

SCOCA year in review 2024

Overview

This year the California Supreme Court demonstrated that the past few years were a transition phase and gave some signs of what is to come. One year ago, in our 2023 year-in-review article, we observed that the court had settled into stasis, coalescing into such high unanimity that it simultaneously ruled out any appearance of partisan bias while also sparking concerns from other court watchers about uncritical groupthink and bare-minimum productivity. This year one factor in that discussion (the three-way split between the appointing governor blocs) remains the same, and in practice such partisan affiliation markers still provide no insight into how the court operates. What's new is that this year we see increased productivity, lower unanimity, and an emerging 5-2 voting pattern in dissents and separate statements to denials of review developing with two justices (Liu and Evans) appointed by different Democratic governors. These developments combine to further refute the groupthink critique others have advanced, and overall the metrics we track suggest that 2022-23 were transitional years with 2024 marking the start of something new.

Analysis

This year we looked at Chief Justice Guerrero's moves to shape the court and the judiciary. She launched a number of civic-learning and access-to-justice initiatives. There were some administrative changes in the judicial branch, such as the new administrative director at the Judicial Council. The budget crisis many feared for this year proved to be modest, with the judicial branch absorbing a \$97 million reduction to the trial court budget; this was significant, but not as bad as court budget cuts in recent memory. There were no seat changes or retention elections this year. And the court held its periodic SCOCA Conference at UC Law San Francisco.

We also considered what the new chief justice herself said about her plans. In her State of the Judiciary Address to the legislature on March 19, 2024 (video here, transcript here) Chief Justice Guerrero made two points relevant here:

"The third priority I want to report on is increasing transparency, improving

efficiencies as was mentioned, and increasing productivity without sacrificing quality. Caseload management is an important process in meeting these objectives and providing timely access to justice. For the California Supreme Court, we've instituted internal targets for our court to meet. Our annual number of opinions has trended up, and we also are working our way through some important landmark new laws, such as the Racial Justice Act, which is impacting our workflow. . . . There have been a number of studies on our Supreme Court this past year, and one reported that we had the highest unanimity rate in the court's recent history — 94%. . . . I will say that is not because we don't value dissent or share one another's opinions — my colleagues are not shy! I think that statistic may change at some point."

She was right on both counts: opinion output was up this year, and unanimity fell. In fact, Chief Justice Guerrero hit all her marks this year. She predicted that straight grants would increase (they did), opinions would increase (they did), and the high unanimity rate would change (it did). And she wrote the most majority opinions in her first year as chief justice. The last time a new chief justice did that was Malcolm Lucas in 1988, but that metric doesn't capture an apples-to-apples comparison because Lucas became chief justice in February 1987 and had previously served for nearly three years as an associate justice. The previous two chief justices, George and Cantil-Sakauye, were not the high scorers in their first years. Correct in her predictions, a smooth administrative transition, and first-place chambers productivity — that's a solid start for a new chief justice.

Opinion output

For our quantitative analysis this year we looked for any signs of change from the court's now-well-established trends. With the same membership in 2023 and 2024, and with a seat change and a chief justice transition separating those two years from prior ones, it's most useful this year to evaluate the court from two perspectives. First, in comparing 2023 and 2024, what's different between those two years? And second, do those two years together show any change in direction from longer-term trends?

As always, our figures may vary slightly from other sources because we use the

calendar year. The Judicial Council’s annual Court Statistics Report follows a fiscal year schedule, and the court issues its own year-in-review report based on a September-to-August year. The court’s most recent report counts 58 opinions from September 2023 to August 2024; the Judicial Council figures for the most recent fiscal year are not available yet.

As Figure 1 shows, output is up this year compared with 2023. We counted 58 majority opinions this year, a substantial year-to-year increase over the 52 opinions in 2023 ($58-52/52 =$ a 11.54% increase). It’s a coincidence that our 2024 calendar-year count is the same as the court’s September-to-August count.

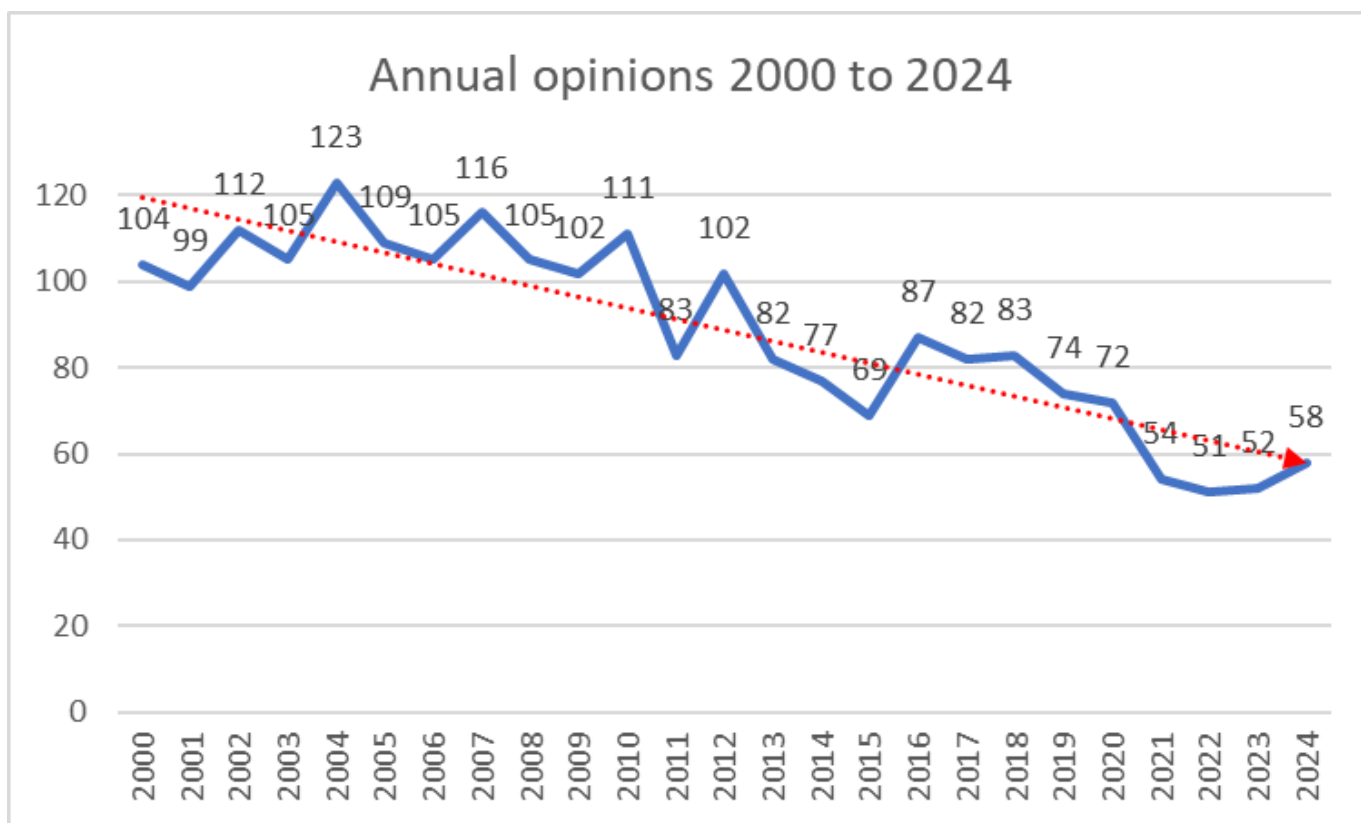


Figure 1

The annual decision output stayed in the 50s this year, marking a four-year trend of tallies in that range. The whole-period trend remains down, while the short-term trend is up. Note the consistency in results for the past four years and compare those with the greater inconsistency over the longer term: the recent years are remarkable for staying within a relatively narrow band. Still, we see opinions ticking up from the whole-period low of 51 in 2022. So the short-term trend is positive, while the 25-year trend remains negative. All this suggests that the 51 opinions in

2022 and 52 opinions in 2023 were the period-low results, which supports our thesis that those two years were transitional. If the court keeps the heat on we could see opinion tallies in the 60s in the next few years.

Other factors affecting opinion output

Lower opinion output is not solely attributable to transitions within the court. As we previously showed vacancies and transitions do correlate with lower output, and 2022-23 fits that description with a seat change, a chief justice change — and the lowest output in the court’s modern era. Yet as we acknowledged in that article other factors likely are at play. For example, we noted that the new grant-and-hold process may consume internal time and attention in a way invisible to outsiders, and the chief justice in her 2024 State of the Judiciary address noted the Racial Justice Act’s effect. Other contemporary factors, such as the rise in separate statements from conference results tracked by At the Lectern, may also similarly divert resources. Ultimately, of course, lacking inside knowledge about the court’s decisions we are limited to drawing inferences from apparent correlation in observable factors.

One such factor to consider here is the possible effect that private judging and arbitration may be having on the court’s docket. There’s an argument that JAMS and its ilk are capturing many civil matters; this may contribute to the long-term decline in petitions for review. A counterpoint is that, as Figure 4 below shows, the court’s proportion of civil decisions is increasing. But that is an output metric, and we suspect that much of the full answer depends on input: the declining number of filings, petitions for review specifically.

It’s clear that the decline in petitions for review correlates with lower yearly grants. As the most recent Court Statistics Report shows (see pages 11 and 12), total filings and petitions for review are down substantially, both by about 25%. And dispositions largely track those trends, which suggests a fewer-in-fewer-out relationship. We considered this, and the common-sense rejoinder “So what? They can always grant more petitions,” and concluded that there was no clear answer given the various possible contributing considerations. But there’s no denying that input, for whatever reason, corresponds with output.

Finally, consider that the pandemic was also a significant factor, particularly in reducing trial court filings. As the 2024 Court Statistics Report shows (see pages 31, 47, 52) fewer trial court filings in 2020-21 corresponds with fewer appellate matters. That suggests an oncoming wave of appeals and petitions for review; for example, delayed criminal cases that were tried post-pandemic and are now moving through the appellate process. A resultant increase in appeals in turn could produce more petitions for review, and perhaps inspire more grants. If that wave arrives, look closely at whether any change in petitions tracks with straight grants.

Unanimity

This year saw more separate opinions and votes than last year. Taking the long view, the whole-period high of 94% unanimity in 2023 looks like an outlier; it wasn't the court's highest-ever annual unanimity, but it was close. Note also the significant disparity in Figure 2 between 2022 and 2023. Both the outlier aspect and the sudden inflection support our transitional-phase thesis. As Figure 2 shows, unanimity is down significantly from that peak, dropping to 81% this year. That's somewhat expected; it would be difficult for the court to achieve even higher unanimity. As Herbert Stein observed, "If something cannot go on forever, it will stop."

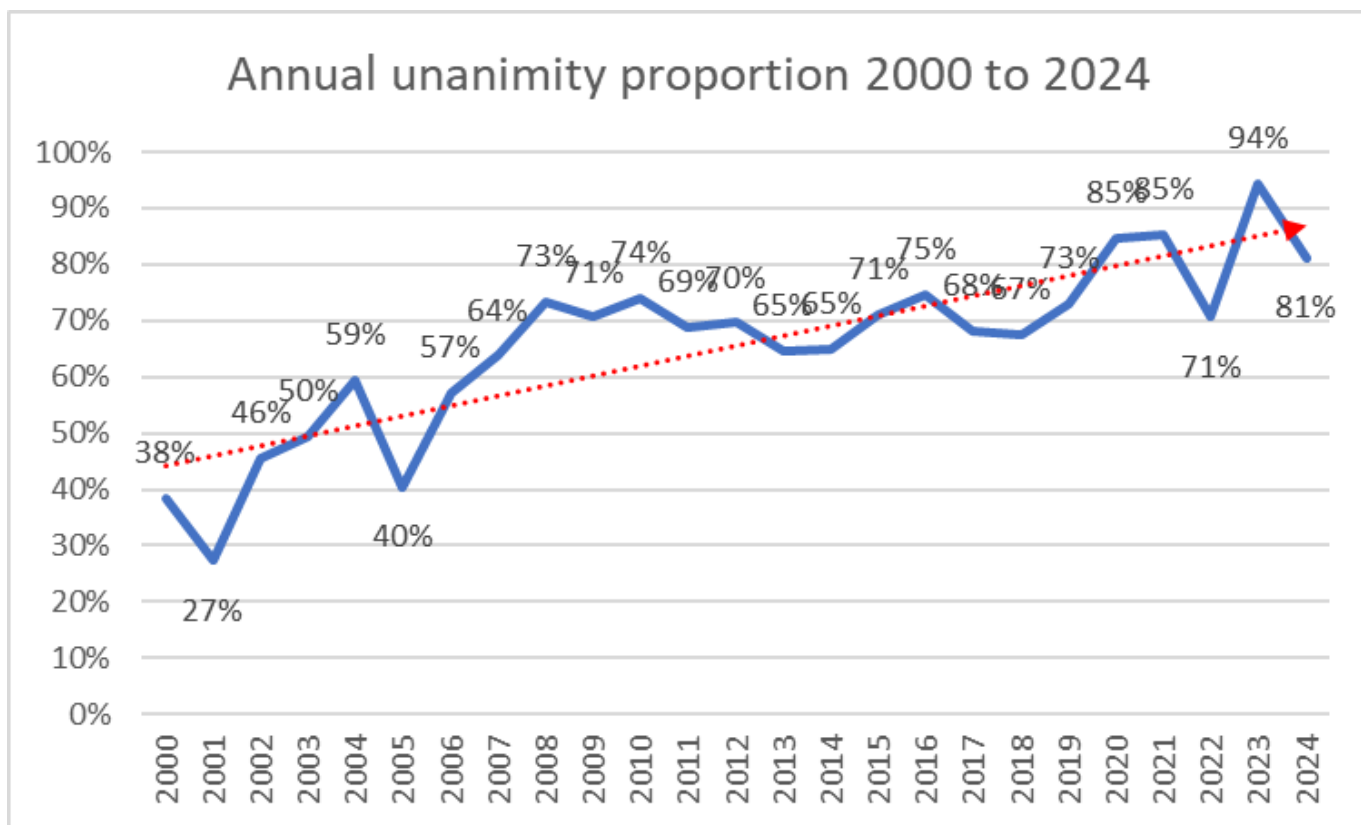


Figure 2

The 25-year trend remains positive. Yet this year's decline in unanimity to around 80% is closer to the court's most recent performance, and to the 25-year average of 64.85%. This year's unanimity rate is arguably more in line with the court's regular rate, especially if we discount the high (2023) and low (2001) years as outliers. This sign of return to form contributes to our thesis that 2022 and 2023 were transitional years, and that this year represents an inflection back towards historic norms. If this proves true then going forward one expects the court's annual unanimity rate to hover around 80%.

Consistent with the court's recent high unanimity rate, Figure 3 shows that vote splits continue to be few, as they have been since around 2020. In particular, bare-minimum 4-3 majority splits have become scarce, a marked change from 20 years ago when they were relatively more common. Three justices cast zero dissenting votes this year for the second year running: Corrigan, Kruger, and Jenkins.

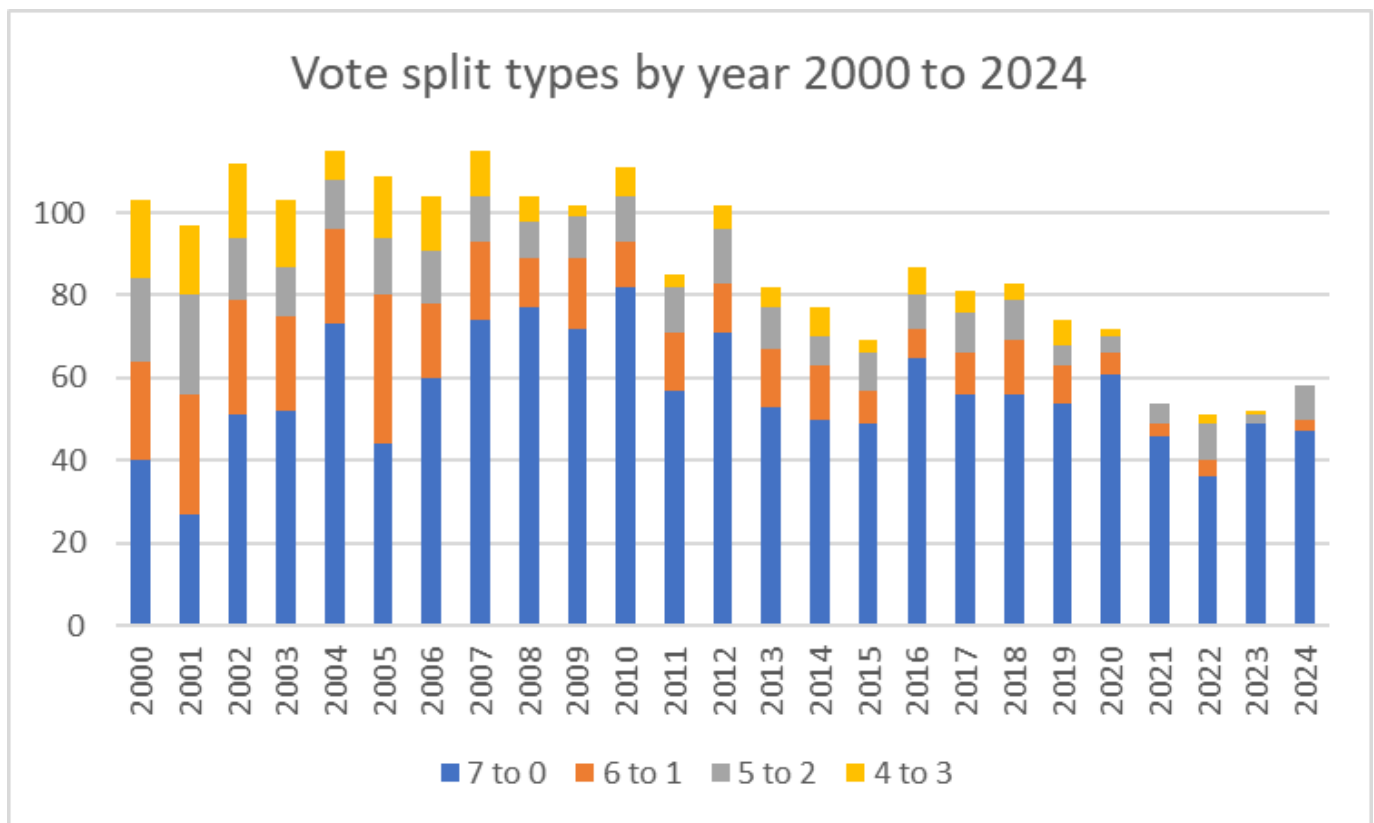


Figure 3

Chief Justice Guerrero wrote or voted separately three times this year after exhibiting zero nonmajority behavior in 2023. (See this article for a discussion of her

Court of Appeal opinions and votes.) She wrote her first dissent in *People v. Lynch* and cast her first dissenting vote in *In re Dezi C*; she also signed Justice Groban's concurrence in *In re Kenneth D.*, which we count as separate action. We have too little data to say which year will prove more consistent with her overall pattern: 2023's no separate action, or 2024's few separate actions.

Justice Corrigan similarly had zero separate actions last year, but she concurred three times this year. Looking at her history it's generally uncommon to see separate actions by Justice Corrigan, and such votes or opinions by her have become less common over time. Justice Jenkins is even less likely to act separately: he has just a few concurring opinions or votes since he joined the court in 2021, and we have yet to see a dissenting opinion or vote from him.

As Chief Justice Guerrero said, her colleagues are unafraid of disagreement, and the unanimity rate's apparent return to form shows that. This shift adds force to our rebuttal (in the 2023 year in review) to concerns others raised about groupthink when the unanimity rate peaked in 2023, which now appears to be an outlier in a transitional year. Now the court's collaborative decision-making process, which incorporates critical input from all seven justices, is showing its effect. Such a group writing process should iron out most disagreements in a collegial group, producing higher unanimity. That process also partly explains why opinions can take so long to produce, and why some are narrow decisions.

We still think that for the modern court political party affiliation of the appointing governor neither predicts polarization nor correlates with unanimity. As Figure 2 shows, unanimity rates were lowest in 2000 and 2001. Except for Justice Mosk, all justices were Republican appointees during those years, and that 6-1 composition remained true through 2014 after Justice Mosk was replaced by Justice Moreno and then replaced by Justice Liu. If appointing political affiliation were a proxy for justice orientation then unanimity should have been higher in that time — but it wasn't. Instead, as Figure 3 shows this time has the lowest-in-period unanimity and bare-minimum 4-3 majority splits were relatively more common in that time.

Today, the 6-1 composition exists in the reverse, with Justice Corrigan the lone justice appointed by a Republican governor. Yet agreement among the justices is

high, with 4-3 splits increasingly uncommon; there were none in 2024. Perversely, this absence of polarization partly inspires the groupthink critique others advanced, arguing that of course appointees by Democratic governors would be like-minded. Yet if political party had any bearing on the justices' voting patterns we would expect to see frequent 6-1 splits with Corrigan in the minority — but we don't. Unless there's something unique about consensus in conservative versus liberal ideology (which we doubt) there's no reason a court dominated by one party's appointees should show comparatively greater or lesser unanimity without something else affecting the process. The upshot is that for the modern California Supreme Court appointing political party does not correlate with unanimity.

Indeed, the primary division emerging in the court today is between Democratic appointees: the emerging 5-2 split of justices Liu and Evans joining each other in dissents and separate statements, which we discuss below. Going forward we expect the court's unanimity rate to settle into the 80th percentile, particularly if that 5-2 split continues to be a factor. Of course, a rise in annual opinions could affect this metric.

Case types and results

As Figure 4 shows the proportion of automatic appeals in the court's annual case count remains small, and civil cases are filling the void. Figures 4 and 5 figures omit certified questions and original jurisdiction matters; this year there were seven cases in those categories combined. The grand totals in these figures are whole-period results (2000 to 2024) for comparison. The difference between this year and the whole-period criminal cases proportion is negligible, as is the variance in habeas matters. Taking those case types out of consideration suggests that the reduction in capital decisions created an opening for more civil decisions.

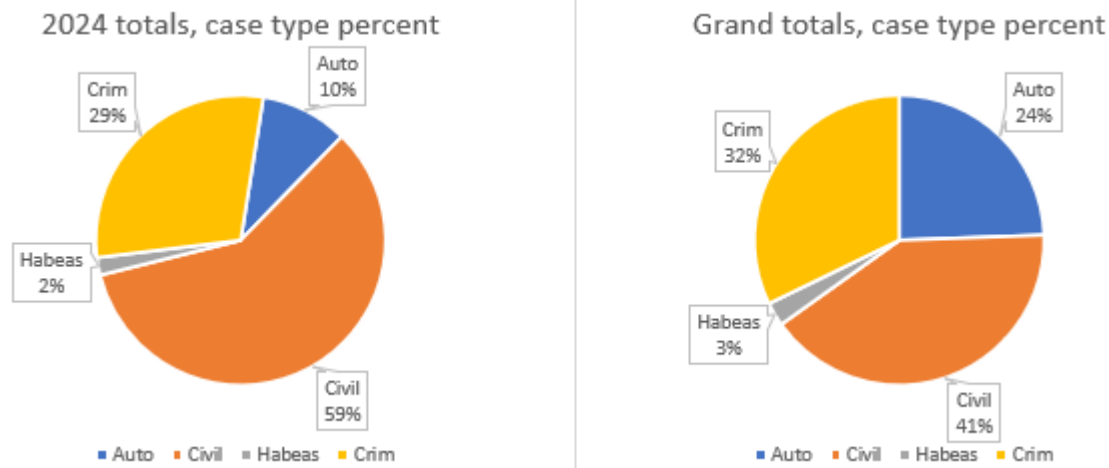


Figure 4

Figure 5 shows that this year the court reversed in a clear-but-small majority of cases (53%), significantly more than the whole-period result (41%). A full or partial reversal was the most common result this year no matter how you slice it. This year's full or partial reversal proportion approaches the general 60% reversal rate we considered in the Appellate rules of thumb article.

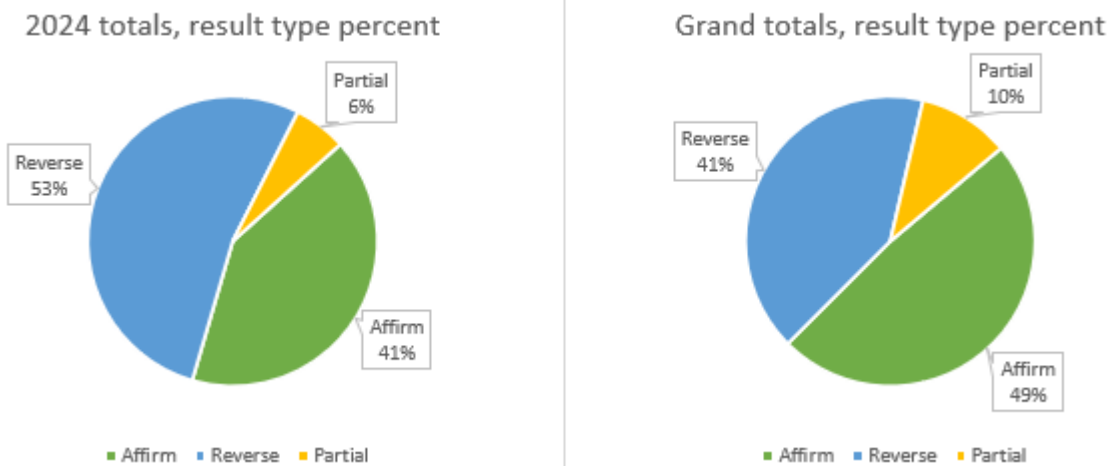


Figure 5

Overall, these changes in the court's docket are modest when current proportions are compared with all-time figures. The decline in automatic appeals remains a primary driver of changes in case types the court decides. With new automatic appeals approaching zero, we continue to wonder if the court will someday catch up and eliminate the capital docket backlog. Of course, a change in law or a blanket commutation could moot this scenario.

For a substantive review of some decisions this year we suggest this article by David

Axelrad and Rebecca Marcyes.

Word count

As Figure 6 shows word count is still trending up. This year's annual average is an increase over last year, but still below the peak word count in 2022. This also supports our thesis that 2022-23 was a transitional period, with highly variable year-to-year results that do not reflect the court's usual behavior. That this transitional period lags the pandemic is consistent with our thinking above about the delayed effect on the court from the trial court shutdown. As the last stop in the legal process, it makes sense that front-line effects would take time to reach the state's highest court.

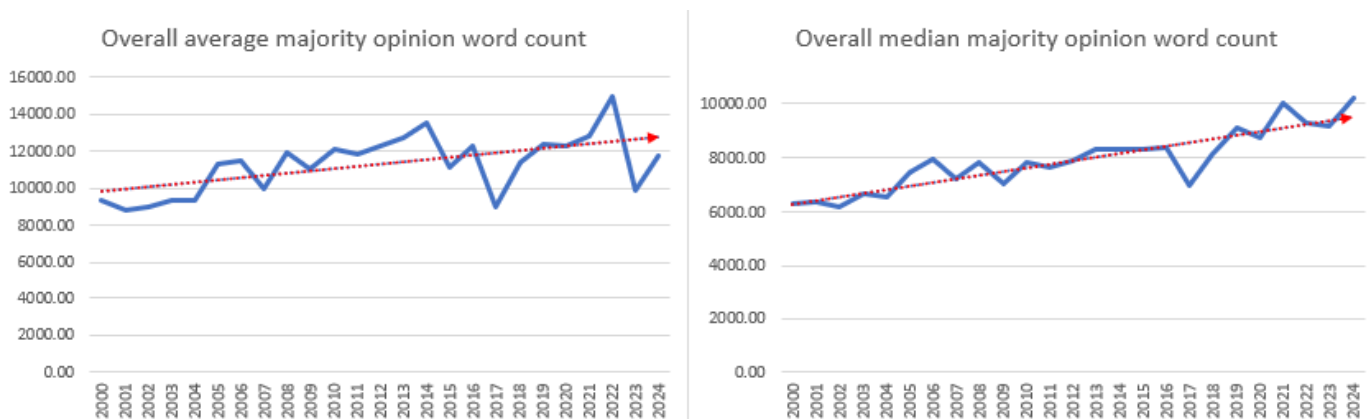


Figure 6

Twenty years ago the court's annual average word count was around 9,000 words; as Figure 6 shows this year's average opinion length was closer to 12,000 words. The percent-average change from 2000 to 2024 is 25.35%, and the percent median change from 2000 to 2024 is 61.51%. The median word count today is around 10,000 words.

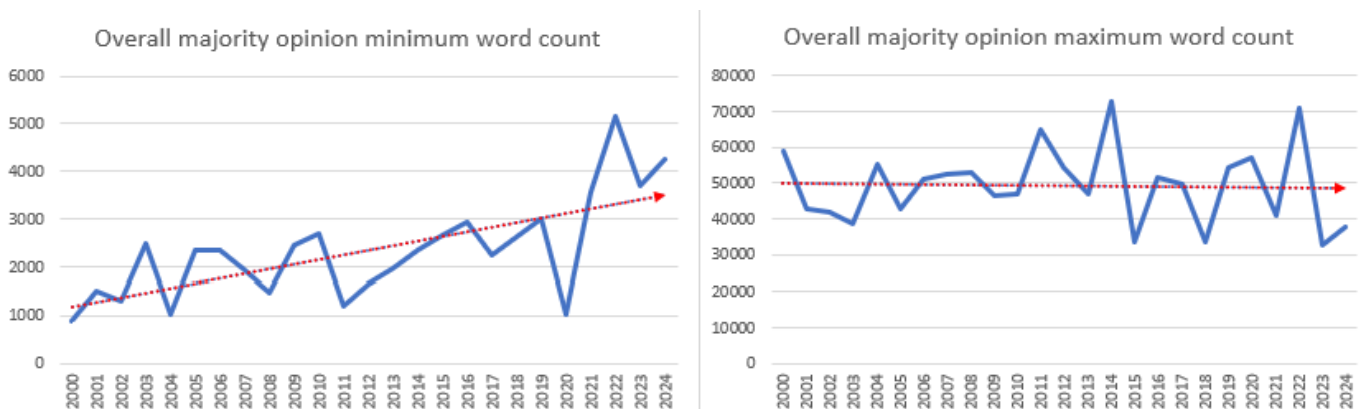


Figure 7

The minimum word count continues to rise, while the maximum word count continues to hover around 50,000 words. Look at the difference in scales in Figure 7: the maximum ranges across 40,000 words, while the minimum ranges across 4,000 words. There is far greater variation in the maximum than the minimum, suggesting a wide range of possible high word counts. And it seems that decisions can only be so short, given the California constitution article VI, section 14 requirement that the court's decisions "be in writing with reasons stated." Chief Justice Cantil-Sakauye still holds the since-2000 high count record at 72,628 words in *People v. Lucas* (2014) 60 Cal.4th 153, and Justice Brown still holds the since-2000 low count record at 897 words in *People v. Tillman* (2000) 22 Cal.4th 300.

This year's majority opinion higher performers

The clear majority opinion leaders this year were Chief Justice Guerrero and Justice Kruger. Chief Justice Guerrero immediately claimed the top spot on joining the court in 2023 with 12 majorities, narrowly beating Justice Liu's 11, and the chief justice wrote another 12 majorities this year. Justice Kruger returned to double digits this year, while Justice Liu dropped back into single digits. In 2024 only two justices (Guerrero and Kruger) hit double digits; last year the only two double-digit justices were Liu and Guerrero.

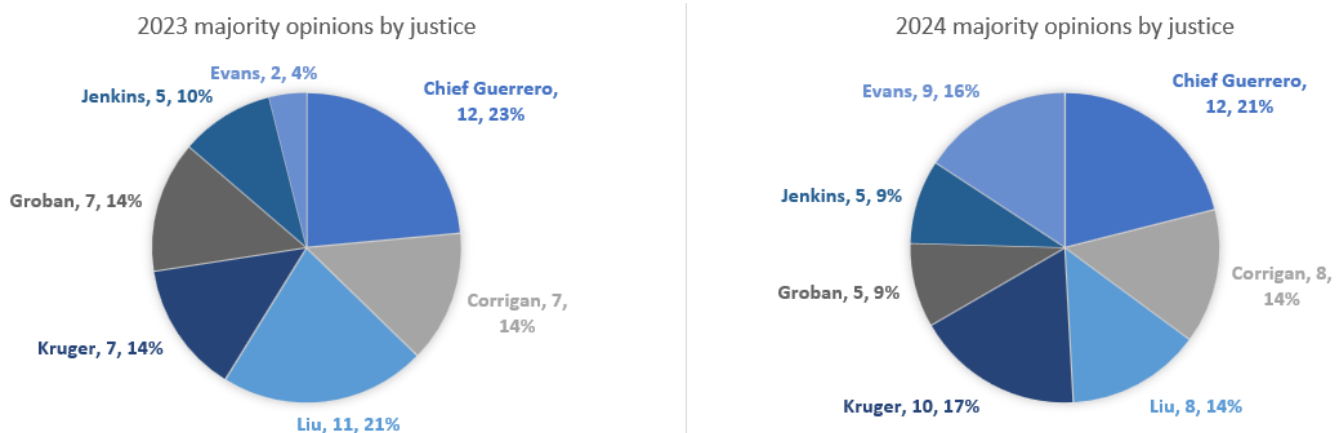


Figure 8

A year-to-year pie chart comparison in Figure 8 shows the relative changes of each justice's performance. Justice Evans is now at full speed, while Justice Liu's share decreased. The takeaway: for two years running the chief justice is the clear

majority opinion leader.

The Liu-Evans axis

When writing or voting separately (anything other than a majority opinion or vote) Justices Liu and Evans had a high coincidence of agreement. After Justice Evans joined the court in 2023, that year every time Liu or Evans wrote or voted separately the other did too, most often joining a separate opinion written by the other; they also were together in the 4-3 minority in *People v. Brown*. In 2024, when they sat together on more cases because Justice Evans served the full year (and there were more decisions), this pairing in separate votes or opinions was absent only twice: once in *Needham v. Superior Court*, and once when Justice Evans did not participate in *People v. Williams*. *Needham* is the only time in the past two years that this pair was not together in the minority when both participated.

Each signed all the majority opinions written by the other in 2023 and 2024, but that's of less value on a court with such high unanimity. This pairing appears even when they both also sign the majority opinion and also write separately, as in *People v. Schuller* in 2023, and in *People v. Flores* and *People v. McCune* in 2024. Indeed, in this year's *In re Tellez* Justice Evans wrote the majority and still signed Justice Liu's concurrence. Except for *People v. Flores*, when one writes separately only the other signs that separate opinion; no other justices concur. And each only signs separate opinions written by the other; the only exceptions are *People v. Brown* when both signed Justice Groban's concurring-and-dissenting opinion and *Needham v. Superior Court*. Still, *People v. Brown* features this pair together in the minority.

That justices Liu and Evans wrote the most dissents this year (5 and 4 respectively) and cast the most dissenting votes (8 and 6 respectively) further shows their alignment relative to other justices. Add the fact that this Liu-Evans dissent pairing is equal opportunity — Liu-Evans dissents appeared in decisions written by everyone else except Justice Groban.

This pairing does not account for every 5-2 vote split: Justice Evans wrote the majority opinion in *In re Dezi C.* with a dissent by Justice Groban joined by Chief Justice Guerrero, and *People v. Needham* was a 5-2 split with Justice Groban signing Justice Liu's dissent. But those are the only 5-2 cases in 2023 or 2024 that do not

feature Liu and Evans in the minority. And *In re Dezi C.* still shows Liu and Evans together — in the majority. That leaves *Needham v. Superior Court* as the only time in the past two years when justices Liu and Evans are on opposing teams. It's hard to unsee this pairing, and it's unique among the current justices.

The other relevant factor here is the frequency of separate statements to denials of review by the Liu-Evans pair. It is unusual for any current justice of this court to write separately at all for a denial of review, so these two justices being mostly unique in doing so is telling. Justices Liu and Evans also appear on these separate statements together, with no other justices joining or writing separately at all. We did not count these occurrences; instead, we relied on the detailed coverage of Liu-Evans separate statements to review denials on *At the Lectern*. That publication identified multiple instances of this pairing, which appeared more often than any other individual or subgrouping.

This is a small, short-term sample that may prove short-lived. Indeed, in the court's first 2025 decision (*People v. Collins*) a different 5-2 lineup appeared, albeit with justices Liu and Evans staying together in the majority. But on a court that distinguishes itself with consensus and the absence of identifiable voting blocs, the ease in identifying the Liu-Evans pairing is striking. This trend merits close observation in the future; for example, for years Justice Liu was one of the highest-majority-producing justices — will that change? One thing to watch is *which* cases this pair appears in a 5-2 minority; so far many instances are criminal cases, but not all. *At the Lectern* notes that “they have been regularly dissenting from review denials in youth offender parole cases, including once with a separate statement asserting that cruel-or-unusual-punishment issues should be addressed.”

Seat changes

Barring a retirement the likelihood of seat changes in 2025 is low. No justices will appear on the November 2025 ballot for retention. The next ballot appearances are as follows:

- Justice Evans will be on the ballot for retention in the next gubernatorial election in November 2026.

- Justice Groban will appear on the November 2026 ballot for a new full term.
- Justices Corrigan and Kruger will both next be on the ballot in November 2030.
- Justices Liu and Jenkins will not be on the ballot again until November 2034.
- Chief Justice Guerrero also will next appear on the ballot in November 2034.

Last year it appeared that despite changing court membership in the past decade, observable trends continued, suggesting that new members were unlikely to change the court's dynamics between now and the next open gubernatorial election in 2026. With another year's data we now begin to see small changes in those trend directions that suggest the court is emerging from a transitional phase that coincides with the change in chief justices. And a caveat here is the possible effect of the Liu-Evans axis — if that pattern continues — particularly if a retiring justice is replaced by someone who joins that alliance. In that event we could see more frequent 4-3 vote splits.

Looking ahead

This year we will look for the court to decide two potential blockbuster cases, both writs in the court's original jurisdiction. One is *OSPD v. Bonta* (S284496), which seeks an order invalidating California's capital punishment system. The other is *FVAP v. Superior Court* (S288176), which asks the court to nullify a statute that bans electronic trial court records. (California Constitution Center affiliates are amici in both cases.) Action in either case could have far-reaching effects — as could inaction.

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Senior research fellows Stephen M. Duvernay and Brandon V. Stracener contributed to this article.