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Despite popular misconception, Supreme Court 9-0 rulings aren't that rare

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In one of the final decisions of its current term, the Supreme Court unanimously ruled against the National Collegiate Athletic Association in a closely watched case, concluding that the NCAA could not prevent certain payments to college athletes, thus putting the longstanding amateur model of college sports in jeopardy.

After the ruling was announced, Trey Wingo, a former ESPN host and commentator, sent a tweet that sought to encapsulate how stunning the Supreme Court's 9-0 decision was.

"A 9-0 Supreme Court ruling is the equivalent of finding a unicorn and a Yeti at the same time under a rainbow with a pot of gold and they're both speaking 3 languages," Wingo tweeted on June 21.

That's quite a way to say that something is "rare." But the reality is the opposite: 9-0 rulings are the most common types of Supreme Court rulings, year after year. While 5-4 rulings attract the most attention from the public and the media, there's a good chance that a larger number of cases you never heard about were decided on a unanimous basis.

Wingo's tweet "reflects the common misperception that the court is hopelessly split," said Ilya Shapiro, a vice president of the libertarian Cato Institute and a Supreme Court watcher. "The cases that make the front pages, or the digital-era equivalent, aren't the 9-0 rulings on bankruptcy law or personal jurisdiction but rather the culture-war controversies that do tend to be 5-4."

Wingo did not respond to an inquiry via Twitter.

Looking at the data

Experts told us that the most complete data on Supreme Court decisions is tallied by the publication SCOTUSBlog. We looked at their data since 2008 for 9-0 rulings, 5-4 rulings, and other ruling combinations.

Between 2008 and 2019, which is the last year for which SCOTUSBlog has published the data, the percentage of all Supreme Court rulings that were 9-0 ranged from a low of 36% and a high of 66%. (Technical note: These figures include rulings in which justices voted with the majority but may have written their own opinions to explain their reasoning.)

By contrast, the percentage of 5-4 rulings ranged from 5% and 29%. And the percentage of rulings with any other numerical breakdown ranged from 20% to 51%.

In the term that ran from the fall of 2018 to the summer of 2019, the breakdown was 36% 9-0 rulings, 21% 5-4 rulings, and 43% any other ruling.

Put a different way, in most years, the share of 9-0 rulings amounted to a plurality. Even in the years when it wasn't a plurality, 9-0 rulings accounted for 30% to 40% of decisions.

Why there's a misconception

Legal experts said Wingo's misconception is understandable.

"The close splits may be fewer, but they are more often in high-profile cases with a broader impact and that affect the rights of more people," said Sarah E. Turberville, director of the Constitution Project at the Project On Government Oversight.

Indeed, there's a bit of circular logic feeding the misunderstanding. "High-profile cases tend to be high-profile precisely because they are about divisive issues such as abortion, same-sex marriage, affirmative action, and church-state relations," said Eugene Volokh, a law professor at the University of California, Los Angeles.

Volokh added that the 9-0 decision in the case involving the NCAA may have been surprising because it was a high-profile issue but one on which there was not a lot of legal disagreement.

"It involved a question that's of practical interest to the public, but not because it involved some deeply felt legal divide," he said. "It's thus unsurprising that the justices agreed on the legal question."

Another high-profile 9-0 decision from June was Fulton v. City of Philadelphia, which held that Philadelphia violated constitutionally protected religious freedom when it refused to contract with Catholic Social Services for foster care services unless the group agreed to certify same-sex couples as foster parents.

The Fulton case offers another example that even high-profile rulings do not necessarily fall "on clear partisan lines," said Anthony Marcum, a resident fellow at the R Street Institute, a right-of-center think tank.

Our ruling

Wingo said, “A 9-0 Supreme Court ruling is the equivalent of finding a unicorn and a Yeti at the same time under a rainbow with a pot of gold and they’re both speaking 3 languages.”

In truth, 9-0 rulings aren’t rare at all. In the past decade, they accounted for a plurality of rulings and never fell below 36% of all rulings. They are more common than 5-4 rulings.

Experts said it’s easy to understand why this misperception is so common, since many of the 9-0 rulings are on technical cases that don’t receive as much attention as the more dramatic 5-4 splits.