

A photograph of the Supreme Court building at dusk. The building is illuminated from within, and the sky is a deep blue with some clouds. The text "Legal Issues" is overlaid in the center of the image in a white, sans-serif font.

Legal Issues

The SCOTUS 9





Liberal vs Conservative in SCOTUS

Liberal (4)

- Believes the Constitution is a “living document” that must be reinterpreted with the times.
- More likely to make decisions on the “spirit of the law.”
- Believes the court is an important force for social change
- May be called a judicial activist
- More likely to be appointed by a Democratic president

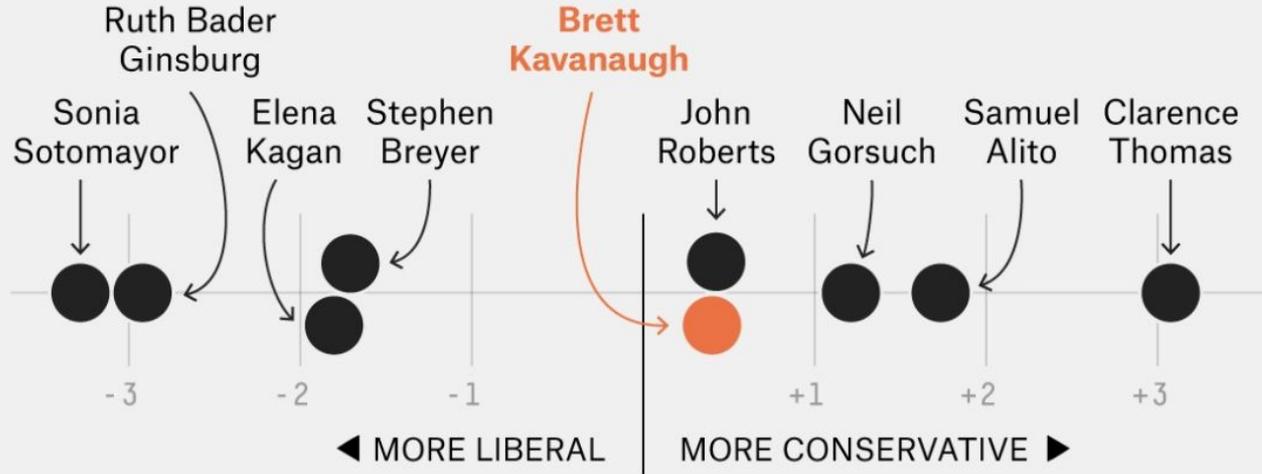
Conservative (5)

- Believes the Constitution must be interpreted exactly as written
- More likely to make decisions based on the “letter of the law.”
- Believes that elected officials should make social changes, not judges
- May be called a judicial originalist
- More likely to be appointed by a Republican president

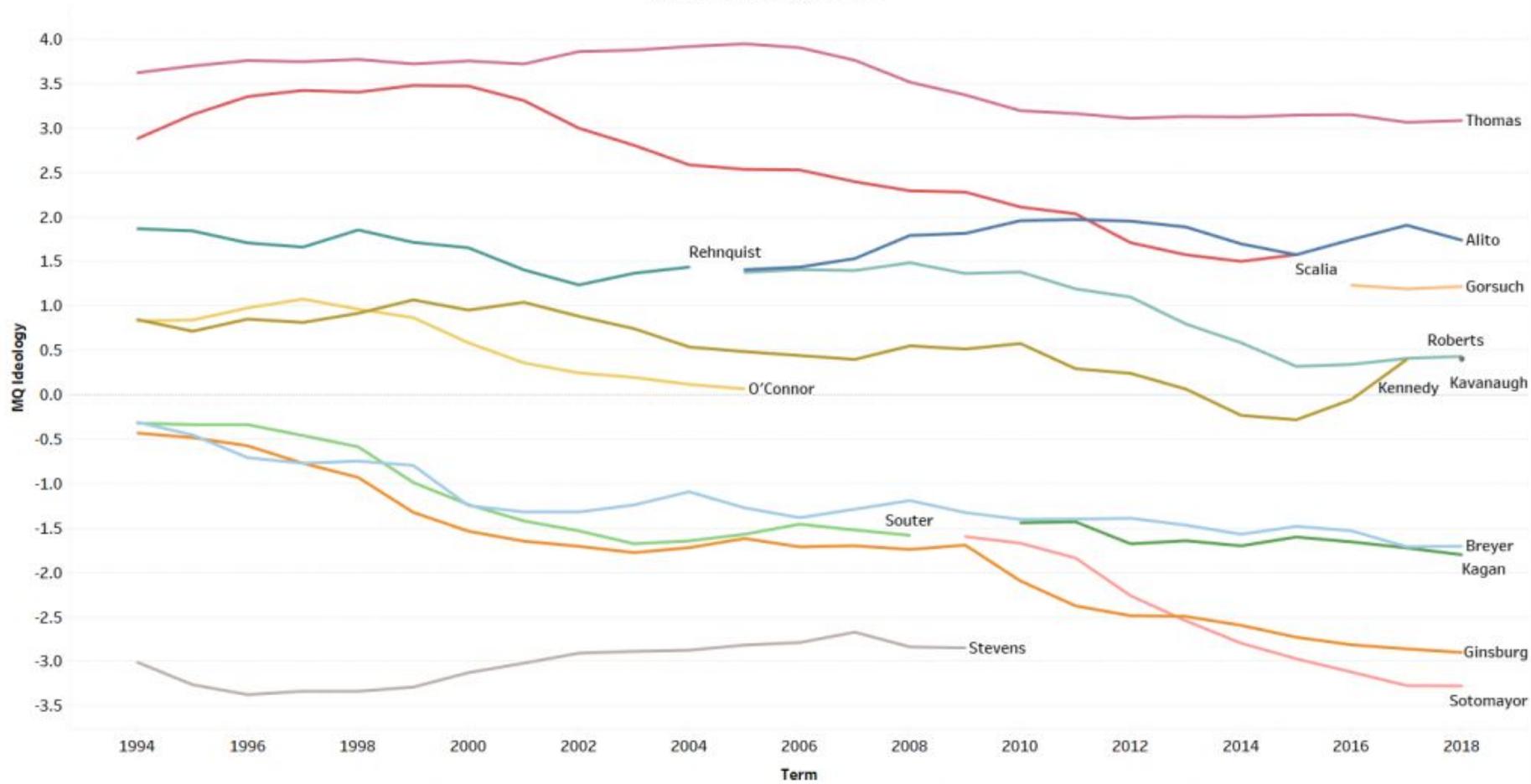
Ideologies (with one caveat)

Kavanaugh is Roberts 2.0

The ideologies of the Supreme Court justices in the October 2018 term, based on Martin-Quinn ideology scores



Justices' Ideology Scores



The Swing Justice



Roberts Continued & What Goes Into a Decision

- 20% of Supreme Court Decisions Come Down to Swing Votes
- DACA, Native Territory, LGBTQ Rights, Abortion -- all 5/4 votes
- John Roberts was the decisive vote in all of these

- Analyze specific ideologies with the strength of arguments under said ideologies
- Also:
 - Public pressure
 - Precedent
 - Questions about IF SCOTUS should rule on it

Recommended Filing Sources

- [ScotusBlog](#) | The official blog of the Supreme Court
 - Look at the right hand side bar. Check “this week,” “major cases” and “recent decisions” for likely potential questions
- [Times Topic: The Supreme Court](#) | NY Times Coverage of SCOTUS
- [ABA Journal](#) | American Bar Association
- The Atlantic | Ideas
- Oyez | Good explanation of cases
- Wikipedia | Don’t cite, but very clear explanations
- Cornell Legal Information Institute

Question Types

- Does X violate Y amendment?
 - Requires specific legal argument, C point must impact back the amendment
- How will the Supreme Court rule on X?
 - Requires analysis of specific justices' likely opinions
- How should the Supreme Court rule on X?
 - More flexible; needs awareness of existing case law or constitutional issues
- Did the Supreme Court rule correctly on X?
 - Must make reference to constitutional issues AND the rationale for the ruling

Example Questions

1

How likely is the current Supreme Court to overturn Roe v Wade?

2

How should the Supreme Court regarding religious exemptions from discrimination suits?

3

Did the Supreme Court rule correctly in Rucho v Common cause?

Establishing Context & Significance

- 1 sentence: main issue of case
- 1 sentence: plaintiff's side
- 1 sentence: defendant's side
- 1 sentence: what are the real-world implications of the case? What is the effect of the precedent?

Some Important SCOTUS Cases

Marbury v. Madison (1803): Established the power of judicial review

Gideon v Wainwright (1963): A criminal defendant gets an attorney even if they can't afford one.

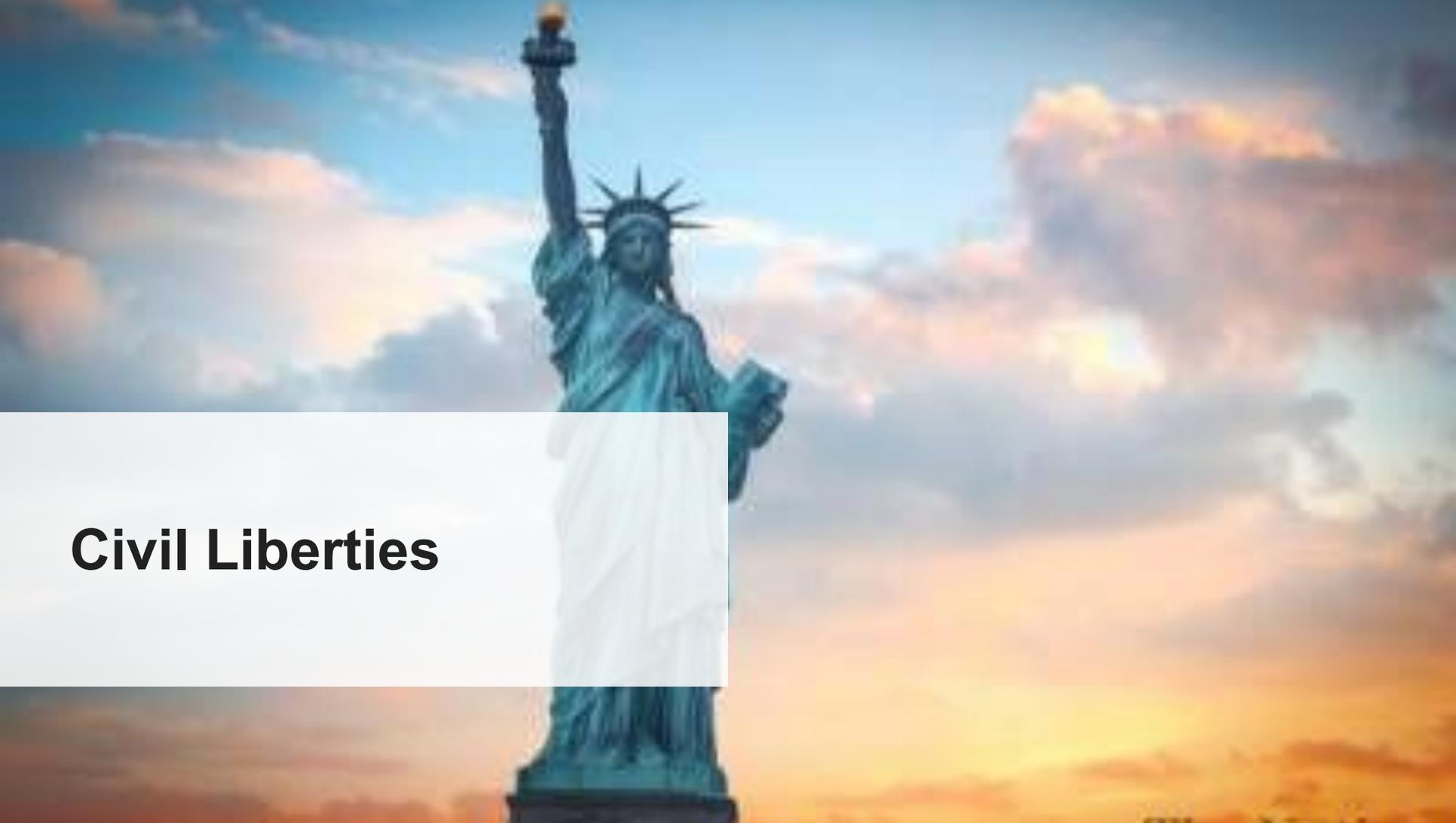
Miranda v Arizona (1966): Police have to read you your Miranda rights

Roe v Wade (1973): The due process clause under the 14th amendment extended to the right for a woman to have an abortion.

Some Important SCOTUS Cases

United States v Nixon (1974): The President cannot use executive powers to withhold evidence during a criminal investigation.

Obergefell vs Hodges (2015): legalized same-sex marriage under the equal protection & due process clauses of the 14th amendment

The image features the Statue of Liberty in the center, set against a dramatic sky at sunset or sunrise. The sky is filled with large, billowing clouds in shades of orange, yellow, and blue. The statue is shown from the waist up, holding a torch aloft in its right hand and a tablet in its left. A semi-transparent white rectangular box is overlaid on the left side of the image, containing the text "Civil Liberties".

Civil Liberties



Key Amendments

- 1st: freedom of speech, press, religion, assembly
- 2nd: right to bear arms
- 4th: freedom from unreasonable search and seizure
- 8th: freedom from cruel and unusual punishment

Strict Scrutiny

Laws that prohibit specific free speech content must pass strict scrutiny. That means the government must prove:

- A compelling government interest
- The law is narrowly tailored to achieve that interest (without restricting other forms of speech unnecessarily)
- There is no other way to achieve that interest

Does it violate your freedom of speech?

1. Google fires an employee who posts an essay online arguing that women are not good engineers.
2. The city of Edina makes a regulation forbidding loud noises after 11 p.m.
3. New York City denies a permit for the KKK to march through an African-American neighborhood.
4. Congress passes a law prohibiting religious proselytizing at airports after cult recruiters begin targeting vulnerable travelers.
5. The federal government passes a law prohibiting hate speech on social media.
6. Congress passes a law prohibiting tobacco advertisements within a certain radius of schools.
7. Joe is arrested after he stands up on a car and starts shouting for protestors to set fires.

Two Tests for Religion

Lemon Test

1. Does the law have a legitimate secular purpose?
2. Does the law have a primary effect of advancing or inhibiting religion?
3. Does the law result in excessive government entanglement with religion?

Coercion Test

1. Does the law provide direct aid to a religion in a way that would tend to establish a state church?
2. Does the law force people to support or participate in religion against their will?

Does it violate your freedom of religion?

-
1. A teacher opens class with a prayer and invites students to participate if they choose.
 2. A 100-year-old cross at a WWI memorial is allowed to stand.
 3. The state of Oklahoma builds a monument to the 10 commandments outside the state capitol building.
 4. The state of Texas approves a Catholic charter school to receive public education funds.
 5. A student Christian group gathers before school to pray.
 6. A police station places a Christmas tree in the lobby.
 7. The state passes a law requiring all doctors to prescribe birth control, regardless of their religion.
 8. A baker is sued for refusing to bake a cake for a gay wedding.

The 4th Amendment

- Does not apply to anything “in plain sight” or “plain smell.”
- Only applies in places where you have a “reasonable expectation of privacy.”
- There are two levels of suspicion:
 - **Reasonable suspicion:** an officer may briefly search and detain an individual when, according to their training and expertise, there is a reasonable chance contraband will be discovered. Must be based on an “articulable fact” and not an “unparticularized suspicion.”
 - **Probable cause:** the belief, supported by facts and circumstances, that a crime has been, is being, or will be committed. Required for a warrant or an arrest.

Does it violate the 4th Amendment?

1

The school searches your locker, finds marijuana, and arrests you.

2

The police pull you over for speeding, then search your car because they claim to smell marijuana.

3

The police search have a warrant to search your house for a stolen TV. While searching, they find drugs. They arrest you.

4

The police see a “suspicious” car in a nice neighborhood. They pull it over and search it.

5

The police search your trash cans when they are sitting right next to your garage.