

Scaling the Lexicon Fortress: The United States Supreme Court's Use of Dictionaries in the Twenty-First Century

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SCALING THE LEXICON FORTRESS: THE UNITED STATES SUPREME COURT'S USE OF DICTIONARIES IN THE TWENTY- FIRST CENTURY

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*This Article examines the Court's use of dictionaries in the first decade of the twenty-first century, building on previous research by Professor Kirchmeier and Judge Thumma regarding the Supreme Court's history of using dictionaries. See Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court's Use of Dictionaries*, 47 *Buff. L. Rev.* 227 (1999); Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Remains a Fortress: An Update*, 5 *Green Bag* 51 (2001).*

During Supreme Court Terms 2000–2001 through 2009–2010, the Justices have referenced dictionary definitions to define nearly 300 words or phrases. Yet the Court has never expressly explained the proper role and use of the dictionary in American jurisprudence. The Article studies the frequency and the approach the Justices have taken to citing dictionaries in the new century, and it considers the Court's lack of a reasoned process for selecting or using dictionaries.

Part I examines the frequency of dictionary use in the new century as compared to past use, comparing the different Justices with respect to their dictionary usage and the dictionaries most frequently cited by the Court. Part II addresses the stages of dictionary use, from the initial decision to use a dictionary to define a word to the selection of the dictionary and the choice of definitions. Part III examines some recent cases that illustrate the approaches taken in using dictionaries to define terms from various sources, including the United States Constitution,

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statutes, and prior cases. The Article includes three comprehensive appendices that compile information from the twenty-first century cases listing: (1) the terms defined by the Court with references to the cases; (2) the Justices who have used a dictionary in opinions (along with their frequency of use and which dictionaries are used); and (3) the dictionaries used by the Court. These appendices, when combined with the authors' previous articles examining the Supreme Court's dictionary use through the twentieth century, provide a comprehensive compilation of the use of dictionaries since the Court began.

The Article concludes that, in the twenty-first century, the Court continues to use dictionaries at a high rate with little guidance for parties, lawyers or others regarding when to turn to dictionaries, which dictionaries to use, and how to use dictionaries. Although the authors are able to deduce several principles from the Court's history, to date, the United States Supreme Court has issued no definitive decision squarely addressing the proper use of the dictionary. The ongoing usage of dictionaries by the United States Supreme Court and other courts continues to demonstrate the need for such guidance.

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I. INTRODUCTION

A Dictionary is an historical monument, the history of a nation contemplated from one point of view; and the wrong ways into which a language has wandered, or been disposed to wander, may be nearly as instructive as the right ones in which it has travelled: as much may be learned, or nearly as much, from its failures as from its successes, from its follies as from its wisdom.

*Richard Chenevix Trench*¹

Beginning in 1830 and through the first decade of the twenty-first century, United States Supreme Court Justices have used dictionaries as legal sources in their opinions.² In the first decade of this century alone, the Justices referenced dictionaries to define almost three hundred words or phrases.³ The Court consults dictionaries in its opinions for a variety of reasons, including interpreting the United States Constitution, the United States Code, common law words and phrases, and contract terms. Justices have even cited dictionaries to define the word “court.”⁴

Although words are the tools of lawmakers and lawyers, and one way to determine the possible meaning of words is reference to a dictionary, the Court’s growing use of dictionaries has been inconsistent and often does not reflect the limitations of the dictionary as a source.⁵

1. RICHARD CHENEVIX TRENCH, ON SOME DEFICIENCIES IN OUR ENGLISH DICTIONARIES (London, John W. Parker & Son 2 ed. 1860).

2. *See, e.g.*, *Patapsco Ins. Co. v. Coulter*, 28 U.S. (3 Pet.) 222, 230 (1830) (citing “[t]he best French dictionary we have” to define “prevariquez”). *See generally* Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court’s Use of Dictionaries*, 47 BUFF. L. REV. 227 (1999) [hereinafter *The Lexicon Has Become a Fortress*]; Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Remains a Fortress: An Update*, 5 GREEN BAG 2D 51, 52 (2001) [hereinafter *The Lexicon Remains a Fortress*].

3. The Court used dictionaries to define 295 words or phrases during this ten year period. *See infra* app. a.

4. *See* *Small v. United States*, 544 U.S. 385, 397 n.1 (2005) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976)) (Thomas, J., dissenting); *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 356 (1998) (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY 611 (2d ed. 1949)) (Scalia, J., concurring).

5. As one commentator noted, “Arguably, it remains unclear whether courts receive

Unlike other points of reference for interpreting words and phrases—such as context, the stated or implied purpose of a phrase or enactment, drafts, legislative history, or other documents—dictionary definitions provide no context for the word or phrase being defined. For example, definitions of “diet,” when used as a noun, include “food and drink regularly provided or consumed” and “any of various national or provincial legislatures,” two wildly different definitions.⁶ Absent context, these definitions would be comparatively useless as an aid to define the word.

In the twenty-first century, with the advancement of technology, legal sources can be far more broadly disseminated, perhaps suggesting that reliance on physical sources such as dictionaries should decrease. In fact, however, the opposite may be true as changes in technology have made a wide variety of dictionaries easier to access. Merriam-Webster, Inc., the publisher of the *Webster's* dictionaries, makes available on the Internet a variety of different services, including “Ask the Editor” videos, a “Visual Dictionary Online,” an audio pronunciation option, and a daily podcast.⁷ West Publishing Company released *Black's Law Dictionary*—the dictionary most used by the United States Supreme Court—as West's first application for Apple, Inc.'s iPhone and iPod Touch.⁸ According to the editor of *Black's*, “[t]he idea that you can have a very full, elaborate, complex and richly textured book like *Black's* available at your fingertips is fantastic.”⁹ Like the *Webster's* dictionaries, *Black's Law Dictionary* also is available as a digital edition.¹⁰

Along with these changes to traditional dictionaries, technical

citations from dictionaries ‘as evidence *per se*’ or merely to refresh the judicial memory on matters judicially noticed.” Roderick Munday, *The Bridge That Choked a Watercourse or Repetitive Dictionary Disorder*, 29 STATUTE L. REV. 26, 32 (2008) (quoting PHIPSON ON EVIDENCE § 32.51 (Hodge M. Malek et al. eds., 16th ed. 2005)). That the basic, fundamental purpose in citing a dictionary arguably “remains unclear” is particularly telling. See *Werk v. Parker*, 249 U.S. 130, 132–33 (1919) (“[W]e deem it clear, beyond question—that the court was justified in taking judicial notice of facts that appeared so abundantly from standard works accessible in every considerable library.”).

6. WEBSTER'S NEW COLLEGIATE DICTIONARY 317 (1977).

7. Merriam-Webster On-Line, <http://www.merriam-webster.com> (last visited Dec. 27 2010); Merriam-Webster Visual Dictionary Online, <http://visual.merriam-webster.com/> (last visited Dec. 27 2010); Merriam-Webster Video, <http://www.merriam-webster.com/video/index.htm> (last visited Dec. 27, 2010).

8. *West Announces i-Versions of Black's Law Dictionary*, LAWYER'S PC (Thompson Reuters/West, Rochester, N.Y.), May 15, 2009, at 15.

9. *Id.*

10. *Black's Law Dictionary*, <http://www.blackslawdictionary.com> (last visited Dec. 27, 2010).

advances are changing the fundamental approach and source of dictionaries and lexicology. One well-known “open” dictionary-like technology—*Wikipedia*—bills itself as “the free encyclopedia that anyone can edit.”¹¹ Unlike traditional dictionaries, which were crafted over years by editors from various disciplines and physically printed in an unchangeable format, *Wikipedia* allows users to list entries and definitions without regard to source, perspective, accuracy, or bias.¹²

Although perhaps best known, *Wikipedia* is not alone in this interactive approach. Even Merriam-Webster—with its roots in printed dictionaries tracing back centuries—has an electronic “open” dictionary.¹³ Like *Wikipedia*, this Merriam-Webster product allows users to submit and share entries that are not in its online dictionary and also to browse entries submitted by members of the Merriam-Webster online community.¹⁴

Undoubtedly, technology will result in further changes to dictionaries, their form, and their sources. To date, however, *Wikipedia* alone has influenced many judicial decisions. Although the United States Supreme Court has yet to rely on *Wikipedia*, hundreds of federal judicial decisions¹⁵ and thousands of law review articles have cited

11. Wikipedia, http://en.wikipedia.org/wiki/Main_Page (last visited Dec. 27, 2010).

12. See Wikipedia, “Wikipedia,” <http://en.wikipedia.org/wiki/Wikipedia> (last visited Dec. 27, 2010).

Wikipedia . . . is a mostly free, web-based, collaborative multilingual encyclopedia project supported by the non-profit Wikimedia Foundation.

....

... [C]ritics of Wikipedia accuse it of systemic bias and inconsistencies (including undue weight given to popular culture), and allege that it favors consensus over credentials in its editorial process. Its reliability and accuracy are also targeted. Other criticisms center on its susceptibility to vandalism and the addition of spurious or unverified information, though scholarly work suggests that vandalism is generally short-lived, and an investigation in *Nature* found that the material they compared came close to the level of accuracy of *Encyclopædia Britannica* and had a similar rate of “serious errors.”

Id.

13. Merriam-Webster Open Dictionary, http://www3.merriam-webster.com/open_dictionary (last visited Dec. 27, 2010).

14. Merriam-Webster’s Online Dictionary, http://www3.merriam-webster.com/open_dictionary/guide.php (last visited Dec. 27, 2010).

15. *Wikipedia* has been mentioned in 372 federal court opinions as of December 2010, according to a search for “Wikipedia” on Westlaw in the database “allfeds” (Dec. 27, 2010). See, e.g., *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1033 n.18 (10th Cir. 2008). Not all courts, however, have relied on *Wikipedia* as a source. See *Lyons v. Coxcom, Inc.*, No. 08-CV-02047, 2009 WL 347285, at *6 (S.D. Cal. Feb. 6, 2009) (declining to take judicial notice of a *Wikipedia* page that defined “uploading” and “downloading”).

Wikipedia.¹⁶ This expansive use of technology influencing dictionaries, and resulting reliance in the law, is unlikely to abate in the foreseeable future.¹⁷

Long before these recent technological advances to the dictionary, the old-fashioned printed dictionary served a prominent role in the United States Supreme Court's jurisprudence. After first citing a dictionary in 1830, the Court's use of dictionaries has grown almost algebraically in recent decades.¹⁸ The Court, however, has never expressly delineated the proper role and use of the dictionary in American jurisprudence. The few concepts that the Court has developed over time appear to be followed inconsistently and irregularly. Different Justices may use different dictionaries on different occasions for different purposes. Justices of the United States Supreme Court have used more than 120 different dictionaries in their opinions, with *Webster's Third New International Dictionary* the most cited general usage dictionary, while the most cited law dictionary is *Black's Law Dictionary*.¹⁹ Other than general concepts sometimes mentioned by individual Justices, there is no real guidance to determine what dictionary should be used in the definitional process.²⁰ In fact, the most basic issue involved in using a dictionary—what word or phrase to define—has caused debate among the members of the Court.²¹

In focusing on these and other uncertainties, our previous articles compiled the United States Supreme Court's use of dictionaries through the twentieth century.²² Those articles catalogue—by word or phrase, dictionary, and Justice—all opinions using a dictionary to define a phrase or word during the history of United States Supreme Court

16. *Wikipedia* has been mentioned in 2635 articles as of December 2010, according to a search for "Wikipedia" on Westlaw in the database "jlr" (Dec. 27, 2010). The first law journal article in Westlaw's database to use Wikipedia as a source was published in 2002. See Moisés Naím, *The Fourth Annual Grotius Lecture: Five Wars of Globalization*, 18 AM. U. INT'L L. REV. 1, 8 n.22 (2002).

17. Changes in technology also have created new words for attorneys and judges to interpret. For example, the Supreme Court recently turned to a dictionary of computer terms to define the phrase "main memory." See *Quanta Computer Inc. v. LG Elecs., Inc.*, 128 S. Ct. 2109, 2113 (2008) (citing WEBSTER'S NEW WORLD DICTIONARY OF COMPUTER TERMS 344, 451 (8th ed. 2000)).

18. *The Lexicon Remains a Fortress*, *supra* note 2, at 51 (explaining that, since the 1960s, the Court's "dictionary use had exploded" in frequency).

19. *The Lexicon Has Become a Fortress*, *supra* note 2, at 262–63, app. c (chronicling the frequency with which the Court has used particular dictionaries).

20. *Id.* at 268–72.

21. *Id.* at 264–67 (discussing cases where Justices disagreed about the word or phrase to be defined).

22. See *id.* at 232. See generally *The Lexicon Remains a Fortress*, *supra* note 2.

through the Court's 2000 Term.²³

In this Article, we examine the Court's use of dictionaries in the first decade of the twenty-first century. This Article studies the frequency and approach the Justices have taken to citing dictionaries in the new century, and considers whether the Court has set forth a more reasoned process for selecting or using dictionaries.²⁴ We address several questions about the Court's use of dictionaries in the twenty-first century, including: (1) whether the Court's increasing frequency in citing dictionaries has continued in the new century;²⁵ (2) whether the Court has clarified a process for selecting and using dictionaries;²⁶ and (3) whether the Justices have continued their debate on the proper choice and use of dictionaries.²⁷

Part II of this Article examines the frequency of dictionary use in the twenty-first century in contrast to prior periods, comparing the different Justices with respect to their dictionary usage and the dictionaries most used by the Justices in the twenty-first century. In Part III, we address the different steps in the Court's use of dictionaries, from the initial decision to use a dictionary to define a word to the selection of the dictionary and the definition selected. Part IV examines some recent selected cases reflecting the Justices' approach to using dictionaries to define words from various sources, including the United States Constitution, statutes, and prior cases. The Article addresses Justices who frequently use dictionaries and apparent tendencies of the newest members of the Court as well as additional insight into why some Justices select certain dictionaries. The Article also includes three appendices of cases from the twenty-first century listing: (1) words and phrases defined by the Court (Appendix A); (2) Justices citing to dictionaries, including their frequency of use and which dictionaries are used (Appendix B); and (3) dictionaries cited by the Court (Appendix C). Combined with our previous articles, these appendices provide a comprehensive compilation of the Court's use of dictionaries through the first decade of the twenty-first century.

The Article concludes that, in the twenty-first century, the Supreme Court Justices continue to use dictionaries frequently with comparatively little guidance for parties, lawyers, or others regarding

23. See *The Lexicon Has Become a Fortress*, *supra* note 2; *The Lexicon Remains a Fortress*, *supra* note 2.

24. See *infra* Part II.B.

25. See *infra* Part II.

26. See *infra* Part V.

27. See *infra* Part III.

when to use dictionaries, which dictionaries to use, and how to use dictionaries.²⁸ The propriety and approach to citing dictionaries continues to attract significant judicial attention,²⁹ but the United States Supreme Court has yet to issue a definitive decision squarely addressing the proper use of the dictionary. Although individual Justices have given some helpful suggestions on the proper use of dictionaries,³⁰ and the Article concludes with some guidance provided by a review of the Court's historical use of dictionaries, the ongoing usage of dictionaries by the United States Supreme Court and other courts continues to demonstrate the need for an opinion expressly addressing the proper judicial use of dictionaries in defining terms and phrases.

II. THE SUPREME COURT'S USE OF DICTIONARIES IN THE NEW CENTURY

By the year 2000, the Court was citing dictionaries more frequently than at any point in the history of the Court.³¹ The decade of the 1990s *alone* accounted for “nearly *half* of *all* the opinions in the Court's two century history” in which the Court relied on a dictionary.³² As of the year 2000, Justices Scalia and Thomas, and, to a lesser extent, Justice Souter, cited dictionaries most frequently.³³ The Court's use of dictionaries from the 2000–2001 Term through the 2009–2010 Term reflects changes in Court personnel and provides additional data and insight in dictionary usage by the Court.³⁴

28. See *infra* Part IV.

29. See, e.g., *Dugong v. Rumsfeld*, No. C 03-4350 MHP, 2005 WL 522106, at *6 & n.2 (N.D. Cal. Mar. 2, 2005); *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1089 (Fed. Cir. 2003); *Schonbek Worldwide Lighting, Inc. v. Am. Lighting Fixture Corp.*, No. Civ.A.00-11834-DPW, 2002 WL 472283, at *3 (D. Mass. Mar. 19, 2002); *U.S. LEC of Tenn., Inc. v. Tenn. Regulatory Auth.*, No. M2004-01417-COA-R12-CV, 2006 WL 1005134, at *5 (Tenn. Ct. App. Apr. 17, 2006); *Eastman Chem. Co. v. Chumley*, No. M2002-02114-COA-R3-CV, 2004 WL 51822, at *8 & nn. 38–39 (Tenn. Ct. App. Jan. 12, 2004), *rev'd by* *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503 (Tenn. 2004); *Heilker v. Zoning Bd. of Appeals*, 552 S.E.2d 42, 47 (S.C. Ct. App. 2001); Joseph Scott Miller & James A. Hilsenteger, *The Proven Key: Roles and Rules for Dictionaries at the Patent Office and the Courts*, 54 AM. U. L. REV. 829, 832 & n.8 (2005); Roy M. Mersky & Jeanne Price, *The Dictionary and the Man*, 63 WASH. & LEE L. REV. 719, 730 (2006) (reviewing BLACK'S LAW DICTIONARY (8th ed. 2004)).

30. See *infra* Part II.

31. See *The Lexicon Has Become a Fortress*, *supra* note 2, at 248–60 (chronicling the increases in dictionary usage through 1999).

32. *Id.* at 260.

33. *The Lexicon Has Become a Fortress*, *supra* note 2, at 262; *The Lexicon Remains a Fortress*, *supra* note 2, at 52.

34. Because this Article focuses on the first decade of the twenty-first century, it includes cases from the 2000–2001 Court Term that were also listed in one of our previous articles. See *The Lexicon Remains a Fortress*, *supra* note 2, at 53–54. Accordingly, in the

A. Frequency of Dictionary Use

The use of dictionaries by the United States Supreme Court started slowly, grew slowly, and then greatly expanded.³⁵ For example, during the first decade of the twentieth century (1900–1909), the Court cited dictionaries in twenty-one opinions to define twenty-six words or phrases.³⁶ Frequency was comparatively flat for the first half of that century and in the 1960s, the Justices only used dictionaries in sixteen opinions.³⁷ The Court's use of dictionaries then expanded greatly to forty opinions in the 1970s³⁸ and nearly 100 opinions in the 1980s.³⁹

The Court ended the twentieth century and began the twenty-first century with the highest rates of dictionary use in its history. The Court used dictionaries in a record 239 opinions to define more than 250 words or phrases in the decade from the 1990–1991 Term through the 1999–2000 Term.⁴⁰ Although the first decade of the twenty-first century saw a slight drop in the number of opinions using dictionaries, the Justices used more dictionary definitions than in any previous decade. For the 2000–2001 Term through the 2009–2010 Term, the Justices used dictionaries in 225 opinions⁴¹ to define 295 words or phrases.⁴² The Court thus begins the twenty-first century with one of the highest rates of dictionary use in its history.

The number of Court opinions using dictionaries doubled in the 1970s from the previous decade, doubled again in the 1980s, and then doubled again in the 1990s. The 2000–2010 decade, however, stayed at nearly the same rate as the 1990s. The relatively similar numbers between the most recent decade and the previous decade may indicate that the Court has reached its peak of dictionary use and, in any event, ends the recent trend of doubling every decade.

This flattening of the rate of use could be attributed to a variety of reasons, including the inherent limit on the number of cases the Court

Appendices to this Article, cases from the 2000–2001 Term that appear in both this article and *The Lexicon Remains a Fortress* are marked with an asterisk to allow the compilation of the research reflected in all three articles.

35. See, e.g., *Patapsco Ins. Co. v. Coulter*, 28 U.S. (3 Pet.) 222, 230 (1830); see also app. a.

36. *The Lexicon Has Become a Fortress*, *supra* note 2, at 249.

37. *Id.* at 251–52. In those sixteen opinions, the Justices defined twenty-three words or phrases. *Id.* at 252.

38. *Id.* at 252. In those opinions, the Justices defined fifty words or phrases. *Id.* at 252 .

39. *Id.* at 252–53. In those opinions, the Justices defined nearly 125 words or phrases. *Id.* at 253.

40. See *id.* 256; *The Lexicon Remains a Fortress*, *supra* note 2, at 60–64.

41. See *infra* app. b.

42. See *infra* app. a.

hears during a Term, the types of cases, the number of dissents and concurring opinions, and the philosophies of the individual Justices on the Court. As the past decade shows, the individual Justices do not appear to be of one mind in using dictionaries. Further, there have been changes in Court personnel in recent years, raising the question of how these changes have altered, and how future changes will affect, the rate of dictionary use.

B. Individual Justices

1. Individual Justices' Use of Dictionaries in the Twenty-First Century

By the late 1990s, the three current Justices who relied upon dictionaries most frequently were, in order, Justices Scalia, Thomas, and Souter.⁴³ Dictionary usage in the 1998–1999 Term through the 2000–2001 Term again revealed that Justice Scalia used the dictionary most often, with Justice Thomas a close second.⁴⁴ During that three year period, though, Justice Souter decreased his use of the dictionary, with Justices Kennedy and O'Connor tying for third place.⁴⁵

Examining the first decade of the twenty-first century, from the 2000–2001 Term to the 2009–2010 Term, Justices Scalia and Thomas maintained their position as the two Justices to most frequently use the dictionary throughout the history of the Court.⁴⁶ For the first decade of the twenty-first century, Justice Thomas cited a dictionary in one opinion more than Justice Scalia. During this time, Justice Thomas cited the dictionary in forty-one opinions to define sixty-four words or phrases, averaging 4.10 opinions and 6.40 definitions per Term, while Justice Scalia used the dictionary in forty cases to define sixty-five words or phrases, averaging 4.00 opinions and 6.50 words or phrases per Term.⁴⁷

Of the Justices who have been on the Court during the entire decade of the 2000–2001 Term through the 2009–2010 Term, Justice Ginsburg has the lowest rate of dictionary use, citing a dictionary as a source in 1.50 cases per Term. The usage rates for each of the Justices who served on the Court during the decade are as follows, ranked by average

43. *The Lexicon Has Become a Fortress*, *supra* note 2, at 262.

44. *See The Lexicon Remains a Fortress*, *supra* note 2, at 52. During those three Court terms, Justice Scalia cited the dictionary in 12 cases (4.0/Term) and defined 13 words or phrases (4.33/term). *Id.* app. b. at 62. Justice Thomas cited the dictionary in 11 cases (3.66/Term) and defined 12 words or phrases (4.0/Term). *Id.* app. b. at 63.

45. *Id.* app. b. at 61, 63.

46. *See infra* app. b.

47. *See infra* app. b.

number of opinions per Term:⁴⁸

TABLE 1: DICTIONARY USE OF SUPREME COURT JUSTICES FOR THE 2000–2001 TERM THROUGH THE 2009–2010 TERM

Justices Who Served During 2000–2010	Average Number of Opinions per Term	Average Number of Words/Phrases Per Term	Total Opinions	Total Words or Phrases Defined
Justice Thomas	4.10	6.40	41 (10 Terms)	64
Justice Scalia	4.00	6.50	40 (10 Terms)	65
Justice Sotomayor	4.00	5.00	4 (1 Term)	5
Justice Alito	3.40	8.60	17 (5 Terms)	43
Justice Stevens	2.60	4.00	26 (10 Terms)	40
Justice Souter	2.22	2.67	20 (9 Terms)	24
Justice Kennedy	2.20	2.90	22 (10 Terms)	29
Justice Breyer	2.00	2.90	20 (10 Terms)	29
Chief Justice Rehnquist	1.60	2.00	8 (5 Terms)	10
Justice Ginsburg	1.50	1.60	15 (10 Terms)	16
Chief Justice Roberts	1.20	1.40	6 (5 Terms)	7
Justice O'Connor	1.16	1.50	7 (6 Terms)	9

For comparison purposes, of all the Justices who retired from the Supreme Court before the year 2000, Justice Brennan cited the dictionary most frequently, having done so in thirty-one opinions during thirty-four years on the Court for a rate of 0.91 opinions per Term.⁴⁹ As shown in Table 1, every Justice who served on the Court during the last decade exceeded that rate, and two Justices used dictionaries in more opinions during that ten year period than Justice Brennan did during his thirty-four year tenure on the Court.⁵⁰

When trying to identify what may explain the differences in dictionary use among the twenty-first century Justices, it is important to note that the differences are based on frequency of dictionary use over a comparatively short period of time. Accordingly, it is fair to question whether there truly is a significant difference in usage by the Justices. A number of factors might impact how often a Justice uses a dictionary and it may be that some Justices are more likely to author opinions in types of cases that happen to be conducive to dictionary use, such as

48. See *infra* app. b.

49. See *The Lexicon Has Become a Fortress*, *supra* note 2, at 261. Justice Brennan used dictionaries to define forty-three terms. *Id.* app. b. at 402–06.

50. At the other end of the spectrum, a number of Supreme Court Justices, including Justices Brandeis, Cardozo, and Holmes, never cited dictionaries. *Id.* at 261.

statutory interpretation cases. Moreover, these numbers do not reflect how often a Justice joined an opinion citing a dictionary but was not the author of that opinion. At the extremes, however, the numbers are instructive and would appear to provide a rough gauge of a Justice's views on the propriety and efficacy of relying on dictionary definitions. For example, various factors unrelated to a willingness or desire to cite a dictionary could explain why Justice Kennedy cited a dictionary in twenty-two opinions while Justice Stevens did so in twenty-six opinions. The outliers, however, would appear more clearly to reflect a difference in philosophies. Justice Ginsburg cited a dictionary in just fifteen opinions while Justice Thomas cited a dictionary in forty-one opinions during the same period, almost three times as often. This difference is more difficult to explain by factors unrelated to a willingness to look to the dictionary as a substantive source.

Some have suggested that the frequency in use of dictionaries may be tied to judicial philosophies, which may not be expressly stated in opinions. As one commentator asked, "do some judges like dictionaries because they believe dictionaries track the original meaning of the law or because dictionaries make the law more predictable by tying interpretation to publicly accepted definitions?"⁵¹ Raw numbers do not answer that question.

The connection between judicial philosophy and dictionary use may be clearer for the leading dictionary users, Justices Thomas and Scalia. One commentator noted that as Justice Scalia "has denied the legitimacy of relying on legislative history as a guide to statutory meaning, he has turned frequently to dictionaries as one means of establishing the intention of the legislature through the words by which it chose to express that intention."⁵² According to this same commentator, Justice Thomas "recently has taken the lead for constitutional originalists."⁵³ As a constitutional originalist, Justice Thomas may be more likely than some other Justices to use a dictionary to interpret the United States Constitution.

By contrast, Chief Justice Roberts, who joined the Court in September 2005, has thus far rarely used the dictionary. Through the 2009–2010 Term, Chief Justice Roberts cited a dictionary in just six cases during his five Terms, averaging 1.20 opinions, defining 1.40

51. Jason J. Czarnezki & William K. Ford, *The Phantom Philosophy? An Empirical Investigation of Legal Interpretation*, 65 MD. L. REV. 841, 853 (2006).

52. Gary L. McDowell, *The Politics of Meaning: Law Dictionaries and the Liberal Tradition of Interpretation*, 44 AM. J. LEGAL HIST. 257, 258–59 (2000).

53. *Id.* at 259.

words, per Term.⁵⁴ Chief Justice Roberts' first opinion using a dictionary did not appear to involve any real debate. Writing for a unanimous Court, he cited *Webster's Third New International Dictionary* and the *American Heritage Dictionary* in defining "would" as used in a provision of the Internal Revenue Code.⁵⁵ Even then, Chief Justice Roberts quoted a case for the definition, which in turn cited the dictionaries.⁵⁶ Thus, the case citation did not add much authority to the definition, other than to show that another court relied on the same dictionaries. In the other cases where Chief Justice Roberts cited dictionaries, he referenced *Webster's American Dictionary of the English Language*, *Webster's Third New International Dictionary*, and editions of *Black's Law Dictionary*.⁵⁷

Perhaps not surprisingly, Chief Justice Roberts' infrequent citation to dictionaries while on the Court is consistent with his previous tenure as a judge. While serving on the United States Court of Appeals for the District of Columbia Circuit for two years, then-Judge Roberts cited dictionaries in only two cases.⁵⁸

By contrast, Justice Alito, who joined the Court on January 31, 2006, has cited dictionaries far more frequently. During five Terms, Justice Alito cited dictionary definitions in seventeen opinions (3.40 per Term) to define forty-two words or phrases (8.60 per Term).⁵⁹ This rate over

54. See *infra* app. b.

55. *Knight v. Comm'r*, 552 U.S. 181, 192 (2008) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2637–38 (1993); AMERICAN HERITAGE DICTIONARY 2042, 2059 (3d ed. 1996)).

56. See *Scott v. United States*, 328 F.3d 132, 139 (4th Cir. 2003) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 481 (1976); AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 2042, 2059 (3d ed. 1992)). Chief Justice Roberts cited the same dictionaries in *Knight*, but referenced editions with more recent publication dates. See *Knight*, 552 U.S. at 192.

57. In all of the cases where Chief Justice Roberts cited a dictionary, his opinion was the majority opinion. See, e.g., *Nken v. Holder*, 129 S. Ct. 1749, 1757–58 (2009) (citing BLACK'S LAW DICTIONARY 784, 1413 (6th ed. 1990)) (defining "injunction" and "stay"); *Nw. Austin Mun. Util. Dist. v. Holder*, 129 S. Ct. 2504, 2513 (2009) (quoting BLACK'S LAW DICTIONARY 1197 (8th ed. 2004)) (defining "district" in the Voting Rights Act).

58. See *Amoco Prod. Co. v. Watson*, 410 F.3d 722, 723, 733 (D.C. Cir. 2005) (citing BLACK'S LAW DICTIONARY 285, 389, 1096 (6th ed. 1990)) (defining "damages," "complaint," and "order"); *PDK Labs. Inc. v. U.S. DEA*, 362 F.3d 786, 801 (D.C. Cir. 2004) (Roberts, J., concurring) (citing IV OXFORD ENGLISH DICTIONARY 888 (2d ed. 1989); BLACK'S LAW DICTIONARY 491 (7th ed. 1999)) (defining "divert" and "diversion"). During his time on the Court of Appeals from 2003–2005, then-Judge Roberts wrote forty-nine opinions. See John G. Roberts, Jr. Biography, http://www.oyez.org/justices/john_g_roberts_jr (last visited Dec. 27, 2010).

59. See *infra* app. b. Justice Alito's numbers may be slightly skewed by one dissent from a denial of certiorari. In *Nurre v. Whitehead*, while considering a First Amendment issue involving the playing of *Ave Maria* at a high school graduation, Justice Alito referenced a

this limited time period places Justice Alito among the top dictionary users on the Court. Again, perhaps not surprisingly, this rate reflects Justice Alito's use of dictionaries before his appointment to the Supreme Court. While serving for more than fifteen years on the United States Court of Appeals for the Third Circuit,⁶⁰ then-Judge Alito cited dictionaries at a comparable rate.⁶¹

Justice Sotomayor's relatively high rate of dictionary use during her one Term (four opinions; five words or phrases defined) is consistent with usage during her final years as a Judge on the United States Court of Appeals for the Second Circuit. Then-Judge Sotomayor served on the Second Circuit from October 1998 until her elevation to the Supreme Court effective August 2009.⁶² During that time, Judge Sotomayor cited to dictionary definitions in twenty-two opinions.⁶³ That

music dictionary for support that ten individuals had composed music for *Ave Maria*. 130 S. Ct. 1937, 1937 & n.1, 1938 (2010) (citing 22 THE NEW GROVE DICTIONARY OF MUSIC AND MUSICIANS 670, 718 (Schubert); 10 *id.* at 215, 233 (Gounod); 26 *id.* at 462 (Verdi); 17 *id.* at 319 (Mozart); 8 *id.* at 131 (Elgar); 22 *id.* at 130 (Saint-Saens); 21 *id.* at 763 (Rossini); 4 *id.* at 208 (Brahms); 24 *id.* at 560 (Stravinsky); 4 *id.* at 480 (Bruckner) (2d ed. 2001)). Yet, even if one does not consider these ten definitions, Justice Alito's rate of dictionary use on the Supreme Court would still be high (3.0 cases per Term; 6.4 words or phrases per Term).

60. See Samuel A. Alito, Jr. Biography, available at http://www.oyez.org/justices/samuel_a_alito_jr (last visited Dec. 27, 2010).

61. During that time, then-Judge Alito cited dictionary definitions in more than 40 opinions. See, e.g., *MBIA Ins. Corp. v. Royal Indem. Co.*, 426 F.3d 204, 211 (3d Cir. 2005) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1934 (Philip Babcock Gove ed., unabr. ed. 1971)); *Oyebanji v. Gonzales*, 418 F.3d 260, 264 (3d Cir. 2005) (citing BLACK'S LAW DICTIONARY 16 (8th ed. 1999)); *Child Evangelism Fellowship v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 528 (3d Cir. 2004) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1821 (1976)); *Khodara Envtl., Inc. v. Blakey*, 376 F.3d 187, 199 (3d Cir. 2004) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 456 (1971)); *United States v. Pray*, 373 F.3d 358, 361 (3d Cir. 2004) (citing BLACK'S LAW DICTIONARY 760 (7th ed. 1999); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 583 (10th ed. 1993)); *United States v. Wright*, 363 F.3d 237, 247 (3d Cir. 2004) (citing BLACK'S LAW DICTIONARY 23 (6th ed. 1990)); *Rompilla v. Horn*, 355 F.3d 233, 242 n.5, 243 n.8 (3d Cir. 2004) (citing RICHARD SLOANE, THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY—1992 SUPPLEMENT 522 (1992); STEDMAN'S MEDICAL DICTIONARY 1596 (27th ed. 2000)); *In re Fed. Mogul-Global, Inc.*, 348 F.3d 390, 404 (3d Cir. 2003) (citing BLACK'S LAW DICTIONARY 1301 (6th ed. 1990); WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1000 (1986)); *In re Hechinger Inv. Co.* 335 F.3d 243, 252 (3d Cir. 2003) (citing WEBSTER'S THIRD INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 2487 (1993); RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1543 (unabr. ed. 1967)); *Chadwick v. Janecka*, 312 F.3d 597, 608 (3d Cir. 2002) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1147 (1971)); *Lawson ex rel. Lawson v. Fortis Ins. Co.*, 301 F.3d 159, 165 (3d Cir. 2002) (citing WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 481 (1986); BLACK'S LAW DICTIONARY 579–80 (5th ed. 1979)).

62. See Sonia Sotomayor Biography, http://www.oyez.org/justices/sonia_sotomayor (last visited Dec. 27, 2010).

63. See *In re WorldCom, Inc. v. MCI*, 546 F.3d 211, 221 n.7 (2d Cir. 2008) (citing

total, however, may be misleading. In her early years on the Second Circuit, Judge Sotomayor rarely cited dictionaries, but in her more recent years on that court, she cited dictionaries nearly half a dozen times a year.⁶⁴ That background, along with her frequency in the one year she has served as a Justice, indicates she may view dictionaries similarly to the way they are seen by Justices Scalia, Thomas, and Alito, each whom frequently cite dictionaries.⁶⁵

BLACK'S LAW DICTIONARY 1541 (8th ed. 2004)); *Riverkeeper, Inc. v. U.S. E.P.A.*, 475 F.3d 83, 110, 122 n.32 (2d Cir. 2007) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 330, 1438 (1986); BLACK'S LAW DICTIONARY 332, 478, 958 (8th ed. 1999)); *Burrell v. United States*, 467 F.3d 160, 164 (2d Cir. 2006) (citing BLACK'S LAW DICTIONARY 1017 (8th ed. 2004)); *Farrell v. Burke*, 449 F.3d 470, 487, 489 (2d Cir. 2006) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1969); WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1767 (1981); AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000)); *Protection & Advocacy for Persons with Disabilities v. Mental Health & Addiction Servs.*, 448 F.3d 119, 125–26 (2d Cir. 2006) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1565 (1986)); *Lin v. Gonzales*, 445 F.3d 127, 133 (2d Cir. 2006) (citing BLACK'S LAW DICTIONARY 637 (8th ed. 2004)); *Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp.*, 418 F.3d 168, 179 (2d Cir. 2005) (citing BLACK'S LAW DICTIONARY 749, 783–84 (8th ed. 2004)); *Travelers Ins. Co. v. Carpenter*, 411 F.3d 323, 334 & n.9 (2d Cir. 2005) (citing BLACK'S LAW DICTIONARY 1302 (8th ed. 2004); BLACK'S LAW DICTIONARY 1280 (7th ed. 1999); BLACK'S LAW DICTIONARY 491 (6th ed. 1990)); *Richards v. Ashcroft*, 400 F.3d 125, 129 (2d Cir. 2005) (citing BLACK'S LAW DICTIONARY 1158 (5th ed. 1979)); *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 43 n.7 (2d Cir. 2004) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 56 (1986)); *United States v. Saget*, 377 F.3d 223, 228 (2d Cir. 2004) (citing 1 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster, ed. 1828)); *United States v. McClain*, 377 F.3d 219, 221 (2d Cir. 2004) (citing 1 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster, ed. 1828)); *United States v. Reimer*, 356 F.3d 456, 462 (2d Cir. 2004) (citing *United States v. Soklov*, 814 F.2d 864, 874 (2d Cir. 1987)); *Jessica Howard Ltd. v. Norfolk S. Ry. Co.*, 316 F.3d 165, 166 n.1 (2d Cir. 2003) (citing BLACK'S LAW DICTIONARY 159 (7th ed. 1999)); *Travelers Ins. Co. v. Carpenter*, 313 F.3d 97, 107 (2d Cir. 2003) (citing BLACK'S LAW DICTIONARY 490 (6th ed. 1990)); *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 56 n.1 (2d Cir. 2001) (citing BLACK'S LAW DICTIONARY (6th ed. 1990)); *Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123, 128 (2d Cir. 2001) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 117 (1986) and BLACK'S LAW DICTIONARY 102 (7th ed. 1999)); *United States v. Kennedy*, 233 F.3d 157, 161 n.3 (2d Cir. 2000) (citing BLACK'S LAW DICTIONARY 1205 (6th ed. 1990)); *Koehler v. Bank of Bermuda*, 229 F.3d 187, 191 n.7 (2d Cir. 2000) (Sotomayor, J., dissenting) (citing A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed., 1755) and 2 AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 84 (photo. reprint 1985)(Noah Webster ed., 1828)); *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 660–61 (2d Cir. 1999) (Sotomayor, J., dissenting) (citing an edition of WEBSTER'S DICTIONARY); *Salahuddin v. Mead*, 174 F.3d 271, 275 (2d Cir. 1999) (citing BLACK'S LAW DICTIONARY 192 (6th ed. 1990)). While Justice Sotomayor was a United States District Judge for the Southern District of New York, she cited a dictionary in an opinion while sitting by designation on the Second Circuit Court of Appeals. *See United States v. Hendrickson*, 26 F.3d 321, 334 (2d Cir. 1994) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF ENGLISH LANGUAGE 1324 (1986); BLACK'S LAW DICTIONARY 1541 (6th ed. 1990)), *implied overruling recognized by United States v. Camara*, 196 Fed. Appx. 48 (2d Cir. 2006).

64. *See supra* note 63 and accompanying text.

65. Justice Elena Kagan was sworn in on August 7, 2010 without previously having

2. Recently Retired Justices

From 2000 through 2010, four Justices completed their careers on the Court: Justice Souter, Justice O'Connor, Chief Justice Rehnquist, and Justice Stevens.⁶⁶ When viewed in the context of the Court's history, each of these Justices was on the high-end of dictionary use, but in comparison to current Justices, they all were toward the middle to low end of dictionary usage.

The first Justice to depart in the twenty-first century was Chief Justice Rehnquist. Chief Justice Rehnquist joined the Court as an Associate Justice in January 1972 and retired as Chief Justice in September 2005, serving thirty-four Terms on the Court.⁶⁷ During that time, he cited to a dictionary in only thirty-four cases (1.00 cases per Term) to define forty-four words or phrases (1.29 per Term).⁶⁸ Although he used the dictionary at a slightly higher rate in his final years, his overall rate is lower than that of any Justice currently serving on the Court.⁶⁹ Given this comparatively low rate during a tenure that spanned the time when the Court was doubling its dictionary use every decade, Chief Justice Rehnquist may be a link between the current, frequent use of dictionaries and the past when Justices used dictionaries less frequently. Despite his low rate compared to the current Justices, his rate is more than double that of his predecessor, Chief Justice Burger, who served on the Court from 1969–1986 and only cited dictionaries in seven cases, for an average of 0.41 cases per Term.⁷⁰

Throughout her time on the Court, Justice O'Connor similarly cited the dictionary less often than most of her colleagues. Justice O'Connor joined the Court in September 1981 and retired in January 2006, serving twenty-five Terms.⁷¹ During that time, she used the dictionary in thirty-nine cases (1.56 cases per Term) to define forty-eight words or phrases

served as a judge or justice on any court. See Elena Kagan Biography, http://www.oyez.org/justices/Elena_Kagan (last visited Dec. 27, 2010).

66. Sandra Day O'Connor Biography, http://www.oyez.org/justices/sandra_day_oconnor (last visited Dec. 27, 2010); John Paul Stevens Biography, http://www.oyez.org/justices/john_paul_stevens (last visited Dec. 27, 2010); William H. Rehnquist Biography, http://www.oyez.org/justices/william_h_rehnquist (last visited Dec. 27, 2010).

67. William H. Rehnquist Biography, http://www.oyez.org/justices/william_h_rehnquist (last visited Dec. 27, 2010).

68. See *The Lexicon Has Become a Fortress*, *supra* note 2, app. b at 438–42; Thumma & Kirchmeier, *The Lexicon Remains a Fortress*, *supra* note 2, app. b at 62; *infra* app. b.

69. See *supra* Table 1: Dictionary Use of Supreme Court Justices for 2000–2001 Term through the 2009–2010 Term.

70. *The Lexicon Has Become a Fortress*, *supra* note 2, app. b at 410.

71. Sandra Day O'Connor Biography, http://www.oyez.org/justices/sandra_day_oconnor (last visited Dec. 27, 2010).

(1.92 per Term).⁷²

Justice Souter served twenty Terms, having joined the Court in October 1989 and retired in June 2009. During that time, Justice Souter cited the dictionary in thirty-eight opinions to define forty-seven words or phrases, averaging only 1.9 cases using dictionaries per Term to define 2.35 words or phrases per Term.⁷³ Interestingly, during his final nine Terms, he only relied upon dictionaries in opinions he wrote for the majority or plurality, and never wrote a concurring or dissenting opinion citing a dictionary.⁷⁴

Justice Stevens, the most recent Justice to retire, served on the Court from December 1975 to the conclusion of the 2009–2010 Term, serving a total of thirty-six Terms. During that time, he cited the dictionary in sixty-six cases (1.83 cases per Term) and defined ninety-three words or phrases (2.58 per Term).⁷⁵ During his final year on the Court, however, Justice Stevens cited dictionaries at more than five times that rate, doing so in ten opinions to define eighteen words or phrases.⁷⁶

C. Dictionaries Cited by the Court

Before the year 2000, of the more than 120 dictionaries cited by the United States Supreme Court, the general usage dictionary most often cited was *Webster's Third New International Dictionary* and the most cited law dictionary was *Black's Law Dictionary*.⁷⁷ In the twenty-first century, *Webster's Third New International Dictionary* remains the most cited general usage and *Black's Law Dictionary* remains the most-cited law dictionary.⁷⁸

On average, throughout the most recent decade, the Justices used *Black's Law Dictionary* for definitions in more than ten cases per Term.⁷⁹ *Black's Law Dictionary* likely will remain the most cited law dictionary for some time, as it has no modern competition.⁸⁰ Further,

72. See *The Lexicon Has Become a Fortress*, *supra* note 2, app. b at 431–35; *The Lexicon Remains a Fortress*, *supra* note 2, app. b at 61; *infra* app. b.

73. See *The Lexicon Has Become a Fortress*, *supra* note 2, app. b at 450–52; *The Lexicon Remains a Fortress*, *supra* note 2, app. b at 63; *infra* app. b.

74. See *infra* app. b.

75. See *infra* app. b.

76. See *infra* app. b.

77. *The Lexicon has Become a Fortress* *supra* note 2, at 262–63.

78. See *infra* app. c.

79. The various versions of *Black's Law Dictionary* were cited in 103 opinions from the 2000–2001 Term through the 2009–2010 Term. See *infra* app. c.

80. “*Black's* is the last standing comprehensive American legal dictionary. . . .” Merskey & Price, *supra* note 29, at 720 (noting that *Bouvier's Law Dictionary* has not been revised since 1934 and *Ballentine's Law Dictionary* has not been updated since 1969).

the Justices were quick to embrace the newest edition of *Black's Law Dictionary*, using the 2009 Ninth Edition to define twenty-one different words in twelve cases during the 2009–2010 Term.⁸¹

One interesting aspect of the relationship between dictionaries and the Court is that they each may affect each other. As the Court relies upon dictionaries, dictionary definitions are influenced by Court opinions. Although this relationship exists to some extent between the Court and general usage dictionaries, the connection may be more direct when addressing legal dictionaries. A case in point is the relationship between the Court and *Black's Law Dictionary*.

Bryan A. Garner, the editor of recent editions of *Black's Law Dictionary*, noted in a preface to the seventh edition published in 1999 that “[a]s the law continues its rapid evolution, . . . *Black's Law Dictionary* will keep apace.”⁸² True to this declaration, five years later, the eighth edition of *Black's Law Dictionary*—the first edition published in the twenty-first century—contains definitions for 17,000 more words than the previous edition.⁸³ This growth suggests that *Black's Law Dictionary* will keep adapting to how courts, including the Supreme Court, define legal words and phrases. It is also likely that the Court will continue to refer to *Black's Law Dictionary* for defining words. Precisely where this somewhat-circular relationship ends is, of course, uncertain.

Some scholars have questioned judicial use of dictionaries because of possible inaccuracies in dictionaries themselves.⁸⁴ Henry Black, the original author of *Black's Law Dictionary*, reportedly “was not hesitant to create a definition out of whole cloth.”⁸⁵ As the current editor of *Black's Law Dictionary*, Mr. Garner is reported as more thorough in

81. See *infra* app. c.

82. Roy M. Mersky, *The Evolution and Impact of Legal Dictionaries*, EXPERIENCE, Fall 2004, at 32, 34 (quoting Bryan A. Garner, editor of the seventh edition of *Black's Law Dictionary*). The Seventh Edition of *Black's Law Dictionary* was published in 1999. See *id.*

83. Mersky & Price, *supra* note 29, at 725.

84. See J. Gordon Christy, *A Prolegomena to Federal Statutory Interpretation: Identifying the Sources of Interpretive Problems*, 76 MISS. L.J. 55, 64–65 (2006).

The first mistake . . . justices and judges, and many legal scholars for that matter, make is blithely to assume that dictionaries are sound sources for word meanings, although the fact dictionaries often differ should have given them pause. In contrast, linguistic scholars who specialize in lexical semantics appear to be unanimously agreed that dictionaries are not reliable sources for word meanings.

Id. at 65.

85. Mersky & Price, *supra* note 29, at 732.

using sources, even if those sources are not always cited.⁸⁶ Still, commentators have noted that Mr. Garner’s “confidence in his ability to identify reliable, succinct, and persuasive authorities for his definitions enables him to fairly radically overhaul both the content and the format of [the dictionary].”⁸⁷

A recent collaboration between Mr. Garner and Justice Scalia provides some additional insight into the Court’s relationship with dictionaries. Mr. Garner and Justice Scalia recently co-wrote a book about advocacy entitled *Making Your Case: The Art of Persuading Judges*.⁸⁸ The masterful work suggests using *Black’s Law Dictionary*’s pronunciations as a helpful source for advocates.⁸⁹ Even more instructive, the book lists seven general usage dictionaries with brief critiques and usage notes that may provide some insight into Justice Scalia’s views on those specific dictionaries.⁹⁰

Justice Scalia has cited *Webster’s Second New International Dictionary* in a number of opinions.⁹¹ *Making Your Case* praises *Webster’s Second* as “still quite sound on historical matters, and exhaustive on traditional legal and literary terms.”⁹² By contrast, *Making Your Case* is critical of *Webster’s Third New International Dictionary*, which is described as “scholarly but infamously permissive in neglecting to include accurate usage tags”⁹³ with the warning to “use it discriminately.”⁹⁴ This dichotomy between *Webster’s Second* and *Webster’s Third* is not surprising, given a firestorm of criticism over *Webster’s Third*.

When *Webster’s Third* was published in 1961, critics were literally angry that it took a descriptive approach, listing usage without regard to what was “correct,” a substantial departure from the prescriptive approach in *Webster’s Second*.⁹⁵ One critic complained that *Webster’s*

86. *Id.*

87. *Id.* The authors praise Mr. Garner’s work, noting that he “is credible because of the logic of his approach, his thoroughness, and his absolute faith in both his mission and its product.” *Id.*

88. ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* (2008).

89. *See id.* at 144.

90. *See id.* at 213.

91. *See The Lexicon Has Become a Fortress*, *supra* note 2, app. b at 442–50; *infra* app. b.

92. SCALIA & GARNER, *supra* note 88, at 213.

93. *Id.*

94. *Id.*

95. *See* JONATHON GREEN, *CHASING THE SUN: DICTIONARY MAKERS AND THE DICTIONARIES THEY MADE* 453 (1996); *The Lexicon Has Become a Fortress*, *supra* note 2, at 242–43.

Third was “a very great calamity” and that it “thrust upon us a dismaying assortment of the questionable, the perverse, the unworthy and the downright outrageous.”⁹⁶ Some have seen the debate as reflecting a cultural gap, presenting a “battle . . . over a whole philosophy of life,”⁹⁷ with the debate reflecting core issues of the United States’ very foundation: “Should there be a directing class, qualified as such by reason of intellect, education and general culture, or should there be unbridled democracy with a nose counting process to determine what was good and what was bad?”⁹⁸

Justices frequently cite both *Webster’s Second* and *Webster’s Third*, although *Webster’s Third* has been used more often. For example, during the most recent decade, *Webster’s Third* was used in sixty opinions while *Webster’s Second* was used in forty opinions.⁹⁹ Some Justices have clear preferences between *Webster’s Third* and *Webster’s Second*. Justice Scalia has cited *Webster’s Second* in twelve cases in the twenty-first century, while only citing *Webster’s Third*¹⁰⁰—apparently following his own book’s advice—discriminatingly.¹⁰¹ Justice Souter also demonstrated a preference for *Webster’s Second* over *Webster’s Third*, citing the former three times while not citing *Webster’s Third* at all during this century.¹⁰² By contrast, Chief Justice Roberts appears to prefer *Webster’s Third*, citing it in three of his six opinions using dictionaries, while not yet citing *Webster’s Second*.¹⁰³ During her first Term, Justice Sotomayor cited *Webster’s Third* in two opinions while not citing *Webster’s Second*.¹⁰⁴ The other Justices who cited a *Webster’s* dictionary in the twenty-first century did not show a clear preference for

96. GREEN, *supra* note 95, at 453 (quoting Wilson Follett).

97. *Id.* at 455.

98. *Id.*

99. *See infra* app. c.

100. *See infra* app. c. Prior to this century, Justice Scalia also had a strong preference for *Webster’s Second* over *Webster’s Third*, but he has cited *Webster’s Third* in a handful of cases. *See, e.g.*, *MCI Telecomm. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225–26 & n.2 (1994) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1452 (1981)); *Bowen v. Massachusetts*, 487 U.S. 879, 913–14 (1988) (Scalia, J., dissenting) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 571 (1981)); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 324 n.2 (1988) (Scalia, J., concurring in part and dissenting in part) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1605 (1981)).

101. SCALIA & GARNER, *supra* note 88, at 213.

102. *See infra* app. c. Like Justice Scalia, Justice Souter cited *Webster’s Third* prior to the twenty first century while still showing a preference for *Webster’s Second*. *See The Lexicon Has Become a Fortress*, *supra* note 2, app. b. at 450–52.

103. *See infra* app. b.

104. *See infra* app. b.

one over the other.¹⁰⁵

In reviewing the dictionaries cited by the Court, with the notable exception of *Black's Law Dictionary*, the Justices rarely use the most recent edition available. Given the ways dictionaries are updated and marketed, this tendency may not be particularly surprising. Dictionary scholars have noted a trend where publishers market their dictionaries by focusing on the number of new words in each new edition.¹⁰⁶ “No attention is paid to the older, established words and meanings [a dictionary] has omitted to make room for the current crop of ephemera.”¹⁰⁷ Therefore, to find the meanings of “older, established words,” reference to older dictionary editions may be required.

Further, by design, some dictionaries—classified as synchronic dictionaries—cover “a narrow band of time and attempt to represent the lexicon as it exists or existed at a particular point in time.”¹⁰⁸ By contrast, diachronic—or historical—dictionaries focus on an extended period of time and, the “development of forms and meanings of each headword over the period covered.”¹⁰⁹ Most American and British one-volume dictionaries, such as the unabridged *Webster's Third New International Dictionary*, are synchronic.¹¹⁰ Accordingly, in the view of at least some Justices, dictionaries from time periods contemporary with the enactment of statutes or constitutional provisions may provide better insight into meaning than more recent editions, containing more recent understandings of the same words.¹¹¹ Although this approach may not fully explain the editions used, it may go a long way to help explain how a specific dictionary edition is selected.

D. Foreign Words and Specialized Dictionaries

In the first decade of the twenty-first century, the Justices cited foreign language dictionaries in just two cases, neither of which is particularly instructive.¹¹² In *Krupski v. Costa Crociere*,¹¹³ a cruise ship

105. See *infra* app. c.

106. See, e.g., SIDNEY I. LANDAU, *DICTIONARIES: THE ART AND CRAFT OF LEXICOGRAPHY* 204 (2d ed. 2001) (“Unfortunately, dictionary editors have everything to gain and nothing to lose by inserting every new word (or *neologism*), faddish or not, that comes along, since the popular view is that the ultimate test of every new dictionary is that it has the very latest words.”).

107. *Id.*

108. *Id.* at 27.

109. *Id.*

110. *Id.*

111. See *infra* Part III.

112. See *Medellin v. Texas*, 552 U.S. 491, 553 (2008) (Breyer, J., dissenting) (citing *SPANISH AND ENGLISH LEGAL COMMERCIAL DICTIONARY* 44, 59 (1945)); *Krupski v. Costa*

passenger sued for injuries against a company called Costa Cruise before later filing an amended complaint against the correct defendant, Costa Crociere.¹¹⁴ In addressing whether the plaintiff's amended complaint related back to her original complaint under Federal Rule of Civil Procedure 15(c), Justice Sotomayor noted that Costa Cruise and Costa Crociere were related entities with similar names.¹¹⁵ In doing so, the opinion cited *Cassell's Italian Dictionary* to point out that "*crociera*" means "cruise" in Italian. Thus, in her first Term on the Court, Justice Sotomayor became the first member of the Court to use an Italian-language dictionary to define a word.¹¹⁶

In the other case from this period involving a foreign language dictionary, Justice Breyer cited to a Spanish dictionary to define "*comprometer*" ("become liable") and "*cumplir*" ("to perform, discharge, carry out, execute"), apparently as used in a Spanish version of the United Nations Charter.¹¹⁷ Prior to that, the Supreme Court last used a Spanish-language dictionary in 1929.¹¹⁸ Thus, the Court continues

Crociere, 130 S. Ct. 2485, 2498 (2010) (citing CASSELL'S ITALIAN DICTIONARY 137, 670 (1967)).

113. *Krupski*, 130 S. Ct. at 2485; *see infra* app. c.

114. *Krupski*, 130 S. Ct. at 2490.

115. *Id.* at 2492–93, 2498.

116. *Id.* (citing CASSELL'S ITALIAN DICTIONARY 137, 670 (1967)). Justice Sotomayor did not explain why she used a 1967 edition of the dictionary, even though more recent editions exist. *See, e.g.*, CASSELL'S ITALIAN DICTIONARY 670 (2002).

117. *Medellin v. Texas*, 552 U.S. 491, 553 (2008) (Breyer, J., dissenting) (quoting SPANISH AND ENGLISH LEGAL AND COMMERCIAL DICTIONARY 44, 59 (1945)).

118. *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 4, 15 (1929) (citing 2 DICCIONARIO DE LA ADMINISTRACION ESPAÑOLA 118, 259, 261 (Marcelo Martinez Alcubilla ed., 5th ed.)). *See* Sergio D. Stone, *A Study of Dictionaries in U.S. and Latin American Courts*, COLO. LAW., Aug. 2007, at 115, 116 ("From 1795 through the end of 2006, the U.S. Supreme Court cited three legal Spanish-language dictionaries and one general usage Spanish-language dictionary on thirteen occasions"). Spanish dictionaries have been used more recently by other federal courts. *See id.* at 116. Our original 1999 survey of dictionaries did not involve a search for the word "diccionario," but a current search of the Court's history through the 2009–2010 term reveals that references to dictionaries in the Spanish language appears five times in Court opinions. *See Gonzalez*, 280 U.S. at 4, 15 (1929) (citing 2 DICCIONARIO DE LA ADMINISTRACION ESPAÑOLA 118 (Marcelo Martinez Alcubilla ed., 5th ed.)) (reporting information on terms of chaplaincy in the Roman Catholic Church); *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296, 315 (1908) (citing 3 DICCIONARIO DE LA ADMINISTRACION ESPAÑOLA 94 (Marcelo Martinez Alcubilla ed.)) (offering information on "the *concordats* of 1851 and 1859"); *Ainsa v. United States*, 184 U.S. 639, 646 (1902) (citing DICCIONARIO DE LEGISLACION Y JURISPRUDENCIA (Joaquin Escriche ed., Madrid 1847)) (discussing "*Poseedor*," "*Poseedor de buena fe*," and "*Poseedor de mala fe*" and the laws of Mexico regarding possessors); *United States v. Perot*, 98 U.S. 428 (1878) (citing VIDE DICCIONARIO UNIVERSEL DE HISTORIA Y DE GEOGRAFIA (Francisco de Paula Mellado ed., Madrid 1847)) (citing for support, although not apparently to define a word); *Fremont v. United States*, 58 U.S. (17 How.) 542 (1854) (referring to "1 CONEJO, DICCIONARIO

to rarely use Spanish-language dictionaries, even though the number of Spanish speakers in the United States increased 60% during the last decade of the twentieth century.¹¹⁹

In the twenty-first century, foreign terms defined by the Court generally were Latin, like “*eiusdem generis*”¹²⁰ and “prima facie evidence.”¹²¹ In defining those phrases, the dictionary of choice was not a Latin-language dictionary, but various editions of *Black’s Law Dictionary*.¹²² Similarly, Justice Ginsburg used *Black’s Law Dictionary* to define the French legal word “*renvoi*.”¹²³

Apart from foreign words or phrases, the Court sometimes defines non-legal technical words. For example, *Zuni Public School District No. 89 v. Department of Education*¹²⁴ addressed a federal school funding statute. In writing for the majority, Justice Breyer looked to *The Concise Oxford Dictionary of Mathematics* as well as general dictionaries to define the mathematical terms “n-th percentile,” “quantile,” “percentile,” “quartile,” and “decile.”¹²⁵ The Court then concluded that the various “definitions, mainstream and technical, all indicate that” specific action was required by the statute.¹²⁶

DERECHO REAL” but apparently not to define a word); *see also* *Strother v. Lucas*, 37 U.S. (12 Pet.) 410, 443 (1838) (referring to “[t]he dictionary of the Spanish academy”).

119. HYON B. SHIN WITH ROSALIND BRUNO, LANGUAGE USE AND ENGLISH SPEAKING ABILITY, UNITED STATES CENSUS BUREAU 3 (2003), <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>.

120. *James v. United States*, 550 U.S. 192, 218 (2007) (Scalia, J., dissenting) (citing BLACK’S LAW DICTIONARY 535 (7th ed. 1999)).

121. *Virginia v. Black*, 538 U.S. 343, 369 (2003) (Scalia, J., dissenting) (citing BLACK’S LAW DICTIONARY 1190 (6th ed. 1990)); *see also* *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 130 S. Ct. 1396, 1402 (2010) (Stevens, J.) (citing BLACK’S LAW DICTIONARY 1160 (9th ed. 2009)) (defining “*noscitur a sociis*”).

122. *See James*, 550 U.S. at 218 (Scalia, J., dissenting) (citing BLACK’S LAW DICTIONARY 535 (7th ed. 1999)); *Black*, 538 U.S. at 369 (Scalia, J., dissenting) (citing BLACK’S LAW DICTIONARY 1190 (6th ed. 1990)).

123. “*Renvoi* is “[t]he doctrine under which a court in resorting to foreign law adopts as well the foreign law’s conflict-of-laws principles, which may in turn refer the court back to the law of the forum.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 756 n.3 (2004) (Ginsburg, J., concurring) (quoting BLACK’S LAW DICTIONARY 1300 (7th ed. 1999)).

124. 550 U.S. 81 (2007).

125. *Id.* at 95, 99 (citing THE AMERICAN HERITAGE SCIENCE DICTIONARY 468 (2005); THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 378–79 (3d ed. 2005); A DICTIONARY OF ECONOMICS, 348–49 (2d ed. 2002); MERRIAM-WEBSTER’S MEDICAL DESK DICTIONARY 612 (2002); WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1675 (1961)).

126. *Id.* at 95. In another use of a specialized dictionary, Justice Alito used *The New Grove Dictionary of Music and Musicians* to look up composers such as Schubert and Brahms to support the assertion that they “composed music for the *Ave Maria*.” *Nurre v. Whitehead*, 130 S. Ct. 1937–38 n.1 (2010) (Alito, J., dissenting from denial of certiorari) (citing 22 THE NEW GROVE DICTIONARY OF MUSIC AND MUSICIANS 670, 718 (Schubert); 10 *id.* at 215, 233

In a few other cases, Justices turned to specialized dictionaries during the past decade. For example, in separate cases, Justice Alito used the *Dictionary of Accounting* to define “net income,”¹²⁷ while Justice Souter used the *Dictionary of Accounting* to define “cost.”¹²⁸ In another case Justice Scalia used *The New Palgrave Dictionary of Money and Finance* to define “mortgage-servicing rights.”¹²⁹

There are, undoubtedly, several possible explanations for the Court’s infrequent use of specialized and foreign language dictionaries. The main reason appears to be that, despite the continued use of foreign and technical terms, the Court’s interpretations of the Constitution and statutes do not involve such terms. Another reason may be that the Court is, simply put, less comfortable in relying upon dictionaries that do not have the history or familiarity of dictionaries commonly relied upon by the Court. As noted by one commentator, for specialized or foreign-language dictionaries, “the criteria for selecting entries are often uncertain.”¹³⁰ Regardless of the reasons, and notwithstanding that the Court first cited a dictionary in 1830 by relying upon “[t]he best French dictionary we have,” the Court continues to cite specialized and foreign language dictionaries rarely.¹³¹

III. THE COURT’S PROCESS FOR USING DICTIONARIES IN THE TWENTY FIRST CENTURY

The Court goes through several steps in using a dictionary to define a word or phrase, each of which can be critically important.¹³² As Mark Twain explained, “the difference between the *almost-right* word and the *right* word is really a large matter—’tis the difference between the

(Gounod); 26 *id.* at 462 (Verdi); 17 *id.* at 319 (Mozart); 8 *id.* at 131 (Elgar); 22 *id.* at 130 (Saint-Saens); 21 *id.* at 763 (Rossini); 4 *id.* at 208 (Brahms); 24 *id.* at 560 (Stravinsky); 4 *id.* at 480 (Bruckner) (2d ed. 2001)). The case involved a free speech issue regarding graduating high school students who wished to perform *Ave Maria* at their graduation. *Id.* at 1937–38.

127. *United States v. Santos*, 553 U.S. 507, 540 (2008) (Alito, J., dissenting) (citing *DICTIONARY OF ACCOUNTING* 88 (R. Estes ed., 1981)).

128. *Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467, 500 (2002) (citing *DICTIONARY OF ACCOUNTING* 32 (R. Estes ed., 2d ed. 1985)). In the same case, Justice Souter also used the *MIT Dictionary of Modern Economics* to define “profit.” *Id.* at 500 n.19 (citing *MIT DICTIONARY OF MODERN ECONOMICS* 310 (D. Pearce ed., 1994)).

129. *Morrison v. Nat’l Australia Bank, Ltd.*, 130 S. Ct. 2869, 2875 (2010) (citing 2 *THE NEW PALGRAVE DICTIONARY OF MONEY AND FINANCE* 817 (P. Newman et al. eds., 1992)).

130. LANDAU, *supra* note 106, at 41.

131. *See infra* app. c; *see also Patapasco Ins. Co. v. Coulter*, 28 U.S. (3 Pet.) 222, 230 (1830); *The Lexicon Has Become a Fortress*, *supra* note 2, at app. c; *The Lexicon Remains a Fortress*, *supra* note 2, at app. c.

132. *The Lexicon Has Become a Fortress*, *supra* note 2, at 264.

lightning-bug and the lightning.”¹³³ Thus, the choices made at each step are important when one looks up a definition. First, the word or phrase to be defined must be selected.¹³⁴ Second, the proper type of dictionary needs to be identified, primarily focusing on whether to use a general usage or a specific usage dictionary.¹³⁵ Third, the proper specific dictionary or dictionaries and edition(s) must be identified.¹³⁶ Finally, the appropriate definition must be selected, recognizing that there typically is more than one possible definition provided in a specific dictionary.¹³⁷ As we noted previously, “The Court has a great deal of discretion in each step of this process and, at times, decisions made during each step have determined the outcome of a case. Unfortunately, each step in this process has resulted in debate and confusion.”¹³⁸ In the new century, these problems persist.

A. *Selecting a Word*

One observer recently noted that British courts tend to use dictionaries “in order to probe the meanings of the simplest words.”¹³⁹ That tendency is evident in United States Supreme Court decisions.¹⁴⁰ The words and phrases defined by reference to the dictionary in the new century by the United States Supreme Court are, for the most part, comparatively simple words and phrases.

For example, recent opinions use dictionaries to define “assist,”¹⁴¹ “arrange,”¹⁴² “care,”¹⁴³ “relief,”¹⁴⁴ “oppose,”¹⁴⁵ “now,”¹⁴⁶ “also,”¹⁴⁷ “any,”¹⁴⁸

133. THE ART OF AUTHORSHIP 85, 87, 88 (George Bainton ed., N.Y., D. Appleton & Co. 1890) (quoting Mark Twain).

134. *The Lexicon Has Become a Fortress*, *supra* note 2, at 264–67.

135. *Id.* at 267–69.

136. *Id.* at 269–74.

137. *Id.* at 274–76.

138. *Id.* at 264.

139. Munday, *supra* note 5, at 35.

140. See generally *The Lexicon Has Become a Fortress*, *supra* note 2, at app. a.

141. *Negusie v. Holder*, 129 S. Ct. 1159, 1179 (2009) (Thomas, J., dissenting) (quoting WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 109 (1991); OXFORD AMERICAN DICTIONARY 36 (1980); BLACK’S LAW DICTIONARY 111 (5th ed. 1979)).

142. *Burlington N. and Santa Fe Ry. Co. v. United States*, 129 S. Ct. 1870, 1879 (2009) (citing MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 64 (10th ed. 1993)).

143. *Abbott v. Abbott*, 130 S. Ct. 1983, 2000 (2010) (Stevens, J., dissenting) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 338 (1986)).

144. *United States v. Denedo*, 129 S. Ct. 2213, 2219 (2009) (citing BLACK’S LAW DICTIONARY 1317 (8th ed. 2004)).

145. *Crawford v. Nashville*, 129 S. Ct. 846, 850 (2009) (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY 1710 (2d ed. 1958)).

146. *Carcieri v. Salazar*, 129 S. Ct. 1058, 1064 (2009) (quoting WEBSTER’S NEW

and “if.”¹⁴⁹ While there is the occasional opinion that uses a dictionary for relatively uncommon, legal, or Latin words—such as “hydrography”¹⁵⁰ or “*eiusdem generis*”¹⁵¹—the Court has overwhelmingly turned to dictionaries to define words familiar to most people. The question, then, is why does the Court feel compelled to look to dictionaries to define simple or common words or phrases?

At least at first blush, it seems odd that the Court would feel compelled to resort to the dictionary to define a word as common and generally understood as “if” or “now.” By contrast, however, as a numerical matter, it makes sense that the Court would use dictionaries for more common words or phrases. To state the obvious, common words and phrases are used more often than uncommon words or phrases in the opinions, contracts, statutes, and Constitutional provisions that the Court is asked to construe. Furthermore, even when unusual words do appear, they are more likely than common words to be defined within opinions, statutes, and contracts for the very reason that they are uncommon. Moreover, because most recent dictionaries are descriptive (attempting to describe how words are actually used) as opposed to proscriptive (how words should be used), the use of contemporary dictionaries could be most useful to the Court to define words or phrases in common usage at the relevant time.

Apart from the Court’s tendency to use dictionaries to define common words, identifying the precise word to define has caused controversy. As we noted, “Although the decision regarding which word or phrase to define may not appear to be difficult, it can, nonetheless, cause serious disagreement among the Justices.”¹⁵² For

INTERNATIONAL DICTIONARY 1671 (2d ed. 1934); BLACK’S LAW DICTIONARY 1262 (3d ed. 1933)).

147. *Scarborough v. Principi*, 541 U.S. 401, 424 n.1 (2004) (Thomas, J., dissenting) (citing WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 75 (1991); BLACK’S LAW DICTIONARY 77 (6th ed. 1990)).

148. A dictionary was used to define the word “any” twice. *See Norfolk S. Ry. Co. v. James N. Kirby, Pty, Ltd.*, 543 U.S. 14, 31 (2004) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976))); *see also Small v. United States*, 544 U.S. 385, 396 (2005) (Thomas, J., dissenting) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976))).

149. *Dodd v. United States*, 545 U.S. 353, 358 (2005) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1124 (1993)).

150. *Rapanos v. United States*, 547 U.S. 715, 771 (2006) (Kennedy, J., concurring) (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY 1221 (2d ed. 1954)).

151. *James v. United States*, 550 U.S. 192, 218 (2007) (Scalia, J., dissenting) (quoting BLACK’S LAW DICTIONARY 535 (7th ed. 1999)).

152. *The Lexicon Has Become a Fortress*, *supra* note 2, at 264.

example, sometimes the majority will focus on one word or phrase and the dissent will focus on a different word or phrase. This basic, core difference in analysis has profound implications and has continued to be an issue in the Court's use of dictionaries in the twenty-first century.

One recent case where the majority and dissent defined different words was *Ali v. Federal Bureau of Prisons*.¹⁵³ In *Ali*, an inmate sued the Federal Bureau of Prisons under the Federal Tort Claims Act, alleging that defendant's officers lost the inmate's property during a transfer from one prison to another.¹⁵⁴ At issue was a statutory directive that the United States did not waive sovereign immunity for "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer."¹⁵⁵ The plaintiff inmate argued that "any other law enforcement officer" only applied to officers acting in a capacity relating to customs or excise taxes.¹⁵⁶

The majority opinion in *Ali*, written by Justice Thomas, relied on a prior case where the Court relied upon *Webster's Third New International Dictionary* to define "any" as having a broad meaning.¹⁵⁷ Thus, the majority reasoned, "any law enforcement officer" was not limited by the previous phrase in the statute in the way that the plaintiff argued.¹⁵⁸ Relying on this dictionary definition of "any," the majority held that sovereign immunity was not waived.¹⁵⁹

The dissenting opinion in *Ali*, written by Justice Kennedy, focused on statutory interpretation principles, legislative history, and the text of the statute.¹⁶⁰ Criticizing the majority's focus on the dictionary definition of "any," the dissent noted a "longstanding recognition that a single word must not be read in isolation but instead defined by reference to its statutory context."¹⁶¹ The dissent then observed, "The word 'any' can mean 'different things depending upon the setting.'"¹⁶²

Despite this criticism of the majority's focus on a single word, the

153. 552 U.S. 214 (2008).

154. *Id.* at 216.

155. *Id.* at 218–19 (quoting 28 U.S.C. § 2680(c) (2006)) (emphasis added).

156. *Id.* at 218.

157. *Id.* at 218–19 (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976))).

158. *Id.* at 220.

159. *Id.* at 219–20.

160. *Id.* at 234–38 (Kennedy, J., dissenting).

161. *Id.* at 234.

162. *Id.* (quoting *Nixon v. Mo. Mun. League*, 541 U.S. 125, 132 (2004)).

dissent went on to define a word by citing dictionaries. Although noting that the issue of whether the inmate's property was "detained" within the meaning of the statute had not been raised, the dissent referenced two dictionaries to define the word "detention" as used in the statute.¹⁶³ Thus, the majority and dissent in *Ali* are a recent example of cases showing that "even the simple process of isolating the specific term or phrase to be defined can cause disagreement and controversy."¹⁶⁴

B. Selecting a Dictionary Type, Specific Dictionary, and Edition

In the first decade of the twenty-first century, no apparent standards have been delineated, applied or followed by the Court for deciding which type of dictionary, which dictionary, or which dictionary edition should be used to define words. There are at least 15,000 various types of dictionaries of the English language.¹⁶⁵ Accordingly, the lack of judicial guidance in selecting among those dictionaries creates substantial uncertainty for all involved.

At times, it may be that Justices review various dictionaries until they find a common definition to approximate general usage for the word or phrase during the relevant time period. More pragmatically, it may be that Justices cite specific dictionaries because they have those books in their Chambers. More cynically, some have suggested that judges review dictionaries until they find a definition that they like.¹⁶⁶

Regardless of the explanation, several recent opinions highlight the apparent randomness in dictionary use, where different dictionaries are cited to define a common term. Writing for the majority in *Hibbs v. Winn*,¹⁶⁷ Justice Ginsburg cited petitioner's brief which, in turn, quoted the 1934 edition of *Webster's New International Dictionary of the English Language*, Second Edition, to define the word "assessment" as used in the 1937 Tax Injunction Act (TIA).¹⁶⁸ In doing so, the majority found that the word "assessment" had a comparatively narrower meaning: "If, as the [petitioner] asserts, the term 'assessment,' by itself, signified '[t]he entire plan or scheme fixed upon for charging or

163. *Id.* at 235 (quoting BLACK'S LAW DICTIONARY 459 (7th ed. 1999); AMERICAN HERITAGE DICTIONARY 494 (4th ed. 2000)).

164. *The Lexicon Has Become a Fortress*, *supra* note 2, at 267.

165. GREEN, *supra* note 95, at 22.

166. *See, e.g.*, William N. Eskridge, Jr., *No Frills Textualism*, 119 HARV. L. REV. 2041, 2055-56 (2006) (reviewing ADRIAN VERMEULE, *JUDGING UNDER UNCERTAINTY* (2006)) (noting that judges may shop "for support in various dictionaries").

167. 542 U.S. 88 (2004).

168. *See id.* at 101 (citing Petitioner's Brief (quoting *Webster's New International Dictionary of the English Language* (2d ed. 1934))).

taxing,’ . . . the [TIA] would not need the words ‘levy’ or ‘collection’; the term ‘assessment,’ alone, would do all the necessary work.”¹⁶⁹

In dissent, however, Justice Kennedy criticized the Ninth Circuit Court of Appeals for relying on the *Random House Dictionary of the English Language* (1979), “a dictionary that was unavailable when the TIA was enacted.” He also criticized that court for “rel[ying] not on the definition of the term under consideration, ‘assessment,’ but on the definition of the term’s related verb form, ‘assess.’”¹⁷⁰ “Had [the panel] looked in a different lay dictionary, [it] would have found a definition contrary to the one it preferred. . . . Had the panel considered tax treatises and law dictionaries . . . it would have found much in accord with this broader definition.”¹⁷¹ The dissent then cited the 1927 edition of *Webster’s New International Dictionary*, explaining that “[c]ontemporaneous dictionaries from the time of the TIA’s enactment define assessment in expansive terms. They would broaden any understanding of the term, and so the Act’s bar.”¹⁷² Although observing that “[t]he terms ‘enjoin, suspend, or restrain’ require little scrutiny,” the dissent added that “[i]t is noteworthy that the term ‘enjoin’ has not just its meaning in the restrictive sense but also has meaning in an affirmative sense. The *Black’s Law Dictionary* current at the TIA’s enactment gives as a definition of the term, ‘to require; command; positively direct.’”¹⁷³

Taken together, in construing statutory language enacted in 1937, the *Hibbs* majority and dissent: (1) noted that petitioner cited a general usage dictionary published in 1934; (2) noted criticism of the Ninth Circuit’s citation of a general usage dictionary published in 1979; (3) favorably cited a general usage dictionary published in 1927; and (4) favorably quoted a law dictionary published in 1933 to define a different word. Perhaps due to this apparent scattershot approach, in a concurring opinion, Justice Stevens tried to summarize the Court’s reasoning:

[P]rolonged congressional silence in response to a settled interpretation of a federal statute provides powerful support for maintaining the status quo. In statutory

169. See *id.* (citing Petitioner’s Brief (quoting *Webster’s New International Dictionary of the English Language* (2d ed. 1934))).

170. See *id.* at 116 (Kennedy, J., dissenting).

171. See *id.* (quoting *Winn v. Killian*, 321 F.3d 911, 912 (9th Cir. 2003) (Kleinfeld, J., dissenting)).

172. See *id.* at 117 (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY 139 (1927)).

173. See *id.* at 118 (citing BLACK’S LAW DICTIONARY 663 (3d ed. 1933)).

matters, judicial restraint strongly counsels waiting for Congress to take the initiative in modifying rules on which judges and litigants have relied. In a contest between the dictionary and the doctrine of *stare decisis*, the latter clearly wins. The Court's fine opinion, which I join without reservation, is consistent with these views.¹⁷⁴

Unfortunately, other than a clear statement in a concurrence that the doctrine of *stare decisis* trumps a dictionary definition, and general consensus that contemporaneous dictionaries are preferable to dictionaries published after statutory enactments, *Hibbs* provides little guidance on the proper selection of dictionaries.

Another recent case where the Justices considered several dictionaries is *Begay v. United States*,¹⁷⁵ where the Court construed a provision of the Armed Career Criminal Act of 1984. The statute defined a violent felony as, inter alia, "burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another."¹⁷⁶ The Justices focused on the meaning of the statutory term "otherwise," noting that "the statute places the word 'otherwise,' just after the examples, so that the provision covers a felony that is one of the example crimes 'or otherwise involves conduct that presents a serious potential risk of physical injury.'"¹⁷⁷ Distinguishing the analysis of the dissent, the majority opinion written by Justice Breyer reasoned the following:

But we cannot agree with the Government that the word "otherwise" is *sufficient* to demonstrate that the examples do not limit the scope of the clause. That is because the word "otherwise" *can* (we do not say *must*, cf. *post*, at 151 (SCALIA, J., concurring in judgment)) refer to a crime that is similar to the listed examples in some respects but different in others—similar say in respect to the degree of risk it produces, but different in respect to the "way or manner" in which it produces that risk. *Webster's Third New International Dictionary* 1598 (1961) (defining "otherwise" to mean "in a different way or manner").¹⁷⁸

174. *See id.* at 112–13 (Stevens, J., concurring) (citations omitted) (emphasis in original).

175. 553 U.S. 137 (2008).

176. *Id.* at 140 (quoting 18 U.S.C. § 924(e)(2)(B)(ii) (2000)).

177. *Id.* at 144 (quoting 18 U.S.C. § 924(e)(2)(B)(ii) (2000)).

178. *Id.* (citation omitted).

Citing to the 1957, Second Edition of *Webster's New International Dictionary*—which defines “otherwise” to include “in another way or in other ways”—Justice Scalia’s concurrence stated “[a]s the Court correctly notes, the word ‘otherwise’ in this context means ‘in a different way or manner.’”¹⁷⁹

In dissent, Justice Alito cited to the 2002 edition of *Webster's Third New International Dictionary* and the 1989 *Oxford English Dictionary*, finding that the felony involved “was ‘serious,’ i.e., ‘significant’ or ‘important.’”¹⁸⁰ Coming to a conclusion contrary to the majority, the dissent used these same sources to define “otherwise” to mean “in a different manner.”¹⁸¹ As with *Hibbs*, the opinions in *Begay* provide little guidance on the proper selection of dictionaries or dictionary editions.

Notwithstanding the lack of express, meaningful guidance, and regardless of the proper type or publisher of dictionary selected, there appear to be legitimate arguments to use specific editions of a selected dictionary. The apparent rationale underlying the use of specific dictionaries is that the drafters of the word or phrase to be defined not only had access to, but actually referred to, a dictionary definition available when the language was drafted. If that assumption is accepted, Justices who advocate using dictionaries to interpret the Constitution’s original meaning certainly have a legitimate reason to use dictionary editions from years around—ideally, just before—the time of the drafting of the provision at issue. The same analysis would apply to dictionaries published just before statutory enactments, judicial decisions, or contract provisions. Other than this implicit rationale, the Justices often give no explanation for choosing one dictionary edition over another.

Although the Justices have offered little explicit guidance on choosing dictionaries, there are certain dictionaries that are used more often than others. For general usage dictionaries, *Webster's Third New International Dictionary* is most frequently cited by the Justices, and the next most cited general dictionary is *Webster's Second International Dictionary*.¹⁸² The most frequently cited law dictionary is *Black's Law*

179. *Id.* at 151 (Scalia, J., concurring) (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY 1729 (2d ed. 1957)).

180. *Id.* at 156 (Alito, J., dissenting) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2073 (2002); 15 OXFORD ENGLISH DICTIONARY 15 (2d ed. 1989)).

181. *Id.* at 159 (citing 10 OXFORD ENGLISH DICTIONARY 984 (2d ed. 1989); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1598 (2002)).

182. *The Lexicon Has Become a Fortress*, *supra* note 2, at 262–63; *see also The Lexicon Remains a Fortress*, *supra* note 2, at 52.

Dictionary.¹⁸³ The frequency of the Court's use of these dictionaries impact not only the Court's decisions, but also decisions by other courts. For example, one recent United States District Court decision relied upon *Webster's Third New International Dictionary* "because it is the source most often relied upon by the Supreme Court for federal statutory interpretation."¹⁸⁴

C. Selecting a Specific Definition

After deciding what word to define, what type of dictionary to use, what specific dictionary to use and what edition to use, Justices then must choose among various definitions, given that dictionaries often provide more than one definition for a word. Accordingly, even if the Court had provided express guidance and certainty in deciding the issues leading up to which definition to use, the key—often outcome-determinative—question of the proper definition remains.

*United States v. Santos*¹⁸⁵ highlights the fact that dictionaries often have contrasting definitions, with the plurality and the dissent each indicating that the case could not be decided by choosing one definition over another. *Santos* involved the issue of whether the word "proceeds" in a money laundering statute meant "profits" or "receipts."¹⁸⁶ The plurality, written by Justice Scalia, found that "[p]roceeds" can mean either 'receipts' or 'profits.' Both meanings are accepted, and have long been accepted, in ordinary usage."¹⁸⁷ The plurality rejected the United States' argument that receipts (rather than profits) was the proper

183. *The Lexicon Has Become a Fortress*, *supra* note 2, at 263; *see also The Lexicon Remains a Fortress*, *supra* note 2, at 52.

184. *Dugong v. Rumsfeld*, No. C 03-4350 MHP, 2005 WL 522106, at *6 n.2 (N.D. Cal. Mar. 2, 2005) (citing *The Lexicon Has Become a Fortress*, *supra* note 2, at 262–63). The court used the dictionary to define the word "equivalent" in 16 U.S.C. § 470a-2. *Id.*

185. *United States v. Santos*, 553 U.S. 507 (2008).

186. *Id.* at 511 (Scalia, J., plurality) (construing 18 U.S.C. § 1956(a)(1)(A)(i)). Section 1956(a)(1)(A)(i) reads:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity... (A)(i) with the intent to promote the carrying on of specified unlawful activity ... shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

Id. at 511 n.1.

187. *Id.* at 511 (citing 12 OXFORD ENGLISH DICTIONARY 544 (2d ed. 1989); RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1542 (2d ed. 1987); WEBSTER'S NEW INTERNATIONAL DICTIONARY 1972 (2d ed. 1957)).

definition: “The Government contends that dictionaries generally prefer the ‘receipts’ definition over the ‘profits’ definition, but any preference is too slight for us to conclude that ‘receipts’ is the *primary* meaning of ‘proceeds.’”¹⁸⁸ Although the plurality ultimately concluded that “profits” was the proper definition for proceeds, that conclusion was based on applying the rule of lenity to an ambiguous word, not on dictionary definitions.¹⁸⁹

The plurality did cite to dictionary definitions and used context to address a point made by a four-Justice dissent, which the plurality called the “principal dissent,” addressing other terms:

The principal dissent suggests that a solution to the merger problem may be found in giving a narrow interpretation to the “promotion prong” of the statute: A defendant might be deemed not to “promote” illegal activity “by doing those things . . . that are needed merely to keep the business running,” . . . because promotion (presumably) means doing things that will cause a business to grow. See [*Webster’s New International Dictionary* 1981 (2d ed. 1957)] (giving as one of the meanings of “promote” “[t]o contribute to the growth [or] enlargement” of something). . . . The federal money-laundering statute, however, bars not the bare act of promotion, but engaging in certain transactions “with the intent to promote *the carrying on* of specified unlawful activity.” In that context the word naturally bears one of its other meanings, such as “[t]o contribute to the . . . prosperity” of something, or to “further” something. [*Webster’s New International Dictionary* 1981 (2d ed. 1957)] Surely one promotes “the carrying on” of a gambling enterprise by merely assuring that it continues in business.¹⁹⁰

The plurality supported this conclusion relying on analysis apart from dictionary definitions.¹⁹¹

188. *Id.*

189. *Id.* at 514. In concluding that the term was ambiguous, the plurality applied other principles of statutory interpretation. *Id.* at 511–12. “Since context gives meaning, we cannot say the money-laundering statute is truly ambiguous until we consider ‘proceeds’ not in isolation but as it is used in the federal money-laundering statute.” *Id.* at 512.

190. *Id.* at 517–18 (citations omitted).

191. *Id.* at 518. Justice Scalia continued:

By contrast, the principal dissent, written by Justice Alito, placed more weight on the dictionary definitions of “proceeds.” The principal dissent began with the following:

Fairly read, the term “proceeds,” as used in the principal federal money laundering statute, 18 U. S. C. § 1956(a), means “the total amount brought in,” the primary dictionary definition. *Webster’s Third New International Dictionary* 1807 (1976). *See also* *Random House Dictionary of the English Language* 1542 (2d ed. 1987) (“the total sum derived from a sale or other transaction”). The plurality opinion, however, makes no serious effort to interpret this important statutory term. Ignoring the context in which the term is used, the problems that the money laundering statute was enacted to address, and the obvious practical considerations that those responsible for drafting the statute almost certainly had in mind, that opinion is quick to pronounce the term hopelessly ambiguous and thus to invoke the rule of lenity. Concluding that “proceeds” means “profits,” the plurality opinion’s interpretation would frustrate Congress’ intent and maim a statute that was enacted as an important defense against organized criminal enterprises.¹⁹²

The principal dissent argued that the plain meaning of the statute and dictionary definitions supported a preference for the “receipts” definition of the word “proceeds.”¹⁹³ But the principal dissent did “not suggest that the question presented in this case can be answered simply by opening a dictionary. When a word has more than one meaning, the meaning that is intended is often made clear by the context in which the word is used”¹⁹⁴ Accordingly, the principal dissent turned to

In any event, to believe that this “narrow” interpretation of “promote” would solve the merger problem one must share the dissent’s misperception that the statute applies just to the conduct of ongoing enterprises rather than individual unlawful acts. If the predicate act is theft by an individual, it makes no sense to ask whether an expenditure was intended to “grow” the culprit’s theft business. The merger problem thus stands as a major obstacle to the dissent’s interpretation of “proceeds.”

Id.

192. *Id.* at 531 (Alito, J., dissenting).

193. *Id.* at 532.

194. *Id.*

statutory interpretation principles and focused on context and legislative intent to support the “receipts” definition, arguing that the plurality referred too quickly to the rule of lenity.¹⁹⁵

These competing opinions in *Santos* provide a helpful example of the different approaches used by the Court when considering, relying upon and applying specific dictionary definitions. *Santos* also provides an excellent example of how focusing on different definitions of the same word can cause substantial disagreement. Unfortunately, what *Santos* does not provide is a helpful analytical framework that would allow attorneys, parties, and other courts to address how to select among competing dictionary definitions.

As another point of reference, one of Justice Stevens’ final opinions on the Court addressed the definition selection issue in a dissent joined by Justices Thomas and Breyer. In *Abbott v. Abbott*,¹⁹⁶ the majority opinion written by Justice Kennedy cited to the second definition, but relied upon the first definition, of “determine” in the 1954, Second Edition of *Webster’s New International Dictionary* to define the word as used in the Hague Convention on the Civil Aspects of International Child Abduction (“Convention”).¹⁹⁷ In dissent, Justice Stevens concluded that the second definition of “determine” applied and argued that the Court should not automatically select the first definition in a dictionary to define a word.¹⁹⁸ In doing so, the dissent gave an example of how the dictionary’s fifth definition of another word in the Convention (“care”) clearly would apply instead of the first definition listed.¹⁹⁹ The dissent then gave one of the Court’s most direct statements on the subject of selecting definitions: “The point is only that context, as well as common sense, matters when selecting among possible definitions.”²⁰⁰

IV. THE COURT’S RECENT USE OF SUBJECT-MATTER CONSTRUCTION PRINCIPLES INVOLVING DICTIONARIES

The Court uses dictionaries to define words and phrases from a variety of different sources, including the Constitution, statutes, and court opinions. The Court’s most common (and most controversial) use

195. *Id.* at 531–32.

196. *Abbott v. Abbott*, 130 S. Ct. 1983 (2010).

197. *Id.* at 1991 (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY 711 (2d ed. 1954)).

198. *Id.* at 2002 n.4 (Stevens, J., dissenting) (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY 771 (2d ed. 1954)).

199. *Id.* (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY 405 (2d ed. 1954)).

200. *Id.*

of dictionaries is in interpreting the United States Constitution and in interpreting statutory language.

A. Constitutional Words or Phrases

Despite the existence of the United States Constitution for more than two-hundred years, the Court's interpretation of its terminology still has the Justices citing dictionaries. One commentator notes that "there [has] . . . been a growing reliance on dictionaries to help establish the original meaning of provisions of the Constitution."²⁰¹ Originalists, who seek to enforce the Constitution's original meaning, "emphasize old dictionaries and other evidence of how the words in the Constitution were used at the time of the founding."²⁰² Justice Thomas has been called the leading advocate on the Court for the use of dictionaries to interpret the Constitution,²⁰³ and the frequent reliance on dictionary definitions by Justices Thomas and Scalia has been attributed to constitutional originalist views.²⁰⁴

Regardless of the reason, Justices Scalia and Thomas cite dictionaries at a higher rate than any other Justice, and they often do so in construing the Constitution and statutory language.²⁰⁵ For example, in *District of Columbia v. Heller*, the Court addressed whether the Second Amendment of the United States Constitution confers on an individual the right to keep and bear arms.²⁰⁶ In doing so, the majority opinion, written by Justice Scalia, construed the following constitutional text: "A well regulated Militia, being necessary to the security of a free State, the

201. McDowell, *supra* note 52, at 259.

202. Caleb Nelson, *Originalism and Interpretive Conventions*, 70 U. CHI. L. REV. 519, 519 (2003) (citing U.S. DEP'T OF JUSTICE, OFFICE OF LEGAL POLICY, ORIGINAL MEANING JURISPRUDENCE: A SOURCEBOOK 9 (1987)).

203. See McDowell, *supra* note 52, at 259; see also Gregory E. Maggs, *Which Original Meaning of the Constitution Matters to Justice Thomas?*, 4 N.Y.U. J. L. & LIBERTY 494, 505 (2009) (noting that while Justice Thomas in some cases gives weight to the original intent of the Framers, in various other cases "Justice Thomas has also consulted period dictionaries and other secondary sources to determine the original objective meaning of terms in the Constitution").

204. See McDowell, *supra* note 52, at 259; see, e.g., Thomas B. Colby & Peter J. Smith, *Living Originalism*, 59 DUKE L.J. 239, 302-03 (2009) (noting that Justice Thomas's brand of originalism that sometimes focuses on original intent and sometimes on original understanding of the Constitution's meaning, allows him to broaden "his ability to find . . . support" among various sources ranging from the drafting history of the Constitution to post-enactment statements to eighteenth-century dictionaries).

205. See *infra* app. b; see also *The Lexicon Has Become a Fortress*, *supra* note 2, at 262, app. b; *The Lexicon Remains a Fortress*, *supra* note 2, at 52, app. c.

206. 128 S. Ct. 2783 (2008).

right of the people to keep and bear Arms, shall not be infringed.”²⁰⁷

In analyzing the Second Amendment, the majority referenced five different dictionaries—both general usage and legal—to define six words.²⁰⁸ In a particularly significant example of the Court’s reliance on dictionaries to define constitutional terms, the majority in *Heller* used dictionaries to define the constitutional terms “regulate,” “militia,” “keep,” and “arms” as well as two terms that do not appear in the Second Amendment (“carry” and “against”).²⁰⁹

The majority referred to dictionaries including Timothy Cunningham’s 1771 *A New and Complete Law Dictionary* and Samuel Johnson’s 1773 *Dictionary of the English Language*, for “[t]he 18th-century meaning” of “arms” as used in the Second Amendment and concluded that “arms” is not limited to weapons used by the military.²¹⁰ The majority referenced an example from Cunningham’s dictionary including a sentence using the phrase “bear arms” that was unrelated to military affairs.²¹¹ In doing so, the majority took exception to a definition of “bear arms” adopted by the dissent because, among other things, “[n]o dictionary has ever adopted that definition, and we have been apprised of no source that indicates that it carried that meaning at the time of the founding.”²¹²

Two different dissenting opinions focused on a disagreement with the majority about the definition of “arms.”²¹³ One dissent, written by Justice Stevens, referenced an identical definition quoted by the majority from Johnson’s dictionary to find that “bear arms” and “arms,”

207. U.S. CONST. amend. II; see *Heller*, 128 S. Ct. at 2788.

208. *Heller*, 128 S. Ct. at 2791–94, 2799–2800 (citing 1 *DICTIONARY OF THE ENGLISH LANGUAGE* 107, 161, 1619 (Samuel Johnson ed., London, W. Strahan 4th ed. 1773) (defining “arms,” “keep,” “carry,” and “regulate”); 1 *A NEW AND COMPLETE LAW DICTIONARY* (Timothy Cunningham ed., London, His Majesty’s Law Printers 2d ed. 1771) (defining “arms”); *AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE* (photo. reprint 1989) (Noah Webster ed., 1828) (defining “arms,” “keep,” “carry,” “militia”); *A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE* (Thomas Sheridan ed., London 1796) (defining “carry”); 2 *OXFORD ENGLISH DICTIONARY* 20, 21 (2d ed. 1989) (defining “carry” and “against”)).

209. *Id.* Justice Scalia explained, “At the time of the founding, as now, to ‘bear’ meant to ‘carry.’” *Id.* at 2793.

210. *Id.* at 2791–93.

211. *Id.* at 2791 (“Servants and labourers shall use bows and arrows on *Sundays*, &c. and not bear other arms.”).

212. *Id.* at 2794.

213. *Id.* at 2828 (Stevens, J., dissenting) (citing 1 *OXFORD ENGLISH DICTIONARY* 634 (2d ed. 1989)) (defining “arms”); *id.* at 2849 (Breyer, J., dissenting) (citing 1 *DICTIONARY OF THE ENGLISH LANGUAGE* 107, 161, 1619 (Samuel Johnson ed., London, W. Strahan 4th ed. 1773) (defining “firearms”)).

as used in the Second Amendment, refers to military—not civilian—possession of arms.²¹⁴ This dissent also cited a 1989 edition of the *Oxford English Dictionary* for support.²¹⁵ Another dissent, written by Justice Breyer, cited to Johnson’s dictionary to define “firearms” in discussing the regulation of firearms in colonial cities.²¹⁶

Regarding the use of dictionaries in *Heller*, two points are particularly instructive. First, the various opinions did not offer any particularly helpful guidance in addressing the proper role of dictionaries in the Court’s analysis. Second, the majority cited to dictionaries as a starting point to consider the origins of the terms and use of words at the time of the drafting of the Second Amendment, and then analyzed context and other materials, including “analogous arms-bearing rights in state constitutions,” post-ratification commentary, pre-Civil War case law, post-Civil War legislation, commentary, and case law.²¹⁷ Additionally, Justice Stevens’ dissent considered the origins of the words and other uses of the words contemporaneous with the drafting of the Second Amendment.²¹⁸ In their opinions, the Justices took some steps to recognize the inherent limits in using dictionaries to define words and to recognize that dictionaries may provide an appropriate starting point (but cannot provide the end point) in defining words.²¹⁹

In *Crawford v. Washington*,²²⁰ as in *Heller*, dictionary definitions served a significant role in interpreting the United States Constitution.

214. *Id.* at 2828 (Stevens, J., dissenting) (quoting 1 A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed., London, W. Strahan 1755)).

215. *Id.* (Stevens, J., dissenting) (quoting 1 OXFORD ENGLISH DICTIONARY 634 (2d ed. 1989)).

216. *Id.* at 2849 (Breyer, J., dissenting) (quoting 1 A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed., London, W. Strahan 4th ed. 1773)).

217. *Id.* at 2791–2822.

218. *Id.* at 2828–29 n.9 (Stevens, J., dissenting).

219. See *The Lexicon Has Become a Fortress*, *supra* note 2, at 294–301.

[T]he Court should rely on dictionaries in beginning its definition of terms to help fully exhaust all possible definitions of what the sender may have meant the message to mean, or how the receiver could have construed the message. Then, the Court should use other factors such as context, conduct, purpose and history to determine the appropriate meaning. This approach properly reflects the limits of dictionaries, the importance of construing language in context and, if correctly applied, should result in decisions accurately reflecting the appropriate definition of the term to be defined.

Id. at 301.

220. 541 U.S. 36 (2004).

Crawford construed the Confrontation Clause of Sixth Amendment to the Constitution, enacted in 1791, which provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”²²¹ The issue in *Crawford* was whether the Court’s prior holdings—“that an unavailable witness’s out-of-court statement may be admitted so long as it has adequate indicia of reliability” by falling “within a ‘firmly rooted hearsay exception’” or bearing “particularized guarantees of trustworthiness”—properly reflected the requirements of the Confrontation Clause.²²²

The majority decision in *Crawford*, written by Justice Scalia, first noted:

The Constitution’s text does not alone resolve this case. One could plausibly read ‘witnesses against’ a defendant to mean those who actually testify at trial, those whose statements are offered at trial, or something in-between. We must therefore turn to the historical background of the Clause to understand its meaning.²²³

The Court then discussed the experience and historical concerns in England, including the infamous trial of Sir Walter Raleigh for treason without the benefit of confrontation, leading up to statutory and judicial reforms that “developed a right of confrontation that limited these abuses.”²²⁴ The Court then turned to the experience in Colonial America, noting “[m]any declarations of rights adopted around the time of the Revolution guaranteed a right of confrontation,” adding that “[e]arly state decisions shed light upon the original understanding of the common law right.”²²⁵

This historical background, the majority observed, supported inferences that the Confrontation Clause was designed to address the “use of *ex parte* examinations as evidence against the accused” and the Framers of the Confrontation Clause “would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity for cross-examination.”²²⁶ Addressing the *ex parte* examination inference, and after noting that “not all hearsay implicates”

221. U.S. CONST. amend. VI.

222. 541 U.S. at 42.

223. *Id.* at 42–43 (citations omitted).

224. *Id.* at 44.

225. *Id.* at 48–49.

226. *Id.* at 50, 53–54.

the “core concerns” of the Confrontation Clause, the majority cited dictionary definitions from that era in discussing the focus of the Confrontation Clause.²²⁷ First, the majority cited Noah Webster’s 1828 *An American Dictionary of the English Language* to note that the Confrontation Clause “applies to ‘witnesses’ against the accused—in other words, those who ‘bear testimony.’”²²⁸ Citing the same dictionary, the majority then noted that “[t]estimony, in turn, is typically ‘[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact.’”²²⁹ Based on these definitions, the majority reasoned, “An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not.”²³⁰

With this background, including what dictionary definitions might typically mean, the majority then examined the law as it existed in 1791 as well as subsequent authority.²³¹ After considering all of these sources, the Court held that “the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination,” leaving “for another day any effort to spell out a comprehensive definition of ‘testimonial.’”²³²

Concurring in judgment, Chief Justice Rehnquist agreed “that the Framers were mainly concerned about sworn affidavits and depositions,” but added that “it does not follow that they were similarly concerned about the Court’s broader category of testimonial statements.”²³³ The concurrence also cited Noah Webster’s 1828 *An American Dictionary of the English Language*, which defined “testimony” as a “solemn declaration or affirmation” that “*in judicial proceedings . . . must be under oath.*”²³⁴ These two opinions demonstrate

227. *Id.* at 50–51 (citing 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)).

228. *Id.* at 51.

229. *Id.* (citing 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)).

230. *Id.* “The constitutional text, like the history underlying the common law right of confrontation, thus reflects an especially acute concern with a specific type of out-of-court statement.” *Id.*

231. *Id.* at 54–68.

232. *Id.* at 68.

233. *Id.* at 71 (Rehnquist, C.J., concurring in judgment).

234. *Id.* at 71 (Rehnquist, C.J., concurring in judgment) (quoting 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)) (defining “Testimony” as “[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact. *Such affirmation in judicial proceedings, may be verbal or written, but must be under oath.*”).

that, even when using the same dictionary as a source, selecting the proper definition from competing definitions may still result in uncertainty in the interpretation of Constitutional provisions.

Other opinions in the twenty-first century have relied upon the same dictionaries used in *Heller* and *Crawford* in construing constitutional provisions. *Baze v. Rees*²³⁵ considered whether execution by lethal injection is “cruel and unusual” under the Eighth Amendment. In that case, Justice Thomas, concurring in judgment and joined by Justice Scalia, cited the same dictionaries relied upon in *Heller* and *Crawford* to define “cruel.”²³⁶

Along with the general challenges presented by the Court’s use of dictionaries, *Heller*, *Crawford*, and the concurrence in *Baze* illustrate an additional, and unstated, concern about using older dictionaries. The assumption in using such dictionaries is that because they were contemporary to the drafting of the relevant Constitutional provision, the drafters either had access to and relied upon those contemporary dictionaries or, at very least, understood the definitions in the same way listed in those dictionaries. However, most dictionaries published before the 1960s were prescriptive, meaning they listed what words should mean (rather than how words were actually used).²³⁷ Additionally, older dictionaries may have lacked helpful examples or details to provide clarity, and the sources for some of the definitions in such dictionaries are questionable.²³⁸ Accordingly, along with the other

235. 553 U.S. 35 (2008).

236. *Id.* at 97 (Thomas, J., concurring). Justice Thomas stated:

Embellishments upon the death penalty designed to inflict pain for pain’s sake also would have fallen comfortably within the ordinary meaning of the word “cruel.” See 1 S. Johnson, *A Dictionary of the English Language* 459 (1773) (defining “cruel” to mean “[p]leased with hurting others; inhuman; hard-hearted; void of pity; wanting compassion; savage; barbarous; unrelenting”); 1 N. Webster, *An American Dictionary of the English Language* 52 (1828) (defining “cruel” as “[d]isposed to give pain to others, in body or mind; willing or pleased to torment, vex or afflict; inhuman; destitute of pity, compassion or kindness”).

Id.

237. See *The Lexicon Has Become a Fortress*, *supra* note 2, at 242 (“From the time that Dr. Johnson published his *Dictionary of the English Language* in 1755 until the early 1960s, general usage dictionaries for the most part were characterized as being ‘prescriptive.’”).

238. See, e.g., *The Lexicon Has Become a Fortress*, *supra* note 2, at 236–241 (noting, *inter alia*, Noah Webster’s “Websterian spellings” contained in his 1806 dictionary, “which reflected Webster’s own personal view of how words should be spelled” and Henry Campbell Black’s acknowledgment that *Black’s Law Dictionary* (1891) “contained many entries for ‘which the definition had to be written entirely *de novo*, apparently without any source.’”); Rickie Sonpal, Note, *Old Dictionaries and New Textualists*, 71 *FORDHAM L. REV.* 2177, 2207–

unresolved issues raised by the Court's use of dictionaries, the very nature of dictionaries, including the generally prescriptive nature of dictionaries published more than fifty years ago, undermines the assumption that the Constitutional Drafters relied upon meanings set forth in such dictionaries.

B. Statutory Words or Phrases

Like originalism in constitutional interpretation, textualism in statutory interpretation may contribute to a frequent use of dictionaries in Supreme Court opinions.²³⁹ Textualism focuses on the words of the statutes to express legislative intent.²⁴⁰ Under this view, dictionaries are properly—and, accordingly, frequently—used to interpret the meaning of the words in a statute.²⁴¹

The dramatic increase in the Court's use of dictionaries in recent decades may be attributed to a plain meaning, or “new textualism,” approach to statutory construction.²⁴² This approach, attributed by one commentator to Justice Scalia and now a majority of the Court, focuses on the text of the statute and precedent without relying upon outside sources—such as legislative history—to determine what the statute is intended to do.²⁴³

By contrast to this approach, Justice Kennedy has raised concerns about relying too much upon dictionary definitions as opposed to

08 (2003) (arguing that older dictionaries are less able than modern dictionaries to give a reader a contextual meaning of a word because “[O]ld dictionaries . . . do not provide the reader with the same sort of illustrative quotations that new dictionaries contain”).

239. See, e.g., McDowell, *supra* note 52, at 258–59.

240. See Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, in *A MATTER OF INTERPRETATION* 3, 16–23 (Amy Gutmann ed., 1997); see, e.g., McDowell, *supra* note 52, at 259.

241. See McDowell, *supra* note 52, at 259.

242. See, e.g., William N. Eskridge, Jr., *The New Textualism*, 37 *UCLA L. REV.* 621 *passim* (1990); Alan Schwartz, *The New Textualism and the Rule of Law Subtext in the Supreme Court's Bankruptcy Jurisprudence*, 45 *N.Y.L. SCH. L. REV.* 149, 149 (2000) (“An effective Supreme Court majority . . . has often employed a method of statutory interpretation that is called ‘the new textualism.’” (quoting Eskridge, *supra* at 621)); Note, *Looking It Up: Dictionaries and Statutory Interpretation*, 107 *HARV. L. REV.* 1437, app. at 1454 (1994); Sonpal, *supra*, note 238, 2192–93 (“Over the past decade or two, the United States Supreme Court has returned to a textual or plain meaning method of statutory interpretation.”).

243. See McDowell, *supra* note 52, at 258–59 (“As [Justice Scalia] has denied the legitimacy of relying on legislative history as a guide to statutory meaning, he has turned frequently to dictionaries as one means of establishing the intention of the legislature through the words by which it chose to express that intention.”); see also Scalia, *supra* note 240 at 16–23; Sonpal, *supra* note 238, at 2192.

statutory language, history, and precedent. As discussed above, in *Ali v. Federal Bureau of Prisons*, Justice Kennedy was critical of the focus by Justice Thomas on a dictionary definition of one word, as opposed to reliance upon statutory text and legislative purpose.²⁴⁴ Justice Kennedy similarly stressed the importance of sources other than dictionaries in *Dolan v. United States Postal Service*,²⁴⁵ a sovereign immunity case involving the proper construction of the statutory phrase “negligent transmission” enacted in 1946.²⁴⁶ Writing for the *Dolan* majority, Justice Kennedy observed that “[a] word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.”²⁴⁷ Instead, the majority relied in large part on the interpretation of a prior Court decision.²⁴⁸ Even then, the majority cited *Webster’s Third New International Dictionary* (1971) for the “ordinary meaning and usage” of the word “transmission.”²⁴⁹

By contrast, a dissent in *Dolan* written by Justice Thomas gave more weight to the dictionary definition.²⁵⁰ The dissent argued that the phrase “negligent transmission” should be given its ordinary meaning because it was not defined in the statute.²⁵¹ Citing *Webster’s Second* published in 1945, the dissent reasoned that the definitions of “transmission” and “transmit” were not inconsistent with precedent and “[t]here is no cause to conclude that Congress was unaware of the ordinary definition of the terms ‘transmission’ and ‘transmit’ when it enacted” the statute.²⁵² In addressing the majority, Justice Thomas did not rely upon the dictionary exclusively and, instead, articulated and then applied “settled principles governing the interpretation of waivers of sovereign immunity.”²⁵³ Yet, in doing so, the dissent’s focus on “ordinary meaning” appeared to give more weight on the dictionary definition than did the majority decision.²⁵⁴

244. 552 U.S. 214, 234–38 (2008) (Kennedy, J., dissenting).

245. 546 U.S. 481 (2006).

246. *Id.* at 481, 486, 490.

247. *Id.* at 486.

248. *Id.* at 487.

249. *Id.* at 486 (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2429 (1971)).

250. *Id.* at 493–94 (Thomas, J., dissenting).

251. *Id.* at 493.

252. *Id.* at 494 (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY 2692 (1945)).

253. *See id.* at 495–99.

254. *Compare id.* at 495–99 *with id.* at 481–86 (Kennedy, J., majority opinion).

In *Begay v. United States*,²⁵⁵ another statutory interpretation case discussed above, Justices Breyer, Scalia, and Alito each wrote separate opinions using a different dictionary edition to define “otherwise.”²⁵⁶ In construing a statute enacted in 1984 defining a “violent felony” as an offense of “burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious risk of physical injury to another,”²⁵⁷ the issue was whether the “otherwise” clause only includes crimes similar to those listed or whether it includes every crime that presents such a risk.²⁵⁸

Justice Breyer’s majority opinion concluded that the clause only applied to crimes similar to those listed.²⁵⁹ As part of the analysis, the majority referred to the definition of “otherwise” in *Webster’s Third New International Dictionary* to illustrate that the word can “refer to a crime that is similar to the listed examples in some respects but different in others.”²⁶⁰ Justice Scalia’s concurring opinion and Justice Alito’s dissenting opinion disagreed with the majority’s interpretation and each referred to different dictionaries to define “otherwise.” Justice Alito relied upon the *Oxford English Dictionary* and *Webster’s Third New International Dictionary*,²⁶¹ and Justice Scalia relied upon the second edition of *Webster’s New International Dictionary*,²⁶² both concluding that the “otherwise” clause was not limited to crimes similar to others listed prior to the clause.²⁶³ In their separate opinions, Justices Breyer and Alito relied on descriptive dictionaries, while Justice Scalia relied on a prescriptive dictionary.²⁶⁴ No discussion of that distinction was provided or has, in the history of the Court, been meaningfully discussed.

255. 553 U.S. 137 (2008).

256. *See id.*

257. 18 U.S.C. § 924(e)(2)(B)(ii) (1984).

258. *Begay*, 553 U.S. at 151.

259. *Id.* at 144–45.

260. *Id.* at 144 (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1598 (1961)). Justice Breyer took issue with Justice Scalia’s more conclusive interpretation, as Justice Breyer emphasized he was stating what the word “can” mean. *Id.* Then he added the comment and citation: “we do not say *must*, cf. post, at 1589–1590 (SCALIA, J., concurring in judgment).” *Id.*

261. *Id.* at 159 (Alito, J., concurring) (quoting 10 OXFORD ENGLISH DICTIONARY 984 (2d ed. 1989); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1598 (2002)).

262. *Id.* at 151 (Scalia, J., concurring) (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY 1729 (2d ed. 1957)).

263. *Id.*; *see also id.* at 158 (Alito, J., concurring).

264. *See id.*; *see also The Lexicon Has Become a Fortress*, *supra* note 2, at 242–44.

C. Judicial or Common Law Words and Phrases

Although the most common use of dictionaries by the Court is to interpret the Constitution and statutory provisions, the Court also uses dictionaries to define contractual terminology, common law terminology, or words used in prior decisions. In *Giles v. California*,²⁶⁵ the Court used dictionaries to define common law terminology relevant to Sixth Amendment Confrontation Clause rights.²⁶⁶ At issue was a common law right to “the use of a witness’s unopposed testimony if a judge finds . . . that the defendant committed a wrongful act that rendered the witness unavailable to testify at trial.”²⁶⁷ In its analysis, the Court considered the common law doctrine of forfeiture by wrongdoing, which allowed the admission of unopposed statements where the defendant wrongfully “procured” the witness’ absence.²⁶⁸ Petitioner, who was found to have killed a potential witness, alleged that to have “procured” the witness’ absence required actions that prohibited the witness from being present *and* did so with the intent to prevent the witness from being present, as opposed to simply taking actions that prohibited the witness from being present without the required intent.²⁶⁹

The majority opinion, written by Justice Scalia, cited dictionaries in concluding that “procure” means that the defendant must take actions with the intent to prevent a witness from testifying.²⁷⁰ The majority cited definitions of “procure” and “contrivance” from Webster’s *An American Dictionary of the English Language* and the *Oxford English Dictionary* and cited definitions of “means” from the same *Oxford English Dictionary* and a different edition of Webster’s *An American Dictionary of the English Language*.²⁷¹ Using dictionaries as a starting point for the analysis, the *Giles* majority went on to largely base its holding on cases and treatises from the nineteenth century, not dictionary definitions.²⁷²

A dissenting opinion, written by Justice Breyer, cited two dictionary

265. 128 S. Ct. 2678 (2008).

266. *Id.* at 2682–83.

267. *Id.* at 2682.

268. *Id.* at 2683.

269. *Id.* at 2682–84.

270. *Id.* Justice Scalia, however, did acknowledge one dictionary supporting a contrasting conclusion. *Id.* at 2683 (citing 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)).

271. *Id.* at 2683.

272. *Id.* at 2683–84. Ultimately, though, the Court found that the forfeiture by wrongdoing exception was not an exception to the Sixth Amendment Confrontation Clause because it was not applied at the time of the Bill of Rights or later. *Id.* at 2693.

definitions of “procure” from Webster’s *An American Dictionary of the English Language* and Richardson’s *New Dictionary of the English Language* in concluding that “procure” does not require intent.²⁷³ Although the majority quoted dictionaries supporting both positions,²⁷⁴ the dissent ignored the majority’s reference to the *Oxford English Dictionary*²⁷⁵ in stating that the only authority supporting the majority’s position was an 1858 treatise.²⁷⁶ As with the majority opinion, Justice Breyer’s dissent in *Giles* did not place much reliance on dictionary definitions but, instead, focused on case law in concluding that the majority failed to show that “procurement” required intent at common law.²⁷⁷

V. THE NEED FOR JUDICIAL GUIDELINES ADDRESSING THE USE OF DICTIONARIES IN THE TWENTY-FIRST CENTURY

Although the explosive growth of the Court’s use of dictionaries has leveled off in the twenty-first century, dictionaries continue to be cited at the highest level of frequency in the Court’s history. Notwithstanding this frequent reliance, the Justices have provided little guidance for when or how dictionaries should be used. In many cases, the opinion is unclear about the importance of dictionary definitions for the holding.²⁷⁸

As we noted more than a decade ago, it is entirely appropriate for the Court to use dictionaries to help define words as a starting point “to help gather the possible definitions for a word and then narrow those possibilities in light of context, underlying facts, legislative purpose, prior decisions, scientific literature, and other potentially helpful sources.”²⁷⁹ Although providing guidance to help define words and phrases, a dictionary definition—lacking any context, history, or

273. *Id.* at 2701 (Breyer, J., dissenting) (quoting 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828); 2 NEW DICTIONARY OF THE ENGLISH LANGUAGE 1514 (Charles Richardson ed., London, William Pickering 1839)).

274. Justice Scalia acknowledged that there are dictionary definitions defining “procure” and “procurement” in a way “that would merely require that a defendant have caused the witness’s absence.” *Id.* at 2683 (citing 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)).

275. *Id.* at 2683 (majority opinion) (quoting 12 OXFORD ENGLISH DICTIONARY 559 (2d ed. 1989)).

276. *Id.* at 2701 (Breyer, J., dissenting).

277. *Id.* at 2705 (“And the most the majority might show is that the common law was not clear on this point.”).

278. See, e.g., Munday, *supra* note 5, at 33–34 (discussing how courts that cite dictionaries often do not clearly indicate the weight they give to the definition).

279. *The Lexicon Has Become a Fortress*, *supra* note 2, at 296.

rationale—“cannot provide the end point in defining terms.”²⁸⁰ Simply put, although dictionaries are at times helpful tools, other methods of Constitutional, statutory, and legal analysis should carry more weight than dictionary definitions.²⁸¹

In the first decade of the twenty-first century, several opinions have taken such an approach—at least in part—and have focused on dictionary definitions as a foundation to begin the analysis of what a word or phrase means.²⁸² Interestingly, most of the opinions using this approach are concurrences or dissents critiquing a majority opinion. There are, however, a small number of majority opinions arising in two contexts—construing the Confrontation Clause of the Constitution along with related common law issues and addressing immunity issues—that provide some guidance about the proper use of dictionaries.

The majority opinions by Justice Scalia in the Confrontation Clause cases—*Crawford v. Washington*,²⁸³ *Davis v. Washington*²⁸⁴ and *Giles v. California*²⁸⁵—each provide helpful insight in using dictionaries. *Crawford*, the first of the three cases, found that the Constitution’s text did “not alone resolve this case.”²⁸⁶ In construing the text, the Court then examined a variety of sources to see what words could mean (including dictionaries), the issues and context that resulted in the enactment of the Confrontation Clause, the law at the time of the enactment, subsequent case law, and other sources.²⁸⁷ Although Justice Scalia considered dictionaries in the middle of this analysis, as opposed to the beginning, he did so given that the history leading up to the

280. *Id.*

281. *See, e.g.,* Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989) (“The starting point for [the] interpretation of a statute is always its language”) (emphasis added).

282. *See, e.g.,* *Giles*, 128 S. Ct. at 2683–84 (2008) (Scalia, J.); *id.* at 2705 (Breyer, J., dissenting); *United States v. Santos*, 553 U.S. 507, 510–12 (2008) (Scalia, J., plurality); *id.* at 531–32 (Alito, J., dissenting); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 235 (2008) (Kennedy, J., dissenting); *Davis v. Washington*, 547 U.S. 813, 823–24 (2006) (Scalia, J.) (defining “testimonial”); *id.* at 836 (Thomas, J., dissenting in part and concurring in part) (defining “witnesses” and “testimonial”); *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) (Kennedy, J.) (defining “negligent transmission”); *Hibbs v. Winn*, 542 U.S. 88, 112–13 (2004); *Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 603–04 (2004) (Thomas, J., dissenting) (criticizing the majority for focusing on dictionary definitions of the word “age” rather than “looking through the historical background of the Age Discrimination in Employment Act of 1967”).

283. 541 U.S. 36, 42 (2004).

284. 547 U.S. 813, 823–24 (2006).

285. 128 S. Ct. 2678 (2008).

286. *Crawford*, 541 U.S. at 42.

287. *See id.* at 42–51.

enactment was particularly robust and instructive.²⁸⁸

In *Davis*, early in the analysis, Justice Scalia cited dictionary definitions, albeit indirectly, by quoting *Crawford*, and, in doing so, intimated that dictionary definitions largely answered the question of “whether the Confrontation Clause applies only to testimonial hearsay.”²⁸⁹ He continued, however, by citing case law construing the Confrontation Clause, the common law right to confrontation, and state and British counterparts in construing the meaning and reach of the constitutional provision.²⁹⁰

Building on the analysis of *Crawford* and *Davis*, in *Giles*, Justice Scalia relied upon dictionaries at the beginning of the analysis to note what the relevant phrases could mean.²⁹¹ Justice Scalia then examined treatises and case law from other courts at and after the enactment of the Confrontation Clause, the Court’s cases addressing the issue, and other sources to reach a conclusion.²⁹² Although not using identical analytical frameworks, and not expressly acknowledging the limits of dictionary definitions, these opinions in *Crawford*, *Davis*, and *Giles* properly recognized that dictionaries do have a role in defining words, but that dictionaries cannot provide a definitive answer to the meaning of words in context.

Two unrelated cases addressing immunity issues similarly provide helpful insight into how dictionaries should be used. In *Cook County v. United States ex rel. Chandler*, the Court defined the word “corporation” as previously used by the Court to decide whether local governments are amenable to *qui tam* actions.²⁹³ In writing for the majority, Justice Souter properly started by quoting dictionary definitions but then went on to consider treatises and recent Court opinions to help find more

288. *See id.*

289. *Davis*, 547 U.S. at 823–24 (quoting *Crawford*, 541 U.S. at 51 (citing 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828))).

290. *Id.* at 824–34.

291. *Giles*, 128 S. Ct. at 2683. Justice Scalia stated:

Although there are definitions of “procure” and “procurement” that would merely require that a defendant have caused the witness’s absence, other definitions would limit the causality to one that was *designed* to bring about the result “procured.” . . . Similarly, while the term “means” could sweep in all cases in which a defendant caused a witness to fail to appear, it can also connote that a defendant forfeits confrontation rights when he uses an intermediary for the purpose of making a witness absent.

Id. (citation omitted) (noting a phrase was “commonly defined” to mean certain conduct).

292. *Id.*

293. 538 U.S. 119, 125 (2003).

definitively the proper meaning of the term.²⁹⁴

In the second immunity case, *Dolan v. United States Postal Service*, the Court was asked to define the statutory phrase “negligent transmission” in addressing immunity of the United States Government.²⁹⁵ Writing for the majority, Justice Kennedy started with the statutory text, considered possible definitions of the terms involved, including dictionary definitions, and then looked to context, case law, and other sources in arriving upon a definition.²⁹⁶ Justice Kennedy first noted that, by reading a dictionary, the phrase “negligent transmission” could include a broad range of negligent acts.²⁹⁷ He then added the following limitation on using dictionaries:

The definition of words in isolation, however, is not necessarily controlling in statutory construction. A word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.²⁹⁸

Applying those principles, Justice Kennedy continued:

Here, we conclude both context and precedent require a

294. *Id.* at 125–26 (citing 2 A LAW DICTIONARY 332 (John Bouvier & Robert Kelham eds., 6th ed. 1856) and 1 A LAW DICTIONARY AND GLOSSARY 383 (Alexander Mansfield Burrill ed., 2d ed. 1859)). In *Virginia v. Black*, 538 U.S. 343, 369–71 (2003), Justice Scalia started with a dictionary definition of “prima facie evidence” from *Black’s Law Dictionary* and then considered definitions from cases and a treatise. See *id.* (quoting BLACK’S LAW DICTIONARY 1190 (6th ed. 1990)).

295. 546 U.S. 481, 486 (2006).

296. *Id.*

297. Justice Kennedy explained:

If considered in isolation, the phrase “negligent transmission” could embrace a wide range of negligent acts committed by the Postal Service in the course of delivering mail, including creation of slip-and-fall hazards from leaving packets and parcels on the porch of a residence. After all, in ordinary meaning and usage, transmission of the mail is not complete until it arrives at the destination. See, e.g., *Webster’s Third New International Dictionary* 2429 (1971) (defining “transmission” as “an act, process, or instance of transmitting” and “transmit” as “to cause to go or be conveyed to another person or place”).

Id.

298. *Id.*

narrower reading, so that “negligent transmission” does not go beyond negligence causing mail to be lost or to arrive late, in damaged condition, or at the wrong address. The phrase does not comprehend all negligence occurring in the course of mail delivery.²⁹⁹

Although spartan, these cases provide some recent, helpful guidance from the Court about the proper role of dictionaries in judicial decisions. The guidance, however, is more implied by example rather than expressly stated and is sporadic. Moreover, there is no indication that a majority of the Justices adopt (or reject) the approaches used in these cases. Clearly, more is needed. It would be particularly useful if the Court would provide clear, express guidance for: when and how dictionaries should be used, how a specific dictionary should be chosen, how a specific definition should be chosen, and how to use the dictionary for interpretation.

For example, the Justices have shown a clear preference for using *Black’s Law Dictionary* to help construe legal terms.³⁰⁰ Given that clear preference, the Court could add certainty to its analysis by stating that law dictionaries should have preference for interpreting legal terms and, if there is a consensus in using a specific dictionary, stating that expressly. Similarly, the opinions reveal a preference to cite dictionaries published just before constitutional or legislative enactments when construing terms contained in those enactments.³⁰¹ If that is the case, expressly stating such a preference would add certainty.³⁰² Further guidance could include expressly discussing whether there is preference by the Court for descriptive or prescriptive dictionaries.

Because the Court has not provided guidance in these and other areas, attorneys, parties, and other courts are left to try to extrapolate from the ad hoc use of dictionaries in legal analysis. For example, if a word needs to be defined, history suggests that most Justices are more likely to rely upon *Black’s Law Dictionary* and *Webster’s Third New International Dictionary* than other dictionaries.³⁰³ Even that gross

299. *Id.* (citations omitted).

300. *See The Lexicon Has Become a Fortress*, *supra* note 2, at 263; *infra* app. c.

301. *See, e.g.*, *Welsh v. United States*, 398 U.S. 333, 351 (1970) (Harlan, J., concurring).

302. One commentator suggested a judicial declaration “that when courts consult a dictionary, they will *always* use the edition of *Webster’s Dictionary* that was current at the time the statute being interpreted was enacted.” Sydney Foster, *Should Courts Give Stare Decisis Effect to Statutory Interpretation Methodology?*, 96 GEO. L.J. 1863, 1903 (2008).

303. *See The Lexicon Has Become a Fortress*, *supra* note 2, at 262–63; *supra* Part. I.B. But even with that information, there can be debate about which of these two dictionaries should prevail, as in *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health &*

generalization, however, has exceptions: Justice Scalia is far more likely to cite *Webster's Second New International Dictionary*.³⁰⁴ Fairly stated, any gross generalizations are educated guesses, given that the Justices have never clearly stated such preferences.³⁰⁵

By definition, judicial analysis requires courts to examine cases one at a time, which may help explain why the Court has not provided much guidance to the use of dictionaries. The Court focuses on resolving the issue presented in the case before it, using dictionaries where the individual Justices find them instructive. The result, however, is a smattering of cases where the Court cites dictionaries with little discussion about a proper analysis for doing so. Clearly, the process of defining words is far more involved than simply opening a dictionary and selecting a definition. But the analysis for citing dictionaries—which the Court has done many, many times for nearly two centuries—has not been addressed with clarity, in contrast to many other types of analysis where the Court seeks to provide clear guidelines for all.³⁰⁶

As another possible explanation for the lack of clear directives, it may be that there is no common view on the Court about the proper use of dictionaries or the approach to be taken when considering dictionary definitions.³⁰⁷ Numerically, Justices Scalia and Thomas lead in the use of dictionaries, while Chief Justice Roberts and Justice Ginsburg infrequently rely upon dictionary definitions.³⁰⁸ In the middle are Justices Breyer and Kennedy, both of whom have been critical of the use of dictionaries at times.³⁰⁹ Indeed, Justice Breyer criticized legal analysis that focuses too much on dictionaries:

Language, dictionaries, and canons, unilluminated by

Human Res., 532 U.S. 598 (2001), where the majority cited *Black's Law Dictionary* and the dissent cited *Webster's Third New International Dictionary*. *Id.* at 603, 615–16 (Rehnquist, C.J.) (quoting BLACK'S LAW DICTIONARY 1145 (7th ed. 1999)); *id.* at 629–33 (Ginsburg, J., dissenting) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1797 (1976)).

304. See *supra* Part II.C; see also SCALIA & GARNER, *supra* note 88, at 213.

305. See *Buckhannon*, 532 U.S. at 628–29 (Ginsburg, J., dissenting) (citations omitted) (“In prior cases, we have not treated *Black's Law Dictionary* as preclusively definitive; instead, we have accorded statutory terms, including legal ‘term[s] of art,’ . . . a contextual reading.”).

306. See, e.g., *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962)) (stating that in statutory construction the Court will assume “that the legislative purpose is expressed by the ordinary meaning of the words used”); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 452 (1987) (Scalia, J., concurring) (specifically addressing role of legislative history in statutory analysis).

307. See *supra* Part II.B.

308. *Id.*

309. *Id.*

purpose, can lead courts into blind alleys, producing rigid interpretations that can harm those whom the statute affects. If generalized, the approach, bit by bit, will divorce law from the needs, lives, and values of those whom it is meant to serve—a most unfortunate result for a people who live their lives by law’s light.³¹⁰

Providing express analytical guidance for using dictionaries could go a long way to avoid such a divorce or, more properly, reconcile the relationship.

VI. CONCLUSION

To abandon all humanity, to achieve some Platonic perfection of an entirely disinterested dictionary is impossible.

*Jonathon Green*³¹¹

Although the United States Supreme Court has used dictionary definitions in its opinions for nearly two centuries, the Court has given little explicit guidance for when and how dictionaries should be used as a source. Without such guidance, litigants, attorneys, and other courts are left to gather what principles they can from bits and pieces, here and there, provided by the Court.

Considering the Court’s historical use of dictionaries, one may extract several general guidelines regarding the Court’s analysis in using a dictionary. First, for construing provisions in the United States Constitution and statutory provisions, some of the Justices show a preference for using dictionaries published prior to or around the same

310. *Duncan v. Walker*, 533 U.S. 167, 193 (2001) (Breyer, J., dissenting). Notwithstanding this critique, Justice Breyer has relied upon dictionary definitions in twenty cases during the twenty-first century. *See infra* app. b. In *Duncan v. Walker*, the Court considered whether the time for filing a federal habeas corpus petition was tolled during the pendency of the petitioner’s first habeas corpus petition. 533 U.S. at 172–73 (2001). The issue was whether the petitioner’s federal habeas corpus petition was an “application for State post-conviction or other collateral review” within the meaning of the Antiterrorism and Effective Death Penalty Act. *Id.* at 172–182. In determining that a federal habeas petition did not qualify as “other collateral review” within the meaning of the statute, the majority focused on the language used in the statute in comparison to other statutory provisions. *Id.* at 180–81. By contrast, in a dissenting opinion, Justice Breyer came to the opposite conclusion by focusing on the legislative purpose and Congress’s goal of not depriving state prisoners of a first federal habeas corpus review. *Id.* at 192–93 (Breyer, J., dissenting).

311. GREEN, *supra* note 95, at 468.

time as the enactment being interpreted.³¹² Second, when construing a legal word or phrase, the Court is most likely to choose *Black's Law Dictionary*, although there certainly are exceptions.³¹³ Third, for non-legal words and phrases, the Court often uses *Webster's Second New International Dictionary* and *Webster's Third New International Dictionary*,³¹⁴ with a slight preference for *Webster's Third*, recognizing, though, that Justice Scalia is far more likely to rely upon *Webster's Second*.³¹⁵ Fourth, current Justices who are described by some as originalists or textualists are generally more likely to cite dictionaries than others.³¹⁶ Fifth, when a Justice relies upon a dictionary definition, that definition will not be the only support for the conclusion, recognizing that at different times Justices may give more or less weight to dictionary definitions.³¹⁷ Finally, as noted by three Justices, there appears to be a general consensus that “context, as well as common sense, matters” in defining terms.³¹⁸

Beyond these general observations, however, litigants, attorneys, and other courts are left to scale the lexicon fortress on their own in attempting to predict how the Court will use dictionaries to define terms. A majority of the Court has never explicitly offered any definitive guidance in selecting dictionary publishers or editions, specific definitions, how much weight to give to definitions, or whether to use a dictionary at all.

The meaning and understanding of words are not dictated only by dictionaries, be they descriptive, prescriptive, general usage, law, foreign, technical, or otherwise. Dictionaries are tools that provide effective guidance for the beginning of the process of defining terms—not the end—and lawyers and judges have other tools to give more precise definitions in context. Otherwise, those responsible for dispensing justice would defer too much to the dictionary author. As noted more than 150 years ago, “the lexicographer is a historian, not a law giver.”³¹⁹

312. *See supra* Part IV.

313. *See supra* Part II.B.

314. *See supra* Part II.C.

315. *See supra* Part II.C.

316. *See supra* Part II.B.

317. *See, e.g., supra* Part IV. An additional observation is that currently and historically, Chief Justices tend to rely less on dictionaries in their opinions than other Justices. *See supra* Part II.B.

318. *Abbott v. Abbott*, 130 S. Ct. 1983, 2002 n.4 (2010) (Stevens, J., dissenting) (joined by Thomas, J., and Breyer, J.).

319. GREEN, *supra* note 95, at 468.

Courts other than the United States Supreme Court recognize these limits and have raised concerns about the reliance on dictionaries to define words and phrases. The United States Court of Appeals for the Federal Circuit recently noted that dictionaries “aim not to select or give meaning to a word or phrase, but to report the meaning already established and commonly understood by those skilled in the art.”³²⁰ Recognizing the importance of context, one recent state court opinion found that “[t]he major shortcoming of dictionaries as interpretive tools is their imperfect relationship to the statutory context.”³²¹ Another court stated it more bluntly: “Statutes should not be construed as if they are simply a series of *Webster’s* definitions strung together.”³²²

Justice Breyer’s warning that rigid reliance on dictionaries may “divorce law from the needs, lives, and values of those whom it is meant to serve” came at the beginning of the twenty-first century.³²³ His statement echoes words written more than a century earlier by Walt Whitman: “Language, be it remember’d, is not an abstract construction of the learn’d, or of dictionary-makers, but is something arising out of the work, needs, ties, joys, affections, tastes, of long generations of humanity, and has its bases broad and low, close to the ground.”³²⁴

An express declaration by the Court setting forth an analytical framework in using dictionaries to define terms and recognizing the inherent limitations of relying on dictionaries is needed to provide guidance to lawyers and other judges in defining disputed terms. Hopefully the words of the Supreme Court Justice and the poet will be heeded in the upcoming decades of the twenty-first century, and the Court will provide express guidance addressing the proper role of dictionaries in defining terms and the relationship of those definitions with context, purpose, history, and other similar factors in interpreting words and phrases.

320. *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1089 (Fed. Cir. 2003) (citing *The Lexicon Has Become a Fortress*, *supra* note 2, at 291).

321. *Eastman Chem. Co. v. Chumley*, No. M2002-02114-COA-R3-CV, 2004 WL 51822, at *6 (Tenn. Ct. App. Jan. 12, 2004) (citations omitted), *rev’d by* Eastman Chem. Co. v. Johnson, 151 S.W.3d 503 (Tenn. 2004).

322. *U.S. LEC of Tenn., Inc. v. Tenn. Regulatory Auth.*, No. M2004-01417-COA-R12-CV, 2006 WL 1005134, at *5 (Tenn. Ct. App. Apr. 17, 2006) (citing LIEF H. CARTER & THOMAS F. BURKE, *REASON IN LAW* (6th ed. 2002)).

323. *Duncan v. Walker*, 533 U.S. 167, 193 (2001) (Breyer, J., dissenting).

324. WALT WHITMAN, *COMPLETE PROSE WORKS* 407 (1901).

APPENDIX A:

WORDS & PHRASES DEFINED BY THE U.S. SUPREME COURT

(2000–2001 TERM THROUGH 2009–2010 TERM)*

(OCT. 2000 THROUGH JUNE 2010)

Abridge*McDonald v. City of Chicago*, 130 S. Ct. 3020, 3078 (2010) (Thomas, J., concurring in part and concurring in the judgment)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 6 (Noah Webster ed., Chauncey Goodrich & Noah Porter rev. 1865)

Accident*Olympic Airways v. Husain*, 540 U.S. 644, 652 (2004) (Thomas, J.)

WEBSTER'S NEW WORLD COLLEGE DICTIONARY 8 (4th ed. 1999)

AMERICAN HERITAGE DICTIONARY 10 (4th ed. 2000)

BLACK'S LAW DICTIONARY 15 (6th ed. 1990)

Action*BP America Production Co. v. Burton*, 549 U.S. 84, 92 (2006) (Alito, J.)

BLACK'S LAW DICTIONARY 31 (8th ed. 2004)

Actual Notice*Dusenbery v. United States*, 534 U.S. 161, 170 (2002) (Rehnquist, C.J.)

BLACK'S LAW DICTIONARY 1087 (7th ed. 1999)

Adjacent*Rapanos v. United States*, 547 U.S. 715, 805 (2006) (Stevens, J., dissenting)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 32 (2d ed. 1954)

WEBSTER'S THIRD INTERNATIONAL DICTIONARY 26 (1961)

Administrative

* The cases in these three appendices cover the time period October 2000 through June 2010. Even though cases from the 2000-2001 term were included in the appendices to Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Remains a Fortress: An Update*, 5 GREEN BAG 51 (2001), we include them here to present and analyze the entire first decade of the twenty-first century. Those cases that also appeared in the previous article are marked with an * here.

Graham County Soil & Water Conservation District v. United States ex rel. Wilson, 130 S. Ct. 1396, 1402 (2010) (Stevens, J.)

BLACK'S LAW DICTIONARY 49 (9th ed. 2009)

Graham County Soil & Water Conservation District v. United States ex rel. Wilson, 130 S. Ct. 1396, 1412 (2010) (Sotomayor, J., dissenting)

BLACK'S LAW DICTIONARY 42 (5th ed. 1979)

Affidavits

Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2532 (2009) (Scalia, J.)

BLACK'S LAW DICTIONARY 62 (8th ed. 2004)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Age

General Dynamics Land Systems v. Cline, 540 U.S. 581, 603–04 (2004) (Thomas, J., dissenting)

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Proportional Quorum

New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2651 (2010)
(Kennedy, J., dissenting)

BLACK'S LAW DICTIONARY 1370 (9th ed. 2009)

Prosecution

Rothgery v. Gillespie County, Texas, 128 S. Ct. 2578, 2597 (2008)
(Thomas, J., dissenting)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah
Webster ed., 1828)

Provisional Attachment

Washington State Department of Social & Health Services. v. Guardianship Estate of Keffeler, 537 U.S. 371, 382–83 (2003)
(Souter, J.)

BLACK'S LAW DICTIONARY 123 (7th ed. 1999)

Public Health

Whitman v. American Trucking Ass'ns, 531 U.S. 457, 465 (2001)*

WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1950)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981)

Quantile

Zuni Public School District No. 89 v. Department of Education, 550 U.S. 81, 99 (2007) (Breyer, J.)

THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 379 (3d ed. 2005)

Quartile

Zuni Public School District No. 89 v. Department of Education, 550 U.S. 81, 99 (2007) (Breyer, J.)

THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 379 (3d ed. 2005)

Quorum

New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2642 (2010)
(Stevens, J.)

BLACK'S LAW DICTIONARY 1370 (9th ed. 2009)

OXFORD ENGLISH DICTIONARY 51 (2d ed. 1989)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2046 (2d ed. 1954)

New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2647 (2010)
(Kennedy, J., dissenting)

BLACK'S LAW DICTIONARY 1370 (9th ed. 2009)

Real Party in Interest

United States ex rel. Eisenstein v. City of New York, New York, 129 S. Ct. 2230, 2235 (2009) (Thomas, J.)

BLACK'S LAW DICTIONARY 840 (8th ed. 2004)

Record

Yeager v. United States, 129 S. Ct. 2360, 2367–68 (2009) (Stevens, J.)
BLACK'S LAW DICTIONARY 1301 (8th ed. 2004)

Recovery

Doe v. Chao, 540 U.S. 614, 630 (2004) (Ginsburg, J., dissenting)
BLACK'S LAW DICTIONARY 1280 (7th ed. 1999)
WEBSTER'S 3RD NEW INTERNATIONAL 1898 (1966)

Redistrict

Branch v. Smith, 538 U.S. 254, 299 (2003) (O'Connor, J., dissenting)
WEBSTER'S COLLEGIATE DICTIONARY 980 (10th ed. 1993)
BLACK'S LAW DICTIONARY 1283 (7th ed. 1999)

Regulate

District of Columbia v. Heller, 128 S. Ct. 2783, 2800 (2008) (Scalia, J.)
DICTIONARY OF THE ENGLISH LANGUAGE, 1619 (Samuel Johnson ed.,
4th ed. 1773)

Relief

United States v. Denedo, 129 S. Ct. 2213, 2219 (2009) (Kennedy, J.)
BLACK'S LAW DICTIONARY 1317 (8th ed. 2004)

Renvoi

Sosa v. Alvarez-Machain, 542 U.S. 692, 757 (2004) (Ginsburg, J.,
concurring)
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Residence

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BLACK'S LAW DICTIONARY 1423 (9th ed. 2009)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1931 (1986)

Restore

Logan v. United States, 552 U.S. 23, 31 n.3 (2007) (Ginsburg, J.)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1936 (1993)
AMERICAN HERITAGE DICTIONARY 1486 (4th ed. 2000)
OXFORD ENGLISH DICTIONARY 755 (2d ed. 1989)

Resulting From

Bloate v. United States, 130 S. Ct. 1345, 1361 (2010) (Alito, J., dissenting)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1937 (1971)

Revision

New York Times Co., Inc. v Tasini, 533 U.S. 483, 500 (2001) (Ginsburg, J.)*
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1944, 2545 (1976)

Right

McDonald v. City of Chicago, 130 S. Ct. 3020, 3063–64 (2010) (Thomas, J., concurring in part and concurring in the judgment)
AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 1140 (Noah Webster ed., Chauncey Goodrich & Noah Porter rev. 1865)

Right of Action

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Rossini

Nurre v. Whitehead, 130 S. Ct. 1937, 1938 (2010) (Alito, J., dissenting from denial of certiorari)
THE NEW GROVE DICTIONARY OF MUSIC AND MUSICIANS 763 (2d ed. 2001)

Saint-Saëns

Nurre v. Whitehead, 130 S. Ct. 1937, 1938 (2010) (Alito, J., dissenting from denial of certiorari)
THE NEW GROVE DICTIONARY OF MUSIC AND MUSICIANS 130 (2d ed. 2001)

Sale

Plains Commerce Bank v. Long Family Land and Cattle Co., 128 S. Ct. 2709, 2730 (2008) (Ginsburg, J., concurring/dissenting)
OXFORD ENGLISH DICTIONARY 388 (2d ed. 1989) (def. 1(a))

Sanction

Alabama v. North Carolina, 130 S. Ct. 2295, 2306 (2010) (Scalia, J.)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2211 (2d ed. 1957)
BLACK'S LAW DICTIONARY 1458 (9th ed. 2009)

Schubert

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Search

Kyllo v. United States, 533 U.S. 27, 33 (2001) (Scalia, J.)*
WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 66 (1828) (reprinted 6th ed. 1989)

Serious

United States v. Stevens, 130 S. Ct. 1577, 1596 (2010) (Alito, J., dissenting)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2073 (1976)
RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1303 (1966)
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WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2073 (2002)
OXFORD ENGLISH DICTIONARY 15 (def. 6(a)) (2d ed. 1989)

Service

Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2721 (2010) (Roberts, C.J.)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2075 (1993)

Servicing Mortgages

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(Scalia, J.)

DICTIONARY OF BANKING AND FINANCIAL SERVICES 600 (Jerry
Rosenberg ed., 2d ed. 1985)

Shall

Barhart v. Peabody Coal Co., 537 U.S. 149, 184–85 (2003) (Thomas, J.,
dissenting)

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National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644,
661–62 (2007) (Alito, J.)

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National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644,
691 n.12 (2007) (Steven, J., dissenting)

MELLINKOFF'S DICTIONARY OF AMERICAN LEGAL USAGE 402–03
(1992)

DICTIONARY OF MODERN LEGAL USAGE 939 (2d ed. 1995)

Silt

Rapanos v. United States, 547 U.S. 715, 806–07 (2006) (Stevens, J.,
dissenting)

WEBSTER'S THIRD INTERNATIONAL DICTIONARY 2119 (1961)

Similar

Rousey v. Jacoway, 545 U.S. 320, 329 (2005) (Thomas, J.)

AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE
1206 (1981)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2120 (1981)

Simulated

Ashcroft v. Free Speech Coalition, 535 U.S. 234, 269 (2002) (Rehnquist,
C.J., dissenting)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1099 (1983)

Sound

Alaska v. United States, 545 U.S. 75, 95 (2005) (Kennedy, J.)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2176 (1981)

Sovereign

United States v. Lara, 541 U.S. 193, 218 (2004) (Kennedy, J., concurring)
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Sovereignty

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WEBSTER'S NEW INTERNATIONAL DICTIONARY 2406 (2d ed. 1934)
BLACK'S LAW DICTIONARY 1568 (4th ed. 1951)
LAW DICTIONARY AND PRONUNCIATIONS (James Ballentine ed., 2d
ed. 1948)

Special/Regular

Hamdan v. Rumsfeld, 548 U.S. 557, 730 (2006) (Alito, J., dissenting)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2186, 1913
(1961)

Specify

Kucana v. Holder, 130 S. Ct. 827, 834 (2010) (Ginsburg, J.)
WEBSTER'S NEW COLLEGIATE DICTIONARY 1116 (1974)

Speech

Citizens United v. Federal Election Commission, 130 S. Ct. 876, 950
(2010) (Stevens, J., dissenting in part, concurring in part)
DICTIONARY OF THE ENGLISH LANGUAGE 1853–54 (Samuel Johnson
ed., 4th ed. 1773, reprinted 1978)
AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster
ed., 1828, reprinted 1970)

Standard

*Engine Manufacturers Ass'n v. South Coast Air Quality Management
District*, 541 U.S. 246, 253 (2004) (Scalia, J.)
WEBSTER'S SECOND NEW INTERNATIONAL DICTIONARY 2455 (1945)

Stay

Nken v. Holder, 129 S. Ct. 1749, 1758 (2009) (Roberts, C.J.)

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Nken v. Holder, 129 S. Ct. 1749, 1765, 1767 (2009) (Alito, J., dissenting)

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BLACK'S LAW DICTIONARY 1413 (6th ed. 1990)

Stravinsky

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from denial of certiorari)

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2001)

Stream

Rapanos v. United States, 547 U.S. 715, 733 (2006) (Scalia, J., plurality)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2493 (2d ed. 1954)

Rapanos v. United States, 547 U.S. 715, 770 (2006) (Kennedy, J.,
concurring)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2493 (2d ed. 1954)

Streams

Rapanos v. United States, 547 U.S. 715, 801 (2006) (Stevens, J.,
dissenting)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2493 (2d ed. 1954)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1180 (1961)

Strong

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323 (2008)
(Ginsburg, J.)

AMERICAN HERITAGE DICTIONARY 1717 (4th ed. 2000)

OXFORD ENGLISH DICTIONARY 949 (2d ed. 1989)

Structure

Boyle v. United States, 129 S. Ct. 2237, 2244 (2009) (Alito, J.)

AMERICAN HERITAGE DICTIONARY 1718 (4th ed. 2000)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1410
(1967)

Subject Matter Jurisdiction

Carlsbad Technology, Inc. v. HIF Bio, Inc., 129 S. Ct. 1862, 1866 (2009)
(Thomas, J.)
BLACK'S LAW DICTIONARY 870 (8th ed. 2004)

Substantially/Substantial

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184,
196–97 (2002) (O'Connor, J.)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2280 (1976)
OXFORD ENGLISH DICTIONARY 66–67 (2d ed. 1989)

Suit

BP America Production Co. v. Burton, 549 U.S. 84, 91 (2006) (Alito, J.)
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Suspend

INS v. St. Cyr, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting)*
WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
(1828)
AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (Nathan
Bailey ed., 26th ed. 1789)
A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed.,
1773)

Tax Valuation

Limtiaco v. Camacho, 549 U.S. 483, 489 (2007) (Thomas, J.)
BLACK'S LAW DICTIONARY 116 (6th ed. 1990)

Terminate

Mac's Shell Service, Inc. v. Shell Oil Products Co. LLC, 130 S. Ct. 1251,
1257 (2010) (Alito, J.)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2605 (2d ed. 1957)
THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1465
(1967)

Testimonial

Davis v. Washington, 547 U.S. 813, 823–24 (2006) (Scalia, J.)
AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah
Webster ed., 1828)

Testimony

Crawford v. Washington, 541 U.S. 36, 51 (2004) (Scalia, J.)
AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Crawford v. Washington, 541 U.S. 36, 71 (2004) (Rehnquist, C.J., concurring)
AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Theology

Locke v. Davey, 540 U.S. 712, 735 (2004) (Thomas, J., dissenting)
AMERICAN HERITAGE DICTIONARY 1794 (4th ed. 2000)
WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1223 (1991)

Trafficking

Carachuri-Rosendo v. Holder, 130 S. Ct. 2577, 2585 (2010) (Stevens, J.)
BLACK'S LAW DICTIONARY 1534 (8th ed. 2004)
Lopez v. Gonzalez, 549 U.S. 47, 53-54 (2006) (Souter, J.)
BLACK'S LAW DICTIONARY 1534 (8th ed. 2004)

Transmission

Dolan v. United States Postal Service, 546 U.S. 481, 486 (2006)
(Kennedy, J.)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2429 (1971)
Dolan v. United States Postal Service, 546 U.S. 481, 493-96 (2006)
(Thomas, J., dissenting)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2692 (2d ed. 1934, as republished 1945)

Under

Watson v. Philip Morris Co., 551 U.S. 142, 151-52 (2007) (Breyer, J.)
OXFORD ENGLISH DICTIONARY 948-49 (2d ed. 1989)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2765 (2d ed. 1953)
FUNK AND WAGNALL'S NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 2604 (1942)
Florida Department of Revenue v. Picadilly Cafeterias, Inc., 128 S. Ct. 2326, 2332 (2008) (Thomas, J.)
AMERICAN HERITAGE DICTIONARY 1395 (1976)

Undertake

Medellin v. Texas, 552 U.S. 491, 553 (2008) (Breyer, J., dissenting)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2770 (2d ed. 1939)

Until

Branch v. Smith, 538 U.S. 254, 298–99 (2003) (O'Connor, J., dissenting)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2794 (2d ed. 1957)
WEBSTER'S COLLEGIATE DICTIONARY 1297 (10th ed. 1993)

Untoward

Baze v. Rees, 553 U.S. 35, 70 (2008) (Alito, J.)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2513 (1971)
RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1567
(1967)

Upon

Roell v. Withrow, 538 U.S. 580, 592–93 (2003) (Thomas, J., dissenting)
RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1570
(1966)

Use

Kelo v. City of New London, 545 U.S. 469, 508 (2005) (O'Connor, J.,
dissenting)
A DICTIONARY OF THE ENGLISH LANGUAGE 2194 (Samuel Johnson
ed., 4th ed. 1773)
Watson v. United States, 552 U.S. 74, 79 n.7 (2007) (Souter, J.)
RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, 2097 (2d
ed. 1987)
BLACK'S LAW DICTIONARY, 1541 (6th ed. 1990)

Vacant

US Airways, Inc. v. Barnett, 535 U.S. 391, 409 (2002) (O'Connor, J.,
concurring)
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2527 (1976)

Valuation

Limtiaco v. Camacho, 549 U.S. 483, 488 (2007) (Thomas, J.)
BLACK'S LAW DICTIONARY, 1721 (4th ed. 1951)

Verdi

Nurre v. Whitehead, 130 S. Ct. 1937, 1938 (2010) (Alito, J., dissenting
from denial of certiorari)
THE NEW GROVE DICTIONARY OF MUSIC AND MUSICIANS 462 (2d ed.
2001)

Violent

Johnson v. United States, 130 S. Ct. 1265, 1271 (2010) (Scalia, J.)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2846 (2d ed. 1954)
OXFORD ENGLISH DICTIONARY 656 (2d ed. 1989)
BLACK'S LAW DICTIONARY 1706 (9th ed. 2009)

Violent Felony

Johnson v. United States, 130 S. Ct. 1265, 1271 (2010) (Scalia, J.)
BLACK'S LAW DICTIONARY 1188 (9th ed. 2009)

Visitation

Cuomo v. Clearing House Ass'n, L.L.C., 129 S. Ct. 2710, 2716 (2009)
(Scalia, J.)
A LAW DICTIONARY 790 (John Bouvier, ed., 15th ed. 1883)
Cuomo v. Clearing House Ass'n, L.L.C., 129 S. Ct. 2710, 2723 (2009)
(Thomas, J., dissenting)
A LAW DICTIONARY AND GLOSSARY 598 (Alexander Burrill ed., 1860)
A LAW DICTIONARY 633 (John Bouvier ed., 1852)

Void Judgment

United Student Aid Funds, Inc. v. Espinosa, 130 S. Ct. 1367, 1377 (2010)
(Thomas, J.)
BLACK'S LAW DICTIONARY 1822 (3d ed. 1933)
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Waters

Rapanos v. United States, 547 U.S. 715, 732–33, 734–35, 739 (2006)
(Scalia, J., plurality)

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Rapanos v. United States, 547 U.S. 715, 768–69, 770 (2006) (Kennedy, J.,
concurring)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2882 (2d ed. 1954)

Witnesses

Crawford v. Washington, 541 U.S. 36, 51 (2004) (Scalia, J.)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah
Webster ed., 1828)

Davis v. Washington, 547 U.S. 813, 836 (2006) (Thomas, J., concurring in
part and dissenting in part)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah
Webster ed., 1828)

Work

IBP, Inc. v Alvarez, 546 U.S. 21, 25 (2005) (Stevens, J.)

WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed., unabridged)

Would

Knight v. Commissioner of Internal Revenue, 552 U.S. 181, 192 (2008)
(Roberts, C.J.)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 2637–38
(1993)

AMERICAN HERITAGE DICTIONARY 2042–59 (3d ed. 1996)

APPENDIX B:

UNITED STATES SUPREME COURT JUSTICES CITING DICTIONARIES

(2000–2001 TERM THROUGH 2009–2010 TERM)

(OCT. 2000 THROUGH JUNE 2010)

Associate Justice Samuel Anthony Alito, Jr. (Jan. 31, 2006 – present)**5 terms in the Twenty-First Century**

17 Cases (3.40/Court Term) and

43 Words or Phrases (8.60/Term)

Bloate v. United States, 130 S. Ct. 1345, 1360, 1361 (2010) (Alito, J., dissenting)

(Including)

(Proceeding)

BLACK'S LAW DICTIONARY 831, 1324 (9th ed. 2009)

(Resulting From)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1971)

Johnson v. United States, 130 S. Ct. 1265, 1274 (2010) (Alito, J., dissenting)

(Battery)

BLACK'S LAW DICTIONARY 173 (9th ed. 2009)

Mac's Shell Service, Inc. v. Shell Oil Products Co. LLC, 130 S. Ct. 1251, 1257 (2010)

(Cancel)

(Terminate)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 389, 2605 (2d ed. 1957)

THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 215, 1465 (1967)

Nurre v. Whitehead, 130 S. Ct. 1937, 1937 n.1 (2010) (Alito, J., dissenting from denial of certiorari)

(Brahms)

(Bruckner)

(Elgar)

(Gounod)

(Mozart)

(Rossini)

(Saint-Saëns)

(Schubert)

(Stravinsky)

(Verdi)

THE NEW GROVE DICTIONARY OF MUSIC AND MUSICIANS 208, 480, 131, 215, 233, 319, 763, 130, 670, 718, 560, 462 (2d ed. 2001)

United States v. Stevens, 130 S. Ct. 1577, 1595 n.4 (2010) (Alito, J., dissenting)

(Serious)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2073 (1976)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1303 (1966)

Boyle v. United States, 129 S. Ct. 2237, 2244 (2009)

(Association)

BLACK'S LAW DICTIONARY 156 (rev. 4th ed. 1968)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 132 (1976)

(Enterprise)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 757 (1976)

(Structure)

AMERICAN HERITAGE DICTIONARY 1718 (4th ed. 2000)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1410 (1967)

Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee, 129 S. Ct. 846, 853, 853–54, 854 (2009) (Alito, J., concurring)
(Oppose)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1709–10 (2d ed. 1953)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1010 (1966)

OXFORD ENGLISH DICTIONARY 866–67 (2d ed. 1989)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1359 (2d ed. 1987)

Nken v. Holder, 129 S. Ct. 1749, 1765, 1767 (2009) (Alito, J., dissenting)
(Enjoin)

BLACK'S LAW DICTIONARY 529 (6th ed. 1990)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 754 (1993)

(Stay)

BLACK'S LAW DICTIONARY 1413 (6th ed. 1990)

Baze v. Rees, 553 U.S. 35, 70 (2008) (plurality opinion)

(Untoward)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2513 (1971)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1567 (1967)

Begay v. United States, 553 U.S. 137, 159, 156 (2008) (Alito, J., dissenting)

(Otherwise)

OXFORD ENGLISH DICTIONARY 1729 (2d ed. 1989)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (2002)

(Serious)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2073 (2002)

Cuellar v. United States, 553 U.S. 550, 558, 563 (2008)

(Money Laundering)

(Design)

AMERICAN HERITAGE DICTIONARY 992, 491 (4th ed. 2000)

BLACK'S LAW DICTIONARY 1027, 478 (8th ed. 2004)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 611 (1993)

United States v. Santos, 553 U.S. 507, 540, 531 (2008) (Alito, J.,

dissenting)

(Net Income)

DICTIONARY OF ACCOUNTING 88 (Ralph Estes ed., 1981)

(Proceeds)

RANDOM HOUSE DICTIONARY OF ENGLISH LANGUAGE 1542 (2d ed. 1987)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1807 (1976)

James Jr. v. United States, 550 U.S. 192, 208 n.5 (2007)

(Potential)

BLACK'S LAW DICTIONARY 1188 (7th ed. 1999)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1775 (1971)

Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 460–61 (2007) (Alito, J., concurring)

(Combine)

(Component)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 452, 466 (1976)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 283 (1967)

National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 668, 667, 661–62 (2007)

(Discretion)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 411 (unabridged ed. 1967)

(Insure)

OXFORD ENGLISH DICTIONARY 1959 (2d ed. 1989)

(Shall)

BLACK'S LAW DICTIONARY 1375 (6th ed. 1990)

BP America Production Co. v. Burton, 549 U.S. 84, 91, 92, 95 (2006)

(Action)

BLACK'S LAW DICTIONARY 31 (8th ed. 2004)

(Complaint)

BLACK'S LAW DICTIONARY 303 (8th ed. 2004)

BLACK'S LAW DICTIONARY 356 (4th ed. 1951)

(Damages)

BLACK'S LAW DICTIONARY 466 (4th ed. 1951)

(Right of Action)

BLACK'S LAW DICTIONARY 1488 (4th ed. 1951)

(Suit)

BLACK'S LAW DICTIONARY 1603(4th ed. 1951)

Hamdan v. Rumsfeld, 548 U.S. 557, 726, 730 (2006) (Alito, J., dissenting)

(Constitute)

(Special/Regular)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 486, 2186,
1913 (1961)

Associate Justice Stephen Breyer

10 terms in the Twenty-First Century

20 Cases (2.00/Court Term) and

29 Words or Phrases (2.90/Term)

Hertz Corp. v. Friend, 130 S. Ct. 1181, 1192 (2010)

(Principal)

OXFORD ENGLISH DICTIONARY 495 (2d ed. 1989)

Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2741 (2010)

(Breyer, J., dissenting)

(Material)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1392 (1961)

Ministry of Defense & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi, 129 S. Ct. 1732, 1742 (2009)

(At Issue)

BLACK'S LAW DICTIONARY 136 (8th ed. 2004)

Begay v. United States, 553 U.S. 137, 144 (2008)

(Otherwise)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (1961)

District of Columbia v. Heller, 128 S. Ct. 2783, 2849 (2008) (Breyer, J., dissenting)

(Firearms)

A DICTIONARY OF THE ENGLISH LANGUAGE 751 (Samuel Johnson ed., 4th ed. 1773)

Giles v. California, 128 S. Ct. 2678, 2701 (2008) (Breyer, J., dissenting)

(Procure)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

NEW DICTIONARY OF THE ENGLISH LANGUAGE 1514 (1839)

Irizarry v. United States, 553 U.S. 708, 718 (2008) (Breyer, J., dissenting)

(Departure)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 604 (1993)

John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 136 (2008)

(Cognizance)

BLACK'S LAW DICTIONARY 1038 (3d ed. 1933)

(Jurisdiction)

BLACK'S LAW DICTIONARY 991 (4th ed. 1951)

Medellin v. Texas, 552 U.S. 491, 553 (2008) (Breyer, J., dissenting)

(Comprometer)

SPANISH AND ENGLISH LEGAL AND COMMERCIAL DICTIONARY 44 (1945)

(Undertake)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2770 (2d ed. 1939)

Metropolitan Life Insurance Co. v. Glenn, 128 S. Ct. 2343, 2348 (2008)

(Conflict of Interest)

BLACK'S LAW DICTIONARY 319 (8th ed. 204)

Watson v. Philip Morris Co., Inc., 551 U.S. 142, 151–52 (2007)

(Under)

OXFORD ENGLISH DICTIONARY 948–49 (2d ed. 1989)
WEBSTER'S NEW INTERNATIONAL DICTIONARY 2765 (2d ed. 1953)
FUNK AND WAGNALLS NEW STANDARD DICTIONARY OF THE
ENGLISH LANGUAGE 2604 (1942)

Zuni Public School District No. 89 v. Department of Education, 550 U.S.
81, 96, 97, 98, 99 (2007)

(Percentile)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1675 (1961)
THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 379 (3d ed.
2005)
A DICTIONARY OF ECONOMICS, 348–49 (2d ed. 2002)
THE AMERICAN HERITAGE SCIENCE DICTIONARY 468 (2005)
MERRIAM-WEBSTER'S MEDICAL DESK DICTIONARY 612 (2002)

(Per)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1674 (1961)
BLACK'S LAW DICTIONARY 1171 (8th ed. 1999)

(Decile)

(Quantile)

(Quartile)

(N-th Percentile)

THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 379, 379,
379, 378–79 (3d ed. 2005)

Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53, 59–60
(2006)

(Discriminate Against)

OXFORD ENGLISH DICTIONARY 758 (2d ed. 1989)

Hamdan v. Rumsfeld, 548 U.S. 557, 640–41 (2006) (Breyer, J.,
concurring)

(Practicable)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1780 (1961)

Dole Food Co. v. Patrickson, 538 U.S. 468, 481–82 (2003) (Breyer, J., dissenting)

(Own/Ownership)

BLACK'S LAW DICTIONARY 1049, 1105 (6th ed. 1990)

Eldred v. Ashcroft, 537 U.S. 186, 247–48 (2003) (Breyer, J., dissenting)
(Limited)

A DICTIONARY OF THE ENGLISH LANGUAGE 1151 (Samuel Johnson ed., 4th rev. ed. 1773)

Carey v. Saffold, 536 U.S. 214, 219 (2002)

(Pending)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1669 (1993)

Utah v. Evans, 536 U.S. 452, 473–76 (2002)

(Enumeration)

A DICTIONARY OF THE ENGLISH LANGUAGE 658 (Samuel Johnson ed., 4th rev. ed. 1773)

AN ETYMOLOGICAL ENGLISH DICTIONARY (Nathan Bailey ed., 26th ed. 1789)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993)

Chickasaw Nation v. United States, 534 U.S. 84, 90, 89 (2001)

(Ambiguous)

(Include)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 77, 609 (1985)

Cedric Kushner Promotions, Ltd. v. King, 121 S. Ct. 2087, 2090 (2001)

(Breyer, J.)*

(Associate)

(Employ)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993)

Associate Justice Ruth Bader Ginsburg**10 terms in the Twenty-First Century**

15 Cases (1.50/Court Term) and

16 Words or Phrases (1.60/Term)

Kucana v. Holder, 130 S. Ct. 827, 834 (2010)

(Specify)

WEBSTER'S NEW COLLEGIATE DICTIONARY 1116 (1974)

Schwab v. Reilly, 130 S. Ct. 2652, 2674 n.9 (2010) (Ginsburg, J., dissenting)

(Property Interest)

BLACK'S LAW DICTIONARY 828 (8th ed. 2004)

United States v. Hayes, 129 S. Ct. 1079, 1084–85 (2009)

(Element)

BLACK'S LAW DICTIONARY 559 (8th ed. 2004)

Burgess v. United States, 553 U.S. 124, 130 (2008)

(Felony)

BLACK'S LAW DICTIONARY 651 (8th ed. 2004)

New Jersey v. Delaware, 552 U.S. 597, 604 n.3 (2008)

(Low Water Mark)

BLACK'S LAW DICTIONARY 1623 (8th ed. 2004)

Plains Commerce Bank v. Long Family Land & Cattle Co., 128 S. Ct. 2709, 2730 (2008) (Ginsburg, J., concurring and dissenting)

(Sale)

OXFORD ENGLISH DICTIONARY 388 (2d ed. 1989)

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323 (2008)

(Strong)

AMERICAN HERITAGE DICTIONARY 1717 (4th ed. 2000)

OXFORD ENGLISH DICTIONARY 949 (2d ed. 1989)

Logan v. United States, 552 U.S. 23, 31 n.3 (2007)

(Restore)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1936 (1993)

AMERICAN HERITAGE DICTIONARY 1486 (4th ed. 2000)

OXFORD ENGLISH DICTIONARY 755 (2d ed. 1989)

Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 449 n.11 (2007)

(Component)

WEBSTER'S INTERNATIONAL DICTIONARY OF THE ENGLISH

LANGUAGE 466 (1981)

Doe v. Chao, 540 U.S. 614, 630 (2004) (Ginsburg, J., dissenting)

(Recovery)

BLACK'S LAW DICTIONARY 1280 (7th ed. 1999)

WEBSTER'S THIRD NEW INTERNATIONAL 1898 (1066)

Hibbs v. Winn, 542 U.S. 88, 100–01 (2004)

(Assessment)

BLACK'S LAW DICTIONARY 112 (7th ed. 1999)

WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH

LANGUAGE 166 (2d ed. 1934)

Sosa v. Alvarez-Machain, 542 U.S. 692, 756 n.3 (2004) (Ginsburg, J., concurring)

(Renvoi)

BLACK'S LAW DICTIONARY 1300 (7th ed. 1999)

Eldred v. Ashcroft, 537 U.S. 186, 199 (2003)

(Limited)

A DICTIONARY OF THE English LANGUAGE 1151 (Samuel Johnson ed., 7th ed. 1785)

A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (Thomas Sheridan ed., 6th ed. 1796)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1312 (1976)

Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 608 (2001) (Ginsburg, J., dissenting)*

(Prevailing Party)

BLACK'S LAW DICTIONARY 1145 (7th ed. 1999)

(Prevail)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1797 (1976)

New York Times Co., Inc. v. Tasini, 533 U.S. 483, 500 (2001) (Ginsburg, J.)*

(Revision)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1944, 2545 (1976)

Associate Justice Anthony Kennedy
10 terms in the Twenty-First Century

22 Cases (2.20/Court Term) and

29 Words or Phrases (2.90/Term)

Abbott v. Abbott, 130 S. Ct. 1983, 1991 (2010)

(Determine)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 711 (2d ed. 1954)

Barber v. Thomas, 130 S. Ct. 2577, 2585 (2010) (Kennedy, J., dissenting)

(Expiration)

BLACK'S LAW DICTIONARY 619 (8th ed. 2004)

Bilski v. Kappos, 130 S. Ct. 3218, 3228 (2010)

(Method)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1548 (2d ed. 1954)

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, et al., 130 S. Ct. 1605, 1629, 1638 (2010) (Kennedy, J., dissenting)

(Error)

BLACK'S LAW DICTIONARY 582 (8th ed. 2004)

(Procedure)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1807 (1976)

New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2642, 2651 (2010)

(Kennedy, J., dissenting)

(Quorum)

(Proportional Quorum)

BLACK'S LAW DICTIONARY 1370, 1370 (9th ed. 2009)

Salazar v. Buono, 130 S. Ct. 1803, 1811 (2010)

(Mojave National Preserve)

MERRIAM-WEBSTER'S GEOGRAPHICAL DICTIONARY 755, 1228–30
(3d ed. 1997)

United States v. Denedo, 129 S. Ct. 2213, 2219 (2009)

(Relief)

BLACK'S LAW DICTIONARY 1317 (8th ed. 2004)

Ali v. Federal Bureau of Prisons, 552 U.S. 214, 235 (2008) (Kennedy, J.,
dissenting)

(Detention)

BLACK'S LAW DICTIONARY 459 (7th ed. 1999)

AMERICAN HERITAGE DICTIONARY 494 (4th ed. 2000)

Boumediene v. Bush, 128 S. Ct. 2229, 2242–43, 2252, 2257–58 (2008)

(Habeas Corpus)

BLACK'S LAW DICTIONARY 728 (8th ed. 2004)

(Sovereignty)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2406 (2d ed. 1934)

BLACK'S LAW DICTIONARY 1568 (4th ed. 1951)

LAW DICTIONARY AND PRONUNCIATIONS 1216 (James Ballentine
ed., 2d ed. 1948)

Gonzalez v. Carhart, 550 U.S. 124, 152 (2007)

(Deliver, when used in connection with “fetus”)

STEDMAN'S MEDICAL DICTIONARY 470 (27th ed. 2000)

(Deliver)

THE HARPERCOLLINS ILLUSTRATED MEDICAL DICTIONARY 160
(4th ed. 2001)

MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 306 (10th ed.
1997)

Dolan v. United States Postal Service, 546 U.S. 481, 486 (2006)

(Transmission)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2692 (1981)

Howard Delivery Service v. Zurich American Insurance Co., 547 U.S. 651, 670 (2006) (Kennedy, J., dissenting)
(Contribution)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 496 (1971)

Rapanos v. United States, 547 U.S. 715, 768–69, 770, 771 (2006)
(Kennedy, J., concurring)
(Waters)
(Stream)
(Hydrography)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2882, 2493, 1221
(2d ed. 1954)

Alaska v. United States, 545 U.S. 75, 95 (2005)
(Sound)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2176 (1981)

Johnson v. United States, 544 U.S. 295, 315 (2005) (Kennedy, J., dissenting)
(Discovery)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 647 (1993)
BLACK'S LAW DICTIONARY 465 (6th ed. 1990)

Alaska Department of Environmental Conservation v. EPA, 540 U.S. 461, 504 (2004) (Kennedy, J., dissenting)
(Determine)

AMERICAN HERITAGE DICTIONARY 495 (4th ed. 2000)

Hibbs v. Winn, 542 U.S. 88, 116–17, 118 (2004) (Kennedy, J., dissenting)
(Assessment)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 90
(1979)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 139 (1927)
(Enjoin)

BLACK'S LAW DICTIONARY 663 (3d ed. 1933)

Republic of Austria v. Altmann, 541 U.S. 677, 719 (2004) (Kennedy, J.,
dissenting)

(Henceforth)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1056 (1976)

United States v. Lara, 541 U.S. 193, 218 (2004) (Kennedy, J., concurring)
(Sovereign)

BLACK'S LAW DICTIONARY 1395 (6th ed. 1990)

Moseley v. V Secret Catalogue, 537 U.S. 418, 435 (2003) (Kennedy, J.,
concurring)

(Capacity)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 330 (1961)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 396 (2d ed. 1949)

AMERICAN HERITAGE DICTIONARY 275 (4th ed. 2000)

OXFORD ENGLISH DICTIONARY 875 (2d ed. 1989)

Carey v. Saffold, 536 U.S. 214, 228 (2002) (Kennedy, J., dissenting)
(Pending)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1669 (1993)

Owasso Independent School District No. I-011 v. Falvo, 534 U.S. 426,
433 (2002)

(Maintain)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1160
(2d ed. 1987)

**Associate Justice Sandra Day O'Connor (ret. Jan. 31, 2006)
6 terms in the Twenty-First Century**

7 Cases (1.16/Court Term) and
9 Words or Phrases (1.50/Term)

*Justice O'Connor's Complete Career numbers (Sept. 1981-Jan. 2006: 25
Court Terms):*

39 Cases (1.56/Court Term)
48 Words or Phrases (1.92/Term)

Dodd v. United States, 545 U.S. 353, 358 (2005)

(If)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1124 (1993)

Kelo v. City of New London, 545 U.S. 469, 508 (2005) (O'Connor, J.,
dissenting)

(Use)

A DICTIONARY OF THE ENGLISH LANGUAGE 2194 (Samuel
Johnson ed., 4th ed. 1773)

Smith v. City of Jackson, 544 U.S. 228, 249, 250 (2005) (O'Connor, J.,
concurring)

(Disparate Treatment)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 194 (1961)

Norfolk Southern Railway v. James N. Kirby, Pty Ltd., 543 U.S. 14, 31
(2004)

(Any)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976)

Branch v. Smith, 538 U.S. 254, 299, 298–99 (2003) (O'Connor, J.,
dissenting)

(Redistrict)

BLACK'S LAW DICTIONARY 1283 (7th ed. 1999)

WEBSTER'S COLLEGIATE DICTIONARY 980 (10th ed. 1993)

(Until)

WEBSTER'S COLLEGIATE DICTIONARY 1297 (10th ed. 1993)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2794 (2d ed. 1957)

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 197, 196–97 (2002)

(Major)

(Substantial/Substantially)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1363, 2280 (1976)

OXFORD ENGLISH DICTIONARY 66–67 (2d ed. 1989)

U.S. Airways, Inc v. Barnett, 535 U.S. 391, 409 (2002) (O'Connor, J., concurring)

(Vacant)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2527 (1976)

Chief Justice William Rehnquist (ret. Sept. 3, 2005)

5 Court terms in the Twenty-First Century

8 Cases (1.60/Court Term) and

10 Words or Phrases (2.00/Term)

Chief Justice Rehnquist's Complete Career numbers (Jan. 1972-Sept. 2005: 34 Terms):

34 Cases (1.00/Court Term)

44 Words or Phrases (1.29/Term)

Arthur Anderson LLP v. United States, 544 U.S. 696, 705, 706, 707 (2005)

(Corrupt/Corruptly)

(Impede)

(Knowledge/Knowingly)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 512, 1132, 1252–53 (1993)

BLACK'S LAW DICTIONARY 371, 888 (8th ed. 2004)

AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 299–300, 725 (1981)

Crawford v. Washington, 541 U.S. 36, 71 (2004) (Rehnquist, C.J., concurring)

(Testimony)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Virginia v. Maryland, 540 U.S. 56, 62 n.2 (2003)

(Low Water Mark)

BLACK'S LAW DICTIONARY 1586 (7th ed. 1999)

Ashcroft v. Free Speech Coalition, 535 U.S. 234, 269 (2002) (Rehnquist, C.J., dissenting)

(Simulated)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1099 (1983)

Bell v. Cone, 535 U.S. 685, 698 (2002)

(Contrary)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 495 (1976)

Dusenbery v. United States, 534 U.S. 161, 170 (2002)

(Actual Notice)

BLACK'S LAW DICTIONARY 1087 (7th ed. 1999)

Bartnicki v. Vopper, 532 U.S. 514, 546 (2001) (Rehnquist, C.J., dissenting)*

(Disclosure)

BLACK'S LAW DICTIONARY (7th ed. 1999)

Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 603 (2001)*

(Prevailing Party)

BLACK'S LAW DICTIONARY 1145 (7th ed. 1999)

Chief Justice John Glover Roberts (Sept. 29, 2005 – present)**5 Terms**

6 Cases (1.20/Court Term) and
7 Words or Phrases (1.40/Term)

Free Enterprise Fund v. Public Co. Accounting Oversight Board, 130 S. Ct. 3138, 3162–63 (2010)

(Department)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828, 1995 facsimile ed.)

Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2721 (2010)

(Service)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2075 (1993)

United States v. Stevens, 130 S. Ct. 1577, 1588 (2010)

(Killed)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1242 (1993)

Nken v. Holder, 129 S. Ct. 1749, 1757, 1758 (2009)

(Injunction)

BLACK'S LAW DICTIONARY 784 (6th ed. 1990)

BLACK'S LAW DICTIONARY 800 (8th ed. 2004)

(Stay)

BLACK'S LAW DICTIONARY 1413 (6th ed. 1990)

Northwest Austin Mun. Utility Dist. No. One v. Holder, 129 S. Ct. 2504, 2513 (2009)

(District)

BLACK'S LAW DICTIONARY 1197 (8th ed. 2004)

Knight v. Commissioner of Internal Revenue, 552 U.S. 181, 192 (2008)

(Would)

AMERICAN HERITAGE DICTIONARY 2042, 2059 (3d ed. 1996)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2637–38 (1993)

Associate Justice Antonin Scalia

10 terms in the Twenty-First Century

40 Cases (4.00/Court Term) and
65 Words or Phrases (6.50/Term)

Alabama v. North Carolina, 130 S. Ct. 2295, 2306, 2309 (2010) (Scalia, J.)
(Sanction)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2211 (2d ed. 1957)

BLACK'S LAW DICTIONARY 1458 (9th ed. 2009)

(Appropriate)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 133 (2d ed. 1957)

Citizens United v. Federal Election Commission, 130 S. Ct. 876, 928 n.6
(2010) (Scalia, J., concurring)

(Press)

AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828,
reprinted 1970)

Hamilton v. Lanning, 130 S. Ct. 2464, 2479 (2010) (Scalia, J., dissenting)
(Projected)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1978 (2d ed. 1957)

Johnson v. United States, 130 S. Ct. 1265, 1270, 1271 (2010)

(Battery)

(Physical Force)

(Violent Felony)

BLACK'S LAW DICTIONARY 173, 717 (9th ed. 2009)

(Force)

(Violent)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 985–86, 2846 (2d
ed. 1954)

BLACK'S LAW DICTIONARY 77, 1706 (9th ed. 2009)

OXFORD ENGLISH DICTIONARY 656 (2d ed. 1989)

Maryland v. Shatzer, 130 S. Ct. 1213, 1221 n.2 (2010)

(Jail)

BLACK'S LAW DICTIONARY 910 (9th ed. 2009)

Merck & Co., Inc. v. Reynold, 130 S. Ct. 1784, 1800 (2010) (Scalia, J.,
concurring)

(Discovery)

WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 745 (2d ed. 1957)

Morrison v. National Australia Bank, Ltd., 130 S. Ct. 2869, 2875 (2010)

(Servicing Mortgages)

DICTIONARY OF BANKING AND FINANCIAL SERVICES 600 (Jerry Rosenberg ed., 2d ed. 1985)

(Mortgage-Servicing Rights)

THE NEW PALGRAVE DICTIONARY OF MONEY AND FINANCE 817 (Peter Newman, Murray Milgate & John Eatwell eds. 1992)

Salazar v. Buono, 130 S. Ct. 1803, 1825 n.2 (2010) (Scalia, J., concurring)

(Permitting)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1824 (2d ed. 1957)

Cuomo v. Clearing House Ass'n, L.L.C., 129 S. Ct. 2710, 2716 (2009)

(Visitation)

A LAW DICTIONARY 790 (John Bouvier ed., 15th ed. 1883)

Entergy Corp. v. Riverkeeper, Inc., 129 S. Ct. 1498, 1506 (2009)

(Best – “Best Technology”)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 258 (2d ed. 1953)

Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2532 (2009)

(Affidavits)

BLACK'S LAW DICTIONARY 62 (8th ed. 2004)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Republic of Iraq v. Beaty, 129 S. Ct. 2183, 2193 (2009)

(Apply)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 131 (2d ed. 1954)

Begay v. United States, 553 U.S. 137, 151 (2008)

(Otherwise)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1729 (2d ed. 1989)

District of Columbia v. Heller, 128 S. Ct. 2783, 2791, 2793, 2792, 2794, 2793, 2799, 2800 (2008)

(Arms)

A DICTIONARY OF THE ENGLISH LANGUAGE 107 (Samuel Johnson ed., 4th ed. 1773)

A NEW AND COMPLETE LAW DICTIONARY (Timothy Cunningham ed., 1771)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828, reprinted 1989)

(Bear)

OXFORD ENGLISH DICTIONARY 20 (2d ed. 1989)

A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (Thomas Sheridan ed., 1796)

A DICTIONARY OF THE ENGLISH LANGUAGE 161 (Samuel Johnson ed., 4th ed. 1773)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828, reprinted 1989)

(Keep)

A DICTIONARY OF THE ENGLISH LANGUAGE 1095 (Samuel Johnson ed., 4th ed. 1773)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster, ed., 1828, reprinted 1989)

(Bear Arms Against)

OXFORD ENGLISH DICTIONARY 21 (1989)

(Carries a Firearm)

BLACK'S LAW DICTIONARY 214 (6th ed. 1998)

(Militia)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828, reprinted 1989)

(Regulate)

A DICTIONARY OF THE ENGLISH LANGUAGE 1619 (Samuel Johnson ed., 4th ed. 1773)

Giles v. California, 128 S. Ct. 2678, 2684, 2683, 2701 (2008)

(Contrivance)

OXFORD ENGLISH DICTIONARY 850 (2d ed. 1989)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 47

(Noah Webster ed., 1828)

(Means)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 822

(Noah Webster ed., 1869)

OXFORD ENGLISH DICTIONARY 516 (2d ed. 1989)

(Procure)

OXFORD ENGLISH DICTIONARY 559 (2d ed. 1989)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

A NEW DICTIONARY OF THE ENGLISH LANGUAGE 1514 (Charles Richardson ed., 1839)

New Jersey v. Delaware, 552 U.S. 597, 632 (2008) (Scalia, J., dissenting)

(Jurisdiction)

WEBSTER'S INTERNATIONAL DICTIONARY OF THE ENGLISH

LANGUAGE 806 (1898)

United States v. Santos, 553 U.S. 507, 511, 517–18 (2008)

(Proceeds)

OXFORD ENGLISH DICTIONARY 544 (2d ed. 1989)

RANDOM HOUSE DICTIONARY OF ENGLISH LANGUAGE 1542 (2d ed. 1987)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1972 (2d ed. 1957)

(Promote)

WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1957)

United States v. Williams, 553 U.S. 285, 294–95 (2008)

(Presents)

(Promotes)

AMERICAN HERITAGE DICTIONARY 1388, 1403 (4th ed. 2000)

James Jr. v. United States, 550 U.S. 192, 218 (2007) (Scalia, J., dissenting)
(Otherwise)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1729 (2d ed. 1954)
(Ejusdem Generis)

BLACK'S LAW DICTIONARY 535 (7th ed. 1999)

Massachusetts v. Environmental Protection Agency, 549 U.S. 497, 559–60
(2007) (Scalia, J., dissenting)

(Air)

(Pollute)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 54, 1910 (2d ed.
1949)

Winkelman v. Parma City School District, 550 U.S. 516, 536 (2007)
(Scalia, J., concurring in part, dissenting in part)

(Party Aggrieved)

BLACK'S LAW DICTIONARY 1154 (8th ed. 2004)

Zuni Public School District No. 89 v. Department of Education, 550 U.S.
81, 111 (2007) (Scalia, J., dissenting)

(N-th Percentile)

THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 378–79 (3d
ed. 2005)

Davis v. Washington, 547 U.S. 813, 823–24 (2006)

(Testimonial)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah
Webster ed., 1828)

Rapanos v. United States, 547 U.S. 715, 732–33, 733, 734–35, 736, 739
(2006) (plurality opinion)

(Waters)

(Stream)

(Moat)

(Canal)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2882, 2493, 1575,
388 (2d ed. 1954)

Crawford v. Washington, 541 U.S. 36, 51 (2004)

(Testimony)

(Witnesses)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Engine Manufacturers Ass'n v. South Coast Air Quality Management District, 541 U.S. 246, 252–53 (2004)

(Standard)

WEBSTER'S SECOND NEW INTERNATIONAL DICTIONARY 2455 (1945)

Tennessee v. Lane, 541 U.S. 509, 559 (2004) (Scalia, J., dissenting)

(Enforce)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 396 (Noah Webster ed., 1860)

DICTIONARY OF THE ENGLISH LANGUAGE 486 (Joseph Worcester ed., 1860)

Vieth v. Jubelirer, 541 U.S. 267, 274, 271 n.1 (2004)

(Gerrymander)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1052 (2d ed. 1945)

(Political Gerrymander)

BLACK'S LAW DICTIONARY 696 (7th ed. 1999)

Branch v. Smith, 538 U.S. 254, 264 (2003)

(Enact)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 841 (2d ed. 1949)

(Legislate)

BLACK'S LAW DICTIONARY 910 (7th ed. 1999)

Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 31–32 (2003)

(Goods)

(Origin)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1079 (2d ed. 1949)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1720–21 (2d ed. 1954)

Virginia v. Black, 538 U.S. 343, 369–71 (2003) (Scalia, J., dissenting)
(Prima Facie Evidence)

BLACK'S LAW DICTIONARY 1190 (6th ed. 1990)

City of Columbus v. Ours Garage & Wrecker Service, 536 U.S. 424, 445
(2002) (Scalia, J., dissenting)
(Football)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 983 (2d ed. 1950)

Republican Party of Minnesota v. White, 536 U.S. 765, 776 (2002)
(Impartiality)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1247 (2d ed. 1950)

NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711
(2001)

(Employee)

AMERICAN HERITAGE DICTIONARY 604 (3d ed. 1992)

INS v. St. Cyr, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting)*
(Suspend)

WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
(1828)

AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (Nathan
Bailey ed., 26th ed. 1789)

A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed.,
1773)

Nevada v. Hicks, 533 U.S. 353, 364 (2001) (Scalia, J.)*
(Process)

BLACK'S LAW DICTIONARY 1084 (5th ed. 1979)

Kyllo v. United States, 533 U.S. 27, 33 (2001) (Scalia, J.)*
(Search)

WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
66 (1828) (reprinted 6th ed. 1989)

Semtek International v. Lockheed Martin Corp., 531 U.S. 497, 505–06 (2001)*

(Dismissal Without Prejudice)

BLACK'S LAW DICTIONARY (7th ed. 1999)

Whitman v. American Trucking Ass'ns, 531 U.S. 457, 465–66 (2001)*
(Public Health)

WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1950)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981)

Artuz v. Bennett, 531 U.S. 4, 8–9 (2000) (Scalia, J.)*

(File)

BLACK'S LAW DICTIONARY 642 (7th ed. 1999)

Associate Justice Sonia Sotomayor (August, 8, 2009 – present)

1 term in the Twenty-First Century

4 Cases (4.00/Court Term) and

5 Words or Phrases (5.00/Term)

Graham County Soil & Water Conservation District v. United States ex rel. Wilson, 130 S. Ct. 1396, 1412 (2010) (Sotomayor, J., dissenting)

(Administrative)

BLACK'S LAW DICTIONARY 42 (5th ed. 1979)

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, et al., 130 S. Ct. 1605, 1614 (2010)

(Procedure)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1807 (1976)

Krupski v. Costa Crociere S.P.A., 130 S. Ct. 2485, 2494 (2010)

(Mistake)

BLACK'S LAW DICTIONARY 1092 (9th ed. 2009)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1446 (2002)

(Crociera)

CASSELL'S ITALIAN DICTIONARY 137, 670 (1967)

Milavetz, Gallop & Milavetz, P.A., et al. v. United States, 130 S. Ct. 1324, 1334, 1335 (2010)

(Contemplation of Bankruptcy)

BLACK'S LAW DICTIONARY 336 (8th ed. 2004)

Associate Justice David Souter (ret. June 29, 2009)

9 terms in the Twenty-First Century

20 Cases (2.22/Court Term) and

24 Words or Phrases (2.66/Term)

Justice Souter's Complete Career numbers (Oct. 1989-June 2009):

20 terms

38 Cases (1.90 cases/Court Term) and

47 Words or Phrases (2.35/Term)

Abuelhawa v. United States, 129 S. Ct. 2102, 2106 (2009)

(Aid and Abet)

(Facilitation)

BLACK'S LAW DICTIONARY 76, 627 (8th ed. 2004)

Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee, 129 S. Ct. 846, 850 (2009)

(Oppose)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1709-10 (2d ed. 1958)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1010 (1966)

Kennedy v. Plan Administrator for DuPont Savings & Investment Plan, 129 S. Ct. 865, 870 (2009)

(Alienate)

(Assign)

BLACK'S LAW DICTIONARY 96, 152 (4th rev. ed. 1968)

Travelers Indemnity Co. v. Bailey, 129 S. Ct. 2195, 2200 n.2 (2009)

(Direct Actions)

BLACK'S LAW DICTIONARY 491 (8th ed. 2004)

Department of Revenue of Kentucky v. Davis, 553 U.S. 328, 332 n.2 (2008)

(Municipal Bond)

DICTIONARY OF FINANCE AND INVESTMENT TERMS 439 (7th ed. 2006)

EC Term of Years Trust v. United States, 550 U.S. 429, 431 (2007)

(Levy)

BLACK'S LAW DICTIONARY (8th ed. 2004)

Safeco Insurance Co. v. Burr, 551 U.S. 47, 61 (2007)

(Increase)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1260 (2d ed. 1957)

Watson v. United States, 552 U.S. 74, 79 n.7 (2007)

(Use)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 2097 (2d ed. 1987)

BLACK'S LAW DICTIONARY 1541 (6th ed. 1990)

Lopez v. Gonzalez, 549 U.S. 47, 53-54 (2006)

(Trafficking)

BLACK'S LAW DICTIONARY 1534 (8th ed. 2004)

S.D. Warren Co. v. Maine Board Of Environmental Protection, 547 U.S. 370, 376 (2006)

(Discharge)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 742 (2d ed. 1949)

MGM Studios, Inc., v. Grokster, Ltd., 545 U.S. 913, 935 (2005)

(Inducement of Infringement)

BLACK'S LAW DICTIONARY 790 (8th ed. 2004)

Sosa v. Alvarez-Machain, 542 U.S. 692, 723 n.16 (2004)

(Animadvert)

OXFORD ENGLISH DICTIONARY 474 (2d ed. 1989)

Breuer v. Jim's Concrete Brevard, Inc., 538 U.S. 691, 694-95 (2003)

(Maintain/Maintain an Action)

BLACK'S LAW DICTIONARY 1143 (3d ed. 1933)

Cook County, Illinois v. United States ex rel. Chandler, 538 U.S. 119,
125–26 (2003)

(Corporation)

A LAW DICTIONARY 332 (John Bouvier ed., 6th ed. 1856)

A LAW DICTIONARY & GLOSSARY 383 (Alexander Burrill ed., 2d
ed. 1859)

Roell v. Withrow, 538 U.S. 580, 586–88 nn.3 & 5 (2003)

(Appearance)

BLACK'S LAW DICTIONARY 95 (7th ed. 1999)

LAW DICTIONARY AND PRONUNCIATIONS 91 (James Ballentine ed.,
2d ed. 1948)

*Washington State Department of Social & Health Services v.
Guardianship Estate of Keffeler*, 537 U.S. 371, 383 (2003)

(Provisional Attachment)

BLACK'S LAW DICTIONARY 123 (7th ed. 1999)

(Garnishment)

BLACK'S LAW DICTIONARY 123 (7th ed. 1999)

JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd., 536
U.S. 88, 99 (2002)

(Citizen)

BLACK'S LAW DICTIONARY 237 (7th ed. 1999)

Verizon Communications, Inc. v. FCC, 535 U.S. 467, 500 & n.19 (2002)
(plurality opinion)

(Cost)

ESTES R., DICTIONARY OF ACCOUNTING 32 (2d ed. 1985)

(Profit)

MIT DICTIONARY OF MODERN ECONOMICS 310 (1994)

United States v. Mead, 533 U.S. 218, 225 (2001)

(Diary)

OXFORD ENGLISH DICTIONARY 321 (Compact ed. 1982)

Atwater v. City of Lago Vista, 532 U.S. 318, 332 (2001)*
(Arrest)

A NEW AND COMPLETE LAW DICTIONARY (Timothy Cunningham
ed., 1771)

THE LAW DICTIONARY 129 (Giles Jacob ed., 1st Am. Ed. 1811)

Associate Justice John Paul Stevens (ret. June 29, 2010)

10 terms in the Twenty-First Century

26 Cases (2.60/Court Term) and

40 Words or Phrases (4.00/Term)

*Justice Stevens' Complete Career numbers (December 1975-June 2010: 36
Court Terms):*

66 Cases (1.83 /Court Term)

93 Words or Phrases (2.58 words or phrases/Court Term)

Abbott v. Abbott, 130 S. Ct. 1983, 2000–01, 2001, 2001–02, 2002 (2010)
(Stevens, J., dissenting)

(Care)

([To] Determine)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 388, 616
(1986)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 405, 711 (2d ed.
1954)

(Place)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1727 (1986)

(Residence)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1931 (1986)

BLACK'S LAW DICTIONARY 1423 (9th ed. 2009)

Bilski v. Kappos, 130 S. Ct. 3218, 3243–44 (2010) (Stevens, J., concurring)

(Art)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828, facsimile ed.)

A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed., 1773, reprinted 1978)

(Discover; Invent)

A DICTIONARY OF CONTEMPORARY USAGE 137 (Bergen Evans & Cornelia Evans eds., 1957)

Carachuri-Rosendo v. Holder, 130 S. Ct. 2577, 2585 (2010)

(Trafficking)

BLACK'S LAW DICTIONARY 1534 (8th ed. 2004)

(Felony)

(Aggravated Offense)

BLACK'S LAW DICTIONARY 694, 75 (9th ed. 2009)

Citizens United v. Federal Election Commission, 130 S. Ct. 876, 950 n.55, 962–63 (2010) (Stevens, J., dissenting)

(Corruption)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 512 (1966)

(Speech)

A DICTIONARY OF THE ENGLISH LANGUAGE 1853–54 (Samuel Johnson ed., 4th ed. 1773, reprinted 1978)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828, reprinted 1970)

Florida v. Powell, 130 S. Ct. 1195, 1209 (2010) (Stevens, J., dissenting)

(Miranda)

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 792 (11th ed. 2003)

Graham County Soil & Water Conservation District v. United States ex rel. Wilson, 130 S. Ct. 1396, 1402 (2010)

(Administrative)

(Noscitur A Sociis)

BLACK'S LAW DICTIONARY 49, 1160 (9th ed. 2009)

New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2642 (2010)

(Quorum)

BLACK'S LAW DICTIONARY 1370 (9th ed. 2009)

OXFORD ENGLISH DICTIONARY 51 (2d ed. 1989)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2046 (2d ed. 1954)

Renico v. Lett, 130 S. Ct. 1855, 1871 (2010) (Stevens, J., dissenting)

(Deadlock)

OXFORD ENGLISH DICTIONARY 290 (2d ed. 1989)

Salazar v. Buono, 130 S. Ct. 1803, 1831 (2010) (Stevens, J., dissenting)

(Permit)

OXFORD ENGLISH DICTIONARY 578 (2d ed. 1989)

Samantar v. Yousuf, 130 S. Ct. 2278, 2286 (2010)

(Entity)

BLACK'S LAW DICTIONARY 612 (9th ed. 2009)

Boyle v. United States, 129 S. Ct. 2237, 2248 (2009) (Stevens, J., dissenting)

(Enterprise)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 757 (1976)

Burlington Northern & Santa Fe Railway Co. v. United States, 129 S. Ct. 1870, 1879 (2009)

(Arrange)

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 64 (10th ed. 1993)

Travelers Indem. Co. v. Bailey, 129 S. Ct. 2195, 2208 (2009) (Stevens, J., dissenting)

(Direct Actions)

BLACK'S LAW DICTIONARY 491 (8th ed. 2004)

Yeager v. United States, 129 S. Ct. 2360, 2367–68 (2009)

(Record)

BLACK'S LAW DICTIONARY 1301 (8th ed. 2004)

District of Columbia v. Heller, 128 S. Ct. 2783, 2828 (2008) (Stevens, J., dissenting)

(Arms)

A DICTIONARY OF THE ENGLISH LANGUAGE 107 (Samuel Johnson ed., 1755)

(Bear Arms)

OXFORD ENGLISH DICTIONARY 634 (2d ed. 1989)

United States v. Williams, 553 U.S. 285, 308 (2008) (Stevens, J., concurring)

(Pander)

OXFORD ENGLISH DICTIONARY 129 (2d ed. 1989)

(Pandering)

BLACK'S LAW DICTIONARY 1142 (8th ed. 2004)

National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 691 n.12 (2007) (Stevens, J., dissenting)

(Shall)

MELLINKOFF'S DICTIONARY OF AMERICAN LEGAL USAGE 402–03 (1992)

DICTIONARY OF MODERN LEGAL USAGE 939 (2d ed. 1995)

Arkansas Dept. of Health & Human Services v. Ahlborn, 547 U.S. 268, 286 (2006)

(Lien)

BLACK'S LAW DICTIONARY 922 (6th ed. 1990)

Dixon v. United States, 548 U.S. 1, 6 n.4 (2006)

(Malice)

BLACK'S LAW DICTIONARY 968 (7th ed. 1999)

Rapanos v. United States, 547 U.S. 715, 801, 805, 806–07 (2006) (Stevens, J., dissenting)

(Streams)

(Adjacent)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2493, 32 (2d ed. 1954)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1180, 26 (1961)

(Alluvium)

(Silt)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 59, 2119 (1961)

Gonzalez v. Raich, 545 U.S. 1, 25–26 (2005)

(Economics)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 720 (1966)

IBP, Inc., v. Alvarez, 546 U.S. 21, 25 (2005)

(Work/Employment)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1944 (2d ed. Unabridged)

Johnson v. California, 545 U.S. 162, 168 n.4 (2005)

(Inference)

BLACK'S LAW DICTIONARY 781 (7th ed. 1999)

Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 382 nn.15 & 16 (2004)

(Arise)

AMERICAN HERITAGE DICTIONARY 96 (4th ed. 2000)

BLACK'S LAW DICTIONARY 138 (rev. 4th ed. 1968)

OXFORD ENGLISH DICTIONARY 629 (2d ed. 1989)

Scheidler v. NOW, Inc., 537 U.S. 393, 403 n.8, 416 (2003) (Stevens, J., dissenting)

(Obtain)

(Disposal)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1559, 1559 (1976)

Whitman v. American Trucking Ass'ns, 531 U.S. 457, 488 (2001)
(Stevens, J., concurring)*

(Legislation)

BLACK'S LAW DICTIONARY (6th ed. 1990)

Associate Justice Clarence Thomas
10 terms in the Twenty-First Century

41 Cases (4.10/Court Term) and

64 Words or Phrases (6.40/Term)

Astrue v. Ratliff, 130 S. Ct. 2521, 2526 (2010)

(Award)

BLACK'S LAW DICTIONARY 125 (5th ed. 1979)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 152 (1993)

McDonald v. City of Chicago, 130 S. Ct. 3020, 3063–64, 3078 (2010)

(Thomas, J., concurring in part and concurring in the judgment)

(Immunity)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 661

(Noah Webster ed., Chauncey Goodrich & Noah Porter rev. 1865)

A NEW DICTIONARY OF THE ENGLISH LANGUAGE 1056 (Charles
Richardson ed., 1839)

EXPOSITOR OF THE ENGLISH LANGUAGE 105 (3d ed. 1812)

(Right)

(Abridge)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 1140, 6

(Noah Webster ed., Chauncey Goodrich & Noah Porter rev. 1865)

(Privilege)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 1039

(Noah Webster ed., Chauncey Goodrich & Noah Porter rev. 1865)

A NEW DICTIONARY OF THE ENGLISH LANGUAGE 1512 (Charles
Richardson ed., 1839)

EXPOSITOR OF THE ENGLISH LANGUAGE 152 (3d ed. 1812)

ROYAL STANDARD ENGLISH DICTIONARY 411 (1788)

United Student Aid Funds, Inc. v. Espinosa, 130 S. Ct. 1367, 1377 (2010)

(Void Judgment)

BLACK'S LAW DICTIONARY 1822 (3d ed. 1933)

BLACK'S LAW DICTIONARY 1709 (9th ed. 2009)

Atlantic Sounding Co., Inc. v. Townsend, 129 S. Ct. 2561, 2570 (2009)

(Elect)

FUNK & WAGNALLS NEW STANDARD DICTIONARY OF THE
ENGLISH LANGUAGE 798 (1913)

(Election)

BOUVIER'S LAW DICTIONARY 979 (8th ed. 1914)

Carcieri v. Salazar, 129 S. Ct. 1058, 1064 (2009)

(Now)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 1671 (2d ed. 1934)
BLACK'S LAW DICTIONARY 1262 (3d ed. 1933)

Carlsbad Technology, Inc. v. HIF Bio, Inc., 129 S. Ct. 1862, 1866 (2009)

(Subject Matter Jurisdiction)

BLACK'S LAW DICTIONARY 870 (8th ed. 2004)

Cuomo v. Clearing House Ass'n, L.L.C., 129 S. Ct. 2710, 2723 (2009)

(Visitation)

A LAW DICTIONARY AND GLOSSARY 598 (Alexander Burrill ed.,
1860)

A LAW DICTIONARY 633 (John Bouvier ed., 1852)

Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343, 2350 (2009)

(Because Of)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 194 (1966)

OXFORD ENGLISH DICTIONARY 746 (1933)

THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE
132 (1966)

Negusie v. Holder, 129 S. Ct. 1159, 1179 (2009) (Thomas, J., dissenting)

(Assist)

(Participate)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 109, 858 (1991)

OXFORD AMERICAN DICTIONARY 36, 487 (1980)

BLACK'S LAW DICTIONARY 111, 1007 (5th ed. 1979)

(Persecution)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 877 (1991)

WEBSTER'S NEW COLLEGIATE DICTIONARY 855 (1975)

United States ex rel. Eisenstein v. City of New York, New York, 129 S. Ct. 2230, 2234, 2235 (2009)

(Intervention)

(Party)

(Real Party of Interest)

BLACK'S LAW DICTIONARY 840, 1154, 840 (8th ed. 2004)

Ali v. Federal Bureau of Prisons, 552 U.S. 214, 219 (2008)

(Any)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976)

Baze v. Rees, 553 U.S. 35, 97 (2008) (Thomas, J., concurring)

(Cruel)

A DICTIONARY OF THE ENGLISH LANGUAGE (Samuel Johnson ed., 1774)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Federal Express Corp. v. Holowecki, 552 U.S. 389, 408–09 (2008)

(Thomas, J., dissenting)

(Charge)

AMERICAN HERITAGE DICTIONARY 312 (4th ed. 2000)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 377 (1993)

BLACK'S LAW DICTIONARY 248 (8th ed. 2004)

Florida Department of Revenue v. Picadilly Cafeterias, Inc., 128 S. Ct.

2326, 2331, 2332 (2008)

(Past Participle)

AMERICAN HERITAGE DICTIONARY 1287 (4th ed. 2000)

(Under)

AMERICAN HERITAGE DICTIONARY 1395 (1976)

Quanta Computer Inc. v. LG Electronics, Inc., 553 U.S. 617, 621–22

(2008)

(Main Memory)

WEBSTER'S NEW WORLD DICTIONARY OF COMPUTER TERMS 334, 451 (8th ed. 2000)

Rothgery v. Gillespie County, Texas, 128 S. Ct. 2578, 2596, 2597 (2008)

(Thomas, J., dissenting)

(Indictment)

A NEW AND COMPLETE LAW DICTIONARY (Timothy Cunningham ed., 2d ed. 1771)

(Presentment)

THE LAW DICTIONARY 278–79 (Giles Jacob ed., 1811)

(Prosecution)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Limtiaco v. Camacho, 549 U.S. 483, 488–89 (2007)

(Appraise)

(Assessed Valuation)

(Valuation)

BLACK'S LAW DICTIONARY 129, 129, 1721 (4th ed. 1951)

(Tax Valuation)

BLACK'S LAW DICTIONARY 116 (6th ed. 1990)

Permanent Mission of India to the United Nations v. City of New York, 551 U.S. 193, 198 (2007)

(Incumbrance)

(Lien)

BLACK'S LAW DICTIONARY 908, 1072 (4th ed. 1951)

United States v. Atlantic Research Corp., 551 U.S. 128, 138 (2007)

(Contribution)

BLACK'S LAW DICTIONARY 353 (8th ed. 1999)

Davis v. Washington, 547 U.S. 813, 836 (2006) (Thomas, J., concurring in the judgment in part and dissenting in part)

(Witnesses/Testimonial)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828)

Dolan v. United States Postal Service, 546 U.S. 481, 493–96 (2006)
(Thomas, J., dissenting)
(Transmission)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 2692 (2d ed. 1934,
as republished, 1945)

Gonzalez v. Oregon, 546 U.S. 243, 282–83, 285, 278–79 (2006) (Thomas,
J., dissenting)

(Control)
(Medicine)
(Prescription)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 580, 1527, 1954 (2d
ed. 1950)

Gonzalez v. Raich, 545 U.S. 1, 69, 69–70 (2005) (Thomas, J., dissenting)
(Commerce)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 411
(2d ed. 1987)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 456 (1966)
(Economic)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 720 (1966)
AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE
583 (3d ed. 1992)

Orff v. United States, 545 U.S. 596, 603 (2005)

(Necessary Parties)

BLACK'S LAW DICTIONARY 928 (5th ed. 1979)

Pasquantino v. United States, 544 U.S. 349, 356 (2005)

(Property)

BLACK'S LAW DICTIONARY 1382 (4th ed. 1951)

(Fraud)

A DICTIONARY OF AMERICAN AND ENGLISH LAW 546 (1883)

Rousey v. Jacoway, 544 U.S. 320, 326–27, 330 & n.5, 329 (2005)

(On Account Of)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 13 (2d ed. 1987)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 13 (1981)

(Similar)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2120 (1981)

AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1206 (1981)

(Profit Sharing)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1811 (1981)

AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1045 (1981)

OXFORD ENGLISH DICTIONARY 580 (2d ed. 1989)

Small v. United States, 544 U.S. 385, 396, 397 n.1 (2005) (Thomas, J., dissenting)

(Any)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976)

(Court)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 522 (1961)

THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 335 (1966)

THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 282 (5th ed. 1964)

General Dynamics Land Systems v. Cline, 540 U.S. 581, 603–04 (2004)

(Thomas, J., dissenting)

(Age)

AMERICAN HERITAGE DICTIONARY 33 (3d ed. 1992)

OXFORD AMERICAN DICTIONARY 19 (1999)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 40 (1993)

RANDOM HOUSE DICTIONARY 37 (2d ed. 1987)

Locke v. Davey, 540 U.S. 712, 734–35 (2004) (Thomas, J., dissenting)

(Theology)

AMERICAN HERITAGE DICTIONARY 1794 (4th ed. 2000)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1223 (1991)

Olympic Airways v. Husain, 540 U.S. 644, 651 n.6, 655 (2004)

(Accident)

WEBSTER'S NEW WORLD COLLEGE DICTIONARY 8 (4th ed. 1999)

AMERICAN HERITAGE DICTIONARY 10 (4th ed. 2000)

(Event)

BLACK'S LAW DICTIONARY 554–55 (6th ed. 1990)

AMERICAN HERITAGE DICTIONARY 635 (3d ed. 1992)

WEBSTER'S NEW INTERNATIONAL DICTIONARY 885 (2d ed. 1957)

Sabri v. United States, 541 U.S. 600, 612–13 (2004) (Thomas, J., concurring)

(Plain/Plainly)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 898 (1991)

AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (Noah Webster ed., 1828 facsimile edition)

Scarborough v. Principi, 541 U.S. 401, 424 n.1 (2004) (Thomas, J., dissenting)

(Also)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 75 (1991)

BLACK'S LAW DICTIONARY 77 (6th ed. 1990)

United States v. Galletti, 541 U.S. 114, 122 (2004)

(Assessment)

BLACK'S LAW DICTIONARY 111 (7th ed. 1999)

Barnhart v. Peabody Coal Co., 537 U.S. 149, 184–85 (2003) (Thomas, J., dissenting)

(Shall)

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(Case)

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(Proceeding)

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(Upon)

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1570
(1966)

Ashcroft v. ACLU, 535 U.S. 564, 579 n.9 (2002) (plurality opinion)
(Erotic)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 422 (1991)

National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 110 (2002)
(Occur)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1561(1993)

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in part and dissenting in part)

(Enumeration)

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Webster ed., 1929)

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Bailey ed., 26th ed. 1789)

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Tyler v. Cain, 533 U.S. 656, 662 (2001)*

([To] Make)

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 718–19 (1991)

APPENDIX C:

DICTIONARIES RELIED UPON BY THE WORDS OR PHRASES DEFINED
BY THE UNITED STATES SUPREME COURT

(2000–2001 TERM THROUGH 2009–2010 TERM)

(OCT. 2000 THROUGH JUNE 2010)

AAA

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1970)**

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(2010) (Scalia, J., concurring)
(Press)

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ed.)**

Bilski v. Kappos, 130 S. Ct. 3218, 3243–44 (2010) (Stevens, J.,
concurring)
(Art)

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Boyle v. United States, 129 S. Ct. 2237, 2244 (2009) (Alito, J.)
(Structure)
Ali v. Federal Bureau of Prisons, 552 U.S. 214, 235 (2008) (Kennedy,
J., dissenting)
(Detention)
Cuellar v. United States, 553 U.S. 550, 558, 563 (2008) (Alito, J.)
(Money Laundering)
(Design)
Federal Express Corp. v. Holowecki, 552 U.S. 389, 408–09 (2008)
(Thomas, J., dissenting)
(Charge)
Florida Department of Revenue v. Picadilly Cafeterias, Inc., 128 S. Ct.
2326, 2331 (2008) (Thomas, J.)
(Past Participle)
Tellabs, Inc., v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323 (2008)

(Ginsburg, J.)

(Strong)

United States v. Williams, 553 U.S. 285, 294–95 (2008) (Scalia, J.)

(Promotes, in the same sequence as solicits, distributes, advertises)

(Presents, in the same sequence as solicits, distributes, advertises)

Logan v. United States, 552 U.S. 23, 31 n.3 (2007) (Ginsburg, J.)

(Restore)

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(Determine)

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(Stevens, J.)

(Arise)

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(Theology)

Olympic Airways v. Husain, 540 U.S. 644, 652 (2004) (Thomas, J.)

(Accident)

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(Shall)

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(Capacity)

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(Would)

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(Age)

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(Economic)

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(Employee)

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(Corrupt/Corruptly)
(Knowledge/Knowingly)
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(Profitsharing)
(Similar)

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(Under)

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(Percentile)

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(Suspend)

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(Appearance)

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(Residence)

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(Sanction)

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(Award)

Bloate v. United States, 130 S. Ct. 1345, 1360 (2010) (Alito, J.,
dissenting)

(Including)

(Proceeding)

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J.)

(Felony)

(Aggravated Offense)

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ex rel. Wilson*, 130 S. Ct. 1396, 1402 (2010) (Stevens, J.)

(Administrative)

(Noscitur A Sociis)

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J.)

(Battery)

(Force)

(Physical Force)

(Violent)

(Violent Felony)

Johnson v. United States, 130 S. Ct. 1265, 1274 (2010) (Alito, J., dissenting)
(Battery)
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(Sotomayor, J.)
(Mistake)
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(Jail)
New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2642 (2010)
(Stevens, J.)
(Quorum)
New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2647, 2651
(2010) (Kennedy, J., dissenting)
(Quorum)
(Proportional Quorum)
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(Entity)
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(2010) (Thomas, J.)
(Void Judgment)

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(Expiration)
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(Trafficking)
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(Error)
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(Contemplation of Bankruptcy)
Schwab v. Reilly, 130 S. Ct. 2652, 2674 n.9 (2010) (Ginsburg, J., dissenting)
(Property Interest)

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(Aid and Abet)
(Facilitation)
- Carlsbad Technology, Inc. v. HIF Bio, Inc.*, 129 S. Ct. 1862, 1866
(2009) (Thomas, J.)
(Subject Matter Jurisdiction)
- Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2532 (2009) (Scalia,
J.)
(Affidavits)
- Ministry of Defense & Support for the Armed Forces of the Islamic
Republic of Iran v. Elahi*, 129 S. Ct. 1732, 1742 (2009) (Breyer, J.)
(At Issue)
- Nken v. Holder*, 129 S. Ct. 1749, 1757 (2009) (Roberts, C.J.)
(Injunction)
- Northwest Austin Municipal Utility District No. One v. Holder*, 129 S.
Ct. 2504, 2513 (2009) (Roberts, C.J.)
(District)
- Travelers Indemnity Co. v. Bailey*, 129 S. Ct. 2195, 2200 (2009)
(Souter, J.)
(Direct Actions)
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- United States ex rel. Eisenstein v. City of New York, New York*, 129 S.
Ct. 2230, 2234, 2235 (2009) (Thomas, J.)
(Party)
(Intervention)
(Real Party in Interest)
- United States v. Denedo*, 129 S. Ct. 2213, 2219 (2009) (Kennedy, J.)
(Relief)
- United States v. Hayes*, 129 S. Ct. 1079, 1084–85 (2009) (Ginsburg, J.)
(Element)
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(Record)
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(Habeas Corpus)
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(Felony)

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(Design)
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(2008) (Breyer, J.)
(Conflict of Interest)
New Jersey v. Delaware, 552 U.S. 597, 604 n.3 (2008) (Ginsburg, J.)
(Low Water Mark)
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concurring)
(Pandering)
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(Souter, J.)
(Levy)
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(Scalia, J., concurring in part and dissenting in part)
(Party Aggrieved)
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U.S. 81, 98 (2007) (Breyer, J.)
(Per)
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(Alito, J.)
(Complaint)
(Action)
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(Trafficking)
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(Rehnquist, C.J.)
(Corrupt/ Corruptly)
(Knowledge/Knowingly)
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(Souter, J.)
(Inducement of Infringement)

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(Contribution)

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(Detention)
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(Potential)
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(Ejusdem Generis)
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(Malice)
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(Inference)
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(Assessment)
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(Recovery)
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(Renvoi)
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(Assessment)
Vieth v. Jubelirer, 541 U.S. 267, 271 n.1, 274 (2004) (Scalia, J.)
(Political Gerrymander)
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(Legislate)
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(Redistrict)
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(Proceeding)

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(Provisional Attachment)
(Garnishment)
- Dusenbery v. United States*, 534 U.S. 161, 170 (2002) (Rehnquist, C.J.)
(Actual Notice)
- JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 99 (2002) (Souter, J.)
(Citizen)
- Bartnicki v. Vopper*, 532 U.S. 514, 546 (2001) (Rehnquist, C.J., dissenting)*
(Disclosure)
- Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598, 603 (2001) (Rehnquist, C.J.)*
(Prevailing Party)
- Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598, 628 (2001) (Ginsburg, J., dissenting)*
(Prevailing Party)
- Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505–06 (2001) (Scalia, J.)*
(Dismissal without prejudice)
- Artuz v. Bennett*, 531 U.S. 4, 8–9 (2000) (Scalia, J.)*
(File)

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(Carries a Firearm)

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(Cognizance)
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(Maintain / Maintain an Action)

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(Stay)
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(Enjoin)
(Stay)
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(Tax Valuation)
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(Shall)
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(Use)
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(Lien)
Johnson v. United States, 544 U.S. 295, 315 (2005) (Kennedy, J., dissenting)
(Discovery)

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(Event)
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dissenting)
(Also)
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concurring)
(Sovereign)
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(Case)
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(Prima Facie Evidence)
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(Occur)
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(Administrative)
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dissenting)
(Assist)
(Participate)
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(Necessary Parties)
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(Process)

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(Alienate)
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(Arise)

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(Jurisdiction)
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(Appraise)
(Assessed Valuation)
(Valuation)
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(Lien)
(Incumbrance)
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(Alito, J.)
(Right of Action)
(Complaint)
(Damages)
(Suit)
Pasquantino v. United States, 544 U.S. 349, 356 (2005) (Thomas, J.)
(Property)
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(Now)
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(Enjoin)

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(Immunity)

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(Profit)

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(Under)

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(Deliver)

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(Art)

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(2010) (Stevens, J., dissenting in part, concurring in part)
(Speech)

Johnson, S. [Samuel], A Dictionary of the English Language (4th ed. 1773)

District of Columbia v. Heller, 128 S. Ct. 2783, 2791, 2792, 2793, 2800 (2008) (Scalia, J.)

(Arms)

(Keep)

(Bear)

(Regulate)

District of Columbia v. Heller, 128 S. Ct. 2783, 2849 (2008) (Breyer, J., dissenting)

(Firearms)

Kelo v. City of New London, 545 U.S. 469, 508 (2005) (O'Connor, J., dissenting)

(Use)

Eldred v. Ashcroft, 537 U.S. 186, 248 (2003) (Breyer, J., dissenting)

(Limited)

Utah v. Evans, 536 U.S. 452, 475 (2002) (Breyer, J.)

(Enumeration)

Utah v. Evans, 536 U.S. 452, 492–93 (2002) (Thomas, J., concurring in part and dissenting in part)

(Enumeration)

Johnson, S., A Dictionary of the English Language (1773)

INS v. St. Cyr, 121 S. Ct. 2271, 2299 (2001) (Scalia, J., dissenting)*

(Suspend)

Johnson, S., A Dictionary of the English Language (1755)

District of Columbia v. Heller, 128 S. Ct. 2783, 2828 (2008) (Stevens, J., dissenting)

(Arms)

**** END OF VERSIONS OF SAMUEL JOHNSON'S DICTIONARY OF THE ENGLISH LANGUAGE *

KKK

LLL

MMM**Mellinkoff's Dictionary of American Legal Usage (1992)**

National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 691 n.12 (2007) (Stevens, J., dissenting)
(Shall)

Merriam-Webster's Collegiate Dictionary (11th ed. 2003)

Florida v. Powell, 130 S. Ct. 1195, 1209 (2010) (Stevens, J., dissenting)
(Miranda)

Merriam-Webster's Geographical Dictionary (3d ed. 1997)

Salazar v. Buono, 130 S. Ct. 1803, 1811 (2010) (Kennedy, J.)
(Mojave National Preserve)

NNN**New Dictionary of the English Language (1839)**

Giles v. California, 128 S. Ct. 2678, 2701 (2008) (Breyer, J., dissenting)
(Procure)

The New Grove Dictionary of Music and Musicians (2d ed. 2001)**Brahms**

Nurre v. Whitehead, 130 S. Ct. 1937, 1938 (2010) (Alito, J., dissenting from denial of certiorari)

(Brahms)
(Bruckner)
(Elgar)
(Gounod)
(Mozart)
(Rossini)
(Saint-Saëns)
(Schubert)
(Stravinsky)
(Verdi)

The New Palgrave Dictionary of Money and Finance (P. Newman,

Mike Milgate & J. Eatwell eds. 1992)

Morrison v. National Australia Bank, Ltd., 130 S. Ct. 2869, 2875
 (2010) (Scalia, J.)
 (Mortgage-Servicing Rights)

OOO

**** *VERSIONS OF THE OXFORD ENGLISH DICTIONARY* *

Oxford American Dictionary (1999)

General Dynamics Land Systems v. Cline, 540 U.S. 581, 603–04
 (2004) (Thomas, J., dissenting)
 (Age)

Oxford American Dictionary (1980)

Negusie v. Holder, 129 S. Ct. 1159, 1179 (2009) (Thomas, J.,
 dissenting)
 (Assist)
 (Participate)

The Concise Oxford Dictionary of Current English (5th ed. 1964)

Small v. United States, 544 U.S. 385, 397 (2005) (Thomas, J.,
 dissenting)
 (Court)

The Concise Oxford Dictionary of Mathematics (3d ed. 2005)

Zuni Public School District No. 89 v. Department of Education, 550
 U.S. 81, 95, 96, 99 (Breyer, J.)
 (N-th Percentile)
 (Quantile)
 (Percentile)
 (Quartile)
 (Decile)
Zuni Public School District No. 89 v. Department of Education, 550
 U.S. 81, 111 (2007) (Scalia, J., dissenting)
 (N-th Percentile)

Oxford English Dictionary (2d ed. 1989)

- Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010) (Breyer, J.)
(Principal)
- Johnson v. United States*, 130 S. Ct. 1265, 1271 (2010) (Scalia, J.)
(Violent)
- New Process Steel, L.P. v. N.L.R.B.*, 130 S. Ct. 2635, 2642 (2010)
(Stevens, J.)
(Quorum)
- Renico v. Lett*, 130 S. Ct. 1855, 1871 (2010) (Stevens, J., dissenting)
(Deadlock)
- Salazar v. Buono*, 130 S. Ct. 1803, 1831 (2010) (Stevens, J.,
dissenting)
(Permit)
- Crawford v. Metropolitan Government of Nashville & Davidson
County, Tennessee*, 129 S. Ct. 846, 853–54 (2009) (Alito, J., concurring)
(Oppose)
- Begay v. United States*, 553 U.S. 137, 156, 159 (2008) (Alito, J.,
dissenting)
(Serious)
(Otherwise)
- District of Columbia v. Heller*, 128 S. Ct. 2783, 2793, 2794, (2008)
(Scalia, J.)
(Bear)
(Bear Arms Against)
- District of Columbia v. Heller*, 128 S. Ct. 2783, 2828 (2008) (Stevens,
J., dissenting)
(Bear Arms)
- Giles v. California*, 128 S. Ct. 2678, 2683, 2684 (2008) (Scalia, J.)
(Procure)
(Means)
(Contrivance)
- National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S.
644, 667 (2008) (Alito, J.)
(Insure)
- Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S. Ct.
2709, 2730 (2008) (Ginsburg, J., concurring and dissenting)
(Sale)

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323 (2008)
 (Ginsburg, J.)
 (Strong)
United States v. Williams, 553 U.S. 285, 308 (2008) (Stevens, J.,
 concurring)
 (Pander)
United States v. Santos, 553 U.S. 507, 511 (2008) (Scalia, J.)
 (Proceeds)
Logan v. United States, 552 U.S. 23, 31 n.3 (2007) (Ginsburg, J.)
 (Restore)
Watson v. Philip Morris Co., 551 U.S. 142, 151–52 (2007) (Breyer, J.)
 (Under)
Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53, 60
 (2006) (Breyer, J.)
 (Discriminate Against)
Rousey v. Jacoway, 544 U.S. 320, 330 (2005) (Thomas, J.)
 (Profitsharing)
Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 383 (2004)
 (Stevens, J.)
 (Arise)
Sosa v. Alvarez-Machain, 542 U.S. 692, 724 (2004) (Souter, J.)
 (Animadvert)
Moseley v. V Secret Catalogue, 537 U.S. 418, 435 (2003) (Kennedy J.,
 concurring)
 (Capacity)
Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S.
 184, 196–97 (2002) (O'Connor, J.)
 (Substantially/Substantial)

Oxford English Dictionary (Compact ed. 1982)

United States v. Mead Corp., 533 U.S. 218, 225 (2001) (Souter, J.)
 (Diary)

Oxford English Dictionary (1933)

Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343, 2350 (2009)
 (Thomas, J.)
 (Because Of)

**** END OF VERSIONS OF THE OXFORD ENGLISH DICTIONARY *

PPP**QQQ****RRR****Random House Dictionary [of the English Language] (2d ed. 1987)**

Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee, 129 S. Ct. 846, 850 (2009) (Souter, J.)

(Oppose)

Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee, 129 S. Ct. 846, 854 (2009) (Alito, J., concurring)

(Oppose)

United States v. Santos, 553 U.S. 507, 511 (2008) (Scalia, J.)

(Proceeds)

United States v. Santos, 553 U.S. 507, 531 (2008) (Alito, J., dissenting)

(Proceeds)

Watson v. United States, 552 U.S. 74, 79 n.7 (2007) (Souter, J.)

(Use)

Gonzalez v. Raich, 545 U.S. 1, 69–70 (2005) (Thomas, J., dissenting)

(Commerce)

Rousey v. Jacoway, 544 U.S. 320, 326–27 (2005) (Thomas, J.)

(On Account of)

General Dynamics Land Systems v. Cline, 540 U.S. 581, 603–04 (2004) (Thomas, J., dissenting)

(Age)

Owasso Independent School District No. I-011 v. Falvo, 534 U.S. 426, 433 (2002) (Kennedy, J.)

(Maintain)

Random House Dictionary of the English Language (1979)

Hibbs v. Winn, 542 U.S. 88, 116–17 (2004) (Kennedy, J., dissenting)

(Assessment)

Random House Dictionary of the English Language (1967)

- Mac's Shell Service, Inc. v. Shell Oil Products Co. LLC*, 130 S. Ct. 1251, 1257 (2010) (Alito, J.)
(Cancel)
(Terminate)
Boyle v. United States, 129 S. Ct. 2237, 2244 (2009) (Alito, J.)
(Structure)
Baze v. Rees, 553 U.S. 35, 70 (2008) (Alito, J.)
(Untoward)
Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 460–61 (2007) (Alito, J., concurring)
(Combine)
(Component)
National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 668 (2007) (Alito, J.)
(Discretion)

Random House Dictionary of the English Language (1966)

- United States v. Stevens*, 130 S. Ct. 1577, 1596 (2010) (Alito, J., dissenting)
(Serious)
Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee, 129 S. Ct. 846, 853 (2009) (Alito, J., concurring)
(Oppose)
Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343, 2350 (2009) (Thomas, J.)
(Because Of)
Small v. United States, 544 U.S. 385, 397 (2005) (Thomas, J., dissenting)
(Court)
Roell v. Withrow, 538 U.S. 580, 592–93 (2003) (Thomas, J., dissenting)
(Upon)

Richardson, C., A New Dictionary of the English Language (1839)
McDonald v. City of Chicago, 130 S. Ct. 3020, 3063–64 (2010)
(Thomas, J., concurring in part and concurring in the judgment)
(Privilege)
(Immunity)
Giles v. California, 128 S. Ct. 2678, 2684, 2683, 2701 (2008) (Scalia,
J.)
(Procure)

Rosenberg, J., Dictionary of Banking and Financial Services (2d ed. 1985)
Morrison v. National Australia Bank, Ltd., 130 S. Ct. 2869, 2875
(2010) (Scalia, J.)
(Servicing Mortgages)

Royal Standard English Dictionary (1788)
McDonald v. City of Chicago, 130 S. Ct. 3020, 3063–64 (2010)
(Thomas, J., concurring in part and concurring in the judgment)
(Privilege)

SSS

Sheridan, T., A Complete Dictionary of the English Language (6th ed. 1796)
District of Columbia v. Heller, 128 S. Ct. 2783, 2793 (2008) (Scalia,
J.)
(Bear)
Eldred v. Ashcroft, 537 U.S. 186, 199 (2003) (Ginsburg, J.)
(Limited)
Utah v. Evans, 536 U.S. 452, 492–93 (2002) (Thomas, J., concurring
in part and dissenting in part)
(Enumeration)

Spanish and English Legal and Commercial Dictionary (1945)
Medellin v. Texas, 552 U.S. 491, 553 (2008) (Breyer, J., dissenting)
(Comprometer)

Stedman's Medical Dictionary (27th ed. 2000)*Gonzalez v. Carhart*, 550 U.S. 124, 152 (2007)

(Deliver, when used in connection with “fetus”)

TTT**UUU****VVV****WWW****** *VERSIONS OF WEBSTER'S AMERICAN DICTIONARY* ***Webster, N., An American Dictionary of the English Language (1869)***Giles v. California*, 128 S. Ct. 2678, 2684, 2701 (2008) (Scalia, J.)

(Means)

Webster, N., An American Dictionary of the English Language (C. Goodrich & N. Porter rev. 1865)*McDonald v. City of Chicago*, 130 S. Ct. 3020, 3063–64, 3078 (2010)

(Thomas, J., concurring in part and concurring in the judgment)

(Privilege)

(Immunity)

(Right)

(Abridge)

Webster, N., American Dictionary of the English Language (1860)*Tennessee v. Lane*, 541 U.S. 509, 559 (2004) (Scalia, J., dissenting)

(Enforce)

Webster, N., American Dictionary of the English Language (1828, 1995 facsimile ed.)*Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 130 S. Ct. 3138, 3162–63 (2010) (Roberts, C.J.)

(Department)

Webster, N., American Dictionary of the English Language (1828,

reprinted 1970)

Citizens United v. Federal Election Commission, 130 S. Ct. 876, 950 (2010) (Stevens, J., dissenting in part, concurring in part)
(Speech)

**Webster's American Dictionary of the English Language (1828)
(reprinted 6th ed. 1989)**

Kyllo v. United States, 533 U.S. 27, 33 (2001) (Scalia, J.)*
(Search)

**Webster, N., An American Dictionary of the English Language
(1828)**

Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2532 (2009) (Scalia, J.)

(Affidavits)

Baze v. Rees, 553 U.S. 35, 97 (2008) (Thomas, J., concurring)
(Cruel)

District of Columbia v. Heller, 128 S. Ct. 2783, 2791, 2792, 2793, 2799 (2008) (Scalia, J.)

(Arms)

(Keep)

(Bear)

(Militia)

Giles v. California, 128 S. Ct. 2678, 2683 (2008) (Scalia, J.)

(Procure)

(Contrivance)

Giles v. California, 128 S. Ct. 2678, 2701 (2008) (Breyer, J., dissenting)

(Procure)

Rothgery v. Gillespie County, Texas, 128 S. Ct. 2578, 2597 (2008) (Thomas, J., dissenting)

(Prosecution)

Davis v. Washington, 547 U.S. 813, 823–24 (2006) (Scalia, J.)

(Testimonial)

Davis v. Washington, 547 U.S. 813, 836 (2006) (Thomas, J., concurring in part and dissenting in part)

(Witnesses/Testimonial)

Sabri v. United States, 541 U.S. 600, 613 (2004) (Thomas, J., concurring)
 (Plain/Plainly)
Crawford v. Washington, 541 U.S. 36, 51 (2004) (Scalia, J.)
 (Witnesses)
 (Testimony)
Crawford v. Washington, 541 U.S. 36, 71 (2004) (Rehnquist, C.J., concurring)
 (Testimony)
Utah v. Evans, 536 U.S. 452, 492–93 (2002) (Thomas, J., concurring in part and dissenting in part)
 (Enumeration)
INS v. St. Cyr, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting)*
 (Suspend)

**** *END OF VERSIONS OF WEBSTER'S AMERICAN DICTIONARY* *

**** *VERSIONS OF WEBSTER'S COLLEGIATE DICTIONARY* *

Webster's Collegiate Dictionary (10th ed. 1993)

Branch v. Smith, 538 U.S. 254, 298–99 (2003) (O'Connor, J., dissenting)
 (Until)
 (Redistrict)

Webster's New Colligate Dictionary (1975)

Negusie v. Holder, 129 S. Ct. 1159, 1179 (2009) (Thomas, J., dissenting)
 (Persecution)

Webster's New Collegiate Dictionary (1974)

Kucana v. Holder, 130 S. Ct. 827, 834 (2010) (Ginsburg, J.)
 (Specify)

Webster's Ninth New Collegiate Dictionary (1991)

Negusie v. Holder, 129 S. Ct. 1159, 1179 (2009) (Thomas, J., dissenting)
 (Persecution)
 (Assist)
 (Participate)
Locke v. Davey, 540 U.S. 712, 734–35 (2004) (Thomas, J., dissenting)
 (Theology)
Sabri v. United States, 541 U.S. 600, 612–13 (2004) (Thomas, J., concurring)
 (Plain/Plainly)
Scarborough v. Principi, 541 U.S. 401, 425 (2004) (Thomas, J., dissenting)
 (Also)
Ashcroft v. ACLU, 535 U.S. 564, 579 (2002) (Thomas, J.)
 (Erotic)
Tyler v. Cain, 533 U.S. 656, 662 (2001) (Thomas, J.)*
 ([To] Make)

Webster's Ninth New Collegiate Dictionary (1988)

Utah v. Evans, 536 U.S. 452, 492–93 (2002) (Thomas, J., concurring in part and dissenting in part)
 (Enumeration)

Webster's Ninth New Collegiate Dictionary (1985)

Chickasaw Nation v. United States, 534 U.S. 84, 89 (2001) (Breyer, J.)
 (Include)
 (Ambiguous)

Webster's Ninth New Collegiate Dictionary (1983)

Ashcroft v. Free Speech Coalition, 535 U.S. 234, 269 (2002)
 (Rehnquist, C.J., dissenting)
 (Simulated)

Webster's New World College Dictionary (4th ed. 1999)

Olympic Airways v. Husain, 540 U.S. 644, 652 (2004) (Thomas, J.)
 (Accident)

Merriam Webster's Collegiate Dictionary (10th ed. 1997)

Gonzalez v. Carhart, 550 U.S. 124, 152 (2007) (Kennedy, J.)
(Deliver)

Merriam Webster's Collegiate Dictionary (10th ed. 1993)

Burlington Northern & Santa Fe Railway Co. v. United States, 129 S. Ct. 1870, 1879 (2009) (Stevens, J.)
(Arrange)

**** *END OF VERSIONS OF WEBSTER'S COLLEGIATE DICTIONARY* *

Webster's International Dictionary of English Language (1898)

New Jersey v. Delaware, 552 U.S. 597, 632 (2008) (Scalia, J.,
dissenting)
(Jurisdiction)

**** *VERSIONS OF WEBSTER'S INTERNATIONAL DICTIONARY
SECOND EDITION* *

Webster's New International Dictionary (2d ed. 1958)

*Crawford v. Metropolitan Government of Nashville & Davidson
County, Tennessee*, 129 S. Ct. 846, 850 (2009) (Souter, J.)
(Oppose)

Webster's New International Dictionary (2d ed. 1957)

Alabama v. North Carolina, 130 S. Ct. 2295, 2306, 2309 (2010)
(Scalia, J.)

(Sanction)

(Appropriate)

Hamilton v. Lanning, 130 S. Ct. 2464, 2479 (2010) (Scalia, J.,
dissenting)

(Projected)

Mac's Shell Service, Inc. v. Shell Oil Products Co. LLC, 130 S. Ct.
1251, 1257 (2010) (Alito, J.)

(Cancel)

(Terminate)

Merck & Co., Inc. v. Reynold, 130 S. Ct. 1784, 1800 (2010) (Scalia, J.,
concurring)

(Discovery)

Salazar v. Buono, 130 S. Ct. 1803, 1825 (2010) (Scalia, J., concurring)

- (Permitting)
Begay v. United States, 553 U.S. 137, 151 (2008) (Scalia, J., concurring)
- (Otherwise)
Safeco Insurance Co. v. Burr, 551 U.S. 47, 61 (2007) (Souter, J.)
- (Increase)
Olympic Airways v. Husain, 540 U.S. 644, 655 (2004) (Thomas, J.)
- (Event)
Branch v. Smith, 538 U.S. 254, 298–99 (2003) (O’Connor, J., dissenting)
- (Until)
United States v. Santos, 553 U.S. 507, 511, 517–18 (2008) (Scalia, J.)
- (Proceeds)
- (Promote)
- Webster’s New International Dictionary (2d ed. 1954)**
- Abbott v. Abbott*, 130 S. Ct. 1983, 1991 (2010) (Kennedy, J.)
- (Determine)
Abbott v. Abbott, 130 S. Ct. 1983, 2002 (2010) (Stevens, J., dissenting)
- ([To] Determine)
- (Care)
Bilski v. Kappos, 130 S. Ct. 3218, 3228 (2010) (Kennedy, J.)
- (Method)
Johnson v. United States, 130 S. Ct. 1265, 1270, 1271 (2010) (Scalia, J.)
- (Force)
- (Violent)
New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635, 2642 (2010) (Stevens, J.)
- (Quorum)
Republic of Iraq v. Beatty, 129 S. Ct. 2183, 2193 (2009) (Scalia, J.)
- (Apply)
James Jr. v. United States, 550 U.S. 192, 218 (2007) (Scalia, J., dissenting)
- (Otherwise)

Rapanos v. United States, 547 U.S. 715, 732–33, 733, 734–35, 736, 739 (2006) (Scalia, J., plurality)

(Waters)

(Stream)

(Moat)

(Canal)

Rapanos v. United States, 547 U.S. 715, 768–69, 770, 771 (2006) (Kennedy, J., concurring)

(Waters)

(Stream)

(Hydrography)

Rapanos v. United States, 547 U.S. 715, 801, 805 (2006) (Stevens, J., dissenting)

(Streams)

(Adjacent)

Webster’s New International Dictionary (2d ed. 1953)

Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee, 129 S. Ct. 846, 853 (2009) (Alito, J., concurring)

(Oppose)

Entergy Corp. v. Riverkeeper, Inc., 129 S. Ct. 1498, 1506 (2009) (Scalia, J.)

(Best – “Best Technology”)

Watson v. Philip Morris Co., 551 U.S. 142, 151–52 (2007) (Breyer, J.)

(Under)

Webster’s New International Dictionary (2d ed. 1950)

Gonzalez v. Oregon, 546 U.S. 243, 285, 278–79 (2006) (Thomas, J., dissenting)

(Control)

(Medicine)

(Prescription)

City of Columbus v. Ours Garage & Wrecker Service, 536 U.S. 424, 445 (2002) (Scalia, J., dissenting)

(Football)

Republican Party of Minnesota v. White, 536 U.S. 765, 776 (2002) (Scalia, J.)

(Impartiality)

Whitman v. American Trucking Ass'ns, 531 U.S. 457, 465 (2001)
(Scalia, J.)*
(Public Health)

Webster's New International Dictionary (2d ed. 1949)

Massachusetts v. Environmental Protection Agency, 549 U.S. 497,
559–60 (2007) (Scalia, J., dissenting)

(Pollute)

(Air)

S.D. Warren Co. v. Maine Board of Environmental Protection, 547
U.S. 370, 376 (2006) (Souter, J.)

(Discharge)

Branch v. Smith, 538 U.S. 254, 264 (2003) (Scalia, J.)

(Enact)

Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 31–
32 (2003) (Scalia, J.)

(Goods)

(Origin)

Moseley v. V Secret Catalogue, 537 U.S. 418, 435 (2003) (Kennedy, J.,
concurring)

(Capacity)

Webster's New International Dictionary (2d ed. 1945)

Dolan v. United States Postal Service, 546 U.S. 481, 493–96 (2006)
(Thomas, J., dissenting)

(Transmission)

Vieth v. Jubelirer, 541 U.S. 267, 272, 274 (2004) (Scalia, J.)

(Political Gerrymander)

Webster's New International Dictionary (2d ed. Unabridged 1944)

IBP, Inc. v. Alvarez, 546 U.S. 21, 25 (2005) (Stevens, J.)

(Work/Employment)

Webster's New International Dictionary (2d ed. 1939)

Medellin v. Texas, 552 U.S. 491, 553 (2008) (Breyer, J., dissenting)

(Undertake)

Webster's New International Dictionary (2d ed. 1934)

Carcieri v. Salazar, 129 S. Ct. 1058, 1064 (2009) (Thomas, J.)
(Now)

Boumediene v. Bush, 128 S. Ct. 2229, 2252 (2008) (Kennedy, J.)
(Sovereignty)

Hibbs v. Winn, 542 U.S. 88, 100–01 (2004) (Ginsburg, J.)
(Assessment)

Webster's New International Dictionary (2d ed. 1927)

Hibbs v. Winn, 542 U.S. 88, 116–17 (2004) (Kennedy, J., dissenting)
(Assessment)

Webster's Second New International Dictionary (1945)

Engine Manufacturers Ass'n v. South Coast Air Quality Management District, 541 U.S. 246, 253 (2004) (Scalia, J.)
(Standard)

**** *END OF VERSIONS OF WEBSTER'S INTERNATIONAL
DICTIONARY SECOND EDITION* *

**** *VERSIONS OF WEBSTER'S INTERNATIONAL DICTIONARY THIRD
EDITION* *

Webster's Third New International Dictionary (2002)

Krupski v. Costa Crociere S. P. A., 130 S. Ct. 2485, 2494 (2010)
(Sotomayor, J.)
(Mistake)

Begay v. United States, 553 U.S. 137, 159, 156 (2008) (Alito, J.,
dissenting)
(Otherwise)
(Serious)

Webster's Third New International Dictionary (1996)

Doe v. Chao, 540 U.S. 614, 630 (2004) (Ginsburg, J., dissenting)
(Recovery)

Webster's Third New International Dictionary (1993)

- Astrue v. Ratliff*, 130 S. Ct. 2521, 2526 (2010) (Thomas, J.)
(Award)
Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2721 (2010)
(Roberts, C.J.)
(Service)
United States v. Stevens, 130 S. Ct. 1577, 1588 (2010) (Roberts, C.J.)
(Killed)
Nken v. Holder, 129 S. Ct. 1749, 1765 (2009) (Alito, J., dissenting)
(Enjoin)
Cuellar v. United States, 553 U.S. 550, 563 (2008) (Alito, J.)
(Design)
Federal Express Corp. v. Holowecki, 552 U.S. 389, 408–09 (2008)
(Thomas, J., dissenting)
(Charge)
Irizarry v. United States, 553 U.S. 708, 718 (2008) (Breyer, J.,
dissenting)
(Departure)
Knight v. Commissioner of Internal Revenue, 552 U.S. 181, 192
(2008) (Roberts, C.J.)
(Would)
Logan v. United States, 552 U.S. 23, 31 n.3 (2007) (Ginsburg, J.)
(Restore)
Arthur Andersen LLP v. United States, 544 U.S. 696, 707, 705 (2005)
(Rehnquist, C.J.)
(Impede)
(Knowledge/Knowingly)
(Corrupt/Corruptly)
Dodd v. United States, 545 U.S. 353, 358 (2005) (O'Connor, J.)
(If)
Johnson v. United States, 544 U.S. 295, 315 (2005) (Kennedy, J.,
dissenting)
(Discovery)
General Dynamics Land Systems v. Cline, 540 U.S. 581, 603–04
(2004) (Thomas, J., dissenting)
(Age)

Carey v. Saffold, 536 U.S. 214, 219, 228 (2002) (Breyer, J.) (Kennedy, J., dissenting)

(Pending)

(Pending)

National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 110 (2002) (Thomas, J.)

(Occur)

Utah v. Evans, 536 U.S. 452, 475 (2002) (Breyer, J.)

(Enumeration)

Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161–62 (2001) (Breyer, J.)*

(Associate)

(Employ)

Webster's Third New International Dictionary (1986)

Abbott v. Abbott, 130 S. Ct. 1983, 2000–01, 2001, 2001–02, 2002 (2010) (Stevens, J., dissenting)

(Care)

([To] Determine)

(Place)

(Residence)

Webster's Third New International Dictionary (1981)

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(Component)

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(On Account Of)

(Profitsharing)

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(Any)

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(Combine)

(Component)

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(Court)

(Any)

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(Obtain)
(Disposal)
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(Per)

(Percentile)

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