Voting Alignments

## Among Justices: All Cases

### ► Agreements

- Roberts-Kavanaugh 93%
- Ginsburg-Breyer 93%
- Alito-Thomas 92%

### ► Lowest Agreements

- Sotomayor-Thomas 45%
- Alito-Sotomayor 47%
- Thomas-Ginsburg 50%

# Voting Alignment Among Justices: Divided Cases

## ► Agreements

- Roberts-Kavanaugh 89%
- Ginsburg-Breyer 89%
- Alito-Thomas-87%

## ► Lowest Agreements

- Sotomayor-Thomas 13%
- Alito-Sotomayor 16%
- Thomas-Ginsburg 21%



# 5-4 Cases

Term	Number 5-4 opinions	Percentage	Ideological 5-4	Ideological Conservative Victory of 5-4	Overall Conservative Victory
OT 18	20	28%	80%	50%	40%
OT 19	13	21%	92%	75%	69%
15 Year Ave	15	21%	76%	59%	45%

# Opinion Writing 2019 Term

Justice	Majority	Concurrence	Dissent
Roberts	7	1	1
Thomas	5	14	12
Ginsburg	6	1	7
Breyer	5	2	6
Alito	5	7	11
Sotomayor	5	9	7
Kagan	6	3	1
Gorsuch	7	3	3
Kavanaugh	6	5	3

# Majority Rules: Percentage in Majority

Justice	All cases	Split Cases	5-4 cases
Roberts	97%	95%	92%
Thomas	72%	55%	69%
Ginsburg	75%	61%	23%
Breyer	78%	66%	23%
Alito	73%	58%	69%
Sotomayor	73%	58%	31%
Kagan	80%	68%	33%
Gorsuch	89%	82%	85%
Kavanaugh	93%	89%	77%

# Roberts as the Swing Justice?

- ▶ 90%+ in majority for all types of decisions
- ▶ Most majority opinions (7)
- ▶ Wrote the most 5-4 opinions (4)



# Kavanaugh's Impact

- Overall in majority 93 % in all cases
- Wrote four of the 5-4 opinions (tied with Roberts for first)
- In majority 89% for divided cases
- Most likely to agree with Roberts (89%)
- Least likely to agree with Sotomayor (47%)



# The Kavanaugh Factor

- ▶ Gorsuch did not change voting alignment of Court when replacing Scalia
- ▶ Did Kavanaugh change the voting alignment?



# What Happens When Orals Change?

- ▶ For the weeks of May 4, and May 11, 2020  
Supreme Court scheduled orals for telephone and live stream audio
- ▶ Ten cases were argued (had to be rescheduled because of the pandemic)
- ▶ Process
  - Orals take place remotely
  - Justices cannot interrupt and questions asked by each Justice in terms of seniority after the Chief Justice (Thomas went after Roberts)
  - Chief Justice would moderate questions to make sure they are on time



# What happened during those two weeks?

- ▶ Thomas asked questions that other Justices reacted to.
- ▶ Some indications that Roberts cut off others (females and liberals) to maintain time schedule
- ▶ Some attorneys worked from home or office.
- ▶ Dressed up or standing?



# Mishaps

- Justices forgetting to turn audio on or off
- Connectivity problems
- A flushed toilet (no one will fess up!)



The Supreme Flush?

# Did it affect the Outcome of Cases?

- ▶ 8-9526, *McGirt v. Oklahoma*
- ▶ 5-4- Gorsuch
- ▶ 19-46, *United States Patent and Trademark Office v. Booking.com B.V.*
- ▶ 8-1 Ginsburg
- ▶ 19-177, *Agency for International Development v. Alliance for Open Society International, Inc.*
- ▶ 5-3 Kavanaugh
- ▶ 19-267, *Our Lady of Guadalupe School v. Morrissey-Berru*, and 19-348, *St. James School v. Biel*
- ▶ 7-2 Alito
- ▶ 19-431, *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, and 19-454, *Trump v. Pennsylvania*
- ▶ 7-2 Thomas
- ▶ 19-465, *Chiafalo v. Washington*
- ▶ 9-0 Kagan
- ▶ 19-518, *Colorado Department of State v. Baca*
- ▶ 9-0 Kagan
- ▶ 19-631, *Barr v. American Association of Political Consultants, Inc.*
- ▶ 6-3 Kavanaugh
- ▶ 19-635, *Trump v. Vance*
- ▶ 7-2 Roberts
- ▶ 19-715, *Trump v. Mazars USA, LLP*, and 19-760, *Trump v. Deutsche Bank AG*
- ▶ 7-2 Roberts

Only 10 cases

No clear patterns

# Important 2019 Term Decisions (my selection)

- ▶ *Ramos v. Louisiana*
  - Sixth Amendment to the U.S. Constitution requires that guilty verdicts for criminal trials be unanimous. Overturns previous constitutional precedent *Apodaca v. Oregon* (1972).
- ▶ *Trump v. Mazars*
  - Congressional subpoenas to the president may be enforceable but lower court failed to consider separation of powers of issues when granting it. Remanded to lower court for reconsideration.
- ▶ *Trump v. Vance*
  - State grant jury request for presidents tax records as part of a criminal investigation upheld because everyone is entitled to everyone else's evidence.
- ▶ *Chiafalo v. Washington* and *Colorado Department of State v. Baca*
  - The Constitution gives states broad authority to regulate and fine "faithless" electors in voting for president via the electoral college. Binding electors ensures predictability.
- ▶ *McGirt v. Oklahoma*
  - Much of eastern Oklahoma remains part of Native American land and therefore for the purposes of the Major Crimes Act, a Native-American person who committed various sexual crimes in that area should be tried in federal and not state court.

# Top Criminal Decisions II: 2019 Term

## ▶ *Holguin-Hernandez v. United States*

- Petitioner's district-court argument for a specific sentence (nothing or less than 12 months) preserved his claim on appeal that the sentence imposed was unreasonably long

## ▶ *Kansas v. Glover*

- It is not a Fourth Amendment violation when a police officer lacks information negating an inference that the owner is driving a vehicle, runs a vehicle's license plate and learning that the registered owner's driver's license has been revoked.

## ▶ *Shular v. United States*

- Under the Armed Career Criminal Act of 1984, the definition of "serious drug offense" requires only that the state offense involve the conduct specified in the statute.



# Questions?

Thank you!