

## 5-4 Decisions

### Alignment of the Majority

Majority*	Total (10)	Cases
Kennedy, Ginsburg, Breyer, Sotomayor, Kagan	4	<i>US Airways, McQuiggin, Trevino, Peugh</i>
Roberts, Scalia, Kennedy, Thomas, Alito	3	<i>Clapper, Comcast, Genesis</i>
Roberts, Kennedy, Thomas, Breyer, Alito	1	<i>King</i>
Scalia, Thomas, Ginsburg, Sotomayor, Kagan	1	<i>Jardines</i>
Scalia, Kennedy, Ginsburg, Sotomayor, Kagan	1	<i>McNeely</i>

Term	Number of 5-4 Opinions**	Percentage of Total Opinions	Percentage of 5-4 Split Ideological	Conservative Victory (Percentage of Ideological)	Conservative Victory (Percentage of All 5-4)	Number of Different Alignments	Alignments Divided by 5-4 Opinions
<b>OT05</b>	11	12%	73%	63%	45%	7	0.64
<b>OT06</b>	24	33%	79%	68%	54%	6	0.25
<b>OT07</b>	12	17%	67%	50%	33%	6	0.50
<b>OT08</b>	23	29%	70%	69%	48%	7	0.30
<b>OT09</b>	16	19%	69%	73%	50%	7	0.44
<b>OT10</b>	16	20%	88%	71%	63%	4	0.25
<b>OT11</b>	15	20%	90%	56%	50%	7	0.47
<b>OT12</b>	<b>10</b>	<b>19%</b>	<b>70%</b>	<b>43%</b>	<b>30%</b>	<b>5</b>	<b>0.50</b>
<b>Average</b>	<b>16</b>	<b>21%</b>	<b>76%</b>	<b>62%</b>	<b>47%</b>	<b>6</b>	<b>0.42</b>

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

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

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

## 5-4 Decisions

(continued)

### Membership in a Five-to-Four Majority

Justice	Cases Decided	Frequency in Majority		OT11	OT10	OT09	OT08	OT07
Kennedy	10	9	90%	80%	88%	69%	78%	67%
Ginsburg	10	6	60%	33%	38%	25%	52%	50%
Sotomayor	10	6	60%	47%	38%	43%	-	-
Kagan	10	6	60%	40%	38%	-	-	-
Scalia	10	5	50%	60%	69%	69%	70%	58%
Thomas	10	5	50%	67%	75%	69%	65%	67%
Breyer	10	5	50%	47%	31%	38%	39%	45%
Roberts	10	4	40%	67%	63%	56%	48%	58%
Alito	10	4	40%	60%	63%	63%	52%	50%

### Five-to-Four Majority Opinion Authorship

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

Justice	Cases Decided	Frequency in the Majority	Opinions Authored	Frequency as Author	OT11	OT10	OT09	OT08	OT07
Scalia	10	5	2	40%	0%	9%	18%	33%	29%
Sotomayor	10	6	2	33%	29%	17%	0%	-	-
Alito	10	4	1	25%	33%	0%	40%	8%	17%
Thomas	10	5	1	20%	0%	33%	9%	13%	13%
Breyer	10	5	1	20%	43%	20%	25%	0%	40%
Ginsburg	10	6	1	17%	0%	33%	50%	27%	0%
Kagan	10	6	1	17%	17%	0%	-	-	-
Kennedy	10	9	1	11%	33%	21%	22%	28%	50%
Roberts	10	4	0	0%	10%	30%	22%	18%	14%

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