

Federal Bar Association

Los Angeles Chapter

Volume 10, Issue 1

Winter 2020

Judicial Vacancies in the Central District of California Predicted to be Filled by November, 2020

By Daniel M. Cislo, Esq. and Rebecca Makitalo, Esq.

The Central District of California is experiencing what Chief Judge Virginia A. Phillips referred to as a “crisis of unprecedented magnitude.” This crisis is due to open judicial vacancies and a growing population in need of additional jurists.

District judges, also referred to as Article III judges, are appointed to serve in office for a lifetime term. The Constitution gives the President of the United States power to nominate judges and the Senate must approve or reject the appointments. For over two hundred years, 97% of the judges confirmed by the Senate were faced with little significant opposition; however, in recent years, confirmations in the Senate have become much more contentious.

Despite the difficulty in confirming judgeship appointments, President Donald Trump managed to propose over one hundred judicial nominations within the first twenty-eight months of his presidency and has made a total of one hundred and sixty-four (164) appointments thus far; including, two Supreme Court justices, forty-three appellate court judges, and one hundred and ten district court judges. In less than three years, the Senate has confirmed more circuit

judgeships during President Trump’s time in office than any other president since 1980.

In the Ninth Circuit Court of Appeals alone, the nation’s largest circuit with twenty-nine authorized judgeships, President Trump has already appointed eight judgeships with two more nominations announced in October.

President Trump’s judicial appointees include Mark J. Bennett, Ryan D. Nelson, Eric D. Miller, Bridget Shelton Bade, Kenneth K. Lee, Daniel P. Collins, Daniel Aaron Bress, and Danielle J. Hunsaker. The two previously pending judicial nominees included Patrick J. Bumatay and Lawrence VanDyke, who have now been confirmed.

President Trump’s appointees in the Ninth Circuit replaced three Democratic appointed jurists, approaching the possibility of flipping the liberal-known Ninth Circuit to a majority of Republican appointed judges. The Ninth Circuit would become the fourth federal appellate court for President Trump to convert to a Republican appointed majority after overturning the Democratic appointed majorities in the Second, Third, and Eleventh Circuits.

(Continued on pg. 6)

UPCOMING EVENTS

- **Every Third Wednesday of the Month:** FBA Day at the *Pro Se* Clinic
- **February 12:** YLD Brown Bag Lunch with Hon. Cormac Carney
- **March 18:** State of the District and Circuit Luncheon

FBA – LA OFFICERS

President

Hon. Michael W. Fitzgerald
United States District Court, Central District of California

President-Elect

Jeff Westerman
Westerman Law Corp.

Treasurer

Yuri Mikulka
Alston & Bird LLP

Secretary

Sandhya Ramadas
The Walt Disney Company

*Editor: Brittany Rogers
O’Melveny & Myers 1*

PRESIDENT'S MESSAGE

Honorable Michael W. Fitzgerald
FBA CHAPTER PRESIDENT



It is my honor to serve this year as the President of the Federal Bar Association of Los Angeles (FBA-LA). Since 1937, the FBA-LA has provided a forum for all in the federal legal community – federal judges, civil practitioners, prosecutors, criminal defense attorneys, transactional lawyers, administrative agency lawyers, federal court administrators, and academics with a wide array of interests – to join together to advance the shared mission of strengthening the federal legal system and promoting the administration of justice.

When we think about our Chapter, perhaps the first things that come to mind are our broadly attended events, at which members of the bench and the bar can meet both to learn and to converse candidly about ways to improve our federal legal system. For example, last fall we once again hosted our annual Supreme Court and Russell Awards luncheon. In his inimitable style, Dean Erwin Chemerinsky surveyed some of the landmark cases that the High Court will decide this term. This spring, we will host our annual State of the Circuit/District luncheon and the reception for the federal judiciary.

Other than attending our signature events, how else can you be active in our Chapter? Please consider the following:

- Volunteer at the Central District's Pro Se Clinic on the FBA-LA day (litigation experience **not** required);
- Act as a mentor or become a mentee through our mentorship program;
- Attend one of our smaller seminars on a particular aspect of federal practice;
- Write an article for this newsletter; or
- Assist in the Central District's Law Day and the Ninth Circuit Civics Contest.

I remind you that your membership includes membership in the national Federal Bar Association, which will celebrate its centennial in March. Please take a moment to consider how that membership can help you. Do you read *The Federal Lawyer* magazine? Have you joined a section that focuses on your practice area? Would you like to attend the centennial events, including a reception at the Supreme Court and a black-tie gala? These are some of the benefits provided by your Association membership.

The FBA-LA and the national Federal Bar Association are communities dedicated to preserving our democracy's commitments to independent adjudication and justice under the rule of law. If you are a member, accept my thanks for supporting our Chapter and the Association. If you are not yet a member, we hope that you will join us.

Warmest regards,

Michael W. Fitzgerald
President, Federal Bar Association-Los Angeles



**Federal Bar
Association**

Dean Chemerinsky Reviews U.S. Supreme Court's October 2018 Term, Previews Upcoming Blockbuster Cases for 2019 Term

By Collin P. Wedel, Esq. & Andrew B. Talai, Esq.

On October 3, 2019, the Los Angeles Chapter of the Federal Bar Association hosted its annual “United States Supreme Court Review and Judge Barry Russell Federal Practice Award” luncheon. The event took place at the Millennium Biltmore Hotel in Downtown Los Angeles. Chief Judge Virginia A. Phillips began the event by swearing in the incoming Board of Directors for the Los Angeles Chapter. Judge Barry Russell then honored five local law students for achieving excellence in the study of federal practice and procedure. For the main event, Dean Erwin Chemerinsky reviewed the U.S. Supreme Court’s October 2018 term and offered a preview of upcoming blockbuster cases for the October 2019 term.

1. Swearing in the New Board of Directors

The Honorable Virginia A. Phillips, Chief Judge of the U.S. District Court for the Central District of California, swore in the new Board of Directors for the Los Angeles Chapter of the Federal Bar Association. The Honorable Michael W. Fitzgerald, District Judge of the Central District of California, succeeded Lane Dilg, City Attorney for the City of Santa Monica, as President for the 2019–20 year. President Fitzgerald is joined on the Executive Committee by President-Elect Jeff Westerman of Westerman Law Corp., Treasurer Yuri Mikulka of Alston & Bird LLP, and Secretary Sandhya Ramadas of The Walt Disney Company.

2. Judge Barry Russell Federal Practice Award

The Honorable Barry Russell, Bankruptcy Judge of the U.S. Bankruptcy Court for the Central District of California, presented his annual *Federal Practice Award* to five students from local, ABA-accredited law schools.

The students were honored for achieving excellence in the study of federal practice and procedure. The recipients of this year’s award were Katlynn Clinich of Pepperdine University School of Law, Christopher Phillips of USC Gould School of Law, Erica Jansson of Southwestern Law School, Chelsea Aitken of UCLA School of Law, and Trevor Yedoni of Loyola Law School. Each student received a plaque recognizing their achievement, a \$400 award, and a signed copy of Judge Russell’s *Bankruptcy Evidence Manual*.

3. Dean Chemerinsky’s Annual Supreme Court Review

Erwin Chemerinsky, Dean of Berkeley Law, then conducted his annual U.S. Supreme Court review. Dean Chemerinsky has presented to the Los Angeles Chapter of Federal Bar Association for 25 consecutive years. He began by noting the divisiveness at the Court during the October 2018 term before discussing *stare decisis* in the era of the Roberts Court and highlighting the contributions of a few individual justices. Dean Chemerinsky then discussed three of the most important decisions from the October 2018 term and previewed three of the most important issues that will be decided during the October 2019 term.

A Court divided, but less so ideologically. Dean Chemerinsky explained that the Supreme Court remains divided, but less so on ideological grounds. During the October 2017 term, the Court issued 59 signed merits opinions after oral argument. Nineteen were decided by a 5-4 (or 5-3) vote. Of those split decisions, the five Republican-appointed justices were in the majority 14 times (*i.e.*, Justice Kennedy joined Chief Justice Roberts and Justices Thomas, Alito, and Gorsuch).



Pictured: Dean Erwin Chemerinsky, U.C. Berkeley School of Law

During the October 2018 term, the Court issued 66 signed merits opinions after oral argument and 21 were decided by a 5-4 (or 5-3) vote—a similar rate of split decisions.

This time, however, the five Republican-appointed justices were together in 5-4 majorities only seven times. Notably, the four Democrat-appointed justices were able to create several 5-4 (or 5-3) majorities with the Republican-appointed justices (*e.g.*, four with Justice Gorsuch and three with Chief Justice Roberts). For example, in *Department of Commerce v. New York*, No. 18-966, Chief Justice Roberts, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, held that the Commerce Secretary’s decision to reinstate a citizenship question on the 2020 census violated the Administrative Procedure Act (APA).

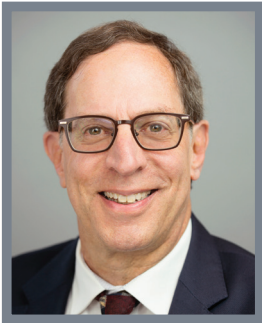
Dean Chemerinsky observed that the Court’s ideological divisions were weaker during the October 2018 term.

(Continued on pg. 12)

JUDICATE WEST

IS PROUD TO SUPPORT THE FEDERAL BAR ASSOCIATION – LOS ANGELES CHAPTER

As the gold standard in private dispute resolution we work tirelessly to attract, develop, and retain a roster of best-in-class neutrals who specialize in resolving all types of commercial cases, including MDL matters.



Hon. Jan M. Adler, Ret.



William J. Caplan, Esq.



Hon. Judith C. Chirlin, Ret.



Hon. Mitchel R. Goldberg, Ret.



Robert J. Kaplan, Esq.



Hon. Victor B. Kenton, Ret.



Hon. William McCurine, Jr., Ret.



Hon. Leo S. Papas, Ret.



Angela Reddock-Wright, Esq.



Jill R. Sperber, Esq.



Hon. John Leo Wagner, Ret.



Michael D. Young, Esq.

DOWNTOWN LOS ANGELES

601 S. Figueroa St.
Suite 3400
Los Angeles, CA 90017

WEST LOS ANGELES

11601 Wilshire Blvd.
Suite 2040
Los Angeles, CA 90025



Results Beyond DisputeSM

JUDICATEWEST.COM | (800) 488-8805

From the Clerk's Office

By Kiry K. Gray

As we bring 2019 to a close and look forward to 2020, we are sad to say good-bye to two of the court's family members. In addition, 2020 will bring new ways of doing business in the Central District of California.

Magistrate Judge Suzanne H. Segal

United States Magistrate Judge Suzanne H. Segal will be "stepping down" from the bench in January 2020, after serving on the Court for nearly 17 years, including four years as the chief magistrate judge from 2012 to 2015. Judge Segal was appointed to the bench in Los Angeles on July 31, 2002. Judge Segal has been an energetic and integral part of the Court. She has served as a member of the Executive Committee and as Coordinator of the Central District of California's Pro Bono Panel. In addition, she has participated in the Magistrate Judge Direct Assignment Program since its inception in 2009; the Voluntary Consent of Civil Cases Program; and the Pro Bono Civil Rights Panel. Judge Segal also lent support to the Court's Merit Selection Panel which consists of volunteer attorneys and non-attorneys tasked with recommending to the Court the recruitment and reappointment of magistrate judges within the District. She also initiated some significant improvement to the effectiveness and operation of the Panel.

She has been deeply committed to her colleagues and supportive of the Clerk's Office. She has said her decision to leave the Court was one of the most difficult decisions she has made and will deeply miss the work and in particular, her colleagues and Court staff.

Magistrate Judge Frederick F. Mumm

United States Magistrate Judge Frederick F. Mumm will be retiring from the bench in April 2020, after serving on the Court for nearly 14 years. Judge Mumm was appointed to the bench in Los Angeles on April 3, 2006. Just as Judge Segal, Judge Mumm participated in the Magistrate Judge Direct Assignment Program since its inception as well as the Voluntary Consent of Civil Cases Program. Judge Mumm has been known for having an outstanding judicial temperament and being a thoughtful and wise judge. He has been a beloved and dedicated colleague and a great support to the Clerk's Office.

On behalf of the Court and Clerk's Office, I wish both judges continued success in their future pursuits, good health and happiness.

CM/ECF Upgrade

The Court will be upgrading its CM/ECF software to the Next Generation ("NextGen") of CM/ECF on February 18, 2020. A new functionality of NextGen is Central Sign-On. This will allow attorneys to use one login and password to access the CM/ECF system and file documents electronically in all NextGen courts (appellate, bankruptcy, and district), as well as to access PACER for all courts. In order to access the court's CM/ECF System after February 17, 2020, there are a few simple steps that attorneys must take through PACER before February 18, 2020. After these steps are taken, there is one critical step the attorneys must take on or after February 18, 2020. Instructions are available on the court's NextGen web page at

<http://www.cacd.uscourts.gov/e-filing/nextgen-cmecf>. The court encourages attorneys to take these steps ahead of time in order to avoid any disruption in access to the court's CM/ECF system on or after February 18, 2020.

Patent Pilot Program

The Central District of California was designated as a participating Court in the ten-year national Patent Pilot Program on June 7, 2011. Any case filed on or after September 19, 2011, that presents one or more issues arising under any Act of Congress relating to patents or plant variety protection is eligible for transfer to the pilot program. The pilot program has several district judges who have been designated to hear cases transferred to the program. The court recently modified its general order governing the Patent Pilot Program by adding designated magistrate judges to handle all referred discovery-related matters in Patent Pilot Program cases. For more information, please refer to the Court's General Order 19-10.



Author Kiry K. Gray is the District Court Executive for the United States District Court, Central District of California

Judicial Vacancies in the Central District of California Predicted to be Filled by November, 2020

(Continued from pg. 1)

During Donald Trump's presidency, judicial confirmations have become a much more streamlined process. This is in large part due to the change made during the Obama administration decreasing the number of votes needed by the Senate to confirm a judicial nominee from sixty votes to fifty-one votes. Furthermore, the current Republican Senate has limited the Senate's blue slip policy. For many years, the Senate has complied with its precedential blue slip policy for judicial nominations allowing home-state senators to block lower court nominations by withholding blue slips (home Senator approved forms) from the Judiciary Committee. During President Trump's term however, many circuit court nominees have been confirmed despite home-state senators refusing to approve nominees and return their blue slips.

Currently, as reported on the U.S. Courts website, among the ninety-four (94) federal judicial districts, there are a total of six hundred and seventy-seven (677) available judgeships, including territorial courts. Despite President Trump's accelerated nominations, there remain eighty-seven (87) judicial vacancies, with forty-four judicial nominees pending. The Central District of California is among the many districts with numerous vacancies. Within its twenty-eight authorized judgeships, the Central District of California has nine judicial vacancies, some of which have been vacant for over five years, a 32% vacancy rate.

The Central District of California is one of the largest and busiest federal trial courts in the nation. The Central District of California serves approximately nineteen million people in the Los Angeles area. While the volume of cases filed within the Central District of California continues to grow, the number of judges has decreased over the years. Furthermore, active judges in the Central District of California preside over almost twice as many cases as the national average. In fact, judges serving in the Central District of California have a weighted case load of about nine hundred and eighty-six (986) civil

cases. In addition to the overwhelming case load for the remaining jurists, it is especially concerning that many overworked judges will soon reach the age for retirement or senior status.

It is of utmost importance to fill the judicial vacancies in the Central District of California to ensure an efficient judicial system. Just two weeks after Chief Judge Virginia A. Phillips proclaimed in a letter to Senators Lindsey Graham, Dianne Feinstein, and Kamala Harris of the Central District's vacancy crisis, the Senate Judiciary committee held hearings for two of President Trump's nominees, Judge Stanley Blumenfeld and Mark Scarsi. Feinstein, the home-state senator, introduced both nominees, indicating she and Harris returned their blue slips, approving the nominations at this stage in the hearings.

In addition to the Central District's nominees Blumenfeld and Scarsi, there are additional Central District nominees awaiting Senate Judiciary Committee hearings. This includes Jeremy B. Rosen, John W. Holcomb, Sandy Nunes Leal, Steve Kim, Rick Lloyd Richmond, and Fernando L. Aenlle-Rocha, whose nominations have now lapsed due to the new Congressional year; they will need to be re-nominated. The Republican majority Senate has been slow to affirm judicial nominations in Democratic States, such as California, since President Trump took office in 2017. However, if home-state senators like Feinstein and Harris continue to return their blue slips, the process can be fast tracked and judicial vacancies filled. Senator Marsha Blackburn of Tennessee, Judiciary Committee chair, stated at Blumenfeld and Scarsi's hearing that she is "hopeful that this will be the first of several hearings for California nominees."

(Continued on pg. 7)



Judicial Vacancies in the Central District of California Predicted to be Filled by November, 2020

(Continued from pg. 6)

Despite President Trump's difficulties in the Central District of California, Article III vacancies continue to decline with nominations and confirmations in the Senate. Presently, there remain less than one hundred vacancies compared to the two hundred and fifty judicial vacancies two years ago. In addition to the change in the Senate's confirmation process, Senate Majority leader Mitch McConnell offered further hope for the Central District of California recently stating that the goal of the Senate is to prioritize judicial confirmations and to reach zero judicial vacancies by the end of President Trump's 2021 term. His new motto is, "Leave no judicial vacancy behind." However, even if all vacancies are filled in the Central District of California, still our judges will have an overload of cases.

It is essential to not only fill judicial vacancies in the Central District of California but also to add additional judicial positions to relieve jurists of the increasing workload due to the Central District's rising population. The

Judicial Conference, through its committee, conducts biennial recommendations to Congress for Article III judgeship needs. The last time Congress authorized new permanent judgeship positions occurred in 2003 when the Central District of California served as a federal judicial district to roughly eighteen million people, compared to a present number of about nineteen million. Just this past March, the committee recommended that the 2019 Judicial Conference ask Congress for additional judgeships. Based on the most recent caseload data and an evaluation of the requests by the committee, nine additional permanent judgeships should be added and one temporary judgeship be converted to permanent status.

The growth in caseload, combined with nine judicial vacancies, has created overwhelming difficulties for those active jurists serving in the Central District of California. Our judges should be commended for their incredible efforts over these last several years. If the Senate continues to prioritize judicial confirmations, home-state

Senators return their blue slips, and Congress approves the Judicial Conference's recommendations by enacting an omnibus judgeship bill, the jurists in the Central District of California may eventually find relief from our severe caseload situation.



Daniel M. Cislo, Esq. is a member of the FBA-LA Board of Directors and Rebecca Makitalo, Esq. is a newly admitted attorney and new FBA member.



Register Now!
March 18 –
March 21
in D.C.

Signature Resolution is proud
to be a sponsor of the
Los Angeles Chapter of the
Federal Bar Association.



SIGNATURE
RESOLUTION

SIGNATURERESOLUTION.COM

Los Angeles | Century City

The Central District of California Expands Its Patent Pilot Program to Include Magistrate Judges

By Daniel M. Cislo, Esq. and the Honorable Michael R. Wilner

Magistrate judges in the United States District Court for the Central District of California will now participate in the district's Patent Pilot Program. The Central District, one of the nation's largest and busiest intellectual property courts, has been part of the nationwide Patent Pilot Program for over eight years. The Program allows United States District Judges to voluntarily transfer patent cases shortly after filing to other designated district judges with specialized expertise or interest in patent litigation. This program is advantageous for both district judges and patent litigants.

Under the existing program, six district judges currently volunteer their expertise to hear cases transferred to the Patent Pilot Program. They are District Judges André Birotte Jr., Philip S. Gutierrez, John A. Kronstadt, James V. Selna, George H. Wu, and S. James Otero.

The district court recently updated the General Order governing the Patent Pilot Program. Under General Order 19-10 (available at the district court's website: cacd.uscourts.gov), the expanded program authorizes magistrate judges to volunteer to participate in the Patent Pilot Program. Patent Pilot Magistrate Judges can now be assigned to patent cases to handle discovery issues and other pretrial matters.

The following magistrate judges have volunteered for the expanded Patent Pilot Program: Magistrate Judges Maria A. Audero, Alex F. MacKinnon, Douglas F. McCormick, John E. McDermott, Rozella A. Oliver, Karen E. Scott, Gail J. Standish, and Michael R. Wilner. Judges Audero, MacKinnon, McDermott, Oliver, Standish, and Wilner sit in Los Angeles. Judges McCormick and Scott are assigned to the Santa Ana courthouse.

Another aspect to this enhancement is that a non-Program district judge who elects to keep a patent case may still request that a Patent Pilot Program Magistrate Judge be assigned to handle any discovery related matters. The original goal of the Patent Pilot Program was to determine whether allowing judicial officers with specialized patent experience to preside over patent cases will decrease rates of reversal and improve judicial efficiency. So far, the program appears to be a success for both the judiciary and patent litigants, and it is hoped that this expansion will further increase the satisfaction of all involved. With this new enhancement, we expect to see specialized magistrate judges who have expertise and an interest in patent matters handling discovery disputes in patent cases.

A Day We Will Never Forget: Attending a Naturalization Ceremony

By Kayla Ghasemi and Rebecca John, Externs to the Honorable Sandra R. Klein

On the morning of September 24th, 2019, the Honorable Sandra R. Klein swore-in 3,443 new citizens during a naturalization ceremony at the Los Angeles Convention Center. The ceremony was particularly special because it was held during Constitution and Citizenship week, which commemorates the formation and signing of the U.S. Constitution in 1787.

From the moment we arrived at the Convention Center, the energy and excitement in the air was palpable. As Judge Klein noted, this was a day that would change the new citizens' lives forever.

After the Courtroom Deputy began the ceremony with an announcement that it was an official court session, Judge Klein granted the USCIS's motion to naturalize all citizenship candidates. Judge Klein then instructed the soon-to-be-citizens to stand and repeat the Oath of Allegiance.

(Continued on pg. 16)

Statement on Judicial Independence issued by the Los Angeles Chapter of the Federal Bar Association*

Recently, the White House issued a statement that publicly attacked judges for opinions issued in pending cases by United States District Court Judges, including judges in the Central District of California. We urge everyone to remember that the Judiciary is a co-equal and independent branch of government established by the Constitution. Regardless of one's political affiliation or beliefs, or disagreement on law and policy, we should all respect the importance of an independent Judiciary in applying the law and protecting rights under the Constitution, as a check and balance on the activity of the Executive and Legislative branches.

The Board of the Los Angeles Chapter of the Federal Bar Association* reiterates the critical importance of judicial independence and acknowledges the hard work of the federal judiciary. As the Board of Directors for the Federal Bar Association's national organization stated in February 2017:

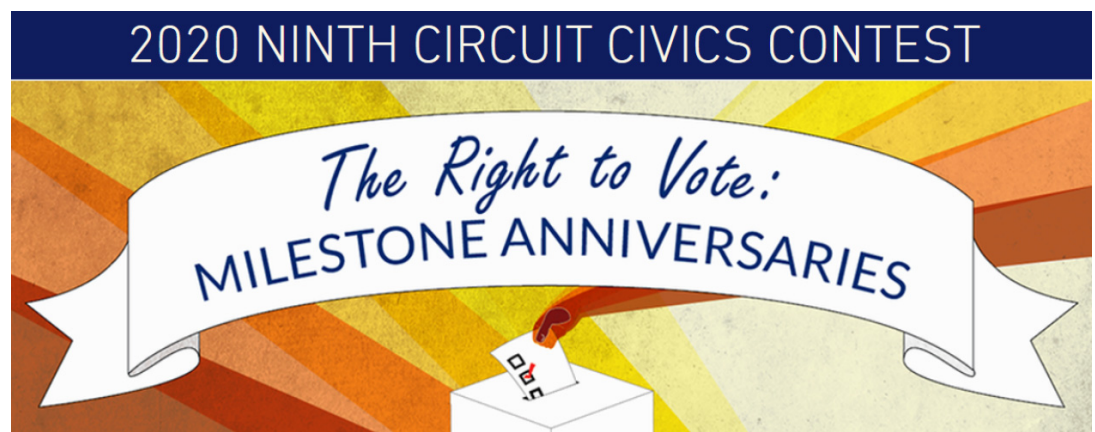
Judicial independence, free of external pressure or political intimidation, lies at the foundation of our constitutional democracy. An independent judiciary needs to remain free of undue influence from the legislative and executive branches and to remain beholden only to the maintenance of the rule of law and the protection of individual rights and personal liberties. We affirm the right to challenge a judge's ruling for reasons based in fact, law or policy. However, when robust criticism of the federal judiciary crosses into personal attacks or intimidation, it threatens to undermine public confidence in the fairness of our courts, the constitutional checks and balances underlying our government and the preservation of liberty.

The Los Angeles Chapter of the Federal Bar Association* stands by these fundamental principles of our democracy and urges civility and professionalism in discourse surrounding the independence, legitimacy and important work of the federal judiciary.

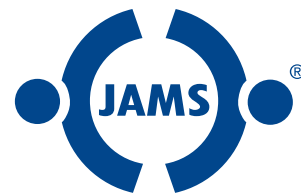
**This statement was authorized by the attorneys serving on the Board of Directors of the Los Angeles Chapter of the Federal Bar Association. Members of the Judiciary and employees of the US Government, including the US Attorney's Office and Federal Public Defender's office who serve on the Board did not participate in the decision to issue this statement. The FBA LA Chapter seeks to promote the sound administration of justice and the integrity, quality and independence of the federal judiciary. See:*

<http://www.fbala.org/>

**Entry deadline
is March 25,
2020!**



Find out more at <https://www.ca9.uscourts.gov/civicscontest/>



JAMS FEDERAL JUDGES

U.S. Courts for the Ninth Circuit

These distinguished neutrals served as district, magistrate and bankruptcy court judges of the Ninth Circuit federal trial courts. They are exclusively associated with JAMS and resolve complex cases across the spectrum of federal law, including class actions, intellectual property, ERISA, product liability, securities and employment matters. [To learn more, visit \[jamsadr.com/9th-Circuit\]\(https://jamsadr.com/9th-Circuit\) or call 800.352.5267.](https://jamsadr.com/9th-Circuit)



Hon. Wayne D.
Brazil (Ret.)



Hon. Rosalyn
Chapman (Ret.)



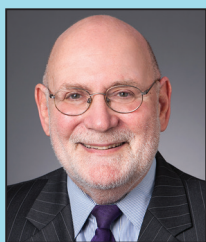
Hon. Frank C.
Damrell, Jr. (Ret.)



Hon. Jay C.
Gandhi (Ret.)



Hon. Irma E.
Gonzalez (Ret.)



Hon. Stephen E.
Haberfeld (Ret.)



Hon. David Warner
Hagen (Ret.)



Hon. Carl W.
Hoffman (Ret.)



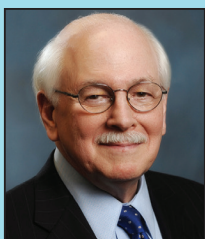
Hon. Edward A.
Infante (Ret.)



Hon. George
H. King (Ret.)



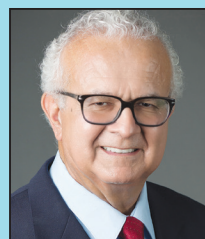
Hon. Elizabeth
D. Laporte (Ret.)



Hon. Lawrence
R. Leavitt (Ret.)



Hon. Peggy
A. Leen (Ret.)



Hon. Carlos R.
Moreno (Ret.)



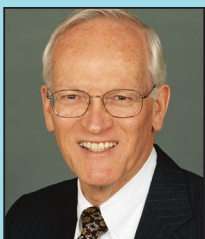
Hon. Margaret
A. Nagle (Ret.)



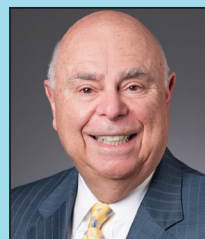
Hon. Randall J.
Newsome (Ret.)



Hon. Philip
M. Pro (Ret.)



Hon. Gary L.
Taylor (Ret.)



Hon. Dickran M.
Tevrizian (Ret.)



Hon. James
Ware (Ret.)

Dean Chemerinsky Reviews U.S. Supreme Court's October 2018 Term, Previews Upcoming Blockbuster Cases for 2019 Term

(Continued from pg. 3)

Nonetheless, he cautioned the audience about the limitations of this data: the small sample size, for instance, and the reality that the “conservative” position prevailed in many ideologically driven cases. See, e.g., *Rucho v. Common Cause*, No. 18-422 (partisan gerrymandering); *Bucklew v. Precythe*, No. 17-8151 (lethal injection); *Am. Legion v. Am. Humanist Ass’n*, No. 17-1717 (Establishment Clause); *Franchise Tax Bd. of Cal. v. Hyatt*, No. 17-1299 (sovereign immunity); *Knick v. Twp. of Scott, Pa.*, No. 17-647 (Takings Clause). Dean Chemerinsky also inferred that, where possible, the Court avoided taking up high-profile cases. For example, during the October 2018 term, the Court chose not to review *Department of Homeland Security v. Regents of the University of California*, No. 18-587—a Ninth Circuit decision that affirmed a preliminary injunction against the Trump Administration’s rescission of Deferred Action for Childhood Arrivals (DACA). After the row over Justice Kavanaugh’s confirmation, the justices may have simply desired a relatively quiet term with fewer blockbuster cases.

Stare decisis and the Roberts Court. Next, Dean Chemerinsky discussed the force of *stare decisis* in the era of the Roberts Court. In most cases, the Court will follow *stare decisis* (i.e., “to stand by things decided”) because it is “more important that the applicable rule of law be settled than that it be settled right.” *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting). Much to Dean Chemerinsky’s surprise, however, the justices vigorously and regularly debated whether to follow or overrule precedent. Two decisions stood out during the October 2018 term.

In *Nevada v. Hall*, 440 U.S. 410 (1979), the Court held that the Constitution does not bar private suits against one state in the courts of another state. The Court overruled that decision in *Hyatt*, No. 17-1299. Writing for the majority, Justice Thomas explained that the decision in *Hall* was “contrary to our constitutional design and the understanding of sovereign immunity shared by the States that ratified the Constitution.” The Court rejected contrary arguments grounded in *stare decisis*. According to the majority, that doctrine is “not an inexorable command” and is, in fact, “at its weakest when [the Court] interpret[s] the Constitution.” Justice Breyer dissented, arguing that the majority “surrendered to the temptation to overrule *Hall* even though it is a well-reasoned decision that has caused no serious practical problems in the four

decades since [the Court] decided it.” Signaling debates to come over abortion, Justice Breyer remarked that “[t]oday’s decision can only cause one to wonder which cases the Court will overrule next.”

In *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the Court held that a property owner cannot bring a Takings Clause claim in federal court until she has exhausted state remedies. The Court overruled that decision in *Knick*, No. 17-647. Writing for the majority, Chief Justice Roberts explained that “the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs” and “conflicts with the rest of [the Court’s] takings jurisprudence.” Relying on the text of the Constitution and analogous decisions, the majority instead held that “a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it.” Justice Kagan dissented, arguing that the majority’s decision “smashe[d] a hundred-plus years of legal rulings to smithereens.” Echoing Justice Breyer’s dissent in *Hyatt*, Justice Kagan explained that “the entire idea of *stare decisis* is that judges do not get to reverse a decision just because they never liked it in the first instance.” She further stressed “the value, in a country like ours, of stability in the law.”

The Court decided both *Hyatt* and *Knick* by a 5-4 vote, with the Republican-appointed justices in the majority. Dean Chemerinsky suggested that, if *Hyatt* and *Knick* are any indication, *stare decisis* will carry diminishing force as the Roberts Court goes forward.

Spotlight on the Justices. Dean Chemerinsky also focused on the unique roles that Chief Justice Roberts and Justices Thomas and Kagan played during the October 2018 term. Dean Chemerinsky recalled a time when it appeared as though the Honorable Merrick Garland, Circuit Judge of the U.S. Court of Appeals for the D.C. Circuit, might have been confirmed to the Supreme Court or Hillary Clinton might have become the President of the United States. In that counterfactual world, Chief Justice Roberts might have frequently found himself in dissent.

(Continued on pg. 13)

Dean Chemerinsky Reviews U.S. Supreme Court's October 2018 Term, Previews Upcoming Blockbuster Cases for 2019 Term

(Continued from pg. 12)

But that did not come to pass. To the contrary, he observed that the Supreme Court is now clearly *the Roberts Court*. During the October 2018 term, Chief Justice Roberts was in the majority in 85 percent of all cases, in the majority in 75 percent of non-unanimous cases, and in the majority in many of the most important cases. See, e.g., *Rucho*, No. 18-422 (partisan gerrymandering); *Dep't of Commerce*, No. 18-966 (the 2020 census case).

Justice Thomas had a notable term, particularly concerning his views on *stare decisis*. Indeed, he was not bashful about his desire to overrule landmark decisions. See, e.g., *Flowers v. Mississippi*, No. 17-9572 (Thomas, J., dissenting) (suggesting that *Batson v. Kentucky*, 476 U.S. 79 (1986), should be overruled); *McKee v. Cosby*, No. 17-1542 (Thomas, J., concurring in the denial of certiorari) (suggesting that *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), should be overruled); *Timbs v. Indiana*, No. 17-1091 (Thomas, J., concurring in the judgment) (proposing the elimination of “substantive” due process and securing only those rights protected under the Privileges and Immunities Clause); *Garza v. Idaho*, No. 17-1026 (Thomas, J., dissenting) (suggesting that *Gideon v. Wainwright*, 372 U.S. 335 (1963), should be overruled). According to Dean Chemerinsky, Justice Thomas has established himself on the ideological frontier of a Court controlled by Republican appointees.

Justice Kagan also had a breakout term. According to Dean Chemerinsky, Justice Kagan wrote the majority opinion in some of the most important cases of the October 2018 term. See, e.g., *Iancu v. Brunetti*, No. 18-302 (holding that a prohibition on the registration of “immoral[] or scandalous” trademarks violates the First Amendment); *Gundy v. United States*, No. 17-6086 (rejecting a challenge to the Sex Offender Registration and Notification Act under the non-delegation doctrine). Dean Chemerinsky also suggested that, given Justice Ginsburg's illness during the October 2018 term, Justice Kagan stepped into the role of the Court's most powerful “liberal” voice, penning “blistering” dissents in cases involving partisan gerrymandering and the Takings Clause. See, e.g., *Rucho*, No. 18-422 (Kagan, J., dissenting); *Knick*, No. 17-647 (Kagan, J., dissenting).

Most important decisions from the October 2018 term. Next, Dean Chemerinsky reviewed three of the

most important decisions from the October 2018 term. Although the Court largely avoided high-profile cases, the majority opinions in *Rucho*, No. 18-422, *Department of Commerce*, No. 18-966, and *American Legion*, No. 17-1717, were nonetheless momentous.

First, in *Rucho*, the Court held that partisan gerrymandering claims are non-justiciable political questions. As Dean Chemerinsky pointed out, the Court was obligated to hear this appeal from a three-judge district court under 28 U.S.C. § 1253. Writing for the majority, Chief Justice Roberts explained that “[p]artisan gerrymandering is nothing new.” Although “the Framers were familiar with it at the time of the drafting and ratification of the Constitution,” the historical record contains no evidence “that the federal courts had a role to play.” According to the majority, “[f]ederal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions.” Justice Kagan wrote a powerful dissent, emphasizing that, “[f]or the first time ever, th[e] Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities.” She rebuked the majority for “throwing up its hands,” and explained that the Court's analysis “reveals a saddening nonchalance about the threat [that partisan gerrymandering] poses to self-governance.”

Second, in *Department of Commerce*, the Court held that the Commerce Secretary's decision to reinstate a citizenship question on the 2020 census violated the APA's reasoned explanation requirement. As Dean Chemerinsky noted, the Court granted certiorari before the Second Circuit's judgment in part because the census questionnaire needed to be finalized for printing by the end of June 2019. Writing for the majority, Chief Justice Roberts agreed with “[d]istrict [c]ourt's determination that the Secretary's decision must be set aside because it rested on a pretextual basis.” The Court was presented “with an explanation for agency action that is incongruent with what the record reveals about the agency's priorities and decisionmaking process.”

(Continued on pg. 15)

ADR SERVICES, INC.

PROUD SPONSOR OF
FEDERAL BAR ASSOCIATION – LOS ANGELES CHAPTER



Hon. Maria-Elena James
(Ret.)



Hon. Nandor J. Vadas
(Ret.)



Hon. Carla M. Woehrle
(Ret.)



Daniel Ben-Zvi, Esq.



Phyllis W. Cheng, Esq.



Michael R. Diliberto,
Esq.



Mark LeHocky, Esq.



Margaret Levy, Esq.



Your Partner in Resolution



Gail Migdal Title, Esq.

WWW.ADRSERVICES.COM

Dean Chemerinsky Reviews U.S. Supreme Court's October 2018 Term, Previews Upcoming Blockbuster Cases for 2019 Term

(Continued from pg. 13)

Specifically, the evidence showed that the Commerce Department's stated reason for reinstating the citizenship question (*i.e.*, enforcement of the Voting Rights Act) was "contrived." Under those circumstances, Chief Justice Roberts explained, the Court could not "ignore the disconnect between the decision made and the explanation given" and was "not required to exhibit a naiveté from which ordinary citizens are free."

Third, in *American Legion*, the Court held that the Bladensburg Peace Cross (a 32-foot-tall Latin cross on government property in Maryland) did not violate the Establishment Clause. Justice Alito delivered an opinion for the Court, where he noted that, in addition to its "widespread uses as a symbol of Christianity," the Latin cross became a "central symbol" of World War I. Since 1925, the Bladensburg Cross has "stood as a tribute to 49 area soldiers who gave their lives in the First World War." According to Justice Alito, "the presence of the Bladensburg Cross on the land where it has stood for so many years" is "fully consistent" with the aim of the Constitution's Religion Clauses, *i.e.*, "to foster a society in which people of all beliefs can live together harmoniously." Dean Chemerinsky noted that *American Legion* generated seven separate opinions, and there are now at least three views of Establishment Clause doctrine. Some justices contend that the Establishment Clause is violated only if the government coerces religious participation or discriminates between religions. Other justices believe that the Establishment Clause prevents the government from endorsing religion. And other justices maintain that the Establishment Clause was designed to erect a wall between church and state.

Preview of the October 2019 term. Dean Chemerinsky predicted that the October 2019 term would be a blockbuster term. The justices have granted certiorari in several cases that involve hot-button issues, like immigration, employment discrimination, healthcare, and the free exercise of religion. These cases will be decided in the shadow of the 2020 presidential election and an impeachment trial in the Senate (where Chief Justice Roberts is currently presiding).

Dean Chemerinsky previewed three of the most important issues that will be decided during the October 2019 term. *First*, the Court will decide several cases concerning LGBT discrimination in employment. In *Bostock v. Clayton County, Georgia*, No. 17-1618, and *Altitude Express, Inc. v. Zarda*, No. 17-1623, the question presented is whether sexual orientation discrimination

constitutes prohibited employment discrimination "because of . . . sex" within the meaning of Title VII of the Civil Rights Act of 1964. And, in *R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission*, No. 18-107, the question presented is whether Title VII prohibits discrimination against transgender people based on their status as transgender or as sex stereotyping under *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

Second, the Court will decide a significant case that concerns the free exercise of religion. In *Espinoza v. Montana Department of Revenue*, No. 18-1195, the question presented is whether it violates the Religion Clauses or the Equal Protection Clause of the Constitution to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools.

Third, the Court will decide an immigration case with enormous human dimensions. In *Department of Homeland Security v. Regents of the University of California*, No. 18-587, the question presented is whether the Department of Homeland Security's decision to wind down DACA is judicially reviewable, and, if so, whether that decision was lawful.

* * *

The views expressed in this article are exclusively those of the authors and do not necessarily reflect those of Sidley Austin LLP and its partners. This article has been prepared for informational purposes only and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this without seeking advice from professional advisers.



Authors Collin P. Wedel, Esq. & Andrew B. Talai, Esq. are attorneys with Sidley Austin LLP.

A Day We Will Never Forget: Attending a Naturalization Ceremony

(Continued from pg. 9)

Upon completing the Oath, Judge Klein spoke the words that so many of the applicants had longed to hear, “Congratulations! You are now American citizens!” The Convention Center erupted in a sea of cheers and waving flags! It was an emotional moment for all – whether newly naturalized or U.S. born citizens.

Following the ceremony, extern Kayla Ghasemi shared that many of her maternal relatives emigrated from parts of Europe and Ireland in the 1700s because of wars and devastating weather conditions. Those relatives came to the U.S. hoping to start new and prosperous lives for generations to come. Her father came to America in search of opportunities unavailable in his home country of Iran. He arrived on a student visa and studied civil engineering in Los Angeles. He recalled his naturalization ceremony as an emotional day because it marked his official welcome into the United States and symbolized the fulfillment of his dream to study in this country and one day raise a family here. As Kayla imagined her family members attending their own naturalization ceremonies, she suddenly realized how incredibly lucky she was to have been born in the United States.

Extern Rebecca John shared that she is a first generation American. Both of her parents were born and raised in Freetown, Sierra Leone, West Africa. One of her parents became a U.S. citizen when she was only one-year old, and the other became a citizen before she was born, so she has no memories of attending their naturalization ceremonies.

Rebecca’s mother recalled the emotions of the day she was naturalized. When Rebecca mentioned that she would be attending a naturalization ceremony, her mother became teary-eyed, remembering the day when she was naturalized and what it meant to her.

For Rebecca’s mother, becoming a citizen signified acceptance and having rights and access to new freedoms. Rebecca’s mother left Sierra Leone when she got married, and although she did not know it at the time, she escaped a war that began a few years later. As a citizen of the United States, Rebecca’s mother has been able to support her family and build a successful career as a real estate agent in the Silicon Valley.

Throughout Judge Klein’s speech, we were reminded of the true importance and impact of the day. She highlighted that, “many of [the applicants] have traveled long distances from [their] homeland and sacrificed so much to become citizens of the United States.” Judge Klein’s remarks made us more aware than ever of the privileges and rights we have enjoyed by virtue of being born in the United States.

We were both emotional during Judge’s Klein speech, realizing that many of the people taking the oath of allegiance—after much effort—were going to enjoy the freedoms and privileges that we have always had.

(Continued on pg. 17)





A Day We Will Never Forget: Attending a Naturalization Ceremony

(Continued from pg. 16)

Watching the citizenship applicants of different ages, ethnicities, and backgrounds unite to celebrate a life-changing event is difficult to describe. The new citizens waved their flags excitedly, acknowledging that they had been invited and accepted into the American family. Some had wide smiles and tears streaming down their faces, others were embracing the person standing next to them, who until that morning, was likely a stranger. A sense of pride, accomplishment, and joy filled the room.

During the ceremony, seven new citizens were recognized for their service in the U.S. Armed Forces. Before becoming citizens, these brave and dedicated individuals risked their lives to serve this country. They stood proudly as the room erupted in cheers in honor of their service. One elderly man especially caught our eyes, as he pushed his walker out of the way and stood proudly with a huge smile as he was honored for his service to what is now HIS country.

Overall, the naturalization ceremony gave us a deeper appreciation and understanding of what it means to be a U.S. citizen. It was an experience we will never forget and one that we will always recall fondly with overwhelming pride for the country we call home.

During her speech, Judge Klein quoted President John F. Kennedy who stated that, “[t]he United States is a nation of immigrants, who have enriched and strengthened the fabric of American life.” Judge Klein noted that this country is a wonderful melting pot of many different ideas, cultures, and beliefs. Regardless of where someone comes from or what ethnicity they might be, if they work hard and persevere, the opportunities available to them, their children, and their grandchildren are limitless. This reminded us that we are a nation of immigrants.

Even though we thought that the naturalization ceremony could not get any better, the Bel Canto Choir, from Huntington Middle School in San Marino, sang a beautiful rendition of the national anthem, ending the ceremony on an exquisite note. As we looked around, we realized that regardless of our different backgrounds, experiences, ethnicities, and religions, we were all one, united in our love for this great nation!

Authors Kayla Ghasemi and Rebecca John are externs to the Honorable Sandra R. Klein