MICHIGAN SUPREME COURT

Justices	 Megan Cavanagh	 Elizabeth Clement	 Brian Zahra	 Davi Viviano	 Richard Bernstein	 Bridget Mary McCormack	 Stephen Markman
Confidence Score	Mild Democrat	Strong Republican	Strong Republican	Strong Republican	Strong Democrat	Mild Democrat	Strong Republican
Opinion Partners			✓				✓
Dissenting Minority	✓				✓	✓	
Determining Majority		✓	✓	✓			✓
Lone Dissenter				✓			

SUMMARY

- Number of justices: ***7***
- Number of cases: ***25***
- Percentage of cases with a unanimous ruling: ***64.0% (16)***
- Justice most often writing the majority opinion: ***Justice Markman (5)***
- Per curiam decisions: ***3***
- Concurring opinions: ***10***
- Justice with most concurring opinions: ***Justice Viviano (4)***
- Dissenting opinions: ***9***
- Justice with most dissenting opinions: ***Justice Markman (3)***

COURT CONTENTION

The Michigan Supreme Court was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 16 cases, which was 57 percent of the time the court issued a ruling. At least one justice dissented in 36 percent of non-per curiam cases.

Opinion partners

The justices who allied most often were Justices Cavanagh and Clement. Cavanagh and Clement ruled the same way 26 times in 2020, and only ruled differently once. In one other decision, Council of Organizations & Others for Ed. v. Michigan, Justice Clement recused herself due to a conflict of interest. In our *Ballotpedia Courts: State Partisanship* study, Cavanagh recorded a Mild Democratic Confidence Score and Justice Clement recorded a Strong Republican Confidence Score.

The two justices who allied most often in dissent were Justices Markman and Zahra. Markman and Zahra dissented together five times, which was 55.6 percent of all cases with dissents. In our *Ballotpedia Courts: State Partisanship* study Markman recorded a Strong Republican Confidence Score and Zahra recorded a Strong Republican Confidence Score.

Court Dissenting minority

The group of three justices who allied most often in dissent were Justices Bernstein, Cavanagh, and McCormack. Justices Bernstein, Cavanagh, and McCormack dissented in the same case twice, which was 66.6 percent of all cases in which three justices dissented. In our *Ballotpedia Courts: State Partisanship* study Bernstein recorded a Strong Democratic Confidence Score. Justice Cavanagh recorded a Mild Democratic Confidence Score. Chief Justice McCormack recorded a Mild Democratic Confidence Score.

Determining majority

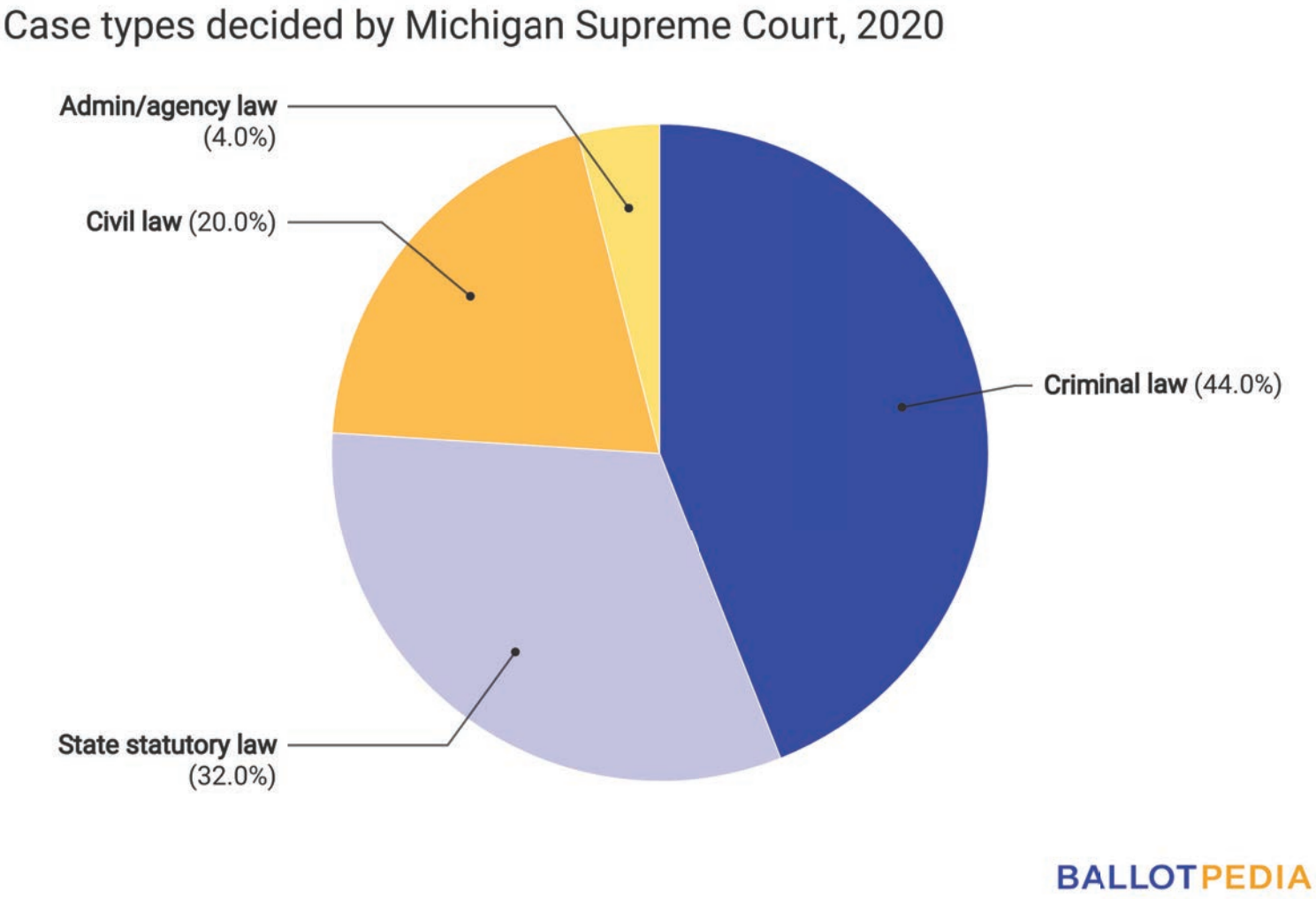
In 2020, the Michigan Supreme Court decided three cases 4-3. In two of the three cases, Justice Clement was in the majority, and in one case she was not participating. In two of the split cases Markman, Viviano, and Zahra formed the majority; in one of those cases they were joined by Clement. In the other case decided by split decision, Clement joined Bernstein, Cavanagh, and McCormack to form the majority.

Lone dissenter

In 2020, Justice Viviano ruled alone seven times, which was more than any other justice. Justice Viviano wrote two lone opinions where he concurred in part and dissented in part, dissented alone once, and wrote concurring opinions in which no other justice joined three times.

COURT JURISDICTION

Most cases heard by the Michigan Supreme Court involve review of Michigan Court of Appeals decisions, but the court also hears judicial misconduct cases, as well as some cases of original jurisdiction, as is the case in a bypass appeal. The court has broad superintending control power over all the state courts in Michigan.



The most common cases heard by the Michigan Supreme Court in 2020 were criminal cases. A criminal case is any case involving a final criminal appeal before the court of last resort. Of the 25 cases it heard, 11 were criminal cases. We identified five of the 11 criminal cases heard by the Michigan Supreme Court as cases of interest, meaning that at least one justice departed from the majority. In four of the 11 criminal cases decided by the Michigan Supreme Court, at least one justice wrote a dissenting opinion.

The second most common cases that reached the supreme court were state statutory cases. A state statutory case involves the violation or enforcement of a state statute. The Michigan Supreme Court heard eight state statutory cases in 2020, or 32 percent of its total caseload for the year.

The third most common cases that reached the court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations

or damages. The Michigan Supreme Court heard five civil cases in 2020, or 20 percent of its total caseload for the year.

PROMINENT CASES

Council of Organizations & Others for Ed. v. Michigan

Justice	Megan Cavanagh	Elizabeth Clement	Brian Zahra	Davi Viviano	Richard Bernstein	Bridget Mary McCormack	Stephen Markman
Council of Organizations & Others for Ed. v. Michigan (Opinion - Leave Granted)	Writing dissenting opinion	Not Participating	Joining the majority opinion	Joining the majority opinion	Joining Cavanagh's dissenting opinion	Joining Cavanagh's dissenting opinion	Writing majority opinion

- **Contention:** Justice Markman wrote the majority opinion. He was joined by Justices Zahra and Viviano. Justice Cavanagh wrote a dissenting opinion and was joined by Justices McCormack and Bernstein. Justice Clement did not participate because of her prior involvement as chief legal counsel for Governor Rick Snyder (R).
- **Summary:** In June 2016 Governor Rick Snyder signed a law appropriating $2.5 million in funds to reimburse costs incurred by nonpublic schools. In July 2016 Gov. Snyder asked the supreme court for an advisory opinion as to whether providing aid to nonpublic schools was prohibited by the state constitution. The court declined his request. In March 2017 the plaintiffs sued the state alleging that the aid to nonpublic schools was prohibited under the state constitution. In July 2017 the Court of Claims issued a preliminary injunction against disbursing the funds. In April 2018 the Court of Claims entered a permanent injunction against disbursing the appropriated funds, concluding that the appropriation of money to nonpublic schools was unconstitutional. In October 2018 the Court of Appeals reversed the Court of Claims' judgment finding that the appropriation of money did not violate the state constitution. The Michigan Supreme Court affirmed the Court of Appeals' reversal by equal division, writing that the disbursement was in accordance with both the religion clauses of the First Amendment of the federal Constitution and Article 8, sec. 2, as amended by Proposal C in 1970, of the Michigan Constitution.
- **Majority Argument**: Justice Markman wrote: "The central issue here concerns the proper interpretation of Const 1963, art 8, § 2, as amended by Proposal C... Proposal C relevantly provides that '[n]o public monies or property shall be appropriated or paid . . . directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school'... Read literally, the state would be prohibited from providing any public benefits to nonpublic schools because doing so would at least presumably 'indirectly' aid the nonpublic school. Providing police and fire services to a nonpublic school, for instance, 'indirectly' aids that school because the school does not need to provide for its own

police or fire protection and, as a result, has available additional funds for other educational purposes. And when that nonpublic school is religious in character and attended by students for that reason, denying the services of the police and fire departments to the nonpublic school-- indeed, denying such services alone to such institutions-- would seemingly raise concerns under the Free Exercise Clause. The only educational institutions that would be deprived of these and other fundamental public services-- provided exclusively and monopolistically by the government-- would be nonpublic schools." (*Council of Organizations & Others for Ed. v. Michigan*, No. 158751, 15 (Mich. 2020))

- **Dissenting Argument**: Justice Cavanagh wrote: "The opinion for affirmance turns the alternative construction of Traverse City on its head by focusing on the limited discussion regarding auxiliary services, which we explicitly limited to those services at issue in that case. Not only does the opinion for affirmance extend the discussion of auxiliary services beyond the explicit boundaries we set in Traverse City, it also exaggerates its import within those boundaries. In reading the opinion for affirmance, one would think that Traverse City, in discussing auxiliary services, approved any direct payment to a nonpublic school so long as the payment went toward 'general health and welfare measures.'" (*Council of Organizations & Others for Ed. v. Michigan*, No. 158751, 22 (Mich. 2020))

Mays v. Snyder

Justice	Megan Cavanagh	Elizabeth Clement	Brian Zahra	Davi Viviano	Richard Bernstein	Bridget Mary McCormack	Stephen Markman
Mays v. Snyder (Opinion - Leave Granted)	Joining McCormack's concurring opinion	Joining McCormack's concurring opinion	Joining Markman's dissenting opinion	Concurring in part and dissenting in part	Writing majority opinion	Writing concurring opinion	Writing dissenting opinion

- **Contention:** Justice Bernstein wrote the majority opinion. Justice McCormack wrote a concurring opinion and was joined by Justices Cavanagh and Clement. Justice Markman wrote a dissenting opinion and was joined by Justice Zahra. Justice Viviano wrote an opinion concurring in part and dissenting in part.
- **Summary:** Melissa Mays and other property owners in Flint, Michigan brought a class action suit against Rick Snyder, the state of Michigan, the Michigan Department of Environmental Quality, and the Michigan Department of Health and Human Services, as well as against Darnell Earley and Jerry Ambrose, former emergency managers for the city of Flint. Plaintiffs alleged that the defendants authorized a contract for a water delivery system from the Flint River with knowledge of a 2011 study which cautioned against use of Flint River water. On April 25, 2014, Flint switched its water source to the Flint River, and Flint water users began receiving Flint River water from their taps. Less than a month after the

switch, state officials began to receive complaints from Flint water users about the quality of the water coming out of their taps. In June 2014, residents complained that they were becoming ill after drinking the tap water. Plaintiffs alleged that during this time, state officials failed to take any significant remedial measures to address the growing health threat and instead continued to downplay the health risk. On January 21, 2016, plaintiffs brought a four-count class-action complaint against all defendants in the Court of Claims for state-created danger, violation of plaintiffs' due-process right to bodily integrity, denial of fair and just treatment during executive investigations, and unconstitutional taking via inverse condemnation. The court ruled that the plaintiffs adequately alleged a claim of inverse condemnation and that the government's actions were a substantial cause of the decline of property value.

- **Majority Argument**: Justice Bernstein wrote: "Plaintiffs present allegations involving one of the most troublesome breaches of public trust in this state's history, with catastrophic consequences for Flint citizens' health, well-being, and property. If plaintiffs' allegations are proved true, we agree that the nature of defendants' alleged constitutional violations weighs markedly in favor of recognizing a damages remedy." (*Mays v. Snyder*, No. 157335-7 & 157340-2, 35 (Mich. 2020))
- **Concurring Argument**: Justice McCormack wrote: "I concur fully with the lead opinion and agree that the plaintiffs have adequately pled a conscience-shocking violation of their fundamental right to bodily integrity. I write separately to respond to Justice VIVIANO's critique of Smith v Dep't of Pub Health, 428 Mich 540; 410 NW2d 749 (1987). This Court is ultimately responsible for enforcing our state's Constitution, and remedies are how we do that." (*Mays v. Snyder*, No. 157335-7 & 157340-2, 2-3 (Mich. 2020))
- **Dissenting Argument**: Justice Markman wrote: " A majority of this Court now affirms the Court of Appeals' conclusion with regard to plaintiffs' inverse-condemnation claim but affirms only by equal division with regard to plaintiffs' violation-of-bodily-integrity claim. Because I conclude that plaintiffs failed to comply with MCL 600.6431(3), the notice provision of the Court of Claims Act, MCL 600.6401 et seq., I would reverse the Court of Appeals and remand to the Court of Claims for entry of an order disposing of all of plaintiffs' claims and dismissing the case." (*Mays v. Snyder*, No. 157335-7 & 157340-2, 2-3 (Mich. 2020))
- **Concurring in Part and Dissenting in Part**: Justice Viviano wrote: "I agree with the lead opinion's analysis of plaintiffs' inverse-condemnation claim and remand for further factual development to determine when that claim accrued. But I would reverse the Court of Appeals' denial of defendants' motion for summary disposition concerning plaintiffs' substantive due-process claim for a violation of bodily integrity because I do not believe that substantive due process encompasses a right to be protected from exposure

to contaminated water and I do not believe that plaintiffs allege conscience-shocking conduct on the part of defendants." (*Mays v. Snyder*, No. 157335-7 & 157340-2, 2 (Mich. 2020))

Sanford v. Michigan

Justice	Megan Cavanagh	Elizabeth Clement	Brian Zahra	Davi Viviano	Richard Bernstein	Bridget Mary McCormack	Stephen Markman
Sanford v. Michigan (Opinion on Application)	Joining McCormack's dissenting opinion	Joining majority opinion	Joining majority opinion	Joining majority opinion	Joining McCormack's dissenting opinion	Writing dissenting opinion	Joining majority opinion

- **Summary:** Davontae Sanford sought compensation under the Wrongful Imprisonment Compensation Act (WICA) after another man confessed to the crimes committed in 2007 to which Smith pled guilty when he was 15 years old. After the other man's confession a circuit court vacated Sanford's convictions and sentences and he was released from the Michigan Department of Corrections. The court of claims ruled that Sanford was entitled to $408,356.16 in damages for the eight years he spent in the state correctional facility. Sanford argued that he was entitled to an extra $27,124.02 for the 198 days he spent in local detention. The Michigan Supreme Court decided that the unfairness or injustice addressed by WICA is the imprisonment of an innocent person following a conviction. Therefore, WICA provides no compensation for individuals who are detained and then subsequently acquitted or released without a conviction, but only provides compensation for imprisonment.
- **Majority Argument**: Justice Zahra wrote: "This conclusion that the WICA does not compensate plaintiff for the time he spent in detention before his conviction is consistent with the WICA's status as a waiver of the state's sovereign immunity. It makes sense that the Legislature would decline to compensate plaintiff for preconviction detention that was purely the result of local decision-making. The Legislature could have written the WICA as a wrongful-prosecution act or a wrongful-arrest-compensation act, but it did not do so. Rather, the "wrong" addressed by the WICA is imprisonment following a conviction, not preconviction detention. While it is unfortunate that plaintiff spent any time in detention before his wrongful conviction, a reading of the WICA in its entirety reveals that the Legislature did not intend to hold the state accountable to plaintiff for his preconviction detention." (*Sanford. v. Michigan*, No. 159636, 11 (Mich. 2020))
- **Dissenting Argument**: Justice McCormack wrote: "This interpretation of the WICA engrafts a new limitation on compensable detention that the statute's text does not support: the statute doesn't allow us to decide whether we think Mr. Sanford's pretrial detention was wrongful, unfair or unjust. But even applying

the majority's new eligibility hurdle, I disagree with the majority's blanket determination that pretrial detention is never unfair or unjust. Pretrial detention of an innocent person, like post-trial detention of an innocent person, is unfair and unjust. This case illustrates. And for the WICA, it is "wrongful" if a plaintiff can satisfy the statute's eligibility requirements, which everyone agrees Mr. Sanford has." (*Sanford. v. Michigan*, No. 159636, 2 (Mich. 2020))