A profile of California Supreme Court Justice Leondra Reid Kruger

Overview

In this article the California Constitution Center evaluates Justice Leondra R. Kruger's record on the California Supreme Court. We searched for evidence of partisan behavior, and focused on defining her alignment and orientation. We conclude that Justice Kruger is the median justice on a court that is closely aligned within a narrow band on the spectrum of possible orientations. We see no evidence of partisan ideology or voting behavior by Justice Kruger, who instead proceeds from a neutral approach that produces equivalent proportions of relatively liberal and conservative results. And we maintain our view that the current California Supreme Court as a whole shows strong consensus and no partisan behavior.[1]

Methodology

We approached this profile from three directions: a substantive review of all decisions in our dataset, and two separate quantitative analyses of the opinions and votes we compiled. Our dataset comprises all California Supreme Court merits decisions and certified questions for the seven-year period from January 1, 2015 through December 31, 2021. We excluded 2015 for most purposes because Justice Kruger did not participate in the full year of decisions, she wrote only one opinion, and she cast just three non-majority votes; including that year would have artificially driven her majority vote rate up, and misleadingly reduced her opinion figures. But we did include Justice Chin's 2015 votes and opinions to make up for him not being on the court in 2021; absent that his figures for our 2016–21 study period would have been misleadingly low. We excluded Justice Jenkins because he only started voting in early 2021. We tabulated all opinions and votes by the participating justices in the 452 cases we examined. We ignored one or two cases in some calculations, such as the fractured decision in *People v. Daniels* (2017) 3 Cal.5th 961. There may be minor data variations between the three separate analyses.

The opinions and votes are categorized as majority, concurring, con/dis, and

dissenting. Each signature on an opinion in a given case counts separately. Thus, a *majority* vote is when a justice signs only the majority opinion. But a justice signing the majority and a separate concurring opinion is coded as *maj/con* and counts twice: once as a majority vote and once as concurring. Regardless of a separate opinion's title in Westlaw, we looked at whether a justice writing separately concurred in the judgment to determine whether they were with the majority. Writing an opinion is counted as a vote for one's own opinion. So if Justice Liu writes the majority, writes a concurring opinion, and joins another justice's concurring and dissenting opinion, that's three Liu votes in the case (one majority, one concur, one con/dis) and two Liu opinions (majority and concurring).

All pro tem justices are counted as one justice. But given our past finding that the pro tems have little effect on the court's decisions we mostly excluded the pro tem seat.

An important caveat is that we do not believe that the current California Supreme Court justices should be categorized as *liberal* or *conservative* because our analysis shows that there is little evidence for applying those ideological labels to the current justices. We reluctantly use those labels here only because we know our readers are going to do it anyway.

Analysis

1. Summary of conclusions

The substantive review produced three conclusions:

- Justice Kruger does not appear to be motivated by a partisan agenda; instead her opinions apply a rigorous analysis regardless of what the result favors.
- Justice Kruger takes a narrow view of statutory construction, often resting her separate position on a disagreement with the majority's more-expansive view of the interpretive task.
- In non-capital criminal matters Justice Kruger is somewhat more likely to favor the defendant, but we do not see that weak and isolated indicator as evidence of a partisan bias.

The quantitative analyses show that Justice Kruger is at or near the median among the court's seven members. There is no evidence of a partisan voting pattern. Instead, when in the minority in nonunanimous cases, Justice Kruger will write alone and with the conservatives about as often as with the liberals. Although she aligns with Justice Liu in the minority more than any other individual or coalition, she disagreed with more Justice Cuéllar majority opinions than any other author. She has formed minorities with nearly every individual justice or combination of them. This even spread of alignments and conflicts supports our median or breaks-both-ways characterization.

Combined, our substantive and quantitative approaches reached comparable results. Our substantive review shows that Justice Kruger in general reaches results that are evenly distributed among liberal and conservative positions, and that those results flow from a neutral approach to reading the law. Our quantitative analysis similarly negates a conclusion that Justice Kruger is a liberal or a conservative justice — she can be both, or neither.

All figures supporting our analysis are at this article's end.

2. Substantive analysis

Justice Kruger's opinions show that balanced analysis, rather than policy considerations, guides her thinking. When she breaks from the majority, it is most often because she interprets a statutory framework or precedent more narrowly than the other justices. Her opinions reveal a slight tendency to favor criminal defendants in non-capital cases.[2] Justice Kruger's opinions show that she takes an incremental approach to advancing the law and respects the separation of powers.

Between 2016 and 2021 Justice Kruger wrote 99 opinions: 71 majority (71.7%) and 28 separate (28.3%). During that period, she wrote nearly as many concurring opinions (13) as her combined total of other separate opinions (15). As we detail below, she often concurred to explain that she reached the result on narrower grounds than the majority.

Between 2016 and 2021 Justice Kruger wrote opinions in 18 unique practice areas

as defined by Westlaw's categorization.[3] Just over half (52%) of her opinions were in civil cases. That percentage is consistent with our previous finding that Justice Kruger's opinions are weighted slightly toward the civil side. Note that the large Criminal Justice category proportion is neither unusual for the court nor does it show a preference by Justice Kruger for such cases: the court's overall merits docket is about two-thirds criminal matters in any given year.[4]

The plurality of Justice Kruger's civil decisions concern Labor and Employment (10%), followed by Government (7%), and Litigation (5%). This distribution may reflect her pre-appointment work experience. As an assistant U.S. Solicitor General, she argued a high profile labor and employment case before the U.S. Supreme Court and taught a course in transnational litigation as a visiting professor at the University of Chicago Law School. The caveat here is that, in general, the Chief Justice assigns majority opinions and the individual justices rarely choose their cases.[5]

Justice Kruger has never written a majority Commercial Law or Taxation opinion. In two of her three Commercial Law opinions Justice Kruger reached her decision by construing textual provisions more narrowly than the majority.[6] Illustrating our point about her tendency to read the law narrowly, in both Taxation opinions she criticized the majority for reading statutes "well beyond [their] language and historical practice."[7]

a. Justice Kruger is non-partisan and guided by neutral statutory analysis.

Justice Kruger's opinions appear to be driven by neutral statutory interpretation rather than an interest in achieving partisan policy outcomes. She decides cases based on the plain language of statutes when possible and departs from the majority only when she believes that it fails to do the same. For example, in *People v. Raybon* (2021) 11 Cal.5th 1056 Justice Kruger wrote a concurring and dissenting opinion because in her view the majority's reading of a statute "departs from its plain text." Similarly, in *People v. Valenzuela* (2019) 7 Cal.5th 415 Justice Kruger dissented because she disagreed with the majority's conclusion that the "ameliorative" effects of Proposition 47 applied to a conviction for participating in a

criminal street gang; she argued instead for construing Proposition 47 to not reduce the penalty. These are typical of the instances where Justice Kruger wrote separately to disagree with the majority's statutory analysis.

That Justice Kruger's interpretations often support policy outcomes opposite from the majority's shows that her opinions are not motivated by accomplishing partisan goals. For example, her concurring opinion in *People v. Valencia* (2017) 3 Cal.5th 347 disfavored criminal defendants because she opposed expanding Proposition 47's resentencing provisions to third-strikers. Yet in *People v. Garcia* (2016) 62 Cal.4th 1116 Justice Kruger's concurring opinion favored criminal defendants because she argued that a defendant cannot receive multiple burglary convictions for entering several rooms inside the same structure. Were she motivated by ideology we would expect to see separate opinions consistently supporting the same position — but our review shows no such motivated reasoning. These disparate outcomes suggest that Justice Kruger's interpretive approach is driven by the analysis, not the result.

Even in cases where Justice Kruger wrote separately to stake out traditionally conservative positions, precedent and statutory interpretation remain her lodestar. In *California Cannabis Coal. v. City of Upland* (2017) 3 Cal. 5th 924, for example, she wrote a concurring and dissenting opinion that would have lowered taxes — a classic conservative policy goal. Our conclusion that her *Upland* opinion was not a policy-based argument masquerading as an issue of statutory construction is supported by the fact that Justice Liu (the court's most identifiably liberal member) joined her opinion.

Although Justice Kruger's opinions reveal that her decisions are rooted in narrow statutory construction, she is not a strict textualist. Justice Kruger has, for example, recognized that a statute should not be "blindly and literally applied" when doing so would lead to an "obvious injustice and a perversion of the legislative purpose."[8] Similarly, she will draw on the history and development of legal concepts when necessary to avoid absurd results.[9] In these instances she is willing to apply common-sense reasoning and experiences.[10] This shows that her default narrow construction approach is not absolutist, so we would not describe her as a strict textualist.

b. Justice Kruger slightly favors defendants in non-capital criminal cases.

Justice Kruger is somewhat liberal (objectively, not compared with her fellow justices) in non-capital criminal cases, favoring criminal defendants about 60% of the time.[11] (Capital cases are poor indicators of individual judicial views because the court must review all capital appeals, where many of the legal principles are well-settled, so it is unsurprising that most are affirmed.) In *People v. Lopez* (2020) 8 Cal.5th 353 Justice Kruger overruled precedent and held that there is no exception to the Fourth Amendment's warrant requirement for searches to locate a driver's identification following a traffic stop. And in *People v. Young* (2019) 7 Cal.5th 905, Justice Kruger wrote for a unanimous court in reversing a death sentence (while affirming the guilty verdict) because the trial court improperly admitted evidence of the defendant's racial prejudice. Yet these decisions do not suggest partisan behavior when considered with the other opinions by Justice Kruger in criminal cases that disfavored criminal defendants.[12] All this shows is that, on the whole, her opinions slightly favor defendants in non-capital criminal cases. That's consistent with the rule of lenity.[13]

c. Justice Kruger is an incrementalist.

Another hallmark of Justice Kruger's opinions is incrementalism: a tendency to make narrow changes to the law rather than expansive rulings. A common criticism found in her separate opinions is that the majority went too far by considering issues not raised in the parties' briefs. In *People v. Fontenot* (2019) 8 Cal.5th 57, for example, the majority adopted a broad rule for the mental state required for a kidnapping conviction. Justice Kruger concurred in the judgment but wrote separately because, unlike the majority, she would not have overruled precedent. She instead encouraged the court to "pause" and "grapple with" important issues before "overturning our own precedent," particularly when a case could be decided without such judicial overhauls. The consistency of this view in Justice Kruger's opinions makes the decision in *People v. Lopez* (which did overturn precedent) significant for its rarity. Justice Kruger's reluctance to reach issues unnecessary to a case's resolution is a key characteristic of her judicial philosophy.[14]

Finally, Justice Kruger's judicial restraint appears to be guided, in part, by respect for the separation of powers. In her concurring opinions in at least two cases, *Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158 and *Abbott Laboratories v. Superior Court* (2020) 9 Cal.5th 642, Justice Kruger asked California's legislature to clarify the relevant statutes. Her separate opinion in *In re Cook* (2019) 7 Cal.5th 439 similarly ties her view on narrow statutory interpretation to separation-of-powers concerns: "Unlike the majority, I do not believe courts have the inherent authority to expand section 1203.01 to provide for such hearings when the Legislature has not chosen to do so." These separate opinions suggest that Justice Kruger will interpret statutes narrowly and apply them as appropriate, but she will not exceed judicial authority by rewriting the law.

3. Quantitative analyses

We evaluated Justice Kruger's majority and separate opinion figures, and majority and minority voting record. We looked at how those things changed over time, and we examined her majority and minority alignments with individual justices and various coalitions. We made a particular effort to look for evidence of partisan voting behavior. Because there are some judgment calls in coding (and for error-correction), we conducted two independent analyses designated *alpha* and *beta*. Both analyses produced similar results: both show the court coalescing into a relatively narrow band on the spectrum of possible decision outcomes. And both the alpha and beta analyses classify Justice Kruger as a median justice, at or near the court's midpoint across most metrics.

a. Summary of quantitative conclusions.

We found little to no evidence of partisan voting behavior. Instead, most of Justice Kruger's opinion and vote metrics place her at or near the court's median position. Her non-majority vote tally ties with Justice Chin for third place; for percent time in the majority she is nearly tied with Justice Corrigan (at second place); and she almost ties with the Chief Justice for second-fewest dissenting votes. This voting pattern suggests that Justice Kruger is a swing or median justice, but not a tiebreaker. Indeed, it would be difficult to characterize any justice as the tiebreaker, because the court has an 89.74% average unanimity rate and no clear coalitions.

Justice Kruger's voting pattern aligns with the current court as a whole, which shows consistently high consensus rates. The voting pattern of the current California Supreme Court better resembles its pre-1950s history than its most recent past. For a period of about 50–60 years from the 1950s to the early 2000s the California Supreme Court was highly polarized along ideological lines, and there is good evidence of partisan voting behavior by the justices in that time.[15] Before that period of polarization the court had greater consensus and displayed little partisan voting behavior. And that is how we describe the California Supreme Court since around 2010: the current court does not appear to be polarized along ideological lines, and there is little evidence of partisan voting behavior by the current justices.

Some of this may be explained by coalescence in voting patterns as justices retired. Several factors since justices Chin and Werdegar retired suggest that the court is more closely aligned: separate opinions and separate votes are declining while the court maintains an average 89.74% unanimity rate in 2015–21. These and other factors make Justice Liu the only plausible outlier, and conversely this all suggests that Justice Kruger is *not* aligned with any minority coalition. Thus, calling Justice Kruger the median justice relies on relatively fine distinctions, because all the justices are close to each other within a narrow band on the spectrum of possible decisions — again, discounting Justice Liu as a relative outlier.

Our analysis shows that Justice Kruger is not aligned with any ideological coalition. Justice Kruger wrote alone in four 6–1 decisions, two with majorities written by Justice Corrigan and the other two by justices Liu and Cuéllar. The top two majority opinion-writers she disagreed with were justices Corrigan and Cuéllar. Her minority votes are about equal between liberal and conservative coalitions, if we count her solo separate votes as conservative. We think counting *Kruger alone* as conservative here is reasonable given our substantive view of her as a narrow interpreter, similar to approaches most often associated with conservatives. And she disagreed with about twice as many majority opinions written by Democratic appointees (11) compared with majorities written by Republican appointees (6). Combined, this opinion and voting pattern looks like equivalent disagreements with liberal and conservative justices.

b. Detailed conclusions of quantitative analysis alpha.

Analysis alpha began with no preset questions and instead evaluated as a whole the calculations we performed on our dataset, then looked for patterns and drew conclusions.

All opinions:

- Justice Kruger wrote the second-highest total opinions, likely due to her second-most total separate opinions.
- Justice Kruger is #4 in majority opinions.
- Justice Kruger wrote the second-most concurring opinions.
- Justice Kruger wrote the second-most con/dis opinions.
- Justice Kruger wrote the second-fewest dissents.
- Justice Kruger wrote the second-most separate opinions.

Takeaway: Justice Kruger is neither the most nor the least in any of the opinion categories, sitting at or near the midpoint in all metrics. This is consistent with viewing her as a median justice. And Justice Kruger rarely disagrees in full; instead she more likely will write separately only to explain her nuanced departure from the majority's reasoning or conclusion.

All votes:

- Justice Kruger is third in majority votes, just behind Justice Corrigan.
- Justice Kruger is tied with Justice Chin for third-most non-majority votes.
- Justice Kruger is third in concurring votes, just behind Justice Cuéllar.
- Justice Kruger is fourth in con/dis votes.
- Justice Kruger is tied for fewest dissenting votes with the Chief Justice.
- Justice Kruger's non-majority votes are below average, her majority votes are close to average, and she is nearly tied with #2 Corrgian for percent in the majority.

Takeaway: Other than dissenting votes, these metrics all sit near the midpoint. She sits between justices Corrigan and Cuéllar and switches between majority and minority coalitions. This voting pattern suggests that Justice Kruger is a median justice, but not a tiebreaker. No one could be characterized as the tiebreaker or swing justice on a court that has so few 4–3 splits.

Opinions and votes over time:

- There is no pattern in majority opinions or majority opinion proportions over time.
- There is no pattern in majority votes over time.
- Justice Kruger's separate opinions have flattened since 2018.
- Since 2018 Justice Kruger's separate opinion numbers most resemble the Chief Justice's (both are low).
- Justices Kruger and Corrigan's separate votes track closely over time in declining.

Takeaway: this is consistent with the conclusion that without justices Chin and Werdegar the court overall is more closely aligned (all separate votes are declining). Several factors suggest coalescence toward the center: overall both separate opinions and votes are declining, justices Kruger and Corrigan's separate votes track most closely and are falling, and Justice Kruger is voting with the majority almost as much as justices Corrigan and Cuéllar.

When Justice Kruger is in minority:

- Justice Kruger is alone or with Justice Liu in the minority more than any other coalition.
- Justice Kruger aligns with Justice Liu in the minority more than any other individual or coalition.
- Justice Kruger is with the liberals most often in minority.
- Justice Kruger writing alone plus with conservatives about equals her liberal alignments.
- Justice Kruger's minorities declined over time, suggesting that without justices Werdegar and Chin the court is more closely aligned with Justice Kruger.
- Justice Kruger broke with a Cuéllar majority the most, Corrigan the second most, and has never broken with (voted against or dissented from) a Chief Justice majority opinion.
- Justice Kruger disagreed with only two Justice Liu majority opinions: *In re Brace* (2020) 9 Cal.5th 903 (alone) and *DeSaulles v. Community Hospital* (2016) 62 Cal.4th 1140 (with Werdegar).

- Overall Kruger disagreed with almost twice as many liberal majority opinions (11) as conservative (6).

Takeaway: These metrics suggest that Justice Kruger breaks both ways. Her minority positions are about equal between liberal and conservative coalitions if you count her alone as relatively conservative. Justice Kruger wrote alone in four 6–1 decisions, two with majorities written by Justice Corrigan and the other two by justices Liu and Cuéllar. And the top two majority opinion-writers she disagreed with were justices Corrigan and Cuéllar — which is equal-opportunity disagreement.

c. Detailed conclusions of quantitative analysis beta.

Analysis beta began by posing a series of questions, then answered them according to the tabulated data and evaluated those answers as a whole.

- Opinions
    - How many majority opinions did Justice Kruger write compared with the other justices?
        - Majority opinions are shared nearly equally among the justices.
        - Justice Kruger wrote 70% of all majorities. This puts her in the median range of majorities-as-percentage-of-all-opinions among all the justices.
    - How many non-majority opinions total did Justice Kruger write compared with the other justices?
        - Justice Kruger wrote 12% of all non-majority opinions. This is the 4th highest in that range, 1% below the median, and 5% below the average.
        - As a percentage of all Justice Kruger opinions, 30% have been non-majority. This is the median in that range and 3% below the average (33%).
    - How many dissents did Justice Kruger write compared with the other justices?
        - As a percentage of all dissents (not including con/dis opinions) 5% are dissents by Justice Kruger. Although this is the median, accounting for Justice Chin’s share of dissent

opinions it is below average, but about average for all justices not including Justice Chin (who wrote 70% of all dissents in our dataset). That said, this figure for Justice Chin is by far a statistical outlier and therefore should not be included in calculating the average for the other justices.
        - As a percentage of all Justice Kruger opinions 7% are dissents. Although this is the median, Justice Chin's figure is a statistical outlier and skews the average upward. Not including Justice Chin's data, the share of Justice Kruger's opinions that are dissents is average.
- Votes
    - What is Justice Kruger's in/out of majority ratio compared with the other justices?
        - Kruger votes with the majority 90% of the time, which is about average not including Justice Chin's outlier data.
        - Including concurrences in that number, Justice Kruger increases to 95% majority votes. This is similar to her colleagues apart from Justice Chin, and average not including Justice Chin's data (an outlier).
    - How often does Justice Kruger sign other justices' opinions compared with the other justices?
        - Justice Kruger signed other justices' opinions 82.79% of the time. Although this is the second-lowest frequency after Judge Liu (79.74%), there is little variation in the data here. This calculation does not include opinions that the justice authored in the total vote count. We did this calculation: total votes cast / (total votes cast + total opinions authored) * 100 = % the justice signs another justice's opinion.
- Change over time
    - What is Justice Kruger's majority opinion output, over time, compared with the other justices?
        - Overall the justices wrote about the same number of majority and separate opinions over time, with the same drop in opinions in 2020 due to the pandemic. Justice Kruger's

majority output opinion has been more consistent over time, and she wrote slightly more than the average number of majority opinions until 2019, after which she wrote fewer majorities than average. Her peak was in 2018 (13) and has fallen to nine opinions in the most recent two years.

- What is Justice Kruger's dissenting opinion output, over time, compared with the other justices?
    - Since 2017 Justice Kruger wrote fewer than the average number of dissenting opinions each year. In 2016 she wrote three dissents (her highest and also higher than average) but wrote no dissents after 2017. Thus, she has consistently written fewer dissents than the average (0.833 dissents vs. 1.278) and the median (1.167 dissents).

- Alignment
    - We first tabulated the raw number of Justice Kruger's disagreements with majority opinions by other justices. And to calculate the proportion of decisions where Justice Kruger aligns or with or against each other justice, we first calculated the percent of disagreement from the other justice's majority opinions, then subtracted that from 100% to determine the alignment percentage. This shows that Justice Kruger most often aligned with majorities by the Chief Justice and Justice Chin, and disagreed with majorities by justices Cuéllar and Corrigan the most:

Percent alignment with other justices				
TCS	Chin	Corrigan	Liu	Cuéllar
100%	**98.46%**	**93.15%**	**97.14%**	**90.62%**

Conclusion

After evaluating Justice Kruger's record from three independent directions, each reaching similar results, we are confident in our conclusions. Justice Kruger employs a neutral approach that produces evenly distributed liberal and conservative results, letting the chips fall where they may. Our review places Justice Kruger at the median justice on a court that is closely aligned within a narrow band on the

spectrum of possible orientations. We found no evidence of partisan voting behavior by Justice Kruger, which is consistent with the current court's overall behavior. As California has benefited from such a fair-minded and neutral arbiter with a rigorous intellect, so may the nation.

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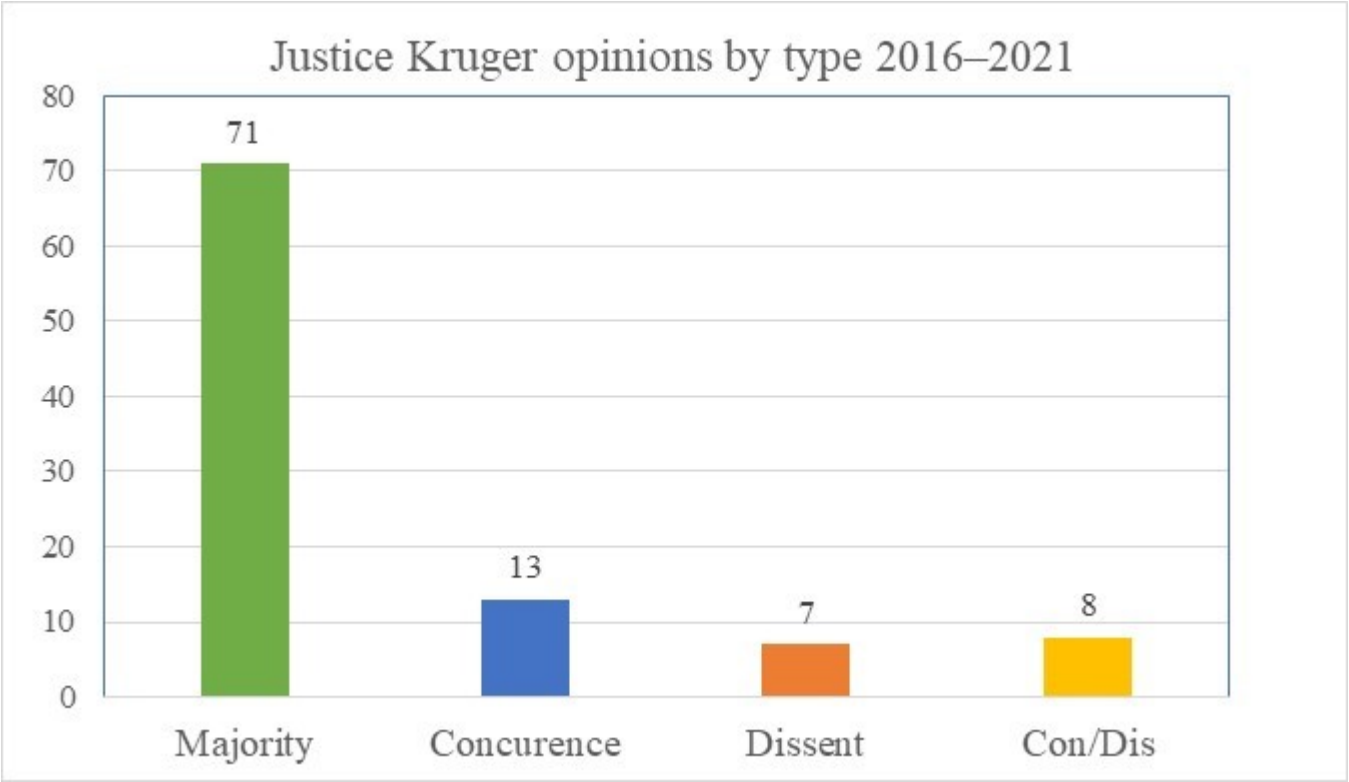
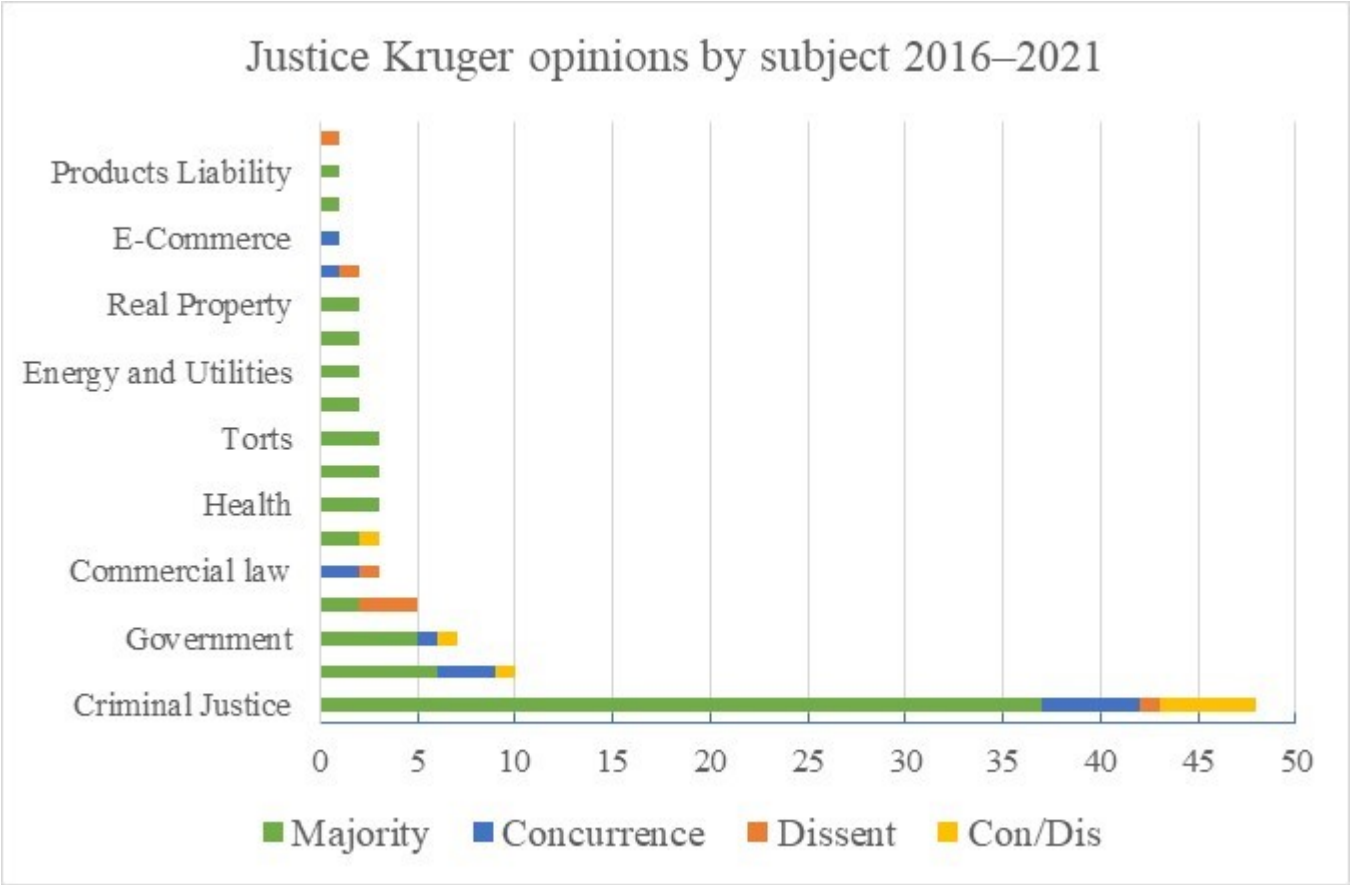
Many of the center's research fellows contributed to this article. Anyone who finds errors here is welcome to email us about a correction.

Figures:




Justice Kruger opinions by subject 2016–2021
Products Liability
E-Commerce
Real Property
Energy and Utilities
Torts
Health
Commercial law
Government
Criminal Justice
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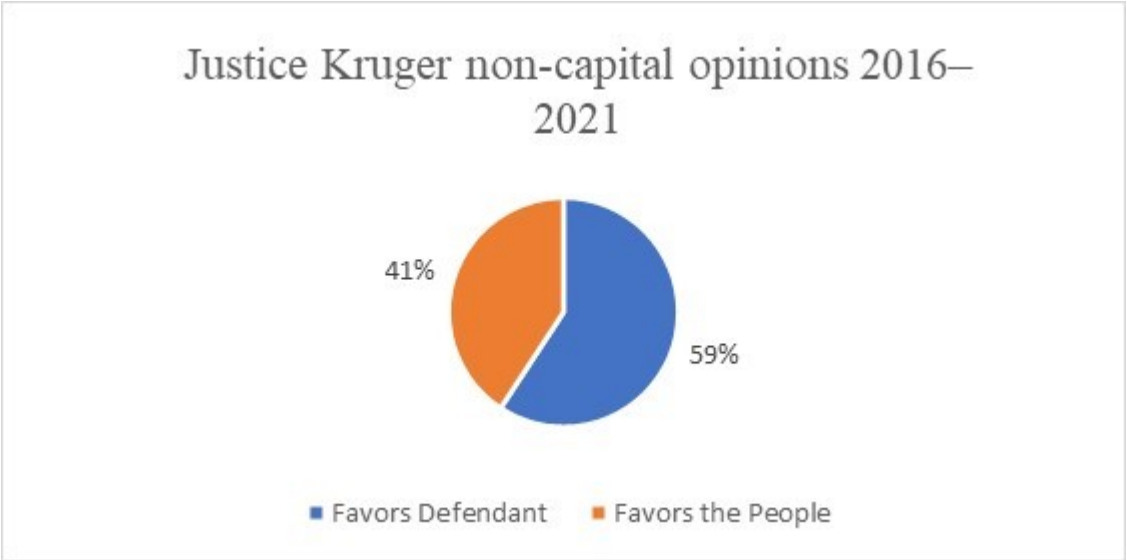
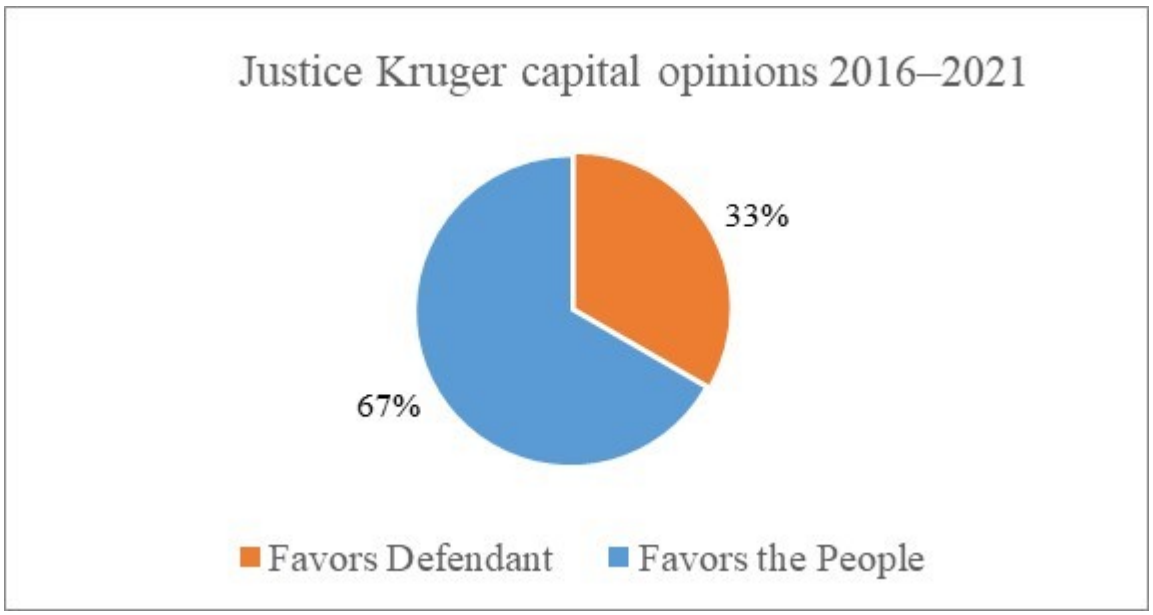
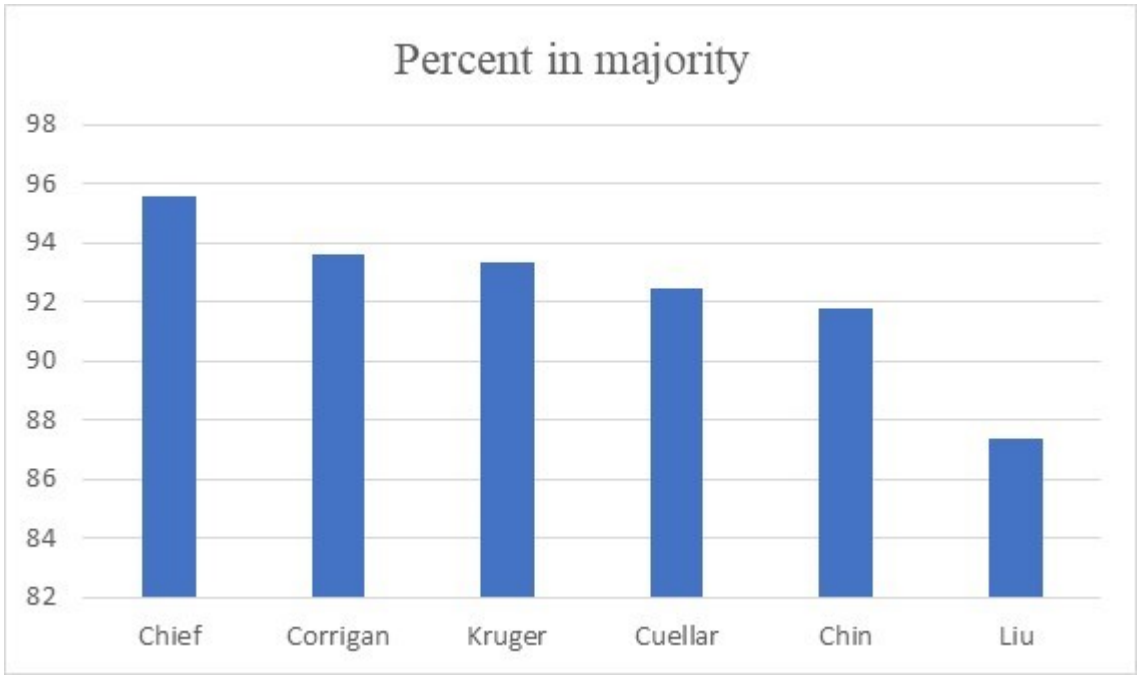
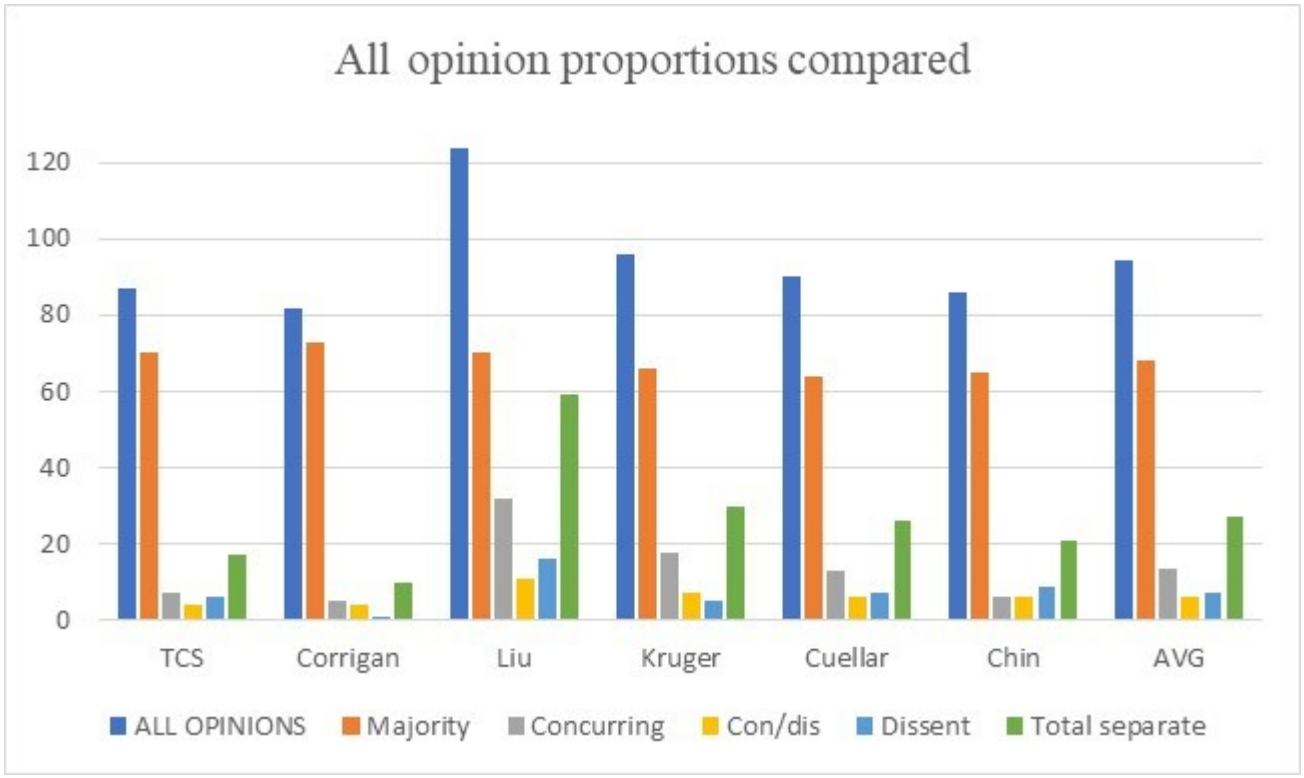
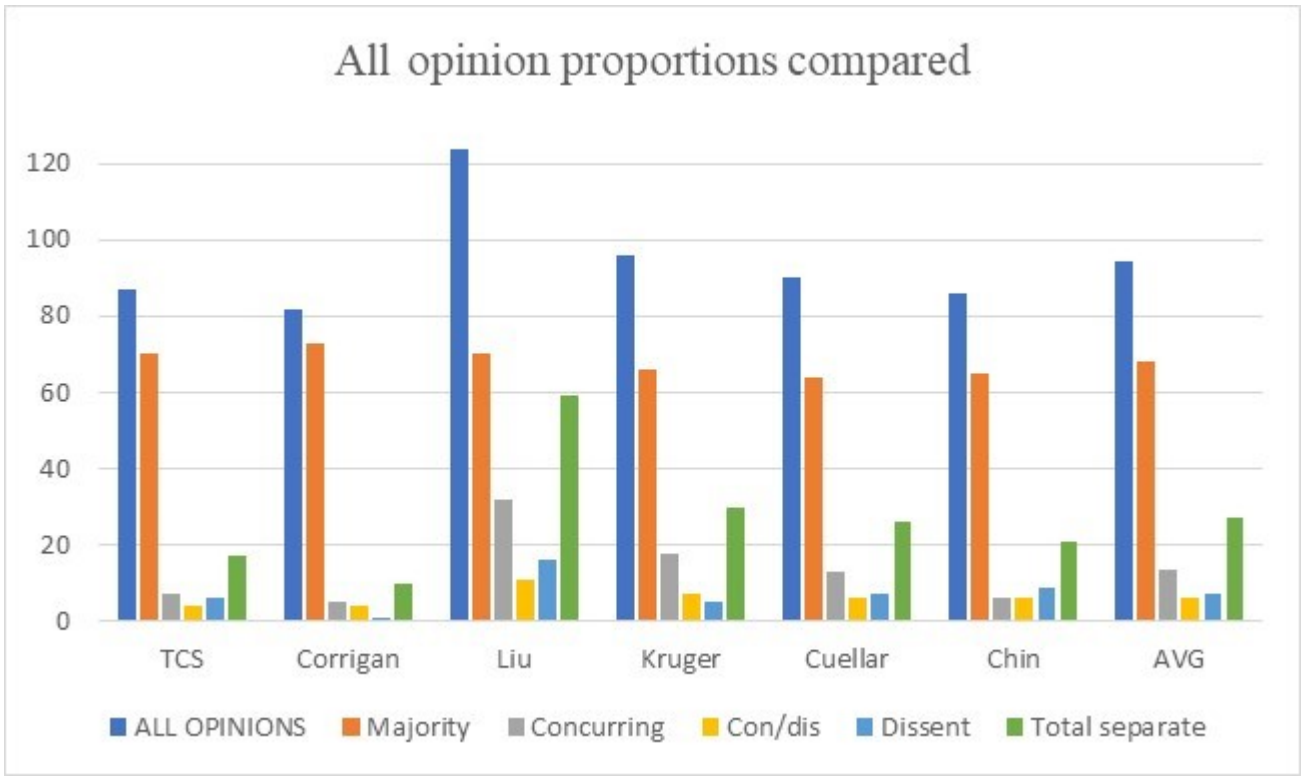
5
10
15
20
25
30
35
40
45
50
Majority
Concurrence
Dissent
Con/Dis


Justice Kruger non-capital opinions 2016–2021
41%
59%
Favors Defendant
Favors the People


Justice Kruger capital opinions 2016–2021
33%
67%
Favors Defendant
Favors the People


Percent in majority
98
96
94
92
90
88
86
84
82
Chief
Corrigan
Kruger
Cuellar
Chin
Liu


All opinion proportions compared
120
100
80
60
40
20
0
TCS
Corrigan
Liu
Kruger
Cuellar
Chin
AVG
ALL OPINIONS
Majority
Concurring
Con/dis
Dissent
Total separate


All opinion proportions compared
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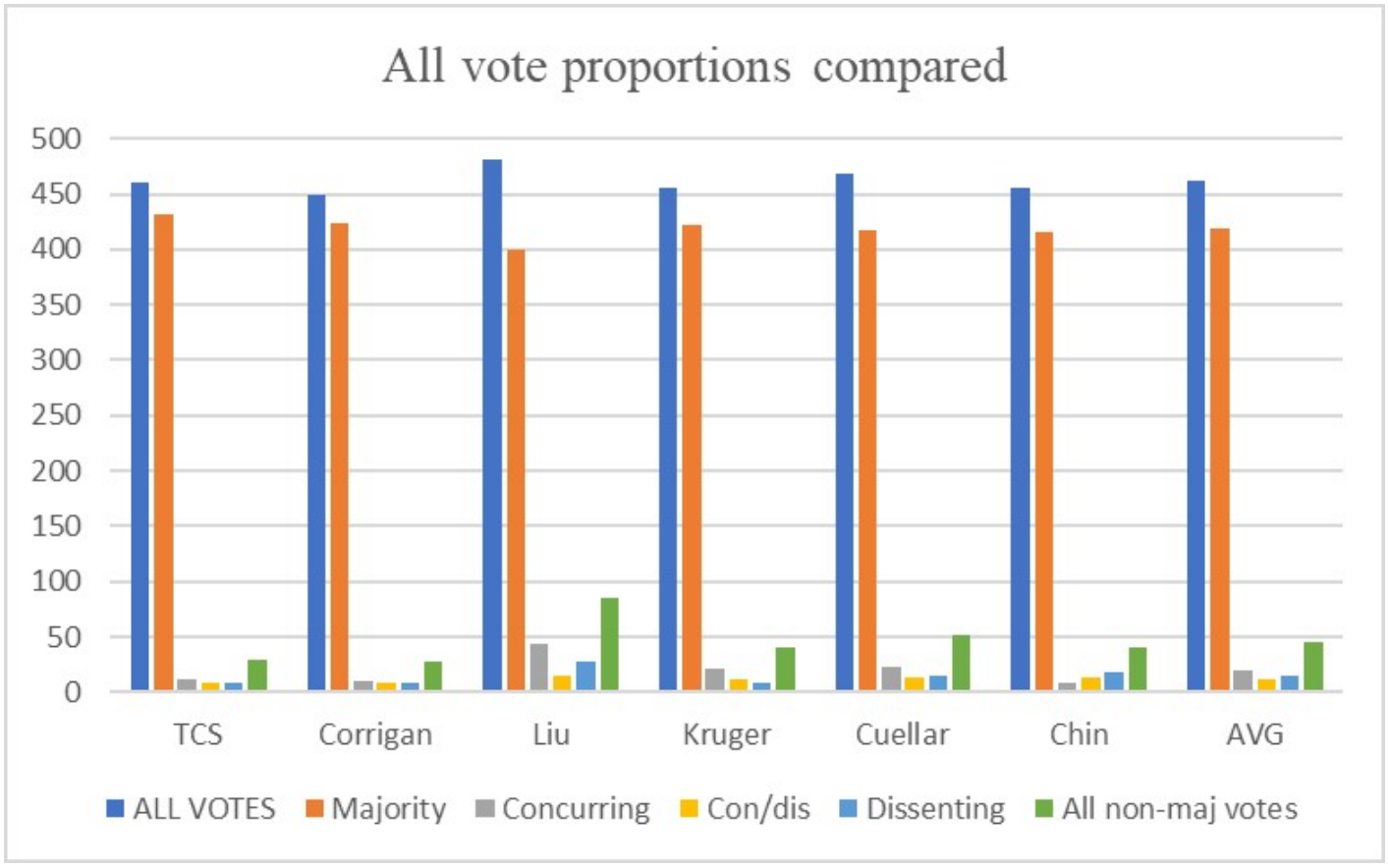
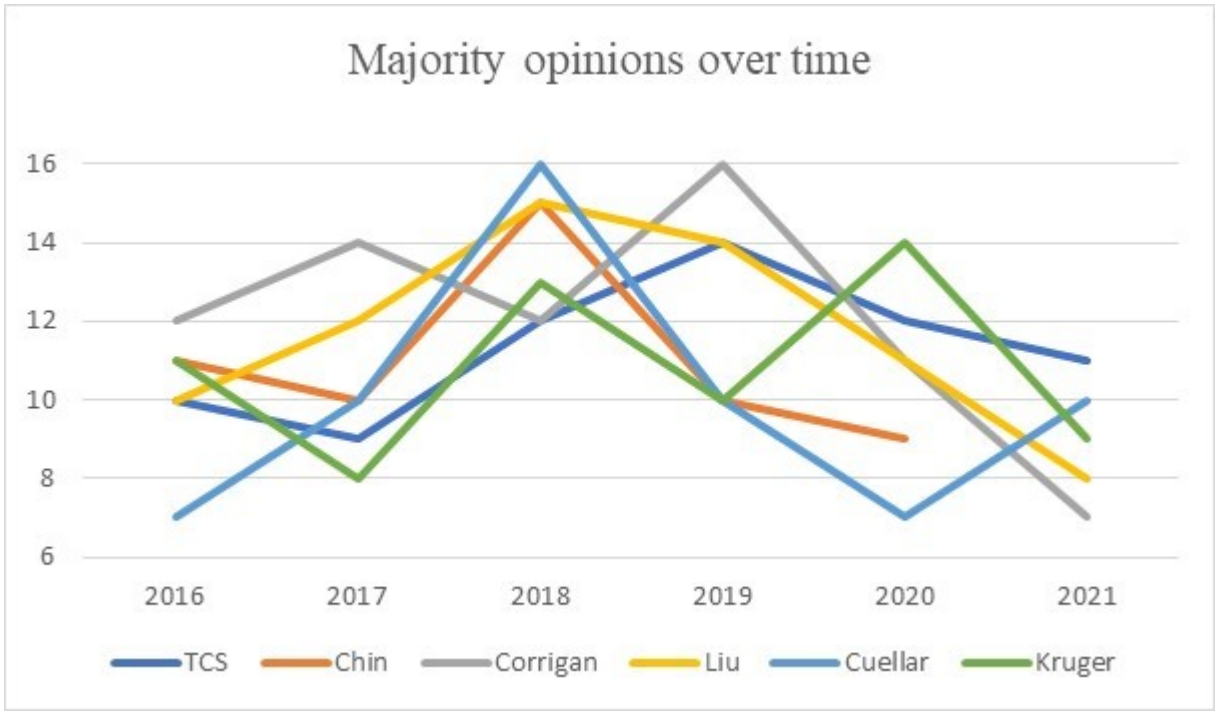
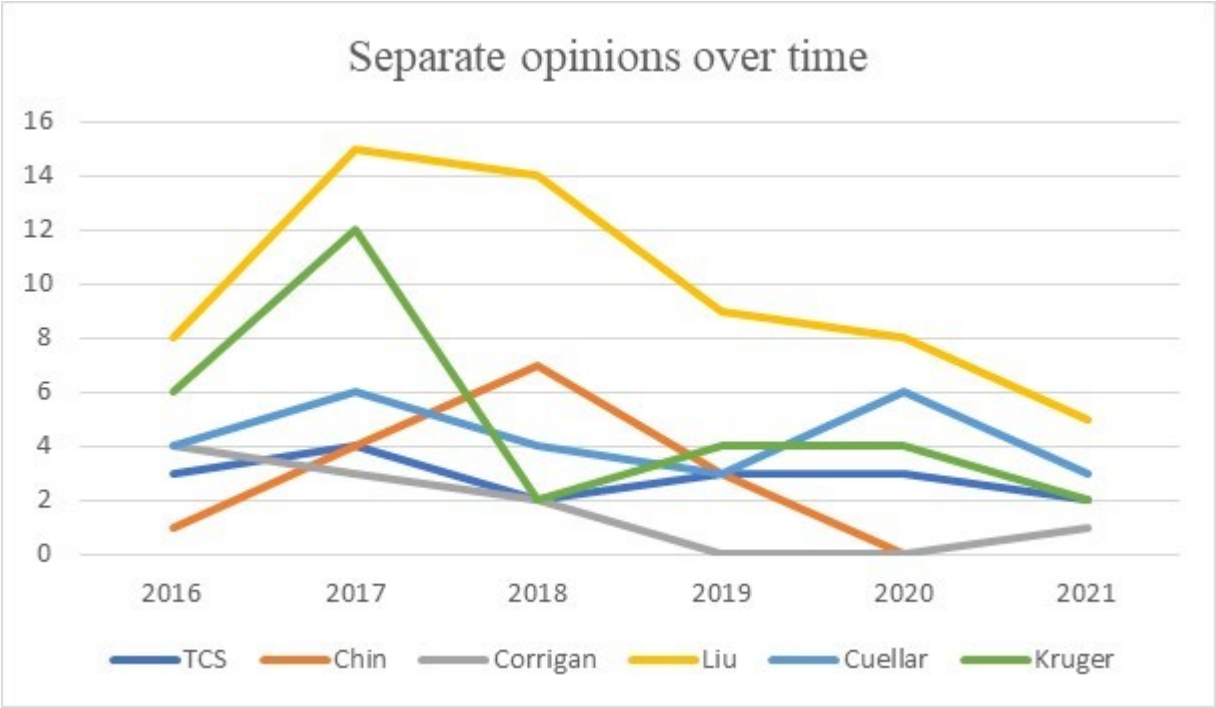
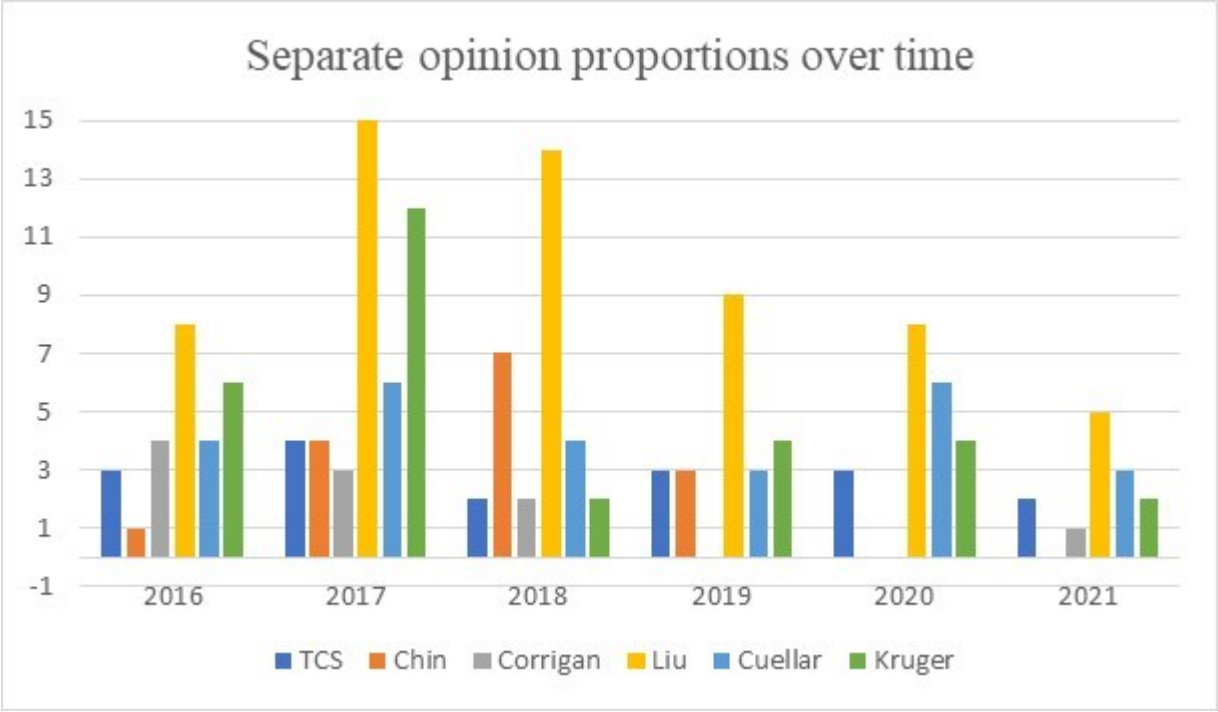
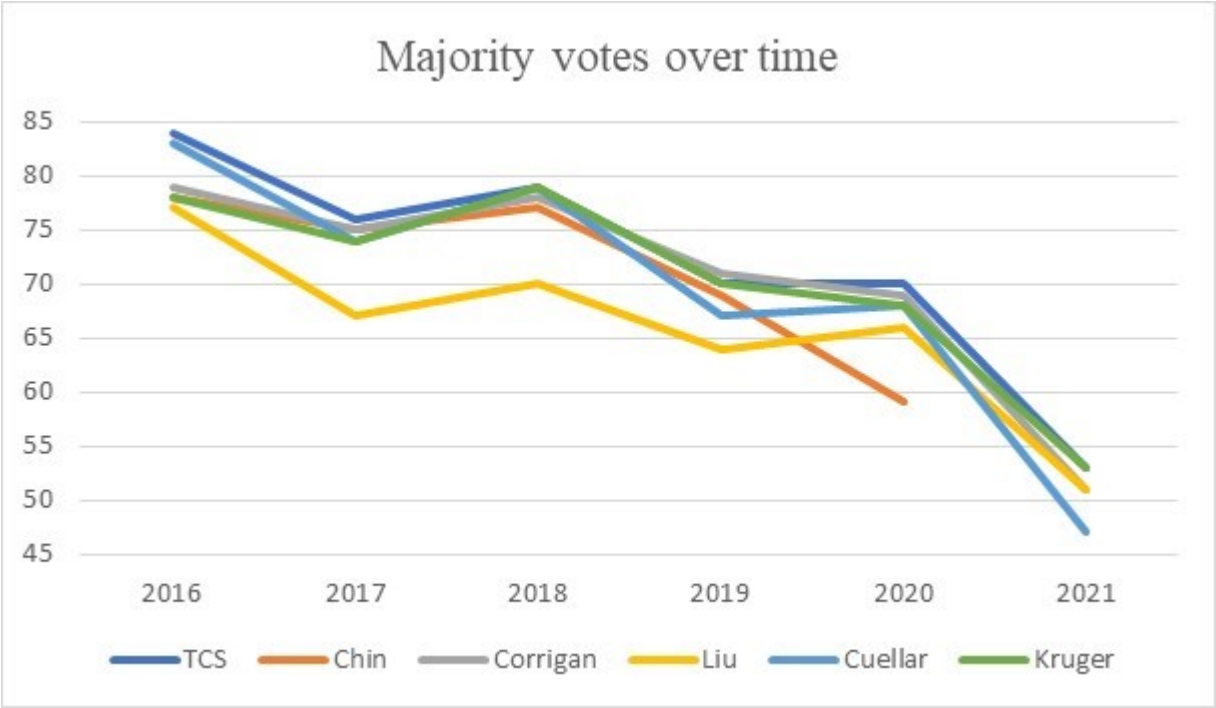
Dissent
Total separate

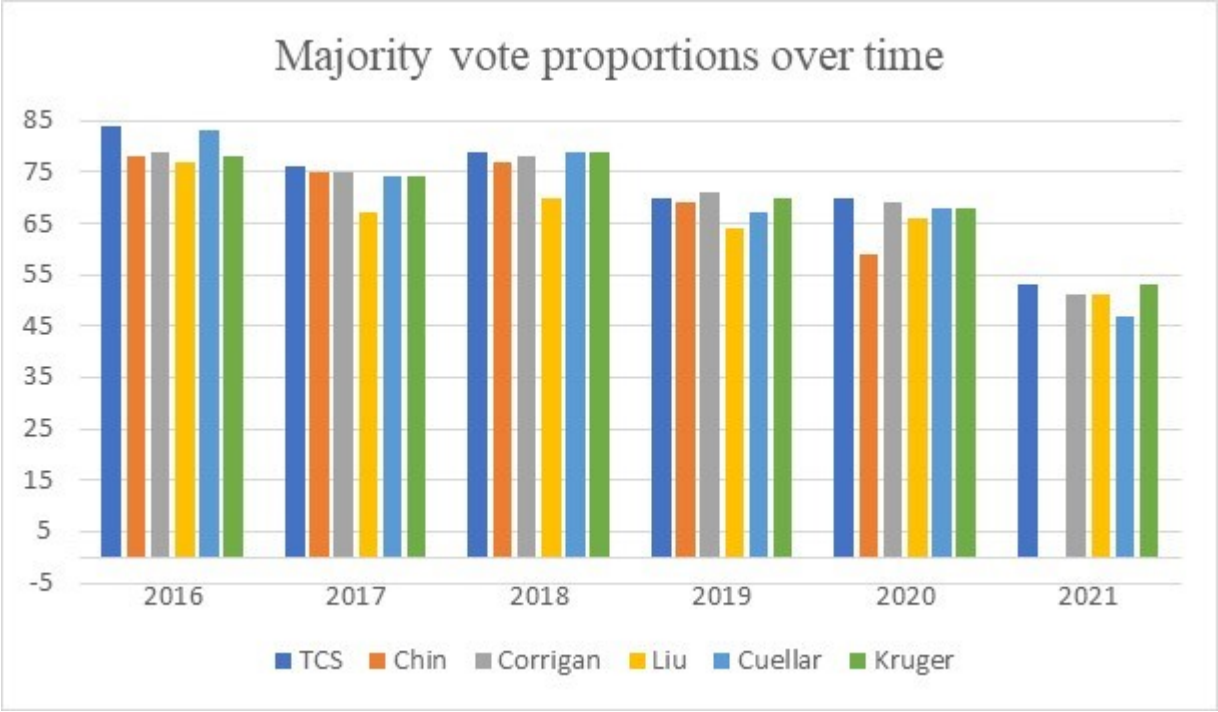

All vote proportions compared
500
450
400
350
300
250
200
150
100
50
0
TCS
Corrigan
Liu
Kruger
Cuellar
Chin
AVG
ALL VOTES
Majority
Concurring
Con/dis
Dissenting
All non-maj votes

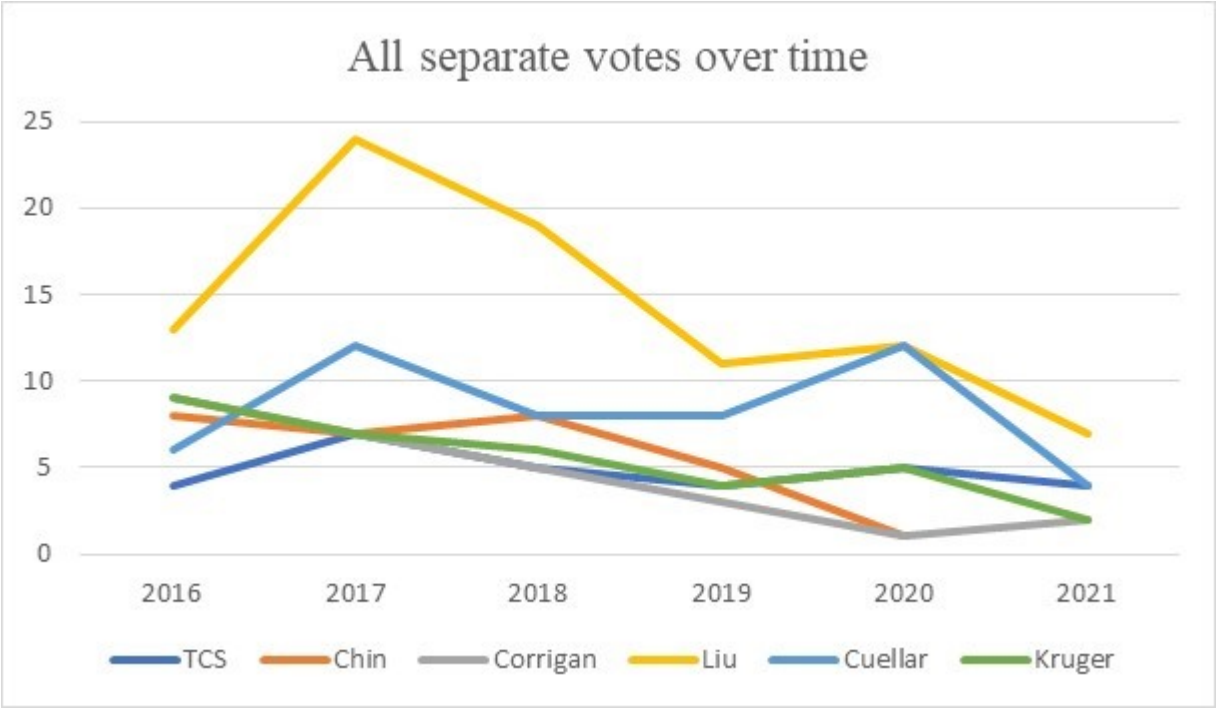

Majority opinions over time
16
14
12
10
8
6
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

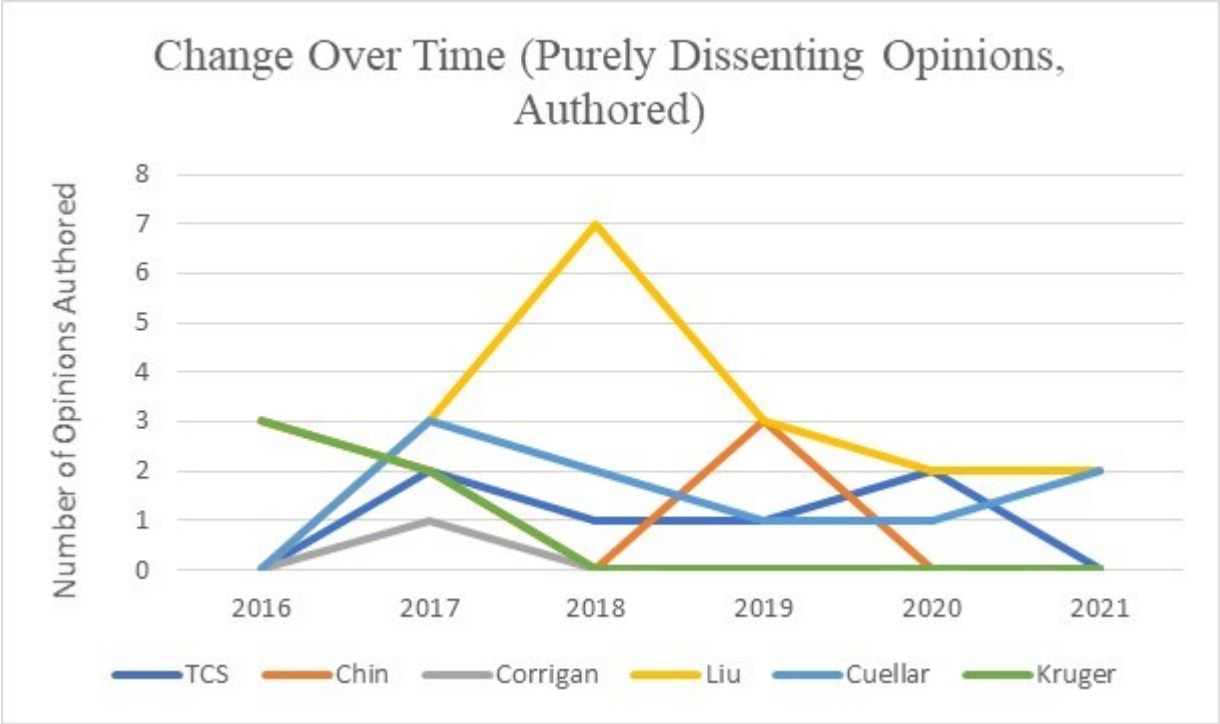

Separate opinions over time
16
14
12
10
8
6
4
2
0
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

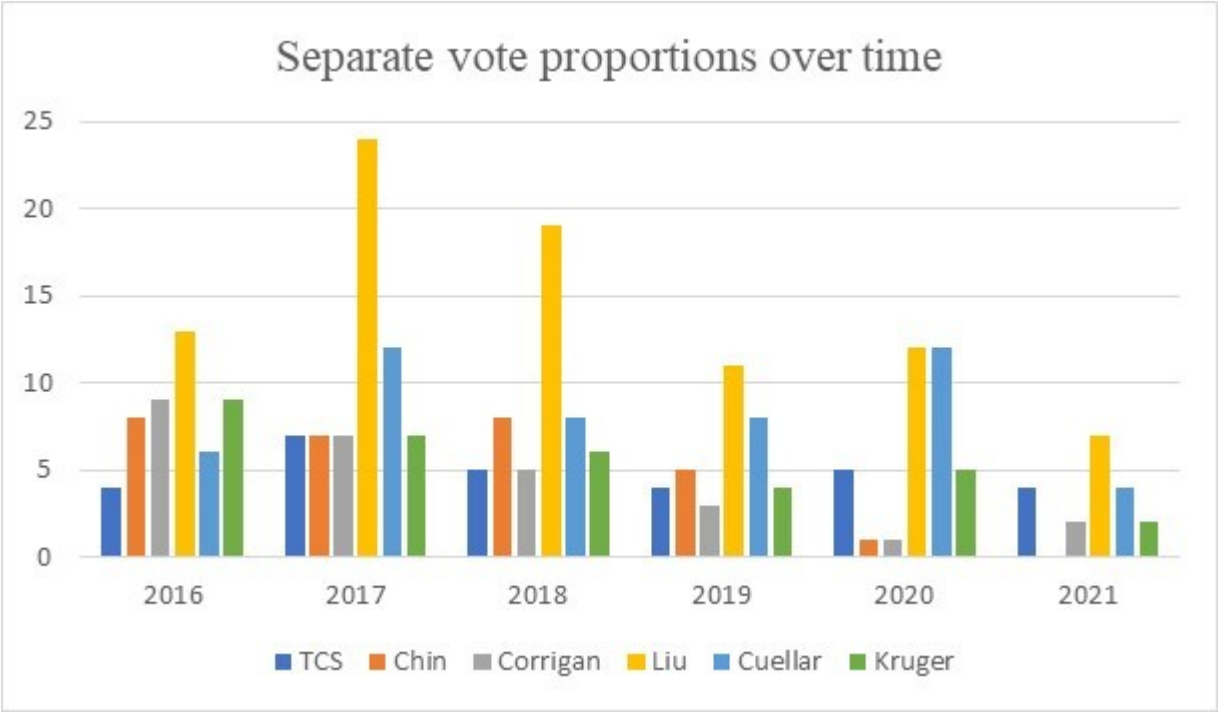

Separate opinion proportions over time
15
13
11
9
7
5
3
1
-1
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

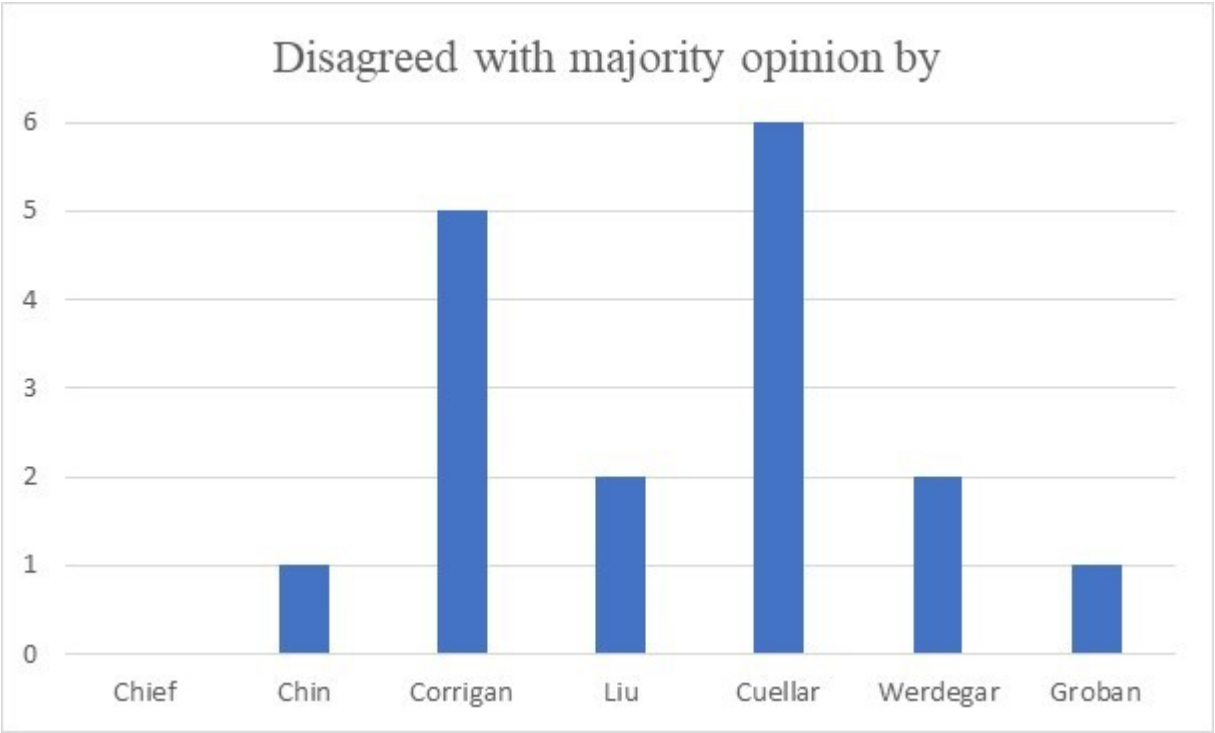

Majority votes over time
85
80
75
70
65
60
55
50
45
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

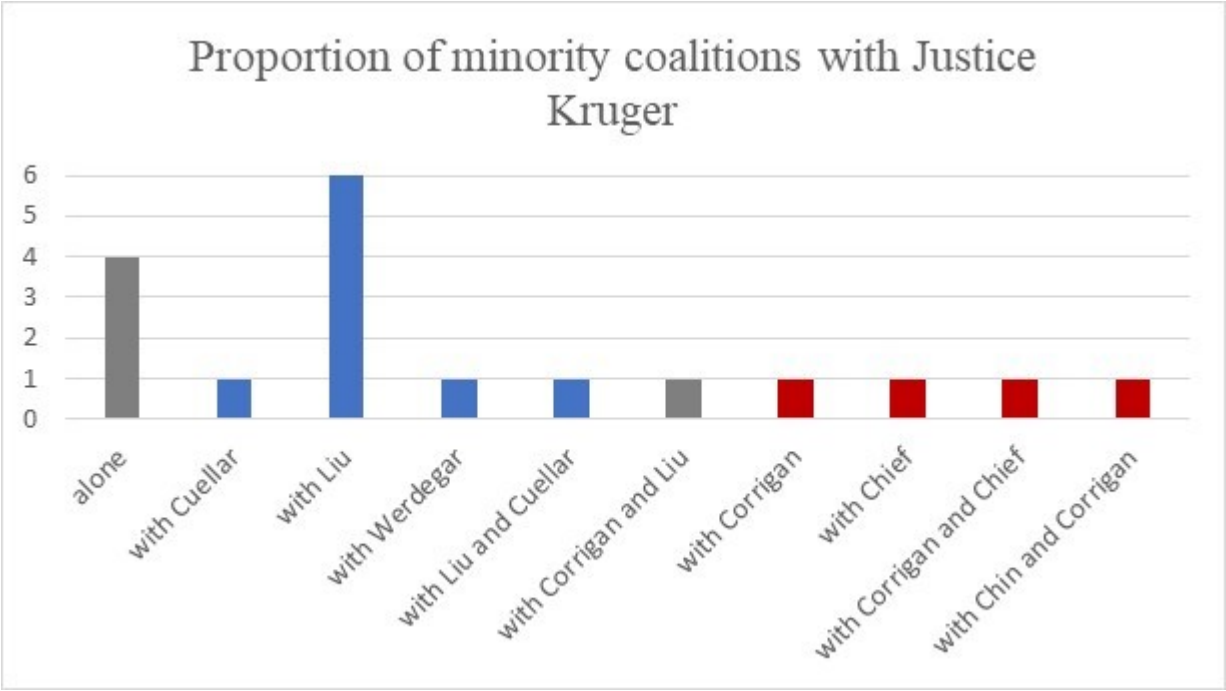

Majority vote proportions over time
85
75
65
55
45
35
25
15
5
-5
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

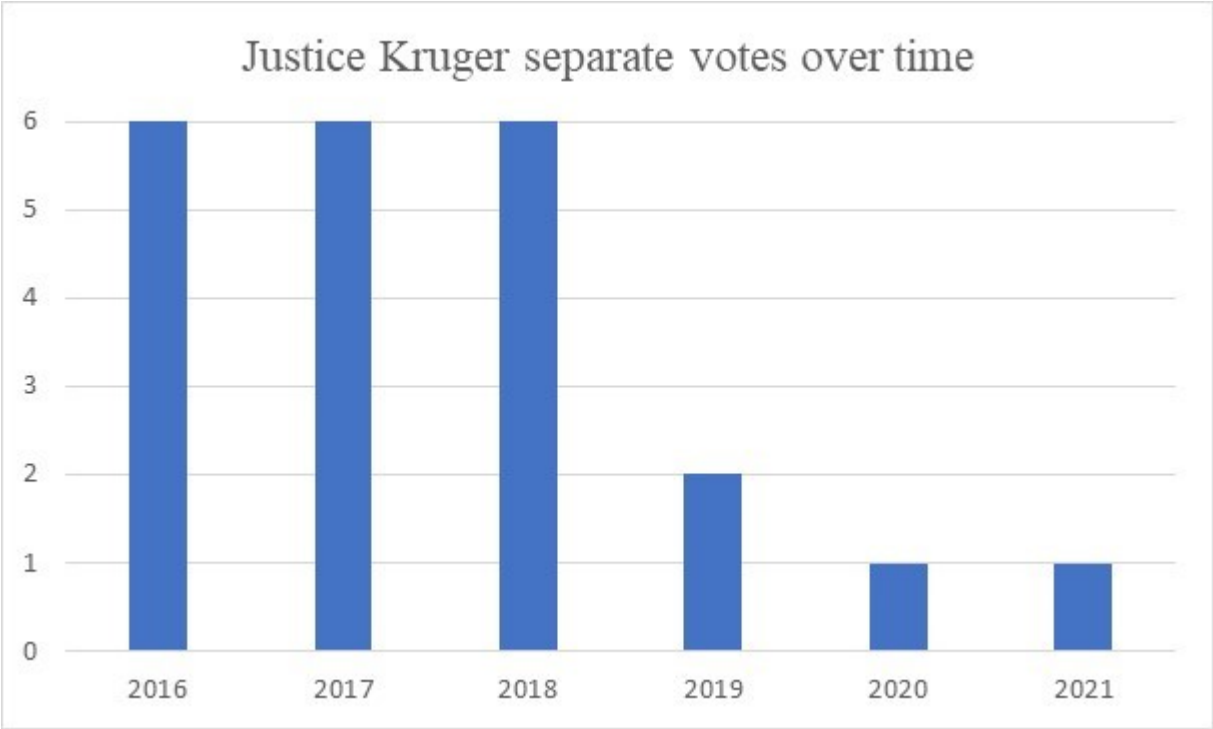

All separate votes over time
25
20
15
10
5
0
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

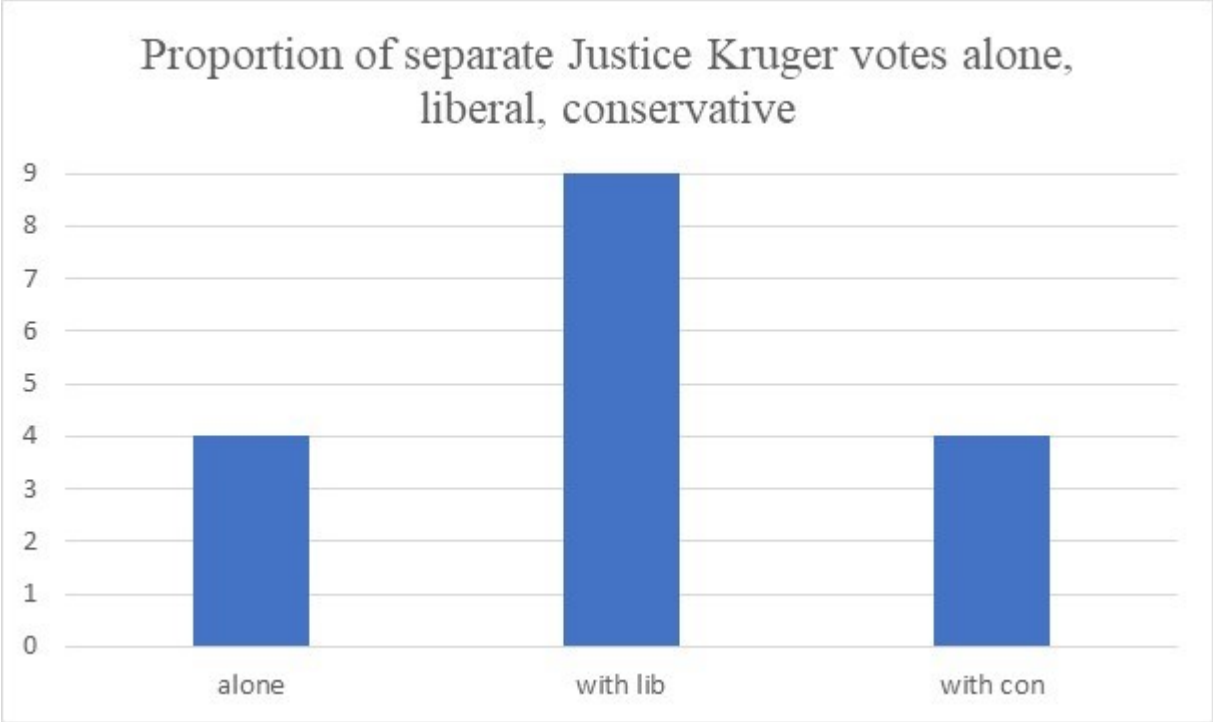

Change Over Time (Purely Dissenting Opinions, Authored)
Number of Opinions Authored
8
7
6
5
4
3
2
1
0
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger

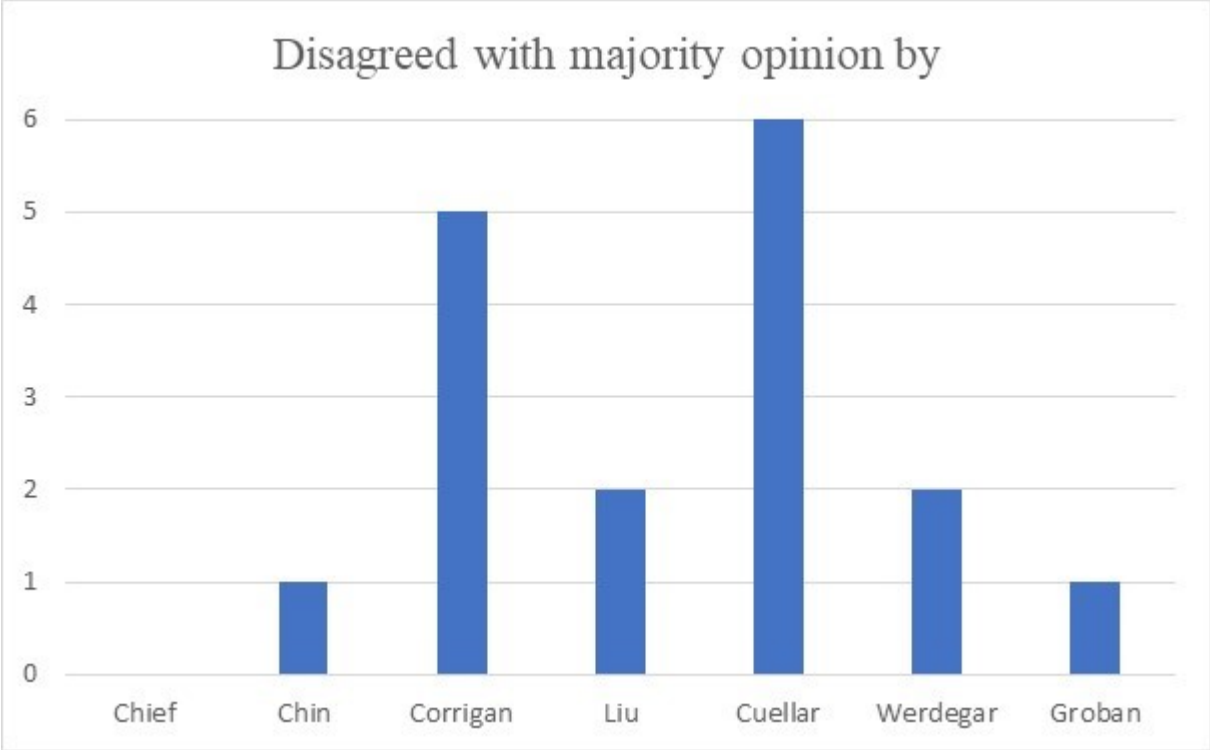

Separate vote proportions over time
25
20
15
10
5
0
2016
2017
2018
2019
2020
2021
TCS
Chin
Corrigan
Liu
Cuellar
Kruger


Disagreed with majority opinion by
6
5
4
3
2
1
0
Chief
Chin
Corrigan
Liu
Cuellar
Werdegar
Groban


Proportion of minority coalitions with Justice Kruger
6
5
4
3
2
1
0
alone
with Cuellar
with Liu
with Werdegar
with Liu and Cuellar
with Corrigan and Liu
with Corrigan
with Chief
with Corrigan and Chief
with Chin and Corrigan


Justice Kruger separate votes over time
6
5
4
3
2
1
0
2016
2017
2018
2019
2020
2021





Majority Op. % (Out of all Majority Ops. written in the court by all justices)								
CUMULATIVE 386	**TCS**	**Chin**	**Corrigan**	**Liu**	**Cuellar**	**Kruger**	**Total**	**Average**
Majority	52	56	60	59	51	53	331	55.16667
As % of Total	16%	17%	18%	18%	15%	16%	100%	17%

Opinion Ratio as Percentage of All Ops. Authored by Individual Justice							
CUMULATIVE 386	**TCS**	**Chin**	**Corrigan**	**Liu**	**Cuellar**	**Kruger**	**Average**
ALL OPINIONS	64	136	69	109	72	76	
% of Opinions that are Majority/ All op authored by that justice	81%	41%	87%	54%	71%	70%	67%
% of Opinions that are Concurring All op authored by that justice	6%	4%	7%	22%	11%	16%	11%
% of Opinions that are concurring/dissenting out of All op authored by that justice	6%	3%	4%	11%	10%	8%	7%
% of Opinions that are dissenting out of All op authored by that justice	6%	52%	1%	13%	8%	7%	15%
% of Opinions that are non-majority out of All op authored by that justice	19%	59%	13%	46%	29%	30%	33%

Dissent Op. %								
CUMULATIVE 386	**TCS**	**Chin**	**Corrigan**	**Liu**	**Cuellar**	**Kruger**	**Total**	**Average**
Dissent Ops	4	71	1	14	6	5	101	
As % of Total Op Written by All Justices	4%	70%	1%	14%	6%	5%	100%	29%

Voting In/Out of Majority Ratio								
CUMULATIVE 386	**TCS**	**Chin**	**Corrigan**	**Liu**	**Cuellar**	**Kruger**	**Average (not incl. Chin)**	**Average**
ALL VOTES	360	558	356	379	369	364	365.6	397.6667
Majority	339	326	332	305	330	328	326.8	326.6667
Concurring	7	74	8	37	16	19	17.4	26.83333
Con/dis	8	77	7	15	12	9	10.2	21.33333
Dissenting	6	81	9	22	11	8	11.2	22.83333
All non-maj votes	21	232	24	74	39	36	38.8	71
% total votes by that justice in majority	94%	58%	93%	80%	89%	90%	89%	84%
% concurring	2%	13%	2%	10%	4%	5%	5%	6%
%con/dis	2%	14%	2%	4%	3%	2%	3%	5%
% dissenting	2%	15%	3%	6%	3%	2%	3%	5%
% non majority (incl. concurrence)	6%	42%	7%	20%	11%	10%	11%	16%
% majority (incl. concurrence and con/dis)	98%	85%	97%	94%	97%	98%	97%	95%
% majority (incl. concurrence)	96%	72%	96%	90%	94%	95%	94%	90%

Voting and Opinion Data Combined							
	TCS	**Chin**	**Corrigan**	**Liu**	**Cuellar**	**Kruger**	**Total**
ALL OPINIONS	85	70	82	124	86	95	542
2021	13	0	8	13	13	11	58
2020	15	9	11	19	13	18	85
2019	17	13	16	23	13	14	96
2018	14	22	14	29	20	15	114
2017	13	14	17	22	16	20	102
2016	13	12	16	18	11	17	87
ALL VOTES	465	388	452	488	473	457	2723
2021	61	0	55	65	56	57	294
2020	75	61	70	78	80	73	437
2019	74	74	74	75	75	74	446
2018	84	85	83	89	87	85	513
2017	83	82	82	91	86	81	505
2016	88	86	88	90	89	87	528
Total Votes+ Ops authored	550	458	534	612	559	552	3265
Votes for another opinion/all votes+ ops auth	84.55%	84.72%	84.64%	79.74%	84.62%	82.79%	

Change Over Time (Majority Opinions, Authored)							
	TCS	Chin	Corrigan	Liu	Cuellar	Kruger	Average
2016	12	13	12	14	11	12	12.33
2017	9	12	15	12	11	13	12.00
2018	11	15	12	15	16	13	13.67
2019	14	10	16	13	10	10	12.17
2020	11	9	11	6	7	9	8.83
2021	11	0	7	8	10	9	7.50

Change Over Time (Purely Dissenting Opinions, Authored)							
	TCS	Chin	Corrigan	Liu	Cuellar	Kruger	Average
2016	0	3	0	0	0	3	1.00
2017	2	2	1	3	3	2	2.17
2018	1	0	0	7	2	0	1.67
2019	1	3	0	3	1	0	1.33
2020	2	0	0	2	1	0	0.83
2021	0	0	0	2	2	0	0.67

1. We are not alone in this view. Recently retired Justice Cuéllar said the same: "partisan politics simply don't enter into what my colleagues or I do, and I feel very confident about this conclusion." ↑
2. Note here *non-capital criminal cases* includes any criminal case that does not have automatic review: habeas petitions, for example, where the court's review is not mandatory. *In re Friend* is a capital case that was affirmed on automatic appeal but returned on habeas, so we group that and similar things in the non-capital criminal case category because the court's review was not automatic. ↑
3. We acknowledge the limitations of Westlaw's categories. Most cases address multiple areas of law. And some categories (like "Criminal Justice") are broader than others. ↑
4. There are various estimates for this breakdown. The Chief Justice recently estimated capital cases at 25%, and Justice Cuéllar similarly estimated "somewhere between 15–30%." Based on those views and the center's past annual reviews, we assume a rule of thirds in any given year: the decisions will be about one third capital, one third non-capital criminal, and one-third civil. ↑
5. Goodwin Liu, *How the California Supreme Court Actually Works: A Reply to Professor Bussel* (2014) 61 UCLA L. REV. 1246, 1252 ("When a case is granted review, the Chief Justice immediately assigns it to one of the seven

justices. Although I have no direct knowledge of how the current Chief Justice makes assignments, I have not seen much in the way of strategic behavior. For the most part, assignments appear to be driven by the more mundane "purpose of equalizing the workload of the justices." Occasionally, the Chief Justice will assign a case to a justice who has expressed particular interest in the issue presented or to a justice who has an existing assignment that involves similar issues, although our court has generally avoided cultivating subject-matter experts through assignments. Also, the Chief Justice will sometimes keep a highly visible or important case for herself, which is a legitimate and well-accepted prerogative."). ↑

6. *Nationwide Biweekly Administration, Inc. v. Superior Court of Alameda County* (2020) 9 Cal.5th 279, 334 ("I arrive at [the majority's] conclusion by a somewhat different — and narrower — path") and *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744 ("Here, in my view, is where the majority goes astray."). ↑
7. *26 North Ardmore Ave., LLC v. County of Los Angeles* (2017) 3 Cal.5th 319, 346. ↑
8. *People v. Bullard* (2020) 9 Cal.5th 94, 106. ↑
9. *See In re Martinez* (2017) 3 Cal.5th 1216, 1231 (Kruger, J., concurring) ("At this point, many decades later, it seems appropriate to recognize that the standard is rooted in an outmoded understanding of the scope of the writ and should no longer be followed."); *In re Friend* (2021) 11 Cal.5th 720, 741 (holding in part that voters intended to "build on, rather than fundamentally reconfigure" a term as it "has developed in the case law"). ↑
10. *Id.* at 108 (observing, "this manner of parsing the section 10851 offense is contrary to both experience"). ↑
11. For this analysis, we treat criminal outcomes as binary: they favor either the defendant or the People. ↑
12. See, e.g., *People v. Raybon* (2021) 11 Cal.5th 1056; *People v. Valenzuela* (2019) 7 Cal.5th 415; *People v. Valencia* (2017) 3 Cal.5th 347. ↑
13. In criminal cases the rule of lenity is a tie-breaking principle that applies when two reasonable interpretations of the same provision "stand in relative equipoise." *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1102 n.30. ↑
14. *See Raybon*, 11 Cal.5th at 1086 ("because the majority's conclusions on this

subject are unnecessary to resolve this case in any event, I do not join this portion of the majority opinion"); *In re White* (2020) 9 Cal. 5th 455, 472 ("By unnecessarily delving into the facts of a marginal case, we run the risk of confusing the law more than we clarify it."). ↑

15. A recent analysis of the court's 1911–2011 voting patterns showed strong patterns of partisan voting beginning in the 1950s. Mark Gergen, David A. Carrillo, Kevin Quinn, and Benjamin Chen, Partisan Voting on the California Supreme Court (2020) 93 S. Cal. L. Rev. 763. ↑