

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	39
.....Signed opinions after oral argument	36
.....Summary reversals	3
Total Merits Opinions Expected	75
.....Petitions granted and set for argument	74
.....Summary reversals	3
.....(Cases consolidated for decision)*	(1)
.....(Cases dismissed)	(1)
Petitions Granted for OT13	17

* *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 the questions asked by each Justice in the separate oral argument proceedings 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 an equally divided (4-4) Court. Cases that are dismissed as improvidently granted are not included in our tally of merits cases.

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Opinions by Sitting

Roberts	1	1	1	2	-	-	-	JGR	5							
Scalia	1	3	-	-	-	-	-	AS	4							
Kennedy	-	1	1	1	-	-	-	AMK	3							
Thomas	1	1	1	-	1	-	-	CT	4							
Ginsburg	1	1	2	1	-	-	-	RBG	5							
Breyer	1	1	1	1	-	-	-	SGB	4							
Alito	1	1	-	-	1	-	-	SAA	3							
Sotomayor	1	1	1	1	-	-	-	SMS	4							
Kagan	1	2	1	-	-	-	-	EK	4							
	October	November	December	January	February	March	April	Total	36							
	Decided: 9 Remain: 1		Decided: 12 Remain: 0		Decided: 8 Remain: 1		Decided: 7 Remain: 5		Decided: 2 Remain: 8		Decided: 0 Remain: 10		Decided: 0 Remain: 12		Args	69
	Lozman	SGB	Kirtsaeng	SGB	Phoebe Putney	SMS	Standard Fire	SGB	Millbrook	CT	Inter Tribal		Myriad			
	Kiobel	JGR	Clapper	SAA	Vance		Descamps		Bowman		Bullock		Davila			
	Kloeckner	EK	Jardines	AS	US Airways	EK	Gabelli	JGR	McBurney	SAA	Cloer		Baby Girl			
	Bormes	AS	Harris	EK	Henderson	SGB	Wos	AMK	PPL Corp.		Mutual Pharm.		Am. Trucking			
	Johnson	SAA	Chaidez	EK	Decker	AMK	McNeely	SMS	Trevino		Horne		Salinas			
	Ark. Game Comm'n	RBG	Bailey	AMK	Genesis	CT	Maracich		McQuiggin		Pelkey		Kebodeaux			
	Ryan	CT	Amgen	RBG	LA County Flood	RBG	Alleyne		Peugh		Oxford		Hillman			
	Tibbals		Comcast	AS	Auburn Regional	RBG	Boyer		King		Actavis		AID			
	Fisher		Evans	SMS	Chafin	JGR	Levin	RBG	Shelby County		Hollingsworth		Tarrant			
	Moncrieffe	SMS	Smith	AS			Koontz		Am. Express		Windsor		Sekhar			
			Marx	CT			Gunn	JGR					Metrish			
			Already	JGR			Arlington						UT Southwestern			

Circuit Scorecard

October Term 2012

	Number	Percent	Decided	Aff'd	Rev'd	Aff'd %	Rev'd %
CA1	1	1%					
CA2	10	13%	6	2	4	33%	67%
CA3	6	8%	4	0	4	0%	100%
CA4	5	7%	3	2	1	67%	33%
CA5	7	9%	2	0	2	0%	100%
CA6	2	3%					
CA7	3	4%	1	1	0	100%	0%
CA8	2	3%	2	0	2	0%	100%
CA9	12	16%	7	1	6	14%	86%
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	12	16%	6	2	4	33%	67%
Dist. Court	-	-					
Original	-	-		N/A	N/A	N/A	N/A
	76	100%	39	10	29	26%	74%

October Term 2013

	Number	Percent
CA1	-	-
CA2	1	6%
CA3	1	6%
CA4	-	-
CA5	3	18%
CA6	2	12%
CA7	2	12%
CA8	2	12%
CA9	3	18%
CA10	-	-
CA11	1	6%
CA DC	-	-
CA Fed	-	-
State	1	6%
Dist. Court	1	6%
Original	-	-
	17	100%

Merits Cases by Vote Split

9-0 22 (56%)	8-1 2 (5%)	7-2 4 (10%)	6-3 5 (13%)	5-4 6 (15%)
Lefemine v. Wideman (PC)	Evans v. Michigan	Lozman v. Riviera Beach	Bailey v. U.S.	Clapper v. Amnesty Int'l
U.S. v. Bormes	Decker v. NW Env't'l Def. Center (7-1)	U.S. v. Chaidez	Henderson v. U.S.	Florida v. Jardines
Nitro-Lift v. Howard (PC)		Marx v. General Revenue	Amgen v. Conn. Retirement Plans	Comcast v. Behrend
Ark. Game & Fish Comm'n v. U.S. (8-0)		Moncrieffe v. Holder	Kirtsaeng v. Wiley & Sons	Genesis v. Symczyk
Kloeckner v. Solis			Wos v. E.M.A.	U.S. Airways v. McCutchen
Ryan v. Gonzales				Missouri v. McNeely
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.				
Std. Fire Ins. v. Knowles				
Millbrook v. U.S.				
Marshall v. Rodgers (PC)				
Kiobel v. Royal Dutch				
McBurney v. Young				

Not Included Above	
<i>Tibbals v. Carter</i>	Decided with <i>Ryan v. Gonzales</i>
<i>Boyer v. Louisiana</i>	Dismissed as Improvidently Granted

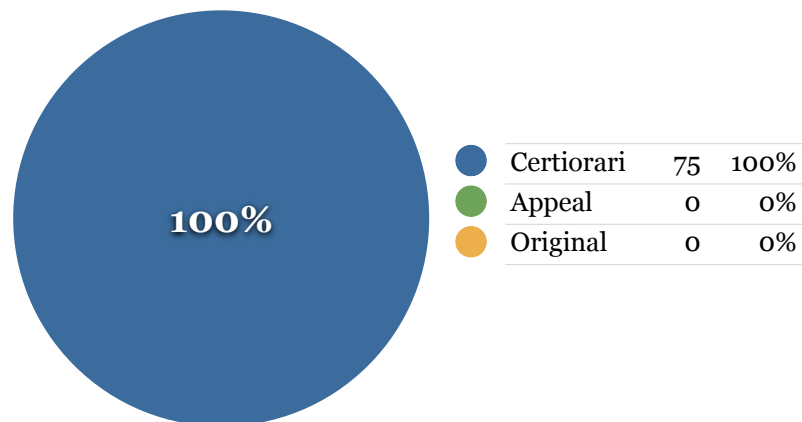
Past Terms					
	9-0	8-1	7-2	6-3	5-4
OT06	39%	13%	11%	4%	33%
OT07	30%	9%	29%	14%	17%
OT08	33%	5%	16%	16%	29%
OT09	46%	10%	15%	11%	18%
OT10	48%	13%	15%	5%	20%
OT11	44%	11%	8%	17%	20%
Avg.	40%	10%	16%	11%	23%

* 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 assume that the recused Justice would have joined the majority. In cases that were decided 5-3, we looked at each case individually 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 count only actual votes.

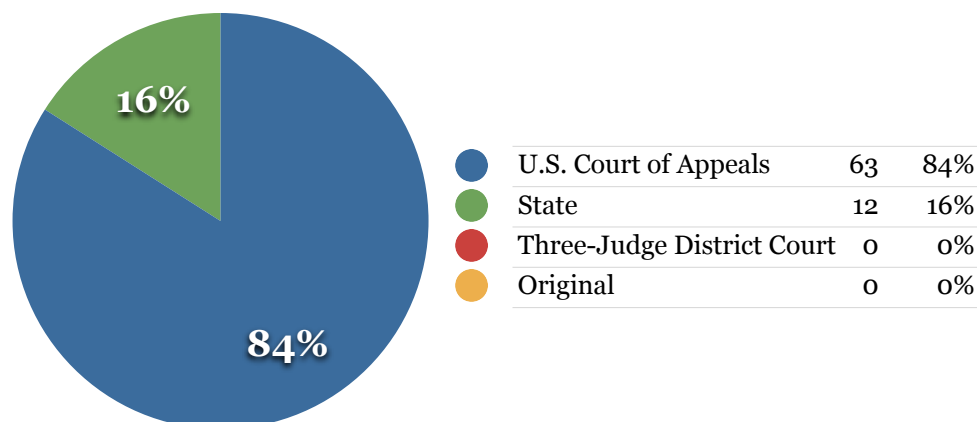
Make-Up of the Merits Docket

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.

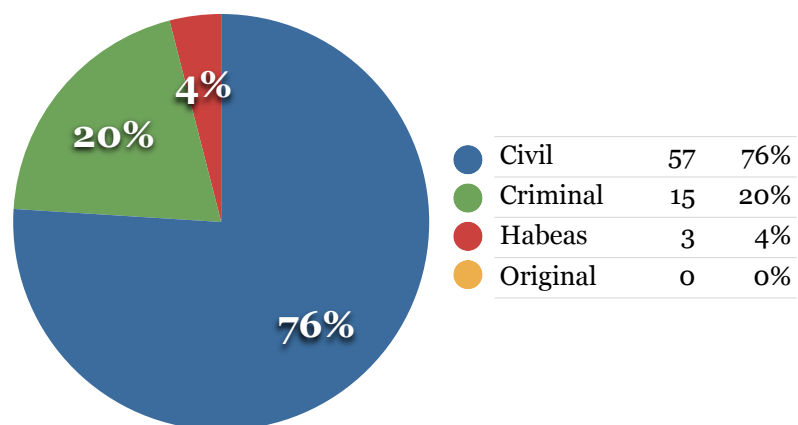
Source of Jurisdiction



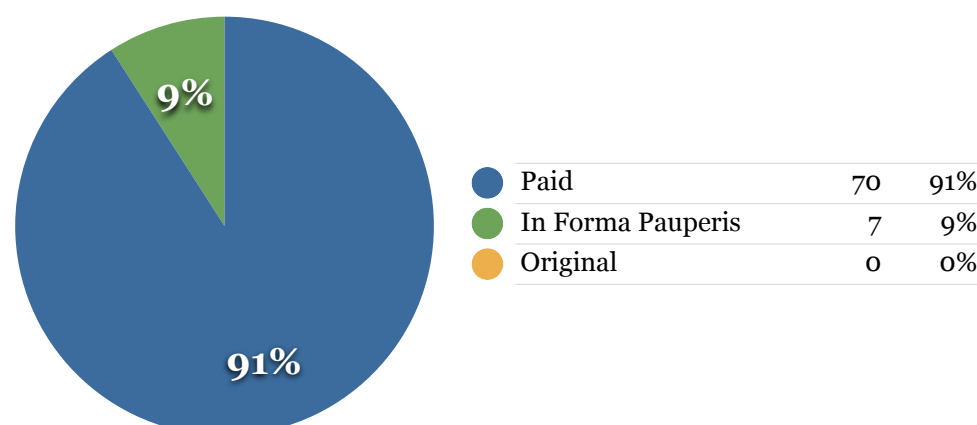
Court Below



Nature



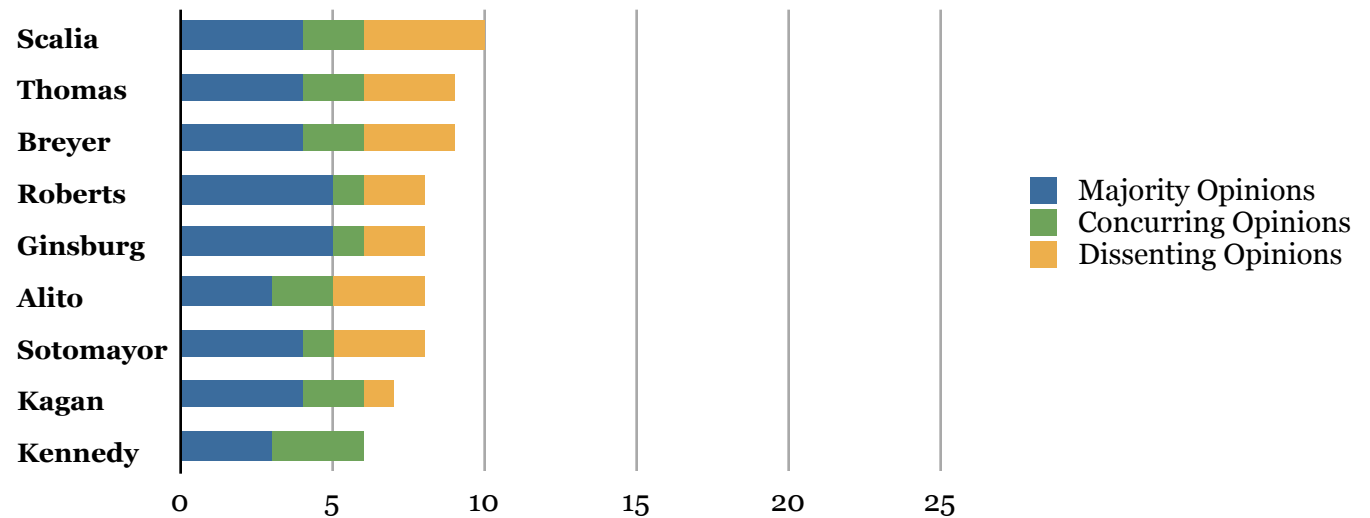
Docket*



* 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	8	5	1	2
Scalia	10	4	2	4
Kennedy	6	3	3	-
Thomas	9	4	2	3
Ginsburg	8	5	1	2
Breyer	9	4	2	3
Alito	8	3	2	3
Sotomayor	8	4	1	3
Kagan	7	4	2	1
Per Curiam	3	3	-	-
	75	39	16	20*



* In *Comcast Corp. v. Behrend*, in which both Justices Ginsburg and Breyer signed a single dissenting opinion, both authors have been credited with releasing one dissenting opinion. However, to acknowledge that only one dissenting opinion was produced in the case, the total number of dissenting opinions and the total number of opinions for the Term have been manually adjusted to count only one dissenting opinions from that case. During October Term 2011, a similar treatment was given to the dissenting opinion in *National Federation of Independent Business v. Sebelius*.

Majority Opinions

Majority Opinions Authored

	Total	9-0	8-1	7-2	6-3	5-4	Average Strength of the Majority*
Roberts	5	5	-	-	-	-	9.0
Scalia	4	2	-	-	-	2	7.0
Kennedy	3	-	1	-	2	-	6.7
Thomas	4	2	-	1	-	1	7.5
Ginsburg	5	4	-	-	1	-	8.4
Breyer	4	1	-	1	2	-	7.0
Alito	3	2	-	-	-	1	7.7
Sotomayor	4	1	1	1	-	1	7.3
Kagan	4	2	-	1	-	1	7.5
	36	19	2	4	5	6	7.7

Unanimous Judgment	Divided Judgment
100%	0%
50%	50%
0%	100%
50%	50%
80%	20%
25%	75%
67%	33%
25%	75%
50%	50%
53%	47%

Authorship as a Percentage of Similar Opinions

	9-0	8-1	7-2	6-3	5-4
Roberts	26%	-	-	-	-
Scalia	11%	-	-	-	33%
Kennedy	-	50%	-	40%	-
Thomas	11%	-	25%	-	17%
Ginsburg	21%	-	-	20%	-
Breyer	5%	-	25%	40%	-
Alito	11%	-	-	-	17%
Sotomayor	5%	50%	25%	-	17%
Kagan	11%	-	25%	-	17%
	100% (19)	100% (2)	100% (4)	100% (5)	100% (6)

Days Between Argument and Opinion

Majority Opinion Author	Days
Ginsburg	62d
Roberts	84d
Thomas	93d
Kennedy	96d
Scalia	99d
Breyer	101d
Kagan	108d
Alito	109d
Sotomayor	121d
	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
Kagan	38	35	92%	82%	81%	-	-	-
Roberts	39	35	90%	92%	91%	91%	81%	90%
Kennedy	39	35	90%	93%	94%	91%	92%	86%
Ginsburg	39	34	87%	70%	74%	80%	70%	75%
Sotomayor	39	34	87%	80%	81%	84%	-	-
Scalia	39	33	85%	82%	86%	87%	84%	81%
Breyer	38	32	84%	76%	79%	78%	75%	79%
Thomas	39	32	82%	86%	88%	83%	81%	75%
Alito	39	32	82%	83%	86%	87%	81%	82%

Divided Cases

Justice	Votes	Frequency in Majority		OT11	OT10	OT09	OT08	OT07
Kagan	17	14	82%	67%	67%	-	-	-
Roberts	17	13	76%	86%	83%	83%	72%	73%
Kennedy	17	13	76%	88%	88%	83%	89%	79%
Ginsburg	17	12	71%	45%	50%	63%	55%	65%
Sotomayor	17	12	71%	64%	64%	69%	-	-
Scalia	17	11	65%	67%	74%	76%	76%	65%
Breyer	16	10	63%	57%	60%	58%	62%	68%
Thomas	17	10	59%	74%	76%	67%	72%	85%
Alito	17	10	59%	69%	74%	76%	72%	75%

Justice Agreement - All Cases

	Scalia		Kennedy		Thomas		Ginsburg		Breyer		Alito		Sotomayor		Kagan		Total
Roberts	29	74%	30	77%	28	72%	26	67%	30	79%	29	74%	25	64%	26	68%	39
	33	85%	33	85%	32	82%	29	74%	31	82%	33	85%	28	72%	29	76%	
	33	85%	33	85%	34	87%	30	77%	32	84%	34	87%	29	74%	30	79%	
	6	15%	6	15%	5	13%	9	23%	6	16%	5	13%	10	26%	8	21%	
Scalia			24	62%	26	67%	25	64%	24	63%	24	62%	19	49%	23	61%	39
			33	85%	33	85%	29	74%	25	66%	29	74%	26	67%	27	71%	
			33	85%	34	87%	30	77%	27	71%	30	77%	27	69%	28	74%	
			6	15%	5	13%	9	23%	11	29%	9	23%	12	31%	10	26%	
Kennedy					27	69%	27	69%	26	68%	27	69%	28	72%	26	68%	39
					29	74%	31	79%	29	76%	29	74%	30	77%	29	76%	
					30	77%	32	82%	30	79%	30	77%	31	79%	30	79%	
					9	23%	7	18%	8	21%	9	23%	8	21%	8	21%	
Thomas							22	56%	23	61%	29	74%	22	56%	21	55%	39
							27	69%	25	66%	31	79%	24	62%	24	63%	
							28	72%	28	74%	34	87%	25	64%	26	68%	
							11	28%	10	26%	5	13%	14	36%	12	32%	
Ginsburg									32	84%	21	54%	32	82%	34	89%	39
									33	87%	25	64%	36	92%	35	92%	
									33	87%	27	69%	36	92%	35	92%	
									5	13%	12	31%	3	8%	3	8%	
Breyer											24	63%	28	74%	30	81%	38
											29	76%	32	84%	33	89%	
											31	82%	32	84%	33	89%	
											7	18%	6	16%	4	11%	
Alito													21	54%	23	61%	39
													25	64%	26	68%	
													27	69%	28	74%	
													12	31%	10	26%	
Sotomayor															33	87%	39
															37	97%	
															37	97%	
															1	3%	
																Kagan	38

Key

Fully Agree

Agree in Full or Part

Agree in Full, Part, or Judgment Only

Disagree in Judgment

Justice Agreement - Non-Unanimous Cases

	Scalia	Kennedy	Thomas	Ginsburg	Breyer	Alito	Sotomayor	Kagan	Total
Roberts	10 59%	10 59%	9 53%	6 35%	10 63%	10 59%	6 35%	6 35%	17
	12 71%	11 65%	10 59%	8 47%	10 63%	12 71%	7 41%	9 53%	
	11 65%	11 65%	12 71%	8 47%	10 63%	12 71%	7 41%	9 53%	
	6 35%	6 35%	5 29%	9 53%	6 38%	5 29%	10 59%	8 47%	
Scalia		7 41%	10 59%	6 35%	5 31%	8 47%	3 18%	6 35%	17
		12 71%	12 71%	9 53%	5 31%	9 53%	6 35%	8 47%	
		11 65%	12 71%	8 47%	5 31%	8 47%	5 29%	7 41%	
		6 35%	5 29%	9 53%	11 69%	9 53%	12 71%	10 59%	
Kennedy			7 41%	8 47%	7 44%	7 41%	8 47%	7 41%	17
			7 41%	10 59%	8 50%	8 47%	9 53%	9 53%	
			8 47%	10 59%	8 50%	8 47%	9 53%	9 53%	
			9 53%	7 41%	8 50%	9 53%	8 47%	8 47%	
Thomas				4 24%	5 31%	9 53%	3 18%	3 18%	17
				6 35%	4 25%	10 59%	3 18%	4 24%	
				6 35%	6 38%	12 71%	3 18%	5 29%	
				11 65%	10 63%	5 29%	14 82%	12 71%	
Ginsburg					10 63%	3 18%	13 76%	14 82%	17
					11 69%	5 29%	14 82%	14 82%	
					11 69%	5 29%	14 82%	14 82%	
					5 31%	12 71%	3 18%	3 18%	
Breyer						6 38%	9 56%	10 63%	16
						9 56%	10 63%	12 75%	
						9 56%	10 63%	12 75%	
						7 44%	6 38%	4 25%	
Alito							1 6%	4 24%	17
							5 29%	7 41%	
							5 29%	7 41%	
							12 71%	10 59%	
Sotomayor								14 82%	17
								16 94%	
								16 94%	
								1 6%	
Kagan									17

Key

Fully Agree

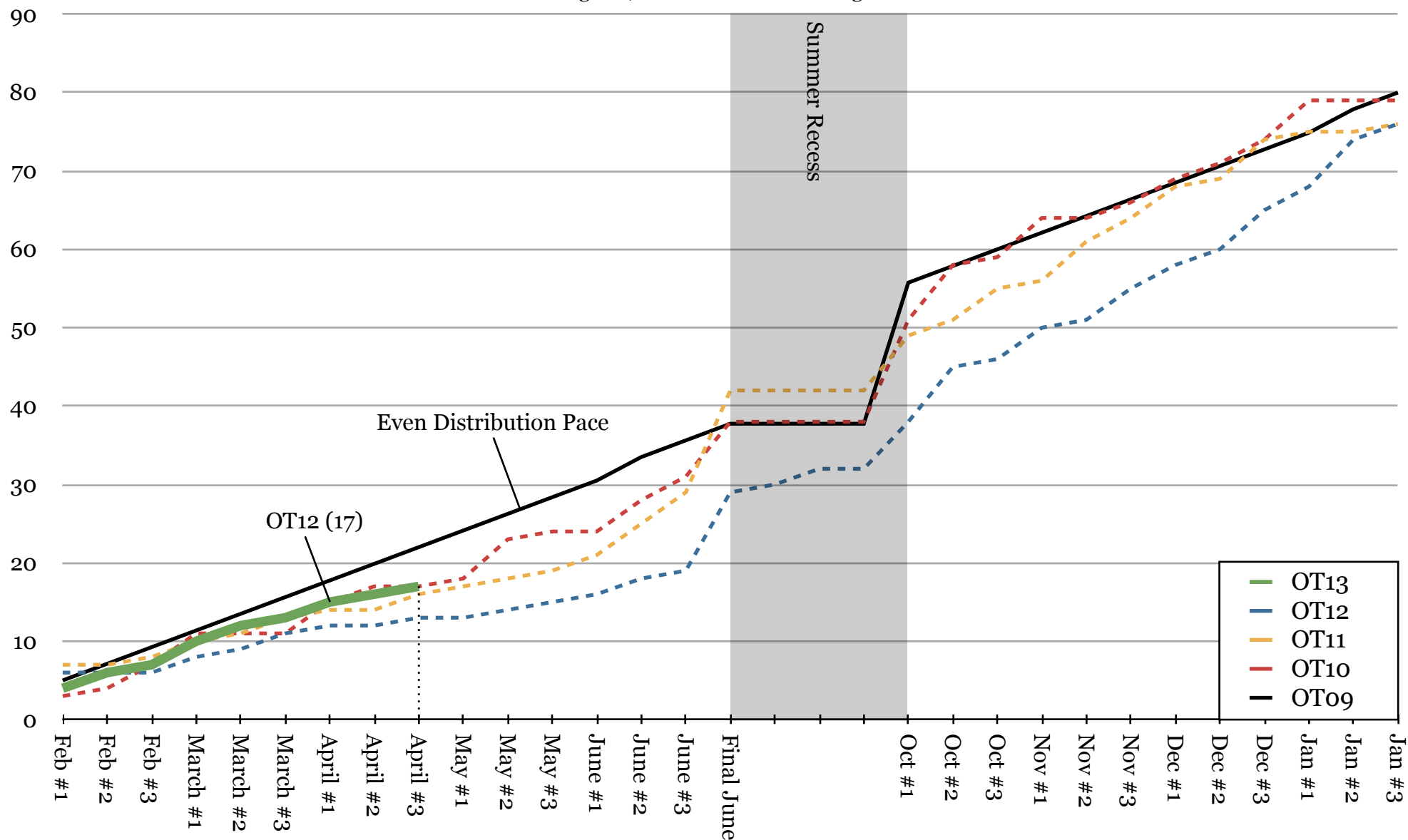
Agree in Full or Part

Agree in Full, Part, or Judgment Only

Disagree in Judgment

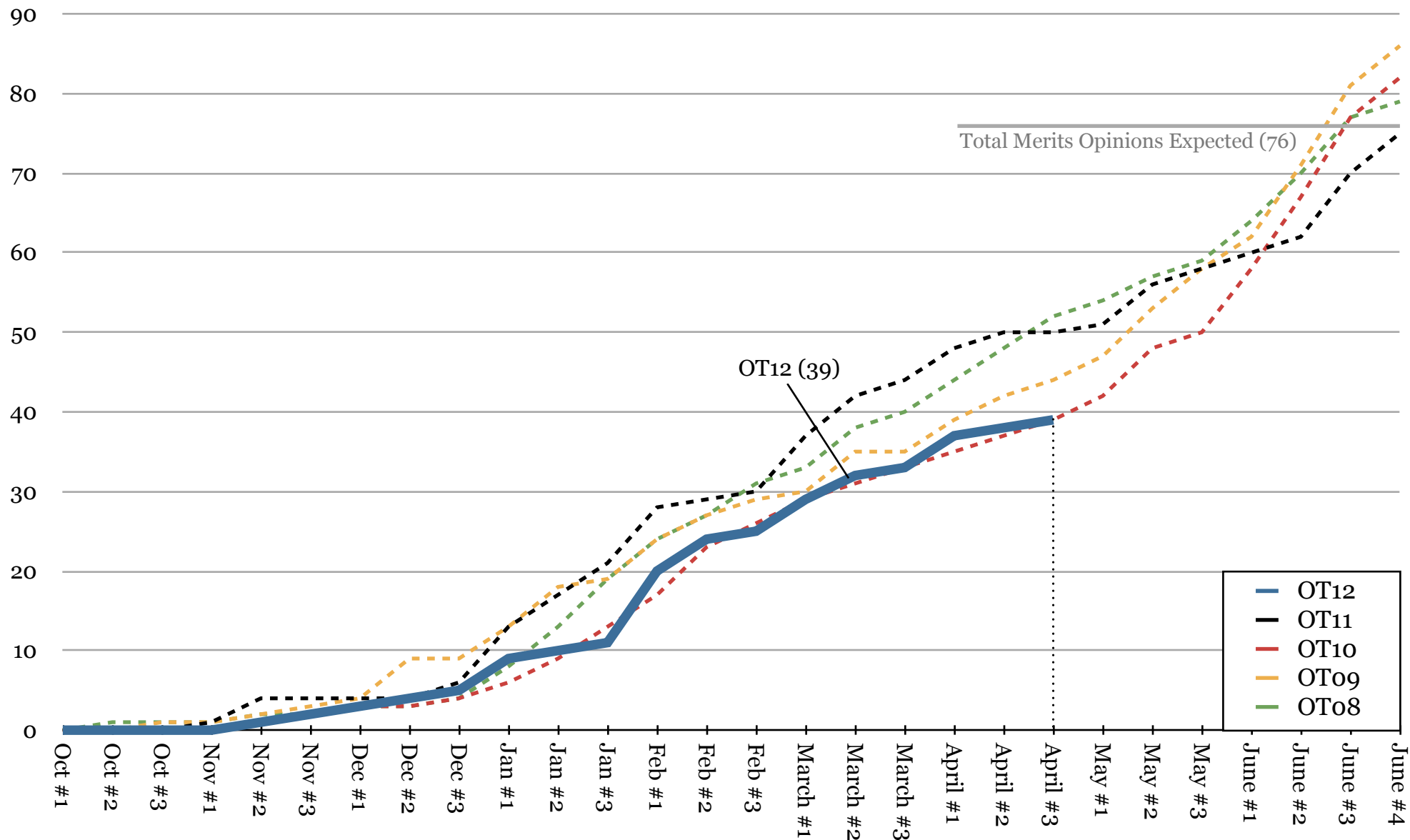
Pace of Grants

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

Overview

	OT12	OT11	OT10
Number of different advocates	120	118	143
Number of total appearances	193	182	196
Appearances by the Office of the Solicitor General	64 (33%)	58 (32%)	57 (29%)
Appearances by advocates who argued more than once	104 (54%)	98 (54%)	81 (41%)
Appearances by advocates from Washington, D.C.	125 (65%)	122 (67%)	106 (54%)
Appearances by expert advocates*	137 (71%)	<i>Not Available</i>	<i>Not Available</i>

Most Popular Advocate Origins**

State	Total
Washington, D.C.	125
New York	12
California	11
Texas	8
Michigan	5
Virginia	4
Arizona	3
Louisiana	3
Washington	3
Georgia	2
Illinois	2

Advocates Who Have Appeared More than Once During OT12

Rank	Name	Appearances	Position	All-Time
1	Donald B. Verrilli, Jr.	8	Solicitor General	29
2	Paul D. Clement	7	Bancroft PLLC	69
3	Sri Srinivasan	5	Principal Deputy Solicitor General	25
4	Michael R. Dreeben	4	Deputy Solicitor General	88
	Jeffrey L. Fisher	4	Stanford Supreme Court Clinic	21
	David C. Frederick	4	Kellogg Huber PLLC	41
	Gregory G. Garre	4	Latham & Watkins LLP	39
	Edwin S. Kneedler	4	Deputy Solicitor General	121
	Malcolm L. Stewart	4	Deputy Solicitor General	63
	Seth P. Waxman	4	WilmerHale LLP	65
11	Ginger D. Anders	3	Assistant to the Solicitor General	9
	Lisa S. Blatt	3	Arnold & Porter LLP	33
	Eric J. Feigin	3	Assistant to the Solicitor General	6
	Curtis E. Gannon	3	Assistant to the Solicitor General	14
	Thomas C. Goldstein	3	Goldstein & Russell PC	28
	Sarah E. Harrington	3	Assistant to the Solicitor General	8
	Benjamin J. Horwich	3	Assistant to the Solicitor General	8
	Ann O'Connell	3	Assistant to the Solicitor General	6
	Joseph R. Palmore	3	Assistant to the Solicitor General	7
	Nicole A. Saharsky	3	Assistant to the Solicitor General	17
	Pratik A. Shah	3	Assistant to the Solicitor General	13
	Melissa A. Sherry	3	Assistant to the Solicitor General	8
	Jeffrey B. Wall	3	Assistant to the Solicitor General	10
	Anthony A. Yang	3	Assistant to the Solicitor General	14
25	John J. Bursch	2	Solicitor General of Michigan	5
	Thomas C. Horne	2	Attorney General of Arizona	2
	Neal K. Katyal	2	Hogan Lovells LLP	17
	Theodore B. Olson	2	Gibson, Dunn & Crutcher LLP	60
	Bert W. Rein	2	Wiley Rein LLP	2
	Charles A. Rothfeld	2	Mayer Brown LLP	30
	Kannon K. Shanmugam	2	Williams & Connolly LLP	13
Total: 31		104		

* 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). Sixty-six different expert advocates presented oral arguments during OT12, representing fifty-five percent of all advocates appearing before the Court. The fifty-five percent of advocates classified as experts made seventy-one percent of all appearances.

** An advocate's "origin" is simply the state of origin listed for an advocate on the Court's monthly hearing lists. If attorneys from the Office of the Solicitor General are omitted, lawyers based in Washington, D.C. have appeared sixty-one times during OT12.