

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	25
.....Signed opinions after oral argument	23
.....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 OT13	7

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.

* 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 that 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. 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.

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Opinions by Sitting

Roberts	-	1	1	2	-	-	-	JGR	4
Scalia	1	1	-	-	-	-	-	AS	2
Kennedy	-	1	-	-	-	-	-	AMK	1
Thomas	1	1	-	-	-	-	-	CT	2
Ginsburg	1	1	2	1	-	-	-	RBG	5
Breyer	1	-	1	-	-	-	-	SGB	2
Alito	1	1	-	-	-	-	-	SAA	2
Sotomayor	-	1	1	-	-	-	-	SMS	2
Kagan	1	2	-	-	-	-	-	EK	3
Justice	October	November	December	January	February	March	April	Total	23
	Decided: 7 Remain: 3	Decided: 9 Remain: 3	Decided: 5 Remain: 4	Decided: 3 Remain: 9	Decided: 0 Remain: 10	Decided: 0 Remain: 10	Decided: 0 Remain: 12	Args	69
<i>Lozman</i>	<i>SGB</i>	<i>Kirtsaeng</i>	<i>Phoebe Putney</i>	<i>Standard Fire</i>	<i>Millbrook</i>	<i>Inter Tribal</i>	<i>Myriad</i>		
<i>Kiobel</i>		<i>Clapper</i>	<i>SAA</i>	<i>Vance</i>	<i>Descamps</i>	<i>Bowman</i>	<i>Bullock</i>	<i>Davila</i>	
<i>Kloeckner</i>	<i>EK</i>	<i>Jardines</i>		<i>US Airways</i>	<i>Gabelli</i>	<i>JGR</i>	<i>McBurney</i>	<i>Cloer</i>	<i>Baby Girl</i>
<i>Bormes</i>	<i>AS</i>	<i>Harris</i>	<i>EK</i>	<i>Henderson</i>	<i>SGB</i>	<i>Delia</i>	<i>PPL Corp.</i>	<i>Mutual Pharm.</i>	<i>Am. Trucking</i>
<i>Johnson</i>	<i>SAA</i>	<i>Chaidez</i>	<i>EK</i>	<i>Decker</i>		<i>McNeely</i>	<i>Trevino</i>	<i>Horne</i>	<i>Salinas</i>
<i>Ark. Game Comm'n</i>	<i>RBG</i>	<i>Bailey</i>	<i>AMK</i>	<i>Genesis</i>		<i>Maracich</i>	<i>McQuiggin</i>	<i>Pelkey</i>	<i>Kebodeaux</i>
<i>Ryan</i>	<i>CT</i>	<i>Amgen</i>	<i>RBG</i>	<i>LA County Flood</i>	<i>RBG</i>	<i>Alleyne</i>	<i>Peugh</i>	<i>Oxford</i>	<i>Hillman</i>
<i>Tibbals</i>		<i>Comcast</i>		<i>Auburn Regional</i>	<i>RBG</i>	<i>Boyer</i>	<i>King</i>	<i>Watson</i>	<i>AID</i>
<i>Fisher</i>		<i>Evans</i>	<i>SMS</i>	<i>Chafin</i>	<i>JGR</i>	<i>Levin</i>	<i>RBG</i>	<i>Shelby County</i>	<i>Hollingsworth</i>
<i>Moncrieffe</i>		<i>Smith</i>	<i>AS</i>			<i>Koontz</i>		<i>Am. Express</i>	<i>Windsor</i>
		<i>Marx</i>	<i>CT</i>			<i>Gunn</i>	<i>JGR</i>		<i>Metrish</i>
		<i>Already</i>	<i>JGR</i>			<i>Arlington</i>			<i>UT Southwestern</i>

Circuit Scorecard

OT 2012

	Number	Percent	Decided	Aff'd	Rev'd	Aff'd %	Rev'd %
CA1	1	1%					
CA2	10	13%	4	1	3	25%	75%
CA3	6	8%					
CA4	5	7%	1	0	1	0%	100%
CA5	7	9%	1	0	1	0%	100%
CA6	2	3%					
CA7	3	4%	1	1	0	100%	0%
CA8	2	3%	1	0	1	0%	100%
CA9	11	14%	5	1	4	20%	80%
CA10	2	3%	1	1	0	100%	0%
CA11	6	8%	3	0	3	0%	100%
CA DC	3	4%	2	1	1	50%	50%
CA Fed	5	7%	2	0	2	0%	100%
State	13	17%	4	0	4	0%	100%
Dist. Court	-	-					
Original	-	-		N/A	N/A	N/A	N/A
	76	100%	25	5	20	20%	80%

OT 2013

	Number	Percent
CA1	-	-
CA2	-	-
CA3	1	14%
CA4	-	-
CA5	1	14%
CA6	1	14%
CA7	1	14%
CA8	-	-
CA9	1	14%
CA10	-	-
CA11	-	-
CA DC	-	-
CA Fed	-	-
State	1	14%
Dist. Court	1	14%
Original	-	-
	7	100%

Merits Cases by Vote Split

9-0 17 (68%)	8-1 1 (4%)	7-2 3 (12%)	6-3 3 (12%)	5-4 1 (4%)
Lefemine v. Wideman (PC)	Evans v. Michigan	Lozman v. Riviera Beach	Bailey v. U.S.	Clapper v. Amnesy Int'l
U.S. v. Bormes		U.S. v. Chaidez	Henderson v. U.S.	
Nitro-Lift v. Howard (PC)		Marx v. General Revenue	Amgen v. Conn. Retirement Plans	
Ark. Game & Fish Comm'n v. U.S. (8-o)				
Kloeckner v. Solis				
Ryan v. Gonzales				
L.A. County Flood Dist. v. NRDC				
Already v. Nike				
Smith v. U.S.				
Sebelius v. Auburn Regional				
Chafin v. Chafin				
FTC v. Phoebe Putney				
Florida v. Harris				
Gunn v. Minton				
Johnson v. Williams				
Gabelli v. SEC				
Levin v. U.S.				

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

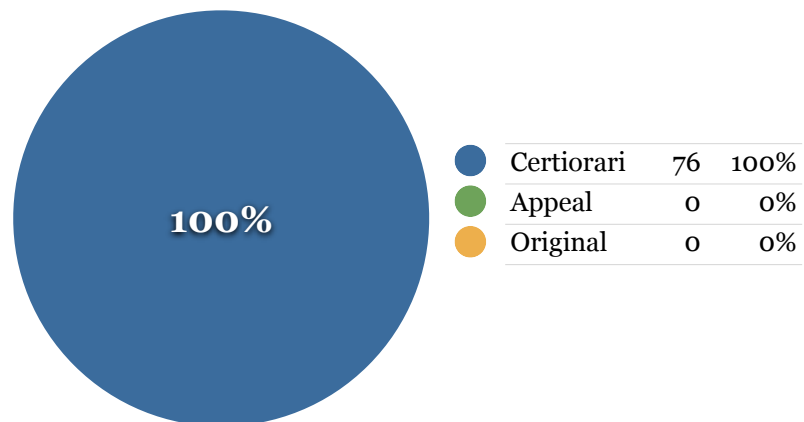
Past Terms					
	9-0	8-1	7-2	6-3	5-4
OT06	39%	13%	11%	4%	33%
OT07	30%	9%	29%	14%	17%
OT08	33%	5%	16%	16%	29%
OT09	46%	10%	15%	11%	18%
OT10	48%	13%	15%	5%	20%
OT11	44%	11%	8%	17%	20%
Avg.	40%	10%	16%	11%	23%

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.

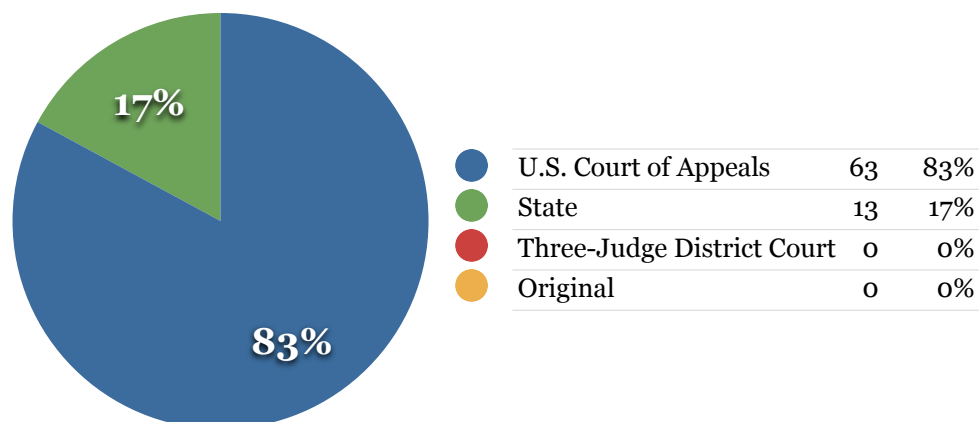
Make-up of the Merits Docket

The following charts depict different characteristics of the cases that were released with merits opinions or are expected to be disposed of with a merits opinion. These charts include information about cases disposed of with signed opinions, summary reversals, or those that were affirmed by an equally divided Court.

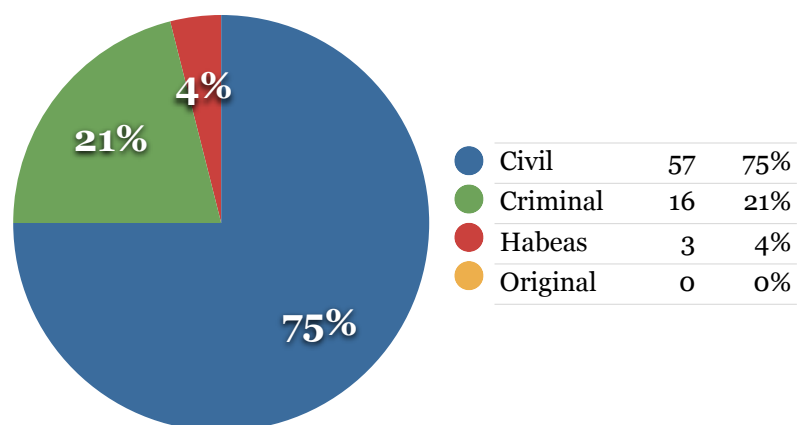
Source of Jurisdiction



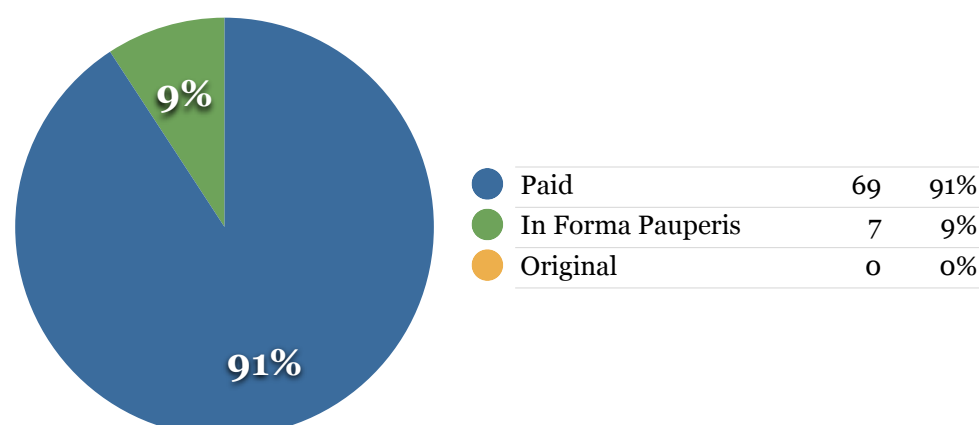
Court Below



Nature



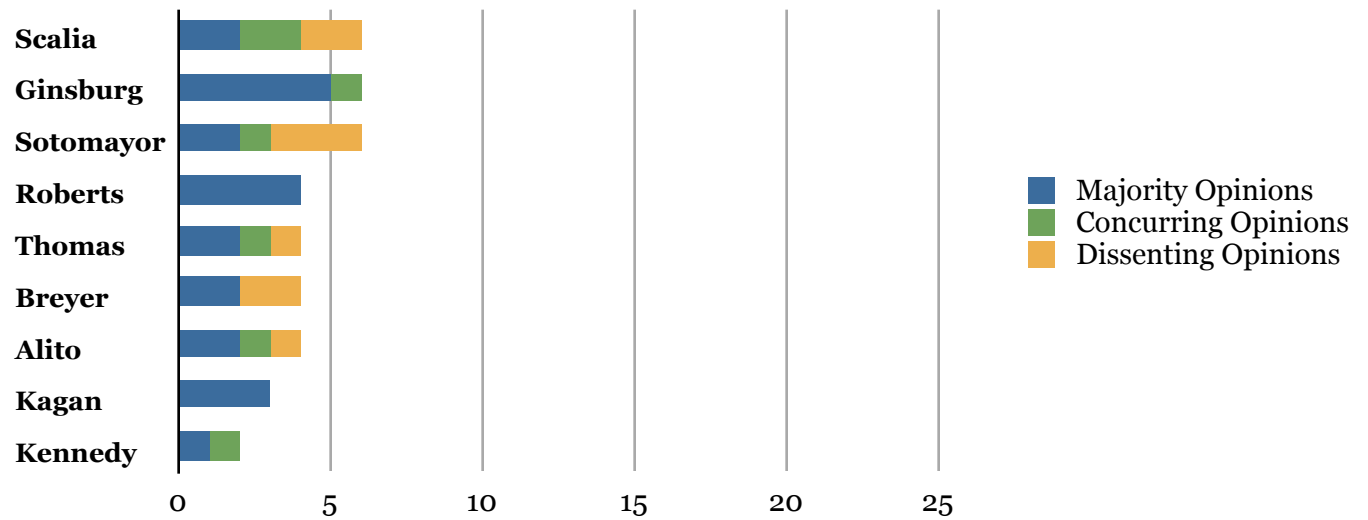
Docket²



² Technically, all paid and *in forma pauperis* cases are on the same docket. Prior to 1971, paid and IFP cases were on truly separate dockets. Since that date, however, they have occupied the same docket, with paid cases beginning each year with case number 1, and IFP cases beginning at number 5001. Accordingly, 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	4	4	-	-
Scalia	6	2	2	2
Kennedy	2	1	1	-
Thomas	4	2	1	1
Ginsburg	6	5	1	-
Breyer	4	2	-	2
Alito	4	2	1	1
Sotomayor	6	2	1	3
Kagan	3	3	-	-
Per Curiam	2	2	-	-
	41	25	7	9



Majority Opinions

Majority Opinions Authored

	Total	9-0	8-1	7-2	6-3	5-4	Average Strength of the Majority*
Roberts	4	4	-	-	-	-	9.0
Scalia	2	2	-	-	-	-	9.0
Kennedy	1	-	-	-	1	-	6.0
Thomas	2	1	-	1	-	-	8.0
Ginsburg	5	4	-	-	1	-	8.4
Breyer	2	-	-	1	1	-	6.5
Alito	2	1	-	-	-	1	7.0
Sotomayor	2	1	1	-	-	-	8.5
Kagan	3	2	-	1	-	-	8.3
Total	23	15	1	3	3	1	8.2

Unanimous Judgment	Divided Judgment
100%	0%
100%	0%
0%	100%
50%	50%
80%	20%
0%	100%
50%	50%
50%	50%
67%	33%
65%	35%

Authorship as a Percentage of Similar Opinions

	9-0	8-1	7-2	6-3	5-4
Roberts	27%	-	-	-	-
Scalia	13%	-	-	-	-
Kennedy	-	-	-	33%	-
Thomas	7%	-	33%	-	-
Ginsburg	27%	-	-	33%	-
Breyer	-	-	33%	33%	-
Alito	7%	-	-	-	100%
Sotomayor	7%	100%	-	-	-
Kagan	13%	-	33%	-	-
	100% (15)	100% (1)	100% (3)	100% (3)	100% (1)

Days Between Argument and Opinion

Majority Opinion Author	Days
Scalia	53d
Roberts	56d
Ginsburg	62d
Breyer	95d
Sotomayor	96d
Kagan	97d
Thomas	101d
Kennedy	110d
Alito	130d
Overall	106d

* "Average Strength of the Majority" is simply the average number of Justices in the majority. The average assumes that nine Justices vote in each case.

Frequency in the Majority

The following charts measure how frequently each Justice has voted with the majority during October Term 2012. The charts include summary reversals but do not include cases that were dismissed.

All Cases

Justice	Votes	Frequency in Majority		OT11	OT10	OT09	OT08	OT07
Roberts	25	25	100%	92%	91%	91%	81%	90%
Kagan	24	23	96%	82%	81%	-	-	-
Scalia	25	23	92%	82%	86%	87%	84%	81%
Kennedy	25	23	92%	93%	94%	91%	92%	86%
Ginsburg	25	23	92%	70%	74%	80%	70%	75%
Breyer	25	23	92%	76%	79%	78%	75%	79%
Thomas	25	22	88%	86%	88%	83%	81%	75%
Alito	25	22	88%	83%	86%	87%	81%	82%
Sotomayor	25	22	88%	80%	81%	84%	-	-

Divided Cases

Justice	Votes	Frequency in Majority		OT11	OT10	OT09	OT08	OT07
Roberts	8	8	100%	86%	83%	83%	72%	73%
Kagan	8	7	88%	67%	67%	-	-	-
Scalia	8	6	75%	67%	74%	76%	76%	65%
Kennedy	8	6	75%	88%	88%	83%	89%	79%
Ginsburg	8	6	75%	45%	50%	63%	55%	65%
Breyer	8	6	75%	57%	60%	58%	62%	68%
Thomas	8	5	63%	74%	76%	67%	72%	85%
Alito	8	5	63%	69%	74%	76%	72%	75%
Sotomayor	8	5	63%	64%	64%	69%	-	-

Justice Agreement - All Cases

	Scalia	Kennedy	Thomas	Ginsburg	Breyer	Alito	Sotomayor	Kagan	Total
Roberts	19 76%	22 88%	20 80%	21 84%	22 88%	19 76%	19 76%	22 88%	25
	22 88%	23 92%	21 84%	23 92%	23 92%	21 84%	21 84%	23 92%	
	23 92%	23 92%	22 88%	23 92%	23 92%	22 88%	21 84%	23 92%	
	2 8%	2 8%	3 12%	2 8%	2 8%	3 12%	4 16%	2 8%	
Scalia		17 68%	18 72%	19 76%	19 76%	17 68%	13 52%	18 72%	25
		22 88%	22 88%	20 80%	20 80%	20 80%	18 72%	20 80%	
		23 92%	24 96%	21 84%	21 84%	22 88%	19 76%	21 84%	
		2 8%	1 4%	4 16%	4 16%	3 12%	6 24%	4 16%	
Kennedy			21 84%	18 72%	19 76%	19 76%	20 80%	19 76%	25
			21 84%	21 84%	21 84%	19 76%	21 84%	21 84%	
			22 88%	21 84%	21 84%	20 80%	21 84%	21 84%	
			3 12%	4 16%	4 16%	5 20%	4 16%	4 16%	
Thomas				18 72%	19 76%	21 84%	17 68%	18 72%	25
				20 80%	21 84%	21 84%	18 72%	19 76%	
				20 80%	22 88%	23 92%	18 72%	20 80%	
				5 20%	3 12%	2 8%	7 28%	5 20%	
Ginsburg					23 92%	16 64%	19 76%	22 88%	25
					23 92%	19 76%	23 92%	23 92%	
					23 92%	20 80%	23 92%	23 92%	
					2 8%	5 20%	2 8%	2 8%	
Breyer						18 72%	18 72%	22 88%	24
						21 84%	21 84%	23 92%	
						22 88%	21 84%	23 92%	
						3 12%	4 16%	2 8%	
Alito							15 60%	17 68%	25
							18 72%	20 80%	
							19 76%	21 84%	
							6 24%	4 16%	
Sotomayor								21 84%	25
								24 96%	
								24 96%	
								1 4%	
Kagan									24

Key

Fully Agree

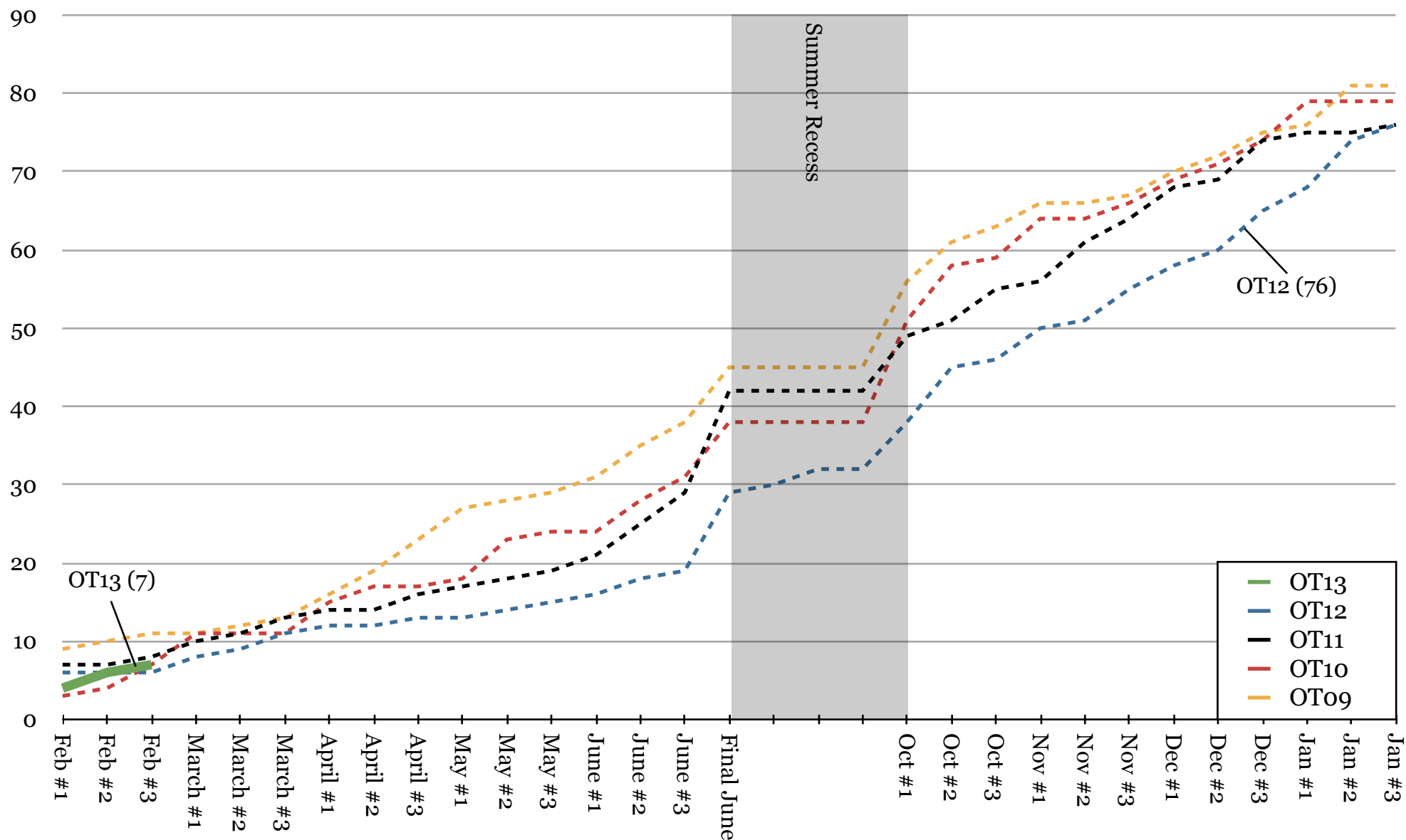
Agree in Full or Part

Agree in Full, Part, or Judgment Only

Disagree in Judgment

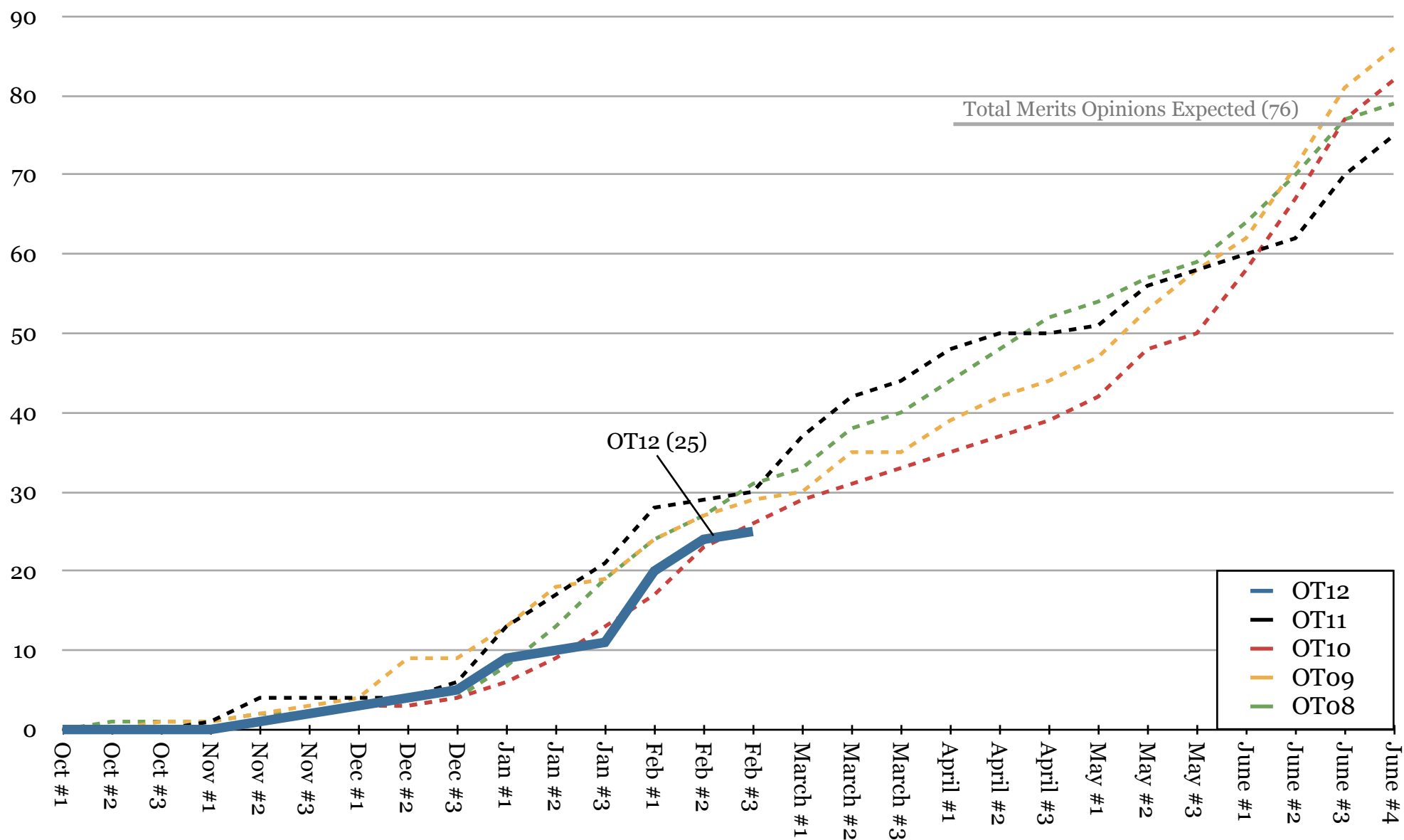
Pace of Grants

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

Overview³

	OT12	OT11	OT10
Number of different advocates	90	118	143
Number of total appearances	132	182	196
Appearances by the Office of the Solicitor General	43 (33%)	58 (32%)	57 (29%)
Appearances by advocates who argued more than once	68 (52%)	98 (54%)	81 (41%)
Appearances by advocates from Washington, D.C.	83 (63%)	122 (67%)	106 (54%)
Appearances by expert advocates ⁴	91 (69%)	<i>Not Available</i>	<i>Not Available</i>

Most Popular Advocate Origins⁵

State	Total
Washington, D.C. ⁶	83
California	9
New York	9
Texas	5
Louisiana	3
Michigan	3
Virginia	3
Washington	3
Arizona	2
Illinois	2
North Carolina	2

Advocates Who Have Appeared More than Once During OT12

Rank	Name	Appearances	Position	All-Time
1	Donald B. Verrilli, Jr.	5	Solicitor General	26
2	Gregory G. Garre	4	Latham & Watkins LLP	39
3	Paul D. Clement	3	Bancroft PLLC	65
	Michael R. Dreeben	3	Deputy Solicitor General	86
	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
	Malcolm L. Stewart	3	Deputy Solicitor General	57
	Jeffrey B. Wall	3	Assistant to the Solicitor General	10
14	Seth P. Waxman	3	WilmerHale LLP	64
	Ginger D. Anders	2	Assistant to the Solicitor General	8
	Eric J. Feigin	2	Assistant to the Solicitor General	5
	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
	Ann O'Connell	2	Assistant to the Solicitor General	5
	Joseph R. Palmore	2	Assistant to the Solicitor General	6
	Bert W. Rein	2	Wiley Rein LLP	2
	Kannon K. Shanmugam	2	Williams & Connolly LLP	13
	Melissa A. Sherry	2	Assistant to the Solicitor General	7
	Sri Srinivasan	2	Principal Deputy Solicitor General	22
	Anthony A. Yang	2	Assistant to the Solicitor General	13
	Total: 26	68		

³ These tables feature information for advocates who have appeared for oral argument on or prior to February 27, 2013.

⁴ 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). Fifty elite advocates have appeared for oral argument before the Supreme Court during OT12, representing fifty-six percent of all advocates who have appeared at the Court.

⁵ An advocate's "origin" is simply the state of origin listed for an advocate on the Court's monthly hearing lists.

⁶ If attorneys from the Office of the Solicitor General are omitted, lawyers based in Washington, D.C. have appeared forty times during OT12.