

Corporations and the Supreme Court: A Muted Term Belies a Supreme Court Deeply Polarized on Corporate Power | 2018-2019 Term

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I. Summary

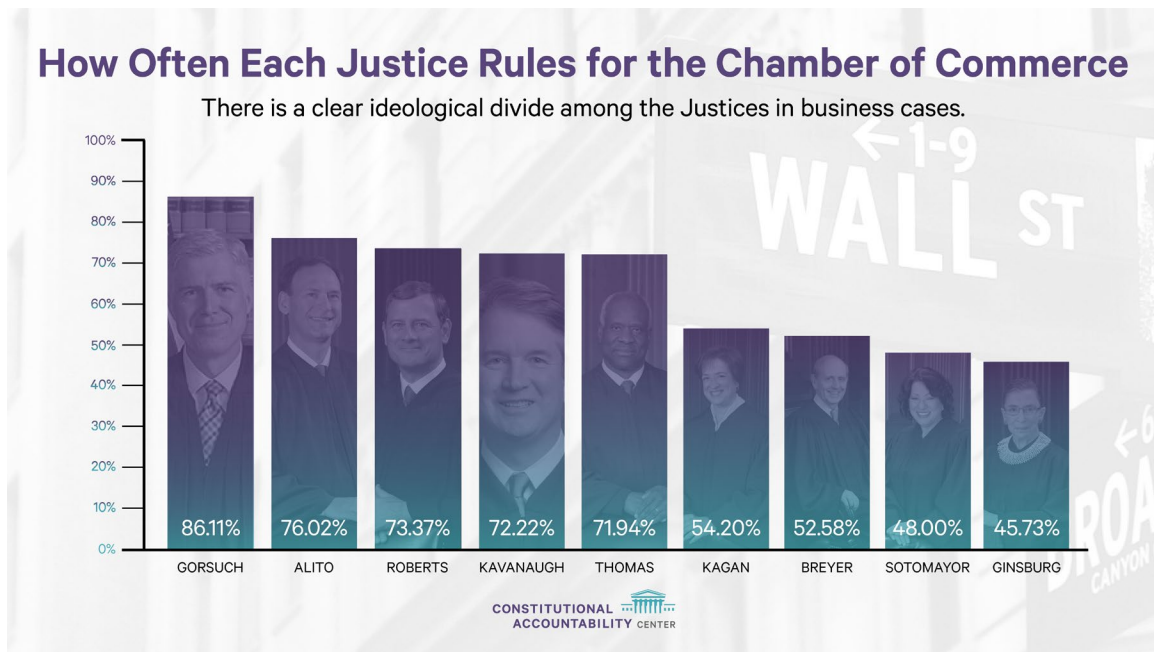
After two years of stratospheric victory rates before the Supreme Court, corporate interests saw a dip in their success rate during the Term that ended in June 2019, winning “only” 62% of the cases in which the U.S. Chamber of Commerce filed a brief. While business interests were remarkably effective in persuading the Court to accept cases for review last Term, they suffered some notable defeats in those cases and were stymied in some of their efforts to push the law in new directions.

Several unusual factors combined to bring down the Chamber’s success rate last Term. First, when the Court agrees to review an especially large number of business cases—as it did last Term, the highest number in a decade—the Chamber has difficulty sustaining the phenomenal victory rates it typically enjoys before the Roberts Court, likely because the expanded pool sweeps in more cases where even pro-business Justices must acknowledge that corporate America’s opponents clearly have the better of the argument. Second, last Term’s business docket was dominated by disputes about the interpretation of narrow statutory terms, in relatively lower-stakes controversies, a context where ideological predilections may be less likely to shape outcomes. Third, and most notably, last Term featured a number of cases in which individual Justices conspicuously broke ranks and joined the opposing ideological camp, a phenomenon that reduced the frequency of 5-to-4 conservative/liberal splits and that led to a number of surprise Chamber losses. Conservative defections in those cases turned what would have been an 80% Chamber success rate into the 62% rate that the Chamber achieved.

Beneath the placid surface of this past Term and its displays of cross-ideological unity, however, the Court remains as divided as ever in cases that pit corporate interests against individuals or the

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government—an ideological rift that is a distinctive feature of the Roberts Court. While notable instances of ideological flipping last Term may have obscured this fact, the overall data reveals that the conservative and more liberal Justices remain separated by a wide gulf in their likelihood of favoring big business, an entrenched divide that appears more likely to widen than to narrow next Term.

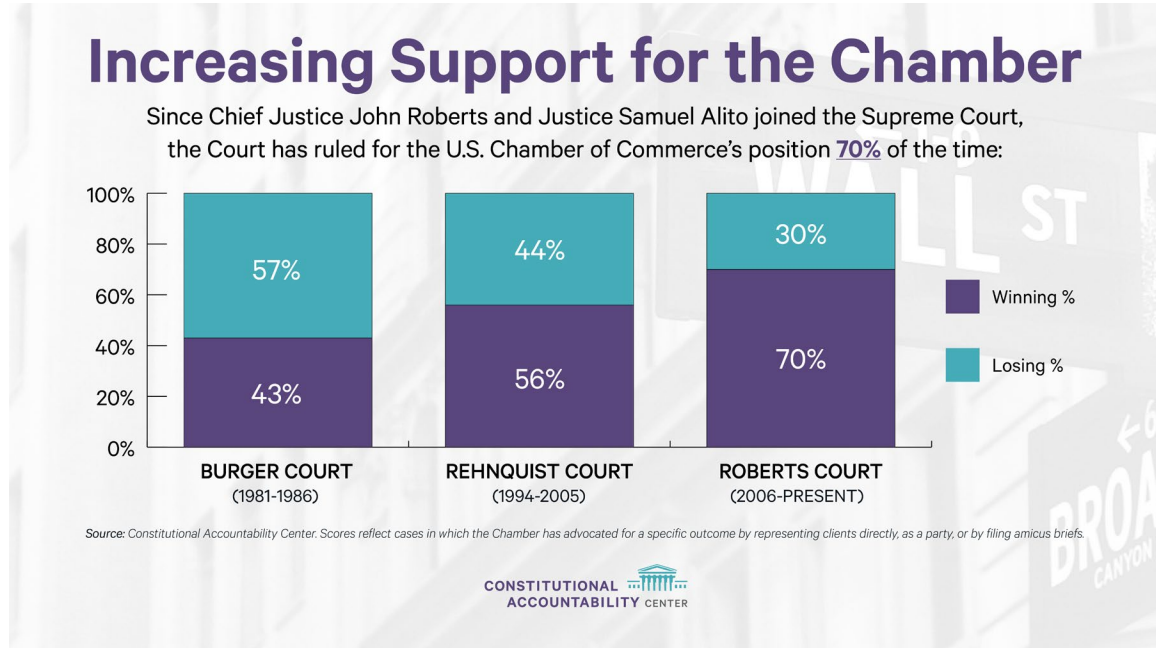


II. Introduction

Not long after John Roberts became Chief Justice of the United States, we at the Constitutional Accountability Center began to monitor the treatment of corporate interests at the Roberts Court by tracking the success rate of the U.S. Chamber of Commerce, which regularly files friend-of-the-court briefs to advance its “[pro-business agenda](#).” Each year, we examine how well the Chamber fared at the Court, tallying how often the Justices adopted the Chamber’s position and discussing the significance of the Chamber’s victories or losses. To discern how much the Roberts Court differs from its predecessors, we also undertook a historical inquiry to discover how often the Chamber prevailed before Chief Justice Warren Burger in the years 1981–1986 and Chief Justice William Rehnquist from 1994 to 2005, comparable recent periods when the Court’s personnel was stable.

Our study has yielded striking results. Since Justice Samuel Alito joined Chief Justice Roberts on the Court in 2006, the Chamber’s success rate has surged: the Roberts Court has sided with the Chamber in 70% of its cases, diverging sharply from the Rehnquist Court (56%) and the Burger Court (43%). We also discovered that a sharp ideological divide in business cases emerged during the Roberts era, with the conservative and more liberal Justices increasingly split into two opposing camps. Such a rift was

barely discernable on the Rehnquist and Burger Courts—it is a distinctive feature of John Roberts’s tenure.¹



The Court’s 2017-2018 Term, discussed in our [last report](#), exemplified both trends: the Chamber prevailed in 90% of its cases, an even more remarkable record than its 80% success rate the [previous year](#), including many significant victories rolling back corporate accountability. We anticipated more of the same with Brett Kavanaugh poised to replace retiring Justice Anthony Kennedy the following year.

The results of the 2018-2019 Term were therefore surprising, at least at first. While business cases made up an outsized portion of the Court’s docket, the Chamber’s success rate in those cases dropped to 62%. Corporate interests also lost some significant cases, while failing elsewhere to achieve the dramatic changes in the law being sought. Overall, 2018-2019 was a Term in which the Court avoided making waves in its business docket.

Of course, the fact that a 62% win rate feels like a defeat for big business only underscores just how accommodating today’s Supreme Court typically is to corporate interests. Several unusual factors, discussed below, appear to have combined to produce this relatively less stellar—but still successful—record for the Chamber.

Furthermore, under the surface of this quiet Term, the ideological fissure between the conservative and more liberal Justices on business issues remains as wide as ever. That phenomenon was largely masked last Term by a conspicuous number of cases in which one or two Justices switched sides to give corporate interests a surprise loss. But when one looks more closely at the data for the Term as a whole, it’s clear that corporate power remains an area in which our Supreme Court’s conservative majority is sharply divided from its more liberal minority.

¹ See Constitutional Accountability Center, [Open for Business: Tracking the Chamber of Commerce’s Supreme Court Success Rate from the Burger Court through the Rehnquist Court and into the Roberts Court](#), at 3-4 (2010).

III. Overview of This Year’s Business Cases Analysis of the 2018-19 Term

1. A Deluge of Business Cases

Business cases made up a huge portion of the Supreme Court’s docket during the 2018-2019 Term, with the Chamber of Commerce filing 23 merits-stage *amicus* briefs—the highest number since we began our study a decade ago. This means that in nearly one-third of the cases the Court heard last Term, the Chamber weighed in.

Stunningly, of the 23 Chamber cases that the Court agreed to review last Term, 20 were cases in which the position favored by business had lost in the court below. In other words, this was a Term in which corporate America repeatedly persuaded the Supreme Court to review, and in many cases reverse, lower-court decisions that favored individuals or the government over business interests. Only twice did the Court agree to review decisions favoring business interests—and in both cases the Court affirmed those pro-business rulings.²

This upsurge in business cases may not have been an accident: it followed a corresponding rise in activity by the Chamber urging the Court to accept cases for review at the *certiorari* stage. All told, the Chamber filed 40 *amicus* briefs in support of petitions for *certiorari* last Term, representing a 60% increase over the year before.³

It’s difficult to know whether this increase in Chamber filings urging review of business cases contributed to the Supreme Court’s increased acceptance of such cases. But the Chamber has a notable record of supporting successful *certiorari* petitions. For the 2017-2018 Term, 24% of the petitions that were supported by a Chamber *amicus* brief were granted—an impressive figure, given that the overall success rate of *certiorari* petitions is in the low single digits. Even more impressive is that for the 2018-2019 Term, the Chamber’s success rate supporting *cert* petitions rose to nearly 40%. Thus, as the number of Chamber briefs urging review rose dramatically, the success rate of those briefs also rose substantially.

Whatever the cause, the Court spent a good deal of its last Term resolving questions of importance to the business community, primarily in cases where business was on the losing side below.

2. How Corporate Interests Fared

While the Chamber was quite successful in securing review of business cases last Term, its ability to win those cases was less impressive than in the recent past. Of the cases decided last Term in which the

² In the one remaining case, *Frank v. Gaos*, the decision that the Court agreed to review did not fall neatly either inside or outside the “pro-business” category, and the Chamber’s brief supported neither party.

³ To calculate these figures, we consulted the Chamber’s own public [record](#) of the *cert*-stage briefs it filed, matching these briefs to the corresponding merits Terms based on when the petitions in question were either granted or denied. By our count, the Chamber filed 25 briefs corresponding to the 2017-2018 Term, and 6 of these petitions were granted. For the 2018-2019 Term, the Chamber filed 40 briefs, and 15 of these petitions were granted. (Two were dismissed before *cert* was granted or denied.)

Chamber filed a brief, 62% of them resulted in a victory for the Chamber’s position, down from the astronomical victory rates of 90% and 80% the Chamber enjoyed the previous two Terms.⁴

As noted, it’s a testament to how well corporate interests generally fare before the Roberts Court that winning more than 6 out of 10 cases represents a dip in success. A 62% victory rate would have been cause for celebration under the Burger Court in the 1980s (when 43% was the norm), and it would have been above average under the Rehnquist Court as well (56%).

It’s also true, however, that on a substantive level, corporate America achieved less last Term than it might have hoped. Many cases won by the Chamber involved fairly narrow questions, which the Court seems to have taken up in order to settle genuine disagreement in the lower courts. Few of the Chamber’s victories represented sea changes in the law. While the conservative majority was not shy about reversing long-standing precedent last Term, it largely confined those efforts to other areas of its docket.⁵ In the business sphere, by contrast, the Court passed on more than one chance to radically reshape established doctrine—in areas that included class-action [settlement awards](#), Congress’s ability to [delegate](#) decision-making to agencies, and judicial deference to agencies’ interpretation of [statutes](#) or [their own regulations](#).

Finally, the business community had a number of real—and sometimes surprising—losses last Term, including in cases involving [antitrust](#), [arbitration agreements](#), [class actions](#), [employment discrimination](#), [securities regulation](#), and [state control over nuclear power](#).

3. Explaining the Term’s Results

While business interests were successful last Term, they were less dominant than usual, and their record certainly fell short of the transformative results pressed by the Chamber. Does this suggest that the Roberts Court’s reputation as a corporate-friendly forum is overblown? Hardly. Several unusual factors appear to have combined to account for last Term’s record.

First, last Term involved an especially large number of business cases. And the data suggests that the Chamber has difficulty in such Terms sustaining the extremely high victory rate it normally enjoys before the Roberts Court. In fact, the Chamber’s score last Term is right on par with two other Terms in which it filed an especially high number of briefs. During the [2010-2011 Term](#), the Chamber filed 21 briefs in cases that were decided on the merits, yielding a 57% win rate. In [2014-2015](#), it also filed 21

⁴ We arrived at this 62% figure as follows. Out of 23 cases in which the Chamber filed a brief, one was dismissed without decision, and one, *Frank v. Gaos*, was decided without resolving the question that the Chamber’s brief addressed (the question the Court had originally agreed to consider). Of the remaining 21 cases, we assessed the Chamber as having prevailed in 13, giving it a 61.9% success rate.

In nearly all of these cases, it was easy to determine whether the Court accepted or rejected the Chamber’s position. One case required a judgment call. In *Kisor v. Wilkie*, the Chamber urged the Court to overrule the long-standing doctrine of “*Auer* deference,” under which courts often defer to an agency’s reasonable interpretation of its own regulations. Because the Court declined to take that dramatic step, we initially viewed *Kisor* as a loss for the Chamber. But while the Court did not go as far as the Chamber wished, it significantly “cabined” the *Auer* doctrine and “reinforce[d]” its limits, as the majority put it—leaving the doctrine, in Justice Gorsuch’s dissenting view, “riddled with holes” and “new and ambiguous limitations.” Because *Kisor* substantially moved the law in the Chamber’s preferred direction, we have decided to score it as a win for the Chamber—a partial victory, to be sure, but a victory nonetheless. The Chamber itself has [proclaimed](#) that the decision “significantly limits” the *Auer* doctrine and has predicted that it “should mean less leeway in the courts for government regulators vis-à-vis business.”

⁵ For instance, the Court issued 5-4 decisions reversing long-standing precedent concerning state sovereign immunity in *Franchise Tax Bd. of Cal. v. Hyatt* and the Takings Clause in *Knick v. Township of Scott*.

briefs, with a 62% win rate. The 2018-2019 Term yielded the same figure: out of the 21 cases in which the Court either accepted or rejected the Chamber’s position, the Chamber prevailed 62% of the time.

Many factors could explain this apparent correlation. But it may simply be that when the Court keeps its docket of business cases relatively small, the Justices are more selective about which cases to review. And on the corporate-friendly Roberts Court, that selectiveness could be skewed toward cases in which business interests appear to have a strong chance of prevailing. Under this theory, the more the Court expands the pool of business cases it agrees to review, the more likely it will sweep in a higher percentage of cases in which even this Court is willing to conclude that consumers, employees, or the government have the better of the argument.

Indeed, the Chamber’s somewhat diminished success rate last Term may be the unavoidable flip side of its success in persuading the Court to accept so many business cases. In almost every case the Court reviewed, the position favored by business had lost in the court below—and in many cases there were good reasons for that loss.

Last Term’s cases involving arbitration may illustrate that dynamic. We have [previously discussed](#) how the modern Court has used binding arbitration to shield corporations from lawsuits by employees and customers. As Supreme Court advocate Paul Clement reportedly told a Chamber audience last year, there are generally two types of arbitration cases: those in which the Court rules 9-0 in favor of arbitration and those in which the Court rules 5-4 in favor of arbitration.⁶ And indeed, last Term saw two such cases: [Henry Schein, Inc. v. Archer & White Sales, Inc.](#) and [Lamps Plus, Inc. v. Varela](#). But the Court also added a third arbitration case, [New Prime Inc. v. Oliveira](#). And there, the arguments in favor of arbitration crumbled under scrutiny, producing something virtually unheard of in this area: a [defeat](#) for big business.

A second distinguishing feature of last Term’s business docket—which may also explain the Chamber’s more muted record—was the high percentage of cases involving close textual analysis of narrow statutory terms. In *New Prime*, for example, the Court interpreted the meaning of “contracts of employment” in the Federal Arbitration Act. And this was true in many other cases as well.⁷ Most of these cases seem to have been accepted for review to resolve genuine disagreement among the lower courts, not to push the law in new directions. In this sense, the Court’s business docket mirrored its overall docket last Term. With some notable exceptions, there were simply fewer high-profile, ideologically charged cases than in recent years. And that dynamic seems to have translated into less radical results in business matters than is often the case.

One last factor seems to have been at play last Term: an apparent effort by the Justices to achieve more cross-ideological agreement in business cases.

⁶ Clement’s comments were reported on Twitter by Lawrence Hurley on June 15, 2018: <https://twitter.com/lawrencehurley/status/1007676016838561792>.

⁷ In [Home Depot U.S.A., Inc. v. Jackson](#), the Court construed the word “defendant” in a provision of the Class Action Fairness Act, while [Return Mail, Inc. v. Postal Service](#) addressed whether a federal agency is a “person” who can seek review of a patent under the Leahy-Smith America Invents Act, and [Cochise Consultancy, Inc. v. United States ex rel. Hunt](#) interpreted the term “official of the United States” under the False Claims Act. In [Weyerhaeuser Company v. U.S. Fish and Wildlife Service](#), the Court construed the term “critical habitat” under Endangered Species Act, in [Obduskey v. McCarthy & Holthus LLP](#) the meaning of “debt collector” in a provision of the Fair Debt Collection Practices Act. [Food Marketing Institute v. Argus Leader Media](#) concerned the definition of “confidential” information under a provision of the Freedom of Information Act, while [Parker Drilling Management Services, Ltd. v. Newton](#) examined what it means for state laws to be “applicable and not inconsistent with” federal law under the Outer Continental Shelf Lands Act.

As usual, many cases were decided unanimously or with lopsided majorities. Some disputes simply reveal themselves to have clear answers after briefing and argument, and of the business cases decided last Term, well over half (59%) were resolved unanimously or with only one or two Justices dissenting.⁸ Only two decisions (9% of the total) featured a 5-4 split with the Court divided between the conservative and more liberal Justices.⁹

This dearth of 5-4 splits (last year the figure was 30%) resulted from an unusual number of cases in which one or two Justices broke ranks to join the other side, averting what would otherwise have been a classic ideological divide.

Most prominently, Justice Kavanaugh joined the more liberal Justices in [Apple Inc. v. Pepper](#), allowing iPhone owners to sue Apple for antitrust violations over the use of its App Store. Justice Clarence Thomas switched sides in [Home Depot U.S.A., Inc. v. Jackson](#), enhancing plaintiffs' ability to keep class action lawsuits in the relatively hospitable forum of state courts. In [Lorenzo v. SEC](#), Justice Samuel Alito and Chief Justice Roberts departed from their conservative colleagues by interpreting the scope of a securities prohibition broadly, while Roberts and Justice Kavanaugh joined the more liberal Justices in [Air & Liquid Systems Corp. v. DeVries](#), facilitating the ability to sue manufacturers for harmful products in the maritime context. Notably too, although it didn't affect the Chamber's score, Chief Justice Roberts broke ranks to temper the result in [Kisor v. Wilkie](#), which limited the deference that courts give to regulatory agencies under the "Auer doctrine" but did not overrule that doctrine entirely, as the four conservatives in dissent would have done.

Conservative Justices weren't the only ones crossing ideological lines. Justice Kagan joined the conservatives in [Dutra Group v. Batterton](#), limiting seamen's ability to seek punitive damages for on-the-job injury caused by employer negligence. Justice Sotomayor switched camps in [Return Mail, Inc. v. Postal Service](#), limiting the government's ability to challenge invalid patents. Because those moves merely changed 5-4 votes into 6-3 votes, they didn't affect the Chamber's success rate. But they did reduce the number of cases in which the Court was split on ideological fault lines.

One can only speculate why last Term had so many examples of individual Justices hopping across ideological lines. But it is hard not wonder if this stemmed from an instinct to smooth over the Court's divisions after the searing Kavanaugh nomination and amid threats to the perceived legitimacy of the Court as a non-partisan institution. This was, after all, the same year that Chief Justice Roberts [rebuked](#) President Trump in defense of the "independent judiciary," rejecting the notion that we "have Obama judges or Trump judges, Bush judges or Clinton judges." Whatever the explanation, conservative defections in business cases last Term turned what would have been an 80% Chamber success rate into the 62% rate the Chamber achieved.¹⁰

⁸ Of the 23 cases in which the Chamber filed a brief, one was dismissed without decision. Of the 22 cases remaining, 13 were resolved unanimously or with only one or two Justices dissenting.

⁹ These two cases were [Lamps Plus, Inc. v. Varela](#), in which the conservative majority restricted the availability of class arbitration (forcing employees to instead go it alone against their employers in one-on-one proceedings), and [Manhattan Community Access Corp. v. Halleck](#), in which the majority held that the First Amendment does not prevent a private entity operating public-access television channels under New York law from censoring viewpoints.

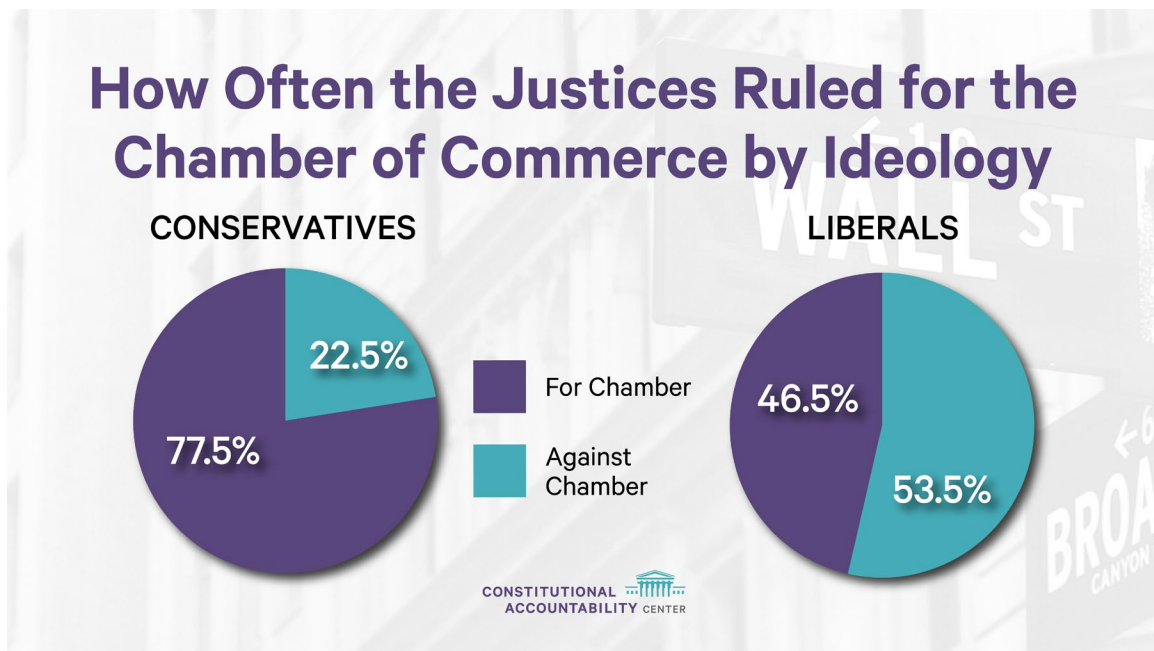
¹⁰ Without the conservative defections described above, [Air & Liquid Systems Corp. v. DeVries](#), [Apple Inc. v. Pepper](#), and [Home Depot U.S.A., Inc. v. Jackson](#) would all have been Chamber victories, while [Lorenzo v. SEC](#) would have been a 4-4 tie resulting in no decision. The Chamber would thus have won 16 cases and lost 4, an 80% success rate.

IV. Entrenchment of the Court’s Ideological Divide

The phenomenon of conservative Justices switching sides to create majorities with the more liberal wing of the Court did more than bring down the Chamber’s success rate last Term. It also obscured a larger truth: the Court’s two ideological factions are as polarized in business cases as they have ever been.

A deep polarization on business issues emerged for the first time under the Roberts Court. On the Burger Court of the 1980s, the conservative Justices voted for business interests at a rate only 12% higher than their moderate/liberal colleagues.¹¹ Even on the Rehnquist Court of the 1990s and early 2000s, the ideological divide remained only 13%. Under the Roberts Court, however, it quickly ballooned. By 2010, we noted that the average level of Chamber support among the conservative bloc was 31 points higher than among the moderate/liberal bloc (74% to 43%).¹²

That gap has endured. Last Term, despite an appearance of greater unity caused by conspicuous ideological defections, the conservative Justices were again separated from the more liberal Justices by 31 points—the same yawning gulf we identified almost a decade ago.¹³ In 2017-2018, the gap was even higher, at 33%.



¹¹ See Constitutional Accountability Center, *Open for Business*, at 3. We identify the “conservative” bloc on the Burger Court as including Chief Justice Burger and Justices O’Connor, Rehnquist, and Powell, and the “moderate/liberal” bloc as including Justices Marshall, Blackmun, Brennan, Stevens, and White.

¹² *Id.*

¹³ The conservatives favored the Chamber on average 77.5% of the time while the moderate/liberal faction did so 46.5% of the time.

The disparity between the most pro-Chamber and least pro-Chamber Justices has likewise expanded under John Roberts. On the Rehnquist Court, the difference between Justice Ginsburg, the least favorable to Chamber positions (44%) and Justice Sandra Day O'Connor, the most favorable (65%), was 21 points. Today, Ginsburg remains the Justice least likely to vote for the Chamber, and her record under the Roberts Court is comparable (46%). But the Justice now most likely to favor the Chamber, Neil Gorsuch, comes in at 86%, creating a stark 40-point spread between these two poles. Even the Chamber's second-most-reliable ally, Justice Alito, scores 30 points higher than Ginsburg, having given the Chamber 76% of his total votes.

Compare this, again, with the 1980s, when the Chamber's strongest ally was Justice Lewis Powell—who had actually worked for the Chamber and was a motivating force in launching its campaign to influence the courts.¹⁴ On the bench, Powell [supported](#) the Chamber's position only 53% of the time, a record that would place him barely ahead of Justice Stephen Breyer under the Roberts Court (52.5%) and behind Justice Elena Kagan (54%).

In short, the Court's ideological wings have hardened into two distinct camps separated by a wide divide in their usual voting patterns on business issues. Notably, only one of last Term's Chamber cases produced a true ideological shakeup. In [Virginia Uranium, Inc. v. Warren](#), Justices Alito, Breyer, and Roberts joined together in favor of the Chamber's position, but all the remaining Justices voted against the Chamber. And even here, the six Justices to vote against the Chamber split along ideological lines in their opinions, with the three conservatives joining one opinion and the three moderate/liberals joining a separate opinion concurring only in the judgment.

Another indicator of polarization on today's Court exists in the Justices' dissenting votes. Strikingly, not one of the Court's conservative Justices cast a single dissenting vote in any case that the Chamber won—much less wrote a dissenting opinion. In other words, as we've noted before, “when business interests prevail before the Court, the conservative Justices almost never disagree with the result.”¹⁵ Last Term, they never disagreed. And the inverse was true of the Court's moderate/liberal bloc: in cases that the Chamber lost, only one single dissenting vote came from that bloc (Justice Breyer in [Virginia Uranium](#)).

President Trump's appointments to the Court are only exacerbating its polarization on business issues. Justice [Gorsuch](#), now more than two years into his tenure, has established himself as the most corporate-friendly Justice on the bench by far. Bucking the overall trend in business cases last term, Gorsuch sided with the Chamber 81% of the time, and he has given the Chamber 86% of his total votes since joining the Court in 2017.

As for Justice Kavanaugh, his voting record during his first Term on the bench puts him in line with his conservative colleagues—favoring the Chamber's position 72% of the time in a year when the Chamber's win rate was only 62%.¹⁶ While Kavanaugh did vote against corporate interests in some notable cases, pushing his rate lower than that of his conservative colleagues (who clocked in at 78.5% last Term), he was nowhere near the moderate-to-liberal bloc of Justices (46.5%). Time will tell, but

¹⁴ David H. Gans and Douglas T. Kendall, [A Capitalist Joker: The Strange Origins, Disturbing Past and Uncertain Future of Corporate Personhood in American Law](#), at 47-48 (2010).

¹⁵ Brian R. Frazelle, [A Banner Year for Business as the Supreme Court's Conservative Majority Is Restored](#) (2018).

¹⁶ Justice Kavanaugh participated in 18 of the 22 Chamber cases decided this Term. The others were argued before he joined the Court.

the enthusiasm that big business expressed for Kavanaugh’s nomination seems to have been warranted.

Indeed, notwithstanding the muted results of the 2018-2019 Term, it is clear that the Court’s conservative wing is itching to further unleash corporations from governmental restraint. In [Kisor](#), only Chief Justice Roberts’s vote prevented the Court from fully eliminating the *Auer* doctrine, under which courts often defer to a government agency’s reasonable interpretation of its own regulations when that interpretation is challenged. Justice Gorsuch portrayed the result as “more a stay of execution than a pardon.” And in [Gundy v. United States](#) (a criminal case the Chamber did not participate in), the conservatives left no doubt that they are ready to revive the “non-delegation doctrine,” a rule that limits Congress’s ability to task agencies with regulatory decision-making, but which has not been employed since the New Deal. Had Justice Kavanaugh joined the Court early enough to provide a fifth vote in *Gundy*, they might have done so last Term.

Finally, the rhetoric of the Court’s conservative Justices continues to offer hints about where their [empathy](#) is directed when business interests are concerned. Although the result was unanimous in [Merck Sharp & Dohme Corp. v. Albrecht](#), Justices Alito, Kavanaugh, and Roberts spent time in a concurring opinion defending Merck Sharp’s conduct against the “one-sided account” allegedly provided in the majority opinion. And in [Manhattan Community Access](#), Justice Kavanaugh infused his majority opinion with concerns about endangering “private enterprise,” capping off his opinion with the gratuitous statement: “It is sometimes said that the bigger the government, the smaller the individual.” Ironically, Justice Kavanaugh made these statements in a case where New York City gave a private company, Time Warner, access to public rights-of-way for its cable service, then gave another private entity a monopoly on operating the public-access channels available through that service—an entity that the Supreme Court then permitted to engage in viewpoint discrimination without First Amendment restraint.

V. Next Term: Looking Forward

During the fraught 2018-2019 Term, the Justices had strong incentive to pull together and demonstrate a measure of harmony. That effort, evident in many public comments by the Justices during the year, seems to have been reflected in the Court’s handling of business cases as well. But it remains to be seen how long that perceived incentive will remain. And the Justices have already agreed to review a raft of cases in the 2019-2020 Term that implicate corporate accountability, in particular the standards and requirements that injured persons must meet in order to seek redress for illegal conduct. A restrictive approach to such cases—closing the courthouse doors—has been a [hallmark](#) of the Roberts Court.

Next Term’s cases include matters involving race [discrimination](#) in contract formation, compelling polluters to adequately clean up toxic [contamination](#), and [three separate cases](#) about individuals’ ability to sue their employer-sponsored pension funds for misconduct. Also before the Court is a significant dispute about the scope of federal prohibitions on polluting the nation’s [waters](#). Waiting in the wings, meanwhile, are pending *certiorari* petitions supported by the Chamber that involve [class action](#) rules, industry rights-of-way through the [national forests](#), and the [constitutionality](#) of the Consumer Financial Protection Bureau, among other matters. It remains to be seen whether the 2019-2020 Term will bring a return to form, with corporate interests once again achieving sky-high victory rates under the Roberts Court. If so, the consequences could be dire for workers, consumers, and the environment.