

Stat Pack for October Term 2012

Unless otherwise noted, the following charts cover October Term 2012, which began on Monday, October 1, 2012, and ends on Sunday, October 6, 2013.

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Summary of the Term

Total Merits Opinions Released	11
.....Signed opinions after oral argument	9
.....Summary reversals	2
Total Merits Opinions Expected	76
.....Petitions granted and set for argument	75
.....Summary reversals	2
.....(Cases consolidated for decision) ¹	(1)
Total Petitions granted for OT13²	2

¹ *Tibbals v. Carter* was argued separately from *Ryan v. Gonzales*, but the two cases were decided with only one opinion, which was captioned with *Gonzales*. Therefore, throughout this Stat Pack the two cases are generally treated as consolidated. The Pace of Grants chart, however, treats them separately.

² Two of the four petitions granted on January 18, 2013, are expected to be argued during October Term 2012: *University of Texas Southwestern Medical v. Nassar* (12-484) and *Metrish v. Lancaster* (12-547). The other two grants from that day, *Chadbourne & Parke LLP v. Troice* (12-79) (consolidated with *Willis of Colorado Inc. v. Troice* (12-86) and *Proskauer Rose LLP v. Troice* (12-88)) and *Bond v. United States* (12-158), are expected to be argued during October Term 2013.

* You can find past Stat Packs here: <http://www.scotusblog.com/reference/stat-pack/>. A few matters regarding our methodology are worth mentioning at the outset.

First, SCOTUSblog treats consolidated cases as a single case, as determined by the case with the lowest docket number (prior to the release of an opinion) or the case that is captioned with an opinion. To the extent two cases are argued separately but later decided with only one opinion, we will remove one of the cases from this Stat Pack, except to include it in the Pace of Grants chart to maintain cross-conference comparisons. The most unusual way we manage these later-consolidated cases is to merge the oral argument data for the two cases. Put another way, we sum up the questions asked by each Justice in each separate oral argument proceeding into one “consolidated” session.

Second, this Stat Pack frequently uses the term “merits opinions,” “merits docket,” or “merits cases.” Those three terms are used interchangeably, and signify the set of cases decided “on the merits.” Those cases include signed opinions after oral argument (the bulk of all merits cases), most per curiam opinions released after oral arguments, summary reversals (cases decided with per curiam opinions after the certiorari stage), and cases decided by a divided Court 4-4. Cases that are dismissed as improvidently granted (DIG) are not included in our tally of merits cases.

** Suggested Citation: Kedar S. Bhatia, *SCOTUSblog Stat Pack for October Term 2012 (Interim)*, SCOTUSBLOG (Feb. 8, 2013), http://sblog.s3.amazonaws.com/wp-content/uploads/2013/02/SB_Stat_Pack_020813.pdf.

Opinions by Sitting

Roberts	-	1	-	-	-	-	-	JGR	1
Scalia	1	1	-	-	-	-	-	AS	2
Kennedy	-	-	-	-	-	-	-	AMK	0
Thomas	1	-	-	-	-	-	-	CT	1
Ginsburg	1	-	2	-	-	-	-	RBG	3
Breyer	1	-	-	-	-	-	-	SGB	1
Alito	-	-	-	-	-	-	-	SAA	0
Sotomayor	-	-	-	-	-	-	-	SMS	0
Kagan	1	-	-	-	-	-	-	EK	1
Justice	October	November	December	January	February	March	April	Total	9
	Decided: 6 Remain: 4	Decided: 2 Remain: 10	Decided: 2 Remain: 7	Decided: 0 Remain: 12	Decided: 0 Remain: 10	Decided: 0 Remain: 10	Decided: 0 Remain: 0	Args	69
	<i>Lozman</i> SGB	<i>Kirtsaeng</i>	<i>Phoebe Putney</i>	<i>Standard Fire</i>	<i>Millbrook</i>	<i>Inter Tribal</i>			
	<i>Kiobel</i>	<i>Clapper</i>	<i>Vance</i>	<i>Descamps</i>	<i>Bowman</i>	<i>Bullock</i>			
	<i>Kloeckner</i> EK	<i>Jardines</i>	<i>US Airways</i>	<i>Gabelli</i>	<i>McBurney</i>	<i>Cloer</i>			
	<i>Bormes</i> AS	<i>Harris</i>	<i>Henderson</i>	<i>Delia</i>	<i>PPL Corp.</i>	<i>Mutual Pharm.</i>			
	<i>Johnson</i>	<i>Chaidez</i>	<i>Decker</i>	<i>McNeely</i>	<i>Trevino</i>	<i>Horne</i>			
	<i>Ark. Game Comm'n</i> RBG	<i>Bailey</i>	<i>Genesis</i>	<i>Maracich</i>	<i>McQuiggin</i>	<i>Pelkey</i>			
	<i>Ryan</i> CT	<i>Amgen</i>	<i>LA County Flood</i> RBG	<i>Alleyne</i>	<i>Peugh</i>	<i>Oxford</i>			
	<i>Tibbals</i>	<i>Comcast</i>	<i>Auburn Regional</i> RBG	<i>Boyer</i>	<i>King</i>	<i>Watson</i>			
	<i>Fisher</i>	<i>Evans</i>	<i>Chafin</i>	<i>Levin</i>	<i>Shelby County</i>	<i>Hollingsworth</i>			
	<i>Moncrieffe</i>	<i>Smith</i> AS		<i>Koontz</i>	<i>Am. Express</i>	<i>Windsor</i>			
		<i>Marx</i>		<i>Gunn</i>					
		<i>Already</i> JGR		<i>Arlington</i>					

Circuit Scorecard

OT 2012

	Number	Percent	Decided	Aff'd	Rev'd	Aff'd %	Rev'd %
CA1	1	1%					
CA2	10	13%	1	1	0	100%	0%
CA3	6	8%					
CA4	5	7%	1	0	1	0%	100%
CA5	7	9%					
CA6	2	3%					
CA7	3	4%					
CA8	2	3%	1	0	1	0%	100%
CA9	11	14%	2	0	2	0%	100%
CA10	2	3%					
CA11	6	8%	1	0	1	0%	100%
CA DC	3	4%	2	1	1	50%	50%
CA Fed	5	7%	2	0	2	0%	100%
State	13	17%	1	0	1	0%	100%
Dist. Court	-	-					
Original	-	-		N/A	N/A	N/A	N/A
	76	100%	11	2	9	18%	82%

OT 2013

	Number	Percent
CA1	-	-
CA2	-	-
CA3	1	50%
CA4	-	-
CA5	1	50%
CA6	-	-
CA7	-	-
CA8	-	-
CA9	-	-
CA10	-	-
CA11	-	-
CA DC	-	-
CA Fed	-	-
State	-	-
Dist. Court	-	-
Original	-	-
	2	100%

Merits Cases by Vote Split

9-0 10 (91%)	8-1 0 (0%)	7-2 1 (9%)	6-3 0 (0%)	5-4 0 (0%)
Lefemine v. Wideman (PC) U.S. v. Bormes Nitro-Lift v. Howard (PC) Ark. Game & Fish Comm'n v. U.S. (8-0) Kloeckner v. Solis Ryan v. Gonzales L.A. County Flood Dist. v. NRDC Already v. Nike Smith v. U.S. Sebelius v. Auburn Regional		Lozman v. Riviera Beach		

Not Included Above	
<i>Tibbals v. Carter</i> (11-218)	Decided with <i>Ryan v. Gonzales</i> (10-930)

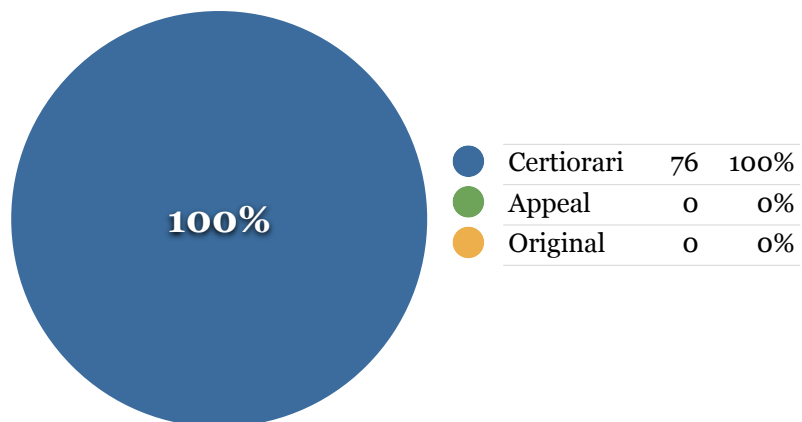
Past Terms					
	9-0	8-1	7-2	6-3	5-4
OT06	39%	13%	11%	4%	33%
OT07	30%	9%	29%	14%	17%
OT08	33%	5%	16%	16%	29%
OT09	46%	10%	15%	11%	18%
OT10	48%	13%	15%	5%	20%
OT11	44%	11%	8%	17%	20%
Avg.	40%	10%	16%	11%	23%

We treat cases with eight or fewer votes as if they were decided by the full Court. For example, we treated *Arkansas Game & Fish Commission v. United States*, which had only eight Justices voting, as a 9-0 case throughout much of this Stat Pack. For 8-0, 7-1, and 6-3 decisions, we categorically assumed that the recused Justice would have joined the majority. In cases that were decided 5-3, we looked at each individual case to decide whether it was more likely that the recused Justice would join the majority or the dissent. Our assumption that nine Justices voted in each case applies only to figures that treat each case as a whole, like the chart above, and not to figures that focus on the behavior of individual Justices, like our Justice Agreement charts, *infra*. We have done our best to note where we assume a full Court and where we use a partial Court.

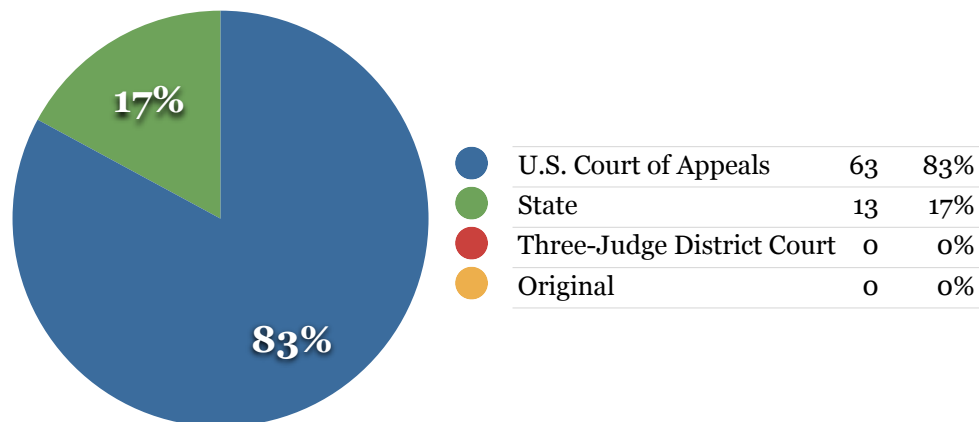
Make-up of the Merits Docket

The following charts depict different characteristics of the cases that were released with merits opinions - cases disposed of with signed opinions, summary reversals, or those that were affirmed by an equally divided Court.

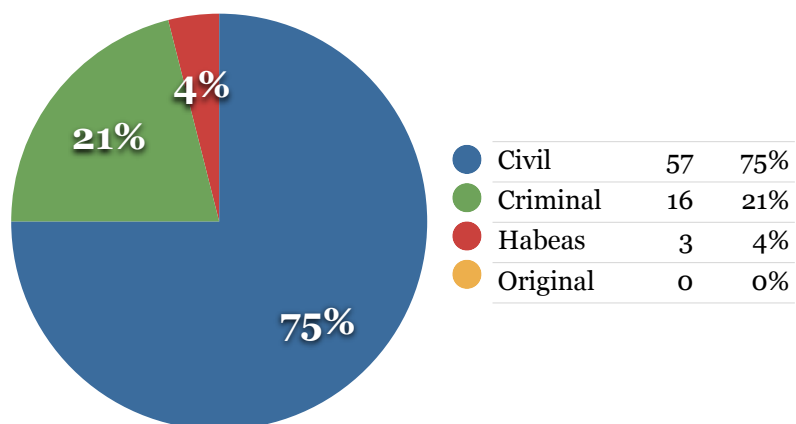
Source of Jurisdiction



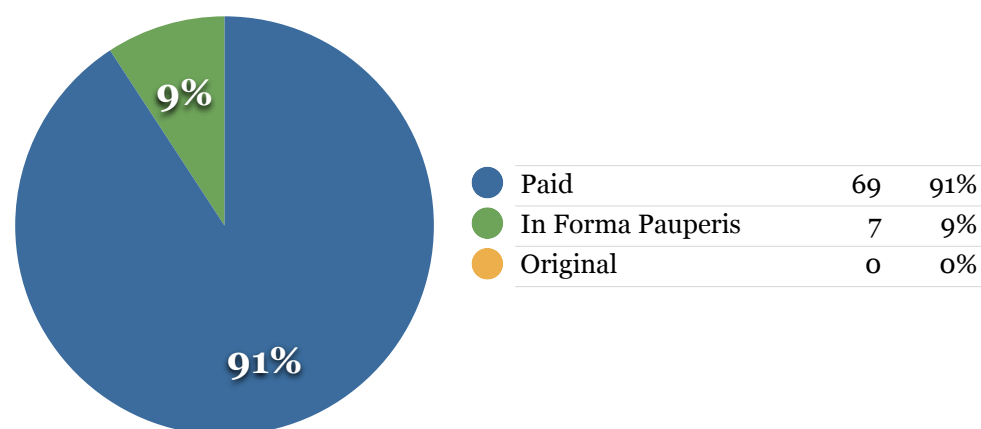
Court Below



Nature



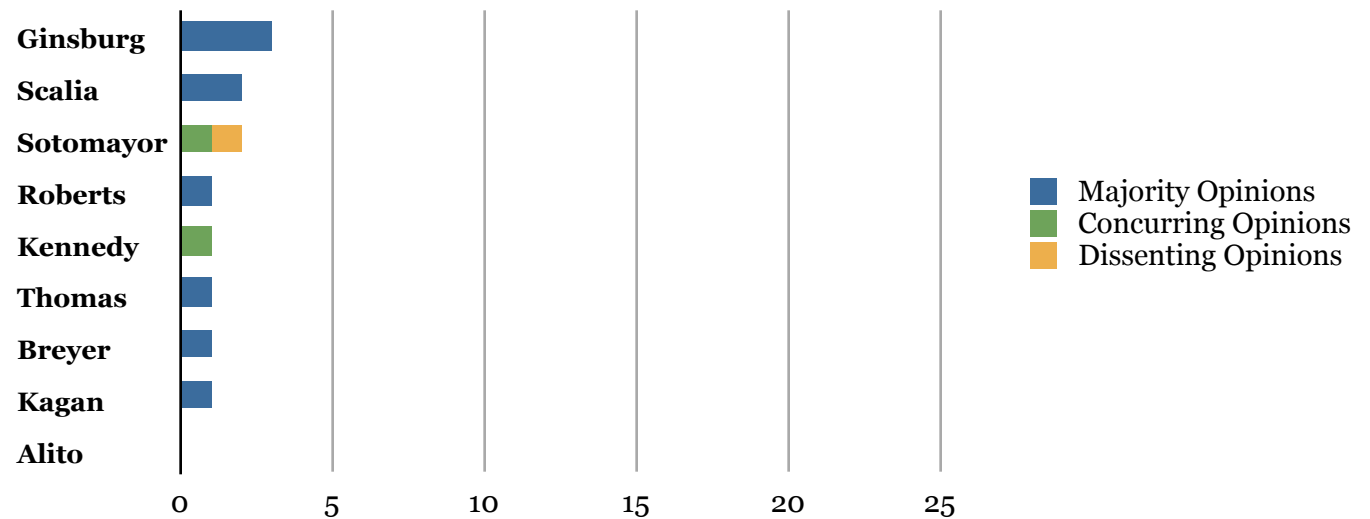
Docket³



³ Technically, all paid and *in forma pauperis* cases are on the same docket. Prior to 1971, paid and IFP cases were on truly on separately numbered dockets. Since that date, however, they occupy the same docket, with paid cases beginning each year with case number 1, and IFP cases beginning at number 5001, *e.g.*, the first paid case of this Term was numbered 12-1 and the first IFP case was numbered 12-5001. Original cases remain on a separate docket and follow a separate numbering convention. For more information on the dockets, see EUGENE GRESSMAN ET AL., SUPREME COURT PRACTICE 55-56 (9th ed. 2007).

Total Opinion Authorship

	Total Opinions	Majority Opinions	Concurring Opinions	Dissenting Opinions
Roberts	1	1	-	-
Scalia	2	2	-	-
Kennedy	1	-	1	-
Thomas	1	1	-	-
Ginsburg	3	3	-	-
Breyer	1	1	-	-
Alito	0	-	-	-
Sotomayor	2	-	1	1
Kagan	1	1	-	-
Per Curiam	2	2	-	-
	14	11	2	1



Justice Agreement - All Cases

	Scalia		Kennedy		Thomas		Ginsburg		Breyer		Alito		Sotomayor		Kagan		Total
Roberts	11	100%	9	82%	10	91%	11	100%	11	100%	9	82%	8	73%	11	100%	11
	11	100%	10	91%	11	100%	11	100%	11	100%	10	91%	10	91%	11	100%	
	11	100%	10	91%	11	100%	11	100%	11	100%	11	100%	10	91%	11	100%	
	0	0%	1	9%	0	0%	0	0%	0	0%	0	0%	1	9%	0	0%	
Scalia			9	82%	10	91%	11	100%	11	100%	9	82%	8	73%	11	100%	11
			10	91%	11	100%	11	100%	11	100%	10	91%	10	91%	11	100%	
			10	91%	11	100%	11	100%	11	100%	11	100%	10	91%	11	100%	
			1	9%	0	0%	0	0%	0	0%	0	0%	1	9%	0	0%	
Kennedy					10	91%	9	82%	9	82%	9	82%	10	91%	9	82%	11
					10	91%	10	91%	10	91%	9	82%	11	100%	10	91%	
					10	91%	10	91%	10	91%	10	91%	11	100%	10	91%	
					1	9%	1	9%	1	9%	1	9%	0	0%	1	9%	
Thomas							10	91%	10	91%	10	91%	9	82%	10	91%	11
							11	100%	11	100%	10	91%	10	91%	11	100%	
							11	100%	11	100%	11	100%	10	91%	11	100%	
							0	0%	0	0%	0	0%	1	9%	0	0%	
Ginsburg									11	100%	9	82%	8	73%	11	100%	11
									11	100%	10	91%	10	91%	11	100%	
									11	100%	11	100%	10	91%	11	100%	
									0	0%	0	0%	1	9%	0	0%	
Breyer											9	82%	8	73%	11	100%	11
											10	91%	10	91%	11	100%	
											11	100%	10	91%	11	100%	
											0	0%	1	9%	0	0%	
Alito													8	73%	9	82%	11
													9	82%	10	91%	
													10	91%	11	100%	
													1	9%	0	0%	
Sotomayor															8	73%	11
															10	91%	
															10	91%	
															1	9%	
																Kagan	10

Key

Fully Agree

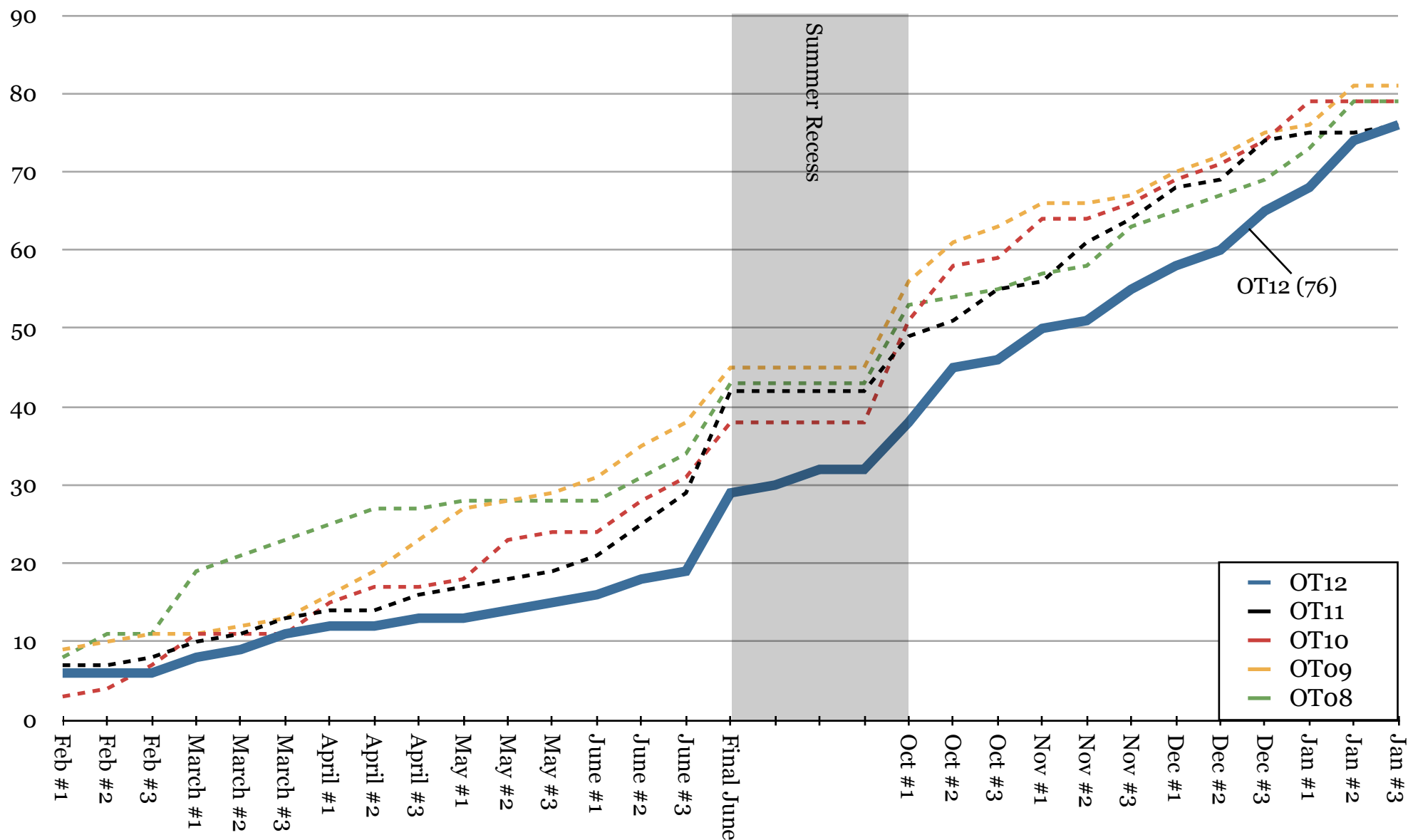
Agree in Full or Part

Agree in Full, Part, or Judgment Only

Disagree in Judgment

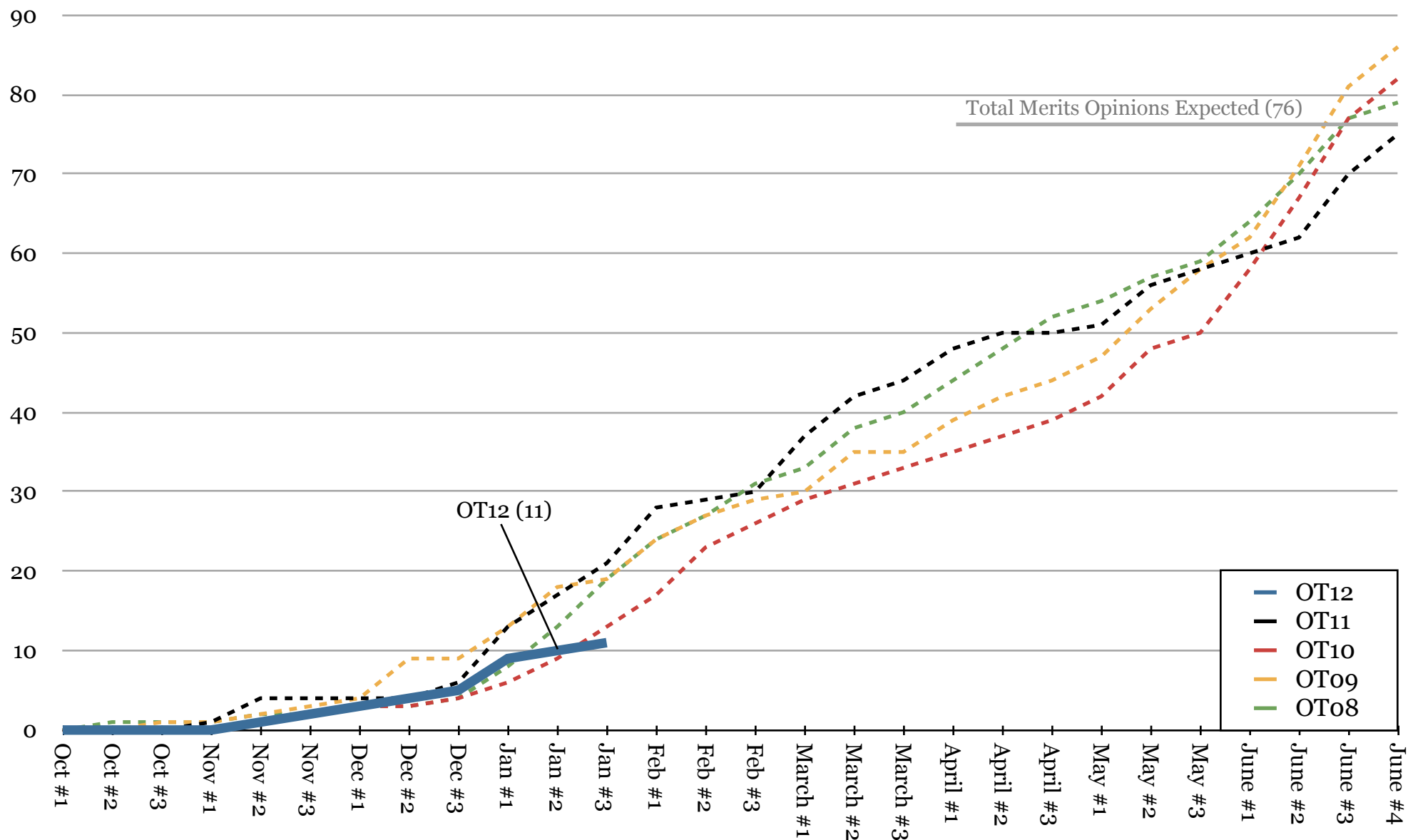
Pace of Grants

The following chart plots the pace at which the Court fills its merits docket for a given Term. Each date marker represents the conference within a given sitting. For instance, Feb #3 is the third February conference which, for OT12, will take place on March 1, 2013. Categorizing grants by their conference placement within a given sitting ensures more accurate cross-Term comparisons. Towards the same end, the chart below counts *Kiobel* as a OT11 “grant,” rather than as a OT12 grant.



Pace of Opinions

The following chart plots the pace at which the Court releases merits opinions throughout the Term, beginning in October and ending in June. This chart includes both opinions released after full briefing and summary reversals. Here, as in the Pace of Grants chart, cases are categorized by their release within a given sitting, rather than by calendar month. For example, opinions for Feb. #3 of OT12 will be released on March 4, 2013.



Oral Argument - Advocates

Overview⁴

	OT12	OT11	OT10
Number of different advocates	77	118	143
Number of total appearances	107	182	196
Appearances by the Office of the Solicitor General	36 (34%)	58 (32%)	57 (29%)
Appearances by advocates who argued more than once	49 (46%)	98 (54%)	81 (41%)
Appearances by advocates from Washington, D.C.	67 (63%)	122 (67%)	106 (54%)
Appearances by expert advocates ⁵	78 (73%)	<i>Not Available</i>	<i>Not Available</i>

Most Popular Advocate Origins⁶

State	Total
Washington, D.C. ⁷	67
California	9
New York	7
Louisiana	3
Texas	3
Arizona	2
Illinois	2
Michigan	2
North Carolina	2
Virginia	2
Washington	2

Advocates Who Have Appeared More than Once During OT12

Rank	Name	Appearances	Position	All-Time
1	Gregory G. Garre	4	Latham & Watkins LLP	39
	Donald B. Verrilli, Jr.	4	Solicitor General	25
3	Jeffrey L. Fisher	3	Stanford Supreme Court Clinic	20
	David C. Frederick	3	Kellogg Huber PLLC	40
	Thomas C. Goldstein	3	Goldstein & Russell PC	28
	Edwin S. Kneedler	3	Deputy Solicitor General	119
	Nicole A. Saharsky	3	Assistant to the Solicitor General	17
	Pratik A. Shah	3	Assistant to the Solicitor General	13
	Jeffrey B. Wall	3	Assistant to the Solicitor General	10
10	Ginger D. Anders	2	Assistant to the Solicitor General	8
	Michael R. Dreeben	2	Deputy Solicitor General	85
	Curtis E. Gannon	2	Assistant to the Solicitor General	13
	Sarah E. Harrington	2	Assistant to the Solicitor General	7
	Benjamin J. Horwich	2	Assistant to the Solicitor General	7
	Neal K. Katyal	2	Hogan Lovells LLP	17
	Joseph R. Palmore	2	Assistant to the Solicitor General	6
	Sri Srinivasan	2	Principal Deputy Solicitor General	22
	Malcolm L. Stewart	2	Deputy Solicitor General	56
	Seth P. Waxman	2	WilmerHale LLP	63
	Total: 19	49		

⁴ These tables feature information for advocates who have appeared for oral argument on or prior to January 16, 2013.

⁵ We adopt Richard Lazarus's definition of an "expert" Supreme Court litigator: one who has argued five or more times before the Supreme Court or works in an office where lawyers have collectively argued more than ten times. See Richard J. Lazarus, *Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar*, 97 GEO. L.J. 1487, 1490 n.17 (2008). Forty-eight elite advocates have appeared for oral argument before the Supreme Court during OT12, representing sixty-two percent of all advocates who have appeared at the Court.

⁶ An advocate's "origin" is simply the state of origin listed for an advocate on the Court's monthly hearing lists.

⁷ If attorneys from the Office of the Solicitor General are omitted, lawyers based in Washington, D.C. have appeared thirty-one times during OT12.