

Five-to-Four Decisions

Alignment of the Majority

Majority*	Total (8)	Cases
Roberts, Scalia, Kennedy, Thomas, Alito	3	<i>Clapper, Comcast, Genesis</i>
Kennedy, Ginsburg, Breyer, Sotomayor, Kagan	3	<i>U.S. Airways, McQuiggin, Trevino</i>
Scalia, Thomas, Ginsburg, Sotomayor, Kagan	1	<i>Jardines</i>
Scalia, Kennedy, Ginsburg, Sotomayor, Kagan	1	<i>McNeely</i>

Term	Number of 5-4 Opinions**	Percentage of Total Opinions	Percentage of 5-4 Split Ideological	Conservative Victory (Percentage of Ideological)	Conservative Victory (Percentage of All 5-4)	Number of Different Alignments	Alignments Divided by 5-4 Opinions
OT05	11	12%	73%	63%	45%	7	0.64
OT06	24	33%	79%	68%	54%	6	0.25
OT07	12	17%	67%	50%	33%	6	0.50
OT08	23	29%	70%	69%	48%	7	0.30
OT09	16	19%	69%	73%	50%	7	0.44
OT10	16	20%	88%	71%	63%	4	0.25
OT11	15	20%	100%	63%	63%	7	0.47
OT12	8	17%	75%	50%	38%	4	0.50
Average	16	21%	77%	63%	49%	6	0.42

* This table features cases that were decided by a 5-3 margin, but were reclassified for our purposes as 5-4 decisions.

** For the purposes of this chart, the total number of 5-4 opinions is the number of cases that split 5-4 on a major issue. It may differ from the number of cases that split 5-4 elsewhere in this Stat Pack.

*** For the purposes of this chart, a "Conservative Win" occurs whenever the majority consists of Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and O'Connor or Alito.

Five-to-Four Decisions

(continued)

Membership in a Five-to-Four Majority

Justice	Cases Decided	Frequency in Majority		OT11	OT10	OT09	OT08	OT07
Kennedy	8	7	88%	80%	88%	69%	78%	67%
Scalia	8	5	63%	60%	69%	69%	70%	58%
Ginsburg	8	5	63%	33%	38%	25%	52%	50%
Sotomayor	8	5	63%	47%	38%	43%	-	-
Kagan	8	5	63%	40%	38%	-	-	-
Thomas	8	4	50%	67%	75%	69%	65%	67%
Roberts	8	3	38%	67%	63%	56%	48%	58%
Breyer	8	3	38%	47%	31%	38%	39%	45%
Alito	8	3	38%	60%	63%	63%	52%	50%

Five-to-Four Majority Opinion Authorship

These percentages consider how often a Justice authors the majority opinion *when that Justice is in the majority*.*

Justice	Cases Decided	Frequency in the Majority	Opinions Authored	Frequency as Author	OT11	OT10	OT09	OT08	OT07
Scalia	8	5	2	40%	0%	9%	18%	33%	29%
Breyer	8	3	1	33%	43%	20%	25%	0%	40%
Alito	8	3	1	33%	33%	0%	40%	8%	17%
Thomas	8	4	1	25%	0%	33%	9%	13%	13%
Ginsburg	8	5	1	20%	0%	33%	50%	27%	0%
Sotomayor	8	5	1	20%	29%	17%	0%	-	-
Kagan	8	5	1	20%	17%	0%	-	-	-
Roberts	8	3	0	0%	10%	30%	22%	18%	14%
Kennedy	8	7	0	0%	33%	21%	22%	28%	50%

* Percentages represent the number of majority opinions authored divided by the number of times a Justice was in the majority for a *signed* opinion. As such, 5-4 *per curiam* opinions are omitted entirely.