

# SCOTUSblog Super StatPack – OT07 Term Recap

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## Key Upcoming Dates:

- Friday, June 27: Final Orders; beginning of Summer Recess
- September 29: Opening Conference of OT08
- October 6: First official day of OT08 and first oral argument of new Term

MEMORANDUM

June 26, 2008

From: Akin Gump Strauss Hauer & Feld LLP and SCOTUSblog.com

Re: End of Term Statistical Analysis – October Term 2007

This memo presents the firm's annual summary of relevant statistics for the Term:

**1. Docket**

The Justices issued 67 merits opinions after argument this Term, the lowest number since the 1953-54 Term. The number of decisions after argument for previous Terms are 68 (OT06), 71 (OT05), 76 (OT04), 74 (OT03), 73 (OT02), 76 (OT01), 79 (OT00), 74 (OT99), 78 (OT98), 92 (OT97), 81 (OT96), 77 (OT95), 84 (OT94), 84 (OT93), 107 (OT92), 107 (OT91), 102 (OT90).

Including two summary reversals and two affirmances by an equally divided court, the Justices decided 71 cases in total this Term, the lowest number of decisions in recent memory. The numbers for previous terms are 72 (OT06), 82 (OT05), 80 (OT04), 79 (OT03), 80 (OT02), 81 (OT01), 85 (OT00), and 77 (OT99).

The Court reversed or vacated the lower court in 46 of 70\* cases (66%) and affirmed in the remaining 24 (34%). Those figures are slightly different from the previous Term, when the Court reversed or vacated the lower court decision in 73% of cases and affirmed the lower court 25% of the time (with two affirmed in part or reversed or vacated in part).

The Court again considered more cases from the Ninth Circuit – 10 of 71 cases (14.1%) – than any other Court, but that proportion was far down from OT06, when the Ninth Circuit supplied 29% of the Court's docket. In OT07, the Court vacated or reversed the Ninth Circuit in eight of ten cases (80%), which is in line with the 86% and 83% reversal rate for the previous two Terms.

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\* One case decided was an original action, so there was no lower court decision to either affirm or reverse.

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The Second Circuit came next with 7 of 71 cases on the docket (9.9%) but was reversed only twice, or 29% of the time. The Seventh and Eleventh Circuits each had six of 71 cases (8.5%), but fared much differently: the Seventh Circuit was reversed or vacated only once, while the Eleventh was overturned four times.

The Court again resolved four cases (5.6%) from the Federal Circuit, reversing three of its decisions, though only heard one patent case from that court this Term.

State courts accounted for 11 cases this session, up from seven in OT06. The Court also decided an original action after oral argument this Term, which they did not do in OT06.

## 2. Split and Unanimous Decisions

The number of 5-4 decisions this Term depends (as it often does) on how you count them. Eleven cases were clearly 5-4. A twelfth (*Stoneridge*) was 5-3, with the left of the Court in dissent and Justice Breyer recused, suggesting that it would have been 5-4 if he had participated. Two others (*Tom F.* and *Warner-Lambert*) were 4-4, almost by definition meaning that the case would have been 5-4 absent a recusal. So between 15% and 20% of the docket was 5-4. We ultimately believe that the fairest count treats *Stoneridge* and ignores the 4-4 cases in which no opinion was ultimately issued – so, we count it as 17%.

That number falls between the previous two Terms of the Roberts Court: it is significantly lower than last year's percentage of 33%, while the 2005 Term saw only 13% of cases decided by a 5-4 margin. The numbers from previous terms are: 24 of 80 cases – 30% (OT04), 21 of 79 cases – 27% (OT03), 15 of 80 – 19% (OT02), 21 of 71 – 26% (OT01), 26 of 85 – 30% (OT00), 21 of 77 – 27% (OT99), 19 of 80 – 24% (OT98), 16 of 96 – 17% (OT97), 17 of 91 – 19% (OT96), 16 of 85 – 19% (OT95). More detailed breakdowns from past years are available in the statistics section of SCOTUSwiki.com ([http://www.scotuswiki.com/index.php?title=Supreme\\_Court\\_Statistics](http://www.scotuswiki.com/index.php?title=Supreme_Court_Statistics)).

Somewhat surprisingly, the drop in the number of 5-4 decisions did not go hand in hand with a commensurate increase in unanimous decisions. This Term, fully unanimous decisions (*i.e.*, decisions with no dissent or concurrence) decreased to only 14 of 71 cases (20%), and there was no dissenting vote in a total of 30% of the decisions. Last Term, which was considered very divisive, the Court issued fully

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unanimous decisions in 18 cases (25%), with a total of 38% of the decisions coming without a dissenting vote; in OT05, 45% of decisions were unanimous and fully 55% cases were decided without a dissenter. The number of unanimous decisions from previous Terms are 17 of 80 – 21% (OT04), 25 of 79 – 32% (OT03), 31 of 80 – 39% (OT02), 26 of 81 – 32% (OT01), 25 of 85 – 29% (OT00).

This lack of unanimity meant that, despite the drop in 5-4 decisions this Term from last, the overall number of dissenting votes remained high. An average decision by the Court this term found 1.85 Justices in dissent, exceeding last Term's 1.81 dissents per case and making decisions this term the most divided in recent history.<sup>†</sup>

Looking back on recent terms, the average dissenting votes per case are: 1.81 (OT06), 1.23 (OT05), 1.68 (OT04), 1.56 (OT03), 1.45 (OT02), 1.79 (OT01), 1.80 (OT00), 1.77 (OT99), 1.61 (OT98), 1.36 (OT97), 1.45 (OT96) and 1.43 (OT95).

### 3. Distribution of Justices in 5-4 Decisions

In OT07, the distribution of Justices in 5-4 decisions was less predictable along ideological lines than it was last Term. In eight out of the 12 (67%) cases we count as 5-4, the “left” (Justices Stevens, Souter, Breyer, and Ginsburg) and “right” (Chief Justice Roberts along with Justices Scalia, Thomas, and Alito) held and Justice Kennedy cast the decisive vote.<sup>‡</sup> Last Term, that happened 19 out of 24 times (79%).

After going 24-for-24 in last Term's most divisive cases, which included a variety of configurations, this Term Justice Kennedy was not in the majority in any 5-4 case that did not break along those traditional ideological lines. Nonetheless, Justice Kennedy was again in the majority in as many 5-4 cases as any other justice – eight. Among the Court's other members, Justice Thomas tied with Kennedy, voting with the majority eight times (67%), while Chief Justice Roberts and Justice Stevens prevailed seven times (58%), Justices Scalia, Souter, Ginsburg, and Alito and Ginsburg six times (50%), and Justice Breyer five times (42%).

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<sup>†</sup> Under this metric, the level of divisiveness produced by two 7-2 decisions is the same as that produced by one 9-0 decision and one 5-4 decision.

<sup>‡</sup> Though Justice Breyer was recused, we count *Stoneridge* in this group.

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Of the eight decisions in which the voting blocs “held,” the left and right split the outcomes four to four. This is a shift from last Term, when 68% of the ideological 5-4s were won by the conservative-plus-Kennedy quintet. For the second straight Term, the left of the court did not prevail in a 5-4 case by getting the vote of a member of the Court other than Justice Kennedy. Conversely, this Term, the majority opinions in *Irizarry* and *Ali* were made up of the conservative bloc but did not include Justice Kennedy; instead Justices Stevens and Ginsburg, respectively, made up the fifth votes.

Among the 5-4 cases not decided along liberal-conservatives lines in OT07, one featured a majority comprised of the Chief Justice and Justices Stevens, Souter, Thomas, and Breyer in the majority (*Kentucky Retirement*); one featured the Chief Justice and Justices Stevens, Scalia, Thomas, and Alito (*Irizarry*); one featured the Chief Justice and Justices Scalia, Thomas, Ginsburg, and Alito (*Ali v. BoP*); and one featured Justices Stevens, Scalia, Souter, Thomas, and Ginsburg (*Santos*).

Though Justice Kennedy was not “perfect” in 5-4s as he was last Term, he still exerted more than considerable influence. He wrote the opinion for the Court in four of the 12 5-4 merits opinions. Justice Stevens assigned him the opinion in three of the four 5-4s in which the left prevailed by getting Justice Kennedy’s vote: *Boumediene*, *Dada*, and *Kennedy v. Louisiana*, while the Chief Justice assigned him the opinion in *Stoneridge*.

No other Justice wrote more than two 5-4 opinions. Justices Scalia and Breyer wrote two, and Chief Justice Roberts and Justices Stevens, Thomas, and Alito each wrote one. Justices Souter and Ginsburg did not author a 5-4 opinion this Term.

#### **4. Levels of Agreement Between Pairs of Justices**

By a nose, the Chief Justice and Scalia were the two justices whose agreement rates were the highest this Term. They agreed in whole, part, or the judgment in 60 of 68 (88%) of cases in which they both participated, though they only agreed in full 68% of the time. Because of this, the Chief Justice and Justice Alito were the most similar in their voting pattern – even though this pair agreed in one fewer case because of recusals – fully agreeing in 81% of the cases they participated in together. On the other side of the ideological spectrum, Justices Souter and Ginsburg were the most aligned justices this Term, agreeing in at least one aspect of 87% of the cases, and agreeing in full in 80% of cases.

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Overall, the most notable difference from last Term is that Justice Kennedy agreed more frequently with some of the liberal members of the Court and less frequently with the conservatives. His agreement rate (in full, part, or judgment) was 77% this Term with Justice Stevens and 85% with Justice Breyer; those are noticeably up from last Term's agreement rates of 66% and 74% respectively. On the opposite side of the judicial spectrum, Justice Kennedy and Justice Thomas agreed 62% of the time as opposed to 79% last Term, while Justice Kennedy and Justice Alito agreed 82% of the time in OT07, down from 90% in OT06.

Justice Thomas may win the "iconoclast" award this Term, as he enjoyed the lowest rates of agreement with other members of the Court and was a solo dissenter in four cases. Justice Thomas agreed in at least the judgment with each of the four most liberal members of the Court less than 60% of the time, and, as previously mentioned, with Justice Kennedy in only 62% of the cases. Nor did his votes fall in lockstep with any of the more conservative members: he agreed with Justice Scalia 87% of the time (as opposed to 93% last Term) and the Chief Justice 79% of the time, as opposed to 88% last Term.

## 5. Frequency in the Majority

At the beginning of OT07, conventional wisdom held that the Court would pick up where it left off the previous term: with Justice Anthony Kennedy in the driver's seat. As Court watchers will recall, Justice Kennedy ended OT06 having joined the majority in a remarkable 97% of cases, and, even more astonishingly, voted with the majority in all 24 cases decided by five-vote majorities. On the heels of a term in which he dissented only twice, it was possible to imagine that Justice Kennedy would finish OT07 with a perfect record. But it would not be. Justice Kennedy cast his third dissenting vote before the start of spring, and by Term's end had joined the minority 10 times.

Into Justice Kennedy's place atop the standings slipped, quietly, Chief Justice Roberts. He ended the winter with only one dissenting vote, and was not again in the minority until late May. The Chief ended the term, impressively, having dissenting in only seven cases, for a frequency-in-the-majority percentage of 90%. He was followed in the standings by Justices Kennedy (86%), Alito (82%), Scalia (81%), Breyer (79%), Souter (77%), and Stevens, Ginsburg, and Thomas, all at 75%. After factoring out cases in which all Justices agreed on the judgment, Chief Justice

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Roberts voted with the majority in a similarly impressive 84% of cases, followed by Justices Kennedy (79%), Alito (74%), Scalia (73%), Breyer (68%), Souter (67%), and then the trio of Stevens, Ginsburg, and Thomas at 65%.

If the Court bestowed a “most improved” to the Justice joining the highest share of majority opinions over the previous term, Justice Stevens would be the clear winner. In OT06, Justice Stevens joined the smallest share of majority opinions in divided cases (37%). This term, by contrast, the longest-serving sitting Justice joined the majority 65% of the time in divided cases – jumping 28 percentage points.

Though he voted with the majority more often than anyone but the Chief, Justice Kennedy ended the term, by contrast, with the biggest declines. After concluding OT06 with a majority rate of 95% for divided cases, Justice Kennedy’s comparable rate for this term declined 16 percentage points to 79%.

### SCOTUSblog Agreement Stats for OT07 - FINAL

	Stevens	Scalia	Ken	Sout	Thom	Gins	Breyer	Alito	Total Cases
CJ Rob	53%	68%	79%	60%	66%	56%	60%	81%	68
	71%	82%	84%	72%	75%	69%	72%	87%	
	72%	88%	84%	72%	79%	69%	75%	88%	
	28%	12%	16%	28%	21%	31%	25%	12%	
Stevens	36%	58%	77%	33%	70%	75%	53%	69	
	57%	75%	87%	51%	84%	86%	68%		
	64%	77%	87%	57%	84%	86%	71%		
	36%	23%	13%	43%	16%	14%	29%		
Scalia	59%	45%	78%	41%	46%	66%	69		
	71%	61%	86%	61%	57%	78%			
	77%	64%	87%	65%	63%	82%			
	23%	36%	13%	35%	37%	18%			
Ken	65%	52%	59%	69%	72%	69			
	74%	59%	72%	82%	81%				
	74%	62%	72%	85%	82%				
	26%	38%	28%	15%	18%				
Sout	46%	80%	77%	59%	69				
	57%	87%	82%	69%					
	59%	87%	83%	69%					
	41%	13%	17%	31%					
Thom	38%	43%	65%	69					
	52%	52%	74%						
	55%	57%	79%						
	45%	43%	21%						
Gins	72%	54%	69						
	78%	68%							
	80%	68%							
	20%	32%							
Breyer	61%	65							
	70%								
	72%								
	28%								
Alito								68	

**Key**

Full
Part + All
<b>Judg + Part + All</b>
<b>Disagree</b>



### SCOTUSblog Agreement Stats for OT07 - FINAL

	Stevens	Scalia	Ken	Sout	Thom	Gins	Breyer	Alito	Total Cases
CJ Rob	36	46	54	41	45	38	39	54	68
	48	56	57	49	51	47	47	58	
	<b>49</b>	<b>60</b>	<b>57</b>	<b>49</b>	<b>54</b>	<b>47</b>	<b>49</b>	<b>59</b>	
	<b>19</b>	<b>8</b>	<b>11</b>	<b>19</b>	<b>14</b>	<b>21</b>	<b>16</b>	<b>8</b>	
Stevens	25	40	53	23	48	49	36	69	
	39	52	60	35	58	56	46		
	<b>44</b>	<b>53</b>	<b>60</b>	<b>39</b>	<b>58</b>	<b>56</b>	<b>48</b>		
Scalia	<b>25</b>	<b>16</b>	<b>9</b>	<b>30</b>	<b>11</b>	<b>9</b>	<b>20</b>	69	
	41	31	54	28	30	45			
	49	42	59	42	37	53			
Ken	<b>53</b>	<b>44</b>	<b>60</b>	<b>45</b>	<b>45</b>	<b>41</b>	<b>56</b>	69	
	<b>16</b>	<b>25</b>	<b>9</b>	<b>24</b>	<b>24</b>	<b>12</b>			
	45	36	41	45	49				
Sout	51	41	50	53	55			69	
	<b>51</b>	<b>43</b>	<b>50</b>	<b>55</b>	<b>56</b>				
	<b>18</b>	<b>26</b>	<b>19</b>	<b>10</b>	<b>12</b>				
Thom	32	55	50	40				69	
	39	60	53	47					
	<b>41</b>	<b>60</b>	<b>54</b>	<b>47</b>					
Gins	<b>28</b>	<b>9</b>	<b>11</b>	<b>21</b>				69	
	26	28	44						
	36	34	50						
Breyer	<b>38</b>	<b>37</b>	<b>54</b>	<b>47</b>	<b>37</b>			69	
	<b>31</b>	<b>28</b>	<b>14</b>	47	37				
				51	46				
Alito								65	
Alito								68	

Key	
Full	
Part + All	
<b>Judg + Part + All</b>	
<b>Disagree</b>	

## SCOTUSblog Agreement Stats for OT07 - "Hot/Cold," by Ideology

		Scalia	Alito	Roberts	Ken	Breyer	Souter	Stevens	Ginsburg
Thomas		78%	65%	66%	52%	43%	46%	33%	38%
		86%	74%	75%	59%	52%	57%	51%	52%
		87%	79%	79%	62%	57%	59%	57%	55%
		13%	21%	21%	38%	43%	41%	43%	45%
Scalia			66%	68%	59%	46%	45%	36%	41%
			78%	82%	71%	57%	61%	57%	61%
			82%	88%	77%	63%	64%	64%	65%
			18%	12%	23%	37%	36%	36%	35%
Alito				81%	72%	61%	59%	53%	54%
				87%	81%	70%	69%	68%	68%
				88%	82%	72%	69%	71%	68%
				12%	18%	28%	31%	29%	32%
Roberts					79%	60%	60%	53%	56%
					84%	72%	72%	71%	69%
					84%	75%	72%	72%	69%
					16%	25%	28%	28%	31%
Ken						69%	65%	58%	59%
						82%	74%	75%	72%
						85%	74%	77%	72%
						15%	26%	23%	28%
Breyer							77%	75%	72%
							82%	86%	78%
							83%	86%	80%
							17%	14%	20%
Souter								77%	80%
								87%	87%
								87%	87%
								13%	13%
Stevens									70%
									84%
									84%
									16%

**Color Key**

Agree 80-90%
Agree 70-80%
Agree 60-70%
Agree 50-60%

**Key**

Full
Part + All
Judg + Part + All
Disagree

### SCOTUSblog Agreement Stats for OT07 - (Non-Unanimous Cases)

	Stevens	Scalia	Ken	Sout	Thom	Gins	Breyer	Alito	
CJ Rob	41%	59%	78%	50%	57%	44%	49%	77%	54
	63%	78%	83%	65%	69%	61%	65%	83%	
	<b>65%</b>	<b>85%</b>	<b>83%</b>	<b>65%</b>	<b>74%</b>	<b>61%</b>	<b>69%</b>	<b>85%</b>	
	<b>35%</b>	<b>15%</b>	<b>17%</b>	<b>35%</b>	<b>26%</b>	<b>39%</b>	<b>31%</b>	<b>15%</b>	
Stevens	20%	44%	44%	71%	16%	62%	69%	41%	55
	45%	65%	65%	84%	38%	80%	82%	57%	
	<b>55%</b>	<b>67%</b>	<b>84%</b>	<b>45%</b>	<b>80%</b>	<b>82%</b>	<b>61%</b>		
	<b>45%</b>	<b>33%</b>	<b>16%</b>	<b>55%</b>	<b>20%</b>	<b>18%</b>	<b>39%</b>		
Scalia	53%	31%	73%	25%	31%	59%		55	
	67%	51%	82%	51%	45%	72%			
	<b>75%</b>	<b>55%</b>	<b>84%</b>	<b>56%</b>	<b>53%</b>	<b>78%</b>			
	<b>25%</b>	<b>45%</b>	<b>16%</b>	<b>44%</b>	<b>47%</b>	<b>22%</b>			
Ken	53%	44%	45%	61%	69%		55		
	64%	53%	62%	76%	78%				
	<b>64%</b>	<b>56%</b>	<b>62%</b>	<b>80%</b>	<b>80%</b>				
	<b>36%</b>	<b>44%</b>	<b>38%</b>	<b>20%</b>	<b>20%</b>				
Sout	33%	75%	71%	48%		55			
	45%	84%	76%	59%					
	<b>49%</b>	<b>84%</b>	<b>78%</b>	<b>59%</b>					
	<b>51%</b>	<b>16%</b>	<b>22%</b>	<b>41%</b>					
Thom	22%	27%	57%		55				
	40%	39%	67%						
	<b>44%</b>	<b>45%</b>	<b>74%</b>						
	<b>56%</b>	<b>55%</b>	<b>26%</b>						
Gins	65%	43%		55					
	73%	57%							
	<b>75%</b>	<b>57%</b>							
	<b>25%</b>	<b>43%</b>							
Breyer	50%		51						
	60%								
	<b>62%</b>								
	<b>38%</b>								
Alito								54	

Key	
Full	
Part + All	
<b>Judg + Part + All</b>	
<b>Disagree</b>	

OT07 - Decisions by Final Vote

9-0 (or unan.) 21 (30%)	8-1 (or 7-1) 6 (8%)	7-2 (or 6-2) 20 (28%)	6-3 10 (14%)	5-4 14 (20%)
<i>Sprint/United</i>	<i>Riegel</i>	<i>Danforth</i>	<i>Medellin</i>	<i>Ali v. BoP</i>
<i>Rowe</i>	<i>Preston</i>	<i>Siebert (PC)</i>	<i>Hall Street</i>	<i>Santos</i>
<i>LaRue</i>	<i>Gonzalez</i>	<i>Gall</i>	<i>Begay</i>	<i>Boumediene</i>
<i>CSX v. Ga. Bd.</i>	<i>Ressam</i>	<i>Kimbrough</i>	<i>Crawford</i>	<i>Irizarry</i>
<i>Logan</i>	<i>Meacham</i>	<i>John Sand</i>	<i>Rodriquez</i>	<i>Dada</i>
<i>Watson</i>	<i>Rothgery</i>	<i>FedEx</i>	<i>Gomez-Perez</i>	<i>Kent. Retire.</i>
<i>Wright v. VP (PC)</i>		<i>Snyder</i>	<i>Engquist</i>	<i>APCC</i>
<i>NY Bd. Of Elections</i>		<i>Wash. Grange</i>	<i>MetLife</i>	<i>Plains Comm.</i>
<i>Knight v. CIR</i>		<i>NJ v. Delaware (6-2)</i>	<i>Giles</i>	<i>Kennedy v. La.</i>
<i>Boulware</i>		<i>Baze</i>	<i>Exxon v. Baker (5-3)</i>	<i>Davis v. FEC</i>
<i>Clintwood Elkhorn</i>		<i>Williams</i>		<i>DC v. Heller</i>
<i>MeadWestvaco</i>		<i>Davis</i>		<i>Stoneridge (5-3)</i>
<i>Burgess</i>		<i>Riley</i>		<i>Tom F. (4-4)</i>
<i>Moore</i>		<i>CBOCS West</i>		<i>W.-Lambert (4-4)</i>
<i>Cuellar</i>		<i>Piccadilly Cafeteria</i>		
<i>Richlin</i>		<i>Phillipines</i>		
<i>Phoenix Bond</i>		<i>Chamber v. Brown</i>		
<i>Quanta</i>		<i>Indiana</i>		
<i>Allison Engine</i>		<i>Greenlaw</i>		
<i>Taylor</i>		<i>Morgan-Stanley (5-2)</i>		
<i>Munaf</i>				

<b>Dismissed</b>
<i>Arave v. Hoffman</i> (not argued)
<i>Ali v. Achim</i> (not argued)
<i>Huber v. Wal-Mart</i> (not argued)
<i>Klein &amp; Co. v. Bd. Of Trade</i>

<b>Final OT06</b>				
28 (38%)	9 (12%)	9 (12%)	3 (4%)	24 (33%)

<b>Final OT05</b>				
45 (52%)	5 (6%)	12 (14%)	13 (15%)	11 (13%)

# Frequency in the Majority

(Through June 26, 2008)

The charts below measure how frequently each Justice has voted with the majority in cases decided on the merits thus far. It does not include opinions where the vote was not disclosed (*Board of Ed. of City School Dist. of New York v. Tom F.*) or where the case was dismissed as moot (*Arave v. Hoffman*).

The first chart examines the results for all cases, the second only for divided cases. In each, we list the number of times each Justice has voted with the majority, the number of times each Justice has voted overall, the frequency with which each Justice has voted with the majority in OT07, and the corresponding figure for OT06.

## All cases

Justice	Majority votes	Total votes	% in majority	% in OT06
Roberts	61	68	89.7%	88.4%
Kennedy	59	69	85.5%	97.2%
Alito	56	68	82.4%	86.1%
Scalia	56	69	81.2%	79.2%
Breyer	51	65	78.5%	75.7%
Souter	53	69	76.8%	76.4%
Stevens	52	69	75.4%	63.9%
Ginsburg	52	69	75.4%	72.2%
Thomas	52	69	75.4%	77.5%

## Divided cases only\*

Justice	Majority votes	Total votes	% in majority	% in OT06
Roberts	40	47	85.1%	82.2%
Kennedy	38	48	79.2%	95.3%
Alito	35	47	74.5%	77.3%
Scalia	35	48	72.9%	65.9%
Breyer	30	44	68.2%	61.4%
Souter	32	48	66.7%	61.4%
Stevens	31	48	64.6%	36.6%
Ginsburg	31	48	64.6%	54.5%
Thomas	31	48	64.6%	62.8%

\* This category consists of cases that attract at least one dissenting vote.

Chief Justice Roberts took no part in consideration of:

- *Morgan Stanley Capital Group v. Public Utility District No. 1* (06-1457)

Justice Alito took no part in consideration of:

- *Exxon v. Baker* (07-219)

Justice Breyer took no part in consideration of:

- *New Jersey v. Delaware* (Original, 134); *Stoneridge v. Scientific-Atlanta* (06-43); *Morgan Stanley Capital Group v. Public Utility District No. 1* (06-1457); and *Meacham v. Knolls Atomic Power Lab* (06-1505)

**SUMMARY INFORMATION REGARDING THE TERM****Status of Cases**

Granted but not argued	3	Argued but not decided	1	Decided	71
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**Decided Cases: Method of Disposition**

After argument and by signed opinion	67	After argument and without signed opinion	2	On the briefs	2
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**Splits in Decided Cases**

Unanimous	14	9-0	7	8-1 or 7-1	6	4-4	2
7-2/6-2/5-2	20	6-3 or 5-3	10	5-4 or 5-3	12		

**Treatment of the Lower Court**

Lower court reversed or vacated	46	Lower court affirmed	24	Lower court reversed or vacated in part and affirmed in	0	Other	1
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**OPINION AUTHORSHIP****Opinion Authorship: Total Number of Opinions**

Roberts	17	Stevens	23	Scalia	23	Kennedy	12	Souter	15
Thomas	24	Ginsburg	16	Breyer	21	Alito	18		

**Opinion Authorship: Majority Opinions (including Unanimous Opinions, excluding Pluralities)**

Per Curiam	2	Roberts	7	Stevens	6	Scalia	7	Kennedy	7
Souter	7	Thomas	7	Ginsburg	8	Breyer	8	Alito	7

**Opinion Authorship: Plurality or Plurality-Like Opinions**

Per Curiam	0	Roberts	1	Stevens	1	Scalia	1	Kennedy	0
Souter	0	Thomas	0	Ginsburg	0	Breyer	0	Alito	0

**Opinion Authorship: Concurring Opinions**

Roberts	5	Stevens	8	Scalia	10	Kennedy	1	Souter	4
Thomas	7	Ginsburg	3	Breyer	2	Alito	3		

**Opinion Authorship: Dissenting Opinions**

Roberts	4	Stevens	8	Scalia	5	Kennedy	4	Souter	4
Thomas	10	Ginsburg	5	Breyer	11	Alito	8		

**Opinion Authorship: Unanimous Majority Opinions**

Per Curiam	1	Roberts	4	Stevens	0	Scalia	0	Kennedy	0
Souter	1	Thomas	4	Ginsburg	3	Breyer	0	Alito	1

**DISSENTING VOTES****Dissenting Votes: Total Number**

Roberts	7	Stevens	17	Scalia	13	Kennedy	10	Souter	16
Thomas	17	Ginsburg	17	Breyer	14	Alito	12		

**Dissenting Votes: Number of Times the only Dissenter in a Case**

Roberts	0	Stevens	0	Scalia	0	Kennedy	0	Souter	0
Thomas	4	Ginsburg	1	Breyer	1	Alito	0		

**FIVE-TO-FOUR CASES**

<b>Number of cases (entirely 5-4 or 5-4 on a major issue)</b>	12
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<b>Five to Four Cases: Alignments</b>		<b>5-4 Cases:</b>
Roberts, Scalia, Kennedy, Thomas, Alito	4	Stoneridge (5-3, Breyer recused), Plains Commerce Bank Heller (DC Guns), Davis v. FEC
Stevens, Kennedy, Souter, Ginsburg, Breyer	4	Boumediene, Sprint v. APCC, Dada, Kennedy v. Louisiana
Roberts, Stevens, Souter, Thomas, Breyer	1	Kentucky Retirement
Roberts, Stevens, Scalia, Thomas, Alito	1	Irizarry
Roberts, Scalia, Thomas, Ginsburg, Alito	1	Ali v. BoP
Stevens, Scalia, Souter, Thomas, Ginsburg	1	Santos

<b>Five-to-Four Cases: Authorship of the Opinion</b>									
Roberts	1	Stevens	1	Scalia	2	Kennedy	4	Souter	0
Thomas	1	Ginsburg	0	Breyer	2	Alito	1		

<b>Five-to-Four Cases: Membership in the Majority</b>									
Roberts	7	Stevens	7	Scalia	7	Kennedy	8	Souter	6
Thomas	8	Ginsburg	6	Breyer	5	Alito	6		

**NOTES:**

Judgments made in line with **StatPack**

**Pluralities:** Santos, Crawford, Baze

**4-4 Per Curiam Opinions with no Voting Records Released:** Tom F., W.-Lambert

**Cases with Opinion(s) Concurring in Part and Dissenting in Part:**

*Counted as Concurrences :* Greenlaw, New Jersey v. Delaware, Dept. of Rev. of KY v. Davis

*Counted as Dissents :* Meacham, Metlife, Philippines

**5-3 Cases With One Recusal:**

*Counted as 5-4:* Stoneridge

*Counted as 6-3:* Exxon

**5-2 Cases With Two Recusals:**

*Counted as 7-2:* Morgan Stanley

## Circuit Scorecard - OT07

Court	Decided	Outstanding	# Aff'd	% Aff'd	# Rev'd	% Rev'd	# Aff'd in Part	% Aff'd in Part	% of SCOTUS Caseload
CA1	2	0	1	50.0%	1	50.0%	0	0.0%	2.8%
CA2*	7	0	5	71.4%	2	28.6%	0	0.0%	9.9%
CA3	0	0	0	0.0%	0	0.0%	0	0.0%	0.0%
CA4	3	0	1	33.3%	2	66.7%	0	0.0%	4.2%
CA5	5	0	1	20.0%	4	80.0%	0	0.0%	7.0%
CA6	3	0	1	33.3%	2	66.7%	0	0.0%	4.2%
CA7	6	0	5	83.3%	1	16.7%	0	0.0%	8.5%
CA8	4	0	1	25.0%	3	75.0%	0	0.0%	5.6%
CA9	10	0	2	20.0%	8	80.0%	0	0.0%	14.1%
CA10	2	0	0	0.0%	2	100.0%	0	0.0%	2.8%
CA11	6	0	2	33.3%	4	66.7%	0	0.0%	8.5%
CADC	5	0	2	40.0%	3	60.0%	0	0.0%	7.0%
CAFC	4	0	1	25.0%	3	75.0%	0	0.0%	5.6%
<i>Dist. Courts</i>	2	0	0	0.0%	2	100.0%	0	0.0%	2.8%
<i>State Courts</i>	11	0	2	18.2%	9	81.8%	0	0.0%	15.5%
<i>Original</i>	1	0	N/A	N/A	N/A	N/A	N/A	N/A	1.4%
<b>Total†</b>	<b>71</b>	<b>0</b>	<b>24</b>	<b>33.8%</b>	<b>46</b>	<b>64.8%</b>	<b>0</b>	<b>0.0%</b>	

Consolidated cases are now counted together. Substantive summary reversals or affirmances are also counted.

\* The Court affirmed the Second Circuit in both *Tom F.* and *Warner-Lambert* by a vote of 4-4 and wrote no opinion.

† This list does not include *Arave*, *Wal-Mart*, *Achim*, or *Klein & Co.*, which were dismissed.



## Opinion Authors by Sitting

<b>OCT</b>	<i>Author</i>	<u>Count</u>	
Wash Grange	CT	JGR	1
Tom F.	PC	JPS	1
Gall	JPS	AS	2
Kimbrough	RBG	AMK	1
Lopez-Torres	AS	DHS	1
Santos	AS	CT	1
Watson	DHS	RBG	1
Stoneridge	AMK	SB	0
Medellin	JGR	SAA	0

<b>NOV</b>	<i>Author</i>	<u>Count</u>	
Klein & Co.	dismiss	JGR	1
Ali v. BoP	CT	JPS	1
US v. Williams	AS	AS	1
Logan	RBG	AMK	1
Danforth	JPS	DHS	2
CSX v. Ga. Bd.	JGR	CT	1
Ky. v. Davis	DHS	RBG	1
John R. Sand	SB	SB	1
Holowiecki	AMK	SAA	0
Hall Street	DHS		

<b>DEC</b>	<i>Author</i>	<u>Count</u>	
LaRue	JPS	JGR	1
NJ v. Del.	RBG	JPS	1
Knight v. CIR	JGR	AS	1
Rowe	SB	AMK	1
Sprint/United	CT	DHS	0
Riegel	AS	CT	1
Snyder	SAA	RBG	1
Boumediene	AMK	SB	1
		SAA	1

<b>JAN</b>	<i>Author</i>	<u>Count</u>	
Baze	JGR	JGR	1
Dada	AMK	JPS	1
Gonzalez	AMK	AS	1
Boulware	DHS	AMK	2
Crawford	JPS	DHS	1
Ky. Retire	SB	CT	1
Moore	AS	RBG	1
Preston	RBG	SB	2
Rodriquez	SAA	SAA	2
Begay	SB		
Quanta	CT		
Meadwestvaco	SAA		

<b>FEB</b>	<i>Author</i>	<u>Count</u>	
Gomez-Perez	SAA	JGR	0
Morgan-Stanley	AS	JPS	0
CBOCS	SB	AS	1
Cuellar	CT	AMK	0
Warner-Lambert	PC	DHS	1
Allison Engine	SAA	CT	1
Exxon	DHS	RBG	0
		SB	1
		SAA	2

<b>MAR</b>	<i>Author</i>	<u>Count</u>	
Phillippines	AMK	JGR	2
Rothgery	DHS	JPS	2
Heller (Guns)	AS	AS	1
Richlin	SAA	AMK	1
Cham. Of Comm.	JPS	DHS	1
Burgess	RBG	CT	1
Clintwood	JGR	RBG	2
Riley	RBG	SB	1
Munaf	JGR	SAA	1
Ressam	JPS		
Edwards	SB		
Piccadilly	CT		

<b>APR</b>	<i>Author</i>	<u>Count</u>	
Plains Commerce	JGR	JGR	2
Phoenix Bond	CT	JPS	1
Greenlaw	RBG	AS	1
Irizarry	JPS	AMK	1
Kennedy v. La	AMK	DHS	1
Sturgell	RBG	CT	1
APCC Svcs.	SB	RBG	2
Enquist	JGR	SB	2
Davis v. FEC	SAA	SAA	1
Giles	AS		
MetLife	SB		
Meacham	DHS		

<b>Total</b>			
JGR	8	DHS	7
JPS	7	CT	7
AS	8	RBG	8
AMK	7	SB	8
		SAA	7

## The Court's Workload in OT07

Cases Granted or Probable Jurisdiction Noted:		72*
Dismissed Before Argument:	-	3
Original Cases Argued:	+	1
Number of Arguments:		70

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Argued Merits Cases Disposed of:		70
Signed Opinions:		67
Dismissals After Argument:		1
Affirmed by Equally Divided Vote:		2
Remaining Merits Opinions:		0

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Expected Merits Opinions in OT07 After Argument:		67
Summary Opinions from Non-Argued Cases:	+	2
Cases Affirmed by Equally Divided Vote:	+	2
Total Merits Decisions:		71









\* Does not include the four (out of six) cases granted on 1/22/08 that will be argued in OT08.

### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote
<i>Ali</i>	<i>Federal Bureau of Prisons</i>	1.22.08	Thomas										5 4
<i>Allen</i>	<i>Siebert</i>	11.5.07	Per Curiam										7 2
<i>Allison Engine</i>	<i>United States, ex rel Sanders</i>	6.9.08	Alito										9 0
<i>Baze</i>	<i>Rees</i>	4.16.08	Roberts										7 2
<i>Begay</i>	<i>United States</i>	4.16.08	Breyer										6 3
<i>Boulware</i>	<i>United States</i>	3.3.08	Souter										9 0
<i>Boumediene</i>	<i>Bush</i>	6.12.08	Kennedy										5 4
<i>Bridge</i>	<i>Phoenix Bond &amp; Immunity</i>	6.9.08	Thomas										9 0
<i>Burgess</i>	<i>United States</i>	4.16.08	Ginsburg										9 0






























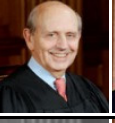








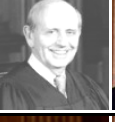












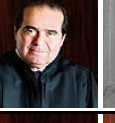






























### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote	
<i>CBOCS West</i>	<i>Humphries</i>	5.27.08	Breyer										7	2
<i>Chamber of Commerce</i>	<i>Brown</i>	6.19.08	Stevens										7	2
<i>Crawford</i>	<i>Marion City Election Board</i>	4.28.08	Stevens										6	3
<i>CSX</i>	<i>Georgia Board of Equalization</i>	12.4.07	Roberts										9	0
<i>Cuellar</i>	<i>United States</i>	6.2.08	Thomas										9	0
<i>Dada</i>	<i>Mukasey</i>	6.16.08	Kennedy										5	4
<i>Danforth</i>	<i>Minnesota</i>	2.20.08	Stevens										7	2
<i>Davis</i>	<i>FEC</i>	6.26.08	Alito										5	4
<i>Department of Revenue of Kentucky</i>	<i>Davis</i>	5.19.08	Souter										7	2












































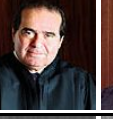







































### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote
<i>District of Columbia</i>	<i>Heller</i>	6.26.08	Scalia										5 4
<i>Engquist</i>	<i>Oregon Department of Agriculture</i>	6.9.08	Roberts										6 3
<i>Exxon</i>	<i>Baker</i>	6.25.08	Souter							Recused			5 3
<i>Federal Express</i>	<i>Holowecki</i>	2.27.08	Kennedy										7 2
<i>Florida Department of Revenue</i>	<i>Picadilly Cafeterias</i>	6.16.08	Thomas										7 2
<i>Gall</i>	<i>United States</i>	12.10.07	Stevens										7 2
<i>Giles</i>	<i>California</i>	6.25.08	Scalia										6 3
<i>Gomez-Perez</i>	<i>Potter</i>	5.27.08	Alito										6 3
<i>Gonzalez</i>	<i>United States</i>	5.12.08	Kennedy										8 1

























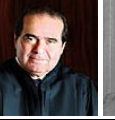








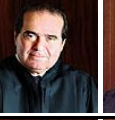


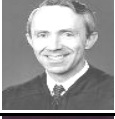








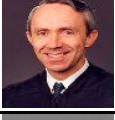

































### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote
<i>Greenlaw</i>	<i>United States</i>	6.23.08	Ginsburg										7 2
<i>Hall Street Associates</i>	<i>Mattel</i>	3.25.08	Souter										6 3
<i>Indiana</i>	<i>Edwards</i>	6.19.08	Breyer										7 2
<i>Irizarry</i>	<i>United States</i>	6.12.08	Stevens										5 4
<i>John R. Sand &amp; Gravel</i>	<i>United States</i>	1.8.08	Breyer										7 2
<i>Kennedy</i>	<i>Louisiana</i>	6.25.08	Kennedy										5 4
<i>Kentucky Retirement System</i>	<i>EEOC</i>	6.19.08	Breyer										5 4
<i>Kimbrough</i>	<i>United States</i>	12.10.07	Ginsburg										7 2
<i>Knight</i>	<i>Commissioner of Internal Revenue</i>	1.16.08	Roberts										9 0


































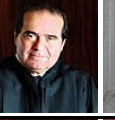











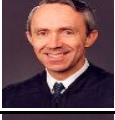



































### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote	
<i>Larue</i>	<i>DeWolff, Boberg &amp; Associates</i>	2.20.08	Stevens										9	0
<i>Logan</i>	<i>United States</i>	12.4.07	Ginsburg										9	0
<i>Meacham</i>	<i>Knolls Atomic Power Lab</i>	6.19.08	Souter				Recused						7	1
<i>Meadwestvaco</i>	<i>Illinois Department of Revenue</i>	4.15.08	Alito										9	0
<i>Medellin</i>	<i>Texas</i>	3.25.08	Roberts										6	3
<i>Metlife</i>	<i>Glenn</i>	6.19.08	Breyer										6	3
<i>Morgan Stanley Capital Group</i>	<i>Public Utility District No. 1</i>	6.26.08	Scalia				Recused		Recused				5	2
<i>Munaf</i>	<i>Geren</i>	6.12.08	Roberts										9	0
<i>New Jersey</i>	<i>Delaware</i>	3.31.08	Ginsburg				Recused						6	2






























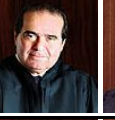


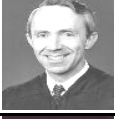







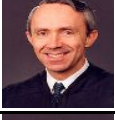















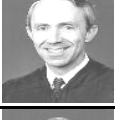












### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote
<i>New York Board of Elections</i>	<i>Lopez Torres</i>	1.16.08	Scalia										9 0
<i>Philippines</i>	<i>Pimentel</i>	6.12.08	Kennedy										7 2
<i>Plains Commerce Bank</i>	<i>Long Family Land &amp; Cattle</i>	6.25.08	Roberts										5 4
<i>Preston</i>	<i>Ferrer</i>	2.20.08	Ginsburg										8 1
<i>Quanta Computer</i>	<i>L.G. Electronics</i>	6.9.08	Thomas										9 0
<i>Richlin Security Service</i>	<i>Chertoff</i>	6.2.08	Alito										9 0
<i>Riegel</i>	<i>Medtronic</i>	2.20.08	Scalia										8 1
<i>Riley</i>	<i>Kennedy</i>	5.27.08	Ginsburg										7 2
<i>Rothgery</i>	<i>Gillespie County (Tex.)</i>	6.23.08	Souter										8 1



























































### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote	
<i>Rowe</i>	<i>New Hampshire Motor Transport Association</i>	2.20.08	Breyer										9	0
<i>Snyder</i>	<i>Louisiana</i>	3.19.08	Alito										7	2
<i>Sprint</i>	<i>APCC Services</i>	6.23.08	Breyer										5	4
<i>Sprint/United Management</i>	<i>Mendelsohn</i>	2.26.08	Thomas										9	0
<i>Stoneridge Investment</i>	<i>Scientific-Atlanta</i>	1.15.08	Kennedy				Recused						5	3
<i>Taylor</i>	<i>Sturgell</i>	6.12.08	Ginsburg										9	0
<i>United States</i>	<i>Santos</i>	6.2.08	Scalia										5	4
<i>United States</i>	<i>Rodriguez</i>	5.19.08	Alito										6	3
<i>United States</i>	<i>Williams</i>	5.19.08	Scalia										7	2



### Supreme Court voting lineups in October Term 2007

Petitioner	Respondent	Decided	Author	Ginsburg	Souter	Stevens	Breyer	Kennedy	Roberts	Alito	Scalia	Thomas	Vote	
<i>United States</i>	<i>Ressam</i>	5.19.08	Stevens										8	1
<i>United States</i>	<i>Clintwood Elkhorn Mining</i>	4.15.08	Roberts										9	0
<i>Virginia</i>	<i>Moore</i>	4.23.08	Scalia										9	0
<i>Washington State Grange</i>	<i>Washington Republican Party</i>	3.18.08	Thomas										7	2
<i>Watson</i>	<i>United States</i>	12.10.07	Souter										9	0
<i>Wright</i>	<i>Van Patten</i>	1.7.08	Per Curiam										9	0



# Supreme Court of the United States

## OT07 Case List



### A. October

Argued	Docket	Case Name	Court	Decided	Vote	Author	Holding
	06-1680	Allen v. Siebert	CA11	11/5/2007	7-2	PC	Reversed & Remanded; Because respondent's petition for state post conviction relief was rejected as untimely by the Alabama courts, it was not "properly filed" under 28 U.S.C. 2244(d), and he was thus not entitled to tolling of AEDPA's one-year statute of limitations.
10/1/2007	06-637	Board of Education of New York v. Tom F.	CA2	10/10/2007	4-4	PC	AEDC; NYC Board of Ed must reimburse parents for private tuition even if the child did not try out public school.
10/1/2007	06-730 / 06-713	Washington v. Washington Republican Party / Washington State Grange v. Washington Republican Party	CA9	3/18/2008	7-2	Thomas	Reversed; Washington initiative -- providing that candidates must be identified on the primary ballot by their self-designated party preference; that voters may vote for any candidate; and that the two top vote getters for each office, regardless of party preference, advance to the general election -- is facially constitutional.
10/2/2007	06-7949	Gall v. United States	CA8	12/10/2007	7-2	Stevens	Reversed; While the extent of the difference between a particular sentence and the recommended Guidelines range is relevant, courts of appeals must review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of discretion standard.
10/2/2007	06-6330	Kimbrough v. United States	CA4	12/10/2007	7-2	Ginsburg	Reversed & Remanded; A district judge must include the Guidelines range in the array of factors warranting consideration, but the judge may determine that a within-Guidelines sentence is "greater than necessary" to serve the objectives of sentencing.

10/3/2007	06-1005	United States v. Santos	CA7	6/2/2008	5-4	Scalia	Affirmed; The word "proceeds" in the federal money-laundering statute applies only to transactions involving criminal profits, not criminal receipts.
10/3/2007	06-766	NY Board of Elections v. Lopez Torres	CA2	1/16/2008	9-0	Scalia	Reversed; New York's system of choosing party nominees for the State Supreme Court, which requires selection at a convention of delegates chosen by party members in a primary election, does not violate the First Amendment.
10/9/2007	06-43	Stoneridge Investment v. Scientific-Atlanta	CA8	1/15/2008	5-3	Kennedy	Affirmed & Remanded; Section 10(b) of the Securities and Exchange Act of 1934 does not create a private right of action against defendants upon whose statements or representations investors did not rely.
10/9/2007	06-571	Watson v. United States	CA5	12/10/2007	9-0	Souter	Reversed & Remanded; A person does not "use" a firearm under 18 U. S. C. 924(c)(1)(A) when he receives it in trade for drugs.
10/10/2007	06-984	Medellin v. Texas	State (TX)	3/25/2008	6-3	Roberts	Affirmed; Neither an ICJ decision finding that violations of the Vienna Convention entitled Mexican nationals on death row to "review and reconsideration" of their convictions and sentences, nor a subsequent memorandum from President Bush that state courts would "give effect" to the decision, constitute directly enforceable federal law pre-empting state limitations on the filing of successive habeas petitions.
10/29/2007	06-1265	Klein & Co Futures v. Board of Trade of NY	CA2		N/A	N/A	Dismissed; Statutory standing under Commodities Exchange Act

## ***B. November***

<b>Argued</b>	<b>Docket</b>	<b>Case Name</b>	<b>Court</b>	<b>Decided</b>	<b>Vote</b>	<b>Author</b>	<b>Holding</b>
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10/29/2007	06-9130	Ali v. Fed. Bureau of Prisons	CA11	1/22/2008	5-4	Thomas	Affirmed; The sovereign immunity waiver exemption in the Federal Tort Claims Act covers all law enforcement officers, not only those enforcing customs or excise laws.
10/30/2007	06-6911	Logan v. United States	CA7	12/4/2007	9-0	Ginsburg	Affirmed; The exemption from enhanced sentencing for violent felons contained in 18 U.S.C. 921(a)(20) does not cover offenders who retained civil rights at all times, and whose legal status, post conviction, remained in all respects unaltered by any state dispensation.
10/30/2007	06-694	United States v. Williams	CA11	5/19/2008	7-2	Scalia	Reversed; The federal provision criminalizing the pandering or solicitation of child pornography is neither overbroad under the First Amendment nor overly vague under the Fourteenth Amendment.
10/31/2007	06-8273	Danforth v. Minnesota	State (MN)	2/20/2008	7-2	Stevens	Reversed & Remanded; The Court's opinion in Teague v. Lane (1989), which held that only "watershed" constitutional rules of criminal procedure may be applied retroactively on federal habeas review, does not constrain the authority of state courts to give broader effect to new rules of criminal procedure than the opinion requires.
11/5/2007	06-666	Department of Revenue of KY v. Davis	State (KY)	5/19/2008	7-2	Souter	Reversed & Remanded; State law exemption of interest on state-issued bonds -- but not out-of-state bonds -- from state income taxes is not barred by the Dormant Commerce Clause.
11/5/2007	06-1287	CSX v. GA Board of Equalization	CA11	12/4/2007	9-0	Roberts	Reversed; The Railroad Revitalization and Regulatory Reform Act of 1976 allows railroads to attempt to show that state methods for determining the value of railroad property result in a discriminatory determination of true market value.
11/6/2007	06-1322	Federal Express v. Holowecki	CA2	2/27/2008	7-2	Kennedy	Affirmed; The filings of a Form 283 "Intake Questionnaire" and accompanying detailed affidavit constituted the filing of a "charge" under the Age Discrimination in Employment Act, as it could be reasonably construed a request for the EEOC to take remedial action on the employee's behalf.

11/6/2007	06-1164	John R. Sand & Gravel v. United States	CAFC	1/8/2008	7-2	Breyer	Affirmed; The special statute of limitations governing the Court of Federal Claims requires sua sponte consideration of the timeliness of a lawsuit, the government's waiver of the issue notwithstanding.
11/7/2007	06-989	Hall Street Association v. Mattel	CA9	3/25/2008	6-3	Souter	Vacated & Remanded; The Federal Arbitration Act's grounds for prompt vacatur and modification of awards are exclusive for parties seeking expedited review under the Act.

### ***C. December***

<b>Argued</b>	<b>Docket</b>	<b>Case Name</b>	<b>Court</b>	<b>Decided</b>	<b>Vote</b>	<b>Author</b>	<b>Holding</b>
11/26/2007	06-856	Larue v. DeWolff, Boberg & Associates	CA4	2/20/2008	9-0	Stevens	Vacated & Remanded; Although ERISA §502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, it does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account.
11/27/2007	06-1286	Knight v. Commisioner of Internal Revenue	CA2	1/16/2008	9-0	Roberts	Affirmed; When incurred by a trust, investment advisory fees generally are subject to the 2% floor under 26 U.S.C. 67(e).
11/27/2007	134	New Jersey v. Delaware	Original	3/31/2008	6-2	Ginsburg	Decided; New Jersey and Delaware have overlapping authority to regulate riparian structures extending into the Delaware River.
11/28/2007	06-457	Rowe v. NH Motor Transport Association	CA1	2/20/2008	9-0	Breyer	Affirmed; The Federal Aviation Administration Authorization Act of 1994 pre-empts a Maine statute requiring tobacco shipper to use delivery companies that verify the age of the customer.

12/3/2007	06-1221	Sprint/United Mgmt v. Mendelsohn	CA10	2/26/2008	9-0	Thomas	Vacated & Remanded; The Court of Appeals erred in concluding the District Court applied a per se rule that evidence from employees of other supervisors is irrelevant in age discrimination claims, and thus should have remanded the case for clarification.
12/4/2007	06-10119	Snyder v. Louisiana	State (LA)	3/19/2008	7-2	Alito	Reversed & Remanded; The trial judge committed clear error in rejecting the defendant's objection that the government used a preemptory strike against a black juror, whom the prosecutor alleged might return a non-capital verdict to avoid a separate sentencing hearing, based on race.
12/4/2007	06-179	Riegel v. Medtronic	CA2	2/20/2008	8-1	Scalia	Affirmed; The pre-emption clause of the Medical Device Amendments of 1976 bar common-law claims challenging the safety or effectiveness of a medical device marketed in a form that received premarket approval from the FDA.
12/5/2007	06-1195 / 06-1196	Boumediene v. Bush / Al Odah v. United States	CADC	6/12/2008	5-4	Kennedy	Reversed & Remanded; Aliens detained at Guantanamo Bay and deemed "enemy combatants" by the U.S. military retain the constitutional privilege of habeas corpus, and alternative procedures outlined in the Detainee Treatment Act are not an adequate and effective substitute for the writ.

### *D. January*

<b>Argued</b>	<b>Docket</b>	<b>Case Name</b>	<b>Court</b>	<b>Decided</b>	<b>Vote</b>	<b>Author</b>	<b>Holding</b>
1/7/2008	07-5439	Baze v. Rees	State (KY)	4/16/2008	7-2	Roberts	Affirmed; State's lethal injection protocol does not violate the Eighth Amendment because it does not create a substantial risk of wanton and unnecessary infliction of pain, torture, or lingering death.
1/7/2008	06-1181	Dada v. Mukasey	CA5	6/16/2008	5-4	Kennedy	Reversed & Remanded; Aliens must be permitted an opportunity to unilaterally withdraw a motion for voluntary departure, provided the request is made before expiration of the departure period, without regard to the underlying merits of a concurrent motion to reopen.

1/8/2008	06-1509	Boulware v. United States	CA9	3/3/2008	9-0	Souter	Vacated & Remanded; A distributee accused of criminal tax evasion may claim return-of-capital treatment without producing evidence that, when the distribution occurred, either he or the corporation intended a return of capital.
1/8/2008	06-11612	Gonzalez v. United States	CA5	5/12/2008	8-1	Kennedy	Affirmed; Under the Federal Magistrates Act, express consent by counsel suffices to permit a magistrate judge to preside over jury selection in a felony trial.
1/9/2008	07-21	Crawford v. Marion City Election Board	CA7	4/28/2008	6-3	Stevens	Affirmed; Indiana law requiring voters to present a government-issued photo identification when voting in person is Constitutional.
1/9/2008	07-25	Indiana Democratic Party v. Rokita	CA7	4/28/2008	6-3	Stevens	Affirmed; Indiana law requiring voters to present a government-issued photo identification when voting in person is Constitutional.
1/9/2008	06-1037	Kentucky Retirement System v. EEOC	CA6	6/19/2008	5-4	Breyer	Reversed; Kentucky's pension system, which treats more generously some retired workers who became disabled before rather than after retirement agent, does not violate the Age Discrimination in Employment Act.
1/14/2008	06-1463	Preston v. Ferrer	State (CA)	2/20/2008	8-1	Ginsburg	Reversed & Remanded; When parties agree to arbitrate all questions arising under a contract, the Federal Arbitration Act (FAA) supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative.
1/14/2008	06-1082	Virginia v. Moore	State (VA)	4/23/2008	9-0	Scalia	Reversed & Remanded; The police did not violate the Fourth Amendment when they made an arrest that was based on probable cause but prohibited by state law, or when they performed a search incident to the arrest.



1/15/2008	06-1646	United States v. Rodriguez	CA9	5/19/2008	6-3	Alito	Reversed & Remanded; The “maximum term of imprisonment . . . prescribed by law” for the respondent's state drug convictions was the 10-year maximum set by the applicable recidivist provision.
1/15/2008	06-11543	Begay v. United States	CA10	4/16/2008	6-3	Breyer	Reversed & Remanded; Convictions under New Mexico's DUI statute do not constitute "violent felonies" under the Armed Career Criminal Act.
1/16/2008	06-1413	Meadwestvaco v. Illinois Department of Revenue	State (IL)	4/15/2008	9-0	Alito	Vacated & Remanded; Illinois state courts erred in considering whether Lexis served an "operational purpose" in Mead's business after determining that Lexis and Mead were not unitary.
1/16/2008	06-937	Quanta Computer v. L.G. Electronics	CAFC	6/9/2008	9-0	Thomas	Reversed; Because the doctrine of patent exhaustion applies to method patents, and because the license agreement at issue authorized the sale of components that substantially embody the patents in suit, the exhaustion doctrine prevents the respondent from further asserting its patent rights with respect to the patents substantially embodied by those products.

### ***E. February***

<b>Argued</b>	<b>Docket</b>	<b>Case Name</b>	<b>Court</b>	<b>Decided</b>	<b>Vote</b>	<b>Author</b>	<b>Holding</b>
2/19/2008	06-1321	Gomez-Perez v. Potter	CA1	5/27/2008	6-3	Alito	Reversed & Remanded; The Age Discrimination in Employment Act prohibits retaliation against federal employees who complain of age discrimination.
2/19/2008	06-1457	Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1	CA9	6/26/2008	5-2	Scalia	Affirmed & Remanded; The Federal Energy Regulatory Commission (FERC) was required to apply the Mobile Sierra presumption in determining whether to modify electricity contracts reached during the 2000-2001 Western energy crisis.

2/20/2008	06-1431	CBOCS West v. Humphries	CA7	5/27/2008	7-2	Breyer	Affirmed; Section 42 U.S.C. 1981 permits racial retaliation claims.
2/25/2008	06-1498	Warner-Lambert v. Kent	CA2	3/3/2008	4-4	PC	AEDC; A lawsuit may proceed against the the maker of a diabetes drug, Rezulin, even though it was initially FDA approved.
2/25/2008	06-1456	Cuellar v. United States	CA5	6/2/2008	9-0	Thomas	Reversed; A conviction under the transportation of the federal money laundering statute requires proof that the transportation's purpose -- not merely its effect -- was to conceal or disguise the funds' nature, location, source, ownership, or control.
2/26/2008	07-214	Allison Engine v. United States, ex rel Sanders	CA6	3/3/2008	4-4	PC	AEDC; Under the False Claims Act, a plaintiff must prove the defendant intended a false statement be material to the Government's decision to pay or approve the false claim, not merely that the false statement's use resulted in payment or approval of the claim or that Government money was used to pay the false or fraudulent claim.
2/27/2008	07-219	Exxon v. Baker	CA9	6/25/2008	5-3	Souter	Vacated & Remanded; A \$2.5 billion punitive damages award resulting from the Exxon Valdez oil spill is excessive as a matter of maritime common law, which permits no more than a 1-to-1 ratio with compensatory damages.

## ***F. March***

<b>Argued</b>	<b>Docket</b>	<b>Case Name</b>	<b>Court</b>	<b>Decided</b>	<b>Vote</b>	<b>Author</b>	<b>Holding</b>
3/17/2008	07-440	Rothgery v. Gillespie County (Tex.)	CA5	6/23/2008	8-1	Souter	Vacated & Remanded; A criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel, regardless of whether a prosecutor is aware of or involved in the proceeding.

3/17/2008	06-1204	The Republic of the Philippines v. Pimentel	CA9	6/12/2008	7-2	Kennedy	Reversed & Remanded; Federal Rule of Civil Procedure 19 requires dismissal of an interpleader action initiated to settle ownership of some \$35 million allegedly wrongfully taken by former Philippine President Ferdinand Marcos.
3/18/2008	07-290	District of Columbia v. Heller	CADC	6/26/2008	5-4	Scalia	Affirmed; The Second Amendment protects an individual right to possess a firearm for traditionally lawful purposes, such as self-defense within the home.
3/19/2008	06-939	Chamber of Commerce v. Brown	CA9	6/19/2008	7-2	Stevens	Reversed & Remanded; National Labor Relations Act preempts a California law against employers' use of state money to influence employees' views on unions.
3/19/2008	06-1717	Richlin Security Service v. Chertoff	CAFC	6/2/2008	9-0	Alito	Reversed & Remanded; A prevailing party that satisfies the other requirements of the Equal Access to Justice Act may recover its paralegal fees, not only attorneys' fees, from the Government at prevailing market rates.
3/24/2008	07-308	United States v. Clintwood Elkhorn Mining	CAFC	4/15/2008	9-0	Roberts	Reversed; The plain language of 26 U. S. C. 7422(a) and 6511 requires a taxpayer seeking a refund for a tax assessed in violation of the Export Clause, just as for any other unlawfully assessed tax, to file a timely administrative refund claim before bringing suit against the Government.
3/24/2008	07-77	Riley v. Kennedy	M.D. Ala.	5/27/2008	7-2	Ginsburg	Reversed & Remanded; Under Section 5 of the Voting Rights Act, a precleared Alabama election law later struck down by the state Supreme Court never gained "force or effect," so the state's reversion to the prior scheme did not constitute a "change" requiring fresh preclearance.
3/24/2008	06-11429	Burgess v. United States	CA4	4/16/2008	9-0	Ginsburg	Affirmed; A state drug offense punishable by more than one year qualifies as a "felony drug offense," even if state law classifies the offense as a misdemeanor.

3/25/2008	07-455	United States v. Ressam	CA9	5/19/2008	8-1	Stevens	Reversed; The federal provision criminalizing the carrying of an explosive "during" the commission of a felony only requires a defendant to carry the explosives at the time of the felony, not necessarily "in relation to" the felony.
3/25/2008	06-1666 / 07 - 394	Munaf v. Geren / Geren v. Omar	CADC	6/12/2008	9-0	Roberts	Vacated & Remanded; While the federal habeas statute extends to U.S. citizens held overseas by U.S. forces operating subject to a U.S. chain of command, federal district courts may not exercise their habeas jurisdiction to enjoin the U.S. from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that sovereign for criminal prosecution.
3/26/2008	07-312	Florida Department of Revenue v. Picadilly Cafeterias	CA11	6/16/2008	7-2	Thomas	Reversed & Remanded; The stamp-tax exemption of 11 USC 1146(a) does not apply to transfers made before a plan is confirmed under Chapter 11.
3/26/2008	07-208	Indiana v. Edwards	State (IN)	6/19/2008	7-2	Breyer	Affirmed; States may require defendants found competent enough to stand trial, but whose mental illnesses may prevent them from representing themselves, to be represented by counsel.

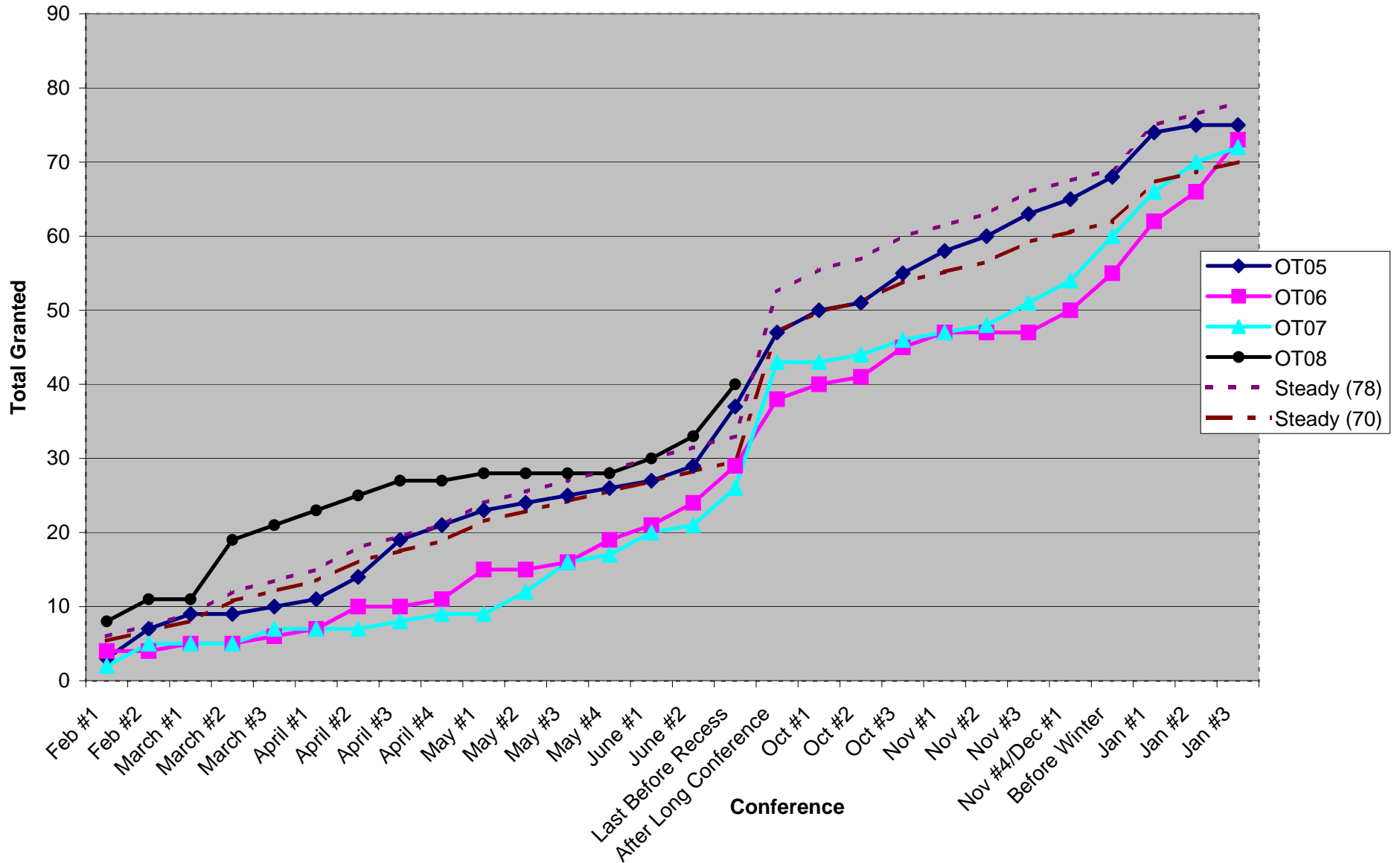
## ***G. April***

<b>Argued</b>	<b>Docket</b>	<b>Case Name</b>	<b>Court</b>	<b>Decided</b>	<b>Vote</b>	<b>Author</b>	<b>Holding</b>
4/14/2008	07-210	Bridge v. Phoenix Bond & Immunity	CA7	6/9/2008	9-0	Thomas	Affirmed; A plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations.
4/14/2008	07-411	Plains Commerce Bank. v. Long Island Family Land & Cattle	CA8	6/25/2008	5-4	Roberts	Reversed; The Tribal Court did not have jurisdiction to adjudicate a discrimination claim concerning a non-Indian Bank's sale of its fee land.

4/15/2008	06-7517	Irizarry v. United States	CA11	6/12/2008	5-4	Stevens	Affirmed; Federal Rule of Criminal Procedure 32(h), which requires courts to notify defendants when it contemplates departures from the applicable sentencing range, does not apply to mere variances from the recommended guidelines range.
4/15/2008	07-330	Greenlaw v. United States	CA8	6/23/2008	7-2	Ginsberg	Vacated & Remanded; Absent an appeal or cross-appeal by the government, courts of appeal cannot on their own initiative order an increase in a defendant's sentence.
4/16/2008	07-343	Kennedy v. Louisiana	State (LA)	6/25/2008	5-4	Kennedy	Reversed & Remanded; Under the Eighth Amendment, states may not impose the death penalty for the rape of a child where the crime did not result, and was not intended to result, in the victim's death.
4/16/2008	07-371	Taylor v. Sturgell	CADC	6/12/2008	9-0	Ginsburg	Vacated & Remanded; Federal courts may not bind nonparties by a judgment on the theory that they were "virtually represented" by a similar previous party.
4/21/2008	07-474	Engquist v. Oregon Department of Agriculture	CA9	6/9/2008	6-3	Roberts	Affirmed; The class-of-one theory of equal protection -- under the which the petitioner alleged she was fired simply for arbitrary, vindictive, and malicious reasons -- does not apply in the public employment context.
4/21/2008	07-552	Sprint v. APCC Services	CADC	6/23/2008	5-4	Breyer	Affirmed; An assignee of a legal claim for money owed has standing to pursue that claim in federal court, even when the assignee has promised to remit the proceeds of the litigation to the assignor.
4/22/2008	07-6053	Giles v. California	State (CA)	6/25/2008	6-3	Scalia	Vacated & Remanded; Because such an exception was not established at the time of the founding, a criminal defendant does not "forfeit" his right to cross-examine a witness against him whom he killed in advance of trial.

4/22/2008	07-320	Davis v. FEC	DDC	6/26/2008	5-4	Alito	Reversed & Remanded; Both the contribution limits and the disclosure requirements of the so-called "Millionaires' Amendment" to the Bipartisan Campaign Reform Act of 2002 violate the First Amendment.
4/23/2008	06-1505	Meacham v. Knolls Atomic Power Lab	CA2	6/19/2008	7-1	Souter	Vacated & Remanded; When an employer engages in business practices that place a disproportionate burden on older workers, the employer bears the burden of persuasion of showing that its action was based on reasonable factors other than age.
4/23/2008	06-923	Metlife v. Glenn	CA6	6/19/2008	6-3	Breyer	Affirmed; A company that both administers and funds a benefit plan operates under a conflict of interest that must be considered as a factor in a court's review of claim denials.

## Granted Cases by Conference



Notes: In OT04, the Court added an additional Conference at the end of June, on the last Monday of the Term, to consider relists. Thus, the jump of 8 cases reflects the grant of 5 cases in Conference on June 23, 2005 and an additional 3 on June 27, 2005.