



*The Supreme Court October
2019 Term: A Pandemic
Year*





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About the Presenter

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Daniel A. Cotter is Attorney and Counselor at Howard & Howard Attorneys PLLC. Dan focuses his practices in a variety of areas of corporate law and litigation, including insurance law, complex business disputes and counseling, employment law, corporate transactions, corporate governance and compliance, and cybersecurity and privacy law. His clients benefit from his diverse professional experience, which – in addition to his years serving as trusted outside counsel – includes positions as a corporate accountant and an in-house attorney. He spent 14.5 years in-house at insurance organizations, where he focused on insurance, regulatory, technology, IT, compliance and transactional matters.

Dan served as President of The Chicago Bar Association for the 2014-2015 bar year and is former Chair of The Young Lawyers Section of the CBA. Dan was an adjunct professor at The John Marshall Law School, and has taught Insurance Law, Accounting for Lawyers and SCOTUS Judicial Biography.

Dan graduated summa cum laude from The John Marshall Law School and received his B.A. in Accounting from Monmouth College, magna cum laude. Dan is a frequent writer and presenter on various substantive topics, including technology and privacy, and in 2019, his book, “The Chief Justices,” was published.”

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Course Description

The Supreme Court's October 2019 Term ended an interesting year, from the impact of the coronavirus to the somewhat surprising alignment. Chief Justice John Roberts aligned with the liberals in one case, based on *stare decisis*. Dan Cotter, author of "The Chief Justices," covers some of the big cases and the Court in general, and discusses what is next.

Course Presentation

This course provides an in-depth examination of the 2019 – 2020 Supreme Court opinions and inner working of the Court.

This course explores the complex issues associated with the inner workings of the U.S. Supreme Court.

This course will provide a comprehensive overview of the Supreme Court Justices, their views, potential retirement and political makeup

This course provides an intellectual foundation and introduces a set of learning skills essential for success in the legal profession and for life beyond. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about stimulating material.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives

The ability to understand the relevant U.S. Supreme Court opinions in the 2019 – 2020 term.

The ability to understand the duties, roles and responsibilities of U.S. Supreme Court justices and Chief Justice.

The ability to understand, discuss and analyze U.S. Supreme Court opinions from the 2019 – 2020 term.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



Timed Agenda:

Presenter Name: Daniel A. Cotter

CLE Course Title: The Supreme Court October 2019 Term: A Pandemic Year

Time Format (00:00:00 - Hours:Minutes:Seconds)	Description
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title: The Supreme Court October 2019 Term: A Pandemic Year
00:00:32	CLE Presenter Introduction
00:02:21	CLE Substantive Material Presentation Introduction
00:09:35	Supreme Court Procedure
00:10:35	The Impact of Covid – 19 on the Supreme Court
00:13:54	Supreme Court Live Hearings
00:17:07	Not a Typical Year in the Supreme Court
00:19:59	Chief Justice John Roberts
00:23:11	Chief Justices are the ones that Pace the Court
00:35:23	Comcast v National Assn. of African American-owned Media
00:37:18	New York Rifle & Pistol Assn. v. City of New York
00:38:45	Bostock v. Clayton County
00:41:16	Dept. of Homeland Security v. Regents of Univ. of California
00:42:54	June Medical Services, LLC v. Russo
00:47:35	Dept. of Homeland Security v. Thuraissigiam
00:48:38	Seila Law v. Consumer Financial Protection Bureau
00:49:44	Examination of Religious Issues
00:59:25	Looking Ahead
01:06:39	Presenter Closing
01:06:59	ApexCLE Company Closing Credits
01:07:07	End of Video



The Supreme Court October 2019 Term- A Pandemic Year

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Disclaimer: This presentation does not constitute legal advice or a legal opinion on any matter discussed. This presentation is for educational purposes only. If you have a specific legal question, please consult with an attorney of your own choice.

DISCLAIMER

The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended, nor should they be construed, to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved. Views expressed are those of the speakers and are not to be attributed to their firm, the courts, or their clients.

Associate Justice Ruth Bader Ginsburg- Health Watch

August 23:

https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_08-23-19

Treatment completed on tumor on pancreas

November 23:

https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_11-23-19

Admitted for chills and treatment

COVID-19 and the Court

Changes Brought

Normally, finished June 30

A number of the Justices usually teach at far away and fun destinations over the summer. They are likely not doing that this year



Opening by marshal:“All persons having business before the honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the court is now sitting. God save the United States and this honorable court!” “draw near” not in May live streams

Arguments cancelled/postponed

<https://www.supremecourt.gov/publicinfo/press/pressreleases/pr 03-16-20>

In keeping with public health precautions recommended in response to COVID-19, the Supreme Court is postponing the oral arguments currently scheduled for the March session (March 23-25 and March 30-April 1). The Court will examine the options for rescheduling those cases in due course in light of the developing circumstances. The Court’s postponement of argument sessions in light of public health concerns is not unprecedented. The Court postponed scheduled arguments for October 1918 in response to the Spanish flu epidemic. The Court also shortened its argument calendars in August 1793 and August 1798 in response to yellow fever outbreaks.

And Again in April

<https://www.supremecourt.gov/publicinfo/press/pressreleases/pr 04-03-20>

In keeping with public health guidance in response to COVID-19, the Court will postpone the oral arguments currently scheduled for the April session (April 20-22 and April 27-29).

<https://www.supremecourt.gov/publicinfo/press/pressreleases/pr 04-13-20>

The Court will hear oral arguments by telephone conference on May 4, 5, 6, 11, 12 and 13 in a limited number of previously postponed cases

May hearings

- First time, livestream
- 18-9526, McGirt v. Oklahoma
- 19-46, United States Patent and Trademark Office v. Booking.com B.V.
- 19-177, Agency for International Development v. Alliance for Open Society International, Inc.
- 19-267, Our Lady of Guadalupe School v. Morrissey-Berru, and 19-348, St. James School v. Biel
- 19-431, Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, and 19-454, Trump v. Pennsylvania
- 19-465, Chiafalo v. Washington



- 19-518, Colorado Department of State v. Baca
- 19-631, Barr v. American Association of Political Consultants, Inc.
- 19-635, Trump v. Vance
- 19-715, Trump v. Mazars USA, LLP, and 19-760, Trump v. Deutsche Bank AG
- Live Hearings
- First toilet flush heard during orals
- Had a different tempo and style:
- Questions by seniority
- Timed by justice
- Although mixed timekeeping by Roberts
- Thomas asked questions
- Technology:
- Mute, unmute, etc.

Chief Justice John Roberts 12

“The Chief Justices”

P. 392: “Time will tell, and the Roberts Court legacy will continue to be closely watched. If the reports of Roberts strong interest in seeing the integrity of the judicial process maintained and the prestige upheld are true, watchers on both sides of the aisle might be disappointed by how Roberts and the Court decide matters.”

The Court’s Pacer?

P. 402: “The Chief Justices are the ones that pace the Court and strive to maintain the Court’s prestige in the eyes of we, the people. Time will tell if the Court is now different.”

Recent Weeks

Pivotal vote: Workplace discrimination against gay and transgender people
DACA Abortion provider restrictions But...

Do not expect Roberts to be the new Kennedy, as some have ascribed?



1. Kennedy was not that broad in his topics for which he voted with liberal bloc?
2. Roberts will not be even as broad, but see stare decisis

General About Court

Tries to balance load by justices Some predicted June Medical based on that month's hearings Through July 6 (56 cases, 8 per curiam):

- Roberts- 5
- Thomas- 4
- Ginsburg- 6
- Breyer – 5
- Alito- 5
- Sotomayor- 5
- Kagan- 6
- Gorsuch- 6
- Kavanaugh- 6

This Term

Lowest production in many years 56 decisions, with 5 remaining Major Cases, 2019 Term

Cases Rejected

Mandatory bar cases
2nd Amendment cases
Qualified immunity cases

Comcast v. National Assn. Of AfricanAmerican-owned Media

https://www.supremecourt.gov/opinions/19pdf/18-1171_4425.pdf

Plaintiff bringing a lawsuit alleging racial discrimination in federal contracting has the high burden of proving race was a but-for cause of the alleged injury. Plaintiffs will have a tough time showing that threshold has been met.

Wisconsin case- RNC v. DNC

April 6 (per curiam)-

https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf



Narrow issue: “Therefore, subject to any further alterations that the State may make to state law, in order to be counted in this election a voter’s absentee ballot must be either (i) postmarked by election day, April 7, 2020, and received by April 13, 2020, at 4:00 p.m., or (ii) hand-delivered as provided under state law by April 7, 2020, at 8:00 p.m.”

New York Rifle & Pistol Assn. v. City Of New York

https://www.supremecourt.gov/opinions/19pdf/18-280_ba7d.pdf

Moot, per curiam opinion- New York changed laws on transporting guns to shooting ranges

Bostock v. Clayton County

When released on June 15, 2020, broke the Internet

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

Gorsuch for the Court (Roberts joined): “Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result... But the limits of the drafters’ imagination supply no reason to ignore the law’s demands.”

Dept. of Homeland Security v. Regents of Univ. of Cal.

https://www.supremecourt.gov/opinions/19pdf/18-1323_c07d.pdf

5-4 decision Trump administration did not take proper steps to end DACA
Roberts also noted administration failed to consider “what if anything to do about the hardship to DACA recipients.”

June Medical Services, LLC v. Russo

https://www.supremecourt.gov/opinions/19pdf/18-1323_c07d.pdf

Struck down Louisiana’s Act 620 Violates rights first announced in Roe v. Wade
Roberts: “The result in this case is controlled by our decision four years ago.”
Moral of story: Advocates on issues cannot rush back to Court when makeup changes to get a result desired.

Department of Homeland Security v. Thuraissigiam

https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf

June 25 (Alito)- 7-2 “Expedited removals” are okay and not a violation of the “Suspension Clause”



Seila Law v. Consumer Financial Protection Bureau

https://www.supremecourt.gov/opinions/19pdf/19-7_new Opm1.pdf

5-4 (Roberts) Structure of the CFPB unconstitutional

Espinoza v. Montana Dept. of Rev.

https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf

5-4 (Roberts) State-based scholarship program that provides public funds to allow students to attend private schools cannot discriminate against religious schools under the Free Exercise Clause of the Constitution.

Chiafalo v. Washington

https://www.supremecourt.gov/opinions/19pdf/19-465_i425.pdf

July 6, 9-0 (Kagan) KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, ALITO, SOTOMAYOR, GORSUCH, and KAVANAUGH, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which GORSUCH, J., joined as to Part II. State may enforce an elector's pledge to support their party's nominee and state's choice for president.

Colorado Dept. of State v. Baca

July 6- per curiam The Tenth Circuit's judgment is reversed for the reasons stated in Chiafalo v. Washington, 591 U. S..

Barr v. American Association of Political Consultants

July 6 decision, 9-0 in decision (Kavanaugh) KAVANAUGH, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and ALITO, J., joined, and in which THOMAS, J., joined as to Parts I and II. SOTOMAYOR, J., filed an opinion concurring in the judgment. BREYER, J., filed an opinion concurring in the judgment with respect to severability and dissenting in part, in which GINSBURG and KAGAN, JJ., joined. GORSUCH, J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, J., joined as to Part II. Federal ban on robocalls to cell phones with exception for government debt collection violated First Amendment, left rest of law in place without the exception.

Our Lady of Guadalupe School v. Morrissey-Berru

(consolidated with St. James School v. Biel)



https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf

Can courts hear employment discrimination claims brought by Catholic elementary school teachers? Alito (7-2): “The First Amendment’s Religion Clauses foreclose the adjudication of [the teachers’] employment-discrimination claims.”

Little Sisters of the Poor Sts. Peter and Paul Home v. Pennsylvania

(consol. with Trump v. Pennsylvania)

<https://www.supremecourt.gov/opinions/19pdf/19-4315i36.pdf>

Did the expansion of the conscience exemption from Obamacare’s birth-control mandate violate the ACA and the laws governing federal administrative agencies? Thomas (5-2-2) “We hold that the Departments had the authority to provide exemptions from the regulatory contraceptive requirements for employers with religious and conscientious objections

7/9 Final Day

McGirt v. Oklahoma:

Does land set up in the 19th century in eastern Oklahoma for the Creek Nation remains a reservation for purposes of a federal law that requires some major crimes committed on a reservation by or against Indians to be prosecuted as federal crimes? Gorsuch (5-4): "Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word."

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

Trump v. Mazars USA

(consolidated with Trump v. Deutsche Bank):

Do congressional committees have the authority to issue subpoenas to the president’s accountant and creditors for financial records belonging to the president and his business entities? Roberts (7-2) - congressional subpoenas may be enforceable but that the courts below did not take account of all the possible separation of powers concerns. The case will this go on. So this issue is back in the hands of the DC and Second Circuits for now.



<https://www.scotusblog.com/wp-content/uploads/2020/07/19-715-febh.pdf>

Trump v. Vance

Can the Manhattan district attorney obtain the president's tax returns as part of a state grand-jury investigation? Roberts (7-2) Trump not immune from grand jury process- Article II and the Supremacy Clause do not categorically preclude, or require a heightened standard for, the issuance of a state criminal subpoena to a sitting President.

<https://www.scotusblog.com/wp-content/uploads/2020/07/19-635o7jq.pdf>

Language from Vance Majority

"We agree that Presidents may challenge specific subpoenas as impeding their Article II functions." "And although we affirm while Justice Thomas would vacate, we agree that this case will be remanded to the District Court."

Mazars

"The courts below did not take adequate account of the significant separation of powers concerns implicated by congressional subpoenas for the President's information."

What's Ahead?

- Rumor mill has suggested:
- Associate Justice Samuel Alito considering retirement
- Associate Justice Clarence Thomas considering retirement
- Would give President Trump another nomination pre-election
- Would not change the conservative makeup
- Time will tell, neither seems likely
- President Trump promised new list
- Debates Continue

"But Gorsuch" The Federalist posted an article entitled, "SCOTUS's Transgender Ruling Firebombs The Constitution." Never mind that the decision was one of statutory construction and did not touch the constitution. President Trump: "These horrible & politically charged decisions coming out of the Supreme Court are shotgun blasts into the face of people that are proud to call themselves Republicans or Conservatives... [W]e will lose our 2nd. Amendment & everything else."



Trump also said to Christian Broadcasting, “Well, so far, we’re not doing too well. It says – look: we’ve had a lot of losses with a court that was supposed to be in our favor.”

Carrie Severino, president of the Judicial Crisis Network:

“What we are starting to see is a pattern of the chief justice unfortunately just being complicit and the court being used as a partisan tool to try to delay and undermine this president’s administration...”

And So Here We Are

A Court not consistently, rigidly for conservative causes Efforts and hopes that Trump can add one more conservative Warren/Burger/Rehnquist redux, or election year status quoism?

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Program Transcript

The following is a computer generated voice recognition transcript of the video presentation. This is an automatically generated transcript and not a verbatim transcript of the program. This is provided only for general reference and there may be portions that have not been accurately computer generated. If there are any inconsistencies, please refer to the video for clarification.

Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org

