Provisional Report on the 2019 Term[*]

Lee Epstein, Andrew D. Martin, & Kevin Quinn[†]

July 10, 2020

Unless otherwise indicated, the data are from the Supreme Court Database and include all orally argued cases,[1] but count only the lead case when one or more cases are consolidated under a single citation.

The Upshot

A Fractured/Polarized Court . . .

1. Some data point to a fractured/polarized Court, with extreme views on public policy and battles over methodology.

2. Revealing is that the fraction of cases with one or more concurring votes is the highest since at least 1937.

3. Also revealing is the range in liberal voting in non-unanimous decisions for justices on the extreme left and right: 71% liberal (Sotomayor) to 26% liberal (Alito and Thomas)—a 45 percentage-point gap.

But the Center Holds

1. Nonetheless this wasn't an especially good term for extremists on either side. The Trump tax cases (the extreme right lost) and the July 8 religion decisions (the extreme left lost) are illustrative. More generally:

   - Sotomayor/Ginsburg on the left and Alito/Thomas on the right were less often in the majority in divided decisions than the other five justices.

- The data also show a lower percentage of a 5-4/5-3 decisions than in the last few terms: 21% this term versus 31% in 2017 and 29% in 2018. Considering the clear partisan/ideological sorting on the Court, the decline is not just unexpected; it's a challenge to theoretical accounts that would predict stronger partisan animus during a presidential election year.
- The decline in closely-divided decisions most likely reflects a combination of (1) an increasing gap between Kagan/Breyer and Sotomayor, (2) Roberts moderating, and (3) a growing soft middle of Roberts-Kavanaugh-Gorsuch.
- Likewise, the data show a centrist Court, producing 50-50 liberal/conservative decisions.

Roberts

1. The 50-50 centrist pattern seems to trace to Roberts. He moderated ideologically, voted with the majority at near-record levels, he was in the majority in all but one of the 5-4/5-3 decisions (a record for a modern-day Chief), he's the clear median, and he didn't especially privilege the Republican appointees over the Democrats (except in most 5-4 decisions). His average agreement rate, in non-unanimous decisions, with the Democrats was 61%, up 17 percentage-points from 2018 (which was 44%); his average agreement rate with the Republicans is about the same as last year (around 70%). In a day and age of "fear and loathing" between opposing partisans, this is pretty extraordinary.

2. At this point, Roberts is vying to the be the most liberal median in the last five decades. He is drifting left at a statistically significant rate—and at a rate roughly resembling Souter's liberal turn in the 1990s.

3. So: Clearly it's Roberts' Court. On common metrics, he's the most powerful player—and indeed the most powerful Chief since at least 1937.

4. Still: It would be a mistake to ignore the implications of the soft middle forming with Roberts and (either or both of) the Trump appointees.

The President's Win Rate

1. Overall, President Trump is the first president since at least FDR to lose more cases than he won (though the data can't speak to whether this is about Trump or part of the trend toward less deference to the president).

2. But the 2019 term wasn't Trump's worst. This term he went 50-50. That's lower than last term (55%) but higher than 2017 (46%).

Contents

1   Number of Cases

1. Figure 1 shows the number of *signed* majority opinions/judgments in cases that were definitely orally argued (this is a question in some of the older cases); consolidated cases are counted only once.

2. This term's 53 cases is the lowest since the 1860s (1860= 53; 1864= 49).

3. Looking at the 1918 term/pandemic: the Court decided 163 cases—over 3 times as many as this term.
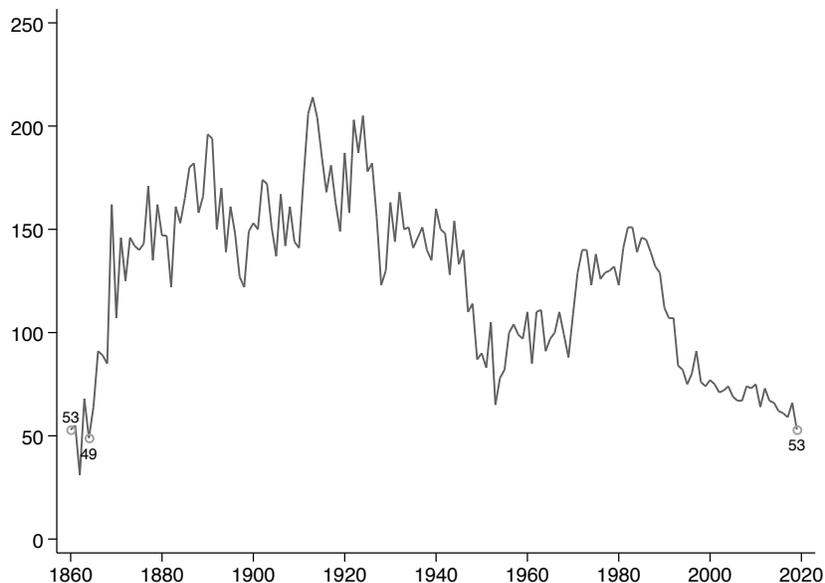
Figure 1: Number of cases with signed majority opinions/judgments that were definitely orally argued. The numbers in the graph correspond to the 1860 (53 cases), 1864 (49 cases), and 2019 (53 cases). Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

2 Dissents

2.1 Overall Numbers

1. The percentage of orally argued cases with at least one dissenting vote is the highest in the last five terms: 64%.

2. This is about 7 percentage points higher than the mean for the Roberts Court (57%).

2.2 Who's Dissenting?

1. Definitely not Roberts. In all cases he was in the majority in 96%; and in cases with at least one dissent, 94% (see Table 1)—meaning he's dissented in only two cases (*Ramos v. Louisiana* and *McGirt v. Oklahoma*).

2. Since the 1953 term: Roberts' 94% is the highest of any Chief. It also puts him in the top 5 lowest dissenters since '53. That is, looking at each justice in each term since 1953—601 observations in all[2]—only Brennan (1964, 1965, and 1968 terms) and Kennedy in 2006[3] voted with the majority in a higher percentage of cases. (More on Roberts below, under Section 6.)

3. Kavanaugh, still mostly hewing to the CJ, isn't dissenting much either.

---

[2]The figure of 601 excludes five justice-terms in which the justice cast fewer than 10 votes.

[3]Kennedy, in 2015, is tied with Roberts in 2019

4. Noteworthy too is that Gorsuch's majority voting has gone way up: from 60% in non-unanimous decisions in the 2018 term to 83% this term.

5. The relative losers in divided cases are the extreme justices on both sides: Thomas/Alito and Sotomayor/Ginsburg.

Fraction in Majority All Cases		Fraction in Majority Non-Unanimous Cases	
JGRoberts	0.96	JGRoberts	0.94
BMKavanaugh	0.93	BMKavanaugh	0.89
NMGorsuch	0.89	NMGorsuch	0.83
EKagan	0.80	EKagan	0.69
SGBreyer	0.79	SGBreyer	0.67
RBGinsburg	0.75	RBGinsburg	0.61
SAAlito	0.73	SAAlito	0.58
SSotomayor	0.73	SSotomayor	0.58
CThomas	0.71	CThomas	0.56
Average	0.81	Average	0.71

Table 1: Voting with the majority by justice, 2019 Term. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

6. In terms of party, see Table 2. The gap between the Democratic and Republican appointees has grown since last term: 8 percentage points in all cases and 12 percentage points in non-unanimous decisions (compared with 3 last term). The gaps seem to trace to more majority voting on the part of the Republican appointees (the percentage for the Democrats is roughly the same as last term).

	Fraction in Majority All Cases		Fraction in Majority Non-Unanimous Cases	
	2018 Term	2019 Term	2018 Term	2019 Term
Republicans	0.80	0.85	0.68	0.76
Democrats	0.78	0.77	0.65	0.64
%-Point Gap b/n Ds and Rs	0.02	0.08	0.03	0.12

Table 2: Voting with the majority by the justice's political party, 2018 and 2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

3   Solo Dissents

1. Solo dissents are unusual on the Roberts Court: Only 8.5% overall (7.8% during the Rehnquist Court but 15% and 12% during the Warren and Burger Courts).

2. Kagan, Roberts, and Kavanaugh have never issued a solo dissent.

3. Of the 59 solo dissents since 2010, the more ideologically extreme justices are responsible for 79% (46/59): RBG (10)/Sotomayor (11) and Alito (8)/Thomas (17).

4. Another way to think about solo dissents is as the percentage of each justice's dissents that are alone. On this metric, Thomas and Sotomayor are in the top 10 since 1937.

5. As for the 2019 term, there were only 6 cases with a solo dissent: 2 for Thomas and 1 each for Alito, Breyer, Ginsburg, and Sotomayor

4   Concurrences

4.1   Overall Numbers

1. The percentage of cases with at least one concurring vote—59%—is the highest since at least 1937. See Figure 2. (The percentage with one or more concurrences in the judgment is higher this term than last (21% v. 16%) .)

Figure 2: Fraction of orally argued decisions with one or more concurring votes, 1937-2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

2. The percentage of decisions with no concurring or dissenting votes is 14%—the lowest in the last 10 years. Last term it was 25%; in 2016 it was nearly 30% (see Figure 3).
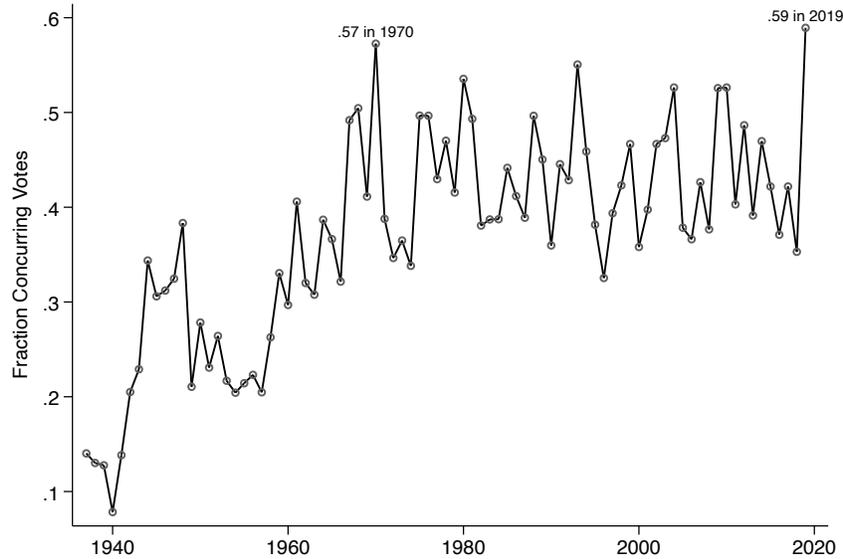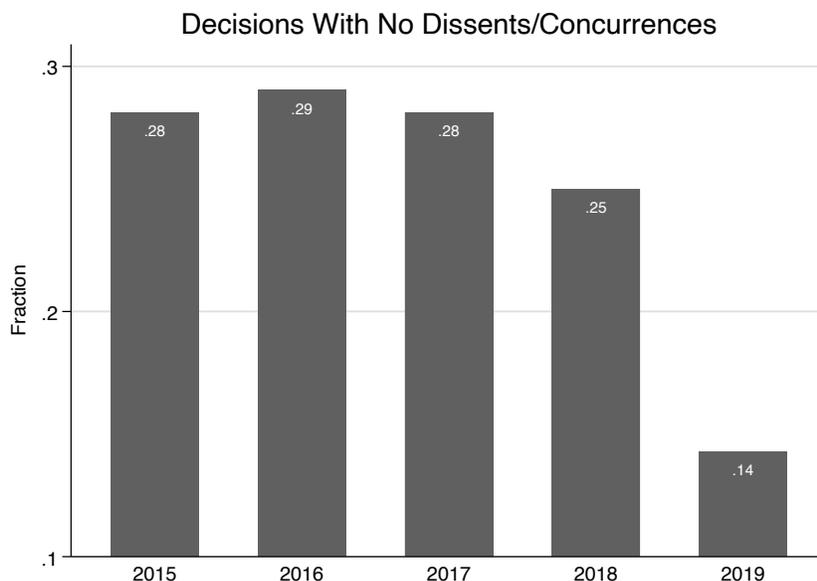
Figure 3: Fraction of orally argued decisions with no concurring or dissenting votes, 2015-2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

3. The unanimity rate is slightly lower than last term (36% versus 38% in 2018), but it's somewhat illusory. In 60% of "unanimous" decisions at least one justice cast a concurring vote. This is very high—again, the highest in the last 10 terms. E.g., in only about a third of the unanimous decisions in 2018 was there a concurring vote(s) (see Figure 4).

Figure 4: Fraction of unanimous decisions with at least 1 concurring vote, 2015-2019 terms (includes cases decided through July 6).

4. The justices produced nearly as many concurring opinions (44) as dissenting opinions (49)—about .79 concurring opinions per case (44/56). That's much higher than last term (.54), and, in fact, it's the highest in a decade.
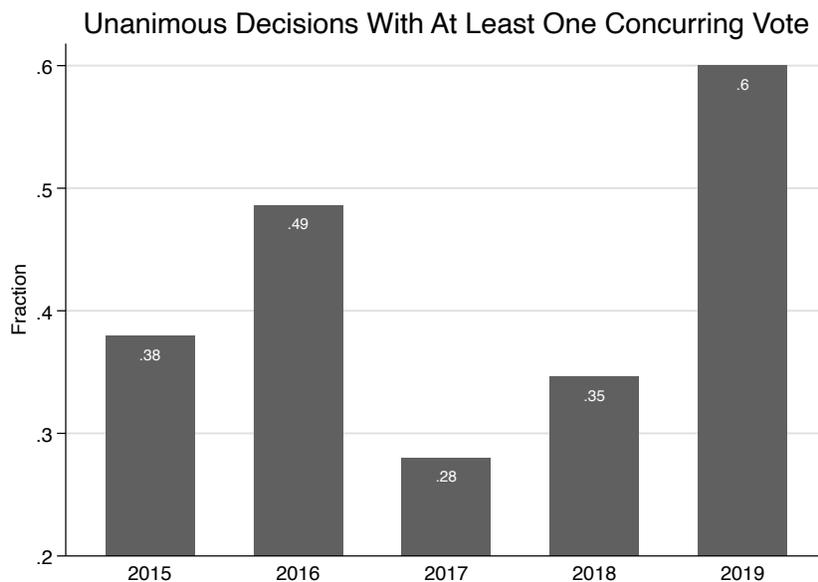
4.2   Who's Concurring?

1. Concurrences are coming from the two extreme justices, Sotomayor and Thomas, plus Gorsuch (Table 3).

Fraction Concurring All Cases		Fraction Concurring Non-Unanimous Cases	
CThomas	0.29	CThomas	0.28
NMGorsuch	0.21	NMGorsuch	0.25
SSotomayor	0.16	SSotomayor	0.17
RBGinsburg	0.11	BMKavanaugh	0.11
SAAlito	0.11	SAAlito	0.08
BMKavanaugh	0.09	RBGinsburg	0.08
EKagan	0.07	EKagan	0.06
SGBreyer	0.07	SGBreyer	0.06
JGRoberts	0.02	JGRoberts	0.03
Average	0.13		0.12

Table 3: Concurring votes, 2019 term. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

2. In terms of party: There's a gap between the Republican and Democratic appointees, with the Republicans concurring at higher rates overall (14% versus 10%) and in non-unanimous decisions (15% versus 9%), suggesting that the Republicans (especially Gorsuch and Thomas) drove up the rate (see Figure 2 above).

5   The Democratic Appointees

5.1   The Bad News for the Democrats

1. As Table 2 showed, the gap between the Democratic and Republican appointees in majority voting in non-unanimous decisions is larger than last term (though, again, that seems attributable to higher majority voting by the Republicans).

2. With the exceptions of *June Medical Services*, DACA, and *McGirt* the 12 5-4/5-3 decisions didn't go the Democrats' way. See Table 4 below comparing this and last term. Note the gap (percentage-point difference): nearly 47 versus 7 last term.

8

	5-4/5-3 Decisions	
	% in Majority 2018 Term	% in Majority 2019 Term
Republicans	59.2	76.7
Democrats	52.5	29.8
%-Point Gap between Rs & Ds	6.7	46.9

Table 4: Voting with the majority by the justice's political party in 5-3/5-4 decisions, 2018 and 2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

3. Turning to Table 5 below, Roberts was in the majority in all but one of the 12 5-4/5-3 decisions (*McGirt*)—92% majority voting. (In 2018 he was in the majority in only 55% of the 5-3/5-4 decisions. See Section 6.2.)

4. And Gorsuch and Kavanaugh aren't that far behind, 83% and 75%.

Fraction Majority 5-3/5-4 2018		Fraction Majority 5-3/5-4 2019	
NMGorsuch	0.65	JGRoberts	0.92
BMKavanaugh	0.61	NMGorsuch	0.83
CThomas	0.60	BMKavanaugh	0.75
JGRoberts	0.55	CThomas	0.67
SAAlito	0.55	SAAlito	0.67
SGBreyer	0.55	EKagan	0.36
RBGinsburg	0.55	SSotomayor	0.33
EKagan	0.50	RBGinsburg	0.25
SSotomayor	0.50	SGBreyer	0.25
Average	0.56		0.56

Table 5: Voting with the majority in 5-3 or 5-4 decisions, 2018 and 2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

5. The implication here is that, although Roberts is the clear median, a soft middle, capable of prevailing in most close cases, is forming with Roberts and (one or both of) the Trump appointees (see also Figure 8 below).

- This suggests that the Democrats will lose more often than they'll win (compare 2018 and 2019 in Table 5).

- BUT: There are more opportunities for the Democrats to form minimum-winning (5-4/5-3) coalitions with one or more Republicans (e.g., *McGirt*), assuming Gorsuch and Kavanaugh remain well to the right of Alito/Thomas.

- This is a real difference from decades of Kennedy domination (and the mostly large gap between Kennedy and Roberts); it's a throwback to the days of White/Powell/Stewart.

6. The 12 closely divided decisions provide some support for these claims. 8 (67%) were the classic Republican-Democratic split.[4]

   - In 2 (DACA and *June Medical Services*), Roberts joined the Democrats.
   - In 1 (*McGirt*), Gorsuch joined the Democrats.
   - In 1 (*Public.Resource.Org*), the 2 Obama appointees and the 2 Trump appointees joined Roberts

5.2   The Better News for the Democrats

1. Although the Democratic appointees lost most 5-4/5-3 decisions, one-vote difference cases aren't as prevalent as they've been in the last few terms: 21% this term versus 31% in 2017 and 29% in 2018. (As noted earlier, this likely reflects a combination of factors: Roberts, the soft middle, and splits on the left side of the Court; more on this below.)

2. Also, this term wasn't the Democratic blood bath that it was in 2005 and again in 2008 (36% liberal decisions overall and 33% in non-unanimous decisions) probably because Roberts has moved to the left overall (if not in 5-4 decisions), nearly picking up where Kennedy left off (see Section 6).

3. That was clear in DACA, Title VII, and abortion, but also in the overall ideological direction of the Court's decisions. See the trend lines in Figure 5, showing an increasingly liberal Court.

---

[4]*Kansas v. Garcia, Barton v. Barr, Hernandez v. Mesa, McKinney v. AZ, Thole v. US Bank, Agency for International Development v. Alliance, Seila Law,* and *Espinoza.*
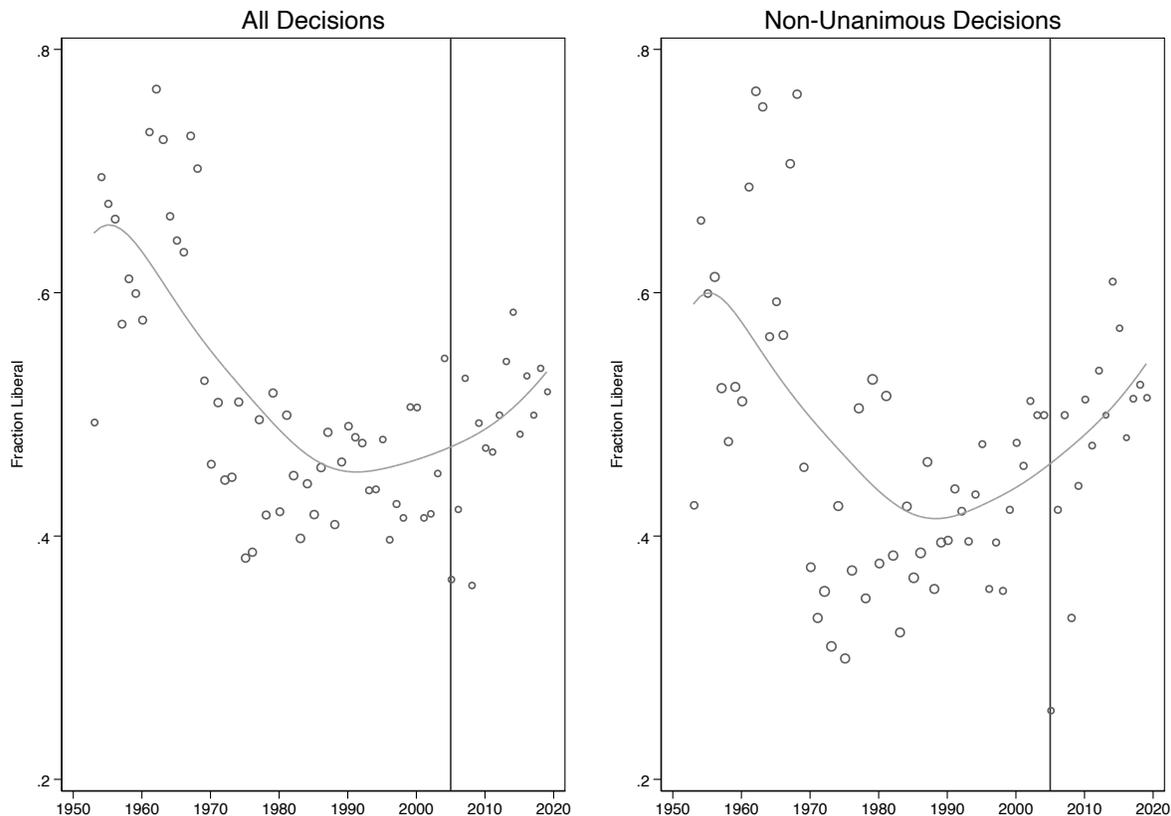
Figure 5: Fraction of liberal decisions, 1953-2019 terms. The circles show the fraction liberal each term, with size of the circles weighted by the number of cases. The dark vertical line is the start of the Roberts Court (2005 term). Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

6 It's the Roberts Court

On common metrics Roberts is the most powerful player on the Court; and the most powerful Chief since at least 1937.

6.1 Majority Voting

1. Between the 2005-2018 terms, Roberts averaged about 88% voting in the majority in all cases; this term, he hit 96%. See Table 6.

2. This means that Roberts assigned every majority opinion this term except *Ramos* and *McGirt*, assuming no consequential vote changes.

3. Even more stunning is that Roberts voted with the majority in 94% of the non-unanimous decisions, compared with his average of 80%. See Table 6.

	Roberts Voting with the Majority	
	All Cases	Non-Unan. Cases
2005	0.91	0.81
2006	0.88	0.82
2007	0.90	0.85
2008	0.82	0.73
2009	0.91	0.84
2010	0.91	0.83
2011	0.89	0.82
2012	0.85	0.73
2013	0.91	0.78
2014	0.77	0.64
2015	0.89	0.80
2016	0.93	0.85
2017	0.92	0.87
2018	0.84	0.74
2019	0.96	0.94
Average	0.89	0.80

Table 6: Roberts' voting with the majority, 2005-2019 Terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

4. This is the best showing by a Chief Justice since at least the 1953 term. As Figure 6 shows, Burger and Rehnquist were way behind Roberts. In non-unanimous decisions, they averaged 79% (Burger) and 74% (Rehnquist as Chief). Their best terms were 89% (Burger) and 85% (Rehnquist). (Only Warren, in the 1965 term, came close to Roberts.)
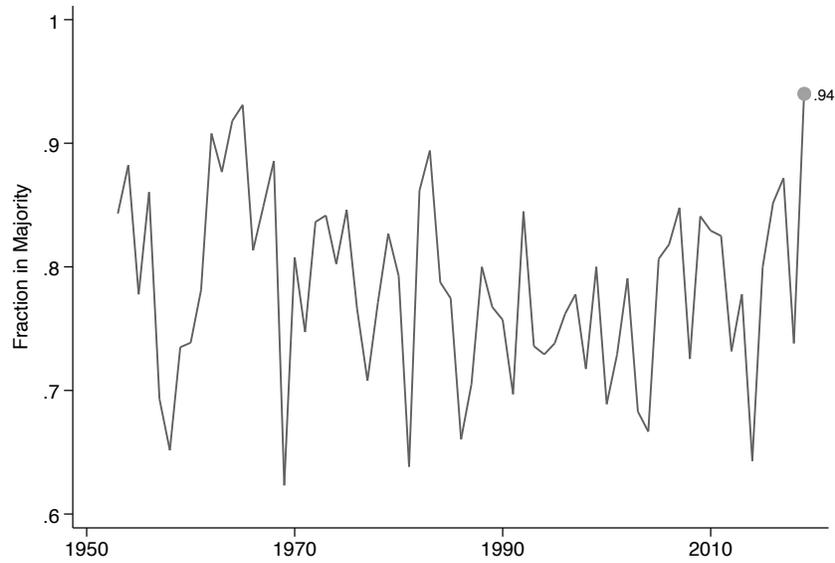
Figure 6: Chief Justice voting with the majority in non-unanimous decisions, 1953-2019 terms.

6.2 Majority Voting in 5-3/5-4 Decisions

1. Equally impressive is Roberts' 2019 term majority voting in 5-3/5-4 decisions (see Table 7). Never has he so often been in the majority in close cases. Last term he was in the majority in only 55% and his overall average is 65%.

Roberts Voting with the Majority in 5-3/5-4 Decisions	
2005	0.62
2006	0.68
2007	0.64
2008	0.54
2009	0.71
2010	0.65
2011	0.60
2012	0.63
2013	0.70
2014	0.50
2015	0.57
2016	0.56
2017	0.90
2018	0.55
2019	0.92
Average	0.65

Table 7: Roberts' voting with the majority in 5-3/5-4 decisions, 2005-2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

2. As Figure 7 shows, Roberts' 92% majority voting in 5-3/5-4 decisions is a modern-day record for Chief Justices. Only Roberts himself came close (in 2017). Warren hit 87.5% in 1964; Burger's high was 81.8% in 1972; and Rehnquist's was 77% in 1988.
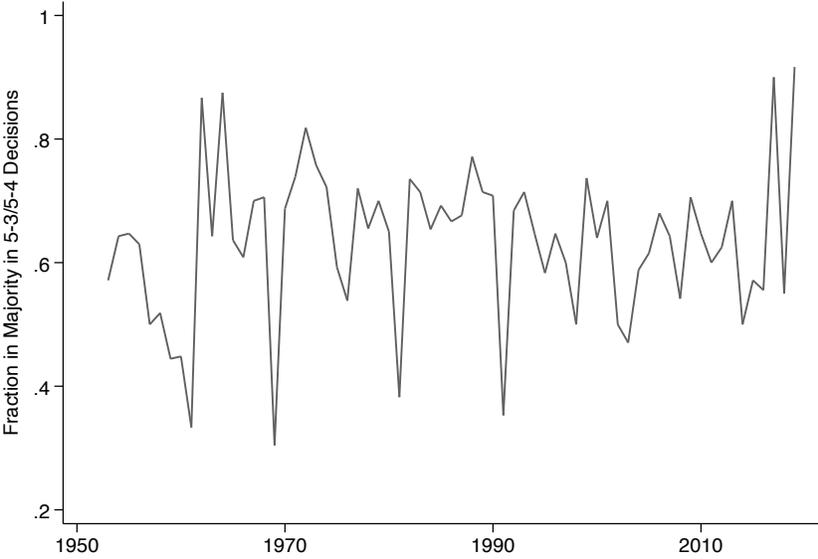

Figure 7: Chief Justice voting with the majority in 5-3 or 5-4 decisions, 1953-2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

6.3 Median Justice

MQ Scores

1. According to the MQ scores, Roberts is the median justice with a 0.81 probability. Kavanaugh isn't as close anymore (0.17 probability). Some separation between the two is clear in Figure 8, which uses the 2019 MQ scores to place the justices in left-right space.

   - At the same time, that soft middle, referenced earlier, shouldn't be neglected, assuming either or both Trump appointees stick close to Roberts.
   - Likewise, note the growing gaps on the left side of the Court, with Breyer and Kagan separating from RBG/Sotomayor, and RBG from Sotomayor. This is even more noticeable in Figure 9 but a bit of data makes the point: The average MQ distance between Sotomayor and Kagan is about 1.1 for the 2010-2018 terms; this term it's grown to 1.8
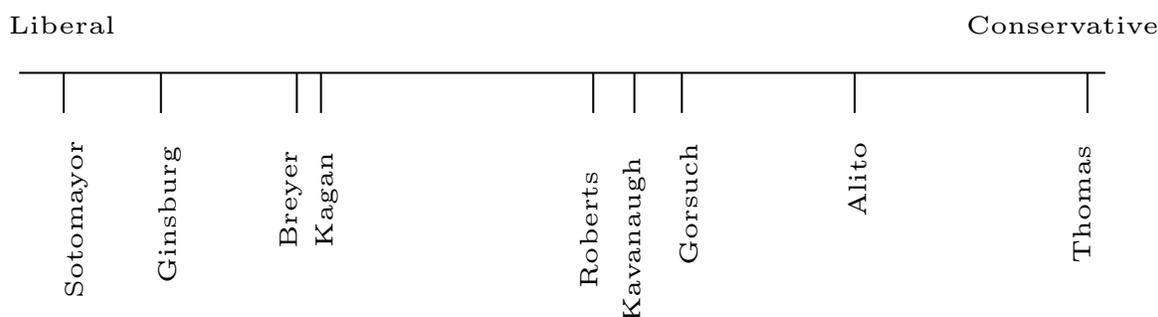

Figure 8: Justices' MQ scores, 2019 term. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

2. The MQ scores also show that **no** Chief Justice (at least since 1937) has ever been the median justice save for Hughes in the early part of the 1937 term (but not the full term).

Fraction Liberal Votes

1. Using the fraction of liberal votes instead of the MQ scores also shows a highly polarized Court. Consider the range of liberal voting: In non-unanimous decisions, from 71% to 26%— a 45 percentage-point difference. See Table 8.

2. But, again, Roberts is in the middle, with a 25 percentage-point difference between him and the extreme left and a 20 percentage-point difference with the extreme right in non-unanimous decisions.

3. In part because of the CJ's relatively moderate voting, the Court is producing roughly 50-50 liberal-conservative decisions, overall and in non-unanimous decisions.

Fraction Liberal All Cases		Fraction Liberal Non-Unanimous Cases	
SSotomayor	0.65	SSotomayor	0.71
SGBreyer	0.63	SGBreyer	0.69
EKagan	0.63	EKagan	0.68
RBGinsburg	0.60	RBGinsburg	0.63
JGRoberts	0.48	**JGRoberts**	0.46
NMGorsuch	0.46	NMGorsuch	0.43
BMKavanaugh	0.43	BMKavanaugh	0.40
CThomas	0.35	CThomas	0.26
SAAlito	0.35	SAAlito	0.26
Average	0.51	Total	0.50

Table 8: Fraction liberal voting, 2019 term. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

6.4 Leftward Drift

1. Roberts' moderation fits with his leftward drift. See Figure 9 below.

2. If Roberts continues to move left, he could turn out to be the most liberal median in at least five decades—since the start of the Burger Court in 1969. His MQ "median" score is gaining ground on the other most liberal Republican medians of the era (all of whom drifted left)—Blackmun, O'Connor, and especially Kennedy, the most liberal median of all in 2015 (see the black median line in Figure 9).
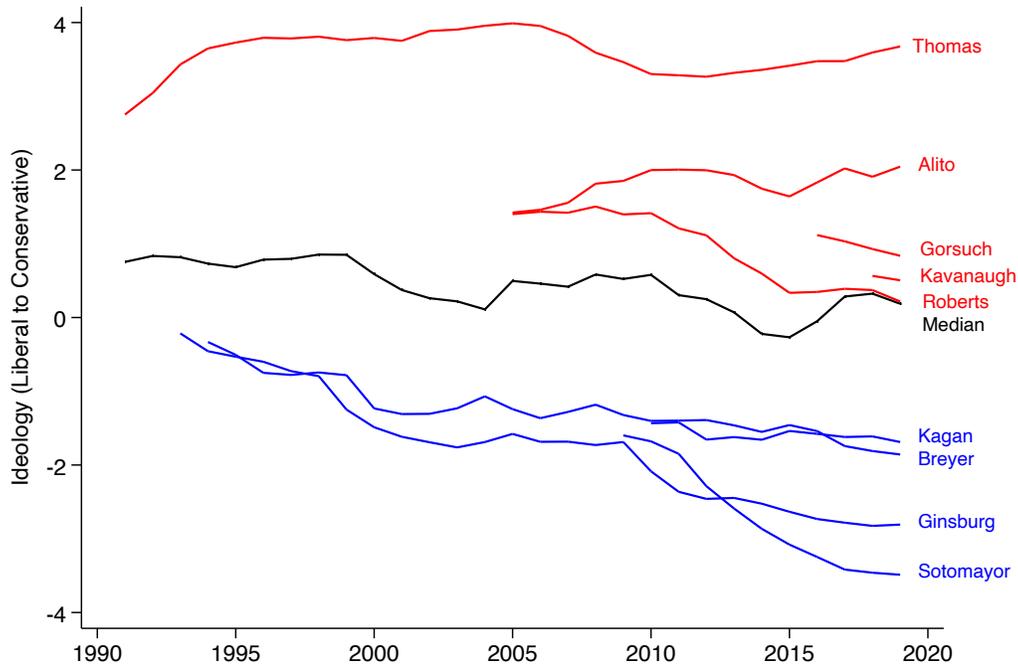
Figure 9: Justices' MQ (ideology) scores, 1991-2019 terms. The scores are the *post_mn* for each justice. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

3. Roberts' drift rate is statistically significant, and is roughly equivalent to Souter's.[5]

4. Figure 4 visually depicts the Republican drifters, along with two (relative) non-drifters, Alito and Kagan.[6] The left panel shows the MQ ideology scores each term; the right panel shows the scores by a counter for each term on the Court.

---

[5]This claim is based on a regression of the justice's MQ score (each term) on term. The resulting slope coefficient tells you how much the MQ score is growing more liberal with each passing time.

[6]Both have drifted but not against type: Kagan has moved somewhat to the left and Alito, to the right.
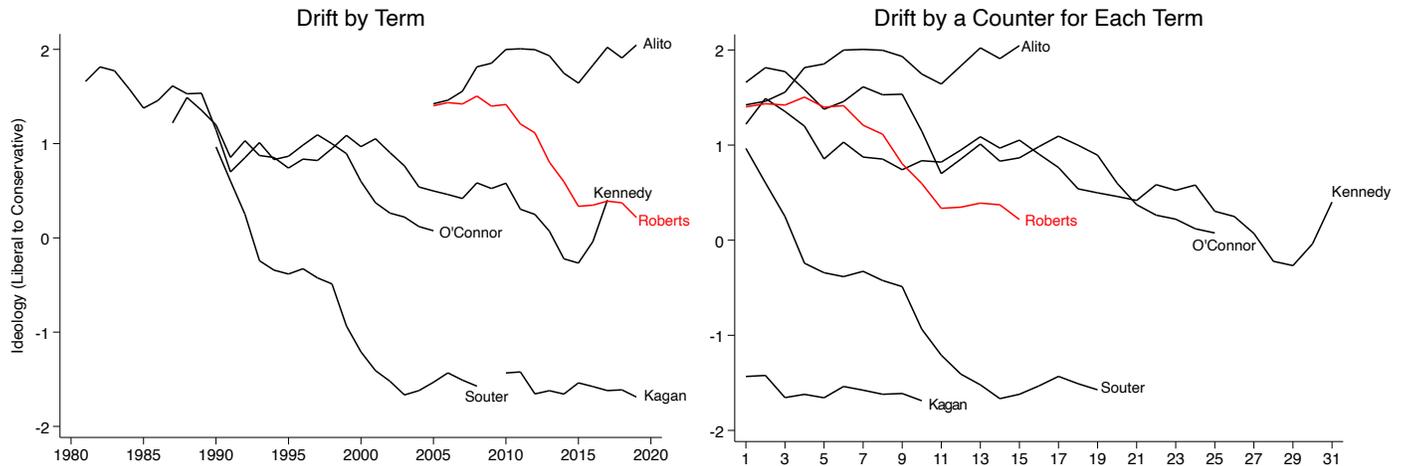
Figure 10: Republican drifters (plus Kagan and Alito), 1969-2019 terms. The data are the justices' MQ (ideology) scores (*post_mn*). Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

5. Both panels suggest that Roberts' leftward drift has been fairly steady, not unlike Souter's.

6. The left panel (by term) highlights the growing gap between Alito and Roberts and the narrowing gap between Roberts and Kagan. Although Alito and Roberts started at a nearly identical ideological level, the distance between them now is roughly similar to the distance between Kagan and Roberts.

7. The right panel (by counter) makes a cleaner apples-to-apples comparison. Comparing Roberts and Souter in their 15th term (2019 for Roberts and 2004 for Souter), Souter is considerably more liberal. But by that time Souter's leftward drift had stabilized. Roberts, in contrast, is more liberal in 2019 than in 2018 (his 14th term); actually, 2019 was his most liberal term yet based on the MQ scores.

8. Whether Roberts' drift rate too will stabilize or continue to increase to the left, the data don't allow us to say.

7   The Extremists

1. Thomas has always been extreme (see Figure 9 above). But, because of Sotomayor's noticeable left turn, the gap between the two has grown.

2. Focus is usually on the median justice but this term, Thomas and Sotomayor merit some attention—in part because neither had a great term. See, e.g., Table 1, showing them (plus Alito) with the lowest % of majority voting.

3. In other words, unlike in the public, the center seems to holding on the Court, with the extremes missing out.

18

8 The Trump Appointees

8.1 Ideology: No Surprises

1. From the data presented in Table 8 (liberal voting) and Figure 8 (left-right placement), it might appear that the two Trump appointees, Gorsuch and Kavanaugh, are more moderate than expected. Actually, they're voting almost precisely as predicted pre-confirmation.

2. Table 9 makes this point, showing predictions for the fraction of liberal votes based on an analysis of editorials prior to each justice's confirmation;[7] Figure 11 graphically displays the data. The editorial ratings are from 0 (most conservative) to 1 (most liberal); and the data cover the 2018 and 2019 terms (when both Kavanaugh and Gorsuch were on the Court).

Justice (Editors' Score)	Predicted Liberal Voting	Actual Liberal Voting	Error
Sotomayor (0.78)	0.71	0.69	−0.02
Ginsburg (0.68)	0.66	0.68	0.01
Kagan (0.73)	0.68	0.65	−0.03
Breyer (0.48)	0.57	0.65	0.08
Roberts (0.12)	0.42	0.48	0.06
Gorsuch (0.11)	0.42	0.43	0.02
Kavanaugh (0.07)	0.40	0.42	0.02
Alito (0.10)	0.41	0.38	−0.04
Thomas (0.16)	0.44	0.34	−0.10

Table 9: Justices' predicted and actual fraction liberal voting, 2018-2019 terms. The predicted fraction is based on an analysis of editorials prior to confirmation (in parentheses next to the justices' name). The correlation between the ideology scores (predictions) and the justices' actual fraction liberal voting is 0.93. Due to rounding, errors may look slightly smaller or larger than simple subtraction of predicted from actual scores would suggest. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database and Segal-Cover's editorial scores (see note 7).

3. Overall, the editors do a good job predicting the justices' ideology: the correlation between their predictions and the justices' fraction liberal voting is a high 0.93.[8] Thomas is a clear exception; he's far more conservative than expected; and Roberts' prediction has become less precise as he's drifted to the left.

4. In contrast, Gorsuch's and Kavanaugh's predictions are nearly right on the money, with only a 2% error for each.

---

[7]These are known as the Segal-Cover scores, which are based on an analysis of newspaper editorials prior to confirmation. Jeffrey A. Segal & Albert D. Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices," 83 *American Political Science Review* 557 (1989).

[8]$r^2 = 0.86$, meaning that the editorial scores explain 86% of the variation in the fraction liberal voting.
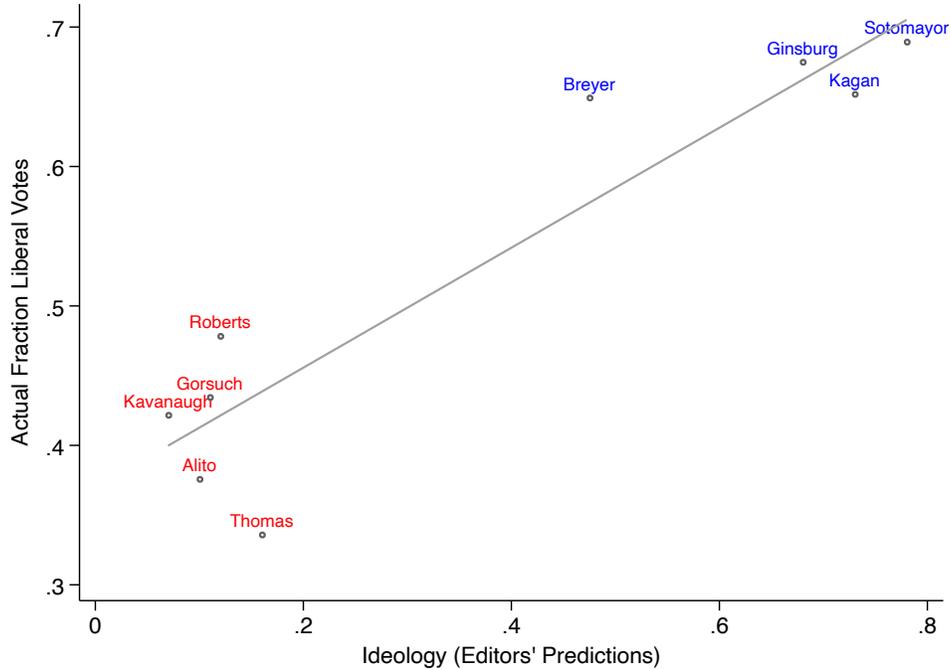
Figure 11: Relationship between the editors' ratings of the justices' ideology and their actual liberal voting, 2018-2019 Terms (includes decisions through July 8). The line shows the prediction between the ratings and liberal voting. The closer a justice is to the line, the better the prediction. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database and Segal-Cover's editorial scores (see note 7).

8.2   Much Higher Agreement Rates

1. In the 2018 term, Kavanaugh's highest agreement rates were with Alito and Roberts (87%), as Table 10 shows (see also Table 12 below for all agreement rates). Gorsuch, in contrast, didn't have especially high rates of agreement with anyone. His highest, with Thomas, was 65%; his percentage with Roberts was only 46%. Gorsuch and Kavanaugh's rate was somewhere in between, at 54%.

2. The picture in 2019 is very different. Gorsuch's agreement rates have gone up with Breyer, Ginsburg, Kagan, Sotomayor, and especially Roberts, at 77% and Kavanaugh, at 83%. 83% is Gorsuch's highest rate and Kavanaugh's second highest (89% with the CJ). Kavanaugh's rates have gone way down with Alito and up with the left side of the Court.

| | Gorsuch | | Kavanaugh | |
| | % Agreement | | % Agreement | |
	2018	2019	2018	2019
Alito	57	63	87	69
Breyer	30	51	49	57
Ginsburg	38	46	41	51
Gorsuch			54	83
Kagan	46	51	49	57
Kavanaugh	54	83		
Roberts	46	77	87	89
Sotomayor	35	49	38	49
Thomas	65	66	68	66

Table 10: Gorsuch's and Kavanaugh's agreement rates in non-unanimous orally argued cases decided by a 9-person Court, 2018 and 2019 terms. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

3. In four of the six cases in which Gorsuch and Kavanaugh disagreed, Gorsuch was in dissent (see Table 11). In all but one of the 6 (*Thryv*), Thomas was a dissenter.

Case	Vote	Majority	Dissent
County of Maui	6-3	BK (concurring)	NG (Thomas, Alito)
Atlantic Richfield Co. v. Christian	7-2	BK	NG (Thomas)
New York State Rifle	6-3	BK (concurring)	NG (Thomas, Alito)
Thryv v. Click-To-Call	7-2	BK	NG (Sotomayor)
Bostock	6-3	NG	BK (Thomas, Alito)
McGirt	5-4	NG	BK (Thomas, Alito, Roberts)

Table 11: 2019 term cases in which Gorsuch and Kavanaugh disagreed. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

9 Agreement Rates

1. Table 12 shows agreement and disagreement rates in non-unanimous decisions, 2018 and 2019 terms, ordered alphabetically, by justice pair.

	2018 Term % Agree	2019 Term % Agree	Difference between 2018-2019
Alito-Breyer	40.5	31.4	−9.1
Alito-Ginsburg	27.0	25.7	−1.3
Alito-Gorsuch	56.8	62.9	6.1
Alito-Kagan	35.1	31.4	−3.7
Alito-Kavanaugh	86.5	68.6	−17.9
Alito-Roberts	83.8	62.9	−20.9
Alito-Sotomayor	24.3	17.1	−7.2
Alito-Thomas	75.7	85.7	10.0
Breyer-Ginsburg	75.7	88.6	12.9
Breyer-Gorsuch	29.7	51.4	21.7
Breyer-Kagan	78.4	82.9	4.5
Breyer-Kavanaugh	48.6	57.1	8.5
Breyer-Roberts	51.4	62.9	11.5
Breyer-Sotomayor	78.4	74.3	−4.1
Breyer-Thomas	21.6	28.6	6.9
Ginsburg-Gorsuch	37.8	45.7	7.9
Ginsburg-Kagan	81.1	77.1	−3.9
Ginsburg-Kavanaugh	40.5	51.4	10.9
Ginsburg-Roberts	37.8	57.1	19.3
Ginsburg-Sotomayor	86.5	80.0	−6.5
Ginsburg-Thomas	18.9	22.9	3.9
Gorsuch-Kagan	45.9	51.4	5.5
Gorsuch-Kavanaugh	54.1	82.9	28.8
Gorsuch-Roberts	45.9	77.1	31.2
Gorsuch-Sotomayor	35.1	48.6	13.4
Gorsuch-Thomas	64.9	65.7	0.8
Kagan-Kavanaugh	48.6	57.1	8.5
Kagan-Roberts	45.9	68.6	22.6
Kagan-Sotomayor	78.4	80.0	1.6
Kagan-Thomas	32.4	22.9	−9.6
Kavanaugh-Roberts	86.5	88.6	2.1
Kavanaugh-Sotomayor	37.8	48.6	10.7
Kavanaugh-Thomas	67.6	65.7	−1.9
Roberts-Sotomayor	40.5	54.3	13.7
Roberts-Thomas	59.5	54.3	−5.2
Sotomayor-Thomas	16.2	14.3	−1.9

Table 12: Agreement rates in non-unanimous orally argued cases decided by a 9-person Court, 2018 and 2019 terms, ordered alphabetically, with Roberts highlighted. Calculated by Lee Epstein and Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, University of Michigan from the Supreme Court Database.

2. A big takeaway is that Roberts' rates of agreement with the Democratic justices have all gone up, from an average of 44% (less than a majority) in 2018 to 61% in 2019. That's a 17 percentage-point increase.

3. Roberts' average rate of agreement with the Republicans is higher—71%, which is about the same as last term (69%). But underlying these averages are some important changes.

- His agreement with Alito has declined dramatically, from 84% to 63%; it's also declined with Thomas (from 60% in 2018 to 54% in 2019).
- Cancelling out those declines is the substantial increase in agreement with Gorsuch: 31 percentage points (from 46% to 77%).

10   President Win Rates

1. These data are updated from Epstein & Posner's work on the Court and the president.[9] They cover orally argued decisions with a signed opinion or judgment, 1932 (FDR)-2019 (Trump) terms.

- In the vast majority of cases, the president was represented by the OSG. But Epstein & Posner's dataset also includes cases in which the president's own attorney represented him. E.g., the Nixon tapes case, *Clinton v. Jones*. For this reason, the update includes the two Trump tax cases.
- Note: The president is the president in office at the time of decision; and consolidated cases are counted only once (on the basis of the lead case). E.g., *Bostock* was not counted as a loss for the Trump administration because *RG & GR Harris Funeral* wasn't the lead case; and *Trump v. Pennsylvania* wasn't counted as a win for the same reason.

2. Figure 12 shows the win rate for each president, which is the N of Cases Won as a Party/Total N of Cases as a Party.

---

[9]With minor corrections. See Lee Epstein & Eric Posner, "The Decline of Supreme Court Deference to the President," 166 *University of Pennsylvania Law Review* 829 (2018); Lee Epstein & Eric Posner, "Supreme Court Justices' Loyalty to the President," 45 *Journal of Legal Studies* 401 (2016).
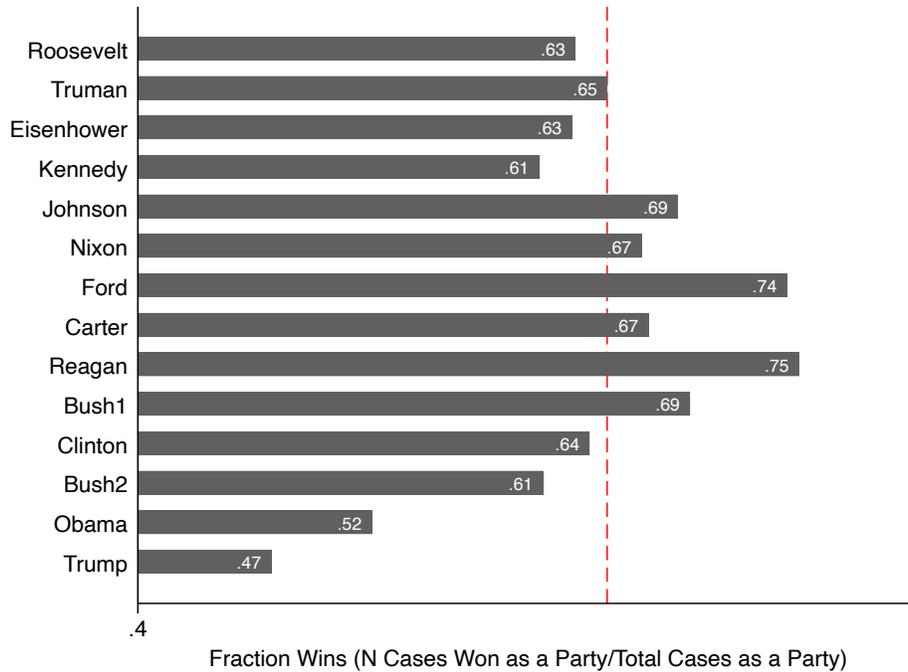
Figure 12: President win rates, 1932-2019 terms. The dashed red line is the weighted mean (0.65).

3. Note that Trump is the first president since at least FDR to lose more cases than he won. But the data can't speak to whether this is about Trump or part of a trend toward less deference to the president.

4. The 2019 term wasn't Trump's worst. This term he went 50-50 wins-losses. That's lower than last term (55%) but better than 2017 (46%). Figure 13 shows the term-by-term win rates, going back to 1932.
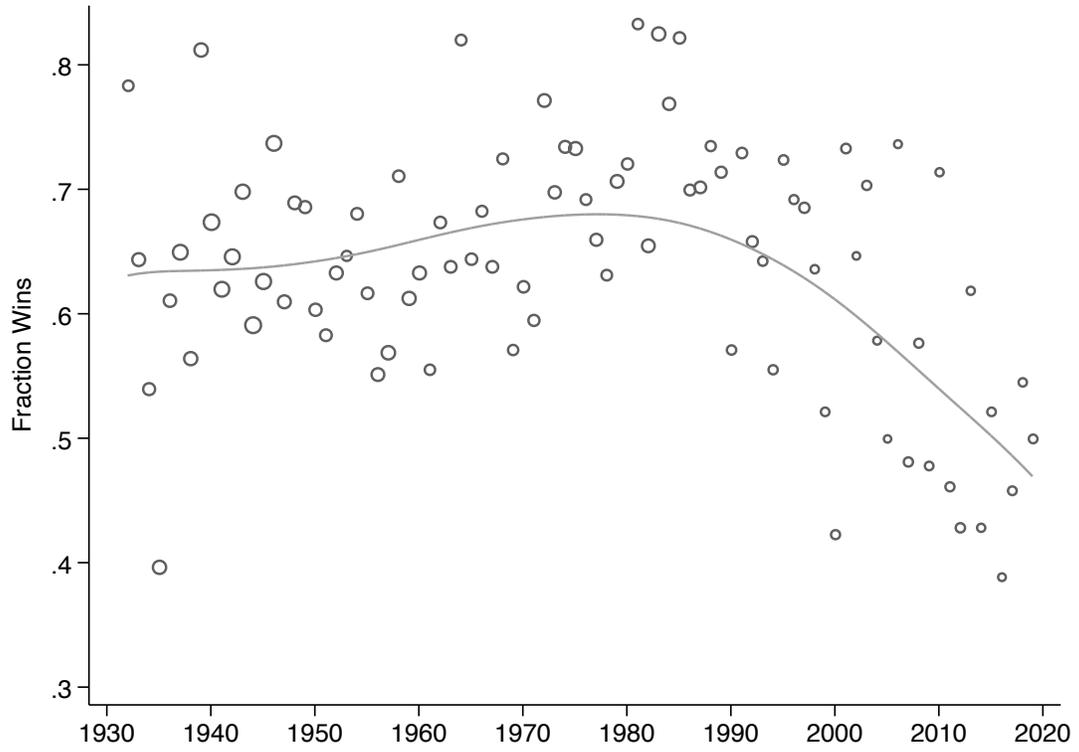
Figure 13: President win rates by term, 1932-2019 terms. The circles show the fraction liberal each term, with size of the circles weighted by the number of cases.