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OT 2019  
SCOTUS Update  
July 16, 2020

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October 2019 Term:  
Statistics and Overview

# The Fewest Signed Decisions in Over 100 Years

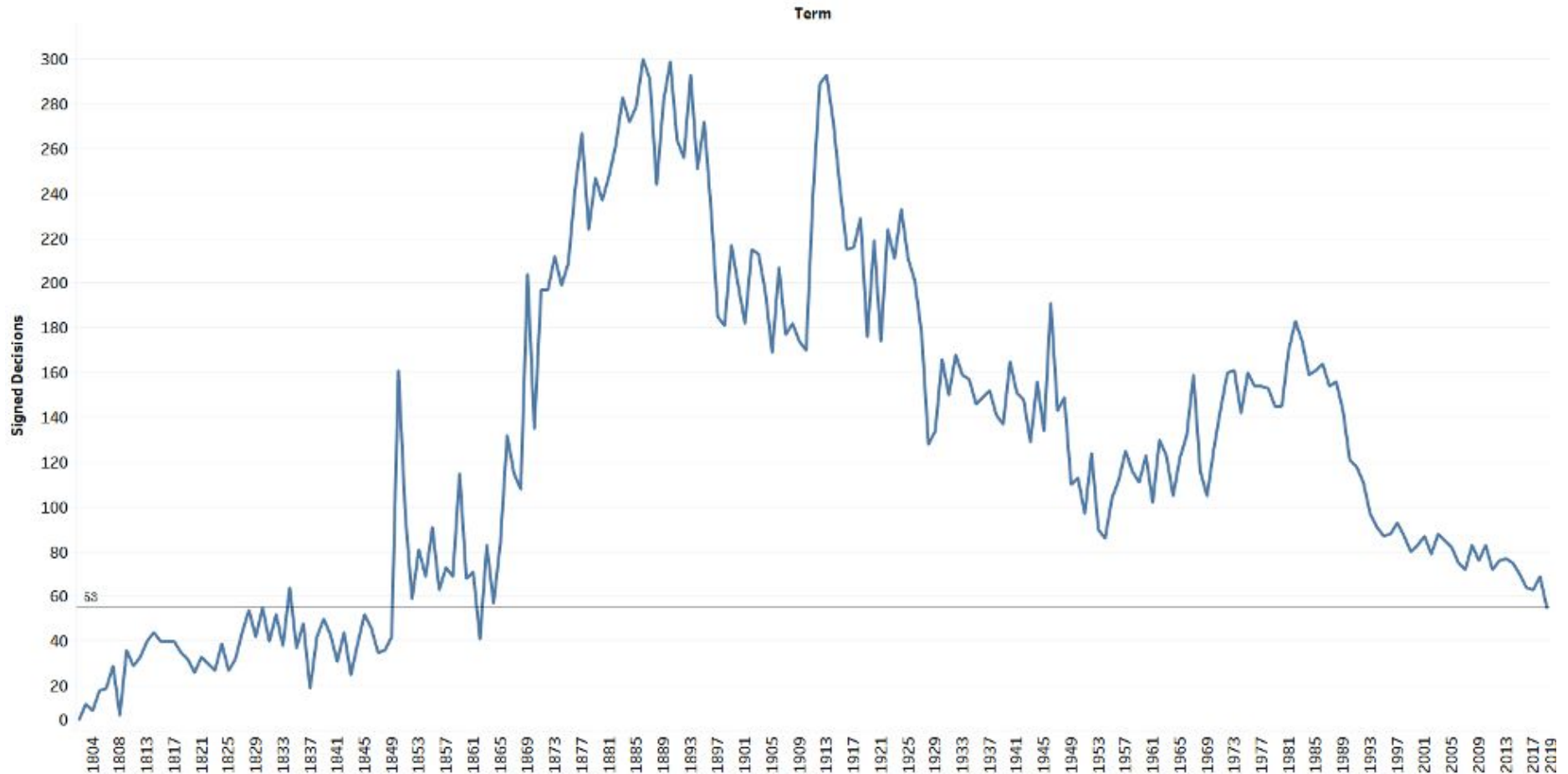


Image retrieved from: <https://www.scotusblog.com/2020/07/final-stat-pack-for-october-term-2019/>

## Frequency in the Majority

<b>Justice</b>	<b>Votes</b>	<b>Frequency in Majority</b>	
<b>Roberts</b>	<b>60</b>	<b>58</b>	<b>97%</b>
<b>Thomas</b>	<b>60</b>	<b>43</b>	<b>72%</b>
<b>Ginsburg</b>	<b>60</b>	<b>45</b>	<b>75%</b>
<b>Breyer</b>	<b>60</b>	<b>47</b>	<b>78%</b>
<b>Alito</b>	<b>60</b>	<b>44</b>	<b>73%</b>
<b>Sotomayor</b>	<b>60</b>	<b>44</b>	<b>73%</b>
<b>Kagan</b>	<b>59</b>	<b>47</b>	<b>80%</b>
<b>Gorsuch</b>	<b>60</b>	<b>53</b>	<b>89%</b>
<b>Kavanaugh</b>	<b>59</b>	<b>55</b>	<b>93%</b>

Image retrieved from: <https://www.scotusblog.com/2020/07/final-stat-pack-for-october-term-2019/>

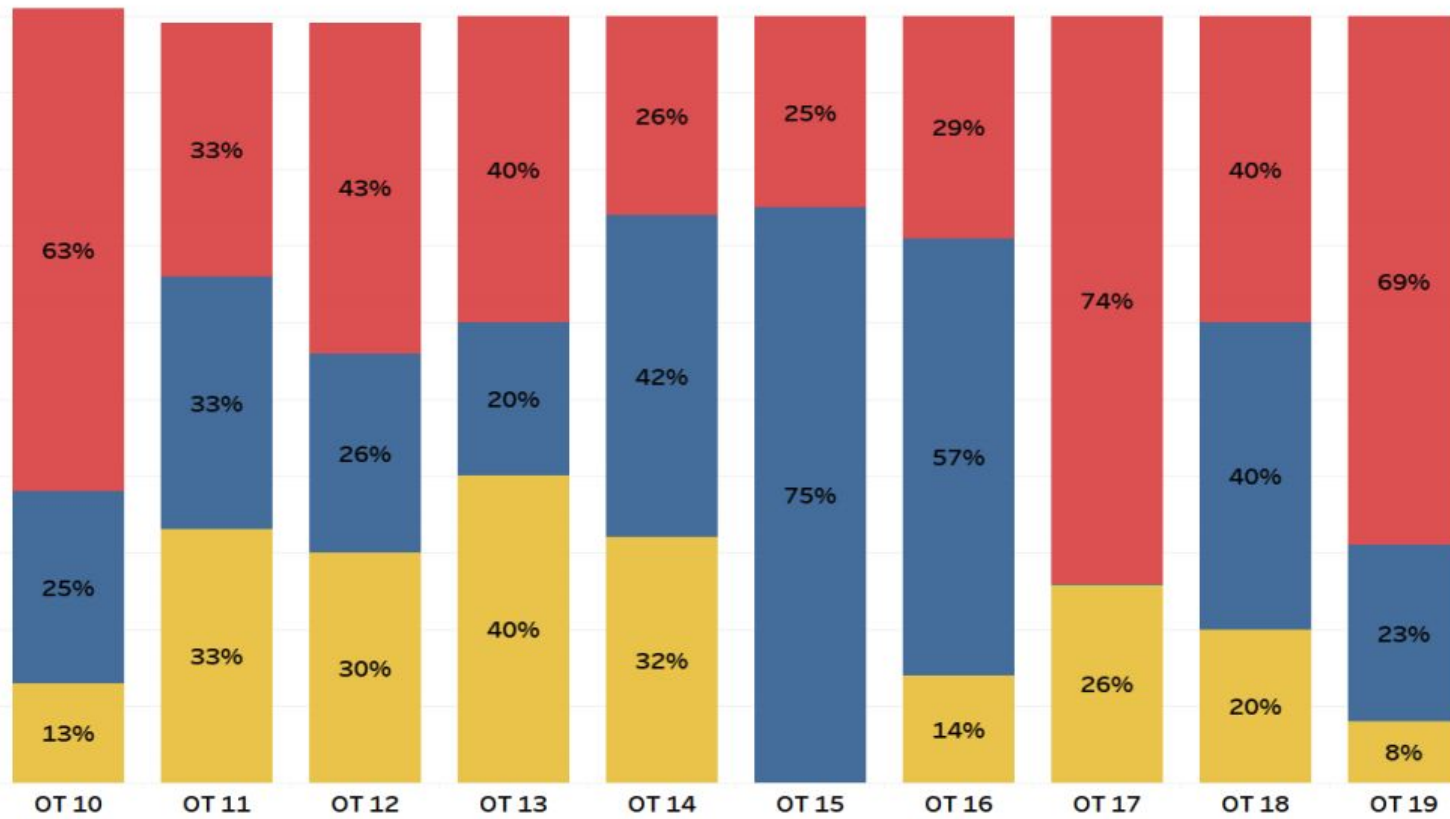
# 5-4 Cases

Alignment of the Majority		
Majority		Cases
Roberts, Thomas, Alito, Gorsuch, Kavanaugh	9	<i>Hernandez, Barton, Thole, McKinney, Garcia, RNC, Espinoza, Selia Law, Open Society</i>
Roberts, Ginsburg, Breyer, Sotomayor, Kagan	2	<i>Regents, June Medical</i>
Ginsburg, Breyer, Sotomayor, Kagan, Gorsuch	1	<i>McGirt</i>
Roberts, Sotomayor, Kagan, Gorsuch, Kavanaugh	1	<i>Public.Resource</i>

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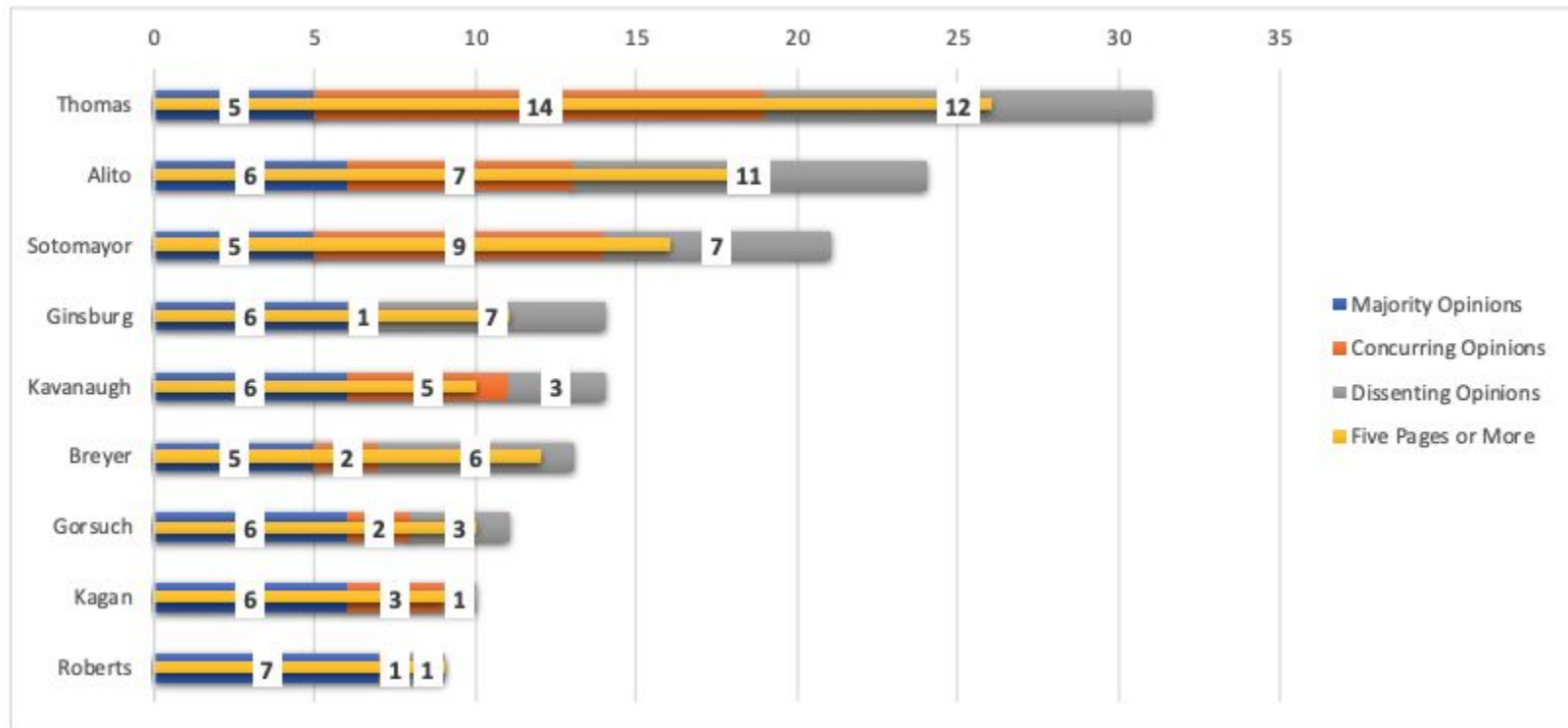
# 5-4 Cases (cont.)

## 5-4 Cases





# Opinion Authorship



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# The Court and the Pandemic



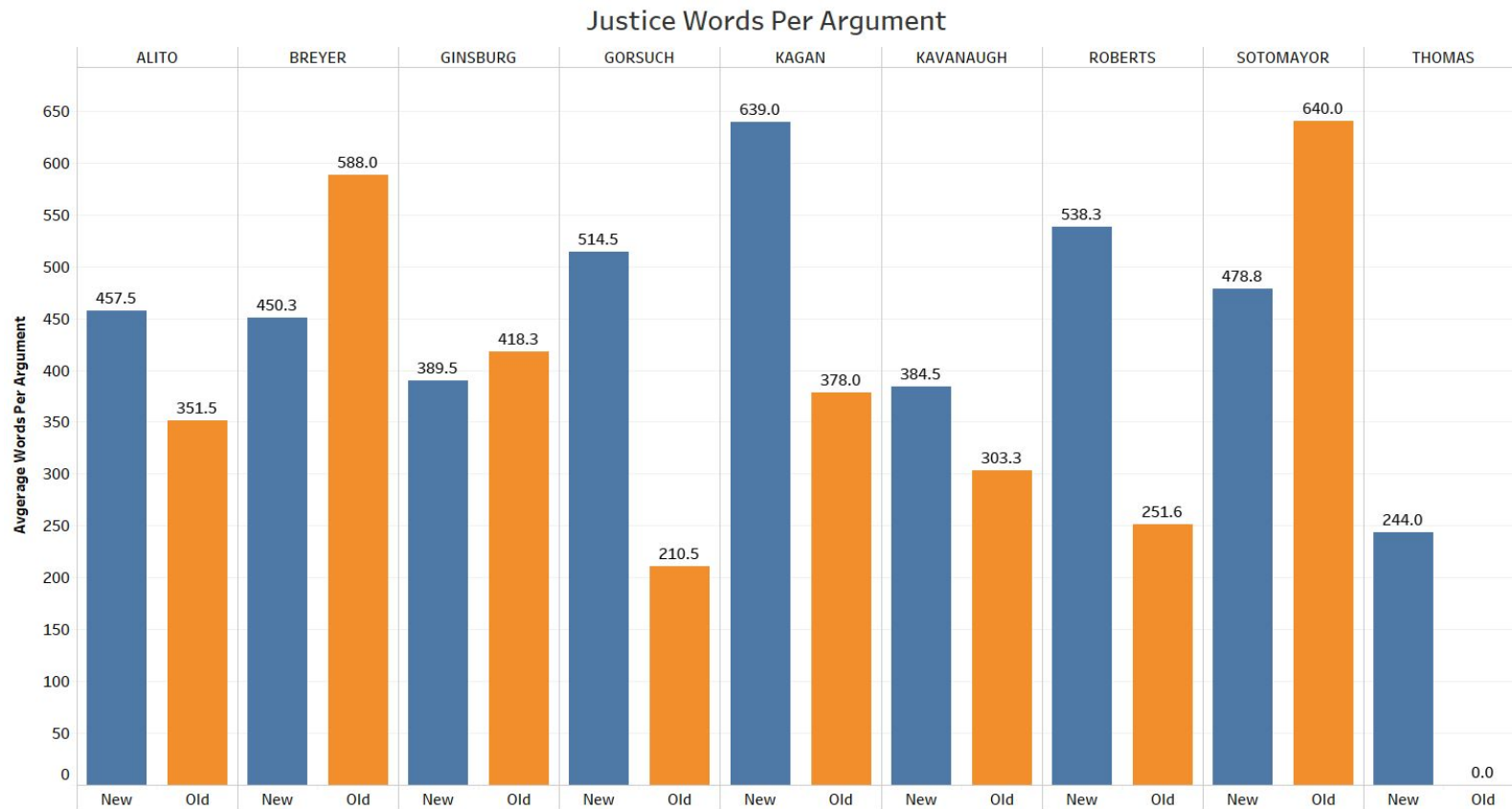
# Telephonic Arguments



# Flushgate



# Justices' Air Time



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Chief Justice Roberts

# Chief Justice Roberts



Frequency in the  
Majority: **97%**  
(Last Term: **85%**)

“Anchor” Justice

Joined majority in 5-4 cases  
**92%** of the time  
(Last Term: **55%**)

Authored 9 Opinions  
(7 Majority, 1 Concurring, 1 Dissenting)

## “Anchor” Justice

Justice Roberts held together 7-2 majorities in both cases dealing with President Donald Trump’s tax returns (Dissenters: Thomas and Alito), as well as in two key religion cases (Dissenters: Ginsburg and Sotomayor)



“Roberts is not only the most powerful player on the court,” said Lee Epstein, a law professor and political scientist at Washington University in St. Louis. “He’s also the most powerful chief justice since at least 1937.”

The New York Times

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# October 2019 Term: Key Cases of Interest



# October 2019 Term: Key Cases of Interest

## Intellectual Property

- *Allen v. Cooper*
- *Georgia v. Public.Resource.Org Inc.*
- *Lucky Brand Dungarees Inc. v. Marcel Fashions Group Inc.*
- *Peter v. NantKwest Inc.*
- *Romag Fasteners Inc. v. Fossil Inc.*
- *Thryv v. Click-To-Call Technologies, LP*
- *U.S. Patent and Trademark Office v. Booking.com B.V.*

## Other Business Cases

- *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC*
- *Comcast Corp. v. National Association of African American-Owned Media*
- *Liu v. Securities and Exchange Commission*

# October 2019 Term: Key Cases of Interest

## **Constitutional Law and Hot-Button Cases**

- *Chiafalo v. Washington*
- *Bostock v. Clayton County, Georgia*
- *Department of Homeland Security v. Regents of the University of California*
- *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*
- *June Medical Services LLC v. Russo*
- *McGirt v. Oklahoma*
- *New York State Rifle & Pistol Association Inc. v. City of New York, New York*
- *Seila Law LLC v. Consumer Financial Protection Bureau*
- *Trump v. Mazars USA, LLP*

# October 2019 Term: Key Cases of Interest

## **First Amendment & Religious Liberty**

- *Barr v. American Association of Political Consultants Inc.*
- *U.S. Agency for Int'l Development v. Alliance for Open Society Int'l*
- *Our Lady of Guadalupe School v. Morrissey-Berru*
- *Espinoza v. Montana Department of Revenue*
- *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*
- *South Bay Pentecostal Church v. Newsom*

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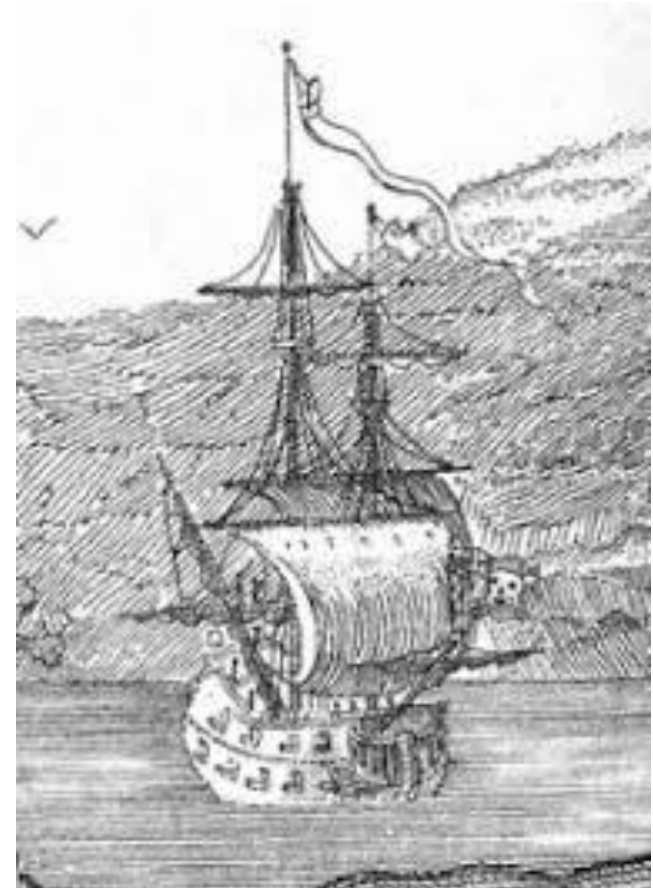
# Intellectual Property

# *Allen v. Cooper*

Decided: 3.23.2020

**Issue:** Whether Congress validly abrogated state sovereign immunity via the Copyright Remedy Clarification Act in providing remedies for authors of original expression whose federal copyrights are infringed by states.

**Holding:** Congress lacked authority to abrogate the states' sovereign immunity from copyright infringement suits in the Copyright Remedy Clarification Act of 1990.



# *Georgia v. Public.Resource.Org Inc.*

Decided: 4.27.2020

**Issue:** Whether the government edict doctrine extends to—and thus renders uncopyrightable—the annotations in the Official Code of Georgia Annotated.

**Holding:** Under the government edicts doctrine, the annotations beneath the statutory provisions in the Official Code of Georgia Annotated are ineligible for copyright protection.



# *Peter v. NantKwest Inc.*

Decided: 12.11.2019

**Issue:** Whether the phrase “[a]ll the expenses of the proceedings” in 35 U.S.C. § 145 encompasses the personnel expenses the United States Patent and Trademark Office incurs when its employees, including attorneys, defend the agency in Section 145 litigation.

**Holding:** The PTO cannot recover the salaries of its legal personnel under Section 145 of the Patent Act.





# *Romag Fasteners Inc. v. Fossil Inc.*

Decided: 4.23.2020

**Issue:** Whether, under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), willful infringement is a prerequisite for an award of an infringer's profits for a violation of Section 43(a), 15 U.S.C. § 1125(a).

**Holding:** A plaintiff in a trademark infringement suit is not required to show that a defendant willfully infringed the plaintiff's trademark as a precondition to an award of profits.



# *U.S. Patent and Trademark Office v. Booking.com B.V.*

Decided: 6.30.2020

The logo for Booking.com, featuring the word "Booking" in a dark blue, sans-serif font, followed by ".com" in a lighter blue, sans-serif font.

**Issue:** Whether, when the Lanham Act states generic terms may not be registered as trademarks, the addition by an online business of a generic top-level domain (“*.com*”) to an otherwise generic term can create a protectable trademark.

**Holding:** A term styled “*generic.com*” is a generic name for a class of goods or services—and thus ineligible for federal trademark protection—only if the term as a whole has that meaning to consumers.

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Other Business Cases

# *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC*

Decided: 6.1.2020

**Issue:** Whether the Convention on the Recognition and Enforcement of Foreign Arbitral Awards permit a non-signatory to an arbitration agreement to compel arbitration based on the doctrine of equitable estoppel?

**Holding:** The Convention on the Recognition and Enforcement of Foreign Arbitral Awards does not conflict with domestic equitable estoppel doctrines that permit the enforcement of arbitration agreements by non-signatories to those agreements.



# *Comcast Corp. v. National Association of African American-Owned Media*

Decided: 3.23.2020

**Issue:** Whether a claim of race discrimination under 2 U.S.C. § 1981 requires that the plaintiff show but-for causation, or only that race is a motivating factor.

**Holding:** A plaintiff who sues for racial discrimination in contracting under 42 U.S.C. § 1981 bears the burden of showing that race was a but-for cause of the plaintiff's injury, and that burden remains constant over the life of the lawsuit.



# Liu v. Securities and Exchange Commission

Decided: 6.22.2020

**Issue:** Whether the Securities and Exchange Commission may seek and obtain disgorgement from a court as “equitable relief” for a securities law violation, even though the Court has determined that such disgorgement is a penalty.

**Holding:** In a Securities and Exchange Commission enforcement action, a disgorgement award that does not exceed a wrongdoer’s net profits and is awarded for victims is equitable relief permissible under 15 U.S.C. § 78u(d)(5).



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Other Hot-Button Cases



# *Bostock v. Clayton County, Georgia*

Decided: 6.15.2020

Consolidated with: *Altitude Express Inc. v. Zarda*; *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*.

**Issue:** Whether Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation.

**Holding:** An employer who fires an individual merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964.

- The Court’s opinion expressly cabins its reach to Title VII, perhaps reducing the likelihood that the decision will have an impact in other areas involving different statutes, such as Title IX or the Americans with Disabilities Act.



# *McGirt v. Oklahoma*

Decided: 7.9.2020

**Issue:** Whether the prosecution of an enrolled member of the Creek Tribe for crimes committed within the historical Creek boundaries is subject to exclusive federal jurisdiction.



**Holding:** For purposes of the Major Crimes Act, land reserved for the Creek Nation since the 19<sup>th</sup> century remains “Indian country.”

# *Department of Homeland Security v. Regents of the University of California*

Decided: 6.18.2020

Consolidated with: *Trump v. NAACP*; *Wolf v. Vidal*.

## **Issue(s):**

- Whether the Department of Homeland Security's decision to wind down the Deferred Action for Childhood Arrivals (DACA) policy is judicially reviewable.
- Whether DHS's decision to wind down the DACA policy is lawful.

**Holding:** The Department of Homeland Security's decision to rescind the Deferred Action for Childhood Arrivals program was arbitrary and capricious under the Administrative Procedure Act.



# *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*

Decided: 6.1.2020

Consolidated with four other cases: *Aurelius Investment, LLC v. Puerto Rico*, *Official Committee of Debtors v. Aurelius Investment, LLC*, *United States v. Aurelius Investment, LLC*, *UTIER v. Financial Oversight and Management Board for Puerto Rico*.

## **Issue(s):**

- Whether the Appointments Clause governs the appointment of members of the Financial Oversight and Management Board for Puerto Rico.
- Whether the de facto officer doctrine allows courts to deny meaningful relief to successful separation-of-powers challengers who are suffering ongoing injury at the hands of unconstitutionally appointed principal officers.

**Holding:** The Constitution's appointments clause does not restrict the appointment or selection of members of Puerto Rico's Financial Oversight and Management Board, who are appointed by the president without the Senate's advice and consent.



# *June Medical Services LLC v. Russo*

Decided: 6.29.2020

Consolidated with: *Russo v. June Medical Services LLC*.

**Issue:** Whether the U.S. Court of Appeals for the 5th Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with the Supreme Court's binding precedent in *Whole Woman's Health v. Hellerstedt*.

**Holding:** Louisiana's Unsafe Abortion Protection Act, requiring doctors who perform abortions to have admitting privileges at a nearby hospital, is unconstitutional.



# *Seila Law LLC v. Consumer Financial Protection Bureau*

Decided: 6.29.2020

## **Issue(s):**

- Whether the vesting of substantial executive authority in the Consumer Financial Protection Bureau, an independent agency led by a single director, violates the separation of powers.
- Whether, if the Consumer Financial Protection Bureau is found unconstitutional on the basis of the separation of powers, 12 U.S.C. §5491(c)(3) can be severed from the Dodd-Frank Act.

**Holding:** The Consumer Financial Protection Bureau's leadership by a single Director removable only for inefficiency, neglect or malfeasance violates the separation of powers.





# *Trump v. Mazars USA, LLP*

Decided: 7.9.2020

Consolidated with: *Trump v. Deutsche Bank AG*.

Linked with: *Trump v. Vance*.

**Issue:** Whether the Committee on Oversight and Reform of the U.S. House of Representatives has the constitutional and statutory authority to issue a subpoena to the accountant for President Trump and several of his business entities demanding private financial records belonging to the president.



**Holding:** Although congressional subpoenas for the president's information may be enforceable, the court below in this case did not take adequate account of the significant separation of powers concerns implicated by subpoenas from the House of Representatives seeking President Donald Trump's financial records.

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First Amendment &  
Religious Liberty



# *Barr v. American Association of Political Consultants Inc.*

Decided: 7.6.2020

## Issues:

- Whether the government-debt exception to the Telephone Consumer Protection Act of 1991's automated-call restriction violates the First Amendment.
- If so, whether the proper remedy for any constitutional violation is to sever the exception from the remainder of the statute.

**Holding:** The government-debt exception is a content-based speech restriction that impermissibly favors debt-collection speech over political and other speech in violation of the First Amendment, but the exception is severable from the rest of the Telephone Consumer Protection Act of 1991.



# *U.S. Agency for Int’l Development v. Alliance for Open Society Int’l*

Decided: 6.29.2020

**Issue:** Whether—when in *Agency for International Development v. Alliance for Open Society International Inc.*, the Supreme Court held that the First Amendment bars enforcement of Congress’ directive, which required respondents, United States-based organizations that receive federal funds to fight HIV/AIDS abroad, to “have a policy explicitly opposing prostitution and sex trafficking” as a condition of accepting those funds—the First Amendment further bars enforcement of that directive with respect to legally distinct foreign entities operating overseas that are affiliated with respondents.



**Holding:** Because the foreign affiliates of American NGOs possess no First Amendment rights, the requirement for funding under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act that organizations have “a policy explicitly opposing prostitution and sex trafficking,” as applied those foreign affiliates, does not violate the Constitution.

# *Our Lady of Guadalupe School v. Morrissey-Berru*

Decided: 7.8.2020

Consolidated with: *St. James School v. Biel*.

**Issue:** Whether the First Amendment's religion clauses prevent civil courts from adjudicating employment-discrimination claims brought by an employee against her religious employer, when the employee carried out important religious functions.

**Holding:** The “ministerial exception” under the religion clauses of the First Amendment forecloses the adjudication of employment-discrimination claims of Catholic school teachers in these cases.



# *Espinoza v. Montana Department of Revenue*

Decided: 6.30.2020

**Issue:** Whether it violates the religion clauses or the equal protection clause of the United States Constitution to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools.



**Holding:** The application of the Montana Constitution's No-Aid Provision to invalidate a state program providing tuition assistance to parents who send their children to private schools violates the Free Exercise clause of the U.S. Constitution.

# *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*

Decided: 7.9.2020

Consolidated with: *Trump v. Pennsylvania*.

## **Issue(s):**

- Whether a litigant who is directly protected by an administrative rule and has been allowed to intervene to defend it lacks standing to appeal a decision invalidating the rule if the litigant is also protected by an injunction from a different court.
- Whether the federal government lawfully exempted religious objectors from the regulatory requirement to provide health plans that include contraceptive coverage.

**Holding:** The Departments of Health and Human Services, Labor and the Treasury had authority under the Affordable Care Act to promulgate rules exempting employers with religious or moral objections from providing contraceptive coverage to their employees. Little Sisters of the Poor Saints Peter and Paul Home had standing to participate in the case.





# *South Bay United Pentecostal Church v. Newsom*

Decided: 5.29.2020

- “The precise question of when restrictions on particular social activities should be lifted during the pandemic,” Roberts reasoned, “is a dynamic and fact-intensive matter subject to reasonable disagreement.”
- It is also a question the Constitution has primarily delegated to politicians, which courts should normally not second-guess.
- “That is especially true,” Roberts explained, in a case like this one, in which the church is seeking emergency relief “while local officials are actively shaping their response to changing facts on the ground.”



# *South Bay United Pentecostal Church v. Newsom*

Decided: 5.29.2020

**JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would grant the application.**

- “The basic constitutional problem is that comparable secular businesses are not subject to a 25% occupancy cap, including factories, offices, supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, bookstores, florists, hair salons, and cannabis dispensaries.”
- “The Church and its congregants simply want to be treated equally to comparable secular businesses. California already trusts its residents and any number of businesses to adhere to proper social distancing and hygiene practices. The State cannot ‘assume the worst when people go to worship but assume the best when people go to work or go about the rest of their daily lives in permitted social settings.’”

# *Elder David A. Bednar on Religious Freedom*

June 17, 2020





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# October 2020 Term: Key Cases of Interest

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- *Borden v. United States*
- *Brownback v. King*
- *California v. Texas*
- *Carney v. Adams*
- *CIC Services, LLC v. Internal Revenue Service*
- *FNU Tanzin v. Tanvir*
- *Ford Motor Company v. Montana Eighth Judicial District Court*
- *Fulton v. City of Philadelphia*
- *Google LLC v. Oracle America Inc.*
- *Henry Schein Inc. v. Archer and White Sales Inc.*
- *U.S. Fish and Wildlife Service v. Sierra Club*
- *United States v. Briggs*
- *Van Buren v. United States*

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