

# New Supreme Court Session Begins

October 7, 2019

*Today the Supreme Court will begin hearing cases in its first complete term with nine justices on the bench since 2017. The court has moved to the right since President Trump took office, with a 5-4 conservative majority that includes two justices he appointed: Neil Gorsuch in 2017 and Brett Kavanaugh in 2018. And with a full bench, this year's docket will likely be more interesting than in the previous two years. As CNN reported, the Supreme Court justices will "face an explosive docket of cases on issues such as abortion, immigration, the Second Amendment and LGBT rights." And as FOX News noted, "a 5-4 conservative majority could be poised to provide the White House with significant legal and political victories -- or setbacks."*

## A New Session Begins

The Supreme Court is the nation's top court in the judicial branch of government. It rules on cases that are appealed from the lower courts. Often the Supreme Court justices look at how the Supreme Court ruled on previous cases as precedent to decide who should win the argument.

By tradition, its term begins on the first Monday in October, and runs for one year. The 9 Supreme Court justices hear oral arguments, complete their deliberations, and hand down all decisions in pending cases by the end of June. Between October and June, the Supreme Court typically reviews between 70 and 80 cases; they complete their work by the end of June.

## An Aging and Divided Court

Nominated by the president and then voted in by the Senate, the justices currently include three women and five men who have the power to strike down laws that are unconstitutional. On the current court, one justice is African American, one is Latina, and one is Italian-American.

In addition to gender, the Court has seen a historic shift in its religious makeup. For the first 180 years of the Supreme Court, Protestant justices overwhelmingly dominated the Court; Catholics were few—the first was appointed in 1836—and there were no Jews on the Court until 1916. Today six of the justices were raised Roman Catholic, and three are Jewish.

Three justices were raised in New York City and another is from the New York metropolitan region. Every current justice has an Ivy League background. The average age is 67 years; its average age has decreased due to the recent additions of Gorsuch (52) and Kavanaugh (54).

With each new term there's been speculation about who might soon retire. Justice Anthony Kennedy, age 81, retired in June 2018. Currently serving beyond the typical retirement age are Justice Stephen Breyer, who is 81, and Justice Ruth Bader Ginsburg, who is 86. A critic of President Trump, Justice Ginsburg indicated that she intends to serve on the Supreme Court as long as she can, noting Justice John Paul Stevens was 90 when he retired.

The internal dynamics of the court are well established. In high-profile cases the court frequently splits into liberal and conservative camps: now a bloc of five conservative justices – all appointees of Republican presidents – are on one side and on the other side, four liberal justices – all nominees of Democratic presidents.

*Nota bene:* This article and the summaries that follow were compiled from a number of different news sources, including *High School SCOTUS*, *NPR*, the *New York Times*, *CNN*, and *Fox News*.

**Some interesting cases from this year's docket:** Below are three of the most talked about cases the Supreme Court will be decide this term.

### **Does the Civil Rights Act of 1964 Protect LGBT Rights? -- October 7**

The Civil Rights Act of 1964 holds that employers cannot discriminate against their employees on the basis of sex. On Tuesday, the Supreme Court will hear two hours of argument on whether the federal civil rights law protects gay men, lesbians and transgender people from employment discrimination. In most of the country, job discrimination based on sexual orientation and gender identity is lawful. The justices will decide whether the federal law, Title VII of the Civil Rights Act of 1964, offers nationwide protection. The three consolidated cases before the court — among them *Bostock v. Clayton County* — were brought by two gay men and a transgender woman who said they were fired for unlawful reasons.

The question for the justices is whether the language of the 1964 law, which bars sex discrimination, also applies to sexual orientation and gender identity. The employers and the Trump administration argue that the lawmakers who voted for the law did not intend such broad coverage. If Congress wanted the law to have such broad protections, it would have written that into the law. The workers say that it is impossible to discriminate against gay and transgender people without taking into account their sex.

### **Can the Trump Administration Remove Protection from Dreamers? -- November 12**

In November, the court will consider the fate of the nearly 800,000 immigrants, known as “Dreamers,” who were brought to the U.S. as children illegally by their parents. In 2012, President Obama created a program to shield them from deportation and to allow them to work. The program, Deferred Action for Childhood Arrivals, or DACA, gave Dreamers access to education and jobs. Just under 40,000 DACA recipients have become legal permanent residents, and over 1,000 have become U.S. citizens.

After President Trump took office, he announced that he would end the program, saying it was unlawful. Lower courts have so far blocked the president's attempt to rescind [repeal; revoke] DACA, ruling that the justifications the Trump administration has offered were inadequate; he could not reverse the executive action taken by President Obama. A decision for the administration in *Trump vs. NAACP* could take two forms: one narrow and the other more consequential. A narrow decision would say that presidents are allowed to change policy. A broader one would say that the program was unlawful to begin with, meaning that only Congress, and not a future president, could reinstate it.

### **Can States Bar Aid for Religious Schools? -- TBD**

The court will also decide whether Montana can exclude religious schools from a state scholarship program. The Montana legislature created a scholarship program in 2015. Shortly after the program was enacted, the Montana Department of Revenue set forth an administrative rule prohibiting scholarship recipients from using their scholarships at religious schools, citing a provision of the state constitution that prohibits “direct or indirect” public funding of religiously affiliated educational programs. (Montana's constitution, like those of many other states, bars the use of government money to aid religious groups based on the First Amendment's Establishment Clause, which prohibits the government from taking an action which favors one religion over another.)

Three mothers who sought scholarships from the state program to send their children to a Christian school sued, saying the state constitution violated provisions of the U.S. Constitution on religious freedom and equal protection. The Montana Supreme Court rejected the challenge and shut down the entire scholarship program. The case, *Espinoza v. Montana Department of Revenue*, will give the U.S. Supreme Court an opportunity to explore the limits of an earlier decision that said a state could not exclude religious institutions from a state program to make playgrounds safer even though the state's Constitution called for strict separation of church and state.