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# Justice Ruth Bader Ginsburg as a Deciding Vote on the Supreme Court: Select Data

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## Justice Ruth Bader Ginsburg as a Deciding Vote on the Supreme Court: Select Data

On September 18, 2020, Justice Ruth Bader Ginsburg, the second woman to serve on the Supreme Court of the United States, passed away at the age of eighty-seven, vacating a seat on the High Court that she had held for twenty-seven years. Over more than a quarter-century on the Court, Justice Ginsburg encountered nearly every major flashpoint of modern American legal debate, including many issues on which the sitting Justices were closely divided.

As Justice Ginsburg's predecessor Justice Byron White observed, "every time a new justice comes to the Supreme Court, it's a different court." It is likely that Justice Ginsburg's views in closely decided Supreme Court cases will be of interest to Members of Congress as the Senate considers a nominee to fill her seat, as those cases may illustrate how the Court could change in her absence. Many recent retrospectives of Justice Ginsburg's career have highlighted her dissenting opinions in cases where she and other Justices in the more liberal wing of the Court were at odds with a more conservative majority. But focusing on Justice Ginsburg's dissents may paint an incomplete picture of her influence on the outcome of Supreme Court cases and the effect that her replacement could have upon the trajectory of the Court's jurisprudence. Justice Ginsburg frequently authored or joined majority opinions for the Court, and she was a deciding vote for the majority position in numerous closely divided cases. While Justice Ginsburg was less likely to be a deciding vote than Justice Anthony Kennedy, who retired from the bench in 2018 after having been the pivotal vote in 186 cases during the Roberts Court era, she was still a deciding vote in 112 cases from the date of Chief Justice Roberts's elevation to the Court to the date of her passing. This report includes several tables relating to cases where Justice Ginsburg cast a deciding vote in the Roberts Court era. The tables compile cases involving constitutional questions, issues governed by statute (including not only questions of statutory interpretation but also agency actions taken pursuant to statutory authority, as well as judicial and executive branch rules and actions concerning procedural matters governed by statute), and other matters.

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September 25, 2020

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On September 18, 2020, Justice Ruth Bader Ginsburg, the second woman to serve on the Supreme Court of the United States, passed away at the age of eighty-seven, vacating a seat on the High Court that she had held for twenty-seven years.<sup>1</sup> Over more than a quarter-century on the Court, Justice Ginsburg encountered nearly every major flashpoint of modern American legal debate, including many issues on which the sitting Justices were closely divided.<sup>2</sup>

As Justice Ginsburg's predecessor Justice Byron White observed, "every time a new justice comes to the Supreme Court, it's a different court."<sup>3</sup> It is likely that Justice Ginsburg's views in closely decided Supreme Court cases will be of interest to Members of Congress as the Senate considers a nominee to fill her seat, as those cases may illustrate how the Court could change in her absence. Many recent retrospectives of Justice Ginsburg's career have highlighted her dissenting opinions in cases where she and other Justices in the more liberal wing of the Court were at odds with a more conservative majority.<sup>4</sup> But focusing on Justice Ginsburg's dissents may paint an incomplete picture of her influence on the outcome of Supreme Court cases and the effect that her replacement could have upon the trajectory of the Court's jurisprudence. Justice Ginsburg frequently authored or joined majority opinions for the Court, and she was an essential vote for the majority in numerous closely divided cases.<sup>5</sup> While Justice Ginsburg was less likely to be a deciding vote in closely divided cases than Justice Anthony Kennedy, who retired from the bench in 2018 after having been the pivotal vote in 186 cases during the Roberts Court era,<sup>6</sup> she

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<sup>1</sup> See SUPREME COURT OF THE UNITED STATES, *Biography of Associate Justice Ruth Bader Ginsburg*, <https://www.supremecourt.gov/about/biographyGinsburg.aspx> (last viewed Sept. 24, 2020).

<sup>2</sup> For additional discussion of Justice Ginsburg's jurisprudence on issues that closely divided the Court, see CRS Legal Sidebar LSB10537, *The Death of Justice Ruth Bader Ginsburg: Initial Considerations for Congress*, by Valerie C. Brannon, Michael John Garcia, and Caitlain Devereaux Lewis.

<sup>3</sup> See Clifford May, *On Judges and Justice: Byron White Reflects on Court and Critics*, ROCKY MTN. NEWS (June 30, 1996), at 69A.

<sup>4</sup> See, e.g., Adam Liptak, *Justice Ginsburg's Judicial Legacy of Striking Dissents*, N.Y. TIMES (Sept. 18, 2020), <https://www.nytimes.com/2020/09/18/us/rbg-accomplishments.html> ("As part of the Supreme Court's four-member liberal wing, [Justice Ginsburg] did her most memorable work in dissent."); David Cohen and Josh Gerstein, *Justice Ruth Bader Ginsburg Dies at 87*, POLITICO (Sept. 18, 2020), <https://www.politico.com/news/2020/09/18/justice-ruth-bader-ginsburg-034990> (discussing Justice Ginsburg's influence, including on the trajectory of Supreme Court jurisprudence on sex and gender issues, while observing that "[h]er influence went far beyond gender cases. . . . As the frequency and barbed tone of her dissents increased later in her career, she became a liberal icon, sometimes dubbed 'The Notorious RBG'"); Richard Wolf, *Justice Ruth Bader Ginsburg's Top Opinions and Dissents, from VMI to Voting Rights Act*, USA TODAY (Sept. 18, 2020), <https://www.usatoday.com/story/news/politics/2020/09/18/i-dissent-justice-ruth-bader-ginsburgs-most-memorable-opinions/2661426002/> ("Throughout her career, Ginsburg's diminutive presence belied her titanic influence on the law, first as the nation's preeminent litigator for women's rights, and more recently as the leader of the high court's liberal bloc, where she served as a bulwark against an increasingly conservative majority.").

<sup>5</sup> According to one study, Justice Ginsburg authored more majority opinions than any other Justice on the bench during the same period as her. Adam Feldman, *Justice Ginsburg Leaves a Lasting Legacy on the Court*, EMPIRICALSCOTUS (Sept. 19, 2020), <https://empiricalscotus.com/2020/09/19/justice-ginsburg-leaves-a-lasting-legacy-on-the-court/>. And even in the Roberts Court era, when Justice Ginsburg was somewhat more likely to be in dissent than in earlier years, she was still part of the deciding majority in nearly 80 percent of the cases considered by the Court. See *id.* (including tables showing that Justice Ginsburg was in the majority in 865 cases during the Rehnquist Court era (roughly 81.4% of considered cases from the October 1993 term through the October 2004 term), compared to 902 cases since Chief Justice Roberts's elevation to the Court (roughly 78.6% of the cases decided from the October 2005 term onward)).

<sup>6</sup> See CRS Report R45256, *Justice Anthony Kennedy: His Jurisprudence and the Future of the Court*, by Andrew Nolan, Kevin M. Lewis, and Valerie C. Brannon, at Appendix (using same methodology as this report to identify cases in which Justice Kennedy was a deciding vote from the October 2015 term until Justice Kennedy's retirement from the High Court in 2018).

was still a deciding vote in 112 cases from the date of Chief Justice Roberts’s elevation to the Court to the date of her passing.<sup>7</sup>

This report includes several tables relating to cases where Justice Ginsburg cast a deciding vote in the Roberts Court era. For purposes of the tables, Justice Ginsburg is considered to have cast a “deciding vote” any time she authored or joined a majority or plurality opinion or concurred in the result of a case where the Justices were divided either 5-4, 5-3, 4-3, or 4-2 on one or more issues.<sup>8</sup> *Per curiam* opinions are included only if they resolved an appeal pending before the Court.<sup>9</sup>

**Table 1** identifies cases primarily centering on questions of constitutional interpretation in which Justice Ginsburg cast a deciding vote. **Table 2** includes cases mainly addressing questions of statutory interpretation—including agency actions taken pursuant to statutory authority, as well as judicial and executive branch rules and actions concerning procedural matters governed by statute—in which Justice Ginsburg cast a deciding vote. **Table 3** compiles closely divided cases that do not fall neatly into either of the prior tables (e.g., cases centering on interstate compacts or the interpretation of treaties with Indian tribes). Each Table also identifies (1) the statute, constitutional provision, or other source of law primarily at issue in the case; and (2) Justice Ginsburg’s position on the key issue in the case. The cases in these three tables are listed alphabetically by year, and are categorized under the following subject areas:

- Abortion Law
- Administrative Law
- Business Law (including issues arising in antitrust, banking, bankruptcy and debt collection, consumer law, contract law, intellectual property law, and securities law)
- Civil Rights Law (including issues arising under the Fourteenth Amendment and civil actions brought under 42 U.S.C. §1983)

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<sup>7</sup> Cases preceding Chief Justice Roberts’s elevation to the Supreme Court are less likely to reflect the current dynamics of the Court—and, by extension, are less likely to illuminate the effect that Justice Ginsburg’s successor might have on those dynamics. *See, e.g.*, Caitlin E. Borgmann, *Holding Legislatures Constitutionally Accountable Through Facial Challenges*, 36 HASTINGS CONST. L.Q. 563, 589 (2009) (opining that “the Roberts Court has heralded a rightward ideological shift on the bench, from a split in which Justice O’Connor served as the swing vote and Justice Kennedy was counted in the conservative half, to one in which a solidly conservative four face off against the four more liberal Justices, with Justice Kennedy functioning as the swing vote”); Amelia Thomson-DeVeaux, *The Supreme Court Might Have Three Swing Justices Now*, FIFTYEIGHT (July 2, 2019) (positing that with Justice Kennedy’s retirement and the ascension of Justices Gorsuch and Kavanaugh to the High Court in recent years, there may be “a newly cemented conservative majority on the court” and that while these new Justices shifted the Court’s center rightward, they are not uniform in their individual approach to issues, suggesting that “the days of a single ‘swing’ justice may be over”).

<sup>8</sup> These cases were obtained using three methods:

- searching Washington University School of Law’s Supreme Court Database for 5-4, 5-3, 4-3, and 4-2 cases in which Justice Ginsburg voted with the majority or plurality from the October 2005 through October 2019 terms;
- referencing SCOTUSBlog’s “Stat Pack” compendia of 5-4 cases from October Term 2005 onward, available at <http://www.scotusblog.com/reference/stat-pack/> (last visited Sept. 23, 2020); and
- searching LexisNexis’s database of Supreme Court cases from October 2005 onward in which one or more Justices recused themselves.

<sup>9</sup> For example, the tally excludes *Laboratory Corp. of America Holdings v. Metabolite Laboratories, Inc.*, 548 U.S. 124 (2006) (*per curiam* opinion joined by Alito, Ginsburg, Kennedy, Scalia and Thomas, JJ., dismissing writ of certiorari as improvidently granted).

- Civil Liability (including torts)
- Communications Law
- Criminal Law and Procedure
- Education Law
- Election Law
- Environmental Law
- Family Law
- Food and Drug Law
- Freedom of Association
- Freedom of Religion
- Freedom of Speech
- Habeas Corpus
- Immigration Law
- Indian Law
- Judicial System (including issues involving federal and state courts generally, civil procedure, standing and justiciability, class actions, equitable remedies, arbitration, and judicial ethics)
- Labor and Employment Law
- Maritime Law
- Military Law
- National Security
- Public Benefits
- Separation of Powers
- Takings
- Tax Law.

For purposes of brevity, no more than two subject areas are identified as relevant to a particular case. While these categorizations are intended to provide a helpful guide to readers in identifying the subject matters of decisions, they do not necessarily reflect the full range of legal issues a judicial opinion may involve.

**Table 1**, **Table 2**, and **Table 3** also identify the composition of Justices hearing a listed case, dividing the members of the Court who participated in the case into two categories: (1) Justices making up the majority or controlling plurality, including those who concurred with the Court's judgment; and (2) Justices who dissented in whole or in part from the judgment of the Court. The author of the primary opinion is designated with an asterisk (\*). Authors of concurring and dissenting opinions are identified with plus signs (+). Justice Ginsburg's name has been capitalized throughout for the reader's convenience. For ease of reference, Justices are listed in alphabetical order, rather than order of seniority.

**Table I. Justice Ruth Bader Ginsburg As a Deciding Vote: Constitutional Law Decisions**

October 2005 Term-October 2019 Term

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Constitutional Provision Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>June Medical Services, LLC v. Russo</b>	Breyer*, GINSBURG, Kagan, Roberts+, Sotomayor	Alito+, Gorsuch+, Kavanaugh+, Thomas+	591 U.S. ____ (2020); 140 S. Ct. 2103 (2020)	Fourteenth Amendment: Due Process Clause	Abortion Law	Admitting privileges requirement imposed an unconstitutional undue burden on a woman's choice to have an abortion.
<b>Gundy v. United States</b>	Alito+, Breyer, GINSBURG, Kagan*, Sotomayor	Gorsuch+, Roberts, Thomas	588 U.S. ____ (2019); 139 S. Ct. 2116 (2019)	Article I: Nondelegation Doctrine	Separation of Powers	The Sex Offender Registration and Notification Act's delegation of authority to the Attorney General to determine the applicability of registration requirements to offenders convicted before the statute's enactment does not violate the nondelegation doctrine.
<b>Madison v. Alabama</b>	Breyer, Kagan*, GINSBURG, Roberts, Sotomayor	Alito+, Gorsuch, Thomas	586 U.S. ____ (2019); 139 S. Ct. 718	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	The Eighth Amendment may permit executing a prisoner who has no memory of committing his crime, but may prohibit execution of a prisoner who suffers from dementia or another disorder as opposed to psychotic delusions; the case was remanded to consider the defendant's competency.
<b>United States v. Davis</b>	Breyer, GINSBURG, Gorsuch*, Kagan, Sotomayor	Alito, Kavanaugh+, Roberts, Thomas	588 U.S. ____ (2019); 139 S. Ct. 2319 (2019)	Gun Control Act	Criminal Law and Procedure	Residual clause in the "crime of violence" definition in 18 U.S.C. § 924(c)(3)(B), which covers an offense "that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," is unconstitutionally vague.

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Constitutional Provision Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>United States v. Haymond</b>	Breyer+, GINSBURG, Gorsuch*, Kagan, Sotomayor	Alito+, Kavanaugh, Roberts, Thomas	588 U.S. ____ (2019); 139 S. Ct. 2369 (2019)	Fifth Amendment; Sixth Amendment: Right to Jury Trial	Criminal Law and Procedure	18 U.S.C. § 3583(k)'s provision requiring revocation of supervised release and authorizing new mandatory minimum sentences for specific crimes based on a preponderance of the evidence violated the Fifth and Sixth Amendment's right to a jury trial.
<b>Virginia House of Delegates v. Bethune-Hill</b>	GINSBURG*, Gorsuch, Kagan, Sotomayor, Thomas	Alito+, Breyer, Kavanaugh, Roberts	587 U.S. ____ (2019); 139 S. Ct. 1945 (2019)	Article III: Case or Controversy Requirement	Civil Procedure	Virginia House of Delegates lacked standing to represent the state's interests or, in its own right, to appeal invalidation of a redistricting plan.
<b>Carpenter v. United States</b>	Breyer, GINSBURG, Kagan, Roberts*, Sotomayor	Alito+, Gorsuch+, Kennedy+, Thomas+	585 U.S. ____ (2018); 138 S. Ct. 2206 (2018)	Fourth Amendment	Criminal Law and Procedure	The government conducts a search under the Fourth Amendment and must generally obtain a search warrant when it accesses historical cell-site location records.
<b>Sessions v. Dimaya</b>	Breyer, GINSBURG, Gorsuch+, Kagan*, Sotomayor	Alito, Kennedy, Roberts+, Thomas+	584 U.S. ____ (2018); 138 S. Ct. 1204 (2018)	Fifth Amendment	Criminal Law and Procedure; Immigration Law	Federal criminal code's residual clause in its definition of "crime of violence," as incorporated into the Immigration and Nationality Act's definition of "aggravated felony," is unconstitutionally vague.
<b>South Dakota v. Wayfair, Inc.</b>	Alito, GINSBURG, Gorsuch+, Kennedy*, Thomas+	Breyer, Kagan, Roberts+, Sotomayor	585 U.S. ____ (2018); 138 S. Ct. 2080 (2018)	Article I: Commerce Clause	Tax Law	State could require out-of-state seller with no physical presence in the state to collect and remit sales taxes, overruling prior Supreme Court precedent holding to the contrary.
<b>McWilliams v. Dunn</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito+, Gorsuch, Roberts, Thomas	582 U.S. ____ (2017); 137 S. Ct. 1790 (2017)	Fourteenth Amendment: Due Process	Habeas Corpus	State did not satisfy due process requirements when it failed to provide defendant with mental health expert to assist in evaluating, preparing, and presenting defense to capital murder charges.

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<b>Moore v. Texas</b>	Breyer, GINSBURG*, Kagan, Kennedy, Sotomayor	Alito, Roberts+, Thomas	581 U.S. ____ (2017); 137 S. Ct. 1039 (2017)	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	State court's standard for determining whether capital defendant was intellectually disabled did not comport with the Eighth Amendment.
<b>Murr v. Wisconsin</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito, Roberts+, Thomas+	582 U.S. ____ (2017); 137 S. Ct. 1933 (2017)	Fifth Amendment: Takings Clause	Takings	Courts must consider a number of factors in determining the proper denominator for purposes of a takings inquiry, including the treatment of the land under state and local law, the physical characteristics of the land, and the prospective value of the regulated land.
<b>Peña-Rodriguez v. Colorado</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts, Thomas+	580 U.S. ____ (2017); 137 S. Ct. 855 (2017)	Sixth Amendment: Right to Jury Trial; Fourteenth Amendment: Equal Protection Clause	Criminal Law and Procedure	The "no-impeachment" rule does not apply when a juror makes clear statements indicating that he relied on racial stereotypes or animus when voting to convict a criminal defendant.
<b>Cooper v. Harris</b>	Breyer, GINSBURG, Kagan*, Sotomayor, Thomas+	Alito+, Kennedy, Roberts	581 U.S. ____ (2017); 137 S. Ct. 1455 (2017)	Fourteenth Amendment: Equal Protection Clause	Election Law; Civil Rights Law	North Carolina officials unconstitutionally considered race as the predominant factor in creating legislative districts.
<b>Fisher v. Univ. of Tex. Austin</b>	Breyer, GINSBURG, Kennedy*, Sotomayor	Alito+, Roberts, Thomas+	579 U.S. ____ (2016); 136 S. Ct. 2198 (2016)	Fourteenth Amendment: Equal Protection Clause	Civil Rights Law; Education Law	University's race-conscious admissions program did not violate the Equal Protection Clause.

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<b>Luis v. United States</b>	Breyer*, GINSBURG, Roberts, Sotomayor, Thomas+	Alito, Kagan+, Kennedy+	578 U.S. ____ (2016); 136 S. Ct. 1083 (2016)	Sixth Amendment: Right to Counsel	Criminal Law and Procedure	Pretrial restraint of defendant's legitimate, untainted assets that are needed to retain counsel of choice violates the Sixth Amendment.
<b>Whole Woman's Health v. Hellerstedt</b>	Breyer*, GINSBURG+, Kagan, Kennedy, Sotomayor	Alito+, Roberts, Thomas+	579 U.S. ____ (2016); 136 S. Ct. 2292 (2016)	Fourteenth Amendment	Abortion Law	State laws imposed an undue burden on women's right to seek pre-viability abortions.
<b>Williams v. Pennsylvania</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito, Roberts+, Thomas+	579 U.S. ____ (2016); 136 S. Ct. 1899 (2016)	Fourteenth Amendment: Due Process Clause	Criminal Law and Procedure; Judicial System	Due process compelled recusal of judge presiding over death penalty case when the judge previously had been involved in the case as a prosecutor.
<b>Ala. Legislative Black Caucus v. Alabama</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito, Roberts, Scalia+, Thomas+	575 U.S. 254 (2015)	Fourteenth Amendment: Equal Protection Clause	Election Law; Civil Rights Law	District court applied incorrect legal standards when evaluating whether changes to electoral districts constituted an unlawful racial gerrymander.
<b>Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n</b>	Breyer, GINSBURG*, Kagan, Kennedy, Sotomayor	Alito, Roberts+, Scalia+, Thomas+	576 U.S. 787 (2015)	Article I: Elections Clause	Election Law	Ballot initiative creating state congressional redistricting commission did not violate the Constitution's Elections Clause.
<b>Brumfield v. Cain</b>	Breyer, GINSBURG, Kagan, Kennedy, Sotomayor*	Alito+, Roberts, Scalia, Thomas+	576 U.S. 305 (2015)	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	Habeas corpus petitioner on death row was entitled to a hearing on his claim that he suffered from an intellectual disability that would render his execution unconstitutional.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Constitutional Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>City of Los Angeles v. Patel</b>	Breyer, GINSBURG, Kagan, Kennedy, Sotomayor*	Alito+, Roberts, Scalia+, Thomas	576 U.S. 409 (2015)	Fourth Amendment	Criminal Law and Procedure	Municipal code provision requiring hotel operators to provide guest information to requesting police officers violated the Fourth Amendment.
<b>Kingsley v. Hendrickson</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito+, Roberts, Scalia+, Thomas	576 U.S. 389 (2015)	Fourteenth Amendment: Due Process Clause	Civil Rights Law	To prevail on an excessive force claim, a pretrial detainee need only show that the force used was objectively unreasonable.
<b>Obergefell v. Hodges</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts+, Scalia+, Thomas+	576 U.S. 644 (2015)	Fourteenth Amendment: Due Process Clause; Fourteenth Amendment: Equal Protection Clause	Family Law; Civil Rights Law	A state, by failing to recognize marriages between same-sex couples, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.
<b>Walker v. Texas Div., Sons of Confederate Veterans, Inc.</b>	Breyer*, GINSBURG, Kagan, Sotomayor, Thomas	Alito+, Kennedy, Roberts, Scalia	576 U.S. 200 (2015)	First Amendment: Free Speech Clause	Freedom of Speech	Texas did not violate the First Amendment by rejecting a proposed specialty license plate design featuring a Confederate battle flag because specialty license plates are government speech.
<b>Williams-Yulee v. Fla. Bar</b>	Breyer+, GINSBURG+, Kagan, Roberts*, Sotomayor	Alito+, Kennedy+, Scalia+, Thomas	575 U.S. 433 (2015)	First Amendment: Free Speech Clause	Freedom of Speech; Election Law	State law prohibiting candidates for state judgeships from personally soliciting campaign funds did not violate the First Amendment, and states have substantial latitude to regulate campaign finance in judicial elections.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Constitutional Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Hall v. Florida</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts, Scalia, Thomas	572 U.S. 701 (2014)	Eighth Amendment: Cruel and Unusual Punishment Clause	Criminal Law and Procedure	State's capital punishment regime created an unacceptable risk of unconstitutionally executing persons with intellectual disabilities.
<b>Alleyne v. United States</b>	Breyer+, GINSBURG, Kagan, Sotomayor+, Thomas*	Alito+, Kennedy, Roberts+, Scalia	570 U.S. 99 (2013)	Sixth Amendment: Right to Jury Trial	Criminal Law and Procedure	Any fact that increases the mandatory minimum sentence is an element of the offense that must be submitted to the jury.
<b>Florida v. Jardines</b>	GINSBURG, Kagan+, Scalia*, Sotomayor, Thomas	Alito+, Breyer, Kennedy, Roberts	569 U.S. 1 (2013)	Fourth Amendment	Criminal Law and Procedure	The use of a drug-sniffing dog on a homeowner's porch to investigate the contents of the home is a search under the Fourth Amendment.
<b>Hollingsworth v. Perry</b>	Alito, GINSBURG, Kagan, Roberts*, Scalia	Alito, Kennedy+, Sotomayor, Thomas	570 U.S. 693 (2013)	Article III: Case or Controversy Requirement	Civil Procedure	Proponents of a California law prohibiting same-sex marriage lacked standing to appeal the district court's order invalidating the law.
<b>Missouri v. McNeely</b>	GINSBURG, Kagan, Kennedy+, Scalia, Sotomayor*	Alito, Breyer, Roberts+, Thomas+	569 U.S. 141 (2013)	Fourth Amendment	Criminal Law and Procedure	Natural metabolization of alcohol in the bloodstream does not create a categorical exception to the search warrant requirement to allow for warrantless, nonconsensual blood testing in drunk driving cases.
<b>Peugh v. United States</b>	Breyer, GINSBURG, Kagan, Kennedy, Sotomayor*	Alito+, Roberts, Scalia, Thomas+	569 U.S. 530 (2013)	Article I: Ex Post Facto Clause	Criminal Law and Procedure	Sentencing a criminal defendant under current sentencing guidelines violates the Ex Post Facto Clause if the applicable sentencing range would be higher than the sentencing guidelines that were in effect at the time of the offense.

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<b>Trevino v. Thaler</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito, Roberts+, Scalia+, Thomas	569 U.S. 413 (2013)	Sixth Amendment: Right to Counsel	Habeas Corpus	Under specified circumstances, federal habeas courts can entertain certain ineffective assistance of counsel claims even if they are procedurally defective.
<b>United States v. Windsor</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts+, Scalia+, Thomas	570 U.S. 744 (2013)	Fifth Amendment: Due Process Clause	Family Law; Civil Rights Law	Federal statute defining marriage to exclude same-sex partnerships was unconstitutional.
<b>Lafler v. Cooper</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts, Scalia+, Thomas	566 U.S. 156 (2012)	Sixth Amendment: Right to Counsel	Criminal Law and Procedure; Habeas Corpus	Defense counsel prejudicially rendered ineffective assistance by advising the criminal defendant to reject plea offer.
<b>Miller v. Alabama</b>	Breyer+, GINSBURG, Kagan*, Kennedy, Sotomayor+	Alito+, Roberts+, Scalia, Thomas+	567 U.S. 460 (2012)	Eighth Amendment: Cruel and Unusual Punishment Clause	Criminal Law and Procedure	Sentences mandating life imprisonment without the possibility of parole for juveniles violated the Eighth Amendment.
<b>Missouri v. Frye</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito, Roberts, Scalia+, Thomas	566 U.S. 134 (2012)	Sixth Amendment: Right to Counsel	Habeas Corpus	Criminal defense counsel must timely communicate favorable plea offers to the defendant.
<b>National Federation of Independent Businesses v. Sebelius</b>	Breyer, GINSBURG+, Kagan, Roberts*, Sotomayor	Alito+, Kennedy+, Scalia+, Thomas+	567 U.S. 519 (2012)	Taxing and Spending Clause	Separation of Powers	The Patient Protection and Affordable Care Act's individual mandate requiring most Americans to purchase health insurance or else pay a penalty is a valid exercise of Congress's taxing power and is also authorized under the Commerce Clause. <sup>b</sup>

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Constitutional Provision Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>Brown v. Plata</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts, Scalia+, Thomas	563 U.S. 493 (2011)	Eighth Amendment: Cruel and Unusual Punishments Clause	Civil Rights Law	Caps on the population of overcrowded state prisons were necessary to remedy violations of prisoners' constitutional rights.
<b>Bullcoming v. New Mexico</b>	GINSBURG*, Kagan, Scalia, Sotomayor+, Thomas	Alito, Breyer, Kennedy+, Roberts	564 U.S. 647 (2011)	Sixth Amendment: Confrontation Clause	Criminal Law and Procedure	The Confrontation Clause does not allow prosecutors to introduce a blood-alcohol test without the testimony of the analyst who performed the test.
<b>JDB v. North Carolina</b>	Breyer, GINSBURG, Kagan, Kennedy, Sotomayor*	Alito+, Roberts, Scalia, Thomas	564 U.S. 261 (2011)	Fifth Amendment: Self-Incrimination Clause	Criminal Law and Procedure	A juvenile defendant's age is generally relevant to whether that juvenile is in custody for the purposes of the <i>Miranda</i> doctrine.
<b>Turner v. Rogers</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito, Roberts, Scalia, Thomas+	564 U.S. 431 (2011)	Fourteenth Amendment: Due Process Clause	Family Law	The Due Process Clause does not automatically require appointment of counsel to indigent parties in civil contempt proceedings in child support cases, but the failure to provide alternate procedural safeguards in such cases can violate due process.
<b>Christian Legal Soc'y v. Martinez</b>	Breyer, GINSBURG*, Kennedy+, Sotomayor, Stevens+	Alito+, Roberts, Scalia, Thomas	561 U.S. 661 (2010)	First Amendment: Free Speech Clause; First Amendment: Free Exercise Clause	Freedom of Religion; Freedom of Association	School did not violate First Amendment by refusing to recognize a student organization that did not accept all students who wished to join the organization, including those who did not share the organization's views about religion and sexual orientation.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Constitutional Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Sears v. Upton</b>	Per Curiam (Breyer, GINSBURG, Kennedy, Sotomayor, Stevens)	Alito, Roberts, Scalia+, Thomas	561 U.S. 945 (2010)	Sixth Amendment: Right to Counsel	Habeas Corpus	State postconviction court failed to apply proper legal standards when assessing whether inadequacies in defense counsel's mitigation investigation prejudiced the petitioner.
<b>Wellons v. Hall</b>	Per Curiam (Breyer, GINSBURG, Kennedy, Sotomayor, Stevens)	Alito+, Roberts, Scalia+, Thomas	558 U.S. 220 (2010)	Fourteenth Amendment: Due Process Clause	Habeas Corpus; Judicial System	Capital murder defendant was not barred from pursuing claims of judge, juror, and bailiff misconduct.
<b>Arizona v. Gant</b>	GINSBURG, Scalia+, Souter, Stevens+, Thomas	Alito+, Breyer+, Kennedy, Roberts	556 U.S. 332 (2009)	Fourth Amendment	Criminal Law and Procedure	The search-incident-to-arrest exception to the Fourth Amendment's warrant requirement does not permit police to search a defendant's car if the defendant poses no threat to the officer's safety or to the preservation of evidence.
<b>Caperton v. A.T. Massey Coal Co.</b>	Breyer, GINSBURG, Kennedy*, Souter, Stevens	Alito, Roberts+, Scalia+, Thomas	556 U.S. 868 (2009)	Fourteenth Amendment: Due Process Clause	Judicial System	Due Process Clause requires recusal when a judge's failure to do so would create a constitutionally intolerable probability of bias.
<b>Haywood v. Drown</b>	Breyer, GINSBURG, Kennedy, Souter, Stevens*	Alito, Roberts, Scalia, Thomas+	556 U.S. 729 (2009)	Article VI: Supremacy Clause	Civil Rights Law; Judicial System	State law that divested state courts of general jurisdiction over suits filed under 42 U.S.C. § 1983 for monetary damages against state corrections officers violated the Supremacy Clause.
<b>Melendez-Díaz v. Massachusetts</b>	GINSBURG, Scalia*, Souter, Stevens, Thomas+	Alito, Breyer, Kennedy+, Roberts	557 U.S. 305 (2009)	Sixth Amendment: Confrontation Clause	Criminal Law and Procedure	An affidavit of a forensic analyst admitted against a defendant is testimonial evidence and thus subject to the requirements of the Sixth Amendment's Confrontation Clause

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Constitutional Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Oregon v. Ice</b>	Alito, Breyer, GINSBURG*, Kennedy, Stevens	Roberts, Scalia+, Souter, Thomas	555 U.S. 160 (2009)	Sixth Amendment: Right to Jury Trial	Criminal Law and Procedure	Sixth Amendment did not prohibit states from allowing judges (rather than juries) to find facts necessary to support imposing consecutive criminal sentences.
<b>Boumediene v. Bush</b>	Breyer, GINSBURG, Kennedy*, Souter+, Stevens	Alito, Roberts+, Scalia+, Thomas	553 U.S. 723 (2008)	Article I: Suspension Clause	National Security; Habeas Corpus	Enemy belligerents detained at Guantanamo Bay were entitled to seek habeas review of the legality of their detention.
<b>Kennedy v. Louisiana</b>	Breyer, GINSBURG, Kennedy*, Souter, Stevens	Alito+, Roberts, Scalia, Thomas	554 U.S. 407 (2008)	Eighth Amendment: Cruel and Usual Punishment Clause	Criminal Law and Procedure	The Eighth Amendment forbids imposing the death penalty for the rape of a child in a case where the victim did not die and the defendant did not intend the victim's death.
<b>Sprint Commc'ns Co. v. APCC Servs., Inc.</b>	Breyer*, GINSBURG, Kennedy, Souter, Stevens	Alito, Roberts+, Scalia, Thomas	554 U.S. 269 (2008)	Article III	Judicial System; Communications Law	Assignees of payphone operators had standing to sue long-distance carriers.
<b>Abdul-Kabir v. Quarterman</b>	Breyer, GINSBURG, Kennedy, Souter, Stevens*	Alito, Roberts+, Scalia+, Thomas	550 U.S. 233 (2007)	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	State court improperly rejected capital defendant's claim that the sentencing jury was unable to consider mitigating evidence concerning the defendant's family background and mental defects.
<b>Massachusetts v. EPA</b>	Breyer, GINSBURG, Kennedy, Souter, Stevens*	Alito, Roberts+, Scalia+, Thomas	549 U.S. 497 (2007)	Article III	Judicial System; Environmental Law	State had standing to challenge the Environmental Protection Agency's (EPA's) alleged failure to regulate greenhouse gases adequately; greenhouse gases fit within the Clean Air Act's definition of "air pollutant" and therefore fell within EPA's regulatory authority.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Constitutional Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Panetti v. Quarterman</b>	Breyer, GINSBURG, Kennedy*, Souter, Stevens	Alito, Roberts, Scalia, Thomas+	551 U.S. 930 (2007)	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	State failed to afford petitioner a constitutionally adequate procedure to prove he lacked the mental competency required to be subject to capital punishment.
<b>Brewer v. Quarterman</b>	Breyer, GINSBURG, Kennedy, Souter, Stevens*	Alito, Roberts+, Scalia+, Thomas	550 U.S. 286 (2007)	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	Jury instructions in a capital murder case did not provide the sentencing jury an adequate opportunity to consider mitigating evidence.
<b>Smith v. Texas</b>	Breyer, GINSBURG, Kennedy*, Souter+, Stevens	Alito+, Roberts, Scalia, Thomas	550 U.S. 297 (2007)	Eighth Amendment: Cruel and Unusual Punishment Clause	Habeas Corpus	Erroneous jury instructions in capital murder case entitled the petitioner to habeas corpus relief.
<b>Central Va. Community College v. Katz</b>	Breyer, GINSBURG, O'Connor, Souter, Stevens*	Kennedy, Roberts, Scalia, Thomas+	546 U.S. 356 (2006)	Article I, Section 8	Bankruptcy Law	A bankruptcy trustee's proceeding to set aside the debtor's preferential transfers to state agencies is not barred by the doctrine of sovereign immunity.
<b>Georgia v. Randolph</b>	Breyer+, GINSBURG, Kennedy, Souter*, Stevens+	Roberts+, Scalia+, Thomas	547 U.S. 103 (2006)	Fourth Amendment	Criminal Law and Procedure	A physically present inhabitant's express refusal of consent to a police search of his home overrides the consent of a fellow occupant, necessitating a warrant for such a search.

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Constitutional Provision Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>Jones v. Flowers</b>	Breyer, GINSBURG, Roberts*, Souter, Stevens	Kennedy, Scalia, Thomas+	547 U.S. 220 (2006)	Fourth Amendment: Due Process Clause	Takings Law	When notice of a tax sale of a home for unpaid taxes is mailed to the homeowner and returned undelivered, the government must take additional reasonable steps to provide notice before selling the property.
<b>United States v. Gonzalez-Lopez</b>	Breyer, GINSBURG, Scalia*, Souter, Stevens	Alito+, Kennedy, Roberts, Thomas	548 U.S. 140 (2006)	Sixth Amendment: Right to Counsel	Criminal Law and Procedure	A trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles the defendant to a reversal of his conviction.

**Source:** Created by CRS.

**Notes:** Author of primary opinion designated with asterisk (\*). Authors of concurring and dissenting opinions identified with plus signs (+).

- a. In the 62 cases listed in **Table 1**, the three most common voting groups of Justices in the majority or controlling plurality were (1) Breyer, GINSBURG, Kagan, Kennedy, and Sotomayor (21 cases); (2) Breyer, GINSBURG, Kennedy, Souter, and Stevens (11 cases); and (3) Breyer, GINSBURG, Kagan, Roberts, and Sotomayor (4 cases).
- b. The separate elements of the Court's holding in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), were each joined by a distinct group of Justices. Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito agreed that the individual mandate was not authorized under the Commerce Clause. Justices Scalia, Kennedy, Thomas, and Alito did not join in Chief Justice Roberts's opinion, however, but arrived at the same conclusion in a dissenting opinion. 567 U.S. at 646 (Scalia, J., joined by Kennedy, Thomas, and Alito JJ.). Chief Justice Roberts, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, agreed that the individual mandate was a valid exercise of Congress's taxing power. *Id.* at 574. Justice Ginsburg wrote a separate partial concurrence, in which she also would have upheld the Affordable Care Act's individual mandate under both the taxing power and the Commerce Clause, and the Medicaid expansion provision under the Spending Clause. *Id.* at 589 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.). Justice Sotomayor joined in the entirety of Justice Ginsburg's opinion, and Justices Breyer and Kagan joined in the opinion as to the individual mandate but not to the Medicaid expansion provision.

**Table 2. Justice Ruth Bader Ginsburg As a Deciding Vote: Statutory Law Decisions**

October 2005 Term–October 2019 Term

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Statutory Provision Interpreted	Area of Law	Justice Ginsburg’s Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>Dep’t of Homeland Security v. Regents of the University of California</b>	Breyer, GINSBURG, Kagan, Roberts*, Sotomayor+	Alito+, Gorsuch, Kavanaugh+, Thomas+	591 U.S. ____ (2020); 140 S. Ct. 1891 (2020)	Administrative Procedure Act	Administrative Law; Immigration Law	Department of Homeland Security provided an inadequate explanation for the rescission of the Deferred Action for Childhood Arrival program, rendering that rescission arbitrary and capricious.
<b>McGirt v. Oklahoma</b>	Breyer, GINSBURG, Gorsuch*, Kagan, Sotomayor	Alito, Kavanaugh, Roberts+, Thomas+	591 U.S. ____ (2020); 140 S. Ct. 2452 (2020)	Major Crimes Act	Criminal Law and Indian Law	Land reserved for the Muscogee (Creek) Nation in the 19th century remained “Indian country” for criminal jurisdiction purposes under the Major Crimes Act, thereby generally limiting Oklahoma’s authority to prosecute Indians for crimes committed on that land.
<b>Dep’t of Commerce v. New York</b>	Breyer+, GINSBURG, Kagan, Roberts*, Sotomayor	Alito+, Gorsuch, Kavanaugh, Thomas+	588 U.S. ____ (2020); 139 S. Ct. 2551 (2019)	Administrative Procedure Act	Administrative Law	The Commerce Secretary provided a pretextual explanation for including a citizenship question on the census, warranting remand to the agency.
<b>Kisor v. Wilkie</b>	Breyer, GINSBURG, Kagan*, Roberts+, Sotomayor	Alito, Gorsuch+, Kavanaugh, Thomas	588 U.S. ____ (2020); 139 S. Ct. 2400 (2019)	Administrative Procedure Act	Administrative Law	The judicial doctrine set forth in <i>Auer v. Robbins</i> , 519 U.S. 452 (1997) and <i>Bowles v. Seminole Rock &amp; Sand Co.</i> , 325 U.S. 410 (1945), under which courts defer to agency interpretations of their own ambiguous regulations, remains controlling law.
<b>Apple Inc. v. Pepper, et al.</b>	Breyer, GINSBURG, Kagan, Kavanaugh*, Sotomayor	Alito, Gorsuch+, Roberts, Thomas	587 U.S. ____ (2019); 139 S. Ct. 1514 (2019)	Clayton Antitrust Act	Business Law	iPhone owners who purchased apps from Apple’s app store were “direct purchasers” and could thus sue Apple for alleged monopolization of apps.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Statutory Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Home Depot U.S.A., Inc. v. Jackson</b>	Breyer, GINSBURG, Kagan, Sotomayor, Thomas*	Alito+, Gorsuch, Kavanaugh, Roberts	587 U.S. ____ (2019); 139 S. Ct. 1743 (2019)	General Removal Provision (28 U.S.C. § 1441); Class Action Fairness Act	Judicial System	Neither the Class Action Fairness Act nor the general statute permitting the removal of state civil actions to federal court permit a third-party counterclaim defendant to remove the counterclaim filed against it to federal court.
<b>Mont v. United States</b>	Alito, GINSBURG, Kavanaugh, Roberts, Thomas*	Breyer, Gorsuch, Kagan, Sotomayor+	587 U.S. ____ (2019); 139 S. Ct. 1826 (2019)	18 U.S.C. § 3624(e)	Criminal Law and Procedure	A criminal defendant's period of supervised release following incarceration may be tolled if the defendant is later charged with another crime and placed in pretrial detention.
<b>Artis v. District of Columbia</b>	Breyer, GINSBURG*, Kagan, Roberts, Sotomayor	Alito, Gorsuch+, Kennedy, Thomas	583 U.S. ____ (2018); 138 S. Ct. 594 (2018)	28 U.S.C. § 1367	Judicial System	If a federal district court exercising supplemental jurisdiction over state claims dismissed those claims, Section 1367(d)'s instruction to "toll" a state limitations period for 30 days stopped the clock on the statute of limitations for refiling those claims in state court.
<b>Chavez-Meza v. United States</b>	Alito, Breyer*, GINSBURG, Roberts, Thomas	Kagan, Kennedy+, Sotomayor	585 U.S. ____ (2018); 138 S. Ct. 1959 (2018)	Sentencing Reform Act of 1984	Criminal Law and Procedure	District court's explanation for reducing defendant's sentence that was not as low as the defendant requested was adequate.
<b>Ocasio v. United States</b>	Alito*, Breyer+, GINSBURG, Kagan, Kennedy	Roberts, Sotomayor+, Thomas+	578 U.S. ____ (2016); 136 S. Ct. 1423 (2016)	Hobbs Act	Criminal Law and Procedure	Defendant could be convicted of conspiracy to violate the Hobbs Act upon proof that he reached an agreement to obtain property under color of official right.
<b>Torres v. Lynch</b>	Alito, GINSBURG, Kagan*, Kennedy, Roberts	Breyer, Sotomayor+, Thomas	578 U.S. ____ (2016); 136 S. Ct. 1619 (2016)	Immigration and Nationality Act	Immigration Law	Alien's conviction for state crime constituted an aggravated felony rendering alien ineligible for cancellation of removal; state crime had all the requisite elements of the listed federal offense except for a connection to interstate commerce.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Statutory Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Texas Dep't of Hous. &amp; Cmty. Affairs v. Inclusive Cmty. Project, Inc.</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito+, Roberts, Scalia, Thomas+	576 U.S. 519 (2015)	Fair Housing Act	Civil Rights Law	Disparate impact claims were cognizable under the Fair Housing Act.
<b>United States v. Kwai Fun Wong</b>	Breyer, GINSBURG, Kagan*, Kennedy, Sotomayor	Alito+, Roberts, Scalia, Thomas	575 U.S. 402 (2015)	Federal Tort Claims Act	Civil Liability; Judicial System	The Federal Tort Claims Act's time limitations were nonjurisdictional and could accordingly be extended pursuant to equitable tolling principles.
<b>Yates v. United States</b>	Alito+, Breyer, GINSBURG*, Roberts, Sotomayor	Kagan+, Kennedy, Scalia, Thomas	574 U.S. 528 (2015)	Sarbanes-Oxley Act	Business Law; Criminal Law and Procedure	Commercial fisherman who disposed of undersized fish to prevent law enforcement detection could not be charged under Sarbanes-Oxley Act for destruction of "tangible objects" to impede a governmental investigation.
<b>Dart Cherokee Basin Operating Company LLC v. Owens</b>	Alito, Breyer, GINSBURG*, Roberts, Sotomayor	Kagan, Kennedy, Scalia+, Thomas+	574 U.S. 81 (2014)	28 U. S. C. § 1446(a)	Judicial System	A defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold and need not contain evidentiary submissions.
<b>Abramski v. United States</b>	Breyer, GINSBURG, Kagan*, Kennedy, Sotomayor	Alito, Roberts, Scalia+, Thomas	573 U.S. 169 (2014)	Gun Control Act	Criminal Law and Procedure	Straw firearms purchasers who presented themselves as the actual buyers of those firearms, despite purchasing them on another's behalf, made false statements in violation of the Gun Control Act.
<b>Paroline v. United States</b>	Alito, Breyer, GINSBURG, Kagan, Kennedy*	Roberts+, Scalia, Sotomayor+, Thomas	572 U.S. 434 (2014)	Mandatory Victims Restitution Act	Criminal Law and Procedure	Restitution for child pornography possession should be awarded in amount comporting with the defendant's relative role in the causal process underlying the victim's losses.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Statutory Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Scialabba v. Cuellar de Osorio</b>	GINSBURG, Kagan*, Kennedy, Roberts+, Scalia	Alito+, Breyer, Sotomayor+, Thomas	573 U.S. 41 (2014)	Child Status Protection Act	Administrative Law; Immigration Law	Interpretation given to the Child Status Protection Act by the Board of Immigration Appeals was reasonable and entitled to deference.
<b>FTC v. Actavis, Inc.</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Roberts+, Scalia, Thomas	570 U.S. 136 (2013)	Hatch-Waxman Act; Federal Trade Commission Act	Business Law	Reverse payment settlements in patent infringement litigation could violate antitrust laws under certain circumstances.
<b>McQuiggin v. Perkins</b>	Breyer, GINSBURG*, Kagan, Kennedy, Sotomayor	Alito, Roberts, Scalia+, Thomas	569 U.S. 383 (2013)	Antiterrorism and Effective Death Penalty Act	Habeas Corpus	Petitioner's plea of actual innocence could potentially overcome statute of limitations in habeas corpus statute; timing of the filing of a petition is relevant to assessment of petitioner's proof of innocence.
<b>US Airways, Inc. v. McCutchen</b>	Breyer, GINSBURG, Kagan*, Kennedy, Sotomayor	Alito, Roberts, Scalia+, Thomas	569 U.S. 88 (2013)	Employment Retirement Income Security Act	Labor and Employment Law; Business Law	Equitable principles could not override the plain terms of a plan established under the Employee Retirement Income Security Act (ERISA), but equitable principles could influence the interpretation of an ERISA plan whose terms were not plain.
<b>Arizona v. United States</b>	Breyer, GINSBURG, Kennedy*, Roberts, Sotomayor	Alito+, Scalia+, Thomas+	567 U.S. 387 (2012)	Immigration and Nationality Act	Immigration Law	Federal law preempted several provisions of a state statute relating to aliens present in the United States without authorization.
<b>Dorsey v. United States</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito, Roberts, Scalia+, Thomas	567 U.S. 260 (2012)	Fair Sentencing Act	Criminal Law and Procedure	Fair Sentencing Act's new, lower mandatory minimums apply to those sentenced after the enactment of the law for offenses committed prior to the law's enactment.

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<b>CSX Transportation v. McBride</b>	Breyer, GINSBURG*, Kagan, Sotomayor, Thomas	Alito, Kennedy, Roberts+, Scalia	564 U.S. 685 (2011)	Federal Employers' Liability Act	Civil Liability; Labor and Employment Law	To prove liability under the Federal Employers' Liability Act, a railroad worker does not need to satisfy the common-law proximate cause standard, but only show that the railroad's negligence played a part in plaintiff employee's injury.
<b>Freeman v. United States</b>	Breyer, GINSBURG, Kagan, Kennedy*, Sotomayor	Alito, Roberts+, Scalia, Thomas	564 U.S. 522 (2011)	Federal Rule of Criminal Procedure 11(c)(1)(C); Sentencing Reform Act	Criminal Law and Procedure	Defendants who enter into plea agreements that recommend a particular sentence as a condition of the guilty plea may be eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2) if the applicable sentencing guidelines range has been lowered by retroactive amendment.
<b>Dolan v. United States</b>	Alito, Breyer*, GINSBURG, Sotomayor, Thomas	Kennedy, Roberts*, Scalia, Stevens	560 U.S. 605 (2010)	Mandatory Victims Restitution Act	Criminal Law and Procedure	A sentencing court that missed the Mandatory Victims Restitution Act's 90-day deadline for determining the amount of restitution nonetheless retained the power to order restitution, where the court had previously made clear that it would order restitution and left open only the amount of restitution.
<b>Hemi Group v. City of New York</b>	Alito, GINSBURG+, Roberts*, Scalia, Thomas	Breyer+, Kennedy, Stevens	559 U.S. 1 (2010)	Racketeer Influenced and Corrupt Organizations Act (RICO)	Civil Liability; Food and Drug Law	New York City could not use Racketeer Influenced and Corrupt Organizations Act to collect tobacco taxes that it could not permissibly collect on out-of-state sellers due to the Commerce Clause.

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<b>Atlantic Sounding Co, Inc. v. Townsend</b>	Breyer, GINSBURG, Thomas*, Souter, Stevens	Alito+, Kennedy, Roberts, Scalia	557 U.S. 404 (2009)	Jones Act	Maritime Law	An injured seaman may recover punitive damages for the willful and wanton disregard of the maintenance and cure obligation in general maritime law.
<b>Corley v. United States</b>	Breyer, GINSBURG, Kennedy, Souter*, Stevens	Alito+, Roberts, Scalia, Thomas	556 U.S. 303 (2009)	Omnibus Crime Control and Safe Streets Act	Criminal Law and Procedure	Statute governing admissibility of confessions in criminal proceedings limited, but did not eliminate, the applicability of the evidentiary exclusionary rule.
<b>Cuomo v. Clearing House Assn., LLC</b>	Breyer, GINSBURG, Souter, Stevens, Scalia*	Alito, Kennedy, Roberts, Thomas+	557 U.S. 519 (2009)	National Bank Act	Business Law	The National Bank Act and an implementing regulation of the Office of the Comptroller of the Currency did not preclude ordinary enforcement of state law against a national bank.
<b>United States v. Denedo</b>	Breyer, GINSBURG, Kennedy*, Souter, Stevens	Alito, Roberts+, Scalia, Thomas	556 U.S. 904 (2009)	Military Justice Act; Uniform Code of Military Justice	Military Law; Criminal Law and Procedure	Military appellate court had jurisdiction to entertain a challenge to a prior criminal conviction resulting from a guilty plea allegedly caused by ineffective assistance of counsel.
<b>Vaden v. Discover Bank</b>	GINSBURG*, Kennedy, Scalia, Souter, Thomas	Alito, Breyer, Roberts+, Stevens	556 U.S. 49 (2009)	Federal Arbitration Act	Judicial System	District court lacked subject matter jurisdiction to entertain a petition to compel arbitration because the case did not arise under the laws of the United States.
<b>Spears v. United States</b>	Per Curiam (Breyer, GINSBURG, Scalia, Souter, Stevens)	Alito, Kennedy+, Roberts+, Thomas+	555 U.S. 261 (2009)	United States Sentencing Guidelines	Criminal Law and Procedure	District court had discretion to reject categorically the advisory federal sentencing guidelines ratio used for sentencing crack cocaine and powder cocaine convictions.

<b>Case Name</b>	<b>Justices in the Majority or Plurality, Including Those Concurring in Judgment<sup>a</sup></b>	<b>Justices Dissenting, Including Partial Dissents</b>	<b>Case Citation with Year</b>	<b>Statutory Provision Interpreted</b>	<b>Area of Law</b>	<b>Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)</b>
<b>Ali v. Federal Bureau of Prisons</b>	Alito, GINSBURG, Roberts, Scalia, Thomas*	Breyer+, Kennedy+, Souter, Stevens	552 U.S. 214 (2008)	Federal Tort Claims Act	Civil Liability	Bureau of Prisons employees are law enforcement officers under the Federal Tort Claims Act; the government's sovereign immunity was not waived in a suit to recover damages for loss of a prisoner's personal property.
<b>Altria Grp., Inc. v. Good</b>	Breyer, GINSBURG, Kennedy, Souter, Stevens*	Alito, Roberts, Scalia, Thomas+	555 U.S. 70 (2008)	Federal Cigarette Labeling and Advertising Act	Civil Liability; Business Law	Federal law did not preempt a state law unfair trade practices claim against tobacco manufacturer.
<b>Dada v. Mukasey</b>	Breyer, GINSBURG, Kennedy*, Souter, Stevens	Alito+, Roberts, Scalia+, Thomas	554 U.S. 1 (2008)	Immigration and Nationality Act	Immigration Law	Alien had to be granted the opportunity to timely withdraw motion for a voluntary departure.
<b>United States v. Santos</b>	GINSBURG, Scalia*, Souter, Stevens+, Thomas	Alito+, Breyer, Kennedy, Roberts	553 U.S. 507 (2008)	Money Laundering Control Act	Business Law; Criminal Law and Procedure	The term "proceeds" in the federal money laundering statute was ambiguous and, therefore, the rule of lenity applied; in present case involving stand-alone gambling operation, the term should mean "profits" instead of "receipts."
<b>Marrama v. Citizens Bank of Mass.</b>	Breyer, GINSBURG, Kennedy, Souter, Stevens*	Alito+, Roberts, Scalia, Thomas	549 U.S. 365 (2007)	Bankruptcy Code	Business Law	Debtor could not use specialized provisions of the Bankruptcy Code governing consumer debtors.

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Statutory Provision Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>Watters v. Wachovia Bank, N.A.</b>	Alito, Breyer, GINSBURG*, Kennedy, Souter	Roberts, Scalia, Stevens+	550 U.S. 1 (2007)	National Bank Act	Business Law	Bank's mortgage business was subject to the superintendence of the Office of the Comptroller of the Currency, rather than that of the states.
<b>Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.</b>	Alito, Breyer*, GINSBURG, Kennedy+, Stevens+	Roberts, Scalia+, Souter+, Thomas	550 U.S. 81 (2007)	Federal Impact Aid Act	Education Law; Administrative Law	Secretary of Education could consider school district population when assessing whether a state had implemented a qualifying program that equalized expenditures for free public education among the state's local educational agencies.
<b>Empire HealthChoice Assurance, Inc. v. McVeigh</b>	GINSBURG*, Roberts, Scalia, Stevens, Thomas	Alito, Breyer+, Kennedy, Souter	547 U.S. 677 (2006)	Federal Employees Health Benefits Act	Judicial System	The Federal Employees Health Benefits Act does not provide for federal-court jurisdiction over a suit by a health insurance carrier seeking reimbursement for benefits after an enrollee recovered damages for injury in a state court action.
<b>Hamdan v. Rumsfeld</b>	Breyer+, GINSBURG, Kennedy+, Souter, Stevens*	Alito+, Scalia+, Thomas+	548 U.S. 557 (2006)	Uniform Code of Military Justice; Detainee Treatment Act	National Security	President's order violated statutes governing the President's authority to convene military courts.
<b>House v. Bell</b>	Breyer, GINSBURG, Kennedy*, Souter, Stevens	Roberts+, Scalia, Thomas	547 U.S. 518 (2006)	Antiterrorism and Effective Death Penalty Act	Habeas Corpus	Procedural default of a petitioner on death row who made a showing of actual innocence could be excused, and the habeas corpus petition could proceed.
<b>League of United Latin Am. Citizens v. Perry<sup>b</sup></b>	Breyer, GINSBURG, Kennedy*, Souter+, Stevens	Alito, Roberts, Scalia, Thomas	548 U.S. 399 (2006)	Voting Rights Act	Election Law	The redrawing of one of Texas's legislative districts violated the Voting Rights Act.

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Statutory Provision Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>Day v. McDonough</b>	Alito, GINSBURG*, Kennedy, Roberts, Souter	Breyer, Scalia+, Stevens+, Thomas	547 U.S. 198 (2006)	Antiterrorism and Effective Death Penalty Act	Habeas Corpus	District court did not reversibly err by dismissing an untimely habeas corpus petition that state had erroneously treated as timely.

**Source:** Created by CRS.

**Notes:** Author of primary opinion designated with asterisk (\*). Authors of concurring and dissenting opinions identified with plus signs (+).

- a. In the 45 cases listed in **Table 2**, the three most common voting groups of Justices in the majority or controlling plurality were (1) Breyer, GINSBURG, Kagan, Kennedy, and Sotomayor (8 cases); (2) Breyer, GINSBURG, Kennedy, Souter, and Stevens (7 cases); and (3) Breyer, GINSBURG, Kagan, Roberts, and Sotomayor (4 cases).
- b. The Supreme Court fractured markedly in *League of United American Latin American Citizens v. Perry*, resulting in six different opinions that reached a variety of different legal conclusions. This chart therefore reflects only the legal positions adopted in a majority opinion joined by Justice Ginsburg. In addition to that opinion, Justice Ginsburg also was part of a three-Justice plurality that concluded that appellants did not establish that a state legislature's decision to override a valid, court-drawn restricting plan used political classifications in a way that caused unconstitutional political gerrymanders. 548 U.S. 399, 439 (Kennedy, J., joined by Souter and Ginsburg, JJ.). See also *id.* at 492-93 (Roberts, C.J., joined by Alito, J., concurring in judgment regarding statewide challenge).

**Table 3. Justice Ruth Bader Ginsburg As a Deciding Vote: Miscellaneous Legal Decisions**

October 2005 Term-October 2019 Term

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Law Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>Herrera v. Wyoming</b>	Breyer, GINSBURG, Gorsuch, Kagan, Sotomayor*	Alito+, Kavanaugh, Roberts, Thomas	587 U.S. ____ (2019); 139 S. Ct. 1686 (2019)	1968 Treaty Between the United States of America and the Crow Tribe of Indians	Indian Law	The Crow Tribe's right to hunt on "unoccupied lands of the United States" under a 1968 treaty did not expire when Wyoming became a state; lands of Bighorn National Forest did not become categorically "unoccupied" when the forest was set aside as a national reserve.
<b>Washington State Dep't of Licensing v. Cougar Den, Inc.</b>	Breyer*, GINSBURG, Gorsuch+, Kagan, Sotomayor	Alito, Kavanaugh, Roberts+, Thomas	586 U.S. ____ (2019); 139 S. Ct. 1000 (2019)	1855 Treaty between the United States and the Yakama Nation	Indian Law; Tax Law	Treaty barred the State of Washington from imposing a tax on fuel importers traveling by public highway who were members of the Yakama Nation.
<b>Florida v. Georgia</b>	Breyer*, GINSBURG, Kennedy, Roberts, Sotomayor	Alito, Kagan, Gorsuch, Thomas+	585 U.S. ____ (2018); 138 S. Ct. 2502 (2018)	Equitable Apportionment	Environmental Law	Further factual findings were necessary in a water apportionment dispute between two states.
<b>Douglas v. Indep. Living Ctr. of S. Cal., Inc.</b>	Breyer*, GINSBURG, Kagan, Kennedy, Sotomayor	Alito, Roberts+, Scalia, Thomas	565 U.S. 606 (2012)	Title XIX of the Social Security Act (Medicaid)	Public Benefits	In light of intervening action by the Centers for Medicare & Medicaid Services, changed circumstances in case warranted remand for determination of whether challenges to state Medicaid statutes could proceed.

Case Name	Justices in the Majority or Plurality, Including Those Concurring in Judgment <sup>a</sup>	Justices Dissenting, Including Partial Dissents	Case Citation with Year	Law Interpreted	Area of Law	Justice Ginsburg's Position in the Case (If She Joined the Majority in Full, Position Adopted by the Majority)
<b>New Jersey v. Delaware</b>	GINSBURG*, Kennedy, Roberts, Souter, Thomas	Alito, Scalia+, Stevens+	552 U.S. 597 (2008)	Interstate Compact Between New Jersey and Delaware	Environmental Law	Provision of a compact between two states did not grant one of those states exclusive jurisdiction over certain riparian improvements.

**Source:** Created by CRS.

**Notes:** Author of primary opinion designated with asterisk (\*). Authors of concurring and dissenting opinions identified with plus signs (+).

- a. In the five cases listed in **Table 3**, the only repeat voting group in the majority or controlling plurality was Breyer, GINSBURG, Gorsuch, Kagan, and Sotomayor (2 cases).

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