

CONTENTIOUS COURTS

In the section below, we spotlight activity in contentious courts. The charts at the beginning of each state section classify justices under the aforementioned categories of behavior. As a rule, at the beginning of each section in our charts, we indicated that a justice fell into one of the given categories only if he or she performed the action corresponding to each label more than twice.

On many courts the justices did not frequently ally together in a pattern that would allow us to discern a majority, minority, or opinion partners. On the courts where justices did not rule together with the requisite regularity, we have omitted indicating majorities, minorities, and opinion partners in the chart at the beginning of the state section. Instead, the categories are left blank to indicate that there was no pattern for majorities, minorities, or partnership on the court.

INDIANA SUPREME COURT

| Justice |  |  |  |  |  |
|----------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| | Christopher Goff | Steven David | Geoffrey Slaughter | Loretta Rush | Mark Massa |
| Confidence Score | Mild Republican | Mild Republican | Mild Republican | Mild Republican | Strong Republican |
| Opinion Partners | | ✓ | | ✓ | |
| Dissenting Minority | | | ✓ | | ✓ |
| Determining Majority | ✓ | ✓ | | ✓ | |
| Lone Dissenter | | | ✓ | | |

SUMMARY

- ▶ Number of justices: **5**
- ▶ Number of cases: **59**
- ▶ Percentage of cases with a unanimous ruling: **66.1% (39)**
- ▶ Justice most often writing the majority opinion: **Justice David (11)**
- ▶ Per curiam decisions: **19**
- ▶ Concurring opinions: **1**
- ▶ Justice with most concurring opinions: **Justice Slaughter (1)**
- ▶ Dissenting opinions: **11**
- ▶ Justice with most dissenting opinions: **Justice Slaughter (7)**

COURT CONTENTION

The Indiana 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 20 cases, which was 33.9 percent of the time the court issued a ruling.

Opinion partners

The two justices who allied most often were Justices David and Rush, who agreed in the ruling of 55 cases heard by the Indiana Supreme Court in 2020, which was 93.2 percent of all cases heard by the Indiana Supreme Court in 2020. In our *Ballotpedia Courts: State Partisanship* study, Justice David recorded a Mild Republican Confidence Score. Justice Rush recorded a Mild Republican Confidence Score.

Dissenting minority

In 2020, the Indiana Supreme Court decided seven cases 3-2. Two of those cases were decided by per curiam opinions. The two justices who allied most often in dissent were Justices Slaughter and Massa, who dissented together three times. In our *Ballotpedia Courts: State Partisanship* study Justice Massa recorded a Strong Republican Confidence Score. Justice Slaughter recorded a Mild Republican Confidence Score.

Determining majority

No justice was in the majority in all seven of the 3-2 decisions of the Indiana Supreme Court in 2020. The three justices most frequently in the deciding majority were Justices David, Goff, and Rush. In our *Ballotpedia Courts: State Partisanship* study Justice David recorded a Mild Republican Confidence Score. Justice Goff recorded a Mild Republican Confidence Score. Justice Rush recorded a Mild Republican Confidence Score.

Lone dissenter

In 2020, Justice Slaughter dissented alone 11 times, which was every time there was a lone dissenter in a case. In five of those cases he wrote a dissenting opinion. Slaughter also wrote three opinions concurring in part and dissenting in part.

COURT JURISDICTION

The Indiana Supreme Court reviews decisions of the Indiana Court of Appeals and the Indiana Tax Court. The Supreme Court also has the power to review and revise sentences imposed by lower courts.

The supreme court also has mandatory jurisdiction over the following types of cases:

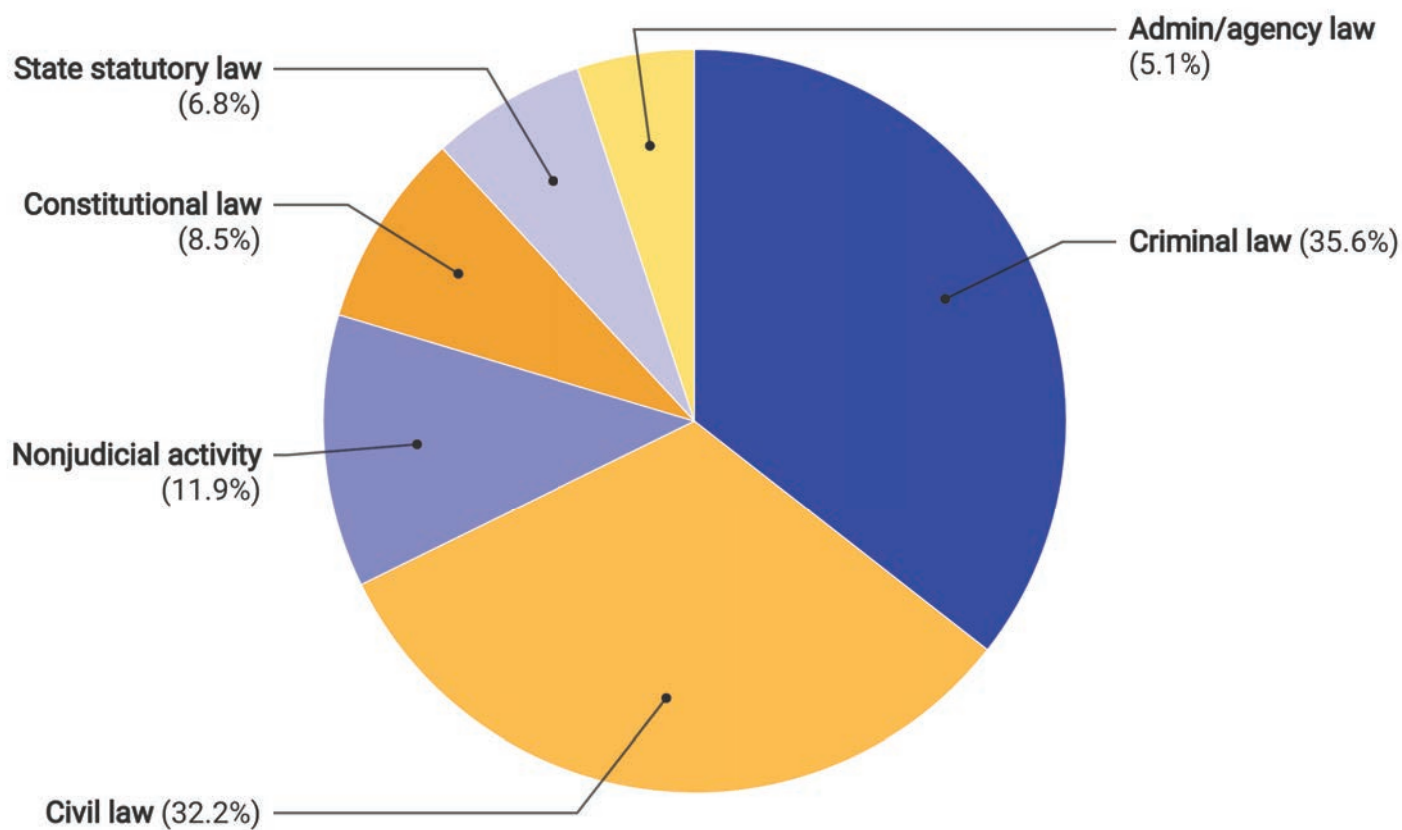
- ◆ appeals where a person received a sentence of death or life in prison;

- ◆ appeals where a state trial court has declared a statute passed by the legislature is unconstitutional. This means these types of cases are not first heard by the Indiana Court of Appeals but go directly to the supreme court.

The court has original, exclusive jurisdiction over the following:

- ◆ admitting attorneys to the practice of law in the state;
- ◆ discipline and disbarment of lawyers;
- ◆ unauthorized practice of law in the state;
- ◆ discipline, removal, and retirement of judges;
- ◆ supervising the exercise of jurisdiction by other courts;
- ◆ issuance of writs necessary in aid of its jurisdiction;
- ◆ appeals denied after a conviction and requested post-conviction relief where there was a death sentence;
- ◆ on petition, cases involving substantial questions of law, great public importance, or emergency.

Case types decided by Indiana Supreme Court, 2020



³ Total case category percentages for each state may total more than 100% because we have rounded to the nearest tenth of a percent for each case category.

The most common cases heard by the Indiana Supreme Court in 2020 were criminal cases. Of the 59 cases it heard, 21 were criminal cases. A criminal case involves a final criminal appeal before the court of last resort.

The second most common cases that reached the supreme court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages. The Indiana Supreme Court heard 19 civil cases in 2020, or 32.2 percent of its total caseload for the year.

The third most common cases that reached the court were nonjudicial activity. A case is considered nonjudicial activity if it does not involve a formal hearing and discussion before the court. The Indiana Supreme Court heard seven cases that were nonjudicial activity.

PROMINENT CASES

Holcomb v. City of Bloomington

| Justice | Christopher Goff | Steven David | Geoffrey Slaughter | Loretta Rush | Mark Massa |
|--------------------------------|------------------|--------------------------|--------------------------------|----------------------------|----------------------------------------------|
| Holcomb v. City of Bloomington | Concurring | Writing majority opinion | Agreeing with majority opinion | Writing dissenting opinion | Agreeing with Slaughter's dissenting opinion |

- ◆ **Contention:** Justice Goff wrote the majority opinion. He was joined by Justice Rush. Justice Slaughter wrote a dissenting opinion and was joined by Justice Massa. Justice David concurred in the result without a separate opinion.
- ◆ **Summary:** The state legislature passed a statute stopping the city of Bloomington's annexation of several areas of land and prohibiting annexation of the areas for five years. The city challenged the constitutionality of the state statute in a declaratory judgment action against Gov. Holcomb. A trial court found the statute unconstitutional. On appeal, the state supreme court sought an answer to two questions: first, whether the city could seek declaratory relief from the governor, and second, whether the statute was constitutional. The state supreme court concluded that the city could challenge and seek relief from the governor, and concluded that the statute was unconstitutional.
- ◆ **Majority Argument:** Justice Goff wrote: "We find that the Governor, in light of his constitutional authority and duty, does enforce Section 11.8 and Bloomington can bring its declaratory judgment action against him here because of the unique way in which the legislature drafted the statute, and because prudential concerns compel us to reach the merits. We also find that the legislature drafted Section 11.8 as a special law when a general law could have been made, so Section 11.8 violates Article 4, Section 23's limitation on special laws. Accordingly, we affirm the trial court's order granting summary judgment and declaratory relief to Bloomington and ruling that

Section 11.8 constitutes impermissible special legislation in violation of Article 4, Section 23 of the Indiana Constitution.” (*Holcomb v. City of Bloomington*, No. 19S-PL-304, 24 (Ind. 2020))

- ◆ **Dissenting Argument:** Justice Slaughter wrote: “Rejecting Governor Holcomb’s argument that he is the wrong defendant in this declaratory-judgment suit, the Court holds that broad principles of standing do not apply here but prudential considerations do. I respectfully disagree on both points and would not give our state constitution’s separation-of-powers mandate such short shrift under either doctrine. Our constitution confines courts to deciding cases over which they have jurisdiction. A justiciable case—one suitable for judicial resolution—has essential constitutional requirements like standing and nonessential considerations like prudence. Today’s decision conflates the essential with the nonessential and thus erodes separation of powers. When a plaintiff lacks standing, any court action exceeds our constitution’s grant of judicial power. Prudence, in contrast, presumes standing and permits a court to skirt a case over which it has jurisdiction. It does not authorize a court to proceed where jurisdiction is lacking. Simply put, Bloomington lacks standing here, which means the courts lack jurisdiction, and prudential considerations cannot fix this fatal flaw.” (*Holcomb v. City of Bloomington*, No. 19S-PL-304, 1 (Ind. 2020))

Seo v. State

| Justice | Christopher Goff | Steven David | Geoffrey Slaughter | Loretta Rush | Mark Massa |
|--------------|--------------------------------|--------------------------------|--------------------------|----------------------------|----------------------------|
| Seo v. State | Agreeing with majority opinion | Agreeing with majority opinion | Writing majority opinion | Writing dissenting opinion | Writing dissenting opinion |

- ◆ **Contention:** Justice Rush wrote the majority opinion. She was joined by Justices David and Goff. Justice Slaughter and Justice Massa wrote separate dissenting opinions.
- ◆ **Summary:** Katelin Seo contacted a local sheriff’s department claiming that she had been raped. A detective met with her and told her that her smartphone contained relevant communications with the accused. With Seo’s consent, officers downloaded data contained in the device. Based on the evidence found in the smartphone, no charges were filed against the man accused by Seo. The detective learned that Seo had stalked and harassed the accused. The detective arrested Seo and took possession of the smartphone, but Seo refused to provide the device’s password. The detective obtained two search warrants, the first authorizing a download of the phone’s data and the second compelling Seo to unlock the phone. Seo refused to unlock the phone and was held in contempt of court. She countered that forcing her to unlock her phone violated her fifth amendment right against

self-incrimination. The state supreme court agreed with Seo, that forcing her to unlock her smartphone compelled self-incrimination.

- ◆ **Majority Argument:** Justice Rush wrote: “Nearly a century ago, U.S. Supreme Court Justice Louis Brandeis cautioned, ‘Ways may some day be developed by which the government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home.’ *Olmstead v. United States*, 277 U.S. 438, 474 (1928) (Brandeis, J., dissenting). That day has come. And to allow the State, on these facts, to force Seo to unlock her iPhone for law enforcement would tip the scales too far in the State’s favor, resulting in a seismic erosion of the Fifth Amendment’s privilege against self-incrimination. This we will not do.” (*Seo v. State*, No. 18S-CR-595, 17 (Ind. 2020))
- ◆ **Massa’s Dissenting Argument:** Justice Massa wrote: “I respectfully dissent from the Court’s opinion deciding the merits of this case because it was mooted when the underlying criminal case was dismissed. And this now-moot case shouldn’t be resolved under our ‘great public interest’ exception because doing so could—in violation of the core principles of federalism—leave our Court as the final arbiter of our nation’s fundamental law.” (*Seo v. State*, No. 18S-CR-595, 1 (Ind. 2020))
- ◆ **Slaughter’s Dissenting Argument:** Justice Slaughter wrote: “I respectfully dissent. Although I agree with Justice Massa that this case is moot, I write separately because I disagree that a mootness exception justifies our reaching the merits of Seo’s constitutional claim. In my view, our prevailing mootness standard does not conform to our constitution’s mandate of separate governmental powers. In lieu of our prevailing standard, I would adopt the federal standard because, consistent with Article 3, Section 1 of our state constitution, it requires that courts decide only actual disputes. Applying this standard here, I would find Seo’s appeal moot and not reach the merits of her Fifth Amendment claim.” (*Seo v. State*, No. 18S-CR-595, 1 (Ind. 2020))

Cavanaugh’s Sports Bar & Eatery, Ltd. v. Porterfield

| Justice | Christopher Goff | Steven David | Geoffrey Slaughter | Loretta Rush | Mark Massa |
|----------------------------------------------------|------------------------|----------------------------|--------------------------------|--------------------------------|--------------------------|
| Cavanaugh’s Sports Bar & Eatery Ltd v. Porterfield | Joining Goff’s dissent | Writing dissenting opinion | Agreeing with majority opinion | Agreeing with majority opinion | Writing majority opinion |

- ◆ **Contention:** Justice Massa wrote the majority opinion. He was joined by Justices Slaughter and Rush. Justice Goff wrote a dissenting opinion and was joined by Justice David.

- ◆ **Summary:** Eric Porterfield sued Cavanaugh's Sports Bar & Eatery for negligence after a fight in the parking lot with another patron after closing time left him injured and permanently blind. The supreme court ruled that Cavanaugh's owed no duty to protect its patron from the sudden parking lot brawl, the criminal act at issue, when no evidence showed that Cavanaugh's knew the fight was impending.
- ◆ **Majority Argument:** Justice Massa wrote: "Landowners must 'take reasonable precautions to protect invitees from foreseeable criminal attacks.' Rogers, 63 N.E.3d at 326. To determine whether this duty, as a matter of law, extends to the criminal act at issue in a particular scenario, the critical inquiry is to determine whether the attack was foreseeable, considering the broad type of plaintiff, the broad type of harm, and whether the landowner had reason to expect any imminent harm. Because we hold that the criminal attack at issue here was unforeseeable, the duty of Cavanaugh's to protect Porterfield did not extend to this particular scenario." (*Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, No. 20S-CT-88, 12 (Ind. 2020))
- ◆ **Dissenting Argument:** Justice Goff wrote: "I respectfully dissent from the Court's opinion granting summary judgment to Cavanaugh's. While I appreciate the majority's thorough review of recent caselaw concerning foreseeability in the context of duty, I disagree with it in two primary respects. First, the majority adds new requirements to our foreseeability inquiry, elevating the standard to impose a duty. Second, the majority focuses on the particular facts of this case, contrary to the standard provided by precedent. Both problems cause issues on their own, but, more broadly, they combine to impede the right to trial. I would resolve this case differently—focusing on the general, common-sense nature of this foreseeability inquiry—and find that Cavanaugh's owed Porterfield a duty." (*Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, No. 20S-CT-88, 1 (Ind. 2020))