ILLUSTRATING SWING VOTES II: UNITED STATES SUPREME COURT

NICHOLAS L. GEORGAKOPOULOS AND FRANK SULLIVAN, JR.*

I. INTRODUCTION

Can we see how different the 5–4 majorities of the United States Supreme Court are? What is the number of swing votes connecting them and their relative importance?

In a previous article in this journal, we developed a method for displaying the swing votes of a supreme court, the (tight) majorities they connect, and the opinions those majorities issue.[1]

We apply our method to compositions of the United States Supreme Court after 1946 that have over 50 tightly split opinions: the compositions of the court defined by its junior justice being Vinson, Stewart, Powell, Stevens, O'Connor, Kennedy, Breyer, Alito, and Kagan.

This look at 5–4 coalitions and swing votes primarily reveals an ebb and flow of a tide of a judicial practice we call *fluidity*, which corresponds to the flexibility or variability with which justices of a supreme court form tight coalitions. The graphs allow us to observe the number of coalitions, their opinions, and swing votes. Fluidity reaches its high point during the composition defined by Stevens as the junior justice, i.e. from 1975 to 1981. Its adjacent compositions, Powell's (1972–75) and O'Connor's (1981–86), are similar. However, the recent compositions, defined by the junior justices being Alito (2006–09) and Kagan (2010–16), differ. Those appear similar to the early ones, defined by Vinson (1946–49) and Stewart (1958–62). Whereas we focus on the graphical representation of 5–4 coalitions and swing votes, several additional phenomena follow the same pattern.

The graphs of the compositions that exhibit high fluidity are different in having more coalitions (9 to 11), linked by more swing votes (in the teens), with those coalitions being closer to proportional in the number of opinions that they issue. The graphs of the coalitions with low fluidity display few coalitions (3 or 4), few swing votes (2 or 3), and even fewer, usually two, coalitions doing the lion's share of issuing opinions. Additionally, the index of fluidity follows that pattern, reaching 0.57 for the most fluid composition of Stevens but being around

---

* Nicholas Georgakopoulos is the Harold R. Woodard Professor of Law, Indiana University Robert H. McKinney School of Law, Indianapolis. Frank Sullivan, Jr. is the Indiana University Bicentennial Professor at the same institution and was an Associate Justice of the Indiana Supreme Court from 1993 until 2012. We wish to thank Jim Chen, Kent Greenfield, Shi-Ling Hsu, Jonathan Nash, Richard Posner as well as participants in the 2016 Midwestern Law and Economics annual meeting and the 2016 Constitution Day conference at McKinney Law School for their comments and acknowledge the excellent research assistance of Allan Griffey, Henry Robison, and John Millikan.

1. Nicholas Georgakopoulos & Frank Sullivan, Jr., *Illustrating Swing Votes I: Indiana Supreme Court*, 53 IND. L. REV. 95 (2020).

0.30 for the least fluid ones.[2] The issuance of opinions with a political slant opposite to the majority of opinions of that coalition, what we call *contraslanted* opinions, again has a high during the fluid compositions (from 2.5 percent to 5 percent compared to 0 percent to 2 percent in the less fluid ones). We speculate about the causes of this phenomenon: how it might relate to the composition of the court by the justices' appointing party but fails to do so.

Secondarily, this analysis reveals the limitations of attempts to fit supreme court adjudication in locational models, especially the median voter theorem. The strongest discrepancies with the median voter theorem are that (1) often the most active swing vote is not the justice who according to the ideological rankings is the median; (2) justices far from the median can be the second most active swing vote; and (3) the busiest swing vote changes without a change of the median justice. Moreover, even a multi-dimensional locational model cannot remain accurate because adjudication makes new factors become important, what from the perspective of locational models would correspond to the creation of new dimensions. We offer the *Apprendi* line of cases and the uniqueness of its coalition as an example of a creation of a new dimension that could not have been anticipated.[3]

For the related literature, we refer to our prior article.

Our approach stands in contrast to attempts to identify a single justice as the swing vote to the extent that we reveal all the swing votes of each court.[4] Notably, our approach reveals Scalia and Thomas to be significant swing votes despite not being in the ideological middle of the court.

II. THE DATA

We use the vote-centered database of the SupremeCourtDatabase.org to identify all 5–4 opinions and ignore opinions where less than nine justices voted.[5] The version of the database that we used covers the years 1946 to 2016. The database codes each vote on each issue in each opinion.[6] We ignore the issues that

---

2. Frank Sullivan, Jr., Nicholas L. Georgakopoulos, & Dimitri Georgakopoulos, *The Fluidity of Judicial Coalitions: A Surprising Look at Coalitions within the Supreme Courts of the United States and Indiana*, JUDICATURE, Autumn 2016, at 34, 36 (developing the index of fluidity).

3. *See* text accompanying notes 22–23 and Appendix A, text accompanying notes 27–37.

4. The two illustrations of ideological positions of justices that stand out are from Martin & Quinn and Bailey, with additional such graphics in other publications by Bailey. *See* Andrew D. Martin & Kevin M. Quinn, *Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999*, 10 POL. ANAL. 134 (2002); Michael A. Bailey, *Measuring Court Preferences, 1950–2011: Agendas, Polarity and Heterogeneity* (Working Paper, August 2012). *See also* Wikipedia, *Ideological Leanings of U.S. Supreme Court Justices* (as of Sept. 28, 2017) [https://perma.cc/7LCZ-K6HM] [hereinafter *Ideological Leanings*].

5. *The Supreme Court Database*, WASH. U. L. (Sept. 13, 2019), supremecourtdatabase.org/data.php [https://perma.cc/ZN48-4BWN].

6. *Id.* The supremecourtdatabase.org codes the votes of each justice on each issue of each dispute with a value from 1 to 8. A value of 1 means the justice voted with the majority, 2 that the

produced other than 5–4 splits. Thus, we produce a single record for each opinion. We make the resulting data available online at https://mckinneylaw.iu.edu/ilr/pdf/vol53p135.pdf and produce tables of the opinions and their summaries in Appendix B. The database codes each outcome as liberal or conservative. We verify the database's coding and rarely disagree with it.

III. THE GRAPHS

We illustrate the swing votes for the court's compositions from 1946 to 2016 that produced more than fifty tightly split opinions. Those turn out to be its compositions defined by the junior justice being Vinson, Stewart, Powell,[7] Stevens, O'Connor, Kennedy, Breyer, Alito, and Kagan. Figures 1 through 9 are the results. Because the data of the United States Supreme Court do not allow as deterministic a construction as did the Indiana data in our previous article, our arrangement of the majorities is not fully objective.

---

justice dissented, 3 that the justice concurred, 4 indicates a special concurrence, 5 indicates the judgement of the court, 6 indicates dissent from a denial of certiorari or dissent from summary affirmation of an appeal, 7 indicates a jurisdictional dissent and 8 indicates an equally divided vote. We treat values of 1, 3, 4, and 5 as votes for the majority and values of 2, 6, and 7 as dissenting votes. We only count opinions, not disputes; i.e., when a single opinion adjudicates more disputes, we only count it once.

7. Whereas Rehnquist was appointed on the same day as Powell and is listed as the junior justice by the Supreme Court, we name this composition of the court after Powell to avoid confusion with popular usage of the phrase "Rehnquist court" to refer to the period of Rehnquist as the Chief Justice, which comprises several different compositions of the court.

Jr. Justice	Date Appointed	No of 5–4 Ops.	Earliest 5–4 op.	Latest 5–4 op.	Nominating President (Party)
Vinson	**6/24/1946**	**83**	**11/1946**	**6/1949**	**Truman (D)**
Clark & Minton	8/24/1949 10/12/1949	34	6/1950	5/1953	Truman (D)
Warren	10/05/1953	9	11/1953	4/1954	Eisenhower (R)
Harlan	3/28/1955	18	6/1955	10/1956	Eisenhower (R)
Brennan	10/15/1956	6	12/1956	2/1957	Eisenhower (R)
Whittaker	3/25/1957	39	4/1957	6/1958	Eisenhower (R)
Stewart	**10/14/1958**	**84**	**12/1958**	**4/1962**	**Eisenhower (R)**
White & Goldberg	4/16/1962 10/1/1962	41	11/1962	6/1965	Kennedy (D)
Fortas	10/4/1965	41	12/1965	6/1967	Johnson (D)
Marshall	10/2/1967	12	6/1968	6/1969	Johnson (D)
Burger	6/23/1969	4	12/1969	12/1969	Nixon (R)
Blackmun	6/9/1970	31	12/1970	6/1971	Nixon (R)
Rehnquist & Powell	**1/7/1972 (both)**	**100**	**2/1972**	**6/1975**	**Nixon (R)**
Stevens	**12/19/1975**	**128**	**4/1976**	**6/1981**	**Ford (R)**
O'Connor	**9/25/1981**	**148**	**12/1981**	**7/1986**	**Reagan (R)**
Scalia	9/26/1986	42	11/1986	6/1987	Reagan (R)
Kennedy	**2/18/1988**	**89**	**4/1988**	**6/1990**	**Reagan (R)**
Souter	10/9/1990	22	1/1991	6/1991	Bush I (R)
Thomas	10/23/1991	31	4/1992	6/1993	Bush I (R)
Ginsburg	8/10/1993	13	12/1993	6/1994	Clinton (D)
Breyer	**8/03/1994**	**191**	**11/1994**	**6/2005**	**Clinton (D)**
Roberts	9/29/2005	2	1/2006	1/2006	Bush II (R)
Alito	**1/31/2006**	**67**	**5/2006**	**9/2009**	**Bush II (R)**
Sotomayor	8/8/2009	17	1/2010	6/2010	Obama (D)
Kagan	**8/7/2010**	**78**	**3/2011**	**6/2015**	**Obama (D)**

Table 1. Appointment and duration data for compositions as defined by junior justices.[8]

Short tenures (of compositions that do not produce enough tightly split opinions for a meaningful graph) separate most compositions. However, the

8. When the table identifies two justices as the junior justices, they either are appointed on the same day, as are Rehnquist and Powell, or no 5–4 opinions appear under the first appointed justice's composition, as is the case with Clark and White.

compositions of Powell, Stevens, and O'Connor are in an uninterrupted sequence. This becomes clearer in Table 1.

Table 1 lists new justices by order of appointment over the period we study, 1946–2016. Each appointed justice, as the junior justice, defines a new composition of the court. The table has the date of appointment; the number of tightly split opinions; the dates of the earliest and the latest split opinions; and the nominating President and his party. In boldface are the rows of the justices who define compositions that issue enough, namely fifty, tightly split opinions for a graph.

We display each opinion as a curved triangle, like a very thin pizza slice, springing from the specific point that corresponds to its majority or, to restate, as a thick radius of a circle with its center at that majority. The result of several such triangles springing from a single majority is an angle defining a fraction of a circle with short lines separating the opinions of that majority. We set the largest such fraction of a circle to be slightly (5 percent) less than a semicircle in each figure. The result is that the size of the slice that corresponds to an opinion in each figure varies, depending on how many opinions the most prolific majority authored. For example, the slice corresponding to each opinion is much smaller in the Breyer court, where the most prolific majority issued eighty-six opinions,[9] compared to the Stevens court, where the most prolific majority issued 19 opinions.[10] The legend of each figure has the total number of 5–4 opinions being illustrated and the output of the most prolific majority. Appendix B lists the 5–4 opinions by majority, but again, only majorities authoring more than two opinions.

We also display the slice corresponding to each opinion as either in hexagonal shading or dark grey (blue or red in the online version), depending on whether its political slant is liberal or conservative. Our coding mostly agrees with that of SupremeCourtDatabase.org. The few disagreements are due to placing emphasis on different levels of the outcome. We usually focus on the outcome that is most material to the parties, but that may differ from the nature of the outcome on a more abstract level. For example, a liberal outcome for the parties, such as the upholding of a local tax, may be the result of a conservative policy of a more abstract level, such as the principle of delegating more powers to state and local authorities. Appendix B, which lists the opinions, their summaries, and their political slant, indicates when we disagreed with the database's coding.

The figures let us see the consistent members of the conservative and the liberal coalitions, the swing votes, and which of the swing votes are dominant in the sense of connecting majorities that issue a disproportionately great number of opinions. Also interesting is the changing number of coalitions into which the court splits. We discuss each court composition in turn. An interactive unified graphic with popups of the opinions and their summaries is available on the

9. *See infra* Figure 7.

10. *See infra* Figure 4.

web.[11]

A. The Vinson Composition (1946–49)

The first composition, defined by the appointment of Chief Justice Vinson as the junior justice on June 24, 1946, by Democratic President Truman, consists entirely of justices appointed by Democratic presidents, two by President Truman (the other Truman appointee was Burton, a Republican) and all of the others by President F.D. Roosevelt. However, tightly split decisions still arise. The conservative side has as its core Vinson with Burton and Reed. The liberal side has as its core Black, Douglas, and Murphy.

The graph has three coalitions issuing 100 percent liberal opinions: at the eight o'clock, nine o'clock, and ten o'clock positions. By the short lines along the outside of each arc separating the opinions, we see those issue, respectively, three, seven, and four opinions. On the conservative side, the graph displays two active coalitions, at two o'clock issuing three opinions and at three o'clock issuing thirty-three opinions. The number of opinions of the most prolific coalition drives the size of the arc that corresponds to each opinion. The most prolific coalition turns out to always be a conservative one and is usually at three o'clock. Its output is set to be 5 percent less than a semicircle. The unoccupied dots in the circle correspond to majorities that never formed or only formed to issue one or two opinions, which we do not display. The total number of points in the circle, 126, corresponds to the number of five-member majorities that are possible in a nine-member court. The lines connecting the majorities, akin to diagonals of the circle of dots, are the swing votes. Only one vote changes when two majorities are connected by a line. The line bears the name of the swing vote. The main swing vote is the one departing the most prolific coalition to form the most prolific one connected to that one, which is usually the second most prolific coalition overall (but not in the Powell and Stevens graphs, where that distinction goes to a second conservative coalition). Here the main swing vote is Frankfurter.

Compared to the compositions defined by Powell and later, the proportion of majorities that do not appear on the graph is high for the Vinson composition (as it is for the next composition, defined by Stewart). The swing vote away from the main conservative majority that produces the majority that authors the greatest number of liberal opinions is that of Frankfurter. Despite that Frankfurter is the most active swing vote, the ideological ranking of the justices does not place Frankfurter as the median justice (except for in the last term of the Vinson composition). Rather, from the perspective of ideology the median justice is Reed. According to the ideological ranking, Frankfurter begins Vinson's term as the second most conservative member of the court and swings significantly toward a more liberal rating to switch to the liberal side; he passes from the

---

11. The graphic of all compositions with popups of the opinions and parenthetical descriptions is at https://mckinneylaw.iu.edu/instructors/Georgakopoulos/Prof/VisgSCtSwings-PopUp/VisgSCtSwings-CombinedPopupOnly.html [https://perma.cc/JT2X-SDX3]. It is also accessible from nicholasgeorgakopoulos.org, under "Scholarship" and the entry corresponding to this article.

median position during the last term of the Vinson composition. Upon the appointment of Clark and Minton, Frankfurter becomes the seventh most conservative justice, i.e., the third most liberal, after Douglas and Black (albeit with a difference).

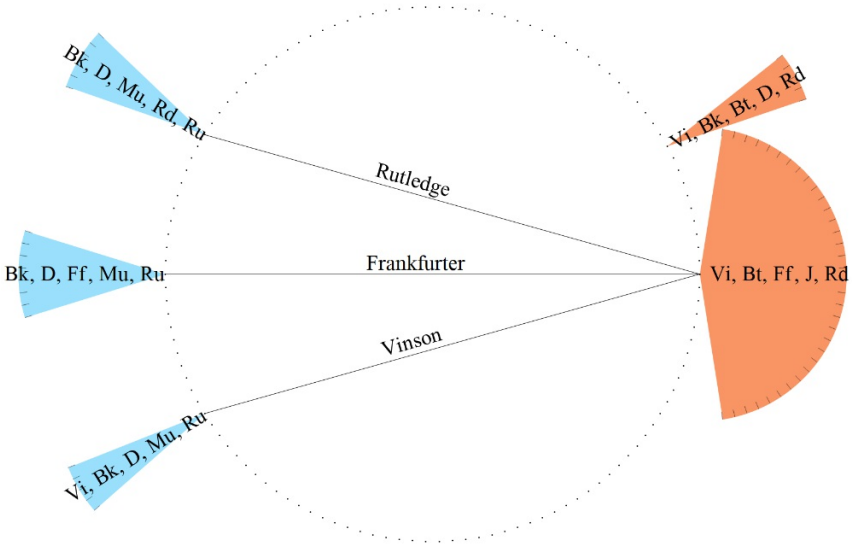

Figure 1. The swing votes of the 5–4 majorities of the Vinson composition of C.J. Vinson (Vi) and Black (Bk), Burton (Bt), Douglas (D), Frankfurter (Ff), Jackson (J), Murphy (Mu), Reed (Rd), and Rutledge (Ru), all Democratic appointees, as they result from fifty-three opinions dating from November 18, 1946, to June 27, 1949, that were issued by majorities issuing more than two opinions and where the most prolific majority authors thirty-three opinions (62 percent of the opinions appearing in the graph).

The second swing vote is that of Rutledge, to a majority that authors five opinions. According to the ideological rankings, Rutledge begins the Vinson composition as the sixth most conservative justice (the fourth most liberal after Black, Murphy, and Douglas) and over its three terms swings to become its most liberal member. The importance of Rutledge's swing vote given how far the ideological rankings place him from the median is particularly interesting. An analogous phenomenon appears during the Alito and Kagan compositions, where the justice rated as second most conservative (Scalia) and the one rated as the most conservative (Thomas) are, respectively, the second most active swing votes. A single-dimensional approach based on the median voter and the ideological ranking of the justices cannot explain how a justice who is not near the median can have an impactful role as a swing vote.

The main (conservative) coalition also experiences the swing vote of Vinson, to form a majority that authors four opinions. Vinson's ideological ranking places him near the median. Therefore, the importance of Vinson's swing vote is not surprising from the perspective of an approach that rests on the median voter.

B. The Stewart Composition (1958–62)

Several judicial departures and appointments separate the Vinson from the Stewart composition, the next composition that issues enough 5–4 opinions for a meaningful graph. The justices in the Vinson composition who left the court prior to Stewart's appointment are Burton, Jackson, Murphy, Reed, Rutledge, and Vinson. The continuing justices are Black, Douglas, and Frankfurter. The new justices are Brennan, Clark, Harlan, Stewart, Warren, and Whittaker. Clark was appointed by Democratic President Truman. All other new justices are Republican President Eisenhower's appointees, giving the court a Republican-appointed majority, a feature that remains in all subsequent compositions that we study. The Stewart court, however, is also tightly split by appointment, with just five of its members being Republican appointees. This phenomenon will only reappear during the Kagan composition, the last one we study.

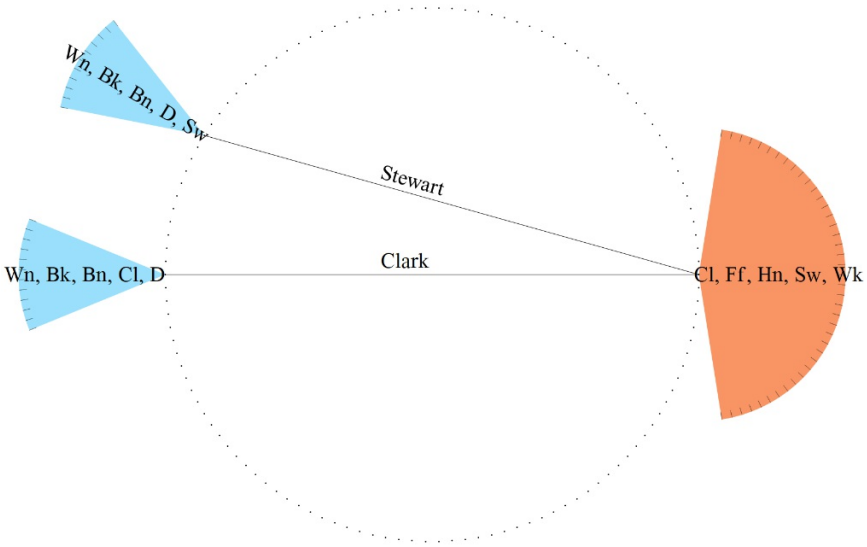

Figure 2. The swing votes of the 5–4 majorities of the Stewart composition of C.J. Warren (Wn) and Black (Bk), Brennan (Bn), Clark (Cl), Douglas (D), Frankfurter (Ff), Harlan (Hn), Stewart (Sw), and Whittaker (Wk)—five Republican appointees, four Democratic—as they result from sixty-one opinions dating from December 8, 1958, to April 19, 1962, that were issued by majorities issuing more than two opinions and where the most prolific majority authors forty opinions (66 percent of the opinions appearing in the graph).

The Stewart composition also presents an interesting and unique problem in the categorization of its fifteen opinions related to "un-American" committee activity.[12] The court splits 5–4 conservative, with Black, Brennan, Douglas, and

12. The Stewart composition issues several opinions related to individuals targeted as communist sympathizers or accused of membership in the Communist Party and who had refused

Warren in the dissent. Of those, only Black and Douglas were Democratic appointees. This tight split, therefore, does not correspond to a difference between appointing parties, with the caveat that Brennan, an appointee of Republican President Eisenhower, was a Democrat. The solitary liberal opinion on this matter reveals Stewart as the swing vote but in a curious manner.[13]

The ideological rankings of justices place Black and Douglas as the by far most liberal members of this court and identify the median justices as Frankfurter, Stewart, and Brennan (as does Bailey) or Clark and Stewart (as do Martin and Quinn). The focus on 5–4 majorities reveals Clark as the most frequent swing vote, closely followed by Stewart, without Frankfurter or Brennan appearing as active swing votes.

The Stewart composition also reveals a polarization that is greater even than the next most intense ones, those of the compositions defined by Alito and Kagan more than forty years later. The figure of the 5–4 majorities and their swing votes has only three majorities, because only three majorities issue more than two opinions. The corresponding figures for the Alito and Kagan compositions have four majorities. All other compositions produce a graph with more majorities—significantly more in the cases of the compositions defined by Stevens, and O'Connor, where the majorities number eleven and twelve,

---

to cooperate with committees akin to the House Un-American Activities Committee. The targeted individuals objected on various grounds, mostly the right against self-incrimination and the rights of free association. The United States Supreme Court's 5–4 opinions of this composition never vindicated the corresponding rights despite that the dissenters were quite vocal. However one reacts to this chapter of history and Constitutional interpretation, it presents a categorization problem. Clearly, these opinions should not be categorized separately according to the resulting legal subject matter, so as to scatter them in subject matters such as criminal procedure, administrative law, and professional responsibility. Rather, these opinions belong in a single group. We place these opinions in the broader category of opinions related to social impact. In subsequent compositions of the Court, this category will have opinions about desegregation, abortion, and gay rights. In the earlier composition of Vinson we only place in this category one opinion about conscientious objectors.

13. *See* Deutch v. United States, 367 U.S. 421 (1961). In the *Deutch* opinion, Stewart joins the dissenters to form a majority to reverse an individual's conviction for refusing to identify other communists on the grounds that the questions were not pertinent to the committee's charge. The greater ideals of civil rights do not reach the surface. Nor can one argue that the *Deutch* opinion corresponds to a change in Stewart's position. Although the opinion, appearing in 1961, comes late in this composition, opinions of the opposite slant appear before and after it. Rather than corresponding to a change in the details of the underlying civil rights, the difference appears to stem from the human details of the way this committee conducted its prosecution, such as calling the same witness for the second time, forcing his appearance in the Southern Summer, and interrupting the witness's vacation. Rather than Stewart taking the position that the committee overreached substantively, it seems more plausible that his swing vote is due to an overreach that may be called procedural. As a result, the swing of Stewart's vote does not fit in a model of the underlying rights but in a model of the procedures that a governmental entity may use to exercise its advantage.

respectively.

C. The Powell Composition (1972–75)

The composition defined by the unusual appointment on the same day of Rehnquist and Powell ("Powell composition"[14]) is also removed from the prior one, of Stewart, by several appointments. The continuing justices are Brennan, Douglas, and Stewart.

In the Powell composition, Burger, Blackmun, and Rehnquist are in all the conservative coalitions. On the other side, Brennan, Douglas, and Marshall are in all the liberal coalitions. The swing vote away from the main conservative majority that produces the majority that author the greatest number of liberal opinions is that of White, an appointee of Democratic President Kennedy. This main liberal coalition, at the nine o'clock position, authors ten opinions. It includes White and Stewart, a Republican appointee. Stewart is also a swing vote, producing the second most productive conservative coalition, at the four o'clock position, which authors sixteen opinions.

14. Again, we name this composition after Powell despite that Rehnquist is considered the junior of the two to avoid confusion from the colloquial use of "Rehnquist court" to refer to the years that the court had Rehnquist as its Chief Justice.

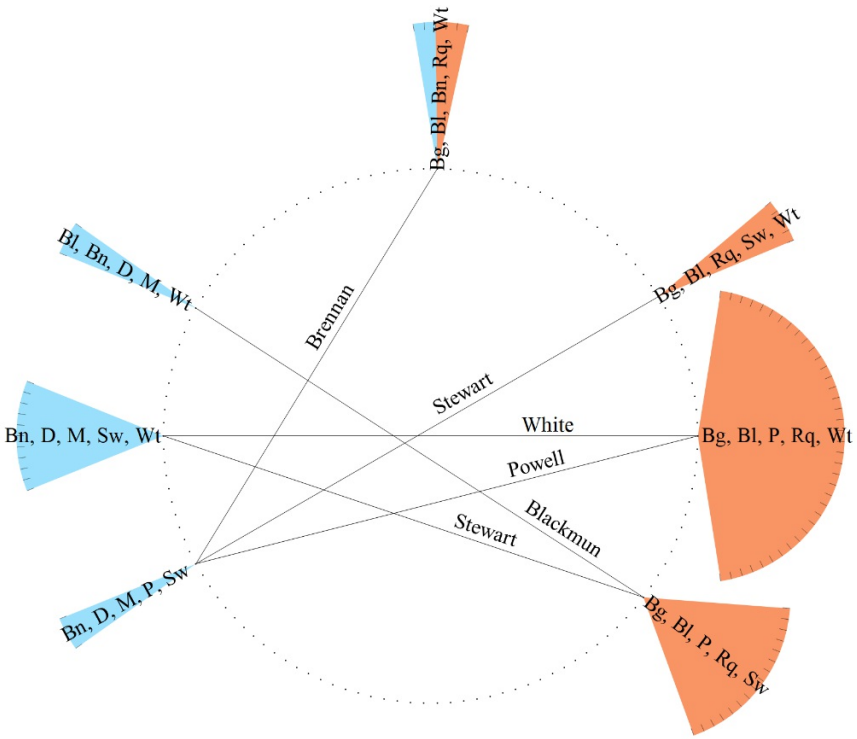

Figure 3. The swing votes of the 5–4 majorities of the Powell composition of C.J. Burger (Bg), and Blackmun (Bl), Brennan (Bn), Douglas (D), Marshall (M), Powell (P), Rehnquist (Rq), Stewart (Sw), and White (Wt)—six Republican appointees and three Democratic—as they result from seventy-seven opinions dating from March 22, 1972, to June 30, 1975, that were issued by majorities issuing more than two opinions and where the most prolific majority authors thirty-seven opinions (48 percent of the opinions appearing in the graph).

Worth noting is that Brennan, despite voting with the liberal block, was appointed by the Republican President Eisenhower. The Democratic appointees are Douglas (of Roosevelt), White (of Kennedy), and Marshall (of Johnson).

The analyses of ideological leaning place White as the median justice and Stewart to his immediate left in this composition.[15] This is a composition where the median justice, according to the ideological rankings, is also the main swing vote; the next most active swing votes, Powell and Stewart, are also near the ideological median, making this a composition that is not far from the expectations of a median voter vision.

15. *See supra* note 3.

D. The Stevens Composition (1975–81)

The Stevens composition is the result of the appointment of Stevens by Republican President Ford to replace Douglas. The majorities are much more fluid, leaving smaller liberal and conservative cores. The conservative core is down to Burger and Rehnquist. The liberal core is down to Brennan and Marshall.

Strikingly, unlike all other compositions of the United States Supreme Court that we study, the Stevens court reveals no dominant conservative or liberal coalitions and, therefore, no dominant swing votes. Powell, who prior to the Stevens composition, was consistently in the conservative coalitions, is now often a swing vote. The likely explanation is that the new composition of the court produces divisions in a more conservative way, so that Powell finds himself more often at the center of the court. The replacement of the very leftmost member of the court, Douglas, by a centrist conservative, Stevens, did not change the median justice, because Stevens was more liberal than the median (and indeed appears in four of the coalitions that issue only liberal opinions but in only one conservative). Therefore, White's loss of the role of the main swing vote refutes the median voter theorem.

Indeed, the ideological scorings of the justices continue to place White as the median justice between Blackmun to his left and Powell to his right, except for the last segment of this composition, when the ideological scorings move White to Powell's right. Whereas White does appear as an active swing vote, his vote does not swing away from the busiest coalition. Powell's is the most active swing vote.

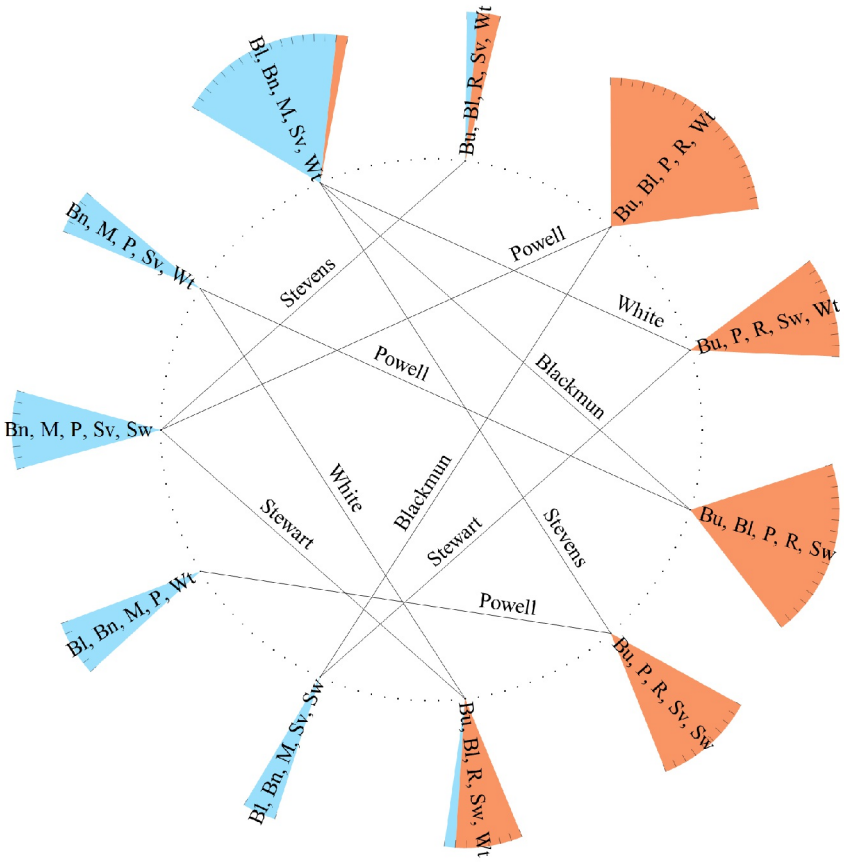

Figure 4. The swing votes of the 5–4 majorities of the Stevens composition of C.J. Burger (Bg) and Blackmun (Bl), Brennan (Bn), Marshall (M), Powell (P), Rehnquist (Rq), Stevens (Sv), Stewart (Stewart), and White (Wt)—seven Republican appointees and two Democratic—as they result from ninety-eight opinions dating from April 26, 1976, to June 26, 1981, that were issued by majorities issuing more than two opinions and where the most prolific majority authors nineteen opinions (19 percent of the opinions appearing in the graph).

The Stevens composition, therefore, is in tension with the median voter theorem in two ways: in the change of its swing vote from the prior composition despite the lack of change of the median justice, and in the fact that its median justice, White, is not the busiest swing vote.

E. The O'Connor Composition (1981–86)

The O'Connor composition is the result of the appointment of O'Connor by Republican President Reagan to replace Stewart. The conservative core remains Burger and Rehnquist. The liberal core remains Brennan and Marshall.

The most prolific coalition is the conservative one at three o'clock, which issues forty-six opinions. The main swing vote of White produces the most productive liberal coalition, at the nine o'clock position, which authors twenty opinions. The second swing vote, that of Powell, produces the liberal majority coalition at the ten o'clock position, which authors sixteen opinions. One more notable swing vote is that of Stevens from the main liberal coalition to form the second most active conservative coalition at the four o'clock position, which authors ten opinions.

The ideological ranking of the justices places White and then Powell as the median justices of the O'Connor composition. That they are also its main swing votes agrees with the expectations of the median voter theorem.

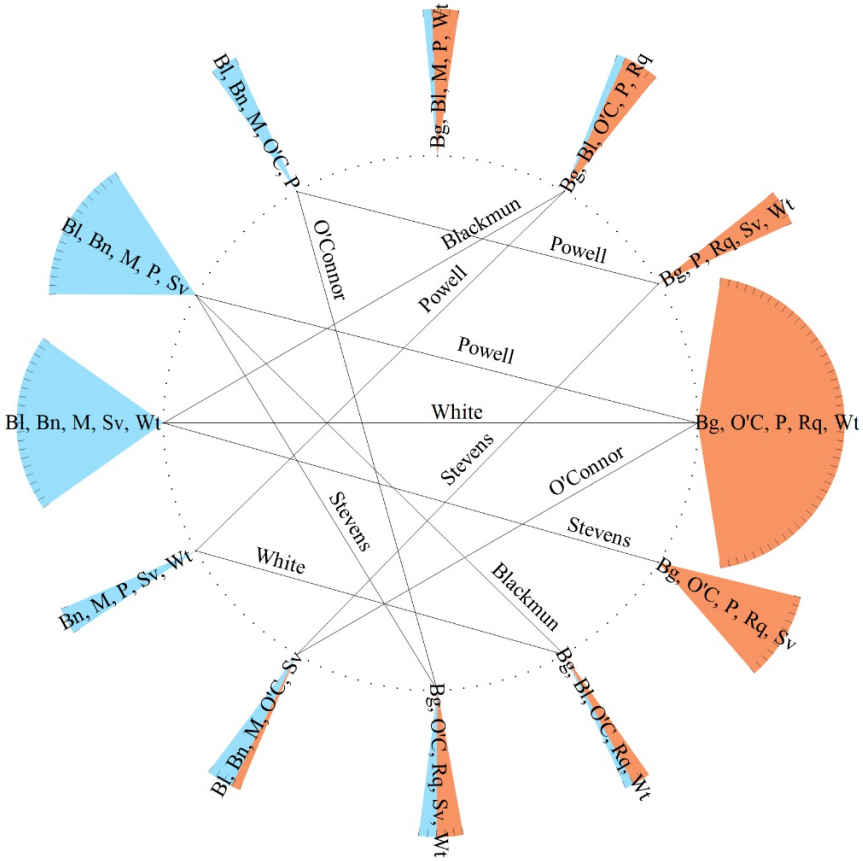

Figure 5. The swing votes of the 5–4 majorities of the O'Connor composition of C.J. Burger (Bg), and Blackmun (Bl), Brennan (Bn), Marshall (M), O'Connor (O'C), Powell (P), Rehnquist (Rq), Stevens (Sv), and White (Wt)—seven Republican appointees and two Democratic—as they result from 123 opinions dating from December 2, 1981, to July 7, 1986, that were issued by majorities issuing more than two opinions and where the most prolific majority authors forty-six opinions (37 percent of the opinions appearing in the graph).

F. The Kennedy Composition (1988–1990)

The Kennedy composition is separated by one appointment from the O'Connor composition. The Chief Justice is now Rehnquist. Justice Scalia was nominated by Republican President Reagan and appointed on September 26, 1986. The departed justice was Chief Justice Burger. The Scalia composition, however, produces fewer than forty-five tightly split opinions, too few for a meaningful graphic. Justice Kennedy was also nominated by President Reagan and appointed on February 18, 1988, replacing Powell. The court produces eighty-nine tightly split opinions with this composition. The conservative core of the court is Rehnquist and Scalia. The liberal core is Blackmun, Brennan, and Marshall. White is the primary swing vote away from the main conservative coalition. Kennedy and O'Connor tie as its secondary swing votes. From the main liberal coalition, after White, the only swing vote is Stevens. A majority that issues a few liberal opinions (Blackmun, Brennan, Kennedy, Marshall, and Scalia) is not connected with a swing vote to any of the majorities that appear on the graph, a phenomenon that also arises in the Breyer and Alito compositions.

The conservative core joined by Kennedy and O'Connor constitutes the most productive coalition, the conservative coalition at the three o'clock position that authors forty-seven opinions. The dominant swing vote is White, producing the liberal majority at nine o'clock that authors twelve opinions, followed by a tie between Kennedy and O'Connor, whose swing votes produce the liberal majorities at the ten o'clock position and the eight o'clock position that author four opinions each. Stevens, the secondary swing from the main liberal coalition, produces the second conservative coalition authoring three opinions and consisting of Rehnquist, Kennedy, O'Connor, Scalia, and Stevens.

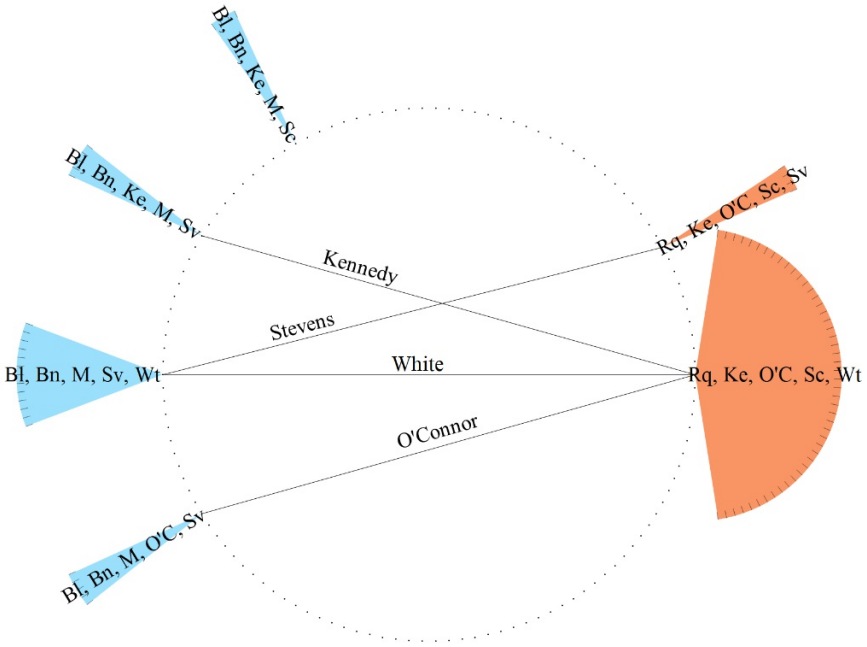

Figure 6. The swing votes of the 5–4 majorities of the Kennedy composition consisting of C.J. Rehnquist (Rq) and Justices Blackmun (Bl), Brennan (Bn), Kennedy (Ke), Marshall (M), O'Connor (O'C), Scalia (Sc), Stevens (Sv), and White (Wt)—seven Republican appointees and two Democratic—as they result from seventy-three opinions dating from April 25, 1988, to June 27, 1990, that were issued by majorities issuing more than two opinions and where the most prolific majority authors forty-seven opinions (64 percent of the opinions appearing in the graph).

The Kennedy composition, in having seven appointees of Republican presidents, shares that characteristic with the preceding compositions of Stevens and O'Connor. Nevertheless, the resulting graphic is quite different. Whereas in the prior two compositions that had seven Republican appointees, the court split to produce many different 5–4 coalitions, that is no longer the case. The Kennedy graph displays only six coalitions, whereas the graphs for Stevens and O'Connor displayed eleven and twelve coalitions. Moreover, only two of the Kennedy graph's coalitions predominate, whereas in the Stevens and the O'Connor graphs several of the coalitions issued similar and significant numbers of opinions.

G. The Breyer Composition (1994–2005)

The Breyer composition is separated from Kennedy's by several appointments. Souter and Thomas, appointed by Republican President G.H.W. Bush, replace Brennan and Marshall, respectively. Ginsburg and Breyer, appointed by Democratic President Clinton, replace White and Blackmun, respectively, and are the court's only Democratic appointees. The liberal core is Ginsburg, Souter, and Stevens. The conservative core is Rehnquist, Scalia, and Thomas.

The conservative core joined by Kennedy and O'Connor constitutes the most productive coalition, the conservative coalition at the three o'clock position that authors eighty-six opinions. The dominant swing vote is O'Connor, producing the liberal majority at nine o'clock that authors thirty-one opinions, followed by Kennedy, whose swing vote produces the liberal majority at the ten o'clock position that authors eighteen opinions. Ginsburg, Stevens, and Souter are rare swing votes away from the liberal coalition.

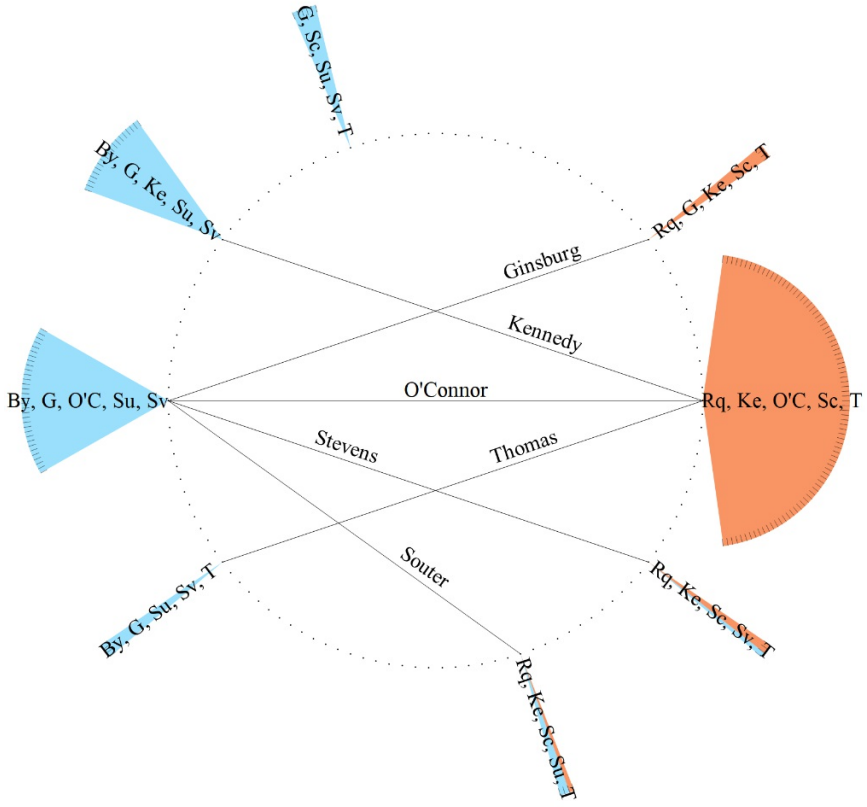

Figure 7. The swing votes of the 5–4 majorities of the Breyer composition of C.J. Rehnquist (Rq), Breyer (By), Ginsburg (G), Kennedy (Ke), O'Connor (O'C), Scalia (Sc), Souter (Su), Stevens (Sv), and Thomas (T)—seven Republican appointees and two Democratic—as they result from 152 opinions dating from November 14, 1994, to June 27, 2005, that were issued by majorities issuing more than two opinions and where the most prolific majority authors eighty-six opinions (57 percent of the opinions appearing in the graph).

H. The Alito Composition (2006–09)

The composition defined by Alito results from the departure of O'Connor and Rehnquist and their replacement by Alito and Roberts, appointed by Republican President G.W. Bush.

The Alito court—similarly to the next composition that we study, the Kagan

court—presents strikingly few, only four, coalitions that form to produce three or more opinions.[16]

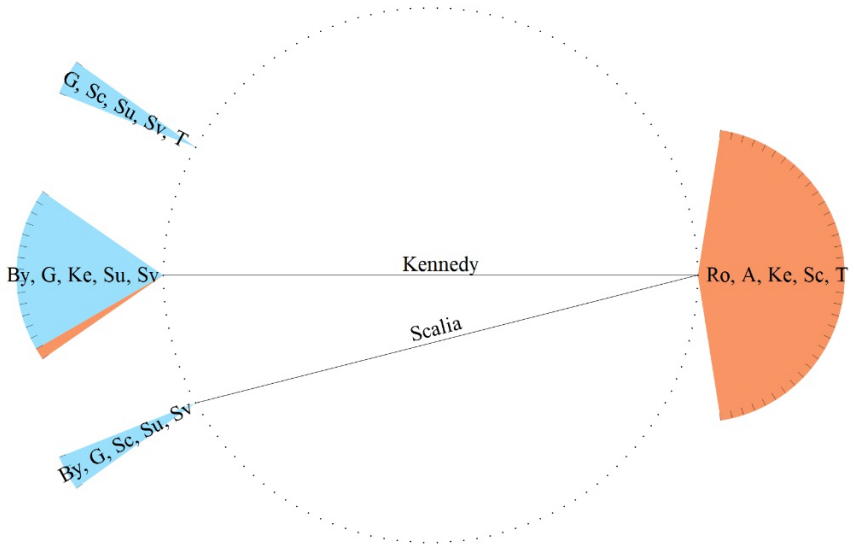

Figure 8. The swing votes of the 5–4 majorities of the Alito composition of C.J. Roberts (Ro) and Alito (A), Breyer (By), Ginsburg (G), Kennedy (Ke), Scalia (Sc), Souter (Su), Stevens (Sv), and Thomas (T)—seven Republican appointees and two Democratic—as they result from fifty-six opinions dating from May 30, 2006, to June 29, 2009, that were issued by majorities issuing more than two opinions and where the most prolific majority authors thirty-five opinions (63 percent of the opinions appearing in the graph).

The dominant conservative majority, at the three o'clock position, produces thirty-five opinions and consists of Roberts, Alito, Kennedy, Scalia, and Thomas. The swing vote of Kennedy produces the dominant liberal majority, at the nine o'clock position, which authors fifteen opinions and consists of Breyer, Ginsburg, Kennedy, Souter, and Stevens. The other swing vote from the dominant conservative majority, the swing of Scalia, produces a majority that authors only three opinions, all liberal, and consists of Breyer, Ginsburg, Scalia, Souter, and Stevens. This appears at the eight o'clock position. One more liberal majority appears, formed by pulling both Scalia and Thomas from the conservative block, while the liberal majority loses Breyer to the conservative side. No single swing vote connects it with any of the prior majorities. It appears at the ten o'clock position and issues three liberal opinions.

Notice also that despite the apparent lack of fluidity of the Alito composition, the illustration still shows a contraslanted opinion: a barely conservative opinion

16. We drop one 5–4 opinion as not being a truly tightly split opinion; a merely apparent 5–4 split appears in Clark v. Arizona., 548 U.S. 735 (2006). One of the dissents, that of Breyer, actually agrees with the majority's interpretation but dissents for a remand instead of a reversal. *Id.* at 780.

from the main liberal majority.[17] The next and last composition of the Supreme Court that we study, the one defined by Kagan as the junior justice, has no contraslanted opinions.[18]

I. The Kagan Composition (2010–16)

The composition defined by Kagan results from the departure of Stevens and Souter and their replacement by Kagan and Sotomayor by Democratic President Barack Obama. The Kagan composition, with four Democratic appointees, has the greatest number of Democratic appointees of any of the courts we study after the appointment of Stewart in 1958 tipped the court to majority Republican. The Democratic appointees are Breyer, Ginsburg, Kagan, and Sotomayor.

The Kagan composition has few tight majorities issuing more than two opinions. As in the case of the Alito composition, only four majorities produce more than two opinions and appear on the graph.

The dominant conservative majority, at the three o'clock position, produces thirty-three opinions and consists of Roberts, Alito, Kennedy, Scalia, and Thomas. The swing vote of Kennedy produces the dominant liberal majority, at the nine o'clock position, which authors twenty-three opinions and consists of Breyer, Ginsburg, Kagan, Kennedy, and Sotomayor. The other swing vote from the dominant conservative majority, that of Thomas, produces a liberal majority that authors only three opinions and consists of Breyer, Ginsburg, Kagan, Sotomayor, and Thomas. A conservative majority of a quite different composition, so that no single swing vote connects it with any of the prior majorities, appears at the four o'clock position and issues five opinions. This

---

17. Marrama v. Citizens Bank of Mass., 549 U.S. 365 (2007) (holding that bankruptcy courts have the authority to block abusive attempts to convert a chapter 7 filing into a chapter 13 proceeding; the dissent would allow no such discretion).

Outside of the majorities illustrated in the graphic, a single majority issues opinions with both conservative and liberal slants. The majority of Alito, Breyer, Ginsburg, Kennedy, and Stevens issues one liberal opinion and one conservative one.

The liberal opinion lets states deviate from the letter of the statute and ignore small school districts when following the statutory algorithm for equalizing per-pupil expenditures. Zuni Pub. Sch. Distr. No. 89 v. Dep't of Educ., 550 U.S. 81 (2007).

The conservative opinion allows states to assign to judges rather than juries the determination of the facts that trigger consecutive rather than concurrent running of sentences, an exception to Apprendi v. New Jersey, 530 U.S. 466 (2000). Oregon v. Ice, 555 U.S. 160, 172 (2009).

18. The Kagan composition, like the Alito one, has a single majority that issues one opinion of each slant. The majority that issues one opinion of each slant on the Alito composition is Alito, Breyer, Ginsburg, Kennedy, and Stevens. On the Kagan composition it is Roberts, Alito, Breyer, Scalia, and Thomas. That coalition could have arisen in the Alito composition. Yet, it did not. If it arose in the Alito composition, the dissenters would have been Ginsburg, Kennedy, Souter, and Stevens. The actual dissenters on the Kagan composition were Ginsburg, Kagan, Kennedy, and Sotomayor.

majority takes the vote of Breyer from the liberal group but loses the vote of Scalia from the conservative group. It consists of Roberts, Alito, Breyer, Kennedy, and Thomas.

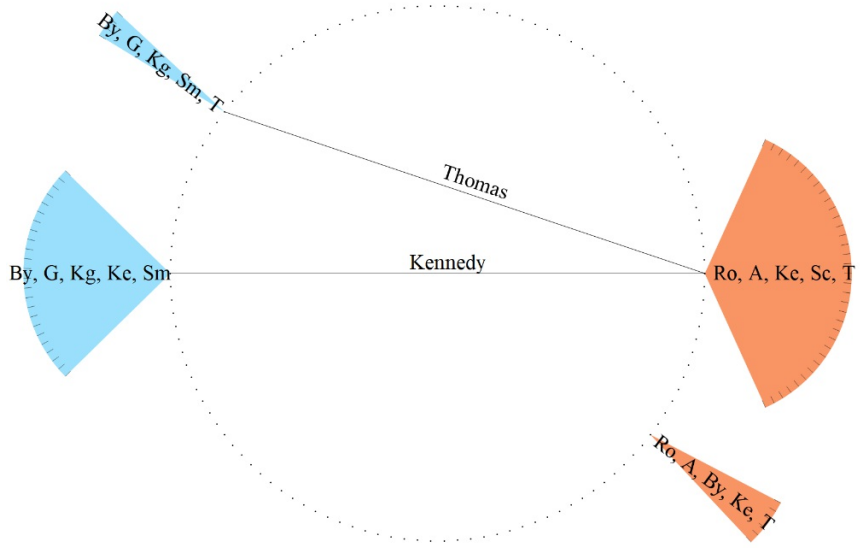

Figure 9. The swing votes of the 5–4 majorities of the Kagan composition of C.J. Roberts (Ro) and Alito (A), Breyer (By), Ginsburg (G), Kagan (Kg), Kennedy (Ke), Scalia (Sc), Sotomayor (Sm), and Thomas (T)—five Republican appointees and four Democratic—as they result from sixty-four opinions dating from March 29, 2011, to June 29, 2015, that were issued by majorities issuing more than two opinions and where the most prolific majority authors thirty-three opinions (52 percent of the opinions appearing in the graph).

IV. THE EBB AND FLOW OF FLUIDITY

The primary phenomenon that this 1946–2016 graphical sojourn across 5–4 coalitions, their opinions, and the swing votes connecting them, reveals is first an increase and then a decrease of what we call fluidity. High fluidity corresponds to a court where justices coalesce in different ways to form many 5–4 coalitions, where each coalition issues a number of opinions similar to that of the other coalitions and many swing votes connect those coalitions. Low fluidity corresponds to a court that forms few coalitions, where even fewer coalitions dominate the issuance of opinions and few swing votes exist. Whereas making a consequentialist argument in favor of high or low fluidity must remain a future project, high fluidity corresponds to a truer collective nature of making decisions, as opposed to a court with a single swing vote, where some decisions effectively depend on a single vote.

The graphs reveal that in the 1946 to 2016 period that we study, fluidity tended to gradually increase, reached its maximum during the Stevens composition (1975-81), and then tended to gradually decrease. This phenomenon is in part visible in the graphs. The graphs corresponding to high fluidity—the compositions defined by Powell (’72–75), Stevens (’75–81), and O’Connor

('81–86)—show that several coalitions issue opinions (seven to twelve), that the number of opinions each coalition issues is closer to proportional, while also having a multitude of swing votes (six to twelve, justices can appear more than once as swing votes between different coalitions). The graphs illustrating the opposite extreme of low fluidity are those of the compositions defined by Stewart ('58–62), Alito ('06–09), and Kagan ('10–16). They have few coalitions (three or four) with one or two coalitions dominating the issuance of opinions. They also have few swing votes (two or three). Moreover in the case of the Alito and Kagan compositions, a single swing vote dominates, that of Kennedy.

Table 2 collects metrics related to fluidity for the compositions illustrated by graphs above. The first three rows have the junior justice who defines the composition of the court, the calendar years of that composition, and the political composition of the court by appointing party, i.e., the number of justices appointed by presidents of each party. The Vinson composition is entirely nominated by Democratic presidents and the only one with a majority of Democratic appointees. Next, Stewart's composition is tightly split by party, which only arises again at the last composition we study, Kagan's.

The next two rows have, in row 4, the number of 5–4 coalitions that form in total and, in row 5, the number of 5–4 coalitions that appear on the graph (by issuing more than two opinions). Row 6 has the percentage that the coalitions that appear on the graph are as a fraction of the total number of coalitions formed.

Row 7 has the number of opinions issued by the most prolific coalition and row 8 that number as a fraction of the total number of opinions that appear on the graph, an imprecise metric but one that is high when fluidity is low because the busiest coalition issues many opinions, and which is low when fluidity is high, reflecting the fact that each coalition issues close to a proportional number of opinions. This follows the expected pattern. It is lowest during the Stevens composition and high during the compositions that have low fluidity, taking its highest value during the Stewart composition.

Row 9 has the number of swing votes that appear on the graph, again following the pattern by being high during the Powell, Stewart, and O'Connor compositions and low during the Vinson, Stewart, Alito, and Kagan ones.

In row 10 appears the index of fluidity, which we developed previously.[19] Whereas it has the small fluctuations that a precise metric would tend to produce, we see a clear break between higher values (.43 and above) for the Vinson, Powell, Stevens, and O'Connor compositions and lower values (below .35) for the compositions of, Stewart, Kennedy, Breyer, Alito, and Kagan.

19. *See* Sullivan et al., *supra* note 2.

1.	Composition/ Jr. Justice	Vinson	Stewart	Powell	Stevens	O'Connor	Kennedy	Breyer	Alito	Kagan
2.	Years	'46–49	'58–62	'72–75	'75–81	'81–86	'88–90	'94–05	'06–09	'10–16
3.	Appointing party, R–D	0–9	5–4	6–3	7–2	7–2	7–2	7–2	7–2	5–4
4.	Total coalitions	28	19	23	33	33	19	35	14	13
5.	Coalitions on graph	5	3	7	11	12	6	8	4	4
6.	Coal'n % on graph	18%	16%	30%	33%	36%	32%	23%	29%	31%
7.	Most opin's by coalition	33	40	37	19	46	47	86	35	33
8.	Most as % of graph	62%	66%	48%	19%	37%	64%	57%	63%	52%
9.	Swing on graph	3	2	6	11	12	4	6	2	2
10.	Fluidity index	.47	.31	.43	.57	.45	.31	.34	.29	.32
11.	Contraslanted	0	0	2	3	6	0	2	1	0
12.	Contrasl'd % of gr.	0%	0%	2.6%	3.1%	4.9%	0%	1.3%	1.8%	0%

Table 2. Metrics Related to Fluidity.

A phenomenon that is not immediately related to the above understanding of fluidity is in harmony with the same pattern. We have mentioned that most coalitions only issue opinions of one political slant, either only conservative or only liberal opinions, and *contraslanted* are those opinions that have a political slant opposite to that of the majority of opinions of the coalition that issues them. The number of contraslanted opinions, in row 11, is very low, not allowing confident conclusions. Nevertheless, their percentage, in row 12, follows the pattern. The percentage of contraslanted opinions is higher during the courts with great fluidity, ranging from 2.6 percent to 4.9 percent. It is at its lowest during the compositions with low fluidity, being zero in three compositions (Vinson's, Stewart's, and Kagan's) and 1.8 percent during Alito's. Dearth of contraslanted opinions should appear during environments of more intense differences between members of the court. Abundance of contraslanted opinions, by contrast, should appear when the members of the court have less concern about the political aspects of adjudication. A composition with high fluidity should also be less politically polarized. Therefore, it should also be more likely to issue contraslanted opinions.

We return to the potential relevance of the political composition of the court by appointing party for fluidity. One can easily formulate a theory that a court dominated by a single party, i.e., that has a supermajority of justices (six or more in the case of a nine-member court) appointed by presidents of the same party, will tend to produce more fluidity. A court that is tightly split by its appointing party should be less fluid because, given that there will always be some quantity of issues on which the political parties are split, those issues will split the court 5–4; the appointees of one party in agreement with each other and in disagreement with the appointees of the other party, resulting in predictable and fixed coalitions. By contrast, if a supermajority (six or more) appointees are from the same party, what splits the court 5–4 will not be issues that split the parties; those issues will be decided by a supermajority vote. Rather, when such a court

splits 5–4, those divisions will be less predictable and more varied. That would produce a more fluid court, a court that splits 5–4 in many ways, as opposed to the court that is tightly split by appointing party.

Appealing as this hypothesis may be, it has some but limited purchase in the data. Granted, the four most fluid courts that we see are all dominated by one party. The compositions defined by Vinson (dominated by Democratic appointees) and by Powell, Stevens, and O'Connor (dominated by Republican appointees) conform to the hypothesis.[20] Moreover, as the hypothesis predicts, two of the least fluid courts are tightly split by appointing party. These are the compositions defined by Stewart and Kagan.

However, the Kennedy, Breyer, and Alito compositions contradict the hypothesis that dominance by one party produces fluidity, as do the Vinson composition's attributes other than its index. The Kennedy, Breyer, and Alito compositions had only two Democratic appointees (as did the Stevens and O'Connor compositions). Nevertheless, Kennedy's composition departed from the fluidity displayed by the preceding compositions of Stevens and O'Connor and this has continued with the Breyer, Alito, and Kagan compositions. Additional concerns, either at appointing time or during the tenure of the justices, may influence the court's fluidity in ways that the division by appointing party is too facile to capture. Perhaps, some of the appointees of Presidents Reagan and G.H.W. Bush, O'Connor, Scalia, Kennedy, Souter, and Thomas, may have been unlike the prior Republican appointees in ways that initiated a reduction of fluidity despite the appearance of continuity in the appointing party. We leave such speculation to others.

In sum, our primary contribution is that we observe an ebb and flow of fluidity. The phenomenon is supported by numerous additional metrics and, in turn, supports our index of fluidity by being consistent with it. However, these changes of fluidity are not amenable to simple analysis. Rather, we would like to flag fluidity as an important attribute of supreme courts that needs better understanding and is amply worthy of further analysis.

V. LIMITATIONS OF LOCATIONAL MODELS

The graphical and geometric nature of the graphs naturally lends itself to a comparison with locational models of adjudication. We find major discrepancies with the simpler median voter theorem but also with multidimensional models.

The median voter theorem takes a one-dimensional view of voting, from the political right to the political left. It posits that in an environment dominated by two parties, the party that obtains the vote of the median voter wins the elections. Effectively, voters are aligned in that one dimension. The central voter, the

20. A complication about the Vinson composition is that its high fluidity index is driven by having many coalitions which only produce one or two opinions and, therefore, do not appear on the graph. Otherwise, it exhibits all the phenomena of low fluidity: few visible coalitions, few swing votes, and no contraslanted opinions.

median, breaks any tie, and the party that obtains that vote gets the majority.[21]

Simplistic as this model may be, applying it to adjudication is straightforward. One would arrange the justices on a single dimension, from right to left. The model suggests that the median justice's vote would resolve close cases, i.e., the 5–4 cases that we study here. Indeed, political scientists armed with big data computational methods have produced right-to-left ideological scorings of justices.[22]

If the ideological positions of each judge were precise and expressed with exactitude, then the median voter theorem would become a deterministic model that is utterly inconsistent with the data. Only two coalitions would exist in every composition of the court and the median justice would be the only swing vote. Giving the median voter theorem some additional complexity, the vote on each case would take additional uncertainty, effectively adding some randomness to each vote, perhaps corresponding to each judge's perception of each case being different, colored by various circumstances. This would allow judges to appear to have swapped positions, if, for example, a more liberal judge perceives a dispute as deserving a less liberal outcome while the next less liberal judge perceives it as deserving a more liberal one. In that version of the model, the outcomes would depend on the size of the variation that the added randomness would allow. If little variation existed, the model might lead to merely the occasional other swing vote, besides the true median. If a lot of variation were added, the model could produce many different coalitions and swing votes. The latter outcome seems unrealistic and the data does not conform to the notion of many random coalitions. The former would imply that the occasional second swing vote would be adjacent to the median. However, occasionally the second swing votes we see are far from the median, as was the case with Scalia and Thomas in recent compositions, and Rutledge during the composition defined by Vinson. Therefore, the data are incompatible with the simple locational model of the medial voter theorem, either in a version of accurate locations or one with added randomness.

Table 3 collects information comparing the ideological ranking of justices and the swing votes of each composition. Row 2 has the median justice according to the two leading ideological rankings of the justices (but only the first one, by Martin and Quinn, reaches Vinson's composition). Row 3 has the actual main swing vote, i.e., the vote that connects the busiest coalition to the next one linked by a swing vote. Whereas the main swing vote is included as one of the median voters in 13 of the potential 17 comparisons, true absolute agreement exists for only four of the nine compositions we study. In other words, the two ideological rankings and the main swing vote are only identified correctly and exclusively in four compositions: Powell's, Kennedy's, Alito's, and Kagan's. In all other compositions, the ideological rankings disagree or identify several different

---

21. The median voter theorem tracks its ancestry to Harold Hotelling, *Stability in Competition*, 39 ECON. J. 41–57 (1929).

22. *See* Martin & Quinn, *supra* note3; Bailey, *supra* note 3. *See also Ideological Leanings*, *supra* note 3.

median voters over the composition's duration. To the extent that the second ideological ranking purports to be an improvement, it identifies correctly only O'Connor as the median for Breyer's composition but performs more poorly than the original ranking in Stewart's composition, where only the original ranking included the actual main swing vote, Clark, as a median justice. Both ideological rankings fail in the Stevens composition, where the main swing vote is Powell, whom neither study includes as a median justice despite producing alternating median justices.

Row 4 has the number of opinions issued by the coalition to which the main swing vote goes—usually the second most active coalition. Those are the majorities that this swing vote creates when it swings away from the busiest coalition. Row 5 expresses this number as a percentage of the opinions that appear on the graph. Row 6 expresses this number as a percentage of the number of opinions issued by the most active coalition. When a single swing vote dominates, as does Kennedy's during the compositions defined by Alito and Kagan, those percentages are elevated.

Row 7 has the secondary swing vote, i.e., the one connecting the busiest coalition to the second most prolific linked coalition. Row 8 has the ideological ranking of that justice by the two rankings. In three compositions, Vinson's, Alito's, and Kagan's, the secondary swing vote has an ideological ranking far from the median. Rutledge is ranked as the most liberal member of the Vinson composition. Thomas is ranked at the conservative extreme of the Kagan composition. Scalia is ranked as the second most conservative member of the Alito composition. The tie of Kennedy and O'Connor as secondary swing votes during the Kennedy composition complicates their ranking, but O'Connor also appears as the second most conservative justice for a period of that composition but only according to the second ideological ranking, Bailey's. Whereas the median voter theorem, even with added randomness, would argue that the secondary swing vote should be adjacent to the median, that repeatedly fails to occur. Not rarely, the Supreme Court has had its secondary swing vote be far from the median.

1.	Composition/Jr. Justice	Vinson	Stewart	Powell	Stevens	O'Conor	Kennedy	Breyer	Alito	Kagan
2.	Median per M&Q/B	Reed Frankf. Burton	Clark Stewart/ Frankf. Stewart Brennan	White	White Stewart Blackm./ White Stewart	White Powell	White	Kennedy, O'Connor/ O'Connor	Kennedy	Kennedy
3.	Main swing vote	Frankf.	Clark	White	Powell	White	White	O'Connor	Kennedy	Kennedy
4.	Swing to opinions	7	11	10	7	20	12	31	15	23
5.	Main sw as % of graph	13%	18%	10%	7%	16%	16%	20%	27%	36%
6.	As % of most active	21%	28%	27%	37%	43%	26%	36%	43%	70%
7.	Secondary swing vote	Rutledge	Stewart	Powell	Blackm.	Powell	K, O'C	Kennedy	Scalia	Thomas
8.	Rank per M&Q/B	7–9	4/3–5	4	3/3,4,6	4–5/3–5	3,4/2,3,4	5,4/4	2/3	1
9.	Swing to opinions	4	10	3	3	16	4	18	3	3
10.	Sec'ry sw as % of main	57%	90%	30%	43%	80%	33%	58%	20%	13%

Table 3. Ideological Ranking and Swing Votes.

A related discrepancy with the median voter theorem comes from comparing the Powell composition to that of Stevens. The membership of the court changed by a single member, by the replacement of Douglas by Stevens. Douglas was by far the most liberal member of the court. Admittedly, Stevens, despite being the nominee of Republican President Ford, was not very conservative. (Stevens appears on the liberal side of that court of seven Republican appointees.) For evaluating the median voter theorem, the point is that the replacement of far-left Douglas with the moderate Stevens did not change the median justice. In a direct contradiction of the median voter theorem, when Stevens replaces Douglas, the main swing vote changes from White to Powell.

Granted, the one-dimensional nature of the median voter theorem is simplistic, making its rejection by the data unremarkable. However, this data reveals a phenomenon that shows that even locational models with many dimensions cannot be durable. Despite that an ideal model with many dimensions could capture nuance, it could still not account for the creation of new dimensions. Adjudication by supreme courts, however, often creates new dimensions, adding new tests or elements for a legal conclusion, or removing them by overruling such precedent. An illustration of a creation of a new test, i.e., a new dimension from the perspective of locational modelling, in criminal procedure arises in the *Apprendi* line of cases in this data.

Apprendi is about criminal procedure, interpreting due process and the right to a jury trial in the context of sentencing enhancements.[23] Sentencing enhancements increase criminal penalties in specific circumstances. In the example of *Apprendi*'s facts, the penalty increased due to racial animus in the commission of the crime. The *Apprendi* line of opinions holds that facts which increase the maximum sentence must be found by the jury beyond a reasonable doubt. Thus, even if a fact is not an element of the crime, if this fact triggers an increase of the maximum penalty, then *Apprendi* requires it to be treated the same way that elements of the crime are. In a trial, the jury must establish this fact beyond reasonable doubt. The majority that produced *Apprendi* appears at the 11 o'clock position of the Breyer graph and has the additional feature that this majority only formed to issue the *Apprendi* line of opinions and one unrelated opinion on tort liability.[24] Moreover, this majority has no swing votes linking it with the others of the graph. It draws two votes from the conservative side of the court, Scalia and Thomas. Also, it fails to draw Breyer's vote from the liberal side of the court.

Suppose that a locational model of criminal procedure had been created before the first of the *Apprendi* opinions were issued, i.e., before *Jones*. This model completely described criminal procedure and each justice's attitudes about every aspect of it. The model would be a perfect description of criminal procedure and would perfectly predict every vote of every justice on every criminal procedure issue. Despite its completeness, however, this model of criminal procedure would use inferences from prior precedent to answer the

23. Apprendi v. New Jersey, 530 U.S. 466 (2000).

24. *See infra* Appendix A, text accompanying notes 23–27.

question whether penalty enhancements should be found by juries beyond reasonable doubt—to wit, not the *Apprendi* holding. Moreover, the justices' other positions on criminal procedure did not foretell their position on this issue, because this was a unique coalition. In other words, this complete model of criminal procedure would be rendered obsolete by the *Apprendi* line of cases because they created a new dimension in criminal procedure. The fact that this new dimension involved a coalition that had not formed for any other issue of criminal procedure underscores its novelty and that it could not have been predicted by the previously correct model.[25]

VI. CONCLUSION

Fluidity is an important attribute of adjudication by supreme courts. Our graphical presentation of the coalitions, the swing votes, and the opinions of supreme court compositions allowed not only a quantitative approach to fluidity but also a visual one. We hope this opens avenues for further research.

We submit that this analysis refutes the possibility of having locational models of either the level of generality of the median voter theorem or of the level of complete specificity that would account for every interpretation. The median voter theorem fails because (a) the most active swing vote is often not the median by ideology justice; (b) the second most active swing vote is often far from the ideological median; and (c) the pattern of coalitions does not conform to the predictions of the median voter theorem, which would call for two dominant coalitions plus additional coalitions due to noise. A locational model of complete specificity is refuted by the creation of new and unexpected coalitions (and dimensions), as exemplified by the *Apprendi* coalition.

This analysis also has relevance about the efficiency of the common law and plaintiffs' victory rate, inviting further research in those directions. The argument about the efficiency of the common law rests on the notion that ineffective interpretations would attract litigation, which would lead to their alteration. Support for this hypothesis may stem from the persistence of the litigation about Un-American Activities Committees that appears in the Stewart composition. To the extent those results were not in harmony with straightforward understandings of the First Amendment, their repeated litigation despite repeated 5–4 losses supports the premise that some outcome (arguably inefficient) will attract litigation. The persistence of the litigation without a change of outcome during that composition does not support the conclusion that the repeated litigation will change the law. However, the predominance of criminal procedure in all compositions may serve as a counterexample. In the Vinson composition, we see the Court stating that the Constitution must not be interpreted so as to dictate to

25. In Appendix A we pursue the information contained in the swing votes connecting the *Apprendi* coalition to the coalitions issuing one or two opinions and which, therefore, do not appear on the graph. Only one helps explain a likely change in Justice Thomas, again underlining the novelty and unpredictability of the *Apprendi* line of cases.

the states their criminal procedure.[26] By today's standards, that is a quaint anachronism. Federal criminal procedure dominates that of the states, despite herculean efforts by the legislature to limit the involvement of the federal judiciary, for example by limiting *habeas corpus* jurisdiction.[27] The argument that this outcome—the subsuming of state criminal procedure by federal Constitutional interpretation—is efficient, seems quite difficult to make. More likely, this is an expression of a different premise, that what attracts litigation is not inefficient interpretations about criminal procedure but every conviction with a colorable Constitutional argument. The result, then, would not be a more efficient criminal procedure law but, at least, a more federalized criminal procedure.

Turning to expected rates of victory, it is striking that in all compositions—from the all-Democratic-appointee Vinson composition, to the heavily Republican-appointee courts of 1972 to 2010—the outcomes skew conservative and the rate of conservative outcomes is almost constant. Because the Court, through the process of granting *certiorari*, determines its own docket, any conclusions will not reflect the decisions of plaintiffs and defendants but the process of granting *certiorari*. A process that selected disputes for being on the cusp of a divided court, should tend to produce outcomes that would be more evenly split. That in all compositions a conservative skew appears likely suggests additional complexities in the selection of disputes.

---

26. Carter v. Illinois, 329 U.S. 173, 175 (1946) ("[T]he Due Process Clause has never been perverted so as to force upon the forty-eight States a uniform code of criminal procedure.")

27. *See*, *e.g.*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996); Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997(e) (1996) (both imposing procedural requirements designed to limit litigation).

APPENDIX A: THE SWING VOTES OF THE *APPRENDI* MAJORITY OFFER NO INFERENCES

The main text, text accompanying notes 21–22, explained how the *Apprendi* line of cases shows that adjudication by supreme courts can create new unanticipated dimensions that render obsolete even a previously accurate multi-dimensional locational model of law. This appendix buttresses this conclusion by showing that exploring the swing votes from the *Apprendi* coalition does not reveal an ability to forecast *Apprendi* and its line.

The *Apprendi* majority appears at the eleven o'clock position of the Breyer court and issues five opinions. The majority is Ginsburg, Scalia, Souter, Stevens, and Thomas.

Four of the five opinions that this majority produces are in the *Apprendi* line, that aggravating factors of sentences must be proven beyond reasonable doubt to the jury. Those are, first, a precursor to *Apprendi*,[28] *Apprendi* itself,[29] and two applications of the principles of *Apprendi* to state courts,[30] and federal courts.[31] The fifth opinion is unrelated, about asbestosis claimants under the Federal Employers Liability Act where the dissent would limit damages.[32] Thus, the political slant of all five decisions is liberal, the *Apprendi* group for impeding criminal liability and the last one for facilitating civil liability.

Going back to the list of the majorities of the Breyer composition that authored up to two opinions and, therefore, are not on the graph, reveals three majorities that connect to the *Apprendi* majority by one swing vote.

The swing vote of Scalia produces the majority of Rehnquist, Breyer, Kennedy, O'Connor, and Scalia, which authors two opinions. One is a tort dispute, where the court absolves from liability a car manufacturer.[33] The other one, *Harris*, is a criminal procedure dispute, and appears contrary to *Apprendi*.[34] However, the majority opinion clarifies that *Apprendi* applies to aggravating factors that increase the penalty beyond the statutory maximum of the crime found by the jury, whereas *Harris* involves an increase of the minimum penalty. Thus, the juxtaposition of *Harris* explains exactly where Scalia's vote changes but on this very narrow issue without helping predict that this swing would come. The *Harris* issue also underscores the unsystematic nature of the *Apprendi* majority by the return of the same issue during the Kagan composition. This time

---

28. Jones v. United States, 526 U.S. 227 (1999).

29. Apprendi v. New Jersey, 530 U.S. 466 (2000).

30. Blakely v. Washington, 542 U.S. 296 (2004).

31. United States v. Booker, 543 U.S. 220 (2005). *Booker* is a microcosm of the point we make in this appendix. In the first part of Booker, the *Apprendi* majority holds for the first time that the *Apprendi* principle applies to federal crimes. But there is a second part to Booker in which a different 5–4 held that the federal sentencing guidelines were discretionary and, therefore, not subject to *Apprendi*'s mandate.

32. Norfolk & Western Ry. Co. v. Ayers, 538 U.S. 135 (2003).

33. Geier v. Am. Honda Motor Co., 529 U.S. 861 (2000) (no manufacturer liability for absence of side airbags; explicitly disapproving this one pro-tort-liability opinion of co-author Sullivan, who consistently opposed tort liability).

34. Harris v. United States, 536 U.S. 545 (2002) (aggravating factor of brandishing gun allowed to be found by judge).

Scalia did not join Thomas; Breyer switched sides; and the new Democratic appointees, Kagan and Sotomayor, joined. Thus, Breyer, Ginsburg, Kagan, Sotomayor, and Thomas form a majority that holds that facts supporting enhancements to minimum criminal penalties do require proof beyond reasonable doubt to the jury.[35]

The swing vote of Thomas away from the *Apprendi* majority produces the majority of Rehnquist, Breyer, Kennedy, O'Connor, and Thomas, which also authors two conservative opinions, both on criminal procedure. The first is contrary to *Apprendi* and is about deported aliens who reenter the United States.[36] While the reentry increases the criminal penalty very significantly, from two to twenty years' maximum incarceration, the court does not consider it an element of the offense, letting it escape the type of scrutiny that *Apprendi* would impose, over a dissent by Scalia to that exact point. The other opinion of the same majority is about double jeopardy in the context of California's three-strikes law and allows the three-strikes trial to establish the prior offense.[37] However, these two opinions predate both *Apprendi* and its precursor, *Jones*, which makes the contradiction of the vote of Thomas less acute. Apparently, Thomas's view on the *Apprendi* issue changed by the time he voted in *Jones*, something that no locational model could predict.

The third majority that is separated by one swing vote from the *Apprendi* majority arises from the swing vote of Souter. The dispute is unrelated to criminal procedure and therefore offers no insight into the fulcrum point of the vote of Souter in the *Apprendi* line of cases.[38] It certainly would not help predict his swing to the *Apprendi* majority.

A fourth majority is also separated by one swing vote from the Apprendi majority: ironically enough, the second part of United States v. Booker, the application of Apprendi to federal courts discussed in note 30, above. The swing vote is Ginsburg and the effect of her joining with Breyer, Kennedy, O'Connor, and Rehnquist is that the *Apprendi* principle does not apply to federal sentencings, hardly predictable by her being part of the *Apprendi* majority!

In sum, despite our probing of potential swing votes, we find no hints that a locational model could have use to predict the formation of the *Apprendi* majority.

---

35. At the ten o'clock position of the graph for the Kagan composition, the majority of Breyer, Ginsburg, Kagan, Sotomayor, and Thomas, which produces only three opinions, also expands on *Apprendi* by requiring its treatment to enhancements of minimum penalties. *See* Alleyne v. United States, 570 U.S. 99 (2013).

36. Almendarez-Torres v. United States, 523 U.S. 224 (1998).

37. Monge v. California, 524 U.S. 721 (1998).

38. The resulting majority is Rehnquist, Breyer, Kennedy, O'Connor, and Souter, which authors a single opinion. Am. Ins. Ass'n v. Garamendi, 539 U.S. 396 (2003). The legal subject matter of *Garamendi* is not easy to categorize. California passed a statute requiring insurance companies that did business in Europe during World War II to disclose to its insurance commissioner details about their life insurance policies on holocaust victims, about which the President of the United States had entered into an agreement with Germany. The court invalidated the statute as being in conflict with the President's authority to conduct foreign affairs. The result can be considered conservative for precluding liability and liberal for not granting the state the right it sought.

APPENDIX B: TABLES OF OPINIONS

Appendix B1: Tables of Vinson Composition Majorities Producing More than Two 5—4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Chief Justice Vinson. The Vinson composition consisted of nine appointees of Democratic presidents: The Vinson composition consists of nine appointees of Democratic presidents (Black, Burton, Douglas, Frankfurter, Jackson, Murphy, Reed, Rutledge, and Vinson). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BLACK–DOUGLAS–FRANKFURTER–MURPHY–RUTLEDGE (NINE O'CLOCK)

Haley v. Ohio, 332 U.S. 596 (1948).	Reversal due to coerced confession. Dissent (Burton with all), "Self-serving perjury, however, must not be the passkey to a mandatory exclusion of the confession from use as evidence. It is for the trial judge and the jury . . . to determine the voluntary nature of a confession."	CrimPro, liberal
Wade v. Mayo, 334 U.S. 672 (1948).	Reversing conviction on habeas: "The Circuit Court of Appeals [which upheld conviction] was therefore in error . . . in assuming that the failure to appoint counsel in a non-capital case in a state court is a denial of due process under the Fourteenth Amendment only if the law of the state requires such an appointment." Dissent (Reed with all) would deny habeas because defendant obtained counsel before his state remedies were exhausted and failed to appeal properly.	CrimPro, liberal
Upshaw v. United States, 335 U.S. 410 (1948).	Repeated interrogations before taking defendant to a magistrate for commitment are grounds for reversal. Dissent (Reed) advises changing the rules about admissibility of evidence "only when 'fundamentally altered conditions,' call for such a change in the interests of justice." (Citation omitted).	CrimPro, liberal
Turner v. Pennsylvania, 338 U.S. 62 (1949).	Reversing conviction on coerced confession. Dissent 1 (Jackson in Watts v. Indiana, 338 U.S. 49 (1949)), "I doubt very much if [constitutional principles] require us to hold that the State may not take into custody and question one suspected reasonably of an unwitnessed murder. If it does, the people of this country must discipline themselves to seeing their police stand by helplessly while those suspected of murder prowl about unmolested." Dissent 2 without opinion.	CrimPro, liberal
Harris v. South Carolina, 338 U.S. 68 (1949).	Reversing conviction on coerced confession. Dissents as in *Turner*, 338 U.S. 62.	CrimPro, liberal

Lustig v. United States, 338 U.S. 74 (1949).	Reversing conviction on warrantless search. Dissent (Reed with all), evidence is admissible because the federal agent did not participate in its procurement by the state police.	CrimPro, liberal
Christoffel v. United States, 338 U.S. 84 (1949).	Reversing perjury conviction before Congressional committee for lack of quorum. Dissent (Jackson with all), "the Court is denying to the records of the Congress and its committees the credit and effect to which they are entitled."	CrimPro, liberal

2. BLACK–DOUGLAS–MURPHY–REED–RUTLEDGE (TEN O'CLOCK)

NLRB v. Jones & Laughlin Steel Corp., 331 U.S. 416 (1947).	Collective bargaining with guards that were deputized military auxiliaries was not contrary to public safety. Dissent (all), without opinion, referring to that of the court below.	Labor, liberal
Memphis Natural Gas Co. v. Stone, 335 U.S. 80 (1948).	Upholding franchise tax on pipeline for the fractional value of its pipeline in the state. Dissent (Frankfurter with all), because local taxes had been paid to the local authorities, "where the only 'local incident' is the fact of interstate commerce—that the interstate pipeline goes through Mississippi—the tax is necessarily a tax upon the privilege of doing interstate business."	Tax, liberal
Vermilya-Brown Co. v. Connell, 335 U.S. 377 (1948).	Upholding application of Fair Labor Standards Act on a military base in Bermuda. Dissent (Jackson with all), "[t]o consider the bases as possessions . . . is incompatible with the spirit of the negotiations [with the UK] and with the letter of the lease by which the bases were acquired."	Labor, liberal
Terminiello v. Chicago, 337 U.S. 1 (1949).	Reversing conviction of disturbing the peace on indoor assembly that garnered opposition and disturbances, political speech by nature attracts dissent. Dissent 1 (Vinson), "the Illinois courts construed the ordinance as punishing only the use of 'fighting words.'" Dissent 2 (Frankfurter), "[i]f the Court refrained from taking phrases out of their environment and finding in them a self-generated objection, it could not be deemed to have approved of them even as abstract propositions." Dissent 3 (Jackson with Burton), the Court "fixes its eyes on a conception of freedom of speech so rigid as to tolerate no concession to society's need for public order."	Speech, liberal
United States v. Cors, 337 U.S. 325 (1949).	Compensation for requisitioned tugboat must not include rise in value due to Government's demand. Dissent (Frankfurter with Burton & Jackson; Vinson no opinion), rise in value is due to demand from rest of market, not government, and must be included in the compensation.	Takings, liberal

3. VINSON–BLACK–BURTON–DOUGLAS–REED (TWO O'CLOCK)

Harris v. United States, 331 U.S. 145 (1947).	FBI may search home incident to arrest. Dissent 1 (Frankfurter with Murphy and Rutledge), "searches are 'unreasonable' unless authorized by a warrant [with] adequate safeguards." Dissent 2 (Murphy), "A warrant of arrest, without more, is now sufficient to justify an unlimited search of a man's home . . ." Dissent 3 (Jackson), "I see no practical limit [of the scope of the search] short of that set in the opinion . . . —and that means to me no limit at all."	CrimPro, conservative
Shapiro v. United States, 335 U.S. 1 (1948).	Records, which merchant must by statute keep, are not subject to immunity because they are public records. Dissent 1 (Frankfurter), "The Court this day decides that when Congress prescribes . . . the form in which some records are to be kept, not by corporations but by private individuals, in what in everyday language is a private and not a Governmental business, Congress thereby takes such records out of the protection of the Constitution against self-incrimination and search and seizure." Dissent 2 (Jackson with Murphy), "The protection against compulsory self-incrimination, guaranteed by the Fifth Amendment, is nullified to whatever extent this Court holds that Congress may require a citizen to keep an account of his deeds and misdeeds and turn over or exhibit the record on demand of government inspectors, who then can use it to convict him." Dissent 3, (Rutledge), nor is the decision consistent with the statute.	CrimPro, conservative
United States v. Hoffman, 335 U.S. 77 (1948).	Companion case to *Shapiro*, 335 U.S. 1, slight differences (improper appeal, records not produced under oath), same outcome without opinion, same dissenters, referring to their opinions in *Shapiro*.	CrimPro, conservative
Nye & Nissen v. United States, 336 U.S. 613 (1949).	Upholding conviction of aiding fraud on the United States in sales of dairy items to the military using fraudulent invoices, reversing conspiracy conviction. Dissent 1 (Frankfurter with Jackson and Rutledge), "Now that the theory has been rejected which made it unnecessary for the Court of Appeals to pass on the sufficiency of the evidence to support the charge of aiding and abetting, we should remand the case so that it may do so." Dissent 2 (Murphy), "[T]he Court holds that failure to instruct of the relationship between conspiracy and aiding or abetting is unimportant. I cannot agree."	CrimPro, conservative

4. VINSON–BURTON–FRANKFURTER–JACKSON–REED (THREE O'CLOCK)

Carter v. Illinois, 329 U.S. 173 (1946).	Not all criminal defendants have a right to counsel, (Frankfurter: "the Due Process Clause has never been perverted so as to force upon the forty-eight States a uniform code of criminal procedure.") Dissent 1 (Douglas with Black and Rutledge) would remand, "there is ample evidence in the record . . . to support petitioner's claim that he was not capable of making his defense." Dissent 2 (Murphy), "there is no affirmative indication that he intelligently waived his right to counsel or that he understood the intricate legal problems involved in his indictment and conviction."	CrimPro, conservative
United States v. United Mine Workers of America, 330 U.S. 258 (1947).	Plurality upholds contempt conviction of mineworkers' union for enjoined strike. Concurrence 1 (Jackson), without opinion. Concurrence 2 (Frankfurter) would not exclude application of labor legislation because the government is a party. Dissent 1 (Black with Douglas) finds the fines excessive and would require that they be conditional on not complying with the court order. Dissent 2 (Murphy), the dispute was clearly a labor dispute, therefore subject to the corresponding legislation and injunction violated the statute. Dissent 3 (Rutledge with Murphy), "Congress has forbidden the use of labor injunctions in this and like cases, that conclusion is the end of our function."	Labor, conservative
Joseph v. Carter & Weekes Stevedoring Co., 330 U.S. 422 (1947).	Tax on general receipts of loading and unloading interstate freight boats and trains violates the Commerce Clause because loading and unloading is part of interstate transportation and the tax is not apportioned. Dissent 1 (Black), without opinion. Dissent 2 (Douglas with Rutledge) finds the tax does not impede interstate commerce but might violate the Import-Export Clause. Dissent 3 (Murphy) joins dissent 2 but not its last part and would approve the tax.	Tax, conservative
Bruce's Juices, Inc. v. American Can Co., 330 U.S. 743 (1947).	Rejecting antitrust claim that quantity discounts (given to larger customers) were illegal; "it does not follow that Congress would forbid the savings of large-scale mass production to be passed along to consumers." Dissent (Murphy with all), "the unmistakable effect of the Court's decision is to permit the recovery of discriminatory prices despite the plain language and policy of the Act and despite the lessening of competition that might thereby result."	Antitrust, conservative

Order of United Commercial Travelers v. Wolfe, 331 U.S. 586 (1947).	Majority allows Ohio's respect for contractual limitations period to govern the South Dakota contract and preclude liability. Dissent (Black with all), "the Court today, in part, nullifies a great purpose of the original Constitution, as later expressed in the Tenth Amendment, to leave the several states free to govern themselves in their domestic affairs. Hereafter, if today's doctrine should be carried to its logical end, the state in which the most powerful corporations are concentrated, or those corporations themselves, might well be able to pass laws which would govern contracts made by the people in all of the other states." Liberal if about states' rights; conservative if about contractual limitations. Treated as conservative.	Business, conservative
United States v. Silk, 331 U.S. 704 (1947).	For social security taxes, self-scheduling truckers with their own trucks were independent contractors, coal loaders who had their own tools were employees. Dissent 1 (Black with Douglas and Murphy) would hold both to be employees without opinion. Dissent 2 (Rutledge) would remand the truckers "not think[ing] it necessary . . . to undertake drawing the final conclusion generally in these borderline cases."	Tax, conservative
Adamson v. California, 332 U.S. 46 (1947).	Federal right against self-incrimination does not apply to state trials despite Fourteenth Amendment: "the due process clause does not protect, by virtue of its mere existence the accused's freedom from giving testimony by compulsion in state trials . . ." Dissent 1 (Murphy with Rutledge), the right against self-incrimination "is a constituent part of the Fourteenth Amendment." Dissent 2 (Black), the Fourteenth Amendment intended and did apply the entire bill of rights to the states.	CrimPro, conservative
Foster v. Illinois, 332 U.S. 134 (1947).	State defendants who plead guilty without counsel still received due process. Dissent (Black with all), the Court "waters down the Bill of Rights guarantee of counsel in criminal cases."	CrimPro, conservative
Gayes v. New York, 332 U.S. 145 (1947).	Sixteen-year-old who plead guilty without counsel still received due process. Dissent (Rutledge with all), "I am unwilling to subscribe to such a doctrine of forfeitures concerning constitutional rights, which in the extreme circumstances of this case seems to me shocking."	CrimPro, conservative
Caldarola v. Eckert, 332 U.S. 155 (1947).	Upholding no liability in NY courts to longshoreman injured by defective vessel of the US managed by agent. Dissent 1 (Douglas with Black and Murphy), "It is no answer to the legal argument on which those private rights rest that the Government might be inconvenienced if they were recognized." Dissent 2 (Rutledge), "the liability here, since it arises from a maritime tort, is a creature of federal law" and would overrule the NY courts and impose liability.	Tort, conservative
Fay v. New York, 332 U.S. 261 (1947).	NY special jury statute does not offend the Constitution. Dissent (Murphy with all), the blue-ribbon jury selection in fact excludes service workers and laborers, therefore it is not representative and therefore violates the equal protection clause of the Fourteenth Amendment.	CrimPro, conservative

Morris v. McComb, 332 U.S. 422 (1947).	Transportation companies with 3 percent interstate work are subject to the Interstate Commerce Commission and, due to an exception in the statute, not subject to the FLSA overtime rules. Dissent 1 (Murphy with Black and Douglas), "it is clear that petitioner's truck drivers and mechanics are subject to the wage and hour provisions of the Fair Labor Standards Act. They spend virtually all of their time in transportation activities which are an integral part of the production of goods for interstate commerce." Dissent 2 (Rutledge), the court extends an exception beyond its intended purpose.	Labor, conservative
Cox v. United States, 332 U.S. 442 (1947).	Affirming AWOL conviction of Jehovah's Witnesses who sought minister exemption from military service. Dissent 1 (Douglas with Black), "The Selective Service files of these petitioners establish, I think, their status as ministers of that sect." Dissent 2 (Murphy with Rutledge), "I object to the standard of review whereby the draft board classification is to be sustained unless there is no evidence to support it."	Social, conservative
Callen v. Pennsylvania R.R. Co., 332 U.S. 625 (1948).	Affirming validity of settlement of worker with railroad and refusing to impose burden of proof on railroad. Dissent (all without opinion), the admiralty rule on releases should apply, burden on carrier.	Labor, conservative
Moore v. New York, 333 U.S. 565 (1948).	NY 'blue ribbon' jury selected from panel that had no African Americans or women was appropriate. Dissent (Murphy with all), "Two men must forfeit their lives after having been convicted of murder not by a jury of their peers, not by a jury chosen from a fair cross-section of the community, but by a jury drawn from a special group of individuals singled out in a manner inconsistent with the democratic ideals of the jury system."	CrimPro, conservative
Bute v. Illinois, 333 U.S. 640 (1948).	Upholding uncounseled conviction, "[t]he Fourteenth Amendment, however, does not say that no state shall deprive any person of liberty without following the federal process." Dissent (Douglas with all), "Of what value is the constitutional guaranty of a fair trial if an accused does not have counsel to advise and defend him?"	CrimPro, conservative
United States v. South Buffalo Ry. Co., 333 U.S. 771 (1948).	Confirming interpretation of Interstate Commerce Act that allows railroads to circumvent a prohibition by carrying items belonging to affiliates. Dissent (Rutledge with all), "This is another case where the Court saddles Congress with the load of correcting its own emasculation of a statute, by drawing from Congress' failure explicitly to overrule it, the unjustified inference that Congress approves the mistake."	Business, conservative
Briggs v. Pennsylvania R.R. Co., 334 U.S. 304 (1948).	Plaintiff recovering under the Federal Employers Liability Act is not entitled to interest during appeal. Dissent (Rutledge with all), "Nothing in [the statutory section's] terms permits an implication that the award of interest is to be made as a matter of judicial discretion. The language is mandatory."	Labor, conservative

United States v. Columbia Steel Co., 334 U.S. 495 (1948).	Not enjoining acquisition by US Steel on antitrust grounds. Dissent (Douglas with all), "The least I can say is that a company that has that tremendous leverage on our economy is big enough."	Business, conservative
Gryger v. Burke 334 U.S. 728 (1948).	Uncounseled conviction not problematic, "It rather overstrains our credulity to believe that one who had been a defendant eight times and for whom counsel had twice waged defenses, albeit unsuccessful ones, did not know of his right to engage counsel." Dissent (Rutledge with all), "Counsel might not have changed the sentence, but he could have taken steps to see that the sentence was not predicated on misconception or misreading of the controlling statute, a requirement of fair play which absence of counsel withheld from this prisoner."	CrimPro, conservative
Ludecke v. Watkins, 335 U.S. 160 (1948).	"The very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion." Dissent 1 (Black with all), "no act of Congress . . . lends the slightest basis to the claim that after hostilities with a foreign country have ended the President or the Attorney General, one or both, can deport aliens without a fair hearing reviewable in the courts."; Dissent 2 (Douglas with Murphy and Rutledge), "The notion that the discretion of any officer of government can override due process is foreign to our system."	Immigr, conservative
Comstock v. Group of Institutional Inv'rs, 335 U.S. 211 (1948).	Reorganization: Refusing to disallow or subordinate parent railroad claim against subsidiary for advances. Dissent (Murphy with all), the subsidiary should not have been paying dividends; "If there is mismanagement and if there is undue harm to the creditors and preferred stockholders of the subsidiary, the Deep Rock doctrine dictates subordination of the parent's claim."	Business, conservative
Eckenrode v. Pennsylvania R.R. Co., 335 U.S. 329 (1948).	Affirming denial of negligence claim for employee. Dissent (Black with all, neither majority nor dissent wrote opinions).	Labor, conservative
Grand River Dam Auth. v. Grand-Hydro, 335 U.S. 359 (1948).	Where utility planning hydroelectric dam transferred the site to state regulating entity pending evaluation for expropriation, the use of the site for a dam was appropriate in its valuation. Dissent (Douglas with all), "The result of this decision, no matter how it is rationalized, is to give the water-power value of the current of a river to a private party who by reason of federal law neither has nor can acquire any lawful claim to it."	Business, conservative
Kovacs v. Cooper, 336 U.S. 77 (1949).	Finding local ordinance against amplified noise not to violate freedom of speech. Dissent 1 (Murphy) without opinion. Dissent 2 (Black with Douglas and Rutledge), should have followed Saia and granted speech protection.	Speech, conservative

Fisher v. Pace, 336 U.S. 155 (1949).	Affirming conviction of lawyer for contempt. Dissent 1 (Douglas with Black), "This lawyer was the victim of the pique and hotheadedness of a judicial officer . . ." Dissent 2 (Murphy), "the assumption that the judge is wise and impartial, should make us quick to upset his determinations in the few cases which clearly demonstrate light regard for the principles that should guide a responsible jurist." Dissent 3 (Rutledge), "there can be no due process in trial in the absence of calm judgment and action, untinged with anger, from the bench."	CivPro, conservative
Reynolds v. Atlantic Coast Line R.R. Co., 336 U.S. 207 (1949).	Affirming lack of employer liability without opinion; dissent without opinion.	Labor, conservative
International Union, U.A.W., A.F. of L., Local 232 v. Wisconsin Emp't Relations Bd., 336 U.S. 245 (1949).	State's police power may prohibit intermittent work stoppages (rather than a strike). Dissent (Murphy with Rutledge), "the Court, by its reasoning and its quotation from a Congressional report, now makes intermittent work stoppages the equivalent of mutiny." Dissent 2 (Douglas with Black and Rutledge), "The concerted activities in these cases were as old as labor's struggle for existence and were aimed at . . . the purposes which . . . the federal Act was designed to protect. Therefore the legality of the methods used is exclusively a question of federal law."	Labor, conservative
Farrell v. United States, 336 U.S. 511 (1949).	Recognizing admiralty law obligation to maintain forever seaman maimed in defense of vessel, but principle not applicable to accident a mile from the ship at a different dock later than time of allowed return. Dissent (Douglas with all), "an injury received on returning to a ship from shore leave is plainly incurred in the service" and therefore should receive maintenance for life.	Labor, conservative
Hynes v. Grimes Packing Co., 337 U.S. 86 (1949).	Dissent would grant Native American tribe more rights against outside fishermen.	Tribal, conservative
Cosmopolitan Shipping Co. v. McAllister, 337 U.S. 783 (1949).	Injured seaman was only employee of the United States, not the shipping agent, hence had no claim against agent. Dissent (Black with all), without opinion.	Labor, conservative
Weade v. Dichmann, Wright & Pugh, Inc., 337 U.S. 801 (1949).	Agent managing ship for the United States could only be liable for his own negligence, not as owner. Dissent without opinion.	Tort, conservative
Fink v. Shepard S.S. Co., 337 U.S. 810 (1949).	Shipping agent (for the United States) not liable to seaman for accident. Dissent without opinion.	Labor, conservative

5. VINSON–BLACK–DOUGLAS–MURPHY–RUTLEDGE (EIGHT O'CLOCK)

Edward Katzinger Co. v. Chicago Metallic Mfg. Co., 329 U.S. 394 (1946).	Clause in patent license establishing price-fixing upon the licensee renders license invalid. Dissent (Frankfurter with all, in McGregor v. Westinghouse, 329 U.S. 402, 1947) licensee of patent may not challenge its validity, the court "use[s] the excuse of an inoperative price-fixing clause to allow a licensee to escape his otherwise valid promise to pay royalties."	Antitrust, liberal
MacGregor v. Westinghouse Elec. & Mfg. Co., 329 U.S. 402 (1947).	(Same as *Edward Katzinger Co*., 329 U.S. 394.)	Antitrust, liberal
Saia v. New York, 334 U.S. 558 (1948).	Free speech; reversing conviction of violation of municipal ordinance prohibiting use of sound amplification in public. Dissent 1 (Frankfurter with Reed and Burton) "Surely there is not a constitutional right to force unwilling people to listen." Dissent 2 (Jackson) "It is astonishing news to me if the Constitution prohibits a municipality from policing, controlling or forbidding erection of [sound amplification] equipment by a private party in a public park." In effect reversed by Ward v. Rock Against Racism, 491 U.S. 781 (1989) (allowing NYC to impose use of its own sound amplification equipment and technicians without citing Saia; also in tension with *Kovacs*, 336 U.S. 77, same Vinson composition, different majority).	Speech, liberal
Urie v. Thompson, 337 U.S. 163 (1949).	Upholding liability of railroad to driver for silicosis from long-term inhalation under Boiler Inspection Act. Dissent 1 (Frankfurter with Reed, Jackson and Burton) would remand but not construe BIA as protecting from occupational diseases and limit recovery to Federal Employers Liability Act.	Labor, liberal

Appendix B2: Tables of Stewart Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Stewart. The Stewart composition consists of four appointees of Democratic presidents (Black, Clark, Douglas, and Frankfurter) and five appointees of Republican presidents (Brennan, Harlan, Stewart, Warren, and Whittaker). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. WARREN–BLACK–BRENNAN–CLARK–DOUGLAS (NINE O'CLOCK)

Monrosa v. Carbon Black Exp., Inc., 359 U.S. 180 (1959).	Interpreting bill of lading setting Genoa as forum to only apply to in personam actions; dissent (Harlan with all), "I cannot agree …"	Business, liberal
Farmers Educ. & Coop. Union of Am., N. Dakota Div., v. WDAY, Inc., 360 U.S. 525 (1959).	Broadcaster of political speech is immune from libel. Dissent (Frankfurter with all) says federal act does not prevent liability for libel under proper state statutes.	Speech, liberal
McElroy v. United States, 361 U.S. 281 (1960).	Courts martial do not have jurisdiction over non-military employees of the military abroad. Dissent 1 (Harlan with Frankfurter at 361 U.S. 234) considers the result "a much too narrow conception of the constitutional power of Congress." Dissent 2 (Whittaker with Stewart), no jurisdiction over dependents of military personnel but yes over employees.	CrimPro, liberal
Goett v. Union Carbide Corp., 361 U.S. 340 (1960).	Vacating appellate decision of no liability for barge accident remand to establish if state or admiralty law applied. Dissent 1 (Harlan with Frankfurter) Ct of App applied the law correctly. Dissent 2 (Whittaker), "persuaded that the Court of Appeals has made sufficiently clear that it thought this diversity, admiralty, death case was governed by the general maritime law, as remedially supplemented by the West Virginia Wrongful Death statute, and properly decided it on that basis." Dissent 3 (Stewart), "even if the Court of Appeals mistakenly applied substantive standards of federal maritime law, no purpose could be served by remanding this case unless it were shown that the state law is somehow more favorable to the petitioner. But there has been no [such] showing—nor any suggestion . . . "	Labor/Tort, liberal

Flora v. United States, 362 U.S. 145 (1960).	The statute "requires full payment of the assessment before an income tax refund suit can be maintained in a Federal District Court." Dissent (Whittaker with all) "cannot doubt that Congress plainly expressed its intention to waive sovereign immunity to suits, and to grant jurisdiction to District Courts over suits, against the United States to recover 'any sum' alleged to have been wrongfully collected."	Tax, liberal
Miller Music Corp. v. Charles N. Daniels, Inc., 362 U.S. 373 (1960).	Executor of deceased has right to renew copyright. Dissent (Harlan with all), "the effect of the decision is to enable an author who has sold his renewal rights during his lifetime to defeat the transaction by a deliberate subsequent bequest of those rights to others in his will."	IP, liberal
United States v. Republic Steel Corp., 362 U.S. 482 (1960).	Remanding on riverbed deepening. Dissent 1 (Frankfurter) found the injunction statutorily precluded. Dissent 2 (Harlan with rest), "In order to reach what it considers a just result the Court, in the name of 'charitably' construing the Act, has felt justified in reading into the statute things that actually are not there."	Envir'l, liberal
FTC v. Henry Broch & Co., 363 U.S. 166 (1960).	Robinson-Patman Act prohibits volume discounts disguised as brokerage fees. Dissent (Whittaker with all) believes the statute allows volume discounts.	Antitrust, liberal
Sunray Mid-Continent Oil Co. v. Federal Power Commission, 364 U.S. 137 (1960).	Federal Power Commission has the authority to force recipient of license to have the license not expire. Dissent 1 (Harlan with all), "I fear this is another instance where the Court has taken impermissible liberties with statutory language in order to remedy what it considers an undesirable deficiency in the way Congress has written the statute." Dissent 2 (Frankfurter), "The Commission cannot rest denial [of a license] on its *ipse dixit*. Nor can the Commission rest on the general spirit or the ultimate purposes of the Natural Gas Act, for to do so amounts to saying that the Act forbids time certificates, when in fact it does not."	Business, liberal
Sun Oil Co. v. Federal Power Commission, 364 U.S. 170 (1960).	(sister case to *Sunray Mid-Continent Oil Co*., 364 U.S. 137)	Business, liberal
Poller v. CBS, 368 U.S. 464 (1962).	Reverses SJ for defendants in antitrust. Dissent (Harlan with all), "As I see it, this is one of those cases, not unfamiliar in treble-damage litigation, where injury resulting from normal business hazards is sought to be made redressable by casting the affair in antitrust terms. I think that the antitrust laws do not fit this case, and that the courts below were quite correct in holding that the respondents were entitled to judgment as a matter of law."	Antitrust, liberal

2. WARREN–BLACK–BRENNAN–DOUGLAS–STEWART (TEN O-CLOCK)

SEC v. Variable Annuity Life Insurance Co. of America, 359 U.S. 65 (1959).	Variable annuity contracts (pegged on the performance of portfolios) required registration with the Securities and Exchange Commission as investment vehicles. Dissent (Harlan with all), "We should decline to admit the SEC into this traditionally state regulatory domain."	Business, liberal
Irvin v. Dowd, 359 U.S. 394 (1959).	Death penalty habeas case proper because state remedies were effectively exhausted. Dissent 1 (Frankfurter) wrote that "it is inconceivable that, on the proceeding before us, we would entertain jurisdiction." Dissent 2 (Harlan with all) said Court should decide the merits and not remand.	CrimPro, liberal
In re Sawyer, 360 U.S. 622 (1959).	Majority reverses lawyer's sanction; dissent (Frankfurter with all), "when a lawyer goes before a public gathering and fiercely charges that the trial in which he is a participant is unfair, that the judge lacks integrity, the circumstances under which he speaks not only sharpen what he says but he imparts to his attack inflaming and warping significance. He says that the very court-room into which he walks to plead his case is a travesty, that the procedures and reviews established to protect his client from such conduct are a sham. 'We are a society governed by law, whose integrity it is the lawyer's special role to guard and champion.' No matter how narrowly conceived this role may be, it has been betrayed by a lawyer who has engaged in the kind of conduct here found by the Hawaii court. Certainly this Court, the supreme tribunal charged with maintaining the rule of law, should be the last place in which these attacks on the fairness and integrity of a judge and the conduct of a trial should find constitutional sanction."	CivPro, liberal
Elkins v. United States, 364 U.S. 206 (1960).	Evidence seized by state agents which would be inadmissible if seized by federal agents is inadmissible. Dissent 1 (Frankfurter with all), "I would not embark upon a hazardous jettisoning of a rule which has prevailed in the federal courts for half a century without bringing to the surface demonstrated evils . . . ." Dissent 2 (Harlan with Clark and Whittaker), "I would retain intact the nonexclusionary rule of [past] cases, which has behind it the strongest judicial credentials, the sanction of long usage, and the support of what, in my opinion, is sound constitutional doctrine . . . ."	CrimPro, liberal
Rios v. United States, 364 U.S. 253 (1960).	(sister case to *Elkins*, 364 U.S. 206)	CrimPro, liberal

Shelton v. Tucker, 364 U.S. 479 (1960).	"[T]o compel a teacher to disclose his every associational tie is to impair that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." Dissent 1 (Frankfurter with all), the statute "does not exceed the permissible range of state action limited by the Fourteenth Amendment." Dissent 2 (Harlan with all), the "requirement cannot be said to transgress the constitutional limits of a State's conceded authority to determine the qualifications of those serving it as teachers . . . ."	Social, liberal
Campbell v. United States, 365 U.S. 85 (1961).	Remanding to inquire about witness statement in possession of FBI deliverable to the defense per statute. Dissent 1 (Frankfurter with all), "It is not for the court to question that the foundation for production—here, the existence of a document—is wanting, if counsel for defendants do not question the Government's explanation for non-production."	CrimPro, liberal
Milanovich v. United States, 365 U.S. 551 (1961).	Remanding for correct instruction to jury to convict of either lesser included or greater offense. Dissent 1 (Frankfurter with all), "the doctrine that an aider and abettor to a theft who at an appreciably later time receives some of the stolen goods may not be charged on separate counts for both transactions, or that a judge may not leave both counts for a jury verdict of guilt on either one or both, . . . is to disregard the whole philosophy of our law based on precedents." Dissent 2 (Clark with Whittaker), "How, I ask, could [the defendant] have been harmed by the jury finding her guilty of both offenses rather than choosing between the two?"	CrimPro, liberal
Stewart v. United States, 366 U.S. 1 (1961).	Mention of not having testified in prior trials reversible error. Dissent 1 (Clark with Whittaker), the court "effectively remove[s] from our law the concept of harmless error in capital cases." Dissent 2 (Frankfurter with Harlan and Whittaker), to assume "that the jury was influenced by the two questions on which the verdict is reversed here, is to show less respect for the jury system than do the opponents of the system."	CrimPro, liberal
Deutch v. United States, 367 U.S. 456 (1961).	Reversing conviction for refusal to identify other communists to the House Committee on Un-American Activities for lack of pertinency of the questions. Dissent 1 (Harlan with Frankfurter), "the defendant made no 'pertinency' objection . . . [therefore] the Government at trial is left free to satisfy the requirement of pertinency in any way it may choose." Dissent 2 (Whittaker with Clark), "the questions . . . were, on their face, clearly pertinent to the inquiry as a matter of law."	Social, liberal

3. CLARK–FRANKFURTER–HARLAN–STEWART–WHITTAKER (THREE O'CLOCK)

Romero v. International Terminal Operating Co., 358 U.S. 354 (1959).	U.S. courts do not have jurisdiction over claim of Spanish seaman in Spanish vessel against foreign owner. Dissent 1 (Brennan with all), jurisdiction over employer exists. Dissent 2 (Black), the words "any seaman" do not exclude foreigners. Dissent 3 (Douglas), agreeing with Black.	CivPro, conservative
The Tungus v. Skovgaard, 358 U.S. 588 (1959).	Affirming reversal of dismissal of suit for wrongful death aboard ship. Dissent 1 (Brennan with all) does not believe the state wrongful death statute encompasses maritime torts and concurs. Concurrence (Frankfurter), "in situations like the present the construction of state law should not, as a matter of the wise administration of law, be made independently by the lower federal courts, but its authoritative construction should be sought, under readily available state procedure, from the state court, while the case is held in the federal court."	CivPro, conservative
United N.Y and N.J. Sandy Hook Pilots Ass'n v. Halecki, 358 U.S. 613 (1959).	Reversing liability to repairman from on-board accident because seaworthiness was not owed to him. Dissent (Brennan with all), he was owed seaworthiness. Concurrence (Frankfurter), same as in *The Tungus*, 358 U.S. 588.	Tort, conservative
Brown v. United States, 359 U.S. 41 (1959).	Affirming summary contempt punishment. Dissent 1 (Warren with all), the majority "sanctions the procedure used below to convict petitioner summarily . . . to 15 months' . . . under Rule 42(a) when [it] should have been [under] Rule 42(b). The denial of even the minimal protections accorded by Rule 42(b) deprived petitioner of an opportunity to prepare a legal defense, or to demonstrate extenuating circumstances . . . ."	CrimPro, conservative
Bartkus v. Illinois, 359 U.S. 121 (1959).	Trial under Illinois law for bank robbery after federal acquittal did not violate due process. Dissent 1 (Black with Warren and Douglas), "double prosecutions for the same offense are . . . contrary to the spirit of our free country . . . ." Dissent 2 (Brennan with Warren and Douglas), "the extent of participation of the federal authorities here constituted this state prosecution actually a second federal prosecution . . . ."	CrimPro, conservative
Frank v. Maryland, 359 U.S. 360 (1959).	Upholding search and conviction for health inspection of defendant who had half-ton pile of rat feces and hay in back yard. Dissent (Douglas with all), city inspector needed proper warrant.	CrimPro, conservative
Uphaus v. Wyman, 360 U.S. 72 (1959).	State had authority to investigate communist activity. Dissent (Brennan with all), "This record, I think, not only fails to reveal any interest of the State sufficient to subordinate appellant's constitutionally protected rights, but affirmatively shows that the investigatory objective was the impermissible one of exposure for exposure's sake."	Social, conservative

Barenblatt v. United States, 360 U.S. 109 (1959).	Upholding contempt for refusing to answer questions of House Un-American Activities Committee. Dissent 1 (Black with Warren and Douglas), "Ultimately all the questions in this case really boil down to one—whether we as a people will try fearfully and futilely to preserve democracy by adopting totalitarian methods, or whether in accordance with our traditions and our Constitution we will have the confidence and courage to be free." Dissent 2 (Brennan) agrees; First Amendment should have prevailed.	Social, conservative
Anonymous v. Baker, 360 U.S. 287 (1959).	State judicial inquiry could properly question investigators accused of ambulance chasing without counsel present. Dissent (Black with all), "In upholding such secret inquisitions the Court once again retreats from what I conceive to be its highest duty, that of maintaining unimpaired the rights and liberties guaranteed by the Fourteenth Amendment and the Bill of Rights."	CivPro, conservative
Rosenberg v. United States, 360 U.S. 367 (1959).	Error in non-production of evidence was harmless. Dissent (Brennan with all), "it is impossible for a judge to be fully aware of all the possibilities for impeachment inhering in a prior statement of a government witness, 'Because only the defense [can.']"	CrimPro, conservative
Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395 (1959).	Defense not entitled to grand jury minutes. Dissent (Brennan with all), "Plainly defense counsel were not asking to see the minutes of the entire grand jury proceedings, nor even of all of Jonas' testimony before the grand jury unless all of it was on the same subject matter as his trial testimony."	CrimPro, conservative
Inman v. Baltimore & Ohio R.R. Co., 361 U.S. 138 (1959).	Railroad whose longtime signalman at crossing was hit by drunk driver was entitled to avoid liability for lack of any negligence. Dissent (Douglas with all), "certainly the duty to make a reasonable effort to provide a safe place of work is not conditioned upon an employee's first being injured or killed."	Tort, conservative
Abel v. United States, 362 U.S. 217 (1960).	Dissents 1 (Douglas with Black) and 2 (Brennan with all) would find search violative of Fourth Amendment.	CrimPro, conservative
Mitchell v. H. B. Zachry Co., 362 U.S. 310 (1960).	Builder of municipal dam not sufficiently closely related to commerce for the Fair Labor Standards Act to apply to employees. Dissent (Douglas with all) disagreeing.	Labor, conservative
Niukkanen v. McAlexander, 362 U.S. 390 (1960).	Deportation of alien as communist was proper (per curiam). Dissent (Douglas with all), "The 'meaningful association' with the Party . . . simply has not been established here."	Social, conservative
Schaffer v. United States, 362 U.S. 511 (1960).	Joinder despite dismissal of conspiracy count was harmless error. Dissent (Douglas with all), "There is no sure way to protect against [guilt by association] except by separate trials, especially where, as here, the several defendants, though unconnected, commit the crimes charged by dealing with one person . . . ."	CrimPro, conservative
Parker v. Ellis, 362 U.S. 574 (1960).	Habeas petition moot after early release for good conduct. Dissent (Douglas with all), "Justice demands that he be given the relief he deserves."	CrimPro, conservative

Levine v. United States, 362 U.S. 610 (1960).	Contempt conviction in closed courtroom was proper, defendant did not request open. Dissent 1 (Black with Warren and Douglas), against precedent. Dissent 2 (Brennan with Douglas), waiver of right to open trial should be express and informed.	CrimPro, conservative
Kimm v. Rosenberg, 363 U.S. 405 (1960).	Alien under deportation order had no right to self-deport, government did not have burden to show membership in communist party. Dissent (Douglas with all), "Today we allow invocation of the Fifth Amendment . . . as proof that an alien lacks the 'good moral character' which he must have . . . to become eligible for [self-deportation]."	Social, conservative
Flemming v. Nestor, 363 U.S. 603 (1960).	Deportation grounds that terminate social security benefits are proper. Dissent 1 (Black), constitutes punishment without due process. Dissent 2 (Douglas), beyond Congressional authority. Dissent 3 (Brennan with Warren & Douglas), is ex post facto punishment.	Social, conservative
Schilling v. Rogers, 363 U.S. 666 (1960).	Courts cannot review administrative discretion of returning property to enemy aliens. Dissent (Brennan with all), "We retreat from established principles of administrative law when we say [judicial review of administrative discretion] is unavailable here."	CivPro, conservative
Gonzales v. United States, 364 U.S. 59 (1960).	Conviction of Jehovah's Witnesses for refusing draft upheld. Dissent (Warren with all), "I am unwilling to give to [this deferential to religious objectors] statute . . . a construction which results in a young man of unblemished reputation, who claims religious scruples, being sent to prison for 15 months without having received a full and fair consideration of his case."	CivPro, conservative
Wolfe v. North Carolina, 364 U.S. 177 (1960).	Dismissing appeal of trespass conviction of attending segregated park for not properly offering federal integration order. Dissent (Warren with all), "[A]ppellants offered the [relevant] record in evidence."	Social, conservative
McPhaul v. United States, 364 U.S. 372 (1960).	Affirming conviction for failure to produce documents requested by the Committee on Un-American Activities. Dissent (Douglas with all), "If Congress desires to have the judiciary adjudge a man guilty for failure to produce documents, the prosecution should be required to prove that the man whom we send to prison had the power to produce them."	Social, conservative
Polites v. United States, 364 U.S. 426 (1960).	Affirming de-naturalization due to membership in Communist Party. Dissent (Brennan with all) would remand for District Court to exercise "discretion under Rule 60(b)(5)."	Social, conservative
Times Film Corp. v. City of Chicago, 365 U.S. 43 (1961).	Upholding film-approval ordinance. Dissent 1 (Warren with all), "[T]he Court . . . , in exalting the censor of motion pictures, has endangered the First and Fourteenth Amendment rights of all others engaged in the dissemination of ideas." Dissent 2 (Douglas with Warren & Black), against censorship.	Speech, conservative

Wilkinson v. United States, 365 U.S. 399 (1961).	Upholding conviction for refusing to answer questions of Committee on Un-American Activities. Dissent 1 (Black with Warren & Douglas) "regard[s] . . . unlimited sweep of the [precedent] a compelling reason, not to reaffirm that case, but to overrule it." Dissent 2 (Douglas with Warren & Black), the Committee does not have authority to prosecute its critics. Dissent 3 (Brennan with Douglas), "[T]he dominant purpose of these questions was . . . to harass the petitioner . . . . "	Social, conservative
Braden v. United States, 365 U.S. 431 (1961).	Upholding conviction for refusing to answer questions of Committee on Un-American Activities. Dissent 1 (Black with Warren & Douglas), "The majority's approach makes the First Amendment, not the rigid protection of liberty its language imports, but a poor flexible imitation." Dissent 2 (Douglas with all), "[B]efore inroads in the First Amendment domain may be made, some demonstrable connection with communism must first be established . . . . "	Social, conservative
Green v. United States, 365 U.S. 301 (1961).	Affirming criminal conviction despite that mitigating statement was made through counsel. Dissent (Black with all) would remand.	CivPro, conservative
Konigsberg v. State Bar of California, 366 U.S. 36 (1961).	Upholding denial of eligibility for bar membership on the basis of refusal to answer about Communist Party membership. Dissent 1 (Black with Warren & Douglas), "[T]his case must take its place in the ever-lengthening line of cases in which individual liberty to think, speak, write, associate and petition is being abridged in a manner precisely contrary to the explicit commands of the First Amendment." Dissent 2 (Brennan with Warren), precedent requires that the committee of the bar should show defendant "advocated the otherthrow of the Government."	Social, conservative
In re Anastaplo, 366 U.S. 82 (1961).	Upholding denial of bar membership for refusing to answer questions about Communist Party membership. Dissent 1 (Black with all), "Too many men are being driven to become government-fearing . . . because the Government is being permitted to strike out at those who are fearless enough to think as they please and say what they think." Dissent 2 (Brennan with Warren), also against precedent as was *Konigsberg*, 366 U.S. at 80.	Social, conservative
Cohen v. Hurley, 366 U.S. 117 (1961).	Upholding disbarment for refusing to answer Communist Party membership questions. Dissent 1 (Black with Warren & Douglas), "[T]he majority is here approving a practice that makes the constitutional privilege against self-incrimination the 'phrase without reality.'" Dissent 2 (Douglas with Black), "The privilege against self-incrimination contained in the Fifth Amendment has an honorable history and should not be downgraded as it is today." Dissent 3 (Brennan with Warren), "[P]etitioner was protected by the immunity from compulsory self-incrimination guaranteed by the Fifth Amendment . . . . "	Social, conservative

Smith v. Butler, 366 U.S. 161 (1961).	Dismissing certiorari effectively precluding liability to employee. Dissent 1 (Brennan with Warren & Black), "I would reverse and remand the cause with direction to enter an order reinstating the judgment in favor of the petitioner." Dissent 2 (Douglas) would remand for a new trial.	Tort, conservative
Communist Party of The United States v. Subversive Activities Control Bd., 367 U.S. 1 (1961).	Upholding registration requirement. Dissent 1 (Warren), "[T]he Act does constitute a violation of the Fifth Amendment." Dissent 2 (Black), "The first banning of an association because it advocates hated ideas . . . marks a fateful moment in the history of a free country." Dissent 3 (Douglas), "Congress can require full disclosure of all the paraphernalia through which a foreign dominated and controlled organization spreads propaganda, engages in agitation, or promotes politics in this country. But the Fifth Amendment bars Congress from requiring full disclosure by one Act and by another Act making the facts admitted or disclosed under compulsion the ingredients of a crime." Dissent 4 (Brennan with Warren), "[O]fficials cannot be compelled to [register] without abridging their privilege against self-incrimination."	Social, conservative
Scales v. United States, 367 U.S. 203 (1961).	Upholding conviction for membership in party advocating the violent overthrow of the government. Dissent 1 (Black), "[P]etitioner has been convicted under a law that is, at best, unconstitutionally vague and, at worst, ex post facto." Dissent 2 (Douglas), "[W]e make a sharp break with traditional concepts of First Amendment rights." Dissent 3 (Brennan with Warren & Douglas), defendant has statutory immunity.	Social, conservative
Gori v. United States, 367 U.S. 364 (1961).	Conviction after mistrial is not double jeopardy. Dissent (Douglas with all), "The policy of the Bill of Rights is to make rare indeed the occasions when the citizen can for the same offense be required to run the gantlet twice."	CrimPro, conservative
Cafeteria & Restaurant Workers Union, Local 473 v. McElroy, 367 U.S. 886 (1961).	Military leader of base may exclude civilian employee of contractor summarily without notice. Dissent (Brennan with all), deserved due process.	Admin, conservative
Killian v. United States, 368 U.S. 231 (1961).	Upholding prosecution for false oath of no membership of Communist Party. Dissent 1 (Black), "[T]he Constitution absolutely prohibits the Government from sending people to jail for 'crimes' that arise out of, and indeed are manufactured out of, the imposition of test oaths that invade the freedoms of belief and political association . . . . " Dissent 2 (Douglas with Warren & Black), "Membership, as that word is used in the Act, should be proved by facts which tie the accused to the illegal aims of the party."	Social, conservative
Hill v. United States, 368 U.S. 424 (1962).	Upholding conviction despite no opportunity to make mitigating statement. Dissent (Black with all), the violation of defendant's right to speak in mitigation is grounds for false sentence.	CrimPro, conservative

Oyler v. Boles, 368 U.S. 448 (1962).	Upholding habitual-offender conviction. Dissent (Douglas with all), notice was inadequate, "procedural due process has not been satisfied."	CrimPro, conservative

Appendix B3: Tables of Powell Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Powell (and Rehnquist, they were appointed the same day). The Powell composition consists of three appointees of Democratic presidents (Douglas, Marshall, and White) and six appointees of Republican presidents (Blackmun, Brennan, Burger, Powell, Rehnquist, and Stewart). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BRENNAN–DOUGLAS–MARSHALL–STEWART–WHITE (NINE O'CLOCK)

Loper v. Beto, 405 U.S. 473 (1972).	Prosecution cannot use against defendant prior convictions obtained without assistance of counsel. Dissents would allow.	CrimPro, liberal
Deepsouth Packing Co. v. Laitram Corp., 406 U.S. 518 (1972).	May infringer export machines before final assembly? Majority, yes. Dissent (Blackmun with Burger, Powell, & Rehnquist), no.	Patent, liberal
Wright v. Council of Emporia, 407 U.S. 451 (1972).	School desegregation cannot be circumvented by creating new school district. Dissent (Burger with Blackmun, Powell, & Rehnquist), not clear that new school would perpetuate discrimination.	Social, liberal
Gelbard v. United States, 408 U.S. 41 (1972).	No obligation to testify before grand jury about discussions obtained by illegal wiretaps. Dissent (Rehnquist with Burger, Blackmun, & Powell) argues majority finds illegality of wiretap too easily.	CrimPro, liberal
Furman v. Georgia., 408 U.S. 238 (1972).	Death penalty is cruel and unusual punishment. Dissents, no.	Criml, liberal
U.S. Dep't. of Agric. v. Murry, 413 U.S. 508 (1973).	Due process; Food stamp recipients could be dependents of taxpayers who could not receive food stamps. Dissents, no.	Social, liberal
Plummer v. City of Columbus, 414 U.S. 2 (1973).	Defendant can take advantage of facial unconstitutionality (for vagueness) of ordinance under which convicted.	CrimPro, liberal

United States v. Giordano, 416 U.S. 505 (1974).	Attorney General's secretary could not approve wiretaps.	CrimPro, liberal
Goss v. Lopez, 419 U.S. 565 (1975).	School students facing suspension are entitled to notice and hearing.	Social, liberal
Wood v. Strickland, 420 U.S. 308 (1975).	School officials exceeded boundaries. Dissent (Powell with Burger, Blackmun, & Rehnquist) would not subject them to as high a level of scrutiny.	Social, liberal

2. BRENNAN–DOUGLAS–MARSHALL–POWELL–STEWART (TEN O'CLOCK)

Almota Farmers Elevator & Warehouse Co. v. United States, 409 U.S. 470 (1973).	Takings, condemnation valuation should also account for improvements beyond lease term. Dissent (Rehnquist with Burger, White, & Blackmun) would not include them.	Takings, liberal
Almeida-Sanchez v. United States, 413 U.S. 266 (1973).	Warrantless search within 100 miles from border, despite statutory authorization, violates Fourth Amendment. Dissent (White with Burger, Blackmun, & Rehnquist), it does not.	CrimPro, liberal
Fla. Power & Light Co. v. Int'l Bhd. of Elec. Workers, Local 641, 417 U.S. 790 (1974).	Union members sanctioned for crossing picket line committed no unfair labor practice. Dissent (White with Burger, Blackmun, & Rehnquist), yes.	Employment, liberal

3. BURGER–BLACKMUN–BRENNAN–REHNQUIST–WHITE (TWO O'CLOCK)

Moore v. Illinois, 408 U.S. 786 (1972).	Death penalty, Illinois cannot execute. Dissent (Marshall with Douglas, Stewart, & Powell), it can.	Criml, liberal
Ricci v. Chi. Mercantile Exch., 409 U.S. 289 (1973).	Majority wants antitrust litigants to obtain reaction from the Commodity Exchange Commission. Dissents find it pointless.	Business, liberal
Colgrove v. Battin, 413 U.S. 149 (1973).	Six-member jury is valid for civil trials. Dissent 1 (Douglas with Powell), no. Dissent 2 (Marshall with Stewart) would not reach merits. If about tort then liberal, if about CivPro then conservative.	CivPro, conservative
Renegotiation Board v. Bannercraft Clothing Co., 415 U.S. 1 (1974).	Government contractors did not have Freedom of Information Act (FOIA) right to documents of the Renegotiation [of Government Contracts] Board in part because merits come later. Dissent (Douglas with Stewart, Marshall, & Powell) thinks contractors had exhausted their remedies and their plea should win.	Admin, conservative

Muniz v. Hoffman, 422 U.S. 454 (1975).	Union and its officer did not have right to jury trial under National Labor Relations Act. Dissents think statute awards right to jury trial.	Employment, conservative

4. BURGER–BLACKMUN–POWELL–REHNQUIST–WHITE (THREE O'CLOCK)

Johnson v. Louisiana, 406 U.S. 356 (1972).	Upholding Louisiana law allowing 9–3 jury conviction. Dissent would require a unanimous jury.	CrimPro, conservative
Apodaca v. Oregon, 406 U.S. 404 (1972).	Upholding Oregon law allowing 10–2 jury conviction. Dissent would require a unanimous jury.	CrimPro, conservative
Jefferson v. Hackney, 406 U.S. 535 (1972).	The system that Texas uses to compute Aid to Families with Dependent Children is proper despite minor inequalities. Dissent would invalidate.	Social, conservative
Milton v. Wainwright, 407 U.S. 371 (1972).	Admission of guilt to undercover police in jail proper. Dissent disagrees.	CrimPro, conservative
Lloyd Corp. v. Tanner, 407 U.S. 551 (1972).	Shopping center was allowed to prohibit distribution of flyers on its premises. Dissent finds a First Amendment violation.	Social, conservative
Laird v. Tatum, 408 U.S. 1 (1972).	Army surveillance of lawful protests did not violate the First Amendment. Dissent finds it does.	Social, conservative
Gravel v. United States, 408 U.S. 606 (1972).	The 'inquiry and debate' clause does not immunize senator and aid from prosecution for publication of military secrets (pentagon papers). Dissents would give immunities.	Admin, conservative
Branzburg v. Hayes, 408 U.S. 665 (1972).	First Amendment does not relieve reporter from responding to criminal grand jury subpoena about confidential sources.	Speech, conservative
United States v. Kras, 409 U.S. 434 (1973).	Filing fee for obtaining discharge in bankruptcy does not deny indigents equal protection. Dissent finds it does.	Social, conservative
Dep't of Motor Vehicles v. Rios, 410 U.S. 425 (1973).	California Supreme Court requires hearing before suspension of license on both California and Federal constitutional grounds. Reversed to clarify which. Dissent would deny certiorari, these reversals are improvident.	Admin, conservative
Ortwein v. Schwab, 410 U.S. 656 (1973).	Oregon twenty-five dollar filing fee to challenge denial of welfare does not violate equal protection. Dissent finds it does; same dissents as in *Kras*.	Social, conservative
Lavallee v. Delle Rose, 410 U.S. 690 (1973).	Reversing lower court grants of habeas corpus for improper use of confessions. Dissent disagrees.	CrimPro, conservative
United States v. Russell, 411 U.S. 423 (1973).	Undercover provision of legal substance did not result in entrapment of drug maker.	CrimPro, conservative
Chaffin v. Stynchcombe, 412 U.S. 17 (1973).	Higher sentence upon retrial does not offend double jeopardy.	CrimPro, conservative

Miller v. California, 413 U.S. 15 (1973).	Upholds obscenity conviction and expands obscenity definition. Dissents disagree.	Social, conservative
Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973).	Upholds injunction against showing obscene movies and expands definition.	Social, conservative
Kaplan v. California, 413 U.S. 115 (1973).	Upholds obscenity conviction of adult bookstore operator (no images) and expands definition.	Social, conservative
United States v. 12 200-Ft. Reels of Super 8mm Film, 413 U.S. 123 (1973).	Upholds forfeiture of obscene films imported by private individual.	Social, conservative
United States v. Orito, 413 U.S. 139 (1973).	Upholds prohibition against transportation of obscene material.	Social, conservative
Cady v. Dombrowski, 413 U.S. 433 (1973).	Warrantless search of car towed for being disabled does not trigger exclusionary rule.	CrimPro, conservative
Heller v. New York, 413 U.S. 483 (1973).	Adversary hearing prior to seizure was not required because the judge issuing the warrant saw the entire obscene film.	Social, conservative
Broadrick v. Oklahoma, 413 U.S. 601 (1973).	Statutory limitation of partisan activities of public employees is proper.	Social, conservative
Gosa v. Mayden, 413 U.S. 665 (1973).	Convicted servicemen are not entitled to retroactive application of new constitutional principle that martial courts cannot convict for offenses against civilians.	CrimPro, conservative
Alexander v. Virginia, 413 U.S. 836 (1973).	Jury is not required in civil proceeding against obscene material.	Social, conservative
United States v. Edwards, 415 U.S. 800 (1974).	Warrantless seizure of clothing over ten hours after arrest is proper.	CrimPro, conservative
United States v. Chavez, 416 U.S. 562 (1974).	If Attorney General actually authorized warrant even if court did not state so, evidence not suppressed.	CrimPro, conservative
Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974).	Sequestration of collateral without hearing is proper.	Business, conservative
Cardwell v. Lewis, 417 U.S. 583 (1974).	Warrantless search of car exterior was proper with probable cause.	CrimPro, conservative
Hamling v. United States, 418 U.S. 87 (1974).	Upholding conviction for publication of illustrated version of the Presidential Report of the Commission on Obscenity and Pornography.	Social, conservative
United States v. Richardson, 418 U.S. 166 (1974).	Taxpayer cannot force the Central Intelligence Agency to turnover spending receipts.	Social, conservative

Am. Radio Ass'n. v. Mobile S.S. Ass'n., 419 U.S. 215 (1974).	Upholds Alabama courts' injunction against picketing by maritime employees in Mobile. Dissent considers it preempted by the National Labor Relations Act.	Employment, conservative
Estelle v. Dorrough, 420 U.S. 534 (1975).	Per curiam. Texas's automatic dismissal of pending appeal by escaped felon proper. Dissent disagrees.	Criml, conservative
Iannelli v. United States, 420 U.S. 770 (1975).	Double jeopardy does not prevent conviction for conspiracy to conduct gambling business and participation in gambling operation. Dissent disagrees.	Criml, conservative
Connell Constr. Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616 (1975).	Allows use of antitrust against union. Dissent finds statutory text excludes this application of antitrust.	Employment, conservative
Hicks v. Miranda, 422 U.S. 332 (1975).	Obscenity; California seized films from theater; theater countered in federal court obtaining ruling of unconstitutionality of obscenity statute and finding authorities harassed theater. Majority denies federal jurisdiction and reverses harassment.	Social, conservative
United States v. Peltier, 422 U.S. 531 (1975).	Will not retroactively apply a later decision finding roving border patrol warrantless searches improper. Dissent would apply.	CrimPro, conservative
Bowen v. United States, 422 U.S. 916 (1975).	Will not retroactively apply a later decision finding roving border patrol warrantless searches improper. Dissent would apply.	CrimPro, conservative

5. BURGER–BLACKMUN–POWELL–REHNQUIST–STEWART (FOUR O'CLOCK)

Kirby v. Illinois, 406 U.S. 682 (1972).	Robbery suspects did not have the right to have an attorney present during lineup identification by victim. Dissent finds suspects should.	CrimPro, conservative
Illinois v. Somerville, 410 U.S. 458 (1973).	After defective indictment, trial court ordered mistrial, allowing re-indictment and trial; defendant objected to mistrial, mistrial was proper. Dissent finds double jeopardy should attach under the circumstances.	CrimPro, conservative
San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).	School funding; Texas scheme proper. Dissent disagrees finding funding violates equal protection with no rational basis.	Social, conservative
Falk v. Brennan, 414 U.S. 190 (1973).	Employer size for Fair Labor Standards Act; real estate management company size was that of its commissions from owners of its managed real estate. Dissent would include total rents.	Employment, conservative

United States v. Gen. Dynamics Corp., 415 U.S. 486 (1974).	Antitrust; District Court was justified in finding that acquisition did not substantially lessen competition, market was energy market. Dissent finds that the market is coal market and regions of merging entities should not be defined by their (different) freight rate districts; and that, yes, acquisition lessened competition.	Business, conservative
Mayor of Phila. v. Educ. Equal. League, 415 U.S. 605 (1974).	Educational equal protection challenge, denied. Dissent would allow.	Social, conservative
Arnett v. Kennedy, 416 U.S. 134 (1974).	Lloyd-LaFollette Act adequately protects terminated federal employees who need no more protection. Dissent would give more protections under various clauses.	Employment, conservative
De Funis v. Odegaard, 416 U.S. 312 (1974).	Affirmative action challenge. Majority finds it moot because student is graduating. Dissent would uphold policy.	Social, conservative
Scherk v. Alberto-Culver Co., 417 U.S. 506 (1974).	Enforcing arbitration agreement in an international acquisition. Dissent would not enforce, subjecting it to securities law.	Business, conservative
Gilmore v. Montgomery, 417 U.S. 556 (1974).	Desegregating Montgomery, Alabama, city parks. Not a 5–4 decision, multiple concurrences.	Dropped
Bangor Punta Operations, Inc., v. Bangor & A. R. Co., 417 U.S. 703 (1974).	Corporate looting recovery in favor of purchased corporate parent barred equitably. Dissent would grant it.	Business, conservative
United States v. Conn. Nat'l Bank, 418 U.S. 656 (1974).	Antitrust, bank acquisition, allowed by lower court. Majority remands for narrow market definition, not a potential market definition. Dissent would adopt statewide potential market definition. Conservative because the dissent is more anti-acquisition than majority.	Business, conservative
Milliken v. Bradley, 418 U.S. 717 (1974).	School desegregation; Detroit's desegregation need not include neighboring school districts. Dissent would include them.	Social, conservative
Schlesinger v. Ballard, 419 U.S. 498 (1975).	Women navy officers allowed to have longer period with no promotion before discharge. Dissent would find it a due process violation.	Admin, conservative
Warth v. Seldin, 422 U.S. 490 (1975).	Citizens do not have standing to challenge zoning producing exclusion of poor people in suburb. Dissent would grant anti-discrimination protection.	Social, conservative
United States v. Nat'l Ass'n of Sec. Dealers, Inc., 422 U.S. 694 (1975).	Antitrust laws do not apply to SEC-regulated open-end mutual fund marketing. Dissent would apply antitrust.	Business, conservative

6. BURGER–BLACKMUN–REHNQUIST–STEWART–WHITE (FIVE O'CLOCK)

United States v. Fuller, 409 U.S. 488 (1973).	Takings, lessee owner of condemned lands was not entitled to value added to leased lands. Dissent disagrees.	Takings, conservative
Rosario v. Rockefeller, 410 U.S. 752 (1973).	New York early registration for voting in primary is proper. Dissent finds burden on vote excessive.	Voting, conservative
Pell v. Procunier, 417 U.S. 817 (1974).	California's prohibition against journalists' requests to interview specific inmates is proper. Dissents find it an improper abridgment of free speech.	Criml, conservative
Saxbe v. Wash. Post Co., 417 U.S. 843 (1974).	Federal prohibition against journalists' requests to interview specific inmates is proper. Dissents find it an improper abridgment of free speech.	Criml, conservative

7. BLACKMUN–BRENNAN–DOUGLAS–MARSHALL–WHITE (SEVEN O'CLOCK)

Sea-Land Servs., Inc. v. Gaudet, 414 U.S. 573 (1974).	Admiralty; Longshoreman's widow can recover in excess of his recoveries. Dissent disagrees.	Tort, liberal
Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115 (1974).	Resolution of objection to New Jersey benefits for striking workers not moot despite that strike was over. Dissent finds it is moot.	Employment, liberal
United States v. ITT Cont'l Baking Co., 420 U.S. 223 (1975).	FTC order prohibiting acquisitions interpreted broadly to allow daily penalties. Dissent would interpret narrowly.	Admin, liberal

Appendix B4: Tables of Stevens Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Stevens. The Stevens composition consists of two appointees of Democratic presidents (Marshall and White) and seven appointees of Republican presidents (Blackmun, Brennan, Burger, Powell, Rehnquist, Stevens, and Stewart). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order. One majority initially appeared to have three opinions, but because we dropped one from the sample, the majority also drops from the analysis. The majority is Blackmun, Brennan, Marshall, Stewart, and White. The dropped opinion is *Concerned Citizens of Southern Ohio v. Pine Creek Conservancy Dist*., 429 U.S. 651 (1977). The majority remands. One dissent would consider the merits, and one would affirm. We drop the case because the dissents are too different to place the majority's political slant.

1. BRENNAN–MARSHALL–POWELL–STEVENS–STEWART (NINE O'CLOCK)

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976).	Blanket prohibition against employment of resident aliens in the federal civil service violates due process. Dissent sees no due process protections to obtaining government employment.	Social, liberal
Woodson v. North Carolina, 428 U.S. 280 (1976).	North Carolina's death sentence law unconstitutional. Dissent would uphold.	Criml, liberal
Roberts v. Louisiana, 428 U.S. 325 (1976).	Louisiana death sentence law unconstitutional. Dissent would uphold.	Criml, liberal
Brewer v. Williams, 430 U.S. 387 (1977).	Tricked confession in police cruiser after reading of Miranda, deprived suspect of assistance of counsel, triggers exclusionary rule. Dissent 1 (Burger) would reduce scope of exclusionary rule; Dissent 2 (White) would not apply it here.	CrimPro, liberal
Roberts v. Louisiana, 431 U.S. 633 (1977).	Louisiana's mandatory death sentence for killing police unconstitutional. Dissents disagree.	CrimPro, liberal
United States v. Larionoff, 431 U.S. 864 (1977).	Re-enlisted military entitled to re-enlistment bonus; contrary rules violate statute. Dissent would uphold contrary rules.	Admin, liberal
Thompson v. United States, 444 U.S. 248 (1980).	Solicitor General falsely stated he sought federal conviction for act that was an element of prior state conviction but actually SG did not seek it and sought reversal; vacates for retrial; dissent 1 with no opinion, dissent 2 that argument was already presented.	CrimPro, liberal

2. BRENNAN–MARSHALL–POWELL–STEVENS–WHITE (TEN O'CLOCK)

Califano v. Goldfarb, 430 U.S. 199 (1977).	Social security limitation on payments to widowers (compared to widows) violates equal protection. Dissent does not consider the distinction sufficient for a claim.	Social, liberal
Trimble v. Gordon, 430 U.S. 762 (1977).	Illinois probate law letting illegitimate children inherit intestate from mothers, not fathers, violates equal protection. Dissent finds differences and would affirm.	Social, liberal
Vitek v. Jones, 445 U.S. 480 (1980).	Nebraska inmate has procedural due process right to a hearing before transport to a mental institution. Dissent finds case moot.	Criml, liberal
Stone v. Graham, 449 U.S. 39 (1980).	Kentucky statute requiring ten commandments in all classrooms violates establishment clause. Dissents would give plenary hearing, adopt Supreme Court of Kentucky's reasoning, and accept secular purpose saving statute.	Religion, liberal

3. BLACKMUN–BRENNAN–MARSHALL–STEVENS–WHITE (ELEVEN O'CLOCK)

Singleton v. Wulff, 428 U.S. 106 (1976).	Abortion providers challenge Missouri denial of Medicaid for abortions; plurality: they do have standing, but Cir Ct should not have reached merits. Dissent 1 (Stevens) would uphold and protect impecunious women. Dissent 2 (Powell, Burger, Rehnquist, Stewart) would not allow physicians to exercise the rights of potential patients.	Abortion, liberal
City of Philadelphia v. New Jersey, 430 U.S. 141 (1977).	Per curiam. Philadelphia wants NJ's prohibition on waste entering NJ unconstitutional. Majority remands to Supreme Court of New Jersey to determine whether NJ's statute is preempted by federal Resource Conservation and Recovery Act. Dissent believes the act does not preempt NJ's statute and should reach the merits.	Federalism, liberal
Castaneda v. Partida, 430 U.S. 482 (1977).	Majority held Jury selection in county where Mexican origin was 80 percent but only 39 percent of veniremen was discriminatory. Dissent of Stewart with Burger & Powell would reverse Court of Appeals (which was upheld) because District Court was not clearly erroneous. Dissent (Burger with Powell and Rehnquist) finds majority's position untenable since it does not know the eligible population stats. Dissent (Powell with Burger and Rehnquist) find disproportionate representation was not purposeful and invidious but from natural causes.	CrimPro, liberal
Nyquist v. Mauclet, 432 U.S. 1 (1977).	Challenge to NY's denial of higher ed benefits to aliens. Majority held classification was inherently suspect. Dissent of Burger with Rehnquist & Powell would not because benefits denied were not essential to sustain aliens (distinguishing precedent). Dissent (Powell with Burger and Stewart) because it is against aliens who prefer to retain foreign citizenship, not a suspect class. Dissent of Rehnquist with Burger finds state does not discriminate because alien who declares intent to stay avoids the disparate treatment.	Social, liberal

Bates v. State Bar of Ariz., 433 U.S. 350 (1977).	Attorney advertisement protected by First Amendment (conservative by liberal majority). Burger dissent: Change harmful to those the ad ban would protect. Rehnquist dissent: Court demeans First Amendment which is designed for public speech. Powell dissent with Stewart: Attorney ads inherently misleading.	Speech, conservative
Dougherty County, Georgia, Bd. of Educ. v. White, 439 U.S. 32 (1978).	GA statute requiring unpaid leave for state employees seeking elected office was subject to prior approval according to the Voting Rights Act. Dissents find Court's reading of Voting Rights Act overbroad.	Social, liberal
County of Los Angeles v. Davis, 440 U.S. 625 (1979).	Challenge by Hispanics of Los Angeles Fire Department hiring standards including written test was dismissed as moot. Dissents against affirmative action suggesting majority's move was partisan.	Social, liberal
Davis v. Passman, 442 U.S. 228 (1979).	Fired congressional aide could conceivably have due process damages claim. Dissent would dismiss to preserve intensely personal relation with legislative staff.	Employment, liberal
Califano v. Westcott, 443 U.S. 76 (1979).	Aid to families with dependent children could not have lower benefits for unemployed parent, if it is the mother. Dissent agrees with due process violation but would not order remedy that benefit be paid to all, rather just enjoin payments until Congress fixes.	Social, liberal
Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979).	Majority affirms school integration relief. Dissent 1 (Stewart in Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979)) would not shift burden and would uphold trial court; Dissent 2 (Rehnquist with Powell) find segregation to be de facto, not de jure, and not meriting remedy.	Social, liberal
Rose v. Mitchell, 443 U.S. 545 (1979).	Majority does not find discrimination in selection of grand jury foreman but would vacate convictions if it did. Dissents would not invalidate convictions for grand jury defects.	CrimPro, liberal
United States Parole Comm'n v. Geraghty, 445 U.S. 388 (1980).	Released prisoner's challenge to parole guidelines is not moot, and he can appeal denial of class certification. Dissent would not grant such procedural rights.	Criml, liberal
Owen v. City of Independence, Mo., 445 U.S. 622 (1980).	Municipality does not have immunity from 1983 liability for civil rights violation in firing police chief. Dissent disagrees on novelty of claim.	Employment, liberal
Clayton v. Int'l Union, 451 U.S. 679 (1981).	Employee did not have to exhaust inadequate union remedies before suing employer and union. Dissent would require exhaustion.	Employment, liberal

County of Wash., Or. v. Gunther, 452 U.S. 161 (1981).	Female guards at a women's prison have sex discrimination claim for receiving lower wages than guards of male prison. Dissent thinks work is not equal.	Employment, liberal
Cal. Medical Assoc'n v. Fed. Election Comm'n, 453 U.S. 182 (1981).	Plurality upholds campaign contribution limits. Blackmun concurrence would subject to strict First Amendment review. Dissent finds majority's construction too burdensome on courts and far from language of statute.	Speech, liberal

4. BURGER–BLACKMUN–REHNQUIST–STEVENS–WHITE (TWELVE O'CLOCK)

Cty. Ct. v. Allen, 442 U.S. 140 (1979).	New York law presumes possession of firearms in car by all occupants. Majority holds its permissible. Dissent believes there is a due process violation.	CrimPro, conservative
United States v. Raddatz, 447 U.S. 667 (1980).	Magistrate judges may hold evidentiary (suppression) hearings. Dissent disagrees.	CrimPro, conservative
San Diego Gas & Elec Co. v. San Diego, 450 U.S. 621 (1981).	Dismisses challenge to California regulatory taking of property. Dissent would reach merits. Treated as a business dispute because this is a developer aggregating 412-acre parcel for nuclear powerplant, liberal because it allows the change in use from industrial to open/agricultural with no compensation.	Business, liberal

5. BURGER–BLACKMUN–POWELL–REHNQUIST–WHITE (ONE O'CLOCK)

Roemer v. Bd. of Public Works, 426 U.S. 736 (1976).	MD may fund nonreligious activities in religious colleges. Dissent 1 (Brennan with Marshall), "the Act provides for payment of general subsidies to religious institutions from public funds and I have heretofore expressed my view that '[g]eneral subsidies of religious activities would, of course, constitute impermissible state involvement with religion.'" Dissent 2 (Stewart) finds theology courses are too religious. Dissent 3 agrees with Dissent 1 but underscores ills of entanglement.	Social, conservative
Ludwig v. Massachusetts, 427 U.S. 618 (1976).	Dissent restates as, "The question in this case is whether Massachusetts may convict a defendant of a crime and sentence him to prison for a period of five years without a jury trial" and answers no.	CrimPro, conservative
Codd v. Velger, 429 U.S. 624 (1977).	Fired police complains cannot find job because of information about discharge. Dissent 3 restates as, "I am not persuaded that a person who claims to have been 'stigmatized' by the State without being afforded due process need allege that the charge against him was false in order to state a cause of action under 42 U.S.C. § 1983" and would remand. The other dissents agree.	Admin, conservative

Marks v. United States, 430 U.S. 188 (1977).	Obscenity defendants should benefit from not having easier standard from 1973 opinion apply to them retroactively and remands. Dissents would not remand but reverse. Because all justices agree about retroactivity, the disagreement is only about remand or reversal (if it were about obscenity, it would be social, liberal). Since remand allows more process that might still produce a guilty outcome, the division is treated as about Criminal Procedure and is conservative.	CrimPro, conservative
Smith v. United States, 431 U.S. 291 (1977).	Federal obscenity conviction. Dissents would reverse.	Social, conservative
Trainor v. Hernandez, 431 U.S. 434 (1977).	Federal Court should not enjoin Illinois effort to recover illegally obtained welfare permits. Dissent 2 restates, "the Court holds that an unconstitutional collection procedure may be used by a state agency, though not by others . . . ."	Social, conservative
Splawn v. California, 431 U.S. 595 (1977).	California obscenity conviction upheld. Dissent finds unconstitutionally overbroad.	Social, conservative
Ward v. Illinois, 431 U.S. 767 (1977).	Illinois pre-1973 obscenity conviction upheld. Dissent 1: statute is overbroad. Dissent 2: the court is wrong in finding that the Illinois statute complies with the court's obscenity precedent (*Miller*, 413 U.S. 15).	Social, conservative
United States v. New York Tel. Co., 434 U.S. 159 (1977).	District Court has authority to order Telephone Company to install surveillance devices. Dissents think the court does not have this authority.	CrimPro, conservative
American Broadcasting Cos., v. Writers Guild of Am., W., 437 U.S. 411 (1978).	Dissent: "The Court holds today that a labor union locked in a direct economic confrontation with an employer is powerless to impose sanctions on its own members who choose to pledge their loyalty to the adversary."	Employment, conservative
Bd. of Tr. of Keene State Coll. v. Sweeney, 439 U.S. 24 (1978).	Per Curiam. Remands employer discrimination with lighter burden of proof on employer. Dissent thinks Circuit Court was correct.	Social, conservative
Dalia v. United States, 441 U.S. 238 (1979).	Dissent: Order to use electronic surveillance does not also authorize breaking and entering into the premises in order to place it and then retrieve it.	CrimPro, conservative
Moore v. Sims, 442 U.S. 415 (1979).	Parents who lost custody of their children challenge Texas statutory and judicial scheme, dismissed. Dissent would reach merits. Considered conservative for being in favor of the state in federalism question.	Federalism, conservative
Mackey v. Montrym, 443 U.S. 1 (1979).	Dissent would require hearing before 90-day suspension of driver's license for refusing to take the breath-analyzer test.	Admin, conservative

Vance v. Terrazas, 444 U.S. 252 (1980).	Dissent 1 (Marshall) would require more than preponderance for intent to relinquish US citizenship; Dissent 2 (Stevens) would consider statutory standard of oath to foreign government inappropriate standard. Dissent 3 (Brennan with Stewart) does not find the acts constituted a relinquishment. Social-conservative for disassociating with foreigners.	Social, conservative
United States v. Havens, 446 U.S. 620 (1980).	Dissent: "The Court upholds the admission at trial of illegally seized evidence to impeach a defendant's testimony deliberately elicited *by the Government* under the cover of impeaching an accused who takes the stand in his own behalf."	CrimPro, conservative
Illinois v. Vitale, 447 U.S. 410 (1980).	Dissent: Teenager should not face involuntary manslaughter charge due to double jeopardy after having been convicted of reckless driving in the same accident.	CrimPro, conservative
Del. State College v. Ricks, 449 U.S. 250 (1980).	Majority: challenge to refusal of tenure is not timely. Dissent 1 (Stewart with Brennan & Marshall) denial of tenure was on date of trustees' decision therefore claim is timely and should not be dismissed. Dissent 2 (Stevens) would use actual date of discharge.	Employment, conservative
Flynt v. Ohio, 451 U.S. 619 (1981).	Dismisses challenge to Ohio obscenity charges. Dissent 1 (Stewart with Brennan & Marshall) would reverse. Dissent 2 (Stevens): "the interest in protecting magazine publishers from being prosecuted criminally because state officials or their constituents are offended by the content of an admittedly non-obscene political cartoon is not merely 'an identifiable federal policy'; it is the kind of interest that motivated the adoption of the First Amendment."	Social, conservative

6. BURGER–POWELL–REHNQUIST–STEWART–WHITE (TWO O'CLOCK)

Scott v. Illinois., 440 U.S. 367 (1979).	Fined defendant has no right to [free] counsel. Dissents would grant it.	CrimPro, conservative
Ambach v. Norwick, 441 U.S. 68 (1979).	Upholds New York law requiring teachers to be citizens or intend to become. Dissent disagrees.	Social, conservative
Comm. for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980).	Upholds New York law funding non-public schools. Dissent 1 shows departure from precedent. Dissent 2 (Stevens) would resurrect no funding of religious schools.	Social, conservative
Harris v. McRae, 448 U.S. 297 (1980).	Challenge to Hyde Amendment restricting Medicaid abortion funding. Upheld, concurrence (White criticizing dissent of Stevens) and four dissents.	Abortion, conservative
Williams v. Zbaraz, 448 U.S. 358 (1980).	Upholds Illinois funding of only abortions necessary to save life of mother. Four dissents.	Abortion, conservative

Diamond v. Diehr, 450 U.S. 175 (1981).	Grants process patent, conservative for creating more property rights.	Patent, conservative
Lassiter v. Dep't of Soc. Serv. of Durham County, N. Carolina, 452 U.S. 18 (1981).	Termination of mother's parental rights; failure to provide counsel not violative of due process. Dissent disagrees.	Social, conservative
Heffron v. Int'l Soc'y for Krishna Consciousness, Inc., 452 U.S. 640 (1981).	Requirement to have stationary booth did not violate First Amendment rights of a religious organization requiring the roving distribution of leaflets.	Speech, conservative
Lehman v. Nakshian, 453 U.S. 156 (1981).	Federal employees making age discrimination claim are not entitled to jury trial.	CivPro, conservative

7. BURGER–BLACKMUN–POWELL–REHNQUIST–STEWART (FOUR O'CLOCK)

United States v. MacCollom, 426 U.S. 317 (1976).	Habeas petitioning prisoners do not have a right to a free transcript.	CrimPro, conservative
Nat'l League of Cities v. Usery, 426 U.S. 833 (1976).	States are not subject to federal minimum wage for traditionally state employees (police etc.) because they cannot fall within the Commerce Clause. Dissents disagree.	Employment, conservative
Ingraham v. Wright, 430 U.S. 651 (1977).	Florida students are subject to corporal punishment, neither cruel and unusual, nor hearing needed for due process. Dissent disagrees.	Social, conservative
Batterton v. Francis, 432 U.S. 416 (1977).	Challenge of denial of aid to families with dependent children; delegation of the executive meant that the executive's interpretation rules; regulation valid. Dissent argues statute sought uniformity of definition of unemployment.	Social, conservative
Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623 (1977).	Challenge of antitrust injunction against enforcement of state damages remedy for violation of a non-compete clause. Majority reverses injunction. Dissent would uphold for true antitrust violation. The judge was the head of the antitrust division of Department of Justice and head of ABA antitrust division before bench. Conservative for upholding contractual arrangement.	Business, conservative
Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978).	News media did not have First Amendment right to obtain Nixon tapes from court that got them by subpoena and had to follow congressional statute about access to presidential material. Conservative for favoring the president and this president. Dissent 1 (White with Brennan) thinks act does not apply. Dissent 2 (Marshall) would grant access on public interest First Amendment. Dissent 3 (Stevens) would only reverse trial court for egregious abuse of discretion.	Speech, conservative

United States v. Scott, 437 U.S. 82 (1978).	Allows appeal from dismissals of criminal counts for delay. Dissent states this changes double jeopardy law, appeals were disallowed.	CrimPro, conservative
Rakas v. Illinois., 439 U.S. 128 (1978).	Warrantless evidence from getaway car not suppressed because defendants were mere passengers with no possessory interest in car or evidence. Dissent opens "The Court today holds that the Fourth Amendment protects property, not people."	CrimPro, conservative
Lalli v. Lalli, 439 U.S. 259 (1978).	Plurality upholds NY requirement of filiation during a father's lifetime as a condition for inheritance by illegitimate child. Dissent finds unacceptable discrimination against illegitimates.	Social, conservative
Leis v. Flynt, 439 U.S. 438 (1979).	In the Ohio obscenity prosecution of Larry Flynt and Hustler Magazine, courts refused his out-of-state lawyers to represent him, and the lawyers claim his prosecution must not proceed until they receive a hearing for the denial of their right to represent him. The majority finds no such right, but the dissent would. Categorized as CrimPro because it is in a criminal prosecution, as conservative because it avoids the hearing and moves the prosecution forward.	CrimPro, conservative
Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979).	NLRB ordered employer to turn over to union the test results of employees; employer refused absent written authorization, employer wins. Dissent would give deference to the NLRB to have balanced the interests correctly when it ordered the release of the scores.	Employment, conservative
TAMA v. Lewis, 444 U.S. 11 (1979).	Investors do not have private right of action under Investment Advisors Act. Dissent points out court reverses every circuit court.	Business, conservative
United States v. Mendenhall, 446 U.S. 544 (1980).	Drugs found on defendant were not suppressed because she did not object to search as she was changing planes. Dissent points out that this is a plurality while a majority do not deny seizure and a majority do not find adequate grounds for it.	CrimPro, conservative
Dawson Chemical Co. v. Rohm & Haas Co., 448 U.S. 176 (1980).	Dissent: "For decades this Court has denied relief from contributory infringement to patent holders who attempt to extend their patent monopolies to unpatented materials used in connection with patented inventions. The Court now refuses to apply this 'patent misuse' principle in the very area in which such attempts to restrain competition are most likely to be successful. The Court holds exempt from the patent misuse doctrine a patent holder's refusal to license others to use a patented process unless they purchase from him an unpatented product that has no substantial use except in the patented process."	Patent, conservative
United States v. DiFrancesco, 449 U.S. 117 (1980).	Government's right to appeal sentence under the Organized Crime Control Act does not violate double jeopardy. Dissent disagrees.	CrimPro, conservative
Michael M. v. Superior Court. of Sonoma Cnty., 450 U.S. 464 (1981).	Statutory rape law of California does not discriminate against men. Dissent 1 finds the classification unconstitutional. Dissent 2 (Stevens) finds influence on conduct minimal and would not uphold ban.	Social, conservative

8. BURGER–POWELL–REHNQUIST–STEVENS–STEWART (FIVE O'CLOCK)

New York Civil Serv. Comm'n v. Snead, 425 U.S. 457 (1976).	Per curiam. Since the statute never properly applied to complainant, therefore the court refuses to decide its constitutionality, state wins against employee. Dissent would vacate without oral argument.	Admin, conservative
Bishop v. Wood, 426 U.S. 341 (1976).	Fired police officer claims due process violations against city. Majority finds due process does not require hearing. Dissents would require hearing before hiring.	Admin, conservative
NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).	Church schools are not subject to NLRB due to First Amendment. Dissent: no. Labor and conservative for leniency on a class of employers.	Employment, conservative
Parham v. Hughes, 441 U.S. 347 (1979).	Georgia's statute barring illegitimate fathers from recovery in wrongful death of child upheld. Dissent: facial discrimination by sex. Business conservative if central idea is liability or social conservative if central idea is inducement of traditional family. Latter seems closer to court's thinking.	Social, conservative
Califano v. Boles, 443 U.S. 282 (1979).	Majority upholds reduced benefits to mothers who did not wed their children's fathers under social security. Dissent sees discrimination against unmarried parents.	Social, conservative
Gannett Co. , v. Depasquale, 443 U.S. 368 (1979).	Plurality upholds exclusion of press from pretrial hearing. Dissent finds majority's resulting rule too easy for the parties and the judge.	CrimPro, conservative
NLRB v. Yeshiva Univ., 444 U.S. 672 (1980).	University professors are not entitled to collective labor bargaining for being managers. Dissent would follow the interpretation of the NLRB and allow professors to unionize.	Employment, conservative
Indus. Union Dep't v. Am. Petroleum Inst., 448 U.S. 607 (1980).	Plurality invalidates OSHA toughening of benzene emissions standard. Dissent: "The plurality ignores the plain meaning of the Occupational Safety and Health Act of 1970 in order to bring the authority of the Secretary of Labor in line with the plurality's own views of proper regulatory policy."	Admin, conservative
Ball v. James, 451 U.S. 355 (1981).	Dissent: "In concluding that the District's 'one-acre, one-vote' scheme is constitutional, the Court misapplies the limited exception recognized in *Salyer Land* . . . , on the strained logic that the provision of water and electricity to several hundred thousand citizens is a 'peculiarly narrow function.'"	Social, conservative

9. BURGER–BLACKMUN–REHNQUIST–STEWART–WHITE (SIX O'CLOCK)

Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397 (1976).	Majority would not grant employer injunction against sympathy strike. Dissent (Stevens with all) thinks the employer may be entitled to an injunction.	Employment, liberal

Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977).	Ohio Supreme Court gives newscast First Amendment right to air tape of human cannonball; majority: entire act is not protected as news. Dissent 1 (Powell, Brennan, & Marshall) consider it proper news matter. Dissent 2 (Stevens) would ask Ohio Supreme Court to clarify as it looks too much about right of publicity relating to tort doctrines. Conservative for limiting speech and protecting creator's rights.	Speech, conservative
Bell v. Wolfish, 441 U.S. 520 (1979).	Pretrial detainees' challenge of practices at detention center denied. Dissents find majority far too permissive of intrusions upon the person of presumed innocent.	Criml, conservative
Greenholtz v. Inmates of the Neb. Penal & Corr. Complex, 442 U.S. 1 (1979).	Nebraska's parole process complied with due process. Dissent 1 (Powell) would require the 72-hour notice of District Court. Dissent 2 (Marshall, Brennan, & Stevens) finds liberty interest deserving broader protection.	Criml, conservative
Fare v. Michael C., 442 U.S. 707 (1979).	Juvenile who asked for probation officer but not attorney is considered to have waived rights and statements are admissible.	CrimPro, conservative
Rummel v. Estelle, 445 U.S. 263 (1980).	Texas three strikes imposing life on $120 fraud not cruel and unusual.	Criml, conservative
Schweiker v. Wilson, 450 U.S. 221 (1981).	Mentally ill under Medicare are not protected group, rational basis applies and state can reduce discretionary funding.	Social, conservative

10. BLACKMUN–BRENNAN–MARSHALL–STEVENS–STEWART (SEVEN O'CLOCK)

Vance v. Universal Amusement Co., Inc., 445 U.S. 308 (1980).	Texas block on display of potentially obscene movies till determination too restrictive. Dissents would not grant protection.	Social, liberal
Baldasar v. Ill., 446 U.S. 222 (1980).	An uncounseled misdemeanor conviction may not be used under an enhanced penalty statute to convert a subsequent misdemeanor into a felony. Dissent (Powell, White, & Rehnquist), uncounseled misdemeanors are valid.	CrimPro, liberal
Bullington v. Mo., 451 U.S. 430 (1981).	Reversed life sentence precludes death sentence on retrial in Missouri. Dissent (Powell with all) would allow death.	CrimPro, liberal

11. BLACKMUN–BRENNAN–MARSHALL–POWELL–WHITE (EIGHT O'CLOCK)

United States v. Lasalle National Bank, 437 U.S. 298 (1978).	IRS summons to bank was not in bad faith. Dissent (Stewart with all) would even more clearly favor criminal prosecutions.	Tax, liberal
Regents of the University of California v. Bakke, 438 U.S. 265 (1978).	Affirmative action; plurality in favor of potential but against actual practice. Dissent (Stevens, Burger, Stewart, & Rehnquist) is against any affirmative action.	Social, liberal

Butz v. Economou, 438 U.S. 478 (1978).	Majority grants qualified immunity to federal officials. Dissent (Rehnquist with all) would grant stronger immunity.	Admin, liberal
Caban v. Mohammed, 441 U.S. 380 (1979).	Unwed fathers, under NY law, less able to block adoptions than mothers, reversed. Dissents would give fathers fewer protections; dissenters considered conservative for adhering to older gender stereotypes.	Social, liberal
NLRB v. Int'l Longshoremen's Assn., 447 U.S. 490 (1980).	Labor dispute over treatment of maritime containers (new technology). NLRB issued rules they were not part of longshoremen's work, reversed. Dissent (Burger with all) sees the ILA trying to usurp the new technology.	Employment, liberal

Appendix B5: Tables of O'Connor Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being O'Connor. The O'Connor composition consists of two appointees of Democratic presidents (Marshall and White) and seven appointees of Republican presidents (Blackmun, Brennan, Burger, O'Connor, Powell, Rehnquist, and Stevens). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BLACKMUN–BRENNAN–MARSHALL–STEVENS–WHITE (NINE O'CLOCK)

NLRB v. Hendricks Cty. Rural Elec. Membership Corp., 454 U.S. 170 (1981).	Dissent would exclude from the NLRA the confidential secretary.	Employment, liberal
Charles D. Bonanno Linen Serv., Inc., v. N.L.R.B., 454 U.S. 404 (1982).	Dissent 1 (Burger with Rehnquist), would allow employer to withdraw from multi-employer bargaining agreement after impasse. Dissent 2 (O'Connor with Powell) finds majority and Dissent 1 too inflexible and would have the N.L.R.B. make more findings.	Employment, liberal
Merrill Lynch, Pierce, Fenner & Smith, Inc., v. Curran, 456 U.S. 353 (1982).	Majority finds private right of action under Commodities Exchange Act. Dissent would not.	Business, liberal

F.E.R.C. v. Miss., 456 U.S. 742 (1982).	Majority upholds Public Utility Regulatory Policies Act. Dissents would strike down much of it. Dissent 1 (Powell) would only strike the provisions mandating procedure.	Business, liberal
Conn. v. Teal, 457 U.S. 440 (1982).	Connecticut's written exams for public employees' promotions had racial disparate impact. Dissent (Powell with all) disagrees.	Social, liberal
Foremost Ins. Co. v. Richardson, 457 U.S. 668 (1982).	Collision of pleasure boats on river did confer admiralty jurisdiction. Dissent (Powell with all) rues erosion of federalism.	Business, liberal
Taylor v. Ala., 457 U.S. 687 (1982).	Confession after illegal arrest suppressed. Dissent (O'Connor with all) would not.	CrimPro, liberal
Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853 (1982).	Plurality: School Board may not remove books it does not like from library. Dissent 1 (Burger with all), calls holding a "lavish expansion" where the court gets "perilously close to becoming a 'super censor' of school board library decisions." Dissent 2 (Powell) lists quotes from the "nine vulgar or racist text books," like Slaughterhouse Five, "'Get out of the road, you dumb motherfucker.' The last word was still a novelty in the speech of white people in 1944. It was fresh and astonishing to Billy, who had never fucked anybody . . .." Dissent 3 (Rehnquist with Burger & Powell) states "It is true that the Court has recognized a limited version of that right in other settings, and Justice Brennan quotes language from five such decisions and one of his own concurring opinions in order to demonstrate the viability of the right-to-receive doctrine." Dissent 4 (O'Connor), "If the school board can set the curriculum, select teachers, and determine initially what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library." The topic could be First Amendment or Social, however, because it does not influence speech, it is categorized as social.	Social, liberal
Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982).	Dissent (Burger) states ". . . it cannot be said that the actions of the named respondents are fairly attributable to the State. Respondents did no more than invoke a presumptively valid state prejudgment attachment procedure available to all."	Business, liberal
Wash. v. Seattle Sch. Dist. No. 1, 458 U.S. 457 (1982).	Majority invalidates WA statute requiring pupils to go to the nearest school except for desegregation. Dissent (Powell with all) "In the absence of a constitutional violation, no decision of this Court compels a school district to adopt or maintain a mandatory busing program for racial integration."	Social, liberal
Enmund v. Fla., 458 U.S. 782 (1982).	Majority reverses death penalty for aider who did not kill. Dissent (O'Connor), ". . . today's holding interferes with state criteria for assessing legal guilt by recasting intent as a matter of federal constitutional law."	Criml, liberal

Conn. v. Johnson, 460 U.S. 73 (1983).	Dissent 2 (Powell with all) would consider error harmless and not suppress stating: "Today a plurality of this Court finds that an instruction given in violation of *Sandstrom v. Montana*, 442 U.S. 510 (1979), cannot be considered harmless except in certain 'rare situations.'""	CrimPro, liberal
E.E.O.C. v. Wyo., 460 U.S. 226 (1983).	Majority: State having 55 years as the retirement age of game warden violates age discrimination statute. Dissent (Burger with all), "The Court decides today that Congress may dictate to the states, and their political subdivisions, detailed standards governing the selection of state employees, including those charged with protecting people and homes from crimes and fires. Although the opinion reads the Constitution to allow Congress to usurp this fundamental state function, I have reexamined that document and I fail to see where it grants to the national government the power to impose such strictures on the states either expressly or by implication." Dissent 2 (Powell with O'Connor), ". . . write separately to record a personal dissent from Justice Stevens' novel view of our Nation's history."	Employment, liberal
Smith v. Wade, 461 U.S. 30 (1983).	Majority upholds award of punitive damages for section 1983 violations (in reformatory). Dissent 1 (Rehnquist with Burger & Powell), would have higher hurdle. Dissent 2 (O'Connor) disagrees with both and would not award punitive damages for recklessness. This is categorized as being about conditions of punishment because of the setting.	Criml, liberal
U.S. v. Sells Eng'g, Inc., 463 U.S. 418 (1983).	Dissent (Burger with all): "The Court today holds that attorneys within the Department of Justice who are not assigned to the grand jury investigation or prosecution must seek a court order on a showing of particularized need in order to obtain access, for the purpose of preparing a civil suit, to grand jury materials already in the Government's possession. In my view, this holding is contrary not only to the clear language but also to the history of Rule 6(e)(3)(A)(i) of the Federal Rules of Criminal Procedure."	CrimPro, liberal
N.L.R.B. v. City Disposal Sys., Inc., 465 U.S. 822 (1984).	Majority: The refusal to work with damaged equipment is an exercise of collective bargaining right. Dissent (O'Connor with all), argues that it is not.	Employment, liberal
Pulliam v. Allen, 466 U.S. 522 (1984).	Majority: May not require bond and incarcerate for non-incarcerable offenses. Dissent (Powell with all), "The Court today reaffirms the rule that judges are immune from suits for damages, but holds that they may be sued for injunctive and declaratory relief and held personally liable for money judgments in the form of costs and attorney's fees merely on the basis of erroneous judicial decisions. The basis for the Court's distinction finds no support in common law and in effect eviscerates the doctrine of judicial immunity that the common law so long has accepted as absolute." Categorized as social because incarceration for petty offenses is a problem for the poor.	Social, liberal

Sec'y of State of Md. v. Joseph H. Munson Co., 467 U.S. 947 (1984).	Majority invalidates Maryland statute limiting fundraiser fees to 25 percent. Dissent (Rehnquist with all), ". . . given the extensive legitimate application of this statute, both to fundraising expenses not attributable to public education or advocacy and to the fees charged by professional fundraisers who, like Munson, are not themselves engaged in advocating any causes, I see no basis for concluding that the Maryland statute is substantially overbroad. Nor does the Court offer any reason to so believe."	Speech, liberal
Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985).	Majority applies minimum wage to government employees (all functions, including governmental). Dissents disagree.	Employment, liberal
Francis v. Franklin, 471 U.S. 307 (1985).	Majority grants challenge to conviction on mandatory intent instruction. Dissent 1 (Powell) does not see irrefutable presumption. Dissent 2 (Rehnquist with Burger & O'Connor): "The conviction is set aside because this Court concludes that one or two sentences out of several pages of instructions given by the judge to the jury could be read as allowing the jury to return a guilty verdict in the absence of proof establishing every statutory element of the crime beyond a reasonable doubt. The Court reaches this result even though the judge admonished the jury at least four separate times that they could convict only if they found guilt beyond a reasonable doubt."	CrimPro, liberal

2. BLACKMUN–BRENNAN–MARSHALL–POWELL–STEVENS (TEN O'CLOCK)

Santosky v. Kramer, 455 U.S. 745 (1982).	Majority: New York should not use preponderance but clear and convincing as standard for terminating parental rights for neglect. Dissent (Rehnquist with all) argues that federal courts should stay out of domestic relations leaving to traditionally state jurisdiction.	Social, liberal
Larson v. Valente, 456 U.S. 228 (1982).	Invalidating statute exempting from registration only churches that raise more than 50 percent from members. Dissent 1 (White with Rehnquist), ". . . if the State determines that its interest in preventing fraud does not extend to those who do not raise a majority of their funds from the public, its interest in imposing the requirement on others is not thereby reduced in the least." Dissent 2 (Rehnquist with Burger, White, and O'Connor) finds no standing.	Religion, liberal
Plyler v. Doe, 457 U.S. 202 (1982).	Majority (with concurrences) strikes down Texas refusal to fund illegal alien children's education. Dissent (Burger with all) thinks the court usurps political authority.	Social, liberal
U.S. v. Johnson, 457 U.S. 537 (1982).	Majority applies retroactively Fourth Amendment interpretations on non-final proceedings. Dissent (White with all) rues expansion of retroactivity doctrine.	CrimPro, liberal

Solem v. Helm, 463 U.S. 277 (1983).	A challenge to South Dakota recidivist statute enhancing five-year-max felony to life was held to be cruel and unusual. Dissent (Burger with all), ". . . today the Court blithely discards any concept of stare decisis, trespasses gravely on the authority of the States, and distorts the concept of proportionality of punishment." "[C]urious business for this Court to so far intrude into the administration of criminal justice to say that a state legislature is barred by the Constitution from identifying its habitual criminals and removing them from the streets."	Criml, liberal
N.Y. v. Uplinger, 467 U.S. 246 (1984).	Challenge to New York statute of loitering for the purpose of deviant sexual behavior, invalidated by New York courts as a precursor to consensual sodomy which was no longer illegal. Majority: certiorari improvidently granted. Dissent (White with all) would reach merits.	Criml, liberal
Shea v. La., 470 U.S. 51 (1985).	Suppression of confession after request for attorney. Dissent 1 (White with all), "Today, however, the majority concludes that notwithstanding the substantial reasons for restricting the application of Edwards to cases involving interrogations that postdate the Court's opinion in Edwards, the Edwards rule must be applied retroactively." ". . . [C]annot concur in the approach to retroactivity adopted by today's majority—an approach that, if our precedents regarding the nonretroactivity of decisions marking a clear break with the past remain undisturbed, merely adds a confusing and unjustifiable addendum to our retroactivity jurisprudence." Dissent 2 (Rehnquist), adopt all of Harlan's retroactivity theory.	CrimPro, liberal
Lindahl v. Office of Pers. Mgmt., 470 U.S. 768 (1985).	Dissent (White with all), "[T]he majority concludes that notwithstanding the review preclusion provision of § 8347(c), petitioner is entitled to judicial review of the denial of his claim for disability retirement benefits. In the view of the majority, § 8347(c) must be interpreted to preclude judicial review only of OPM's factual determinations, not of questions of law. Because I consider the exercise in statutory construction that supports this conclusion fundamentally unsound, I dissent." Categorized as social because it is about disability payments. Could also be about the administration of benefits, i.e., admin, but that seems less central in the opinion.	Social, liberal
Sch. Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985).	Invalidates programs teaching to nonpublic school students. Dissent 1 (Burton) would uphold one of the two programs. Dissent 2 (O'Connor), same. Dissent 3 (Rehnquist), "[O]ne wonders how the teaching of 'Math Topics,' 'Spanish,' and 'Gymnastics,' which is struck down today, creates a greater 'symbolic link' than . . . " Dissent 4 (White), "'not required by the First Amendment and . . . contrary to the long-range interests of the country.'"	Education, liberal

Aguilar v. Felton, 473 U.S. 402 (1985).	Invalidates New York program sending public school teachers to teach non-religious subjects in religious schools. Dissent 1 (Burger), "[O]ur duty is to determine whether the statute or practice at issue is a step toward establishing a state religion" and "'contrary to the long-range interests of the country.'" Dissent 2 (Rehnquist), "[T]he Court takes advantage of the 'Catch-22' paradox of its own creation . . . whereby aid must be supervised to ensure no entanglement but the supervision itself is held to cause an entanglement." Dissent 3 (O'Connor with Rehnquist), "[c]ondemns benign cooperation between church and state."	Education, liberal
Me. v. Moulton, 474 U.S. 159 (1985).	Post-indictment statements to informant, inadmissible. Dissent (Burger with all), "Nothing whatever in the Constitution or our prior opinions supports this bizarre result, which creates a new 'right' only for those possibly habitual offenders who persist in criminal activity even while under indictment for other crimes."	CrimPro, liberal
Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot., 474 U.S. 494 (1986).	Superfund abandonment by bankruptcy trustee; majority requires the court to impose conditions protecting public safety (e.g., cleanup). Dissent (Rehnquist with all), "a misreading of three pre-Code cases, the elevation of that misreading into a 'well-recognized' exception to the abandonment power, and the unsupported assertion that Congress must have meant to codify the exception . . . "	Business, liberal
Thornburgh v. Am. Coll. of Obstetricians & Gynecologists, 476 U.S. 747 (1986).	Abortion conditions of Pennsylvania stuck down. Dissent 1 (Burger), whereas Roe merely required states not to absolutely bar abortions, "[t]oday the Court astonishingly goes so far as to say that the State may not even require that a woman contemplating an abortion be provided with accurate medical information concerning the risks." Dissent 2 (White with Rehnquist), substantive due process quagmire. Dissent 3 (O'Connor with Rehnquist), "[N]o legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion."	Social, liberal
Ford v. Wainwright, 477 U.S. 399 (1986).	Death penalty on insane inappropriate; Florida procedures inadequate. Dissent 1 (O'Connor with White), no such Eighth Amendment right as per Dissent 2; Florida procedures should be guided. Dissent 2 (Rehnquist with Burger), no such Eighth Amendment right.	Criml, liberal
Riverside v. Rivera, 477 U.S. 561 (1986).	Affirming attorneys' fees in civil rights liability. Dissent 1 (Burger), size of fees for novices absurd. Dissent 2 (Rehnquist with all), reasonable fees cannot mean spending almost 2,000 hours to recover $33,000.	Admin, liberal
Local 28 of The Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421 (1986).	Remedies against union favoring nonwhite membership proper. Dissent 1 (O'Connor), such racial quotas are precluded. Dissent 2 (White) remedy is inequitable. Dissent 3 (Rehnquist with Burger), remedy should only accrue in favor of victims of discrimination.	Social, liberal

3. BLACKMUN–BRENNAN–MARSHALL–O'CONNOR–POWELL (ELEVEN O'CLOCK)

FCC v. League of Women Voters of Cal., 468 U.S. 364 (1984).	Dissent 1 (Rehnquist, Burger, & White), "Congress in enacting § 399 of the Public Broadcasting Act, 47 U.S.C. § 399, has simply determined that public funds shall not be used to subsidize noncommercial, educational broadcasting stations which engage in 'editorializing' or which support or oppose any political candidate. I do not believe that anything in the First Amendment to the United States Constitution prevents Congress from choosing to spend public moneys in that manner." Dissent 2 (Stevens), "By enacting the statutory provision that the Court invalidates today, a sophisticated group of legislators expressed a concern about the potential impact of Government funds on pervasive and powerful organs of mass communication. One need not have heard the raucous voice of Adolf Hitler over Radio Berlin to appreciate the importance of that concern."	Speech, liberal
County of Oneida, N.Y. v. Oneida Indian Nation of N.Y., 470 U.S. 226 (1985).	Plurality upholds liability of NY counties to Indian tribes for occupied land. Concurrence in part, Dissent in part (Brennan with Marshall) claim state should survive, Eleventh Amendment only between noncitizens and state. Dissent (Stevens with all), Indians made transfer for valuable consideration 175 years before, time-barred.	Tribal, liberal
Phila. Newspapers, v. Hepps, 475 U.S. 767 (1986).	One who alleges defamation from speech of public concern must show its falsity. Concurrence (Brennan with Blackmun), all defendants, not only media. Dissent (Stevens with all), majority benefits negligent defendants/speakers; "I do not agree that our precedents require a private individual to bear the risk that a defamatory statement—uttered either with a mind toward assassinating his good name or with careless indifference to that possibility—cannot be proven false."	Speech, liberal

4. BURGER–BLACKMUN–MARSHALL–POWELL–WHITE (TWELVE O'CLOCK)

Dickerson v. New Banner Inst., Inc., 460 U.S. 103 (1983).	Majority: Iowa expunction of conviction does not remove federal ban on shipping firearms. Dissent (Rehnquist with all), plea to probation is not conviction preventing right to ship firearms.	Criml, conservative
Jefferson County Pharm. Ass'n, v. Abbott Labs., 460 U.S. 150 (1983).	Sales of pharmaceuticals to state for resale is not exempt from antitrust. Dissent 1 (Stevens) would exempt all governmental purchases from antitrust. Dissent 2 (O'Connor with Brennan, Rehnquist, Stevens) thinks clearly state purchases are not within the act.	Business, liberal
Dixson v. United States, 465 U.S. 482 (1984).	Private administrators of public housing are within federal anti-bribery statute definition of public official. Dissent (O'Connor with all), violating rule of lenity.	Criml, conservative
United States v. Yermian, 468 U.S. 63 (1984).	Proof of actual knowledge of federal agency jurisdiction not necessary for conviction of false statement to federal agency. Dissent (Rehnquist with all) would require actual knowledge.	Criml, conservative

5. BURGER–BLACKMUN–O'CONNOR–POWELL–REHNQUIST (ONE O'CLOCK)

Rose v. Lundy, 455 U.S. 509 (1982).	Habeas only after all state remedies totally exhausted. Concurrence (Blackmun), "Remitting a habeas petitioner to state court to exhaust a patently frivolous claim before the federal court may consider a serious, exhausted ground for relief hardly demonstrates respect for the state courts." Dissent 1 (Brennan with Marshall), "[W]hen the prisoner later brings a second petition based on the previously unexhausted claims that had earlier been refused a hearing, then the remedy of dismissal for 'abuse of the writ' cannot be employed against that second petition, absent unusual factual circumstances truly suggesting abuse." Dissent 2 (White), "[R]ule on the exhausted claims . . . " Dissent 3 (Stevens), "[T]he Court today fashions a new rule . . . that will merely delay . . . and . . . impose unnecessary burdens on both state and federal judges."	CrimPro, conservative
Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Comp. Plans v. Norris, 463 U.S. 1073 (1983).	Employer is not allowed to offer retirement annuities that pay less to (longer-living-on-average) women. Dissent (Powell with all), "The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses actuarially sound, sex-based mortality tables. This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions." Concurrence (O'Connor).	Social, liberal
Woodard v. Hutchins, 464 U.S. 377 (1984).	Per curiam. Last minute death habeas stay; stay vacated, abuse of writ; several dissents.	CrimPro, conservative
INS v. Lopez-Mendoza, 468 U.S. 1032 (1984).	Exclusionary rule does not apply to deportation proceedings. Dissent 1 (Brennan), exclusionary rule must apply, founded on Fourth Amendment. Dissent 2 (White), exclusionary rule must apply, wrong incentives. Dissent 3 (Marshall), "[A] sufficient reason for excluding from civil deportation proceedings evidence obtained in violation of the Fourth Amendment is that there is no other way to achieve 'the twin goals of enabling the judiciary to avoid the taint of partnership in official lawlessness and of assuring the people—all potential victims of unlawful government conduct—that the government would not profit from its lawless behavior.'" Dissent 4 (Stevens) agrees with White mostly.	Admin, conservative
N.Y. v. Class, 475 U.S. 106 (1986).	Gun found while checking car's VIN not suppressed, no privacy in VIN. Dissent 1 (Brennan with Marshall, Stevens), the search was not permissible. Dissent 2 (White with Stevens), car interior protected from warrantless searches.	CrimPro, conservative

6. BURGER–POWELL–REHNQUIST–STEVENS–WHITE (TWO O'CLOCK)

FBI v. Abramson, 456 U.S. 615 (1982).	FBI may avoid journalist's FOIA request that is intrusive upon privacy of investigated individual. Dissents (not in text).	Admin, conservative
United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott, 463 U.S. 825 (1983).	Sec. 1985 (against conspiracies to deprive equal protection) liability does not attach to union's attack on nonunion shop despite conspiracy because First Amendment violation needs state action. Dissent (Blackmun with all), "Today, in a classic case of mob violence intended to intimidate persons from exercising their legal rights, the Court holds that the Ku Klux Klan Act provides no protection." If about labor, then liberal; but seen about civil rights liability (narrowing), hence conservative.	Social, conservative
Herb's Welding, Inc., v. Gray, 470 U.S. 414 (1985).	Longshoremen and Harborworkers Compensation Act does not reach welder on fixed rig. Dissent (Marshall with all), if the rig were floating welder would be covered, should be covered.	Business, conservative
Goldman v. Weinberger, 475 U.S. 503 (1986).	1st amendment does not enable religious hat while in uniform. Concurrence (Stevens with White, Powell). Dissent 1 (Brennan with Marshall), should scrutinize military regulations. Dissent 2 (Blackmun), government made no showing of costs. Dissent 3 (O'Connor with Marshall), court should articulate standard.	Admin, conservative

7. BURGER–O'CONNOR–POWELL–REHNQUIST–WHITE (THREE O'CLOCK)

Cabell v. Chavez-Salido, 454 U.S. 432 (1982).	California may require its peace officers to be citizens. Dissent (Blackmun with all), "reinstates the deadening mantle of state parochialism in public employment."	Social, conservative
Valley Forge Christian Coll. v. Ams. United For Separation of Church & State, Inc., 454 U.S. 464 (1982).	Organization has no standing to enforce First Amendment (establishment in educational spending). Dissent 1 (Brennan with Marshall, Blackmun), "court disregards its constitutional responsibility . . . " Dissent 2 (Stevens), "tenuous distinction between the Spending and the Property Clause."	Social, conservative
American Tobacco Co. v. Patterson, 456 U.S. 63 (1982).	EEOC loses discrimination claim against seniority plan. Dissent 1 (Brennan with Marshall, Blackmun), "court turns blind eye to both language and legislative history of statutory provision." Dissent 2 (Stevens), "[A] seniority system that is unlawful [when] adopted cannot be 'bona fide' within the meaning of [the statute].	Social, conservative
Kremer v. Chem. Constr. Corp., 456 U.S. 461 (1982).	Title VII discrimination claim adjudicated and rejected by New York courts binding upon federal who also dismiss. Dissent 1 (Blackmun, Brennan, & Marshall), "for a compelling array of reasons, the court is wrong." Dissent 2 (Stevens) if review under arbitrary and capricious standard then majority errs.	Social, conservative

Marshall v. Lonberger, 459 U.S. 422 (1983).	Habeas, defendant loses. Dissent 1 (Brennan & Marshall) "inherently prejudicial to admit an unconstitutional, uncounseled prior conviction." Dissent 2 (Blackmun) "enough for me in this case to note the utter absence of a legitimate state interest once the prosecution refused to accept respondent's proffered stipulation. That refusal revealed that the prosecution believed the indictment had prejudicial value." Dissent 3 (Stevens, Brennan, Marshall, & Blackmun), "The prosecutor's naked desire to inject prejudice into the record had the effect of complicating and prolonging the proceedings in this case and deprived the respondent of his Constitutional right to a fair trial."	CrimPro, conservative
Hewitt v. Helms, 459 U.S. 460 (1983).	Prison administrative hearing was sufficient due process for isolation; dissent (Blackmun) not sufficient due process. Dissent 2 (Stevens, Brennan, & Marshall) not clear the process satisfied mandates of due process.	Criml, conservative
City of Los Angeles v. Lyons, 461 U.S. 95 (1983).	Chokehold pattern of LAPD did not create grounds for injunction claim of this choked victim. Dissent (Marshall with all), "The District Court found that the City of Los Angeles authorizes its police officers to apply life-threatening chokeholds to citizens who pose no threat of violence, and that respondent, Adolph Lyons, was subjected to such a chokehold. The Court today holds that a federal court is without power to enjoin the enforcement of the City's policy, no matter how flagrantly unconstitutional it may be."	Social, conservative
Connick v. Myers, 461 U.S. 138 (1983).	Attorney's discharge did not violate her free speech rights. Dissent, (Brennan with all), "Sheila Myers was discharged for circulating a questionnaire to her fellow Assistant District Attorneys seeking information about the effect of petitioner's personnel policies on employee morale and the overall work performance of the District Attorney's Office. The Court concludes that her dismissal does not violate the First Amendment, primarily because the questionnaire addresses matters that, in the Court's view, are not of public concern. It is hornbook law, however, that speech about 'the manner in which government is operated or should be operated' is an essential part of the communications necessary for self-governance the protection of which was a central purpose of the First Amendment."	Speech, conservative
Hensley v. Eckerhart, 461 U.S. 424 (1983).	Attorney fees about challenge to conditions in forensic hospital; fees reduced; Dissent, (Brennan with all), "the District Court in this case awarded a fee that was well within the court's zone of discretion under § 1988, and it explained the amount of the fee meticulously . . . Vacating a fee award such as this and remanding for further explanation can serve only as an invitation to losing defendants to engage in what must be one of the least socially productive types of litigation . . ."	Health, conservative

Planned Parenthood Ass'n of Kan. City, Mo., Inc., v. Ashcroft, 462 U.S. 476 (1983).	Plurality finds second trimester burdens on abortion unconstitutional, other burdens upheld; Dissent 1 (Blackmun with Brennan, Marshall & Stevens) would strike more burdens; Dissent 2 (O'Connor with Rehnquist & White) would allow hospitalization requirement.	Abortion, conservative
Or. v. Bradshaw, 462 U.S. 1039 (1983).	Confession after asking for an atty admissible because defendant initiated further conversation; Dissent (Marshall with all) would suppress.	CrimPro, conservative
Jones v. United States, 463 U.S. 354 (1983).	Defendant innocent by reason of insanity can be confined to a mental hospital longer than he would have been incarcerated; Dissent 1 (Brennan with Marshall & Blackmun) would grant more rights to accused. Dissent 2 (Stevens) would require clear and convincing proof of need for additional hospitalization.	Criml, conservative
Mueller v. Allen, 463 U.S. 388 (1983).	Minnesota allowance of tax deductions for schooling expenses did not violate establishment clause; Dissent (Marshall with all), establishment clause precedent prohibits such deductions.	Education, conservative
Guardians Ass'n v. Civil Serv. Comm'n of N.Y., 463 U.S. 582 (1983).	Plurality; New York City police policy of "last hired, first fired" did not entitle disadvantaged minorities to compensation absent intentional discrimination. Dissent 1 (Marshall) agrees with White that compensation does not require discriminatory intent; Dissent 2 (Stevens with Brennan & Blackmun) argues court abandons precedent. Could be labor, social, or administrative; treated as social because dissent underlines general nature of change of law (not only about municipality employees).	Social, conservative
Ruckelshaus v. Sierra Club, 463 U.S. 680 (1983).	Loss of Sierra Club against EPA precludes award of attorney's fees; Dissent, (Stevens with all), text does not limit fees to victors. Could be administrative, social/environmental, or business. Treated as business because it was about coal-fired power plants rather than nature more directly.	Business, conservative
Cal. v. Ramos, 463 U.S. 992 (1983).	Death penalty jury instruction on governor powers does not require reversal of death penalty; Dissent 1 (Marshall with Brennan & Blackmun), "Even if I accepted the prevailing view that the death penalty may constitutionally be imposed under certain circumstances, I could not agree that a State may tip the balance in favor of death by informing the jury that the defendant may eventually be released if he is not executed." Dissent 2 (Blackmun) understands "the issue in this case to be whether a State constitutionally may instruct a jury about the governor's power to commute a sentence of life without parole" and finds the majority to offer no arguments about that; Dissent 3 (Stevens) analyzed cert and decision to be about easing the death penalty rather than substance. That argument leads to calling this outcome about criminal law rather than procedure.	Criml, conservative

Autry v. Estelle, 464 U.S. 1 (1983).	First habeas petition does not automatically grant stay of execution; Dissent 1, (Brennan with Marshall) no death penalty. Dissent 2, (Stevens with all), "The practice adopted by the majority effectively confers upon state authorities the power to dictate the period in which these federal habeas petitioners may seek review in this Court by scheduling an execution prior to the expiration of the period for filing a certiorari petition. Shortening the period allowed for filing a petition on such an ad hoc basis injects uncertainty and disparity into the review procedure, adds to the burdens of counsel, distorts the deliberative process within this Court, and increases the risk of error."	CrimPro, conservative
Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67 (1983).	Per curiam. Challenge by all-male society to Secretary of Education treatment of university moot because university changed policy. Dissent 1 (Blackmun & Marshall) would deny certiorari. Dissent 2 (Brennan), not really moot. Dissent 3 (Stevens), "the parties continue to disagree as to what the obligations are that federal law imposes upon the University... Nevertheless, the Court holds that this case is moot." Curious strategic postures with potential interest; direct result is that the lower court victory of the Secretary of Education disappears and the case is, therefore, a conservative outcome about a social issue.	Social, conservative
Sec'y of The Interior v. Cal., 464 U.S. 312 (1984).	Sale by Secretary of Interior of offshore oil & gas leases does not trigger statutory obligation to respect state coastal management plan; Dissent (Stevens with all) frustrated that court violates Congress's statutory promise to California to help it protect its coasts. Can be seen as about business or social/environmental, choosing former as closer to the court's approach.	Business, conservative
Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984).	Challenge to retarded confinement to mental institution; state wins on 11th amendment grounds; Dissent 1 (Brennan) thinks Eleventh Amendment only bars outsiders' suits; Dissent 2, (Stevens with all), "In a completely unprecedented holding, today the Court concludes that Pennsylvania's sovereign immunity prevents a federal court from enjoining the conduct that Pennsylvania itself has prohibited."	Federalism, conservative
Lynch v. Donnelly, 465 U.S. 668 (1984).	Display of nativity scene by city does not violate establishment clause. Dissent 1 (Brennan with all), departure from precedent. Dissent 2 (Blackmun with Stevens) underscores departure from precedent.	Religion, conservative
Heckler v. Day, 467 U.S. 104 (1984).	Invalidates injunction in favor of social security disability claimants against secretary of health and human services. Dissent, (Marshall with all) "Far from intruding clumsily into a pervasively regulated area, . . . the District Court fashioned a meaningful, carefully-tailored statewide remedy that mandated feasible, expeditious reconsideration determinations and hearings, that did not cause extra cost to the Secretary or reallocation to [this state] of resources from other States, and that did not harm other statutory goals."	Admin, conservative

Sure-Tan, Inc., v. NLRB, 467 U.S. 883 (1984).	Employer reporting unionizing undocumented aliens for deportation committed unfair labor practice, but remedy was excessive; Dissent (Brennan with all), "The Court goes on, however, to concoct a new standard of review, which considers whether the terms of a remedial order are 'sufficiently tailored' to the unfair labor practice it is intended to redress. . . . Applying its newly minted standard to this case, the Court finds that the remedial order challenged here involved the imposition of requirements on petitioners that 'd[o] not lie within the Board's own powers.' . . . Our prior cases, however, provide no support whatsoever for this new standard." Concurrence (Powell with Rehnquist), illegal aliens are not employees under NLRA.	Employment, conservative
Davis v. Scherer, 468 U.S. 183 (1984).	Challenge by terminated police employee, defeated, notice and hearing were adequate for state officers to retain immunity. Dissent, (Brennan with all), the employee should win. Could be considered administrative (facilitating procedures for firings by states) or labor (allowing firing but decision is irrelevant to private employers therefore no).	Admin, conservative
Hudson v. Palmer, 468 U.S. 517 (1984).	Prisoners have no expectation of privacy in cell. Dissent, (Stevens with all), "But the Court then holds that no matter how malicious, destructive, or arbitrary a cell search and seizure may be, it cannot constitute an unreasonable invasion of any privacy or possessory interest that society is prepared to recognize as reasonable."	Criml, conservative
Segura v. United States, 468 U.S. 796 (1984).	Majority reduces scope of suppression doctrine, admitting evidence pursuant to post-warrantless proper search. Dissent (Stevens with all) bemoans two unaddressed constitutional law violations; "The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home."	CrimPro, conservative
United States v. Young, 470 U.S. 1 (1985).	Prosecution's statement to jury that prosecution thinks the defendant guilty is not error. Dissent 1, (Brennan with Marshall & Blackmun), "remand the case to the Court of Appeals for a proper plain-error inquiry." Dissent 2, (Stevens), "it is perfectly clear that the Court of Appeals has already made that determination. I do not understand how anyone could dispute the proposition that the prosecutor's comments were obviously prejudicial."	CrimPro, conservative
Dun & Bradstreet, Inc., v. Greenmoss Builders, Inc., 472 U.S. 749 (1985).	Plurality: presumed and punitive damages allowed when libel does not involve public figure; Dissent (Brennan with all), "We believe that, although protection of the type of expression at issue is admittedly not the 'central meaning of the First Amendment,' 376 U.S., at 273, *Gertz* makes clear that the First Amendment nonetheless requires restraints on presumed and punitive damages awards for this expression."	Speech, conservative

Pattern Makers' League of N. Am. v. NLRB, 473 U.S. 95 (1985).	Plurality upholds NLRB decision against union's fining members who resigned to return to work against strike. Concurrence (White), NLRB exercised sensible discretion. Dissent 1 (Blackmun with Brennan & Marshall), court undermined union's protected abilities to conduct strikes; Dissent 2 (Stevens), statute does not protect the right to resign.	Employment, conservative
Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985).	Majority: California had not waived sovereign immunity under fed statute disbursing funds. Dissent 1 (Brennan with Marshall, Blackmun, & Stevens), court's Eleventh Amendment jurisprudence "has put the federal judiciary in the unseemly position of exempting the States from compliance with laws that bind every other legal actor." Dissent 2, (Blackmun with Brennan, Marshall, & Stevens) "would affirm the judgment here on the ground that California, as a willing recipient of federal funds under the Rehabilitation Act, consented to suit when it accepted such assistance." Dissent 3 (Stevens), so much precedent does the court overturn that "I am now persuaded that a fresh examination of the Court's Eleventh Amendment jurisprudence will produce benefits that far outweigh 'the consequences of further unraveling the doctrine of stare decisis' in this area of the law."	Federalism, conservative
Cal. State Bd. of Equalization v. Chemehuevi Indian Tribe, 474 U.S. 9 (1985).	Per Curiam: California had the right to require the tribe to collect an excise tax on cigarettes sold by the tribe to non-Indian purchasers reversing 9th Cir. (Reinhardt) who allowed tribe not to collect tax on cigarettes sold to nonmembers. Dissent 1 (Brennann) would deny certiorari. Dissent 2 & 3 (Marshall & Blackmun) would give full hearing. Dissent 4 (Stevens), “I am not prepared to say that the Court of Appeals' construction of the California Code is correct or incorrect. I am prepared, however, to disagree with the Court's conclusion that we should undertake to decide the state-law question in a case of this kind."	Tribal, conservative
Pennsylvania v. Goldhammer, 474 U.S. 28 (1985).	Per Curiam: No double jeopardy if conviction vacated. Dissent 1 (Brennan) objects to summary disposition. Dissent 2 (Marshall), same underlining parties not informed. Dissent 3 (Blackmun) would set for argument. Dissent 4 (Stevens), "The majority recognizes that the Pennsylvania court's judgment may ultimately be supported by state-law grounds. [Therefore], I would simply deny certiorari."	CrimPro, conservative
Green v. Mansour, 474 U.S. 64 (1985).	Class actions complaining of Michigan inclusion of step-parents' income in AFDC calculation (statutorily ratified in the meanwhile), dismissed every step as moot; Majority: Eleventh Amendment, state wins. Dissent 1 (Brennan with all), "the absence of a stable analytical structure underlying the Court's Eleventh Amendment jurisprudence produces inconsistent decisions." Dissent 2 (Marshall with Brennan & Stevens), "In abandoning the result it reached six years ago, the majority misapplies its own Eleventh Amendment jurisprudence." Dissent 3 (Blackmun), Michigan waived sovereign immunity by accepting federal funds.	Federalism, conservative

United States v. Loud Hawk, 474 U.S. 302 (1986).	Majority loosens speedy trial protections. Minority (Marshall with all) disagree.	CrimPro, conservative
Cabana v. Bullock, 474 U.S. 376 (1986).	Plurality (White), "proper course was for district court to issue habeas writ vacating death sentence but to leave to state choice of either imposing sentence of life imprisonment or reimposing death sentence after obtaining determination from its own courts of factual question whether defendant killed, attempted to kill, intended to kill or intended that lethal force would be used." Concurrence (Burton),"court explicitly found '[t]he evidence is overwhelming that appellant was present, *aiding and assisting in the assault upon, and slaying of*, Dickson.'" Dissent 1 (Brennan), death is cruel and unusual. Dissent 2 (Blackmun with Brennan & Marshall), "The Court's misreading of *Enmund* threatens a retreat from the constitutional safeguards on the capital sentencing process . . ." Dissent 3 (Stevens with Brennan), "As the Court points out, *ante*, at 695-96, a Mississippi jury has not found that respondent Bullock killed, attempted to kill, or intended that a killing take place or that lethal force be used. It follows, in my view, that a Mississippi jury has not determined that a death sentence is the only response that will satisfy the outrage of the community, and that a new sentencing hearing must be conducted if respondent is ultimately to be sentenced to die."	CrimPro, conservative
United States v. Lane, 474 U.S. 438 (1986).	Father & son who repeatedly hired arsonist to avoid leases and bad investments and recoup from insurances argue they were improperly tried jointly; majority finds error harmless. Dissent 1 (Brennan with Blackmun), "I conclude that the question whether a particular error 'affects the substantial rights of the parties' does not entail a process of classification, whereby some rights are deemed 'substantial' and errors affecting these rights are automatically reversible. Rather, an error 'affects substantial rights' only if it casts doubt on the outcome of the proceeding" and would remand. Dissent 2 (Stevens with Marshall), "the Court's opinion misconstrues the history and purpose of Rule 8, sows further confusion in the Court's harmless-error jurisprudence, and fails to make the kind of harmless-error analysis that Rule 52(a) requires. Because I do not consider these errors harmless, I respectfully dissent from the judgment regarding Dennis Lane in No. 84-774."	CrimPro, conservative
Whitley v. Albers, 475 U.S. 312 (1986).	Majority: Prisoner shot during operation against prison riot cannot make 1983 claim of cruel and unusual punishment. Dissent (Marshall with all), facts should get to jury.	Criml, conservative

Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986).	Public school collective bargaining agreement giving extra protections against firing to minorities violates Fourteenth Amendment (concurrences by O'Connor & by White). Dissent 1 (Marshall with Brennan & Blackmun), The record and extrarecord materials that we have before us persuasively suggest that the plurality has too quickly assumed the absence of a legitimate factual predicate, even under the plurality's own view, for affirmative action in the Jackson schools." Dissent 2 (Stevens), "Rather than analyzing a case of this kind by asking whether minority teachers have some sort of special entitlement to jobs as a remedy for sins that were committed in the past, I believe that we should first ask whether the Board's action advances the public interest in educating children for the future. If so, I believe we should consider whether that public interest, and the manner in which it is pursued, justifies any adverse effects on the disadvantaged group."	Social, conservative
McMillan v. Pennsylvaniaa, 477 U.S. 79 (1986).	Mandatory sentencing scheme of Pennsylvania upheld, where possession of firearm was aggravator (shown by preponderance) and not an element of the crime (beyond a reasonable doubt). Dissent 1 (Marshall with Brennan & Blackmun), "I would put off until next Term any discussion of how mitigating facts should be analyzed under Winship." Dissent 2 (Stevens), Pennsylvania legislature saying aggravating factors are not elements of the crime does not allow Pennsylvania to avoid showing them with mere preponderance when they are the conduct Pennsylvania intended to deter.	Criml, conservative
Darden v. Wainwright, 477 U.S. 168 (1986).	Death habeas, challenge struck. Dissent 1 (Brennan), no death. Dissent 2 (Blackmun with all), "Twice during the past year—in United States v. Young, . . . and again today—this Court has been faced with clearly improper prosecutorial misconduct during summations. Each time, the Court has condemned the behavior but affirmed the conviction. . . . I believe this Court must do more than wring its hands when a State uses improper legal standards to select juries in capital cases and permits prosecutors to pervert the adversary process. I therefore dissent."	CrimPro, conservative

Smith v. Murray, 477 U.S. 527 (1986).	Confession to psychiatrist admissible for death penalty because objection was available at trial. Dissent 1 (Stevens with Marshall & Blackmun), "The Court . . . is willing to assume that (1) petitioner's Fifth Amendment right against compelled self-incrimination was violated; (2) his Eighth Amendment right to a fair, constitutionally sound sentencing proceeding was violated by the introduction of the evidence from that Fifth Amendment violation; and (3) those constitutional violations made the difference between life and death in the jury's consideration of his fate. Although the constitutional violations and issues were sufficiently serious that this Court decided to grant certiorari, and although the Court of Appeals for the Fourth Circuit decided the issue on the merits, this Court concludes that petitioner's presumably meritorious constitutional claim is procedurally barred and that petitioner must therefore be executed." Dissent 2 (Brennan with Marshall), "Congress did not issue this Court a mandate to sharpen its skills at ad hoc legislating. The same rules of construction that guide interpretation of other statutes apply to the federal habeas corpus statute. Accordingly, the decision whether to direct federal courts to withhold habeas jurisdiction clearly conferred upon them by Congress must be made with the understanding that such abstention doctrines constitute 'extraordinary and narrow' exceptions to the 'virtually unflagging obligation' of federal courts to exercise their jurisdiction."	CrimPro, conservative
Bowers v. Hardwick, 478 U.S. 186 (1986).	Georgia sodomy statute is constitutional (with Burger and Powell concurrences). Dissent 1 (Blackmun with all), "this . . . is about the . . . right to be let alone." Dissent 2 (Stevens with Brennan & Marshall), "The Court orders the dismissal of respondent's complaint even though the State's statute prohibits all sodomy; even though that prohibition is concededly unconstitutional with respect to heterosexuals; and even though the State's post hoc explanations for selective application are belied by the State's own actions. At the very least, I think it clear at this early stage of the litigation that respondent has alleged a constitutional claim sufficient to withstand a motion to dismiss."	Social, conservative
Posadas De Puerto Rico Assocs. v. Tourism Co. of Puerto Rico, 478 U.S. 328 (1986).	Puerto Rico statute prohibiting advertising of gambling in Puerto Rico does not violate First Amendment. Dissent 1 (Brennan with all), "I do not believe that Puerto Rico constitutionally may suppress truthful commercial speech in order to discourage its residents from engaging in lawful activity." Dissent 2 (Stevens with all), "Unless the Court is prepared to uphold an Illinois regulation of speech that subjects the New York Times to one standard and the Chicago Tribune to another, I do not understand why it is willing to uphold a Puerto Rico regulation that applies one standard to the New York Times and another to the San Juan Star."	Speech, conservative

Allen v. Illinois, 478 U.S. 364 (1986).	Assignment of "sexually dangerous" label was not a criminal proceeding, and defendant was not entitled to full protection against self-incrimination. Dissent (Stevens with all), "permitting a State to create a shadow criminal law without the fundamental protection of the Fifth Amendment conflicts with the respect for liberty and individual dignity that has long characterized, and that continues to characterize, our free society."	CrimPro, conservative
Bazemore v. Friday, 478 U.S. 385 (1986).	Per curiam. Orders remedies of pay disparities by race in North Carolina agricultural extension services but not integration of 4-H clubs, etc. Dissent (Brennan with all), "The Court of Appeals determined that respondents' constitutional duty has been satisfied if a plaintiff cannot point to a minority individual who has been discriminated against with respect to membership in a 4–H or Extension Homemaker Club. In upholding the Court of Appeals in this respect, the Court joins the Extension Service in winking at the Constitution's requirement that States end their history of segregative practices, and callously thwarts an effort to eliminate 'the last vestiges of an unfortunate and ignominious page in this country's history.'"	Social, conservative
Papasan v. Allain, 478 U.S. 265 (1986).	Claim on school land grant proceeds invested in destroyed trust barred by Eleventh Amendment. Dissent 1 (Brennan with all), Eleventh Amendment jurisprudence does not make sense. Dissent 2 (Blackmun), similar. Concurrence (Powell with Burger & Rehnquist), "lands account for only 1 ½% of overall funds" of schools; insignificant and would dismiss.	Social, conservative

8. BURGER–O'CONNOR–POWELL–REHNQUIST–STEVENS (FOUR O'CLOCK)

Tibbs v. Fla., 457 U.S. 31 (1982).	Narrowing double jeopardy. Dissent (White with all), retrial without new evidence is double jeopardy.	CrimPro, conservative
Nixon v. Fitzgerald, 457 U.S. 731 (1982).	President enjoys absolute immunity for acts within the outer perimeter of his duties (Burger concurrence). Dissent 1 (White with all), "If that is the case, Congress cannot provide a remedy against Presidential misconduct and the criminal laws of the United States are wholly inapplicable to the President. I find this approach completely unacceptable." Dissent 2 (Blackmun with Brennan & Marshall), certiorari would have been denied if settlement was known.	Admin, conservative
Clements v. Fashing, 457 U.S. 957 (1982).	Plurality: Texas automatic resignation and other limits on officeholders seeking legislative office did not violate First Amendment nor equal protection. Concurrence (Stevens), "the disparate treatment in this case is not inconsistent with any federal interest that is protected by the Equal Protection Clause." Dissent (Brennan with Marshall, Blackmun & partially White), "no genuine justification exists that might support the classifications embodied in" the Texas laws.	Admin, conservative

Brown v. Thomson, 462 U.S. 835 (1983).	Reapportionment challenge failed. Concurrence (O'Connor with Stevens), "ensuring equal representation is not simply a matter of numbers. There must be flexibility in assessing the size of the deviation against the importance, consistency, and neutrality of the state policies alleged to require the population disparities." Dissent (Brennan with all), "[T]he overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight of any other citizen in that state."	Admin, conservative
Pub. Serv. Comm'n of the State of N.Y. v. Mid-Louisiana. Gas Co., 463 U.S. 319 (1983).	Challenge to Federal Energy Regulatory Commission excluding pipeline natural gas from statutory pricing scheme; majority: FERC's exclusion of pipeline production from the NGPA's pricing scheme is inconsistent with the statutory mandate. Dissent (White with all), "The Court today rejects the agency's interpretation and substitutes its own reading of this highly complex law. In doing so, the Court imposes a construction not set forth in the statute itself, not addressed in the legislative history, not selected by the agency, and different even from that of the Court of Appeals. Notwithstanding its novelty, perhaps the Court's construction that pipeline production must be given 'first sale' treatment either as an intracorporate transfer or at the point of a downstream sale is a reasonable interpretation of the Act. But its reasonability does not establish the unreasonability of the Commission's interpretation, and that, of course, is the question before us."	Admin, conservative
Comm'r of Internal Revenue v. Engle, 464 U.S. 206 (1984).	IRS pursued narrow interpretation of implied subsidy to small oil producers, challenged successfully. Dissent (Blackmun with all), the IRS's "administrative interpretation is entitled to prevail so long as it is not 'unreasonable and plainly inconsistent with the revenue statutes.'"	Tax, conservative
NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984).	Debtor in Possession may reject collective bargaining agreement. Dissent (Brennan with all), "I cannot agree with the Court's holding in Part III that a debtor in possession does not commit an unfair labor practice if he unilaterally alters the terms of an existing collective-bargaining agreement after a bankruptcy petition has been filed, but before a Bankruptcy Court has authorized the rejection of that agreement."	Business, conservative

Mills Music, Inc., v. Snyder, 469 U.S. 153 (1985).	Statutory rights to derivatives of copyrighted work; majority: according to original agreement, per statutory text. Dissent (White with all) would revert rights to heirs. "To allow authors to recover the full amount of derivative-works royalties under the Exception is not to slight the role of middlemen such as music publishers in promoting public access to the arts. Achieving that fundamental objective of the copyright laws requires providing incentives both to the creation of works of art and to their dissemination. But the need to provide incentives is inapposite to the circumstances of this case, because the rights at issue are attached to a term of copyright that extends beyond what was contemplated by the parties at the time of the initial grant. In 1940, when Ted Snyder and Mills entered into their royalty-division agreement, neither party could have acted in reliance on the royalties to be derived from the additional 19-year term created by the 1976 Act. In this situation, the author and the grantee have each already reaped the benefit of their bargain, and the only question is which one should receive the windfall conferred by Congress."	Business, conservative
Henderson v. UU, 476 U.S. 321 (1986).	Speedy trial rights were not violated. Dissent (White with all), majority subverts the right by excluding pretrial motion periods.	CrimPro, conservative
Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804 (1986).	Foreign suit alleging violation of FDA act through negligence presented no federal question and removal to federal court was improper. Dissent (Brennan with all), "I believe that the limitation on federal jurisdiction recognized by the Court today is inconsistent with the purposes of § 1331."	Business, conservative

9. BURGER–BLACKMUN–O'CONNOR–REHNQUIST–WHITE (FIVE O'CLOCK)

Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983).	Union may bargain to have exclusive access to teacher mailboxes, excluding rival union. Dissent (Brennan with all), "the exclusive access provision in the collective bargaining agreement amounts to viewpoint discrimination that infringes the respondents' First Amendment rights and fails to advance any substantial state interest."	Employment, conservative
United States v. Nat'l Bank of Commerce, 472 U.S. 713 (1985).	IRS can levy against joint accounts. Dissent (Powell with all), should protect nondelinquent taxpayers joint owners.	Tax, liberal
Offshore Logistics, Inc., v. Tallentire, 477 U.S. 207 (1986).	Deaths in crashes from offshore drilling platforms subject to deaths in high seas act, not Louisiana wrongful death. Dissent (Powell with all), history allows state remedy.	Business, conservative

10. BURGER–O'CONNOR–REHNQUIST–STEVENS–WHITE (SIX O'CLOCK)

Regan v. Wald, 468 U.S. 222 (1984).	Embargo of trading with Cuba and of travel to Cuba did not violate due process. Dissent 1 (Blackmun with all), "Because I do not agree that the grandfather clause encompasses the exercise of Presidential power at issue here, I would affirm the judgment of the United States Court of Appeals for the First Circuit." Dissent 2 (Powell), "the legislative history . . . unmistakably demonstrates that Congress intended to bar the President from expanding the exercise of emergency authority under § 5(b). Contrary to the Court's view, the meaning of the word 'authorities' in the grandfather clause is not 'clear,' nor in my view is it contrary to the fair import of this history."	Social, conservative
Sedima v. Imrex Co., Inc., 473 U.S. 479 (1985).	Private RICO claim enabled. Dissent 1 (Powell), "I write separately to emphasize my disagreement with the Court's conclusion that the statute must be applied to authorize the types of private civil actions now being brought frequently against respected businesses to redress ordinary fraud." Dissent 2 (Marshall with all), "The Court today permits two civil actions for treble damages to go forward that are not authorized either by the language and legislative history of the civil RICO statute, or by the policies that underlay passage of that statute. In so doing, the Court shirks its well-recognized responsibility to assure that Congress' intent is not thwarted by maintenance of unintended litigation, and it does so based on an unfounded and ill-considered reading of a statutory provision."	Business, liberal
Am. Nat'l Bank & Trust Co. of Chi. v. Haroco, Inc., 473 U.S. 606 (1985).	Per curiam. Same as *Sedima*, 473 U.S. 479.	Business, liberal
California v. Ciraolo, 476 U.S. 207 (1986).	Warrantless aerial observation not suppressed. Dissent (Powell with all), "Justice Harlan warned that any decision to construe the Fourth Amendment as proscribing only physical intrusions by police onto private property 'is, in the present day, bad physics as well as bad law, for reasonable expectations of privacy may be defeated by electronic as well as physical invasion''…Because the Court today ignores that warning in an opinion that departs significantly from the standard developed in Katz for deciding when a Fourth Amendment violation has occurred, I dissent."	CrimPro, conservative
Dow Chem. Co. v. United States, 476 U.S. 227 (1986).	EPA may use aerial photography without warrant. Dissent (Powell with all) would hold the same as *Ciraolo,* 476 U.S. 207.	Admin, conservative

11. BLACKMUN–BRENNAN–MARSHALL–O'CONNOR–STEVENS (SEVEN O'CLOCK)

Karcher v. Daggett, 462 U.S. 725 (1983).	Plurality remands Democratic Party-led redistricting of New Jersey, (Stevens nearly arguing gerrymandering). Dissent (White with all), "[T]he Court affirms the District Court's decision thereby striking for the first time in the Court's experience a legislative or congressional districting plan with an average and maximum population variance of under 1%." Slant treated as conservative because it goes against districts of peculiar shape and against Democratic redistricting.	Voting, conservative
Bender v. Williamsport Area Sch. Dist., 475 U.S. 534 (1986).	Plurality dismisses appeal from District Ct decision allowing student-led prayer. Dissent 1 (Burger with Rehnquist & White) would reach merits and uphold student-led prayer. Dissent 2 (Powell) would also reach merits and find that open forum allowed prayer. Since all would allow prayer, issue is reaching merits which plurality declines by not giving appeal right to parent.	Religion, liberal
Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Brock, 477 U.S. 274 (1986).	Union has standing and need not join state agencies about benefits. Dissent 1 (White with Burger & Rehnquist) would find that the district court did not have jurisdiction. Dissent 2 (Powell) would find that perhaps the members with claims are few and union has weak incentive to pursue claims.	Employment, liberal
MacDonald, Sommer & Frates v. Yolo County, 477 U.S. 340 (1986).	Regulatory taking by refusal to approve subdivision, cannot compute damages. Dissent 1 (White with all) would find that a takings claim is stated and court should resolve damages. Dissent 2 (Rehnquist with Powell) would remand with taking instruction.	Takings, liberal

12. BRENNAN–MARSHALL–POWELL–STEVENS–WHITE (EIGHT O'CLOCK)

Florida v. Royer, 460 U.S. 491 (1983).	Dissent 1 (Blackmun) would not ask for probable cause due to difficulty of combating drug offenses. Dissent 2 (Rehnquist with Burger & O'Connor) would find the police reasonable.	CrimPro, liberal
Michigan v. Clifford, 464 U.S. 287 (1984).	Homeowners' warrantless evidence of arson suppressed. Concurrence (Stevens) agrees later fire marshal's entry was warrantless search. Dissent (Rehnquist with Burger, Blackmun & O'Connor) finds same day return within precedent not requiring warrant.	CrimPro, liberal

Reed v. Ross, 468 U.S. 1 (1984).	At 1969, before constitutional doctrine that state had burden on all elements, defendant had cause not to have raised lack of malice and self-defense, justifying retrial on habeas. Concurrence (Powell) would only apply new interpretations on direct review but state has not objected. Dissent (Rehnquist with all), "we have the anomalous situation of a jury verdict in a case tried properly by then-prevailing constitutional standards being set aside because of legal developments that occurred long after the North Carolina conviction became final."	CrimPro, liberal

Appendix B6: Tables of Kennedy Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Kennedy. The Kennedy composition consists of two appointees of Democratic presidents (Marshall and White) and seven appointees of Republican presidents (Blackmun, Brennan, Kennedy, O'Connor, Rehnquist, Scalia, and Stevens). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BLACKMUN–BRENNAN–MARSHALL–STEVENS–WHITE (NINE O'CLOCK)

Mills v. Maryland, 486 U.S. 367 (1988).	Remands death for resentencing because statute made jurors unclear about latitude for mitigation. Dissent (Rehnquist with O'Connor, Scalia & Kennedy) would affirm.	CrimPro, liberal
Houston v. Lack, 487 U.S. 266 (1988).	Pro se prisoner's appeal timely as of delivery to warden rather than court clerk. Dissent (Scalia with Rehnquist, O'Connor & Kennedy) finds majority takes liberty with statutory language.	CrimPro, liberal
South Carolina v. Gathers, 490 U.S. 805 (1989).	Death sentence appeal; majority finds presentation of evidence about victim at sentencing improper. Dissents (O'Connor with Rehnquist & Kennedy; Scalia) would not preclude any discussion of victim in sentencing.	CrimPro, liberal
Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989).	Environmental cleanup defendant can bring state as third-party to impose on state some cleanup costs; three concurrences in part disagree with Eleventh Amendment reasoning.	Envir'l, liberal
James v. Illinois, 493 U.S. 307 (1990).	Murder conviction invalid because improperly obtained statements of defendant were used to impeach defense witness. Dissent (Kennedy with Rehnquist, O'Connor & Scalia) would permit use for impeachment.	CrimPro, liberal

Zinermon v. Burch, 494 U.S. 113 (1990).	Mental patient's incompetence to allow voluntary admission to mental hospital grounds for liability for civil rights violation by doctors. Dissent (O'Connor with Rehnquist, Scalia & Kennedy), "[w]ithout doubt, respondent Burch alleges a serious deprivation of liberty; yet equally clearly he alleges no violation of the Fourteenth Amendment."	Social, liberal
Mo. v. Jenkins, 495 U.S. 33 (1990).	Partial concurrence (Kennedy with Rehnquist, O'Connor & Scalia) would find that that the majority's dicta approving some of the District Court's powers to override statutory taxation limits in order to promote integration of schools were unconstitutional for being too expansive of federal judicial powers.	Social, liberal
Grady v. Corbin, 495 U.S. 508 (1990).	Majority attaches double jeopardy in favor of defendant who pled guilty to DUI after fatal accident and who was being prosecuted for other crimes from same accident. Dissent (Scalia with Rehnquist & Kennedy) would consider offense being prosecuted different.	CrimPro, liberal
Wilder v. Va. Hosp. Ass'n, 496 U.S. 498 (1990).	Dissent (Rehnquist with O'Connor, Scalia & Kennedy) would reverse the Court of Appeals' decision, which concluded that health care providers could sue state officials under § 1983 for inadequate Medicaid reimbursements.	Social, liberal
Rutan v. Republican Party, 497 U.S. 62 (1990).	Majority finds employment decisions even beyond firing violate first amendment if they regard lower level public employees. Dissent (Scalia with Rehnquist, Kennedy & O'Connor) would allow government employers more latitude.	Labor/Social, liberal
Alvarado v. United States, 497 U.S. 543 (1990).	Government's use of race in excluding jurors requires reversal. Dissent (Rehnquist with all) would give government more leeway.	CrimPro, liberal
Metro Broad. v. F.C.C., 497 U.S. 547 (1990).	FCC's minority ownership policies did not violate equal protection principles. Dissents (O'Connor with all; Kennedy with Scalia) find majority's "renew[s] toleration of racial classifications and…repudiat[es] of our recent affirmation that the Constitution's equal protection guarantees extend equally to all citizens."	Social, liberal

2. BLACKMUN–BRENNAN–KENNEDY–MARSHALL–STEVENS (TEN O'CLOCK)

Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847 (1988).	Majority disqualifies judge with conflict. Dissent 1 (Rehnquist with White & Scalia). Dissent 2 (O'Connor).	Jud'l Admin'n, liberal
Terrell v. Morris, 493 U.S. 1 (1989).	Ineffective assistance; majority remands to reach substance. Dissent (Rehnquist with all) would uphold dismissal of challenge.	CrimPro, liberal
Reves. v. Ernst & Young, 494 U.S. 56 (1990).	Dissent (Rehnquist with White, O'Connor & Scalia) would consider that the notes founding securities fraud claim were exempt from the Act due to their short term.	Securities, liberal

Peel v. Atty. Registration & Disciplinary Comm'n, 496 U.S. 91 (1990).	Commercial speech; majority finds First Amendment requires lawyer be allowed to mention certification. Dissents (White; O'Connor with rest) would uphold state Prof. Resp. rule prohibiting mention.	Speech, liberal

3. BLACKMUN–BRENNAN–KENNEDY–MARSHALL–SCALIA (ELEVEN O'CLOCK)

Pittston Coal Grp. v. Sebben, 488 U.S. 105 (1988).	Labor regulations applicable to claims seeking black lung benefits were impermissibly restrictive. Dissent (Stevens with Rehnquist, White & O'Connor) would uphold regulations.	Labor, liberal
Texas v. Johnson, 491 U.S. 397 (1989).	Flag burning; First Amendment trumps Texas statute on flag desecration. Dissents (Rehnquist with White and O'Connor; Stevens) would uphold statute.	Speech, liberal
United States v. Eichman, 496 U.S. 310 (1990).	Flag burning; First Amendment trumps Flag Protection Act of 1989. Dissent (Stevens with Rehnquist, White & O'Connor;), "remain[s] persuaded that the considerations identified in…*Texas v. Johnson* are of controlling importance . . ."	Speech, liberal

4. REHNQUIST–KENNEDY–O'CONNOR–SCALIA–STEVENS (TWO O'CLOCK)

Michael H. v. Gerald D., 491 U.S. 110 (1989).	State law's presumption that spouse is father does not violate true father's due process. Dissents (Brennan with Blackmun & Marshall; White with Brennan) disagree.	Social, conservative
Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827 (1990).	Post-judgement interest should be calculated according to statute in effect on date of judgement. Dissent (White with Brennan, Marshall & Blackmun) sees pendency of litigation and would apply new statutory rate.	Tort, conservative
Kansas v. Utilicorp United, Inc., 497 U.S. 199 (1990).	Dissent (White with Brennan, Marshall & Blackmun) would grant Antitrust standing to customers, not only regulated utility, against overcharging by suppliers, because costs were passed to customers.	Antitrust, conservative

5. REHNQUIST–KENNEDY–O'CONNOR–SCALIA–WHITE (THREE O'CLOCK)

Patterson v. McLean Credit Union, 485 U.S. 617 (1988).	Majority grants certiorari to reconsider *Runyon v. McCrary*, interpreting federal civil rights statute to prohibit racial discrimination in the making and enforcement of private contracts. Dissent 1 (Blackmun with all) would find a violation of stare decisis. Dissent 2 (Stevens with all), undermining anti-discrimination is undesirable.	Social, conservative
Wheat v. United States, 486 U.S. 153 (1988).	Dissents (Marshall with Brennan; Stevens with Blackmun) would consider refusal to appoint substitute counsel reversible error.	CrimPro, conservative
Ross v. Oklahoma, 487 U.S. 81 (1988).	Loss of peremptory challenge on juror whom the court should have excused for cause is not reversible error. Dissent (Marshall with Brennan, Blackmun & Stevens) would reverse.	CrimPro, conservative

Florida v. Long, 487 U.S. 223 (1988).	Precedent finding sex discrimination in state pension plans did not apply to elective benefits and was not retroactive. Dissent 1 (Blackmun with Brennan & Marshall) would impose retroactive liability. Dissent 2 (Stevens), prospective relief by increasing benefits should be appropriate.	Social, conservative
Patterson v. Illinois, 487 U.S. 285 (1988).	Post-indictment waiver of counsel proper and subsequent statements admissible. Dissent 1 (Blackmun), indictment precludes waiver. Dissent 2 (Stevens with Brennan & Marshall), waiver impermissible.	CrimPro, conservative
Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450 (1988).	Fee for school bus proper. Dissents (Marshall with Brennan; Stevens with Blackmun), fees violate equal protection by burdening poor families more.	Social, conservative
Boyle v. United Techs. Corp., 487 U.S. 500 (1988).	Claimant from accident in military helicopter, majority remands to establish that manufacturer followed specifications and issued warning to obtain immunity under federal statute. Dissents (Brennan with Marshall & Blackmun; Stevens) would allow liability under state law.	Tort, conservative
Bowen v. Kendrick, 487 U.S. 589 (1988).	Act making grants for services about premarital adolescent sexual relations does not establish religion. Dissent (Blackmun with Brennan, Marshall & Stevens) disagrees.	Establishment, conservative
Florida v. Riley, 488 U.S. 445 (1989).	Observation of marijuana in greenhouse from helicopter overflight at 400ft proper grounds for search warrant. Dissents (Brennan with Marshall & Stevens; Blackmun) would require warrant for overflight.	CrimPro, conservative
In re McDonald, 489 U.S. 180 (1989).	Convict with history of frivolous petitions could be denied leave pro forma pauperis. Dissent (Brennan with Marshall, Blackmun & Stevens) would deny habeas without reaching issue.	CrimPro, conservative
Dugger v. Adams, 489 U.S. 401 (1989).	Death habeas; not having raised impropriety of jury instruction on appeal or objected to it precludes raising it on habeas. Dissent (Blackmun with Brennan, Marshall & Stevens), "this Court is sending a man to a presumptively unlawful execution because he or his lawyers did not raise his objection at what is felt to be the appropriate time for doing so."	CrimPro, conservative
Rodriguez de Quijas v. Shearson/Am. Exp. Inc., 490 U.S. 477 (1989).	Agreement to arbitrate claims under the Securities Act was enforceable. Dissent (Stevens with all), settled interpretation against arbitration should have prevailed.	Securities, conservative
Finley v. United States, 490 U.S. 545 (1989).	Dissents (Blackmun; Stevens with Brennan & Marshall) would grant jurisdiction over pendent party pendent claim in a federal tort claim.	Tort, conservative
Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989).	Majority finds no disparate impact in separate accommodations for different levels of employees. Dissents (Stevens with all; Blackmun with Brennan & Marshall) argue that the majority's opinion departs from disparate impact precedent.	Social, conservative

Martin v. Wilks, 490 U.S. 755 (1989).	White firefighters could challenge as discriminatory the employment decisions made pursuant to prior consent decree. Dissent (Stevens with Blackmun, Brennan & Marshall), they should have intervened in the prior litigation.	Social, conservative
Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989).	States not subject to liability for civil rights' violations. Dissents (Brennan with all; Stevens) would explore sovereign immunity arguments with doubt.	Social, conservative
Patterson v. McLean Credit Union, 491 U.S. 164 (1989).	Dissent and concurrence (Brennan with Blackmun & Marshall; Stevens) would "hold that the Court of Appeals erred in deciding that petitioner's racial harassment claim is not cognizable under § 1981. It likewise erred in holding that petitioner could succeed in her promotion-discrimination claim only by proving that she was better qualified for the position of intermediate accounting clerk than the white employee who was in fact promoted."	Social, conservative
Dellmuth v. Muth, 491 U.S. 223 (1989).	States have sovereign immunity against liability under the Education of the Handicapped Act. Dissents (Brennan with all; Blackmun, Stevens) would find that the Act abrogated sovereign immunity.	Social, conservative
Pitt. & Lake Erie R.R CO. v. Ry. Labor Executives' Ass'n, 491 U.S. 490 (1989).	Upholding injunction of union's strike against restructuring of Railroad leading to job losses. Dissent (Stevens with Brennan, Marshall & Blackmun) finds majority violates precedent and established regulation of rails.	Labor, conservative
United States v. Monsanto, 491 U.S. 600 (1989).	Asset forfeiture of criminal defendant does not require allowance for attorney's fees. Dissent (Blackmun with all) would find provision unconstitutional.	CrimPro, conservative
Caplin & Drysdale v. United States, 491 U.S. 617 (1989).	Similar to *U.S. v Monsanto*, 491 U.S. 600.	CrimPro, conservative
Jett v. Dall. Indep. Sch. Dist., 491 U.S. 701 (1989).	Dissents (Brennan with all) "would conclude that liability under § 1981 may be predicated on a theory of *respondeat superior*."	Social, conservative
Murray v. Giarratano, 492 U.S. 1 (1989).	Dissent (Stevens with all) would grant a right to postconviction state-appointed (free) counsel that the majority denies.	CrimPro, conservative
Hoffman v. Conn. Dep't of Income Maint., 492 U.S. 96 (1989).	Eleventh Amendment bars bankruptcy trustee claims against state. Dissents (Marshall with all; Stevens with Blackmun) would find that the Bankruptcy Code abrogated immunity.	Bankruptcy, conservative
Duckworth v. Eagan, 492 U.S. 195 (1989).	Majority relaxes Miranda warning standards. Dissent (Marshall with all) would not.	CrimPro, conservative
Penry v. Lynaugh, 492 U.S. 302 (1989).	Partial concurrences would bar the execution of the mentally retarded.	CrimPro, conservative
Stanford v. Kentucky, 492 U.S. 361 (1989).	Dissent (Brennan with all) would consider unconstitutional the execution of underage offenders.	CrimPro, conservative

Webster v. Reprod. Health Servs., 492 U.S. 490 (1989).	State statute imposing restrictions on abortions is constitutional. Dissents (Blackmun with Brennan & Marshall; Stevens) would not find statute constitutional.	Abortion, conservative
Spallone v. United States, 493 U.S. 265 (1990).	Sanctions on city council members who failed to vote for legislative package to counter discrimination in public housing was abuse of discretion. Dissent (Brennan with all), Court is second-guessing district judges.	Social, conservative
Holland v. Illinois, 493 U.S. 474 (1990).	Prosecutor's racial use of peremptory challenges upheld. Dissents (Marshall with Brennan & Blackmun; Stevens), ignores precedent.	CrimPro, conservative
Blystone v. Pennsylvania, 494 U.S. 299 (1990).	Dissent (Brennan with all), mandatory death sentence statute should have been held to violate the "…individualized sentencing hearing required by the Eighth Amendment."	CrimPro, conservative
Michigan v. Harvey, 494 U.S. 344 (1990).	Majority admits uncounseled statements for impeachment. Dissent (Stevens with all) would preclude any use of uncounseled statements.	CrimPro, conservative
Boyde v. California, 494 U.S. 370 (1990).	Dissent (Marshall with all) would find mandatory language of state's death penalty statute unconstitutional.	CrimPro, conservative
Butler v. McKellar, 494 U.S. 407 (1990).	Death habeas; reducing retroactivity of new doctrines. Dissent (Brennan with all), "the Court has finally succeeded in its thinly veiled crusade to eviscerate Congress' habeas corpus regime."	CrimPro, conservative
Saffle v. Parks, 494 U.S. 484 (1990).	Death habeas; dissent (Brennan with all), state statute advising jury to avoid influence of sympathy should have been held unconstitutional.	CrimPro, conservative
Clemons v. Mississippi, 494 U.S. 738 (1990).	Dissents (Brennan; Blackmun with all), given that one aggravating factor was constitutionally invalid, would have not allowed state supreme court to reweigh mitigating and aggravating circumstances and uphold the death penalty.	CrimPro, conservative
New York v. Harris, 495 U.S. 14 (1990).	Dissent (Marshall with all) would vacate considering death penalty cruel and unusual.	Crim'l, conservative
Delo v. Stokes, 495 U.S. 320 (1990).	Dissents (Brennan with Marshall & Blackmun; Stevens with Blackmun) would have allowed fourth habeas petition.	CrimPro, conservative
Demosthenes v. Baal, 495 U.S. 731 (1990).	Death habeas; dissent (Blackmun with Marshall) would not have allowed defendant's withdrawal of habeas petition to override petition by defendant's parents and lead to dismissal of writ.	CrimPro, conservative
Am. Trucking Ass'ns v. Smith, 496 U.S. 167 (1990).	Dissent (Stevens with all) would grant retroactivity to decision interpreting state tax on trucks, past tax was payable. Liberal if about tax, conservative if about procedural quietude.	Tax, conservative
Sullivan v. Stroop, 496 U.S. 478 (1990).	Dissents (Blackmun with Brennan & Marshall; Stevens), "the Court holds that the plain language of a statute applicable by its terms to 'any child support payments' compels the conclusion that the statute does not apply to benefits paid to the defendant child of a disabled, retired, or deceased parent for the express purpose of supporting that child."	Social, conservative

Sawyer v. Smith, 497 U.S. 227 (1990).	Death habeas; no retroactivity to rule about misallocation of responsibility (Caldwell). Dissent (Marshall with all) disagrees.	CrimPro, conservative
Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (1990).	Majority denies parents of vegetative patient right to terminate life support. Dissents (Brennan with Marshall & Blackmun; Stevens), this "desecrates the state's responsibility for protecting life."	Social, conservative
Walton v. Arizona, 497 U.S. 639 (1990).	Death penalty proper. Dissents (Blackmun with Brennan, Marshall and Stevens; Brennan with Marshall; Stevens), rules "run afoul of the established Eighth Amendment principle that a capital defendant is entitled to an individualized sentencing determination which involves the consideration of all relevant mitigating evidence."	CrimPro, conservative
United States v. Kokinda, 497 U.S. 720 (1990).	Dissent (Brennan with all), sidewalk of post office is public forum allowing solicitation.	Speech, conservative
Lewis v. Jeffers, 497 U.S. 764 (1990).	Death habeas; state's "especially heinous" statute was not unconstitutionally vague. Dissent (Blackmun with all), language has no limitations in principle and was falsely applied.	CrimPro, conservative
Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871 (1990).	Advocacy organization has no standing to challenge environmental determinations. Dissent (Blackmun with all), NWF has standing.	Envir'l, conservative

6. BLACKMUN–BRENNAN–MARSHALL–O'CONNOR–STEVENS (EIGHT O'CLOCK)

Sullivan v. Hudson, 490 U.S. 877 (1989).	Majority allows attorney's fees for social security claimant. Dissent (White with all) would not for proceedings on remand; statutory interpretation.	Social, liberal
Brendale v. Confederated Tribes & Bands of Yakima Indian Nation, 492 U.S. 408 (1989).	Zoning regulation of fee land inside reservation; plurality subjects "closed" land to tribe. Dissent (White with all) would not subject it to the tribe.	Tribal, liberal
Cty. of Allegheny v. ACLU, 492 U.S. 573 (1989).	Establishment of religion. Plurality disallows display of creche and menorah; partial dissents would allow it.	Establishment, liberal
Hodgson v. Minnesota, 497 U.S. 417 (1990).	Abortion. Plurality affirms upholding of parental notification before abortions under age 18 subject to judicial bypass; dissents would not.	Abortion, liberal

Appendix B7: Tables of Breyer Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Breyer. The Breyer composition consists of two appointees of Democratic presidents (Breyer and Ginsburg) and seven appointees of Republican presidents (Kennedy, O'Connor, Rehnquist, Scalia, Souter, Stevens, and Thomas). We list the majorities as they appear in the

corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the United States Reporter, and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BREYER–GINSBURG–O'CONNOR–SOUTER–STEVENS (NINE O'CLOCK)

Schlup v. Delo, 513 U.S. 298 (1995).	Plurality; death habeas; majority applies more lenient standard in repeated habeas miscarriage of justice claim. Dissent 1 (Rehnquist with Kennedy & Thomas), court "both waters down the standard suggested in that case, and will inevitably create confusion in the lower courts." Dissent 2 (Scalia with Thomas), contrary to statute.	CrimPro, liberal
Kyles v. Whitley, 514 U.S. 419 (1995).	Plurality; death habeas; evidence undisclosed by the prosecution entitles def to new trial. Dissent (Scalia with all), no disagreement about law, certiorari should not have been granted, uphold lower courts.	CrimPro, liberal
Morse v. Republican Party of Va., 517 U.S. 186 (1996).	Challenge to party's senator nomination procedure; plurality: voting rights act requires preclearance. Dissent 1 (Scalia with Thomas), party issue, party has First Amendment right. Dissent 2 (Kennedy with Rehnquist), no state action. Dissent 3 (Thomas with all), party is not a subdivision of state.	Voting, liberal
Lonchar v. Thomas, 517 U.S. 314 (1996).	Death habeas; Court of appeals vacated stay of execution; majority reverses. Dissent (Rehnquist with all) would only reverse the order vacating the stay, habeas delays problematic.	Criml, liberal
Lindh v. Murphy, 521 U.S. 320 (1997).	Non-capital habeas; amendments did not apply retroactively. Dissent (Rehnquist with all), court disregards retroactivity caselaw.	CrimPro, liberal
Richardson v. McKnight, 521 U.S. 399 (1997).	Prison guard employees of a private prison management firm are not entitled to qualified immunity from § 1983. Dissent (Scalia with all), "This holding is supported neither by common-law tradition nor public policy, and contradicts our settled practice of determining § 1983 immunity on the basis of the public function being performed."	Criml, liberal
Gray v. Maryland, 523 U.S. 185 (1998).	Cannot use confession of codefendant even with name of defendant blank. Dissent (Scalia with all) argues against expanded suppression.	CrimPro, liberal
Minn. v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999).	Indian tribe retains usufructuary rights to its lands. Dissent (Rehnquist with all), "To reach this result, the Court must successively conclude that: (1) an 1850 Executive Order explicitly revoking the privilege as authorized by the 1837 Treaty was unlawful; (2) an 1855 Treaty under which certain Chippewa Bands ceded 'all' interests to the land does not include the treaty right to come onto the land and hunt; and (3) the admission of Minnesota into the Union in 1858 did not terminate the discretionary hunting privilege, despite established precedent of this Court to the contrary."	Tribal, liberal

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).	School board can be liable under Title IX for sexual harassment between students. Dissent (Kennedy with all), "the Court must not imply a private cause of action for damages unless it can demonstrate that the congressional purpose to create the implied cause of action is so manifest that the State, when accepting federal funds, had clear notice of the terms and conditions of its monetary liability."	Social, liberal
West v. Gibson, 527 U.S. 212 (1999).	EEOC has authority to award compensatory damages for discrimination. Dissent (Kennedy with all), "The rules governing waivers of sovereign immunity make clear that the Equal Employment Opportunity Commission (EEOC) may not award or authorize compensatory damages against the United States unless it is permitted to do so by a statutory provision which waives the United States' immunity"	Social, liberal
Stenberg v. Carhart, 530 U.S. 914 (2000).	Plurality: Nebraska partial birth abortion statute unconstitutional because it had no exception for mother's health. Dissents (Rehnquist; Scalia; Kennedy with Rehnquist; Thomas with Scalia & Rehnquist) disagree.	Abortion, liberal
Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288 (2001).	State High School Athletic Association is state actor for First Amendment grounds. Dissent (Thomas with all), "We have never found state action based upon mere 'entwinement.'"	Speech, liberal
Easley v. Cromartie, 532 U.S. 234 (2001).	Majority: That redistricting was driven by race rather than politics was clearly erroneous. Dissent (Thomas with all), not clearly erroneous. Revisiting of Hunt v. Cromartie, 526 US 541 (1999) of main conservative majority with concurrences (hence filter does not catch it) by the standard minority which here also gets O'Connor's vote.	Voting, liberal
Idaho v. United States, 533 U.S. 262 (2001).	Title of tribe to submerged lands to continue (State does not get them). Dissent (Rehnquist with all), "the existence of [Indian-title-preserving] intent on the part of the Executive Branch is simply not enough to defeat an incoming State's title to submerged lands within its borders. Decisions of this Court going back more than 150 years establish this proposition beyond a shadow of a doubt."	Tribal, liberal
Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431 (2001).	Federal Election commission limits on funding consistent with First Amendment. Dissent (Thomas with all), "The Party Expenditure Provision, 2 U.S.C. § 441a(d)(3), severely limits the amount of money that a national or state committee of a political party can spend in coordination with its own candidate for the Senate or House of Representatives. . . . Because this provision sweeps too broadly, interferes with the party-candidate relationship, and has not been proved necessary to combat corruption, I respectfully dissent."	Speech, liberal
Zadvydas v. Davis, 533 U.S. 678 (2001).	Alien habeas past 90-day removal confinement; majority: presumptive limit to reasonable duration of post-removal-period detention is six months. Dissent 1 (Scalia with Thomas),criminal aliens cannot have a right to be released. Dissent 2 (Kennedy with all), no time limit in statute.	Social, liberal

Kelly v. South Carolina, 534 U.S. 246 (2002).	Death habeas; trial refused instruction about ineligibility for parole in case of life without parole because prison knife and escape plans presented to jury were about character, not dangerousness; majority: was entitled to ineligibility instruction. Dissent 1 (Rehnquist with Kennedy), "no connection with the due process rationale of Simmons." Dissent 2 (Thomas with Scalia), no Simmons right to begin with.	CrimPro, liberal
Alabama v. Shelton, 535 U.S. 654 (2002).	Even probation conviction entitles to counsel. Dissent (Scalia with all), precedent required imprisonment.	CrimPro, liberal
Carey v. Saffold, 536 U.S. 214 (2002).	Habeas limitation tolled for state collateral review, remand to ask for unreasonable state delay. Dissent (Kennedy with all), no appeal was filed, majority is making stuff up.	CrimPro, liberal
Rush Prudential HMO, Inc., v. Moran, 536 U.S. 355 (2002).	IL system of arbitrating health coverage was in harmony with ERISA. Dissent (Thomas with all), "not only conflicts with our precedents, it also eviscerates the uniformity of ERISA remedies."	Health, liberal
United States v. White Mountain Apache Tribe, 537 U.S. 465 (2003).	Court of Claims has jurisdiction over Apache tribe's claim, no immunity. Dissent (Thomas with all), statute did not grant claim v US.	Tribal, liberal
Brown v. Legal Found. of Wash., 538 U.S. 216 (2003).	WA had right to require deposits into IOLTA accounts the interest of which pays for legal services, no taking. Dissent 1 (Scalia with all), is taking. Dissent 2 (Kennedy), forced support of political cause violates First Amendment.	Social, liberal
Grutter v. Bollinger, 539 U.S. 306 (2003).	School had compelling interest to diversity, justifying affirmative action. Four dissents: no.	Social, liberal
Stogner v. Cal., 539 U.S. 607 (2003).	CA child abuse law enabling prosecutions of time-lapsed claims is ex post facto law. Dissent (Kennedy with all), "A law which does not alter the definition of the crime but only revives prosecution does not make the crime 'greater than it was, when committed.'"	CrimPro, liberal
Alaska Dep't of Envtl. Conservation v. EPA, 540 U.S. 461 (2004).	Environmental, allows EPA to block state agreement with mine. Dissent (Kennedy with all), "The Court errs, in my judgment, by failing to hold that EPA, based on nothing more than its substantive disagreement with the State's discretionary judgment, exceeded its powers."	Envir'l, liberal
Groh v. Ramirez, 540 U.S. 551 (2004).	BATF warrant not specifying weapons to be seized was defective and gave 1983 claim, no immunity. Dissent 1 (Kennedy with Rehnquist), officer should receive immunity. Dissent 2 (Thomas with Scalia & Rehnquist), the warrant may have been faulty, but the search was not unreasonable.	CrimPro, liberal
Tennessee v. Lane, 541 U.S. 509 (2004).	ADA claim against state for access to courts valid. Dissent 1 (Rehnquist with Kennedy & Thomas), precedent gives states Eleventh Amendment immunity. Dissent 2 (Scalia), no constitutional violation being remedied, therefore immunity. Dissent 3 (Thomas), this is about more than access to courts.	Social, liberal

Hibbs v. Winn, 542 U.S. 88 (2004).	Allows challenge to state tax credit for tuition organizations over Tax Injunction Act. Dissent (Kennedy with all), TIA bars it.	Social, liberal
Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005).	Women's coach at high school had retaliation claim for being dismissed for complaining of sex discrimination in funding of team. Dissent (Thomas with all), private right of action under title IX does not include claims for retaliation.	Social, liberal
Rompilla v. Beard, 545 U.S. 374 (2005).	Death habeas, finds ineffective assistance of counsel in not using mitigating childhood and mental issues. Dissent (Kennedy with all), seasoned professionals (two defense attorneys and three psychologists) not incompetent plus state courts not unreasonable.	CrimPro, liberal
McCreary County, Ky., v. ACLU of Ky., 545 U.S. 844 (2005).	No display of ten commandments in courthouses. Dissent (Scalia with all), "the Court's oft repeated assertion that the government cannot favor religious practice is false; . . . today's opinion extends the scope of that falsehood even beyond prior cases; . . . even on the basis of the Court's false assumptions the judgment here is wrong."	Social, liberal

2. BREYER–GINSBURG–KENNEDY–SOUTER–STEVENS (TEN O 'LOCK)

Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30 (1994).	Port Authority train (PATH) not entitled to Eleventh Amendment immunity from employees' claims. Dissent (O'Connor with all), PATH has immunity from Eleventh Amendment.	Federalism, liberal
U.S. Term Limits, Inc., v. Thornton, 514 U.S. 779 (1995).	Plurality: Arkansas Constitution may not impose additional qualification requirements for US offices (term limits). Dissent (Thomas with all), "Contrary to the majority's suggestion, the people of the States need not point to any affirmative grant of power in the Constitution in order to prescribe qualifications for their representatives in Congress."	Voting, liberal
Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996).	Poultry challenges union's and NLRB's determination that live-haul workers and chicken-catchers &c are not exempt agricultural workers; majority: union wins. Dissent (O'Connor with all), chicken-catchers are agricultural.	Employment, liberal
Medtronic, Inc., v. Lohr, 518 U.S. 470 (1996).	Medical Device statute does not preclude similar state law claims. Dissent (O'Connor with all), "state common-law damages actions ... are preempted."	Federalism, liberal
Denver Area Educ. Telecomm. Consortium, Inc., v. FCC, 518 U.S. 727 (1996).	Plurality on First Amendment on cable TV. Dissent 1 (O'Connor), protect children by allowing cable to not transmit indecent material. Dissent 2 (Thomas with Rehnquist & Scalia), cable should enjoy freedoms of print media and not be obligated to carry others.	Speech, liberal

Old Chief v. United States, 519 U.S. 172 (1997).	Dissent (O'Connor with all), "I do not agree that the Government's introduction of evidence that reveals the name and basic nature of a defendant's prior felony conviction in a prosecution brought under 18 U.S.C. § 922(g)(1) 'unfairly' prejudices the defendant within the meaning of Rule 403. Nor do I agree with the Court's newly minted rule that a defendant charged with violating § 922(g)(1) can force the Government to accept his concession to the prior conviction element of that offense, thereby precluding the Government from offering evidence on this point."	CrimPro, liberal
Crawford-El v. Britton, 523 U.S. 574 (1998).	Prisoner bringing § 1983 against guard misdelivering legal papers need not prove with clear and convincing evidence bad motive to avoid summary judgment. Dissent 1 (Rehnquist with O'Connor), "a government official who is a defendant in a motive-based tort suit is entitled to immunity from suit so long as he can offer a legitimate reason for the action that is being challenged, and the plaintiff is unable to establish, by reliance on objective evidence, that the offered reason is actually a pretext." Dissent 2 (Scalia with Thomas), no exception for pretext because "no 'intent-based' constitutional tort would have been actionable under the § 1983 that Congress enacted."	Admin, liberal
Hohn v. United States, 524 U.S. 236 (1998).	Majority: court has jurisdiction to hear appeals from denials of certificates of appealability for repeated habeas petitions. Dissent (Scalia with all), "Today's opinion permits review where Congress, with unmistakable clarity, has denied it."	CrimPro, liberal
Bragdon v. Abbott, 524 U.S. 624 (1998).	HIV patient claims ADA protection against dentist refusing treatment, patient wins. Dissent 1 (Rehnquist with all), asymptomatic means no disability. Dissent 2 (O'Connor), no need to get into difficulties with childbearing, major activities unimpaired.	Business, liberal
Nat'l Fed'n of Fed. Emps., Local 1309 v. Dep't of the Interior, 526 U.S. 86 (1999).	Majority remands to Agency to determine if midterm collective bargaining is required by statute. Dissent (O'Connor with all) "erroneously concludes that when an agency responds to a judicial decision by abandoning its own interpretation of a statute and adopting that of the judicial forum this Court should defer to the agency's revised position, rather than evaluate whether the revised interpretation renders, in fact, the most plausible reading of the statute."	Employment, liberal
Mitchell v. United States, 526 U.S. 314 (1999).	Majority: "plea is not a waiver of the privilege [against self-incrimination] at sentencing." Dissent (Scalia with all), "she did not have the right to have the sentencer abstain from making the adverse inferences that reasonably flow from her failure to testify."	CrimPro, liberal
NASA v. Fed. Labor Relations Auth., 527 U.S. 229 (1999).	NASA's Office of Inspector General had to grant employee's request to be represented by union at interview. Dissent (Thomas with all), inspectors do not represent management hence no representation right arises.	Employment, liberal

Legal Serv. Corp. v. Velazquez, 531 U.S. 533 (2001).	Congressional restriction on funding of Legal Services prohibiting challenges seeking to increase funding to Legal Services violates First Amendment viewpoint discrimination. Dissent (Scalia with all), funding law does not regulate speech and even if unconstitutional should explore severability.	Social, liberal
INS v. St. Cyr, 533 U.S. 289 (2001).	Immigration habeas; repeal of discretionary relief inapplicable retroactively to alien who pled. Dissent (Scalia with all) Supreme Court has no jurisdiction, result of majority creates delays in law designed to expedite removal.	Immigration, liberal
Calcano-Martinez v. INS, 533 U.S. 348 (2001).	Similar to *St Cyr*, 533 U.S. 289.	Immigration, liberal
Missouri v. Seibert., 542 U.S. 600 (2004).	Plurality: Mid-interrogation confession before Miranda warnings suppressed even though it was repeated after. Dissent (O'Connor with all), we rejected this theory in *Elstad*.	CrimPro, liberal
Roper v. Simmons, 543 U.S. 551 (2005).	Plurality: No death penalty for under 18. Dissent 1 (O'Connor,) unjustified. Dissent 2 (Scalia with Rehnquist & Thomas), has the constitution really changed in fifteen years?	CrimPro, liberal
Kelo v. City of New London, Conn., 545 U.S. 469 (2005).	Plurality: Eminent domain condemnation for economic development fits public use. Dissent 1 (O'Connor with all), "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner." Dissent 2 (Thomas), "shift in phraseology enables the Court to hold, against all common sense, that a costly urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue" justifies a taking.	Takings, liberal

3. GINSBURG–SCALIA–SOUTER–STEVENS–THOMAS (ELEVEN O'CLOCK)

Jones v. United States, 526 U.S. 227 (1999).	Precursor to *Apprendi*, aggravators are elements of the crime to be considered by the jury. 530 U.S. 466. Dissent disagrees.	CrimPro, liberal
Apprendi v. New Jersey, 530 U.S. 466 (2000).	Aggravating facts must be found beyond a reasonable doubt by the jury. Dissent disagrees.	CrimPro, liberal
Norfolk & W. Ry. Co. v. Ayers, 538 U.S. 135 (2003).	Asbestosis victims can recover under Federal Employers' Liability Act. Dissent would not award damages for fear of getting cancer.	Tort, liberal
Blakely v. Washington, 542 U.S. 296 (2004).	Majority applies *Apprendi* to aggravating factor for states. 530 U.S. 466. Dissent considers application to be undermining states' efforts at standardized sentencing.	CrimPro, liberal
United States v. Booker, 543 U.S. 220 (2005).	Majority applies *Apprendi* to aggravating factor for federal crimes. 530 U.S. 466. Dissent would allow the court, not the jury, to find the aggravating factors.	CrimPro, liberal

4. REHNQUIST–GINSBURG–KENNEDY–SCALIA–THOMAS (ONE O'CLOCK)

Montana v. Egelhoff, 518 U.S. 37 (1996).	Montana's prohibition of consideration of voluntary intoxication does not offend due process. Dissent would retry with that evidence mitigating.	CrimPro, conservative
Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co., 522 U.S. 479 (1998).	Bankers can sue Credit Union Admin to prevent approval of expanded customer base. Dissent argues loss of customers should not give standing to challenge group definition of credit union regulation.	Admin., conservative
Medellin v. Dretke, 544 U.S. 660 (2005).	Not having informed consulate does not require retrial. Dissent would require retrial.	CrimPro, conservative

5. REHNQUIST–KENNEDY–O'CONNOR–SCALIA–THOMAS (THREE O'CLOCK)

United States v. Lopez, 514 U.S. 549 (1995).	Plurality: Gun-free zones exceed commerce power. Dissent 1 (Stevens), no, commerce depends on education. Dissent 2 (Souter), meets rational basis, which is test. Dissent 3 (Breyer with all), meets traditional commerce clause test.	Gun rights, conservative
Missouri v. Jenkins, 515 U.S. 70 (1995).	Invalidating orders of district court attempting to desegregate Missouri school. Dissent (Souter with all), "overrule[s] a unanimous constitutional precedent of 20 years' standing, which was not even addressed in argument."	Social, conservative
Adarand Constructors, Inc., v. Pena, 515 U.S. 200 (1995).	Federal subcontractor incentives for minority enterprises subject to strict scrutiny, remands. Dissent 1 (Stevens with Ginsburg), defer to Congress. Dissent 2 (Souter with Ginsburg and Breyer), political branches focus on affirmative action. Dissent 3 (Ginsburg with Breyer), agreeable precedent.	Social, conservative
Sandin v. Conner, 515 U.S. 472 (1995).	Disciplinary solitary confinement did not trigger due process interest. Dissent 1 (Ginsburg with Stevens), process insufficient. Dissent 2 (Breyer with Souter), majority's assumption of little hardship is wrong.	Criml, conservative
Rosenberger v. Rector & Visitors of The Univ. of Va., 515 U.S. 819 (1995).	University cannot deny funding to religious student group. Dissent (Souter with all), "The Court today, for the first time, approves direct funding of core religious activities by an arm of the State. It does so, however, only after erroneous treatment of some familiar principles of law implementing the First Amendment's Establishment and Speech Clauses, and by viewing the very funds in question as beyond the reach of the Establishment Clause's funding restrictions."	Religion, conservative

Miller v. Johnson, 515 U.S. 900 (1995).	Georgia's redistricting violates equal protection. Dissent 1 (Stevens), no cognizable injury. Dissent 2 (Ginsburg with all), "Applying this new 'race-as-predominant-factor' standard, the Court invalidates Georgia's districting plan even though Georgia's Eleventh District, the focus of today's dispute, bears the imprint of familiar districting practices. Because I do not endorse the Court's new standard and would not upset Georgia's plan, I dissent."	Voting, conservative
Netherland v. Tuggle, 515 U.S. 951 (1995).	Death habeas; per curiam: stay of execution granted by court of appeals was not warranted if four justices would not vote to grant cert and if no significant reversal possibility existed. Dissent 1 (Stevens with Ginsburg), no abuse of discretion by court of appeals, certiorari might be granted. Dissent 2 (Souter), deny to vacate stay. Dissent 3 (Breyer, Stevens) present.	CrimPro, conservative
Wood v. Bartholomew, 516 U.S. 1 (1995).	Per curiam: Prosecutors need not disclose that witness had failed polygraph test. Dissent from summary disposition, no opinion.	CrimPro, conservative
Seminole Tribe of Fla. v. Fla., 517 U.S. 44 (1996).	State immune from tribe suit to force good faith negotiations under gaming statute. Dissent 1 (Stevens), federal right must have a remedy. Dissent 2 (Souter with all), "the Court today holds for the first time since the founding of the Republic that Congress has no authority to subject a State to the jurisdiction of a federal court at the behest of an individual asserting a federal right."	Tribal, conservative
Shaw v. Hunt, 517 U.S. 899 (1996).	Overturns districting plan as not narrowly tailored to meet needs. Dissent 1 (Stevens with Ginsburg & Breyer), should not apply strict scrutiny to majority-minority districts, even so, this passes. Dissent 2 (Souter with Ginsburg and Breyer) referring to dissent in *Bush*, 116 S. Ct. at 1997 (court needs to give notice of standards), disagrees.	Voting, conservative
Bush v. Vera, 517 U.S. 952 (1996).	Plurality increasing minority proportion of district violates strict scrutiny. Dissent 1 (Stevens with Ginsburg and Breyer), gerrymander is political, not racial, should return to law is in *Shaw v. Reno*, 509 U.S. 630, 652 (1993). Dissent 2 (Souter with Ginsburg and Breyer), court should give notice of what law is.	Voting, conservative
Koon v. United States, 518 U.S. 81 (1996).	Sentencing of police officers most downward departures valid but not for loss of job. Dissent 1 (Stevens), may mitigate for loss of job. Dissent 2 (Souter with Ginsburg), should not mitigate for susceptibility to abuse in prison and for successive prosecutions. Dissent 3 (Breyer with Ginsburg, Souter), also no mitigation for successive prosecutions. Drop, Stevens and Breyer would punish less, Souter & Ginsburg would punish more.	Dropped
Leavitt v. Jane L., 518 U.S. 137 (1996).	Per curiam. Abortion statute with constitutional and unconstitutional parts; issue: were they severable? Majority: yes (saving constitutional parts). Dissent (Stevens with all), state law issue.	Abortion, conservative

Gray v. Netherland, 518 U.S. 152 (1996).	Death habeas; remands. Dissent 1 (Stevens), would reverse, not even evidence to charge. Dissent 2 (Ginsburg with Souter, Stevens, and Breyer), new unannounced evidence in sentencing stage requires resentencing.	CrimPro, conservative
Bd. of The County Comm'rs of Bryan County, Okla. v. Brown, 520 U.S. 397 (1997).	Excessive force in traffic stop 1983 claim vacated & remanded for not showing pattern. Dissent 1 (Souter with Stevens and Breyer), single act liability possible. Dissent 2 (Breyer with Stevens and Ginsburg), court makes liability far too difficult. Topic administrative if about municipality decisions, social if about policing.	Admin./Social, conservative
McMillian v. Monroe County, Ala., 520 U.S. 781 (1997).	Death row exoneration 1983 claim v county fails for sheriff represented state. Dissent (Ginsburg with all), sheriffs represent counties given Alabama structure.	Social, conservative
Abrams v. Johnson, 521 U.S. 74 (1997).	Upholds court districting plan producing one instead of three majority-minority districts. Dissent (Breyer with all), Georgia is 27 percent African-American, should have at least two of its eleven districts be majority-minority.	Voting, conservative
O'Dell v. Netherland, 521 U.S. 151 (1997).	Death habeas, defendant could not take retroactive advantage of rule that entitles to instruction about life without parole. Dissent (Stevens with all), rule is retroactive.	CrimPro, conservative
Agostini v. Felton, 521 U.S. 203 (1997).	School finance: Majority overrules precedent prohibiting public school teachers to teach in parochial schools. Dissent 1 (Souter with all), no. Dissent 2 (Ginsburg with Breyer), should not have heard the case.	Social, conservative
Idaho, v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261 (1997).	Plurality: Eleventh Amendment bars tribe from claiming compensation for submerged lands. Dissent (Souter with all), falls within *Ex parte Young*, exercise federal right. 209 U.S. 123, 128 (1908).	Tribal, conservative
Kansas v. Hendricks, 521 U.S. 346 (1997).	Kansas sexual violent predator act civil commitment upheld against vagueness and double jeopardy attacks. Dissent (Breyer with Stevens and Souter, Ginsburg in part), it is additional punishment and ex post facto.	Criml, conservative
Printz v. United States, 521 U.S. 898 (1997).	Plurality invalidates parts of Brady Bill on background checks in firearm sales. Dissent (Stevens with all), Congress can impose enforcement obligations on local law enforcement officers.	Gun rights, conservative
Calderon v. Thompson, 523 U.S. 538 (1998).	Death habeas; Petitioner failed to show miscarriage of justice, denied. Dissent (Souter with all), court's order should be reviewed for abuse of discretion and courts have this discretion normally (to change orders).	CrimPro, conservative
Phillips v. Wash. Legal Found., 524 U.S. 156 (1998).	Texas IOLTA is a taking. Dissent (Souter with all and Breyer with all), no because no interest would be earned without IOLTA.	Social, conservative
Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998).	Implied private right of action under title IX versus teacher requires actual notice to school and teacher. Dissent 1 (Stevens with all), thwarts the purpose of title IX. Dissent 2 (Ginsburg with Souter and Breyer), reporting mechanism defense.	Social, conservative

Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357 (1998).	Parole boards need not suppress evidence that would have been suppressed in trial. Dissent 1 (Stevens), remember that the exclusionary rule is constitutionally required. Dissent 2 (Souter with Ginsburg and Breyer), still need to deter Fourth Amendment violations.	Criml, conservative
E. Enterprises v. Apfel, 524 U.S. 498 (1998).	Plurality: Coal Act's retroactive retirement funding obligation on corp. that left the industry unconstitutional taking. Dissent 1 (Stevens with all), circuits being reversed were right, it was lifetime health deal. Dissent 2 (Breyer with all), no taking, reasonable regulation.	Employment, conservative
Calderon v. Coleman, 525 U.S. 141 (1998).	Death habeas; instruction fault could be harmless error. Dissent (Stevens with all), lower courts sufficiently reasoned, error not harmless, would deny cert.	CrimPro, conservative
Grupo Mexicano de Desarrollo, S.A., v. All. Bond Fund, Inc., 527 U.S. 308 (1999).	Preliminary injunction in favor of claimants against Mexican toll road operator was premature. Dissent (Ginsburg with all), claimants had satisfied all conditions for validity of injunction.	Business, conservative
Jones v. United States, 527 U.S. 373 (1999).	Death penalty. Plurality: jury did not need to be instructed on consequences of not being unanimous. Dissent (Ginsburg with Stevens and Souter, Breyer in part), would reverse and remand for accurately informed jury.	CrimPro, conservative
Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank, 527 U.S. 627 (1999).	Federal patent act cannot abrogate states' sovereign immunity. Dissent (Stevens with all), act was appropriate exercise of Congressional power. If about business, then liberal.	Federalism, conservative
Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666 (1999).	Trademark Remedy Clarification Act did not abrogate states' sovereign immunity. Dissent 1 (Stevens), trade activities of states should not be subject to sovereign immunity as foreign sovereigns aren't. Dissent 2 (Breyer with all), against precedent. If about business, then liberal.	Federalism, conservative
Alden v. Maine, 527 U.S. 706 (1999).	Fair Labor Standards Act could not abrogate states' sovereign immunity. Dissent (Souter with all), disagrees.	Employment, conservative
Kimel v. Fla. Bd. of Regents, 528 U.S. 62 (2000).	Plurality: Age Discrimination In Employment Act did not abrogate states' sovereign immunity. Dissent 1 (Stevens with all), contra precedent. Concurrence (Thomas with Kennedy), Congress did not make intent to abrogate Eleventh Amendment immunity clear in statute.	Social, conservative
Illinois v. Wardlow, 528 U.S. 119 (2000).	Search of person fleeing from converging police was reasonable. Dissent (Stevens with all), no reasonable suspicion for stop.	CrimPro, conservative
Weeks v. Angelone, 528 U.S. 225 (2000).	Death habeas; jury instruction proper. Dissent (Stevens with Ginsburg and Breyer, Souter in part), "virtual certainty" of jury confusion.	CrimPro, conservative

Smith v. Robbins, 528 U.S. 259 (2000).	States can follow their own procedures to ensure adequate representation, prejudice not presumed. Dissent 1 (Stevens with Ginsburg), "sharp departure from settled law." Dissent 2 (Souter with all), state procedure is inadequate.	CrimPro, conservative
Reno v. Bossier Par. Sch. Bd., 528 U.S. 320 (2000).	Districting preclearance, plurality upholds nonretrogressive but discriminatory plan. Dissent 1 (Stevens with Ginsburg), Dept. of Justice's construction of statute deserves deference, intent counts and plan fails. Dissent 2 (Breyer), retrogression from zero impossible in 1965 so could not have been the standard. Dissent 3 (Souter with all), precedent was against text of act too.	Voting, conservative
FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120 (2000).	FDA cannot regulate tobacco sales; dissent (By with all) tobacco "affects structure of [a] function of the body" hence subject to FDA.	Social, conservative
Williams v. Taylor, 529 U.S. 362 (2000).	Death habeas; overlapping complex pluralities with liberal and conservative coalitions producing different components of decision, dropped.	Dropped
United States v. Morrison, 529 U.S. 598 (2000).	Civil remedies of Violence Against Women Act beyond Congressional power; dissent 1 (Souter with all) Congress showed effect in interstate commerce. Dissent 2 (Breyer with all), resulting commerce clause law is unworkable.	Social, conservative
Ohler v. United States, 529 U.S. 753 (2000).	Defendant who preemptively introduces evidence of a prior conviction on direct examination may not challenge the admission of such evidence on appeal. Dissent (Souter with all), "The holding is without support in precedent, the rules of evidence, or the reasonable objectives of trial."	CrimPro, conservative
Ramdass v. Angelone, 530 U.S. 156 (2000).	Death habeas, denied b/c defendant was not entitled to ineligibility instruction b/c 3rd prior conviction was not final; dissent (Stevens with all), "acute unfairness in permitting a State to rely on a recent conviction to establish a defendant's future dangerousness while simultaneously permitting the State to deny that there was such a conviction when the defendant attempts to argue that he is parole ineligible and therefore not a future danger."	CrimPro, conservative
Carter v. United States, 530 U.S. 255 (2000).	Bank robber was not entitled to lesser included offense instruction; dissent (Ginsburg with all), larceny is lesser-included of robbery despite statutory niceties.	CrimPro, conservative
Miller v. French, 530 U.S. 327 (2000).	District Courts may not suspend auto stay of Prison Litigation Reform Act; Dissent 1 (Souter with Ginsburg), "serious separation-of-powers issue if the time it allows turns out to be inadequate for a court to determine whether the new prerequisite to relief is satisfied." Dissent 2 (Breyer with Stevens), not what the statute says, District Court may reinstate injunction.	Criml, conservative

Boy Scouts of Am. v. Dale, 530 U.S. 640 (2000).	New Jersey law requiring Boy Scouts to readmit gay person violated their First Amendment rights. Dissent 1 (Stevens with all), no impediment of BSA, no First Amendment violation. Dissent 2 (Souter with Ginsburg and Breyer), "I conclude that BSA has not made out an expressive association claim, therefore, not because of what BSA may espouse, but because of its failure to make sexual orientation the subject of any unequivocal advocacy, using the channels it customarily employs to state its message."	Social, conservative
Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79 (2000).	Mobile home financing arbitration upheld. Dissent (Ginsburg with all), costs of access to arbitration unknown, case unripe for decision.	Business, conservative
Bush v. Gore, 531 U.S. 98 (2000).	Per curiam: Florida order inappropriate. Four dissents: should have allowed recount to conclude.	Social, conservative
Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs, 531 U.S. 159 (2001).	Army Corps of Engineers using Clean Water Act to obtain jurisdiction over non-navigable waters inappropriate. Dissent (Stevens with all), statute does not require navigability.	Social, conservative
Bd. of Tr. of The Univ. of Ala. v. Patricia Garrett, 531 U.S. 356 (2001).	Americans with Disabilities Act did not abrogate states' Eleventh Amendment immunity. Dissent (Breyer with all), Congress may enforce equal protection guarantee of Fourteenth Amendment as it pleases, it is not an agency.	Social, conservative
Circuit City Stores, Inc., v. Adams, 532 U.S. 105 (2001).	Federal Arbitration Act applies to employment contract only in interstate commerce. Dissent 1 (Stevens with all), FAA was not supposed to apply to employment contracts by its text. Dissent 2 (Souter with all), Congress wrote general exclusion of employment contracts.	Employment, conservative
Tex. v. Cobb, 532 U.S. 162 (2001).	Death penalty; plurality: right to counsel only exists for charged offenses. Dissent (Breyer with all), "unnecessarily technical definition undermines Sixth Amendment protections while doing nothing to further effective law enforcement."	CrimPro, conservative
Alexander v. Sandoval, 532 U.S. 275 (2001).	No private right of action to enforce disparate-impact regulations, hence no Spanish test for driver's license. Dissent (Stevens with all), at the time of passage, rule was private rt of action was implied unless excluded.	Social, conservative
Daniels v. United States, 532 U.S. 374 (2001).	Defendant cannot collaterally attack prior conviction used for three strikes. Dissent 1 (Souter with Stevens & Ginsburg), "Why should it be easy to subject a person to a higher sentencing range and commit him for nearly nine extra years (as here) when the prisoner has a colorable claim that the extended commitment rests on a conviction the Constitution would condemn?" Dissent 2 (Breyer), "the Court's earlier decision will lead to ever-increasing complexity, for it blocks the simpler procedural approach that Congress intended."	CrimPro, conservative

Lackawanna County Dist. Attorney v. Coss, 532 U.S. 394 (2001).	Prior enhancement sentence did not influence current penalty. Dissent 1 (Souter with Ginsburg & Stevens), it did in several ways, also dissent in Daniel (immediately above). Dissent 2 (Breyer), issue not briefed, remand to consider.	CrimPro, conservative
Buckhannon Bd. & Care Home, Inc., v. W. Va. Dep't of Health & Human Res., 532 U.S. 598 (2001).	Fee-shifting of Fair housing and ADA need decision on the merits. Dissent (Ginsburg with all), "upsets long-prevailing Circuit precedent applicable to scores of federal fee-shifting statutes."	Business, conservative
NLRB v. Ky. River Cmty. Care, Inc., 532 U.S. 706 (2001).	Nurses are supervisors, no right to unionize. Dissent (Stevens with all), they are not supervisors.	Employment, conservative
Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001).	Cigarette sale regulating statute of Massachusetts challenged on preemption and First Amendment grounds; plurality: advertising ban preempted, ads within 1,000 feet of schools cannot be barred on First Amendment grounds. Dissent 1 (Souter), remand on 1,000 feet from school issue. Dissent 2 (Stevens with all), federal statute does not preempt, would also vacate on First Amendment and remand for trial.	Business, conservative
Palazzolo v. R.I., 533 U.S. 606 (2001).	Plurality: regulatory taking remand. Dissent 1 (Stevens), regulation can be challenged. Dissent 2 (Ginsburg with Stevens & Breyer), owner could develop uplands only. Dissent 3 (Breyer), must not create incentive to transfer non-regulated part of land in order to manufacture takings claim.	Takings, conservative
Tyler v. Cain, 533 U.S. 656 (2001).	Opinion on jury instruction defect about reasonable doubt is not retroactive, habeas fails. Dissent believes it is retroactive.	CrimPro, conservative
Corr. Servs. Corp. v. Malesko, 534 U.S. 61 (2001).	No Bivens private right of action against private entities, and heart attack claim of prisoner fails. Dissent (Stevens), against natural flow of precedent.	Admin/Business, conservative
Dusenbery v. United States, 534 U.S. 161 (2002).	Notice of forfeiture to prison and mom was proper. Dissent (Ginsburg), due process demands right to be heard.	CrimPro, conservative
Great-W. Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (2002).	Under ERISA and common law, health insurer limited to recover from insured actual recovery, not attorney's fees or amount in trust. Dissent 1 (Stevens), ERISA provision was intended to increase judges' latitude; dissent 2 (Ginsburg with all), "treat[s] as dispositive an ancient classification unrelated to the substance of the relief sought; and . . . obstruct[s] the general goals of ERISA by relegating to state court (or to no court at all) an array of suits involving the interpretation of employee health plan provisions."	Health, conservative
Hoffman Plastic Compounds, Inc., v. NLRB, 535 U.S. 137 (2002).	NLRB cannot award backpay to undocumented alien. Dissent (Breyer with all), deter illegal activity.	Employment, conservative

Mickens v. Taylor, 535 U.S. 162 (2002).	Prisoner was sentenced to death and filed a writ for habeas corpus, claiming his attorney had a conflict of interest that court knew had to have influenced outcome to be grounds. Dissent 1 (Stevens), likely prejudicial. Dissent 2 (Souter), judge must inquire about conflict and replace counsel. Dissent 3 (Breyer with Ginsburg), automatic reversal.	CrimPro, conservative
City of L.A. v. Alameda Books, 535 U.S. 425 (2002).	Restriction of a second obscene bookstore in building ordinance was challenged. Plurality: city could reasonably rely on police department study correlating crime patterns with concentrations of adult business. Dissent (Souter with all), prohibiting same establishment from various businesses (books and DVDs) by requiring two rents and other costs drives it out of business and functions as content regulation.	Social, conservative
FMC v. S.C. State Ports Auth., 535 U.S. 743 (2002).	Sovereign immunity bars FMC from adjudicating claim versus state-run port. Dissent 1 (Stevens), rationale "embarrassing insufficient." Dissent 2 (Breyer with all), against precedent and Constitution.	Admin, conservative
McKune v. Lile, 536 U.S. 24 (2002).	Prisoner brought 42 USC §1983 suit against prison officials for violation of right not to self-incriminate. Majority held consequences from not participating in sex abuser treatment not so severe as to force self-incrimination. Dissent (Stevens with all), "[n]or have we ever held that a person who has made a valid assertion of the privilege may nevertheless be ordered to incriminate himself and sanctioned for disobeying such an order. This is truly a watershed case."	Criml, conservative
Zelman v. Simmons-Harris, 536 U.S. 639 (2002).	School voucher program did not violate establishment clause. Dissent 1 (Stevens), the use of public funds is indoctrination. Dissent 2 (Souter with all) failure of public schools does not excuse establishment. Dissent 3 (Breyer with Stevens and Souter), socially explosive; parental choice is not a remedy.	Social, conservative
Republican Party v. White, 536 U.S. 765 (2002).	Prohibition on candidates for judicial elections from announcing positions violates First Amendment. Dissent 1 (Stevens with all), judges are not supposed to be popular. Dissent 2 (Ginsburg with all), by having elected judges, Minnesota "has not thereby opted to install a corps of political actors on the bench," "would differentiate elections for political offices, in which the First Amendment holds full sway, from elections designed to select those whose office it is to administer justice without respect to persons. Minnesota's choice to elect its judges, I am persuaded, does not preclude the State from installing an election process geared to the judicial office."	Speech, conservative
Sattazahn v. Pa., 537 U.S. 101 (2003).	Death penalty; death after successful appeal of life sentence does not violate double jeopardy due to deadlock of first jury. Dissent (Ginsburg with all), a final judgment is a jeopardy-determinative event.	CrimPro, conservative

Ewing v. Cal., 538 U.S. 11 (2003).	Twenty-five-year sentence after three strikes for felony grand theft was not cruel and unusual. Dissent 1 (Stevens with all), Breyer's proportionality required by Constitution. Dissent 2 (Breyer with all), precedent standard is grossly disproportionate, and making this disproportionate.	Criml, conservative
Lockyer v. Andrade, 538 U.S. 63 (2003).	Life sentence for two petty thefts per California three-strikes statute valid. Dissent (Souter with all), same reasons as in Justice Breyer's dissent in *Ewing*, 538 U.S. 11.	Criml, conservative
Demore v. Kim, 538 U.S. 510 (2003).	Plurality: No-bail provision of Immigration and Naturalization Act valid. Dissent 1 (Souter with Stevens & Ginsburg), "The Court's holding that the Constitution permits the Government to lock up a lawful permanent resident of this country when there is concededly no reason to do so forgets over a century of precedent . . ." Dissent 2 (Breyer), defendant's claims that he is not deportable are strong enough that he should get bail.	CrimPro, conservative
Ga. v. Ashcroft, 539 U.S. 461 (2003).	Challenge to refusal of preclearance to Georgia's districting, plurality remand favorable to Georgia. Dissent (Souter with all), switch from majority-minority districts to coalition districts possible, but state bears burden that others will form coalition with minority.	Voting, conservative
Vieth v. Jubelirer, 541 U.S. 267 (2004).	Plurality: political gerrymandering is nonjusticiable. Dissent 1 (Stevens), plurality "would give license, for the first time, to partisan gerrymanders that are devoid of any rational justification." Dissent 2 (Souter with Ginsburg), court need not abandon effort to define prohibited political gerrymandering. Dissent 3 (Breyer), would remand for plaintiffs to show harm from political gerrymandering.	Voting, conservative
Grupo Dataflux v. Atlas Glob. Grp. L.P., 541 U.S. 567 (2004).	Cannot cure lack of diversity jurisdiction by change after filing. Dissent (Ginsburg with all), defect had been cured before trial and is not fatal.	Admin., conservative
Yarborough v. Alvarado, 541 U.S. 652 (2004).	Plurality declines to suppress 17-year-old's confession without Miranda warnings because he was not in custody. Dissent (Breyer with all), he was in custody.	CrimPro, conservative
Hiibel v. Sixth Judicial Dist. Ct., 542 U.S. 177 (2004).	Arrest for violating statute requiring one to identify oneself was proper. Dissent 1 (Stevens), violates right against self-incrimination. Dissent 2 (Breyer with Souter & Ginsburg), contrary to consistent strong dicta.	Criml, conservative
Schriro v. Summerlin, 542 U.S. 348 (2004).	Death habeas; interpretation requiring jury to find aggravators was not retroactive. Dissent (Breyer with all), fits criteria for retroactivity.	CrimPro, conservative
Beard v. Banks, 542 U.S. 406 (2004).	Death habeas; rule of Mills was not retroactive. Dissent 1 (Stevens with all), wanton imposition of death penalty. Dissent 2 (Souter with Ginsburg), need more accuracy in death penalties.	CrimPro, conservative
Rumsfeld v. Padilla, 542 U.S. 426 (2004).	Plurality: SDNY has no jurisdiction over enemy combatant U.S. citizen held in South Carolina. Dissent (Stevens with all), important case over which the court clearly has jurisdiction and must decide.	CrimPro, conservative

United States v. Patane, 542 U.S. 630 (2004).	Plurality: Lack of Miranda warnings does not suppress found firearms and voluntary statements. Dissent 1 (Souter with Stevens & Ginsburg), inducement to ignore Miranda. Dissent 2 (Breyer), should follow Seibert and suppress.	CrimPro, conservative
Holland v. Jackson, 542 U.S. 649 (2004).	Non-capital murder habeas; per curiam; claim of ineffective assistance properly defeated as not prejudicial. Dissent would deny certiorari (and uphold grant of habeas by court of appeals).	CrimPro, conservative
Jama v. Immigr. & Customs Enf't, 543 U.S. 335 (2005).	Removal of alien to country of birth proper even if it will not be hospitable. Dissent (Souter with all), the statutory text requires country to accept him.	Admin, conservative
Pace v. DiGuglielmo, 544 U.S. 408 (2005).	Murder habeas; limitation was not tolled, petition is untimely. Dissent (Stevens with all), "The Court's interpretation of § 2244(d)(2) is not compelled by the text of that provision and will most assuredly frustrate its purpose."	CrimPro, conservative
Dodd v. U.S., 545 U.S. 353 (2005).	Rule that jury had to be unanimous in all aggravators was more than a year old at filing of petition, therefore petition was untimely. Dissent 1 (Stevens with all), cannot have "limitations period to expire before the cause of action accrues." Dissent 2 (Ginsburg with Breyer), "exalts form over reality."	CrimPro, conservative
Bell v. Thompson, 545 U.S. 794 (2005).	Death habeas; court of appeals did not have sufficient grounds in ineffective assistance claims to reverse. Dissent (Breyer with all), extraordinary circumstances, no abuse of discretion.	CrimPro, conservative

6. REHNQUIST–KENNEDY–SCALIA–STEVENS–THOMAS (FOUR O'CLOCK)

U.S. v. Lopez, 514 U.S. 549 (1995).	Plurality: Gun-free zones exceed commerce power. Dissent 1 (Stevens), no, commerce depends on education. Dissent 2 (Souter), meets rational basis, which is the test. Dissent 3 (Breyer with all), meets traditional commerce clause test.	Gun rights, conservative
Mo. v. Jenkins, 515 U.S. 70 (1995).	Invalidating orders of district court attempting to desegregate Missouri schools. Dissent (Souter with all), "overrule[s] a unanimous constitutional precedent of 20 years standing, which was not even addressed in argument . . ."	Social, conservative
Adarand Constructors, v. Pena, 515 U.S. 200 (1995).	Federal subcontractor incentives for minority enterprises are subject to strict scrutiny, remands. Dissent 1 (Stevens with Ginsburg), defer to Congress. Dissent 2 (Souter with Breyer & Ginsburg), political branches focus on affirmative action. Dissent 3 (Ginsburg with Breyer), agreeable precedent exists.	Social, conservative

7. REHNQUIST–KENNEDY–SCALIA–SOUTER–THOMAS (FIVE O'CLOCK)

Lambrix v. Singletary, 520 U.S. 518 (1997).	Heinous-Atrocious-Cruel instruction was given to jury, but was not further defined, requires retrial. Dissent finds that the Florida Supreme Court appropriately considered it waived.	CrimPro, liberal
Atwater v. City of Lago Vista, 532 U.S. 318 (2001).	Arrest for trivial violation (not wearing seatbelt) is proper. Dissent would consider it violating the Fourth Amendment.	CrimPro, conservative

Exxon Mobil Corp. v. Allapattah Servs, Inc., 545 U.S. 546 (2005).	Supplemental plaintiffs need not meet amount in controversy (interpretation of Civil Procedure statute). Dissent would not allow them to join.	CivPro, liberal

8. BREYER–GINSBURG–SOUTER–STEVENS–THOMAS (EIGHT O'CLOCK)

United States v. Bajakajian, 524 U.S. 321 (1998).	Civil forfeiture of entire $357k undeclared at airport excessive, violating Eighth Amendment. Dissent would uphold.	Admin, liberal
AMTRAK v. Morgan, 536 U.S. 101 (2002).	Hostile environment claims include acts that are part of practice beyond 300-day limitations. Dissent would time bar each act individually.	Employment, liberal
Till v. SCS Credit Corp., 541 U.S. 465 (2004).	Chapter 13 secured lender entitled to only interest rate of prime plus risk (9.5%) not cost of funds (21%). Dissent would give contract rate.	Business, liberal

Appendix B8: Tables of Alito Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Alito. The Alito composition consists of two appointees of Democratic presidents (Breyer and Ginsburg) and seven appointees of Republican presidents (Alito, Kennedy, Roberts, Scalia, Souter, Stevens, and Thomas). We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the Supreme Court Reporter (not all United States Reporter citations were paginated at publication time), and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BREYER– GINSBURG–KENNEDY–SOUTER–STEVENS (NINE O'CLOCK)

Marrama v. Citizens Bank, 549 U.S. 365 (2007).	Bankruptcy court had authority to block abusive attempt to convert chapter 7 filing to chapter 13. Dissent (Alito with all), right to convert is absolute.	Business, conservative
Mass. v. EPA, 549 U.S. 497 (2007).	Massachusetts has standing to ask EPA to regulate greenhouse gases. Dissent (Roberts with all) "would reject these challenges as nonjusticiable."	Admin, liberal
Abdul-Kabir v. Quarterman, 550 U.S. 233 (2007).	Identical to *Brewer*, 550 U.S. 286 (2007).	CrimPro, liberal

Brewer v. Quarterman, 550 U.S. 286 (2007).	Majority accepts habeas reversal of denial to allow jury to hear some sentencing mitigating factors. Dissent (Roberts with all), Antiterrorism and Effective Death Penalty Act precluded the Court from reversing on such tenuous precedent.	CrimPro, liberal
Smith v. Tex., 550 U.S. 297 (2007).	Death sentence review, second time, jury instructions defective. Dissent (Alito with all), defendant's lawyer's failure to object or correct instructions despite invitation from judge precludes reversal.	CrimPro, liberal
Panetti v. Quarterman, 551 U.S. 930 (2007).	Defendant incompetent to be executed. Dissent (Thomas with all), defendant not entitled to second successive habeas review.	CrimPro, liberal
Boumediene v. Bush, 553 U.S. 723 (2008).	Guantanamo detainees have habeas rights. Dissent 1 (Roberts with Alito, Scalia, Thomas), "the system the political branches constructed adequately protects any constitutional rights . . . enemy combatants may enjoy." Dissent 2 (Scalia with Roberts, Alito, & Thomas), "The writ of habeas corpus does not, and never has, run in favor of aliens abroad."	CrimPro, liberal
Dada v. Mukasey, 554 U.S. 1 (2008).	Deportable alien can withdraw voluntary withdrawal pending other proceedings. Dissent 1 (Scalia with Roberts & Thomas), "the Court lacks the authority" to change the statutory scheme; dissent 2 (Alito), Board of Immigration Appeals had authority and its action is unclear, would remand.	Immigration, liberal
Sprint Commc'ns. Co., LP v. APCC Servs., 554 U.S. 269 (2008).	Assignees of coin-operated phones can bring suit against carriers. Dissent (Roberts with all), "Respondents have nothing to gain from their lawsuit. Under settled principles of standing, that fact requires dismissal of their complaint."	Business, liberal
Kennedy v. La., 554 U.S. 407 (2008).	Rape with no death cannot lead to the death penalty. Dissent (Alito with all), no basis for limitation.	CrimPro, liberal
Altria Group, Inc., v. Good, 555 U.S. 70 (2008).	Allows false advertising claim against cigarette makers under Maine law. Dissent (Thomas with all), it is preempted by federal legislation.	Business, liberal
Corley v. United States, 556 U.S. 303 (2009).	Suppresses confession. Dissent (Alito with all), "Unless the unambiguous language of § 3501(a) is ignored, petitioner's confession may not be suppressed."	CrimPro, liberal
Haywood v. Drown, 556 U.S. 729 (2009).	State law limiting jurisdiction on prisoners' civil claims for constitutional violation (1983) violated supremacy clause. Dissent (Thomas with all), "neither the Constitution nor our precedent requires New York to open its courts to § 1983 federal actions."	CrimPro, liberal
Caperton, v. A. T. Massey Coal Co., Inc., 556 U.S. 868 (2009).	Elected judge who received large donation from defendant-appellant had recusal obligation. Dissent (Roberts with all), mere "probability of bias" not enough.	CivPro, liberal
United States v. Denedo, 556 U.S. 904 (2009).	Military appellate court had jurisdiction to correct its error allowing defendant to challenge conviction and delay deportation. Dissent (Roberts with all), military courts do not have jurisdiction to issue writs of coram nobis to correct their judgments.	CrimPro, liberal

2. GINSBURG–SCALIA–SOUTER– STEVENS–THOMAS (TEN O'CLOCK)

United States v. Santos, 553 U.S. 507 (2008).	Vacating money-laundering convictions on distinction of profits from other receipts. Dissent 1 (Alito with all), proceeds should include all. Dissent 2 (Breyer) would distinguish money-laundering from crimes that include it as operating gambling business, here.	Criml, liberal
Ariz. v. Gant, 556 U.S. 332 (2009).	(Drug-producing) search of vehicle following driver's arrest improper if unjustified. Dissent (Alito with all), overruling established precedent. Dissent 2 (Breyer), need better rule.	CrimPro, liberal
Melendez-Diaz v. Mass., 557 U.S. 305 (2009).	Admission of lab certificates that seized substance was cocaine violated right to confront. Dissent (Kennedy with all), overruling established admissibility of scientific testimony.	CrimPro, liberal

3. ROBERTS–ALITO–KENNEDY–SCALIA–THOMAS (THREE O'CLOCK)

Garcetti, v. Ceballos, 547 U.S. 410 (2006).	Public employees' work speech not protected by First Amendment. Dissent 1 (Stevens), "it seems perverse to fashion a new rule that provides employees with an incentive to voice their concerns publicly before talking frankly to their superiors." Dissent 2 (Souter with Stevens), "addressing official wrongdoing and threats to health and safety" can justify First Amendment protection. Dissent 3 (Breyer), "courts should apply the Pickering standard, even though the government employee speaks upon matters of public concern in the course of his ordinary duties."	Admin, conservative
Hudson v. Mich., 547 U.S. 586 (2006).	Violation of knock-and-announce rule did not require suppression of all evidence. Dissent (Breyer with all), "the Court destroys the strongest legal incentive to comply with the Constitution's knock-and-announce requirement . . . without significant support in precedent."	CrimPro, conservative
Rapanos v. United States, 547 U.S. 715 (2006).	Land eleven to twenty miles from navigable waters was not waters of the U.S. for Clean Water Act. Dissent 1 (Stevens with all), "[r]ejecting more than 30 years of practice by the Army Corps, the plurality disregards the nature of the congressional delegation to the agency and the technical and complex character of the issues at stake." Dissent 2 (Breyer), courts must defer to Army Corps of Engineers definitions.	Admin, conservative

Kan. v. Marsh, 548 U.S. 163 (2006).	Kansas' death penalty statute satisfies the constitutional mandates of Furman and its progeny because it rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. Dissent 1 (Stevens), "[n]othing more than an interest in facilitating the imposition of the death penalty in [Kansas] justified this Court's exercise of its discretion to review the judgment of the [Kansas] Supreme Court." Dissent 2 (Souter with all), "the Constitution forbids a mandatory death penalty in what they describe as 'doubtful cases,' when aggravating and mitigating factors are of equal weight."	CrimPro, conservative
League of United Latin Am. Citizens v. Perry, 548 U.S. 399 (2006).	Redistricting, plurality, mostly affirms and remands republican Texas plan. Dissent 1 (Stevens with Breyer) would restore neutral plan of court before GOP gerrymander. Dissent 2 (Souter with Ginsburg), "because . . . we have no majority for any single criterion of impermissible gerrymander [I treat this as] improvident grant of certiorari, and add only two thoughts . . . : that I do not . . . flat[ly] reject[] any test of gerrymander turning on the process followed in redistricting, nor do I rule out the utility of a criterion of symmetry as a test." Dissent 3 (Breyer), solely partisan motivation violates equal protection.	Voting, conservative
Ayers v. Belmontes, 549 U.S. 7 (2006).	Death habeas, jury not hearing some evidence mitigating the penalty was not reversible. Dissent (Stevens with all), it was reversible.	CrimPro, conservative
Lawrence v. Fla., 549 U.S. 327 (2007).	Death habeas, one-year limitation appropriate, no extraordinary circumstances justifying tolling. Dissent (Ginsburg with all) "would therefore hold that 28 U.S.C. § 2244(d)'s statute of limitations is tolled during the pendency of a petition for certiorari."	CrimPro, conservative
Gonzales v. Carhart, 550 U.S. 124 (2007).	Partial-birth abortion ban statute upheld. Dissent (Ginsburg with all), "Today's decision is alarming. It refuses to take Casey and Stenberg seriously. It tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists (ACOG). It blurs the line, firmly drawn in Casey, between previability and postviability abortions. And, for the first time since Roe, the Court blesses a prohibition with no exception safeguarding a woman's health."	Social, conservative
Schriro v. Landrigan, 550 U.S. 465 (2007).	Death habeas, ineffective counsel was not prejudicial. Dissent (Stevens with all), "the Court holds that respondent is not entitled to an evidentiary hearing to explore the prejudicial impact of his counsel's inadequate representation [because it] made no difference in the sentencing anyway . . . [which] is pure guesswork."	CrimPro, conservative

Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618 (2007).	Pay discrimination time-barred, need immediate contest within 180 days. Dissent (Ginsburg with all), "[t]he Court's insistence on immediate contest overlooks common characteristics of pay discrimination. Pay disparities often occur, as they did in Ledbetter's case, in small increments."	Social, conservative
Uttecht v. Brown, 551 U.S. 1 (2007).	Death habeas, elimination for cause of death-incapable juror appropriate. Dissent (Stevens with all) disagrees, per Wainwright.	CrimPro, conservative
Fry v. Pliler, 551 U.S. 112 (2007).	Habeas review of exclusion of witness under milder Brecht standard than "harmless beyond reasonable doubt." Dissent 1 (Stevens with all), should elaborate application of Brecht. Dissent 2 (Breyer with Stevens), remand.	CrimPro, conservative
Bowles v. Russell, 551 U.S. 205 (2007).	"[P]petitioner's untimely notice [of appeal]—even though filed in reliance upon a District Court's order—deprived the Court of Appeals of jurisdiction." Dissent (Souter with all), "[t]he District Court told petitioner Keith Bowles that his notice of appeal was due on February 27, 2004. He filed a notice of appeal on February 26, only to be told that he was too late because his deadline had actually been February 24. It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch."	CrimPro, conservative
Morse v. Frederick, 551 U.S. 393 (2007).	Student's banner at off-school sanctioned event was not protected by First Amendment. Dissent (Breyer), need not decide First Amendment issue, qualified immunity sufficient. Dissent 2 (Stevens with Souter and Ginsburg), "it is a gross non sequitur to draw . . . the remarkable conclusion that the school may suppress student speech that was never meant to persuade anyone to do anything."	Speech, conservative
Fed. Election Comm'n v. Wisc. Right to Life, Inc., 551 U.S. 449 (2007).	Campaign financing law limits on speech improper. Dissent (Souter with all), decrying effective overruling of *McConnell*.	Speech, conservative
Hein v. Freedom From Religion Found., Inc., 551 U.S. 587 (2007).	Plurality limits taxpayer standing to bring establishment clause challenges. Dissent (Souter with all), "[t]he controlling opinion closes the door on these taxpayers because the Executive Branch, and not the Legislative Branch, caused their injury. I see no basis for this distinction in either logic or precedent."	Religion, conservative
Nat'l Ass'n of Home Builders, v. Def. of Wildlife, 551 U.S. 644 (2007).	EPA's transfer of authority to state proper (Clean Water and Endangered Species Acts). Dissent 1 (Stevens with all), interpretation is "fundamentally inconsistent with the ESA." Dissent 2 (Breyer), "majority cannot possibly be correct in concluding that the structure of § 402(b) precludes application of § 7(a)(2) to the EPA's discretionary action."	Envir'l, conservative

Parents Involved In Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).	Plurality invalidates integration/affirmative action policy in schools. Dissent 1 (Stevens), "[t]here is a cruel irony in THE CHIEF JUSTICE's reliance on our decision in Brown v. Board." Dissent 2 (Breyer with all), the plurality "distorts precedent, it misapplies the relevant constitutional principles, it announces legal rules that will obstruct efforts by state and local governments to deal effectively with the growing resegregation of public schools, it threatens to substitute for present calm a disruptive round of race-related litigation, and it undermines Brown's promise of integrated primary and secondary education."	Social, conservative
Leegin Creative Leather Prod., Inc. v. PSKS, Inc., 551 U.S. 877 (2007).	Vertical price maintenance agreements are not per se antitrust violations. Dissent (Breyer with all), should not overturn *Dr. Miles*.	Business, conservative
Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316 (2008).	Takes jurisdiction and disallows discrimination award against bank from tribal court. Dissent (Ginsburg with all) would allow the discrimination award.	Tribal, conservative
D.C. v. Heller, 554 U.S. 570 (2008).	Second Amendment gives individual right. Dissent 1 (Stevens with all) would adhere to Miller (1939). Dissent 2 (Breyer with all), even if Second Amendment gives individual right, D.C. could regulate.	Gun rights, conservative
Davis v. Fed. Election Cmty., 554 U.S. 724 (2008).	Campaign finance law bonuses to opponents of self-funded wealthy candidates ("Millionaire's amendment") violate First Amendment. Dissent 1 (Stevens with all), Massachusetts consistent with *McConnell*, reasonable. Dissent 2 (Ginsburg with Breyer) does not join Stevens about *Buckley*.	Speech, conservative
Medellin v. Tex., 554 U.S. 759 (2008).	Death habeas, violation of right to consular access is not grounds for habeas. Dissent (individuals, all), easy to comply with mere notice, no reason to denigrate ICJ and Geneva convention.	CrimPro, conservative
Herring v. United States, 555 U.S. 135 (2009).	Meth and firearm possession conviction, police recordkeeping error not grounds for suppression. Dissent 1 (Ginsburg with all), exclusionary rule should apply to police negligence, not only intentional misconduct. Dissent 2 (Breyer with Souter), precedent excuses recordkeeping errors by other bodies, not police.	CrimPro, conservative
Summers v. Earth Island Inst., 555 U.S. 488 (2009).	Environmental organization has no standing to challenge EPA land disposition. Dissent (By with all), "[n]othing in the record or the law justifies this counterintuitive conclusion."	Admin, conservative

Bartlett v. Strickland, 556 U.S. 1 (2009).	Redistricting, plurality. Dissent 1 (Souter with all), "[t]he question in this case is whether a minority with under 50% of the voting population of a proposed voting district can ever qualify under § 2 of the Voting Rights Act of 1965(VRA) as residents of a putative district whose minority voters would have an opportunity 'to elect representatives of their choice.' 42 U.S.C. § 1973(b) (2000 ed.). If the answer is no, minority voters in such a district will have no right to claim relief under § 2 from a statewide districting scheme that dilutes minority voting rights. I would hold that the answer in law as well as in fact is sometimes yes: a district may be a minority-opportunity district so long as a cohesive minority population is large enough to elect its chosen candidate when combined with a reliable number of crossover voters from an otherwise polarized majority." Dissent 2 (Ginsburg), "[t]he plurality's interpretation of § 2 of the Voting Rights Act of 1965 is difficult to fathom and severely undermines the statute's estimable aim." Dissent 3 (Breyer), "I write separately in light of the plurality's claim that a bright-line 50% rule . . . serves administrative objectives. In the plurality's view, that rule amounts to a relatively simple administrative device that will help separate at the outset those cases that are more likely meritorious from those that are not. Even were that objective as critically important as the plurality believes, however, it is not difficult to find other numerical gateway rules that would work better."	Voting, conservative
Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208 (2009).	The EPA permissibly relied on cost-benefit analysis in setting the national performance standards and in providing for cost-benefit variances from those standards. Dissent 1 (Breyer), "the drafting history and legislative history . . . makes clear that those who sponsored the legislation intended the law's text to be read as restricting, though not forbidding, the use of cost-benefit comparisons." Dissent 2 (Stevens with Ginsburg and Souter), "Like the Court of Appeals, I am convinced that the EPA has misinterpreted the plain text of § 316(b). Unless costs are so high that the best technology is not 'available,' Congress has decided that they are outweighed by the benefits of minimizing adverse environmental impact."	Envir'l, conservative
14 Penn Plaza LLC v. Pyett, 556 U.S. 247 (2009).	Collective bargaining agreement clause to arbitrate age-discrimination claims is enforceable. Dissent 1 (Stevens) bemoans court's favoring of arbitration. Dissent 2 (Souter with all) "would adhere to stare decisis" and continue to allow suit.	Employment, conservative

FCC v. Fox Television Stations, Inc., 556 U.S. 502 (2009).	FCC adoption of single use of expletive is punishable is appropriate. Dissent 1 (Stevens) would "favor stability over administrative whim." Dissent 2 (Ginsburg), "there is no way to hide the long shadow the First Amendment casts over what the Commission has done." Dissent 3 (By with all) the FCC "failed adequately to explain why it changed its indecency policy . . . instead discussed several factors well known to it the first time around . . . is 'arbitrary, capricious, an abuse of discretion. '"	Social, conservative
Ashcroft v. Iqbal, 556 U.S. 662 (2009).	Arab pretrial detainee failed to state a claim. Dissent 1 (Souter with all) "dissent[s] from both the rejection of supervisory liability as a cognizable claim in the face of petitioners' concession, and from the holding that the complaint fails to [state a claim]." Dissent 2 (Breyer), alternative measures to prevent "unwarranted litigation" against government officials exist.	CrimPro, conservative
Montejo v. La., 556 U.S. 778 (2009).	Defendant's silence at pretrial hearing does not allow suppression as he did not request a lawyer. Dissent 1 (Stevens with all), "without any evidence that the longstanding Sixth Amendment protections established in Jackson have caused any harm to the workings of the criminal justice system, the Court rejects Jackson . . ." Dissent 2 (Breyer), court is bound by stare decisis.	CrimPro, conservative
Dist. Atty's Office for the Third Judicial Dist. v. Osborne, 557 U.S. 52 (2009).	Postconviction access to DNA up to legislature, not court, Alaska's procedures reasonable. Dissent 1 (Stevens with all), "the Court today blesses the State's arbitrary denial of the evidence Osborne seeks." Dissent 2 (Souter) would not reach Fourteenth Amendment claim of access to evidence.	CrimPro, conservative
Gross v. FBL Fin. Servs., Inc., 557 U.S. 167 (2009).	Age-discrimination plaintiff needs to show age was but for cause of demotion. Dissent 1 (Stevens with all), "The most natural reading of this statutory text prohibits adverse employment actions motivated in whole or in part by the age of the employee." Dissent 2 (Breyer with Souter & Ginsburg), "The words 'because of' do not inherently require a showing of 'but-for' causation, and I see no reason to read them to require such a showing."	Business/Employment, conservative

Horne v. Flores, 557 U.S. 433 (2009).	"Arizona is now fulfilling its statutory obligation [to help students who need English language instruction] by new means that reflect new policy insights and other changed circumstances." Dissent (Breyer with all) disagrees with court's standard for institutional reform litigation, standard met anyway.	Social, conservative
Ricci v. DeStefano, 557 U.S. 557 (2009).	City must certify results of test for firefighters that city resisted b/c results may expose it to disparate impact liability. Dissent (Ginsburg with all), "the Court pretends that '[t]he City rejected the test results solely because the higher scoring candidates were white.' That pretension, essential to the Court's disposition, ignores substantial evidence of multiple flaws in the tests New Haven used. The Court similarly fails to acknowledge the better tests used in other cities, which have yielded less racially skewed outcomes."	Social, conservative

4. GINSBURG–BREYER–SCALIA–SOUTER–THOMAS (EIGHT O'CLOCK)

United States v. Gonzalez-Lopez, 548 U.S. 140 (2006).	Court's denial of pro hac vice attorney entitled defendant to reversal. Dissent (Alito with all), "defendant should be required to make at least some showing that the trial court's erroneous ruling adversely affected the quality of assistance that the defendant received."	CrimPro, liberal
Spears v. United States, 555 U.S. 261 (2009).	Per curiam affirmance of lower court's deviation from 100:1 ratio for penalty for crack cocaine (viz. powder) as guidelines are merely advisory. Dissent 1 (Kennedy) would grant oral argument. Dissent 2 (Thomas) disagrees. Dissent 3 (Roberts with Alito) "do[es] not think any error is so apparent as to warrant the bitter medicine of summary reversal, and I think there are good reasons not to address the question presented."	CrimPro, liberal
Cuomo v. The Clearing House Ass'n, LLC, 557 U.S. 519 (2009).	Majority allows New York state attorney general to bring enforcement actions for New York law on bank lending practices. Dissent (Thomas with all) would defer to agency's interpretation that state actions are preempted.	Business, liberal

Appendix B9: Tables of Kagan Composition Majorities Producing More than Two 5–4 Opinions

We list the opinions of the United States Supreme Court while its composition is defined by its junior justice being Kagan. The Kagan composition consists of four appointees of Democratic presidents (Breyer, Ginsburg, Kagan, and Sotomayor) and five appointees of Republican presidents (Alito, Kennedy, Roberts, Scalia, and Thomas).

We list the majorities as they appear in the corresponding figure in the full-text proceeding clockwise from the nine o'clock position. The name of the case, along with the citation to the Supreme Court Reporter (not all United States Reporter citations were paginated at publication time), and the year appears in the first column. The second column holds our brief description of the outcome compared to the dissent's position. The third column holds the legal field and the political slant of the majority's position as it arises by juxtaposition to that of the

minority. We sort the justices in the majorities by, first, the chief justice, then the associate justices by alphabetical order.

1. BREYER–GINSBURG–KAGAN–KENNEDY–SOTOMAYOR (NINE O'CLOCK)

Brown v. Plata, 131 S. Ct. 1910 (2011).	Affirming remedy for overcrowding of prison population. Dissent 1 (Scalia with Thomas), order to release 46,000 felons outrageous. Dissent 2 (Alito with Roberts), lower court exceeded its authority.	Admin, liberal
J. D. B. v. N.C., 131 S. Ct. 2394 (2011).	Should have Mirandized 13-year-old. Dissent (Alito with all), child was not in true custody.	CrimPro, liberal
Turner v. Rogers, 131 S. Ct. 2507 (2011).	Incarceration over back child support without counsel violated due process. Dissent (Thomas with all), no right to counsel in civil proceedings.	CrimPro, liberal
Freeman v. United States, 131 S. Ct. 2685 (2011).	Plurality: Reduction of cocaine guidelines applies to pleas. Dissent (Roberts with all), pleas "take the bitter with the sweet."	CrimPro, liberal
Douglas v. Indep. Living Ctr. of S. Cal., Inc., 132 S. Ct. 1204 (2012).	Remands to determine proper Medicaid payments to providers. Dissent (Roberts with all), providers do not have standing.	Health, liberal
Lafler v. Cooper, 132 S. Ct. 1376 (2012).	Habeas, ineffective assistance of counsel, vacated for new plea offer. Dissent 1 (Scalia with Thomas & Roberts), "Today's decision upends decades of our cases, violates a federal statute, and opens a whole new boutique of constitutional jurisprudence ('plea-bargaining law') without even specifying the remedies the boutique offers." Dissent 2 (Alito), no basis for prejudice.	CrimPro, liberal
Missouri v. Frye, 132 S. Ct. 1399 (2012).	Fourth driving while revoked, felony, plea offer should have been transmitted. Dissent (Scalia with all), "The plea-bargaining process is a subject worthy of regulation, since it is the means by which most criminal convictions are obtained. It happens not to be, however, a subject covered by the Sixth Amendment, which is concerned not with the fairness of bargaining but with the fairness of conviction."	CrimPro, liberal
Dorsey v. United States, 132 S. Ct. 2321 (2012).	Retroactive benefits of crack cocaine penalty adjustments. Dissent (Scalia with all), new sentences are not retroactive.	CrimPro, liberal
Miller v. Alabama, 132 S. Ct. 2455 (2012).	Plurality: Life sentence for underage cruel and unusual. Dissent 1 (Roberts with all), apply the law, don't make up social policy. Dissent 2 (Thomas with Scalia), not consistent with original understanding of cruel and unusual.	CrimPro, liberal
US Airways, Inc. v. McCutchen, 133 S. Ct. 1537 (2013).	Insured owes recovery minus atty fees to self-insuring employer. Dissent (Scalia with all), the text of the agreement was net of atty fees.	Business, liberal
McQuiggin v. Perkins, 133 S. Ct. 1924 (2013).	Habeas, actual innocence overrides limitations periods. Dissent (Scalia with all), court overrides text of statute.	CrimPro, liberal

Trevino v. Thaler, 133 S. Ct. 1911 (2013).	Habeas, can raise claims. Dissent 1 (Roberts with Alito), "The questions raised by this equitable equation are as endless as will be the state-by-state litigation it takes to work them out." Dissent 2 (Scalia with Thomas), just like *Martinez*.	CrimPro, liberal
Peugh v. United States, 133 S. Ct. 2072 (2013).	Plurality: Defendant entitled to more lenient guidelines at time of crime. Dissent (Thomas with all), "The retroactive application of the 2009 Guidelines did not alter the punishment affixed to petitioner's crime and does not violate this proscription."	CrimPro, liberal
United States v. Windsor, 133 S. Ct. 2675 (2013).	Same-sex spouses entitled to benefits. Dissent 1 (Roberts), DOMA constitutional, no jurisdiction. Dissent 2 (Scalia with Thomas and Roberts), no jurisdiction. Dissent 3 (Alito with Thomas), Constitution not for same-sex marriage.	Social, liberal
Hall v. Fla., 134 S. Ct. 1986 (2014).	Death; Florida should explore mental disability more. Dissent (Alito with all), the court "adopts a uniform national rule that is both conceptually unsound and likely to result in confusion."	CrimPro, liberal
Abramski v. United States, 134 S. Ct. 2259 (2014).	Upholds misrepresentation convictions of buying gun for other; Dissent (Scalia with all), not per statutory language.	Gun rights, liberal
Ala. Legislative Black Caucus v. Ala., 135 S. Ct. 1257 (2015).	Redistricting, remands majority-minority districting for merely preserving majority-minority percentages. Dissent 1 (Scalia with Roberts, Thomas, & Alito), court allows appellants "to take a mulligan, remanding the case with orders that the District Court consider whether some (all?) of Alabama's 35 majority-minority districts result from impermissible racial gerrymandering." Dissent 2 (Thomas), "[F]ew devices could be better designed to exacerbate racial tensions than the consciously segregated districting system currently being constructed in the name of the Voting Rights Act."	Voting, liberal
United States v. Kwai Fun Wong, 135 S. Ct. 1625 (2015).	Limitations of Fed Tort Claims Act are subject to tolling; dissent (A with all) "The statutory text, its historical roots, and more than a century of precedents show that this absolute bar is not subject to equitable tolling."	Business, liberal
Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015).	Federal Housing Act allows disparate-impact claims. Dissent 1 (Thomas), disparate-impact "foundation ... is made of sand." Dissent 2 (Alito with all), "The Fair Housing Act does not create disparate-impact liability, nor do this Court's precedents."	Social, liberal
City of Los Angeles v. Patel, 135 S. Ct. 2443 (2015).	Motel challenge to LA ordinance on guest information availability violates Fourth Amendment. Dissent 1 (Scalia with all), need deterrence, judicial inspection too burdensome. Dissent 2 (Alito with Thomas), five examples of constitutional searches of registers.	CrimPro, liberal
Brumfield v. Cain, 135 S. Ct. 2269 (2015).	Death habeas; IQ of seventy-five needs more procedural protections. Dissent 1 (Thomas with all), the court oversteps habeas limits. Dissent 2 (Alito with Roberts), story Thomas recounts is not essential.	CrimPro, liberal

Kingsley v. Hendrickson, 135 S. Ct. 2466 (2015).	Pretrial detainee need only show force was objectively unreasonable. Dissent 1 (Scalia with Roberts & Thomas), only standard should be Fourteenth Amendment, due process & no. Dissent 2 (Alito), should dismiss as improvidently granted and decide if pretrial detainee can bring Fourth Amendment claim.	CrimPro, liberal
Obergefell v. Hodges, 135 S. Ct. 2584 (2015).	Same-sex marriage right; four dissents disagree.	Social, liberal

2. BREYER–GINSBURG–KAGAN–SOTOMAYOR–THOMAS (TEN O'CLOCK)

CSX Transp., Inc. v. McBride, 131 S. Ct. 2630 (2011).	For liability in favor of employee under Federal Employer Liability Act need to merely show employer's negligence, not proximate causation. Dissent (Roberts with all), need proximate cause.	Business, liberal
Alleyne v. United States, 133 S. Ct. 2151 (2013).	Plurality: Factors increasing mandatory minimum are elements of crime that need beyond reasonable doubt proof to jury. Dissent 1 (Roberts with Scalia and Kennedy), legislative imposition should not trigger different consequences than judicial discretion. Dissent 2 (Alito), overruling precedent but should be overruling *Apprendi*.	CrimPro, liberal
Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239 (2015).	License plate is government speech and citizens have no right to have the confederate flag on the license plate. Dissent (Alito with all), majority threatens speech that the government finds displeasing.	Speech, liberal

3. ROBERTS–ALITO–KENNEDY–SCALIA–THOMAS (THREE O'CLOCK)

Connick v. Thompson, 131 S. Ct. 1350 (2011).	Plurality: Single DA error does not create § 1983 liability for failure to train. Dissent (Ginsburg with all), "long-concealed prosecutorial transgressions were neither isolated nor atypical."	Social, conservative
Ariz. Christian Sch. Tuition Org. v. Winn, 131 S. Ct. 1436 (2011).	Plurality: Taxpayers lacked standing to challenge tax credit for schooling. Dissent (Kagan with all), break from precedent.	Education, conservative
Cullen v. Pinholster, 131 S. Ct. 1388 (2011).	Plurality: Death habeas, denied. Dissent 1 (Breyer), remand. Dissent 2 (Sotomayor with Ginsburg & Kagan), "[u]nder the Court's novel interpretation of § 2254(d)(1), however, federal courts must turn a blind eye to new evidence in deciding whether a petitioner has satisfied § 2254(d)(1)'s threshold obstacle."	CrimPro, conservative
AT&T Mobility LLC v. Conception, 131 S. Ct. 1740 (2011).	Plurality: Promotion offering free phone where customers were charged sales tax was subject to arbitration clause. Dissent (Breyer with all), California contract law invalidating arbitration contract for fraud should apply.	Business, conservative

Janus Capital Group, Inc. v. First Derivative Traders, 131 S. Ct. 2296 (2011).	Parent fund company not liable for fund's misrepresentations. Dissent (Breyer with all), parent should be liable.	Business, conservative
Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011).	Female Wal-Mart employee class action, defeated. Dissent (Ginsburg with all), this class action has no commonality for damages, but they may have commonality for other relief.	Business, conservative
Pliva, Inc. v. Mensing, 131 S. Ct. 2567 (2011).	Federal law preempts state drug labeling laws. Dissent (Sotomayor with all), FDA permits drug makers to ask to change their labels, removing preemption problem.	Business, conservative
Stern v. Marshall, 131 S. Ct. 2594 (2011).	Bankruptcy: Debtor's counterclaim should have been heard by Article III judge (Scalia concurrence). Dissent (Breyer with all), core matters statute is constitutional.	Business, conservative
Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 131 S. Ct. 2806 (2011).	Arizona matching funds designed to equalize campaign finance violate First Amendment. Dissent (Kagan with all), "A person familiar with our country's core values… might expect this Court to celebrate" the Arizona scheme.	Speech, conservative
Garcia v. Tex., 131 S. Ct. 2866 (2011).	Death habeas stay denied. Dissent (Breyer with all), unless Court stays, U.S. breaches Vienna convention.	CrimPro, conservative
Coleman v. Ct. of Appeals of Md., 132 S. Ct. 1327 (2012).	Plurality: Sovereign immunity bars suits against states for self-care leave. Dissent (Ginsburg with all) would hold that leave "validly enforces the right to be free from gender discrimination in the workplace."	Social, conservative
Florence v. Bd. of Chosen Freeholders of The County of Burlington, 132 S. Ct. 1510 (2012).	Plurality: Arrestee's searches did not violate Fourth and Fourteenth amendments. Dissent (Breyer with all), for minor offense is unreasonable.	CrimPro, conservative
Christopher v. SmithKline Beecham Corp, 132 S. Ct. 2156 (2012).	Drug salesmen are outside salesmen not subject to minimum wage and max hours statutory limits. Dissent (Breyer with all), they are not outside salesmen hence not exempt.	Business, conservative
Am. Tradition P'ship, Inc. v. Bullock, 132 S. Ct. 2490 (2012).	Per curiam: Montana corporate campaign contribution statute violates First Amendment. Dissent (Breyer with all) disagree with Citizens United and Montana court made independent finding of corrupting effect.	Speech, conservative
Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012).	Upholds Obamacare, not Medicaid expansion. Dissent (Ginsburg with all), all valid.	Health, conservative
Clapper v. Amnesty Int'l, 133 S. Ct. 1138 (2013).	Challenge to foreign surveillance, cannot trace injury, no standing; dissent (Breyer with all), they should have standing.	Social, conservative

Comcast Corp. v. Behrend, 133 S. Ct. 1426 (2013).	Denies certification of class action alleging monopolization by cable company. Dissent (Ginsburg & Breyer with all) dismiss as improvidently granted because court did not examine the details.	Business, conservative
Genesis Healthcare Corp. v. Symczyk, 133 S. Ct. 1523 (2013).	Employer's offer to make employee plaintiff whole extinguished class action. Dissent (Kagan with all), makes no sense, she never accepted and was not paid.	Business, conservative
Boyer v. La., 133 S. Ct. 1702 (2013).	Per curiam: Death; Writ dismissed as improvidently granted; concurrence (Alito with Scalia & Thomas), defense counsel caused delay. Dissent (Sotomayor with all), seven-year delay does not offend speedy trial, right?	CrimPro, conservative
Salinas v. Tex., 133 S. Ct. 2174 (2013).	Plurality: Incriminating use of noncustodial silence appropriate. Dissent (Breyer with all), "the Fifth Amendment here prohibits the prosecution from commenting on the petitioner's silence in response to police questioning."	CrimPro, conservative
Mut. Pharm. Co., Inc. v. Bartlett, 133 S. Ct. 2466 (2013).	Claim against drug manufacturer defeated as labeling was preemptedly constrainedly correct. Dissent 1 (Breyer with Kagan), FDA has been clumsy but still could comply. Dissent 2 (Sotomayor with Ginsburg), "Today, the Court unnecessarily and unwisely extends its holding in [*Mensing*] to pre-empt New Hampshire's law governing design-defects with respect to generic drugs."	Business, conservative
Vance v. Ball State Univ., 133 S. Ct. 2434 (2013).	Supervisors only those who can take tangible employment actions against victim; harasser was not supervisor. Dissent (Ginsburg with all), the court "disserves the objective of Title VII to prevent discrimination."	Business, conservative
Univ. Of Tex. S.W. Med. Ctr. v. Nassar, 133 S. Ct. 2517 (2013).	Title VII retaliation claims need but-for causation showing. Dissent (Ginsburg with all), "Today's decision, however, drives a wedge between the twin safeguards in so-called 'mixed-motive' cases."	Business, conservative
Shelby County v. Holder, 133 S. Ct. 2612 (2013).	Voting rights act does not apply. Dissent (Ginsburg with all), "The same assumption—that the problem could be solved when particular methods of voting discrimination are identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the 'variety and persistence' of measures designed to impair minority voting rights."	Speech, conservative

Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586 (2013).	Condition of land use permit on funding offsite mitigation an unconstitutional condition. Dissent (Kagan with all), "cases in which the government conditions a permit not on the transfer of real property, but instead on the payment or expenditure of money. That runs roughshod over Eastern Enterprises v. Apfel . . ., which held that the government may impose ordinary financial obligations without triggering the Takings Clause's protections. The boundaries of the majority's new rule are uncertain. But it threatens to subject a vast array of land-use regulations, applied daily in States and localities throughout the country, to heightened constitutional scrutiny."	Business, conservative
McCutcheon v. FEC, 134 S. Ct. 1434 (2014).	Statutory aggregate limits on how much money a donor may contribute in total to all political candidates or committees violates the First Amendment. Dissent (Breyer with all), breaking from precedent.	Speech, conservative
Town Of Greece v. Galloway, 134 S. Ct. 1811 (2014).	Prayer opening town meetings does not violate establishment clause. Dissent 1 (Breyer), town did not call on all faiths; Dissent 2 (Kagan with all), "I think the Town of Greece's prayer practices violate that norm of religious equality—the breathtakingly generous constitutional idea that our public institutions belong no less to the Buddhist or Hindu than to the Methodist or Episcopalian."	Religion, conservative
Burwell v. Hobby Lobby Stores, 134 S. Ct. 2751 (2014).	RFRA allows employers out from family planning of Obamacare. Dissent (Ginsburg with all), "In a decision of startling breadth, the Court holds that commercial enterprises, including corporations, along with partnerships and sole proprietorships, can opt out of any law (saving only tax laws) they judge incompatible with their sincerely held religious beliefs." Dissent 2 (Kagan and Breyer) join most of dissent.	Religion, conservative
Harris v. Quinn, 134 S. Ct. 2618 (2014).	Personal assistants who do not belong to Union do not need to pay dues. Dissent (Kagan with all), "*Abood* held that a government entity may, consistently with the First Amendment, require public employees to pay a fair share of the cost that a union incurs negotiating on their behalf for better terms of employment."	Employment, conservative
Kerry v. Din, 135 S. Ct. 2128 (2015).	Plurality: "[A]assuming that citizen had a procedural due process right to an explanation of the grounds for the denial of husband's visa application, that right was satisfied when a consular officer informed citizen that her husband was inadmissible under Immigration and Nationality Act's (INA) 'terrorist activities' bar." Dissent (Breyer with all), "She possesses the kind of 'liberty' interest to which the Due Process Clause grants procedural protection."	Admin, conservative
Davis v. Ayala, 135 S. Ct. 2187 (2015).	Death habeas: Plurality: "any constitutional error in defense counsel's absence from ex parte hearing regarding Batson challenges was harmless." Dissent (Sotomayor with all), "there is neither a factual nor a legal basis for the Court's confidence that the prosecution's race-neutral reasons for striking Olanders D. were unassailable."	CrimPro, conservative

Mich. v. EPA, 135 S. Ct. 2699 (2015).	EPA must take cost into account when regulating. Dissent (Kagan with all), "The Environmental Protection Agency placed emissions limits on coal and oil power plants following a lengthy regulatory process during which the Agency carefully considered costs."	Admin, conservative
Glossip v. Gross, 135 S. Ct. 2726 (2015).	Challenge to three-drug execution regime defeated. Dissent 1 (Breyer with Ginsburg) asks briefing on whether death penalty violates constitution. Dissent 2 (Sotomayor with all), "The latter two drugs are intended to paralyze the inmate and stop his heart. But they do so in a torturous manner, causing burning, searing pain. It is thus critical that the first drug, midazolam, do what it is supposed to do, which is to render and keep the inmate unconscious. Petitioners claim that midazolam cannot be expected to perform that function, and they have presented ample evidence showing that the State's planned use of this drug poses substantial, constitutionally intolerable risks."	Criml, conservative

4. ROBERTS–ALITO–BREYER–KENNEDY–THOMAS (FOUR O'CLOCK)

Williams v. Ill., 132 S. Ct. 2221 (2012).	DNA expert testimony admissible without confrontation. Dissent (Kagan with all), need confrontation to avoid errors (with examples).	CrimPro, conservative
Md. v. King, 133 S. Ct. 1958 (2013).	Buccal swab DNA evidence admissible. Dissent (Scalia with all), "The Court's assertion that DNA is being taken, not to solve crimes, but to identify those in the State's custody, taxes the credulity of the credulous."	CrimPro, conservative
Maracich v. Spears, 133 S. Ct. 2191 (2013).	Lawyers sending letters to DMV lists violates DPPA. Dissent (Ginsburg with all), "the lawyers' requests for the information and their use of it fell squarely within the litigation exception to the Driver's Privacy Protection Act of 1994."	Business, conservative
Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013).	Indian Child Welfare Act does not enable parent who never had custody from blocking adoption. Dissent 1 (Scalia), court demeans rights of parenthood. Dissent 2 (Sotomayor with all), "the Congress that enacted the statute announced its intent to stop 'an alarmingly high percentage of Indian families [from being] broken up' by, among other things, a trend of 'plac[ing] [Indian children] in non-Indian . . . adoptive homes.'"	Social, conservative
Navarette v. Cal., 134 S. Ct. 1683 (2014).	911 call gave sufficient grounds for stop and search of truck, evidence not suppressed. Dissent (Scalia with all), precedent is that anonymous tips need corroboration.	CrimPro, conservative