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U.S. Supreme Court Update

Overview

- Overview of OT19
- Discussion of Important OT19 Cases
- Discussion of Significant Cases on the Docket in OT20
- Questions

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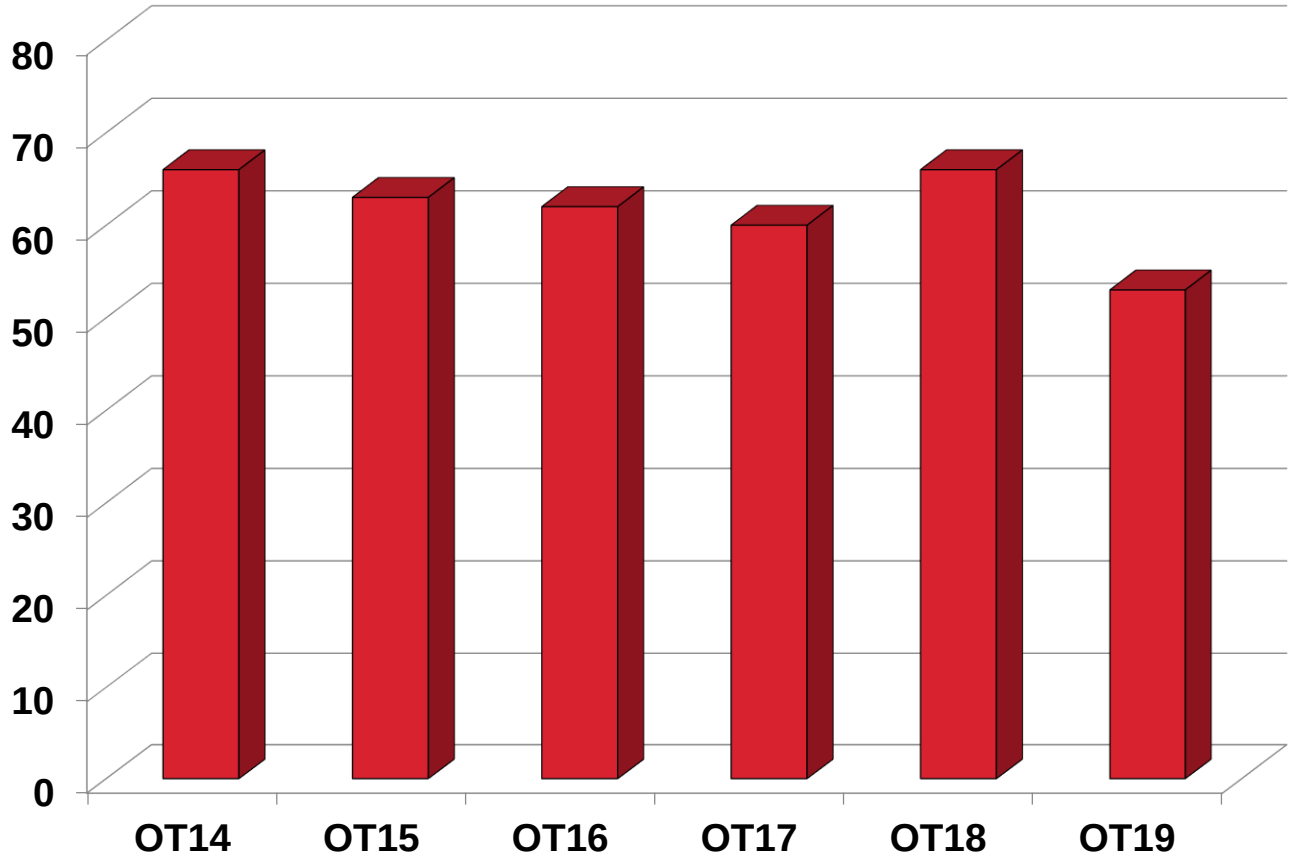
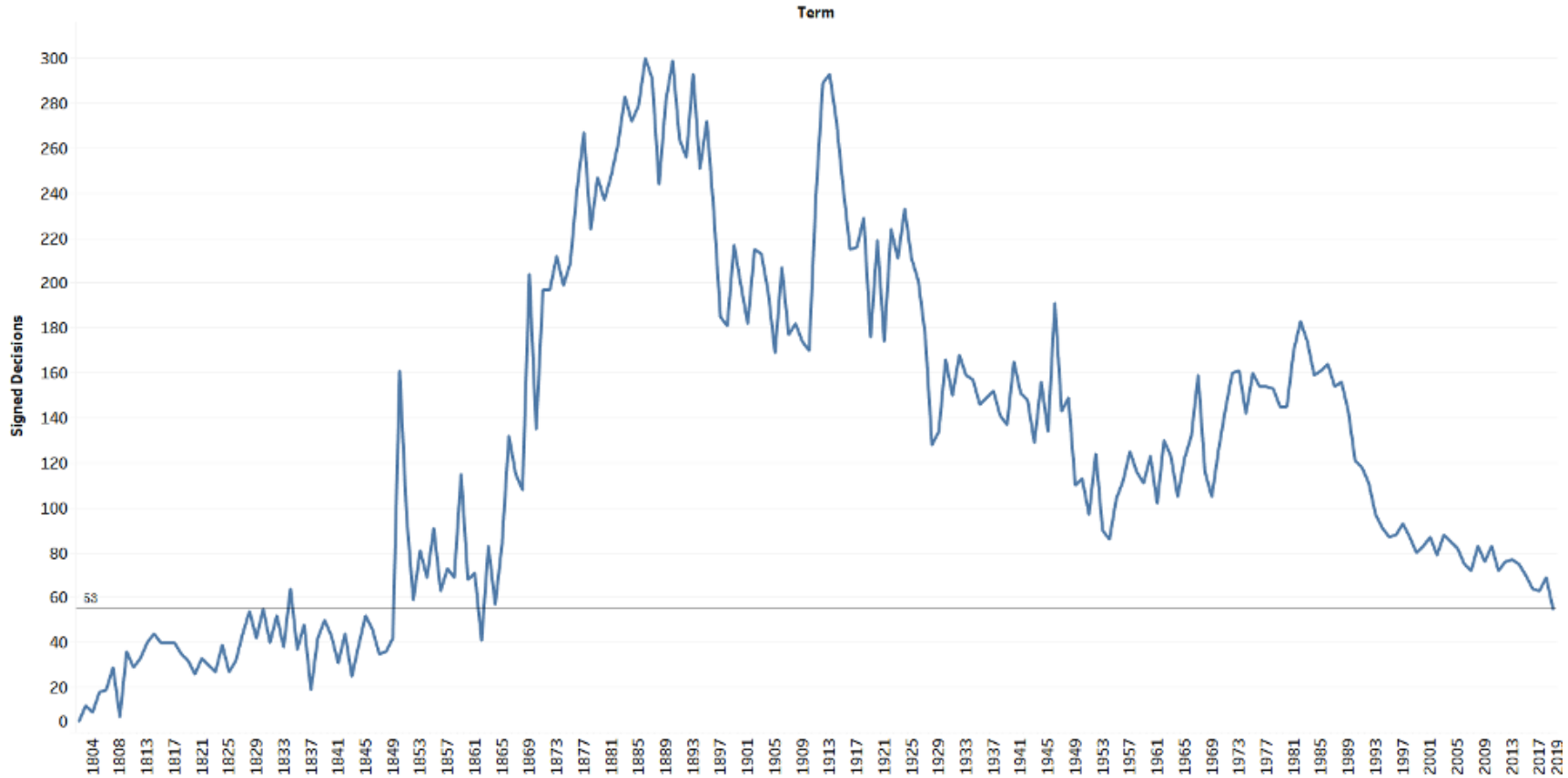
Overview of OT19

Workload

Opinions After Oral Argument by Term

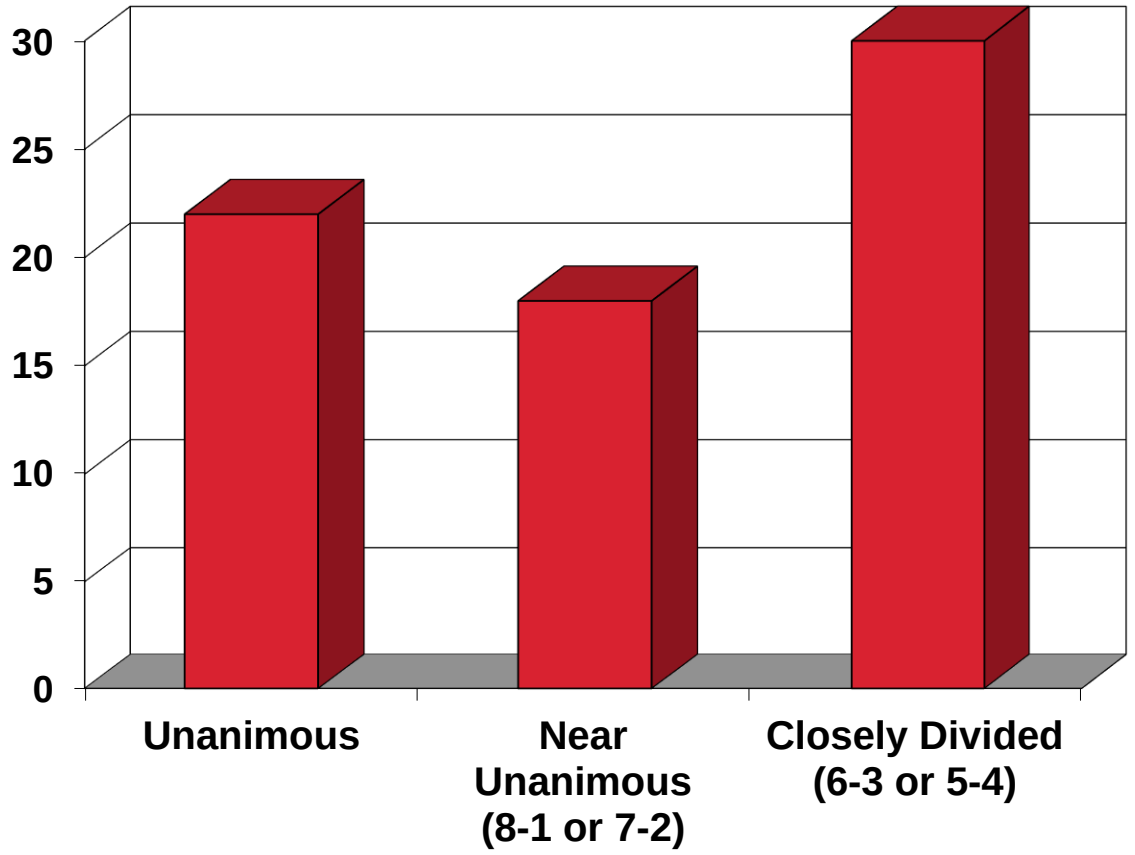


Workload in Historical Context



Source: Scotusblog.com

A Divided Court?



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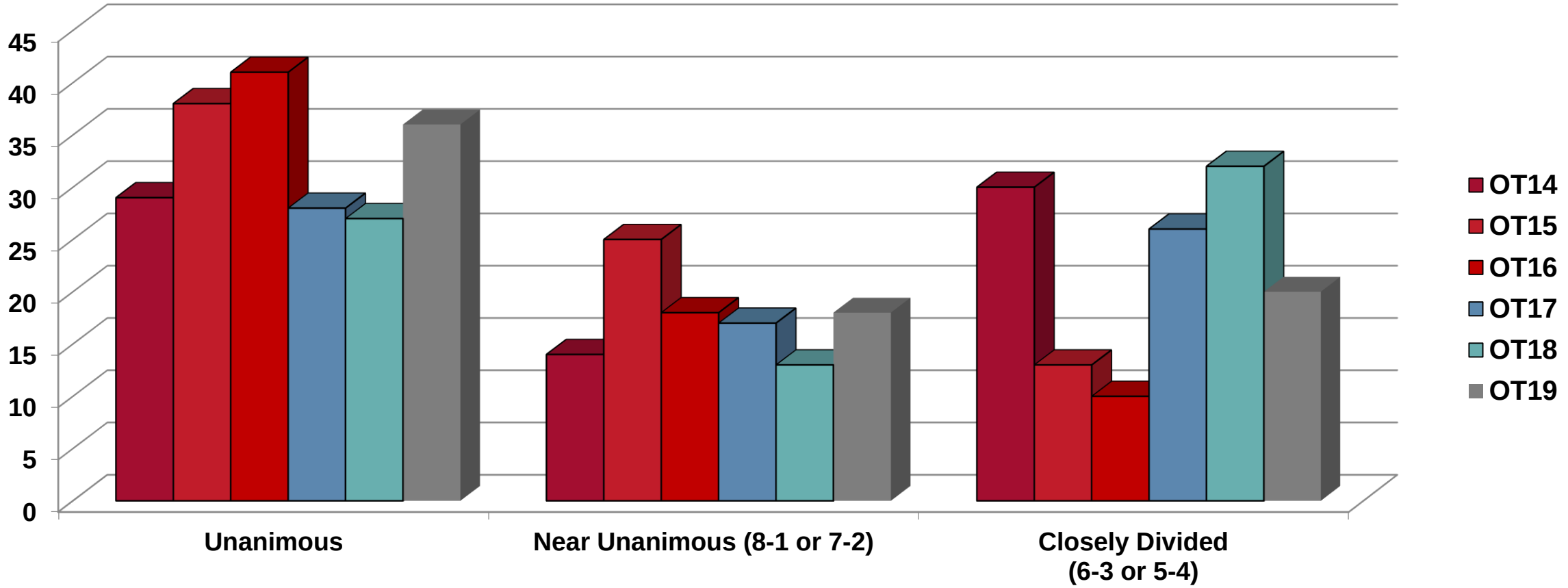

Reversal Rate

- Overall reversal rate: 67 percent
- Outliers:
  - Ninth Circuit: Reversed in 9 out of 10 cases (90 percent)
  - Fifth Circuit: Reversed in 6 out of 7 cases (86 percent)
  - Second Circuit: Reversed in 6 out of 8 cases (75 percent)

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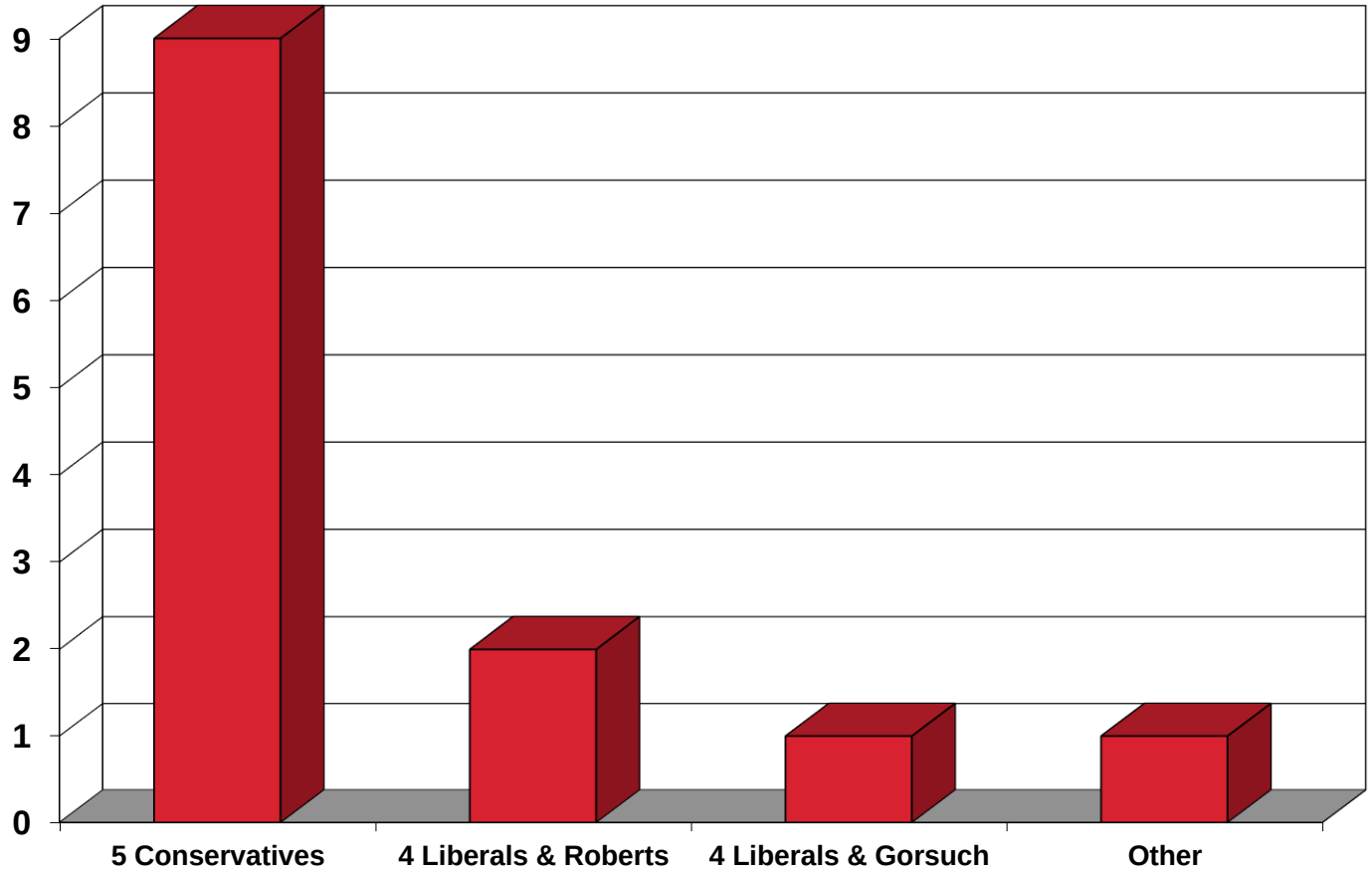
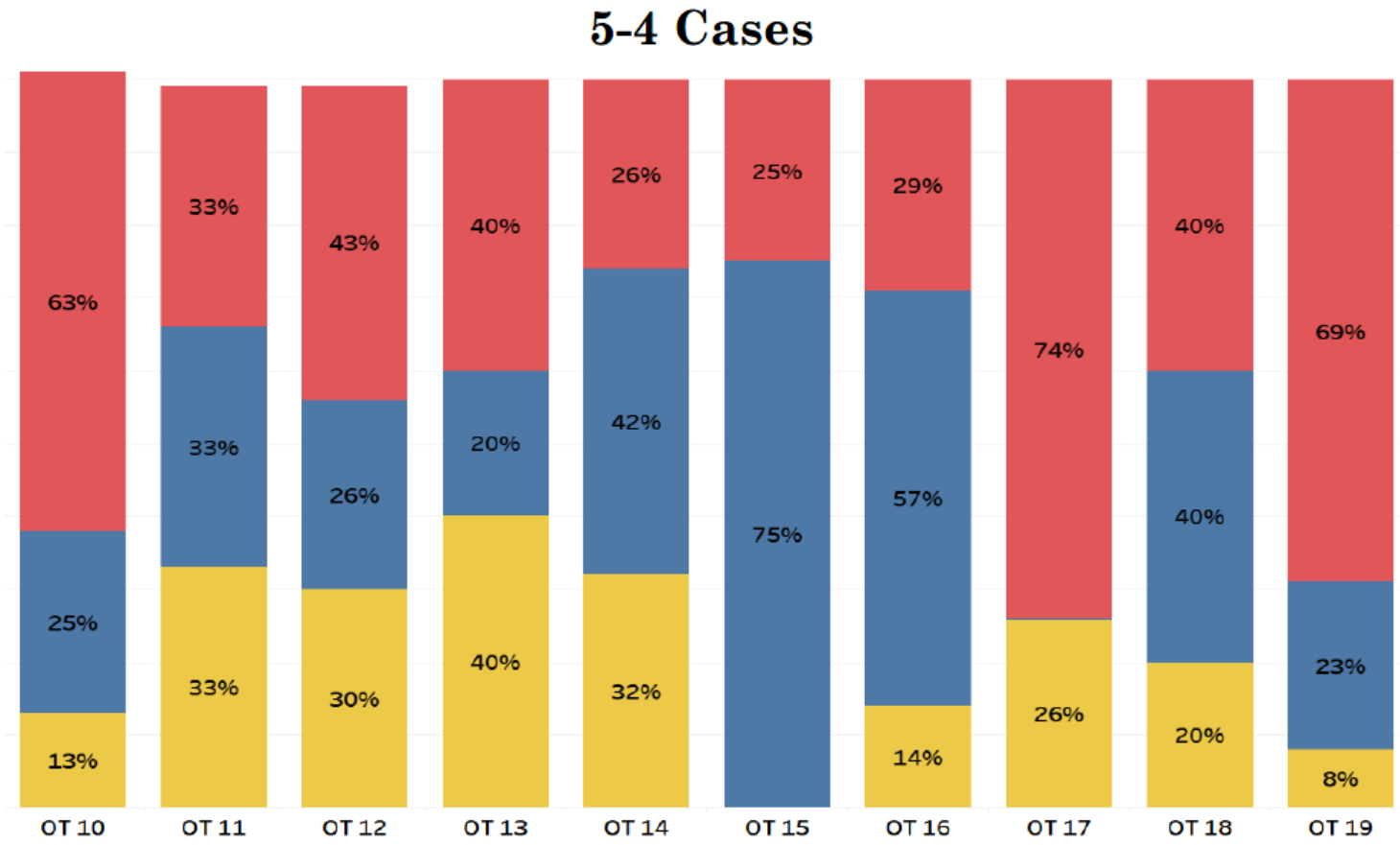
How Conservative Is the Supreme Court?

5-4 Case Alignments

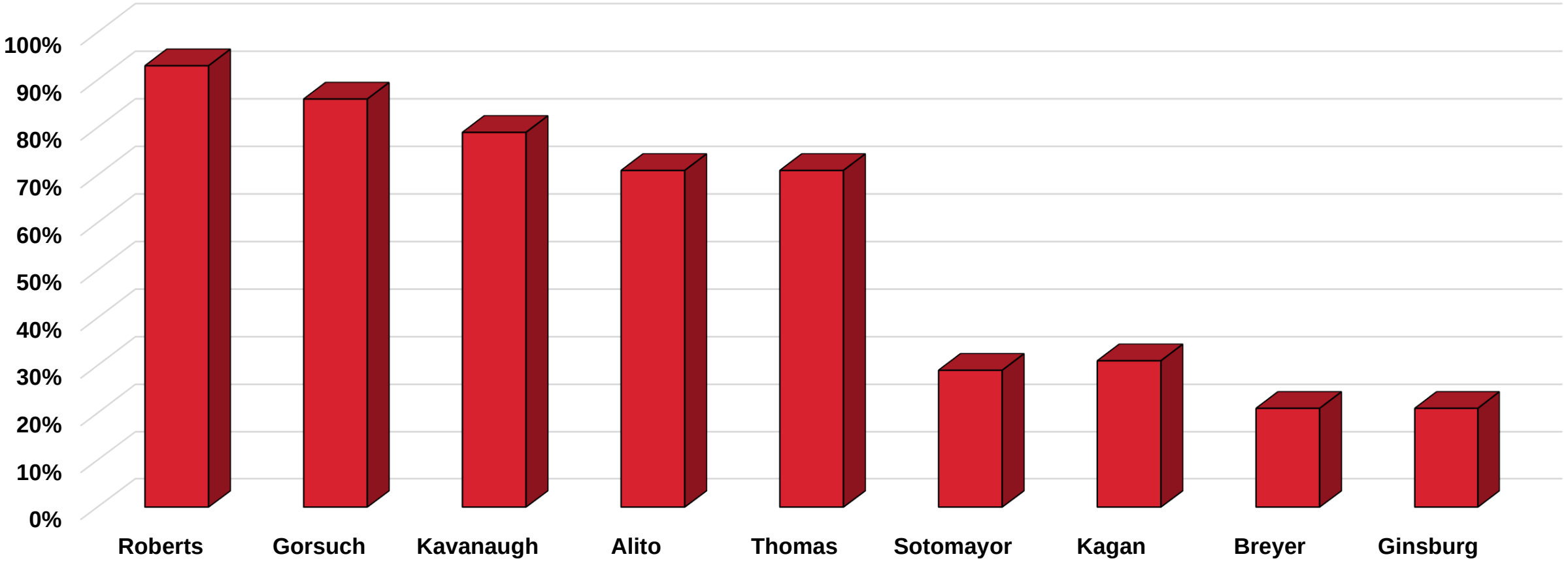


5-4 Cases: Historical Context

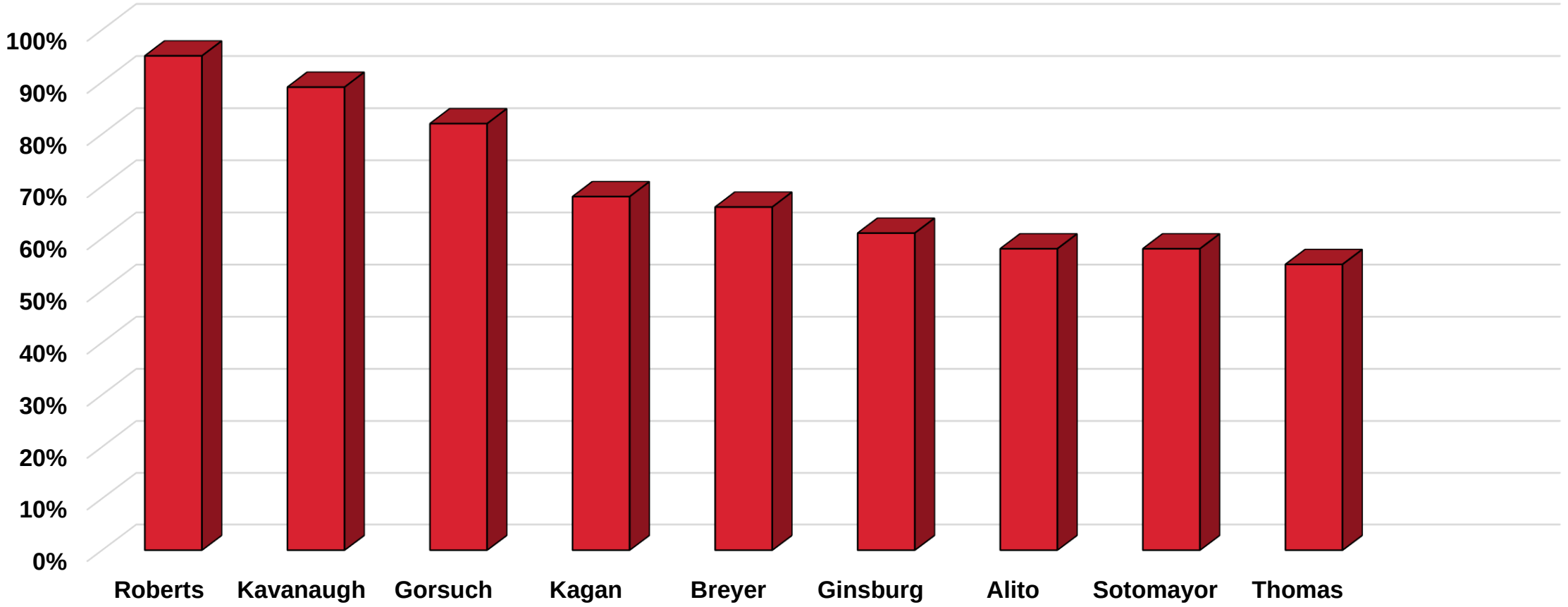


Source:
Scotusblog.com

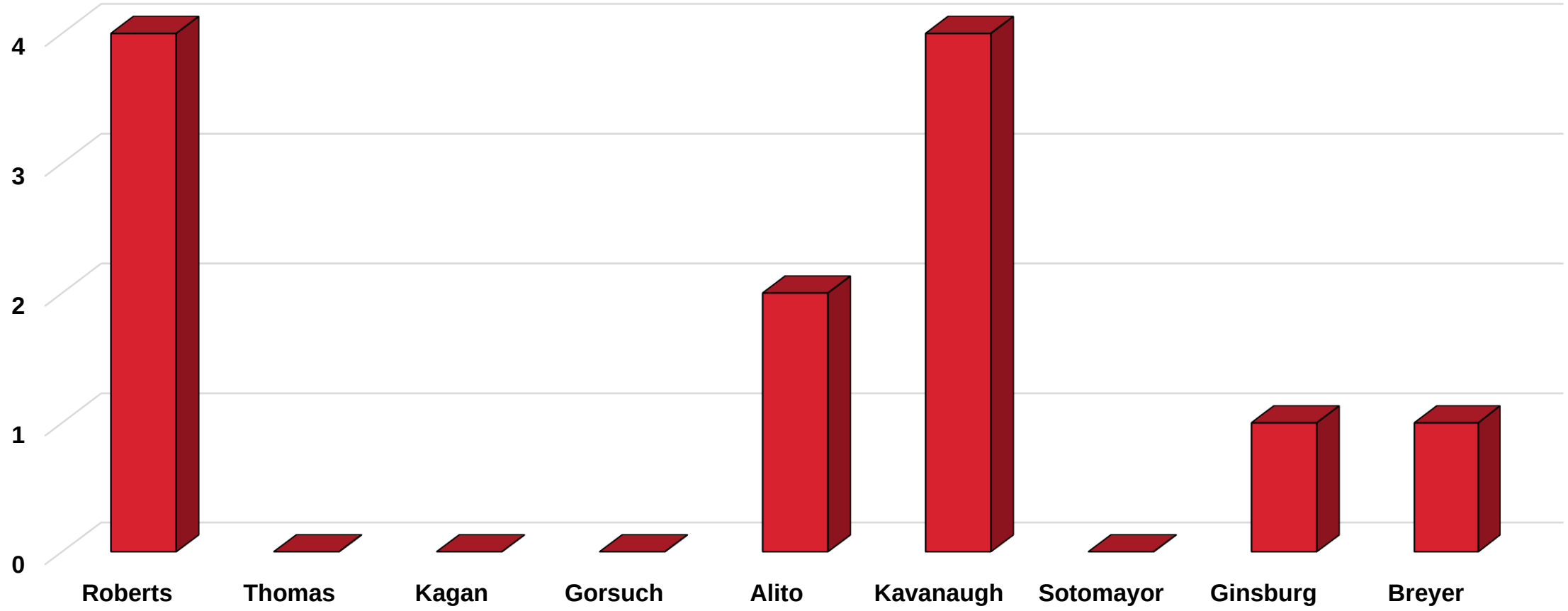
Membership in the Majority | 5-4 Cases



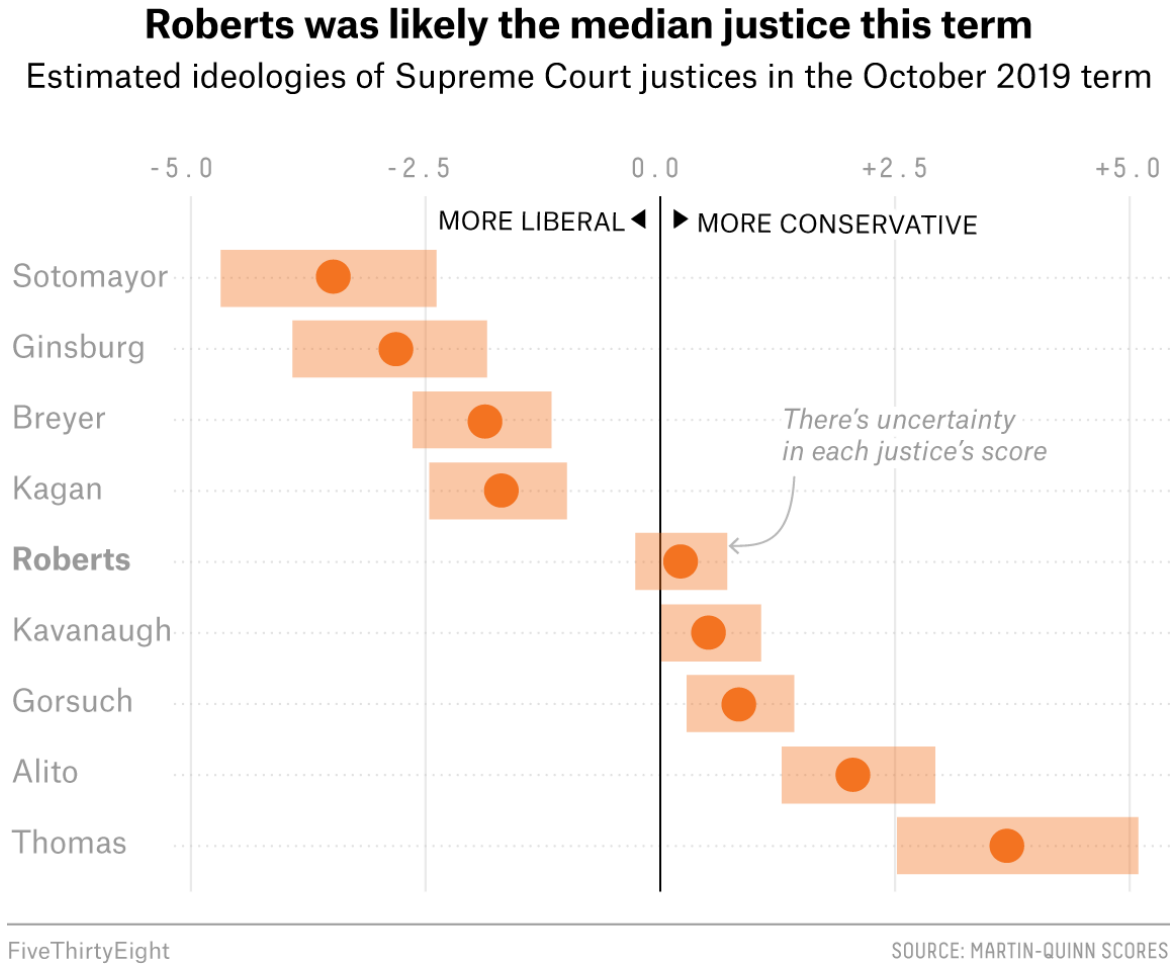
Percentage in the Majority (non-unanimous cases)



5-4 Case Majority Opinion Assignments



Ideologies of the Justices



Ideologies of the Justices

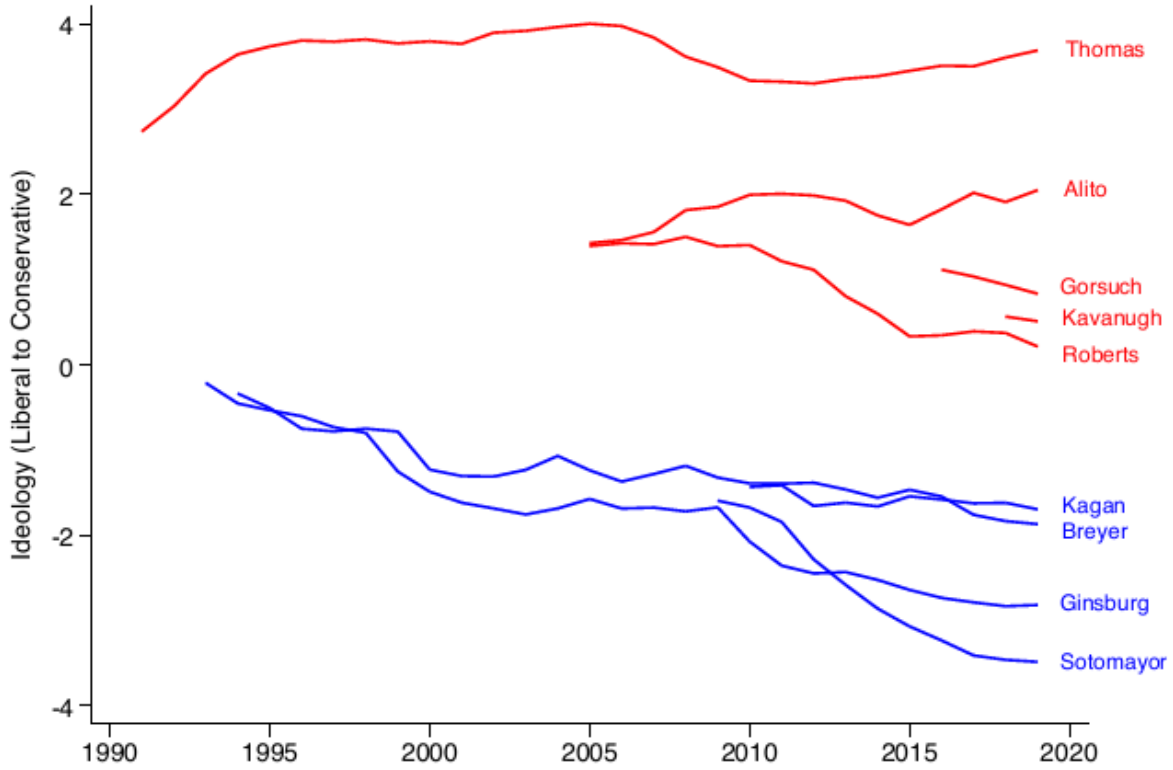


Figure 4: Ideology (Martin-Quinn Scores) Over Time, 1991-2019 Terms.

Justices Who Agree the Most Often (non-unanimous cases)

1. Roberts-Kavanaugh: 89 percent
2. Ginsburg-Breyer: 89 percent
3. Alito-Thomas: 87 percent
4. Breyer-Kagan: 84 percent
5. Ginsburg-Sotomayor: 82 percent

Justices Who Agree the Least Often (non-unanimous cases)

1. Thomas-Sotomayor: 13 percent
2. Alito-Sotomayor: 16 percent
3. Thomas-Ginsburg: 21 percent
4. Thomas-Kagan: 22 percent
5. Ginsburg-Alito: 24 percent

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Notable Cases of the 2019 Term

Title VII

Bostock v. Clayton County, Georgia

Title VII

Bostock v. Clayton County, Georgia

- Title VII, enacted in 1964, bars employment discrimination against an individual "because of such individual's . . . sex."
- In three consolidated cases, the employers discriminated against an employee for being homosexual or transgender.
- The Court, per Gorsuch, held 6-3, that Title VII protected gay and transgender employees.
- "Straightforward" application of the "ordinary public meaning" of Title VII resolves the case. Sex is a but-for cause for such discrimination. It is irrelevant that few in 1964 thought that Title VII applied to such discrimination.
- Thomas, Alito and Kavanaugh dissented.

Religion Clauses

Our Lady of Guadalupe School v. Morrissey-Berru

Religion Clauses

Our Lady of Guadalupe School v. Morrissey-Berru

- Two teachers at Catholic schools—who taught religion and worshipped with students—were fired. Both alleged that the firing was unlawful, and the lower courts refused to apply the "ministerial exception" because the teachers weren't ministers.
- The Court, per Alito, held 7-2, that the First Amendment barred the courts from adjudicating these claims.
- The ministerial exception applies when the employee's responsibilities include educating the students in the religious faith.
- Sotomayor, joined by Ginsburg, dissented.

Lanham Act

U.S. PTO v. Booking.com

Lanham Act

U.S. PTO v. Booking.com

- Trademark law does not allow registration of a generic name. So the PTO refused to register “Booking.com.”
- The Court, per Ginsburg, held 8-1, that “Booking.com” could be registered.
- The question is whether the term, taken as a whole, signifies to consumers a class of goods or services. Because consumers do not perceive “Booking.com” in that way, it is not generic.
- The Court rejected the PTO’s argument that when “.com” is added to a generic term it is automatically generic.
- Breyer dissented.

Article II

Trump v. Vance

Trump v. Mazars USA, LLP

Article II

Trump v. Vance and *Trump v. Mazars USA, LLP*

- A congressional committee and the Manhattan DA subpoenaed records related to Trump. Trump resisted the subpoena, arguing that the President was immune from a subpoena.
- *Vance*: The Court held, 7-2, per Roberts, that Article II and the Supremacy Clause do not categorically preclude, or require a heightened standard for, a criminal subpoena to a sitting president. The President may challenge the subpoena as motivated by bad faith or overbroad or as subjecting him to an undue burden. Alito and Thomas dissented.
- *Mazars*: The Court held, 7-2, per Roberts, that the lower courts did not adequately consider the separation of powers when approving the congressional subpoena. Such a subpoena "must be related to, and in furtherance of, a legitimate task of Congress." Alito and Thomas dissented.

DACA

DHS v. Regents of the Univ. of Calif.

DACA

DHS v. Regents of the Univ. of Calif.

- The DACA program allows unauthorized aliens who arrived in the U.S. as children to apply for a two-year forbearance of removal. If approved, the recipient receives work authorization and other benefits. The DHS Secretary under Trump revoked the program.
- The Court held 5-4, per Roberts, that the rescission decision was arbitrary and capricious under the Administrative Procedure Act. The Secretary failed to consider important aspects of the program and didn't appreciate the full scope of her discretion. For example, she didn't consider denying DACA beneficiaries' benefits but continuing the forbearance of removal.
- The Court (except for Sotomayor) rejected the argument that there was a plausible inference that rescission was motivated by animus in violation of equal protection.

Electoral College

Chiafalo v. Washington

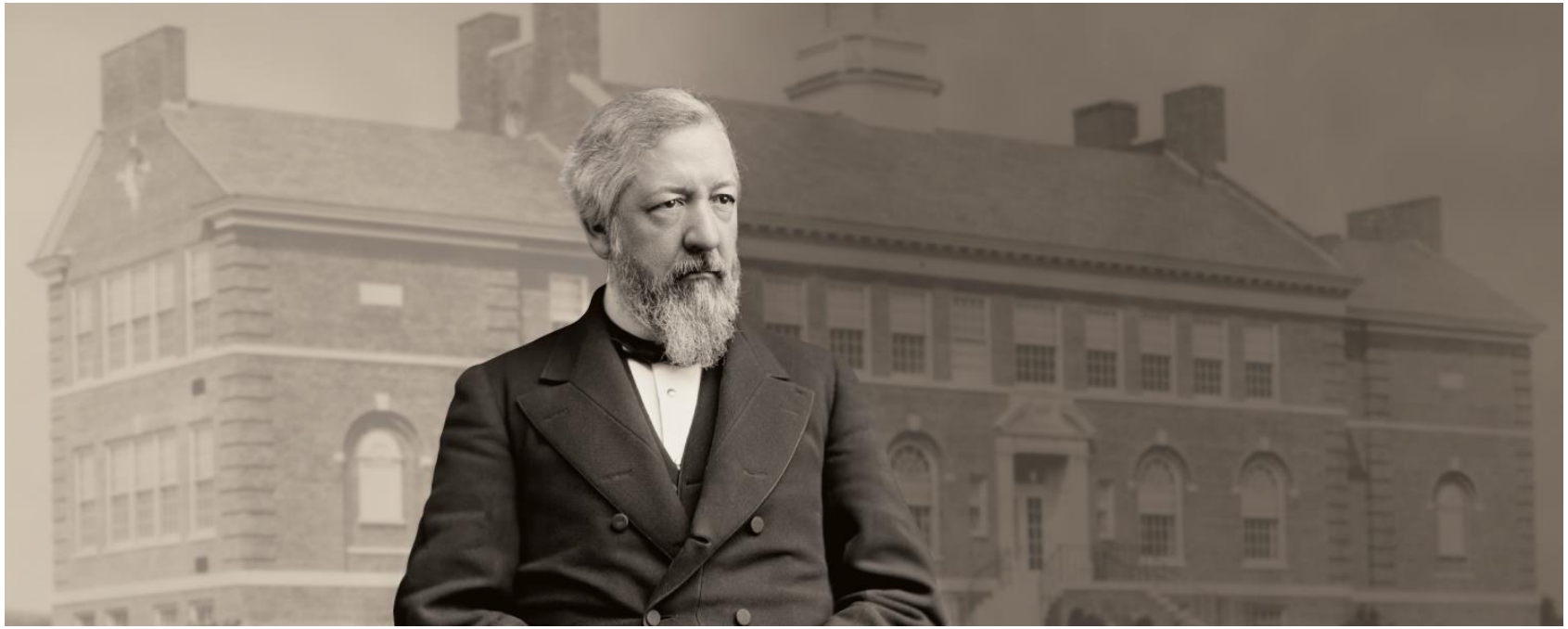
Electoral College

Chiafalo v. Washington

- 15 states punish presidential electors who violate their pledge to vote for a particular presidential candidate. In 2016, three Washington electors violated their pledge to vote for Hillary Clinton, and the state fined them each $1,000.
- The Court, per Kagan, unanimously upheld the punishment. Article II gives the states broad authority to appoint electors; that power includes the power to condition their appointment on various things, including voting in accordance with their pledge to support a particular candidate.
- Thomas, joined by Gorsuch, agreed with the result but adopted a different rationale: The Constitution is silent, so the states have residual power to set the rules.

Religion Clauses

Espinoza v. Montana Dept. of Revenue



Religion Clauses

Espinoza v. Montana Dept. of Revenue

- The Montana Constitution has a “Blane Amendment” barring use of government funds by a religious school. Montana therefore barred children attending religious schools from receiving tax credits for private school. The Montana Supreme Court invalidated the entire program.
- The Court, per Roberts, held 5-4 that the no-aid provision discriminated against religious schools and families in violation of the Free Exercise Clause.
- *Trinity Lutheran* prohibited laws that “impose special disabilities on the basis of religious status.” While states can deny funds for one training for the ministry, they cannot deny funds to any religious school.
- Ginsburg, dissenting, noted that there was no discrimination because the Montana court invalidated the entire program.

Abortion

June Medical Services LLC v. Russo

Abortion

June Medical Services LLC v. Russo

- Louisiana adopted an abortion regulation—requiring doctors to hold admitting privileges at a hospital within 30 miles—almost identical to the Texas law invalidated in *Whole Woman's Health*.
- Breyer (with the three other liberals) held that doctors had standing to challenge the law and that it was invalid under *Whole Woman's Health*.
- Roberts agreed that the doctors had standing and that the law was invalid under *Whole Woman's Health*, even though he dissented in that case and believes the case was wrongly decided. But Roberts articulated a narrower version of the abortion right than Breyer: *Roe* invalidates laws that imposed a "substantial obstacle" on getting an abortion; he wouldn't apply a balancing test comparing the benefits and burdens of any abortion restriction.

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Preview of the 2020 Term

Carney v. Adams

- Whether the Delaware Constitution's requirement that each of the state's courts only have a "bare majority" of judges affiliated with one political party violates the First Amendment.

Google v. Oracle

- (1) Whether copyright protection extends to a software interface; and (2) whether, as the jury found, the petitioner's use of a software interface in the context of creating a new computer program constitutes fair use.

Ford Motor Company v. Montana Eighth Judicial District Court

- Whether the "arise out of or relate to" requirement for a state court to exercise specific personal jurisdiction over a nonresident defendant under *Burger King Corp. v. Rudzewicz* is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts.

Fulton v. City of Philadelphia

- Whether the City of Philadelphia's termination of a contract that allowed Catholic Social Services to help place children in the City with foster parents, on the basis of Catholic Social Services' unwillingness to endorse same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment.

Texas v. California

California v. Texas

- (1) Whether plaintiffs have standing; (2) whether reducing the penalty for not buying health insurance to zero rendered the minimum coverage provision unconstitutional; and (3) if it is unconstitutional, whether that provision is severable from the remainder of the Affordable Care Act.

United States v. Arthrex, Inc.

- (1) Whether, under the Appointments Clause, administrative patent judges are principal officers who must be appointed by the president with the Senate's advice and consent, or "inferior Officers" whose appointment Congress has permissibly vested in a department head; and (2) whether, if administrative patent judges are principal officers, the court of appeals properly cured any appointments clause defect in the current statutory scheme prospectively by severing the application of 5 U.S.C. § 7513(a) to those judges.

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Questions?

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