Supreme Court Wrap-Up
2020-2021
Principles, Politics, and Preferences

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University of Cincinnati
June, 2021
Annual Calendar

Hearings 2 weeks each Month October – May
Monday-Wednesday  Oral Argument
Thursday Study Day
Friday  Conference
   writes of certiorari
   Preliminary vote + assignments
May and June Final Opinion Writing
### Roberts Court 2005—2021

<table>
<thead>
<tr>
<th>Year</th>
<th>Justices</th>
<th>President</th>
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<tr>
<td>2005</td>
<td>Roberts/Rehnquist, Alito/O’Connor</td>
<td>Bush</td>
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<td>2017</td>
<td>Gorsuch/Kennedy</td>
<td>Trump</td>
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<td>2018</td>
<td>Kavanaugh/Scalia</td>
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<td>2020</td>
<td>Barrett/Ginsburg</td>
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- 6 Republicans + 3 Democrats
- 7 Catholics and 2 Jews
- 6 Men and 3 Women
- 4 New Yorkers
- 4 Yale Law, 4 Harvard, 1 Notre Dame
Roberts’ Court 2020-2021

Thomas: GHW Bush (R, 1991) M, Catholic, Yale, Georgia. 71

Breyer: Clinton (D, 1994), Male, Jewish, Harvard, CA. 82

Roberts: GW Bush (R, 2005), Male, Catholic, Harvard, NY. 65

Alito: GW Bush (R, 2006), Male, Catholic, Yale, NJ. 70

Sotomayor: Obama (D, 2009), Female, Catholic, Yale, NY. 66

Kagan: Obama (D, 2010), F, Jewish, Harvard, NY. 60

Gorsuch: Trump (R, 2017), M, Cath/Episc, Harvard, COL 54

Kavanaugh: Trump (R, 2018), M, Catholic, Yale, DC. 55

Barrett: Trump (R, 2020), F, Catholic, Notre Dame, Indiana 49
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<th>Liberal</th>
<th>Conservative</th>
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<td>Civil Liberties</td>
<td>Limited Government Activism</td>
<td>Government Regulation Restraint</td>
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<td>1st Am Speech, Press, Religion Criminal due process Equal Protection</td>
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<tr>
<td>Economic Rights</td>
<td>Government Regulation Restraint</td>
<td>Limited Government Activism</td>
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<td>Property, Minimum Wage Unions, Labor v Management Health Care, Environment</td>
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Merits Docket — Agenda Setting

- 7,000 to 8,000 appeals per year
- *amicus curiae* friend of the court briefs
- **Rule of 4**: required to grant *certiorari*
- 70-80 cases per year (1%) selected for argument. 64 heard in 2020-2021
- 2020 Term 1st Monday in Oct. –June 2021
- 30 minutes per side for oral argument
- Friday conference, Opinion Monday
Shadow Docket—Emergency Appeals

Unsigned order of several sentences that stays lower court injunction before oral argument and final decision of the merits.

1. Unauthorized use of DOD funds to build border wall
2. Barring state pandemic limits on church attendance
3. Rejecting court ordered absentee voting rights
4. Rejecting stays in death penalty cases to allow 10 executions by the U.S. after a 17 year moratorium.
President’s Commission

Biden Executive Order appoints 36 members to report in 6 months on reform proposals
1. Size of the court
2. 18 year term limits or mandatory retirement
3. Super majority to find law unconstitutional
4. Increased number of cases on the merit docket
5. Oral argument and briefing for shadow docket
Health Care

**Affordable Care Act**
**California v. Texas**

**7-2. Breyer**

**Issues:** (1) Whether the individual and state plaintiffs in this case have established Article III standing to challenge the minimum-coverage provision in the Patient Protection and Affordable Care Act (ACA);

HHS Trump Abortion Gag Order. Withdrawn by Biden
Biden withdraws defense of rule forbidding referrals for abortion by federally funded counselors. Planned Parenthood
1st Amendment Free Exercise

Fulton v. City of Philadelphia
9-0. Roberts. Strict scrutiny

Issue:; (2) whether Employment Division v Smith should be revisited; and (3) whether the government violates the First Amendment by conditioning a religious agency’s ability to participate in the foster care system on taking actions and making statements that directly contradict the agency’s religious beliefs

Shadow Docket Emergency Orders on COVID-19
June 1 Gorsuch turns down Colorado churches’ request to
Immigration: Merits Docket

*Trump v. NY.* Census exclusion of undocumented 6-3 unsigned *per curiam*, dismiss challenge. Biden administration includes all in the tally.

*Sanchez v. Mayorkas* 9-0. Kagan deny green card work permits for temporary protected status.

*United States v. Palomar-Santiago* 9-0 Sotomayor against a non-U.S. citizen who was contesting his indictment for criminal re-entry into the country.
Immigration: Shadow Docket

*Trump v. Sierra Club*

5-4 Lifted the stay on use of DOD funds to build border wall. Biden withdrew the challenge to lower court injunctions from Supreme Court docket, ending construction

*Wolf v Cook County*

6-3 unsigned *per curiam*. Sotomayor dissent
Deny entry to individuals deemed a “public charge.” Biden has now rescinded Trump rule
Criminal Due Process: 4th Amendment

_Torres v Madrid_

5-3. Roberts. Black woman shot by police who got away won claim of being “seized”

_Caniglia v Strom_

9-0 Thomas rejects “community caretaking exception” to 4th Amendment warrant requirement for police to enter home seeking firearms.
Criminal Due Process: Police Immunity

*Lombardo v St. Louis.*

Petition for certiorari filed in September 2020 repeatedly discussed without a grant.

3 Republican appeals court judges deny relief to family of black man killed in custody by 6 police in 2015 by granting immunity.

5 Reuters journalists won Pulitzer Prize for data analysis of judicial failure to hold police accountable.
Criminal Due Process

14th Amendment: Equal Protection
*Terry v. US.*
9-0 Thomas Uphold crack conviction despite continued sentencing disparity for Tier 1 offenses based on Congressional failure to expressly include amendments made to Tiers 2 + 3 for possession of larger quantities. Sotomayor concurs with call for Congress to act.

6th Amendment: Jury Trial
*Edwards v Annoy.*
6-3 Kavanaugh. Precedent requiring unanimous juries for criminal conviction not made retroactive in the 2 states allowing non-unanimous juries to convict.
Criminal Procedure

Liberal Pro-defendant Decisions

**Van Buren v. United States**
6-3 Barrett rejected DOJ broad reading of federal Computer Fraud and Abuse Act one of the most important criminal statutes involving computer-related crime, t

**Bolton v. US.**
5-4. Kagan joined by Breyer Gorsuch and Thomas reverse conviction based on 3rd strike crime of “reckless Violence” as lacking *mens Rea*
Criminal Procedure

Conservative Decisions for the Prosecution

Greer v. US.
9-0. Kavanaugh Convictions for being a felon in possession of a gun upheld, denied retrial for opportunity to claim defendant unaware of felony status

Death Penalty Emergency Appeals
Unsigned *per curiam* decisions denying stay of federal executions over dissents of Justices Sotomayor and Breyer seeking oral argument on the merits.
Native American Tribal Rights

*U.S. v. Cooley*

9-0. Breyer. Indian tribes retain the inherent power to police non-Indians
Pending Decisions

Voting Rights
**Brnovich v. Democratic National Committee**

**Issues:** (1) Whether Arizona’s out-of-precinct policy, which does not count provisional ballots cast in person on Election Day outside of the voter’s designated precinct, violates Section 2 of the Voting Rights Act; and (2) whether Arizona’s ballot-collection law, which permits only certain persons (i.e., family and household members, caregivers, mail carriers and elections officials) to handle another person’s completed early ballot, violates Section 2 of the Voting Rights Act or the 15th Amendment.

Free Speech
**Mahanoy Area School District v. Brandi Levy**
Whether Tinker which holds that public school officials may regulate speech that would materially and substantially disrupt the work and discipline of the school, applies to student speech that occurs off campus. Area School District Test of Tinker v Des Moine. Profane post on snapchat by 14 year old cheerleader
2021 Docket

Gun Control Issue(s): Whether the state of New York's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment.

Dobbs v. Jackson Women’s Health Organization, No. 19-1392
Issue(s): Whether all pre-viability prohibitions on elective abortions are unconstitutional.

U.S. v. Zubaydah, No. 20-827
Issue(s): Whether the U.S. Court of Appeals for the 9th Circuit erred when it rejected the United States’ assertion of the state-secrets privilege based on the court’s own assessment of potential harms to the national security, and required discovery to proceed further under against former Central Intelligence Agency contractors on matters concerning alleged clandestine CIA activities.

Federal Bureau of Investigation v. Fazaga, No. 20-828
Issue(s): Whether Section 1806(f) of the Foreign Intelligence Surveillance Act of 1978 displaces the state-secrets privilege and authorizes a district court to resolve, in camera and ex parte, the merits of a lawsuit challenging the lawfulness of government surveillance by
Equal Protection Petitions

*National Coalition for Men v. Selective Service System.* Deny cert in appeal from Texas claiming equal protection violation for mandate that only men must register based on Roster precedent before women become eligible for combat. Sotomayor joined by Kavanaugh and Breyer accept heightened scrutiny review but await Congressional action.

*Students for Fair Admission v Harvard.* Delay cert review on appeal by Asian students challenging affirmative action, request US Solicitor General’s view on race conscious admissions post *Fisher v Texas* ok for undergrad program and *Grutter v. Bollinger*
Pre-2017 Inter-Agreement Index

• 57% Unanimous
• 14%-22% 5-4 or 5-3 decisions
• 2 Justice Inter-Agreement Index: 63% to 96%
• Scalia and Ginsburg agreed in 63% of cases
• Kennedy with majority in 75% - 90% of 5-4 decisions.
• 0 in final term Roberts central