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I. INTRODUCTION

This article is the fourth annual survey of Supreme Court voting behavior presented in the *BYU Journal of Public Law*.[1] Like its predecessors, it examines the positions taken by each member of the Court on selected categories of cases decided during the immediately preceding Term. The classification scheme is designed to provide indicators of the Justices' views on important dimensions of constitutional interpretation and individual rights. Nine of the categories are based on the nature of the issues or the character of the parties. A tenth category tabulates the number of times each Justice voted with the majority in cases decided by a five-to-four margin. The nine issue and party categories are as follows:

(1) Civil controversies in which a state, or one of its officials or political subdivisions, is opposed by a private party.
(2) Civil controversies in which the federal government, or one of its agencies or officials, is opposed by a private party.
(3) State criminal cases.
(4) Federal criminal cases.
(5) First amendment rights of speech, press, association, and the free exercise of religion.
(6) Equal protection claims.
(7) Statutory civil rights claims.
(8) Cases raising a challenge to the exercise of federal court jurisdiction, including standing, justiciability, and related matters.

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1. Riggs & Urban, *Supreme Court Voting Behavior: 1988 Term*, 4 BYU J. PUB. L. 1 (1990); Riggs & Moss, *Supreme Court Voting Behavior: 1987 Term*, 3 BYU J. PUB. L. 59 (1989); Riggs, *Supreme Court Voting Behavior: 1986 Term*, 2 BYU J. PUB. L. 15 (1988).

(9) Federalism issues.

Tables 1-9 present voting data for these nine issue-related categories. Table 10 deals with the cases decided by a single vote.

Each of the first nine categories is intended to reveal attitudes of the Justices toward two super issues which are relevant to most Supreme Court decision-making—individual rights and judicial restraint. Criminal prosecutions, as well as claims arising under the first amendment, the equal protection clause, and the civil rights statutes, have obvious relevance to individual rights. Civil actions between governmental and private parties are also likely to raise issues of individual rights because the preference for a governmental party usually is at the expense of persons claiming rights against the government. The same is true, perhaps to a lesser extent, of the federalism category. Decisions on such issues undoubtedly reflect the Court's view of the proper federal/state balance; nevertheless, a vote for the state may also be a vote against a person seeking federal relief from alleged state encroachment upon his rights.

Judicial restraint is normally identified with deference to legislatures as the policy-making branch of government, with respect for precedent, with avoidance of constitutional questions when narrower grounds for decision exist, with concern about standing and justiciability, and with respect for the framers' intent (when ascertainable) in construing constitutional text.[2] As a hands-off policy, judicial restraint favors the government rather than the individual who claims a right against the government, because the laws are already in place. Judicial restraint is also likely to be identified with respect for the role of states within the federal system.

Judicial restraint and concern for individual rights are not necessarily opposite poles of a single attitudinal dimension. Respect for precedent, avoidance of constitutional questions, a strict view of standing and justiciability, deference to states, and allegiance to the framers' intent are not necessarily inconsistent with respect for individual rights. Still, judicial restraint is often at odds with claims of individual rights. Deference to legislatures frequently means rejection of an individual's claim, especially one predicated upon the impropriety of governmental action. Emphasis upon the framers' intent can mean unwillingness to read new individual rights into the Constitution. Reluctance to exercise federal court jurisdiction may leave the decision to state courts, with their possible bias in favor of actions by state governments, and the certain disappointment of the claimant seeking federal intervention. In

2. For a discussion of judicial restraint, see Lamb, *Judicial Restraint on the Supreme Court*, in SUPREME COURT ACTIVISM AND RESTRAINT 7, 8 (S. Halpern & C. Lamb eds. 1982).

the voting tabulations that follow, most of the data supporting an inference of judicial restraint, or the lack of it, will also be consistent, respectively, with a narrow or a broad view of individual rights.

II. The Voting Record

TABLE 1
CIVIL CASES: STATE GOVERNMENT
VERSUS A PRIVATE PARTY

Justice	Number of Votes—1989 Term		% Votes for Government			
	For Govt	Against Govt	1989 Term	1988 Term	1987 Term	1986 Term
Rehnquist	26	11	70.3	66.7	67.9	71.8
O'Connor	25	12	67.6	57.4	50.0	64.1
Scalia	24	13	64.9	59.2	51.7	64.1
Kennedy	22	14	61.1	57.1	50.0	—
White	22	15	59.5	55.1	53.6	43.6
Blackmun	16	21	43.2	30.6	44.8	36.8
Stevens	15	22	40.5	35.4	37.9	46.2
Brennan	10	27	27.0	20.4	34.5	33.3
Marshall	10	27	27.0	21.3	34.5	30.8
Majority						
All Cases	19	18	51.4	51.0	51.7	53.9
Split Decisions	11	10	52.4	64.0	58.8	—
Unanimous	8	8	50.0	37.5	41.7	—

TABLE 2

CIVIL CASES: FEDERAL GOVERNMENT VERSUS A PRIVATE PARTY

Justice	Number of Votes—1989 Term		% Votes for Government			
	For Govt	Against Govt	1989 Term	1988 Term	1987 Term	1986 Term
Rehnquist	22	6	78.6	71.4	61.8	90.6
White	21	7	75.0	71.4	72.7	87.1
Blackmun	18	10	64.3	60.7	50.0	53.1
Kennedy	17	11	60.7	66.7	58.3	—
O'Connor	17	11	60.7	60.7	76.5	75.0
Scalia	17	11	60.7	59.3	62.5	82.8
Stevens	16	12	57.1	42.9	55.9	50.0
Brennan	15	13	53.6	37.0	45.5	43.8
Marshall	14	14	50.0	39.3	44.1	46.9
Majority						
All Cases	20	8	71.4	64.3	61.8	68.8
Split Decisions	10	5	66.7	66.7	55.6	—
Unanimous	10	3	76.9	61.5	68.8	—

TABLE 3

STATE CRIMINAL CASES

Justice	Number of Votes—1989 Term		% Votes for Government			
	For Govt	Against Govt	1989 Term	1988 Term	1987 Term	1986 Term
Rehnquist	29	5	85.3	85.2	73.7	87.9
O'Connor	26	8	76.5	77.8	61.1	75.8
Kennedy	25	9	73.5	81.5	70.0	—
Scalia	25	9	73.5	74.1	63.2	75.8
White	25	9	73.5	77.8	47.4	81.8
Blackmun	12	22	35.3	37.0	26.3	30.3
Stevens	7	27	20.6	37.0	21.1	21.2
Brennan	4	30	11.8	18.5	5.3	3.0
Marshall	3	31	8.8	14.8	5.3	3.0
Majority						
All Cases	22	12	64.7	70.4	47.4	60.6
Split Decisions	21	9	70.0	72.7	53.8	—
Unanimous	1	3	25.0	60.0	16.7	—

TABLE 4

FEDERAL CRIMINAL CASES

Justice	Number of Votes—1989 Term		% Votes for Government			
	For Govt	Against Govt	1989 Term	1988 Term	1987 Term	1986 Term
O'Connor	7	2	77.8	77.8	71.4	90.0
Rehnquist	7	2	77.8	88.9	85.7	80.0
White	7	2	77.8	88.9	85.7	90.0
Kennedy	6	3	66.7	88.9	71.4	—
Scalia	6	3	66.7	66.7	64.3	70.0
Blackmun	4	5	44.4	55.6	78.6	30.0
Stevens	3	6	33.3	66.7	64.3	40.0
Brennan	1	8	11.1	25.0	38.5	0.0
Marshall	1	8	11.1	33.3	28.6	0.0
Majority						
All Cases	6	3	66.7	88.9	78.6	60.0
Split Decisions	5	1	83.3	100.0	75.0	—
Unanimous	1	2	33.3	66.7	100.0	—

TABLE 5

FIRST AMENDMENT RIGHTS OF EXPRESSION, ASSOCIATION, AND FREE EXERCISE OF RELIGION

Justice	Number of Votes—1989 Term		% Votes for Rights Claim			
	For Claim	Against Claim	1989 Term	1988 Term	1987 Term	1986 Term
Brennan	11	4	73.3	81.3	84.6	91.7
Marshall	11	4	73.3	76.5	84.6	91.7
Blackmun	9	6	60.0	41.2	69.2	72.7
Stevens	7	8	46.7	64.7	50.0	50.0
Kennedy	6	9	40.0	37.5	66.7	—
O'Connor	4	11	26.7	25.0	23.1	45.5
Scalia	4	11	26.7	35.3	38.5	36.4
White	3	12	20.0	23.5	30.8	41.7
Rehnquist	2	13	13.3	18.8	16.7	16.7
Majority						
All Cases	6	9	40.0	35.3	50.0	58.3
Split Decisions	4	6	40.0	22.2	50.0	—
Unanimous	2	3	40.0	50.0	50.0	—

TABLE 6

EQUAL PROTECTION CLAIMS

Justice	Number of Votes—1989 Term		% Votes for Rights Claim			
	For Claim	Against Claim	1989 Term	1988 Term	1987 Term	1986 Term
Kennedy	1	3	25.0	57.1	33.3	—
O'Connor	1	3	25.0	66.7	12.5	42.9
Scalia	1	3	25.0	57.1	12.5	14.3
Rehnquist	1	4	20.0	57.1	12.5	14.3
Blackmun	0	3	0.0	60.0	50.0	57.1
Brennan	0	3	0.0	50.0	37.5	71.4
Marshall	0	3	0.0	50.0	37.5	71.4
Stevens	0	3	0.0	66.7	28.6	33.3
White	0	5	0.0	66.7	12.5	28.6
Majority						
All Cases	0	5	0.0	57.1	12.5	14.3
Split Decisions	0	1	0.0	100.0	0.0	—
Unanimous	0	4	0.0	50.0	20.0	—

TABLE 7

STATUTORY CIVIL RIGHTS CLAIMS

Justice	Number of Votes—1989 Term		% Votes for Rights Claim			
	For Claim	Against Claim	1989 Term	1988 Term	1987 Term	1986 Term
Brennan	9	0	100.0	95.0	87.5	84.6
Marshall	9	0	100.0	94.4	87.5	84.6
Blackmun	8	1	88.9	80.0	87.5	84.6
White	8	1	88.9	55.0	62.5	61.5
Stevens	7	2	77.8	73.7	87.5	61.5
Kennedy	5	3	62.5	45.0	66.7	—
O'Connor	5	4	55.6	52.6	42.9	30.8
Scalia	5	4	55.6	40.0	57.1	38.5
Rehnquist	4	5	44.4	35.0	37.5	38.5
Majority						
All Cases	8	1	88.9	50.0	75.0	53.9
Split Decisions	5	1	83.3	25.0	60.0	—
Unanimous	3	0	100.0	87.5	100.0	—

TABLE 8

CASES RAISING A CHALLENGE TO THE EXERCISE OF JURISDICTION

Justice	Number of Votes—1989 Term		% Votes for Jurisdiction			
	For Jurisdiction	Against Jurisdiction	1989 Term	1988 Term	1987 Term	1986 Term
Brennan	21	3	87.5	66.7	62.8	60.7
Marshall	21	3	87.5	75.0	57.1	57.1
Blackmun	19	5	79.2	64.9	58.1	64.3
Stevens	17	8	68.0	73.0	57.1	71.4
O'Connor	17	8	68.0	51.4	42.9	64.3
White	17	8	68.0	62.2	51.2	71.4
Kennedy	16	9	64.0	51.4	56.3	—
Rehnquist	15	10	60.0	51.4	47.6	67.9
Scalia	15	10	60.0	50.0	36.6	61.5
Majority						
All Cases	16	9	64.0	62.2	55.8	60.7
Split Decisions	3	6	33.3	62.5	71.4	—
Unanimous	13	3	81.3	61.9	48.3	—

TABLE 9

FEDERALISM CASES

Justice	Number of Votes—1989 Term		% Votes for State Claim			
	For State Claim	For Federal Claim	1989 Term	1988 Term	1987 Term	1986 Term
O'Connor	9	7	56.3	73.7	33.3	—
Rehnquist	9	7	56.3	81.0	46.2	—
Scalia	9	7	56.3	76.2	30.8	—
Kennedy	8	8	50.0	72.7	33.3	—
Blackmun	7	9	43.8	40.9	46.2	—
Stevens	7	9	43.8	57.1	46.2	—
White	7	9	43.8	63.6	30.8	—
Brennan	6	10	37.5	31.8	53.8	—
Marshall	6	10	37.5	33.3	53.8	—
Majority						
All Cases	7	9	43.8	59.1	38.5	—
Split Decisions	1	3	25.0	50.0	33.3	—
Unanimous	6	6	50.0	70.0	42.9	—

TABLE 10

SWING-VOTE ANALYSIS: WHO VOTES MOST OFTEN WITH THE MAJORITY IN CLOSE CASES

Justice	Number of Votes—1989 Term		% Votes with Majority			
	With Majority	Against Majority	1989 Term	1988 Term	1987 Term	1986 Term
White	33	9	78.6	76.5	77.4	—
Kennedy	30	12	71.4	82.4	71.4	—
O'Connor	29	13	69.0	76.5	64.5	—
Rehnquist	28	14	66.7	76.5	70.0	—
Scalia	28	14	66.7	73.5	66.7	—
Stevens	18	24	42.9	26.5	61.3	—
Brennan	15	27	35.7	26.5	40.0	—
Marshall	15	27	35.7	23.5	38.7	—
Blackmun	14	28	33.3	38.2	45.2	—
Conservative Coalition	27	15	64.3	76.5	64.5	—
Liberal Coalition	15	27	35.7	23.5	35.5	—

III. ANALYSIS

A list of cases included in each of the ten tables, and criteria governing their selection, are presented in the appendix. Each case was read and classified by three readers—the two authors and a research assistant—and differences were discussed in order to achieve consensus on the appropriate classification. The result undoubtedly falls short of perfect validity and reliability, but we believe that other readers using the same coding criteria would arrive at substantially the same results.

Still, some difficult problems of judgment remain. One example is *Sullivan v. Stroop*[3] in which the Court was asked to construe a provision of the Social Security Act directing the Department of Health and Human Services (HHS) to disregard the first fifty dollars of "child support" in determining the child's eligibility for certain benefits. As interpreted by the Department, the "disregard" provision applied to a non-custodial parent's child support payments but not to insurance benefits received by the child under the Social Security Act. Five Justices approved the HHS interpretation and explicitly held that treating the two kinds of payments differently did not violate the equal protection clause. Four Justices in dissent insisted that the HHS interpreta-

3. 110 S. Ct. 2499 (1990).

tion of the statute was irrational and wrong but did not specifically refer to the equal protection issue. Since equal protection at a minimum requires a "rational basis" for governmental action, the dissent could be viewed as impliedly saying that equal protection had been denied. On the other hand, the dissent's argument against the HHS position presumably would have been stronger if constitutional as well as statutory objections had been made explicit, and the constitutional argument was not explicit. Although reasonable minds could differ, we decided that the dissent did not raise a constitutional objection and we recorded the case in Table 6 as five votes against the equal protection claim and four Justices expressing no opinion. Most of the cases fit with little distortion into a dichotomous classification of "for" or "against," but a few, like *Stroop*, leave room for legitimate differences of opinion on how a particular Justice's "vote" should be coded.[4]

The classification scheme permits a case to be included in more than one table, although the first four tables represent categories which are, for the most part, mutually exclusive. That is, a case is unlikely to be included in more than one of the other four categories. By definition, a case would not be categorized as both civil and criminal,[5] nor would a case on appeal involve a simultaneous federal and state prosecution. However, a civil suit having a private party on one side and both a state and a federal agency or official on the other is possible. One case of that nature was decided during the 1989 Term[6] and was included in

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4. Another difficult classification problem was presented in American Trucking Ass'ns v. Smith, 110 S. Ct. 2323 (1990), a case considering the retroactivity of Supreme Court decisions. All nine Justices agreed that the petitioner Associations were entitled to a refund of at least part of an Arkansas highway use tax paid under a law found to be in violation of the commerce clause. To that extent, all nine took a position against the state party. Five Justices, however, made a further holding—more favorable to the state—that the state need not refund any part of the tax collected for the period preceding the Court's earlier decision in American Trucking Ass'ns v. Scheiner, 483 U.S. 266 (1987), which had declared unapportioned flat highway use taxes levied by states to be unconstitutional. The *Smith* case presented three possible options for inclusion in Table 1: (a) a nine-to-zero decision against the state, (b) a five-to-four decision in the state's favor, or (c) two decisions—one for and one against the state. We ultimately decided on the third option as the most accurate representation of the decision. In doing so, we followed the rule stated in Appendix A-3 that a case is included more than once in the same table if it raises two or more distinct issues affecting the outcome of the case and if the issues are resolved by differing voting alignments.

5. In Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481 (1990), citizens challenged the constitutionality of a Michigan law authorizing the state police to set up sobriety check points on state highways. Because the challenge came in the form of a suit for injunctive and declaratory relief, and not as a defense to prosecution, the case was classified as a civil suit, even though the statute was in aid of drunk driving laws enforceable by criminal penalties.

6. Preseault v. Interstate Commerce Comm'n, 110 S. Ct. 914 (1990). A state (Vermont) and a federal agency were named respondents. Two additional cases, United States Dep't of Labor v. Triplett and Comm. on Legal Ethics of the West Virginia State Bar v. Triplett, 110 S. Ct. 1428 (1990), created a somewhat analogous situation. Although listed in the appendix as separate cases, the Supreme Court dealt with them in a single opinion. The state and federal parties shared

both Tables 1 and 2.

Tables 5-10 do not in any way comprise mutually exclusive categories. A case raising more than one relevant issue is included in each relevant table. For example, an action by a private party against a state might raise issues pertaining to the first amendment, to equal protection, and to jurisdiction. If so, it would be included in all three issue tables, as well as in Table 1 (civil cases: state v. private party). The voting alignment would not necessarily be the same for each issue.[7] In several instances, a single case was included more than once in the same category. This occurred when the facts raised two or more distinct issues affecting the disposition of the case and the issues were decided by differing voting alignments.[8]

A brief look at the behavior of the Court as a whole may be helpful before turning to voting by individual Justices within each of the ten categories. In particular, the data can provide a basis for appraising the extent of the Court's shift toward greater conservatism in recent Terms, a subject of continuing public interest. As the decisions are analyzed in our tables, a conservative position would ordinarily be inferred from a vote favoring the government, a vote against a claim of constitutional or statutory rights, a vote against the exercise of jurisdiction, and a vote in favor of state (rather than federal) authority on federalism questions.

There are, however, exceptions to this general rule. Some decisions were unanimous, indicating that the law or the facts of the case, or both, pointed so clearly one way that there was little room for play of liberal or conservative ideologies. In other cases, much fewer in number, the peculiar nature of the facts created a reverse of the expected relationship with liberals opposing a civil-rights claim and conservatives supporting the claim. A good illustration is *Metro Broadcasting, Inc. v. FCC*,[9] in which a broadcasting company brought action to chal-

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common interests, and the same private party was respondent in each case.

7. To illustrate, in Missouri v. Jenkins, 110 S. Ct. 1651 (1990), involving judicially mandated taxation to implement a school desegregation decree, the Supreme Court was unanimous on a jurisdictional issue but divided five to four on the extent of the district court's remedial powers under 42 U.S.C. § 1983.

8. For example, FW/PBS, Inc. v. City of Dallas, 110 S. Ct. 596 (1990), raised two separate first amendment questions: (1) whether the first amendment right of association was violated by the city's requirement that motels renting rooms for less than ten hours be licensed under an ordinance regulating "sexually oriented businesses," and (2) whether the city's licensing scheme for businesses purveying sexually explicit speech violated the first amendment for lack of adequate procedural safeguards. The Court gave a unanimous "no" to the first question and a six-to-three "yes" to the second. The case is tabulated twice in Table 1, as well as twice in Table 5, because the majority voted against the government on one first amendment issue and for the government on the other.

9. 110 S. Ct. 2997 (1990).

lenge the FCC's policy of giving preference to minorities and women in awarding broadcasting licenses. The petitioner alleged that the government's race and gender preference violated the equal protection component of the fifth amendment due process clause, a reverse discrimination claim. In this situation, the four most liberal members of the Court—Justices Brennan, Marshall, Blackmun, and Stevens—joined by Justice White, voted against the equal protection claim, while the four most conservative members of the Court voted for the petitioner's equal protection claim. Despite such exceptional cases, the expected general correlation between ideology and voting is apparent in most of the tables.

The voting of individual Justices can usefully be compared for any given year, but detecting a shift in the orientation of the Court or its members requires a comparison over time. For our analysis, the best available baseline is the comparable data generated for the three prior years. In the tables, this information is presented as percentages for each Justice and for the Court majority. One must use caution in interpreting the data because the percentages are affected not only by the behavior of individual Justices but also by the nature of the cases decided in a given year. A vote to uphold a higher percentage of criminal convictions in a given year may indicate that a Justice or the Court has become tougher on criminal defendants. Alternatively, it may mean only that this year the facts or the law (or both) of the decided cases were less favorable to the defendant than in previous years. Such variations in law and fact undoubtedly affect other categories of cases. Hence, one cannot be confident that percentage changes in a table from one year to the next reflect a change in ideological orientation of an individual Justice or of the Court majority. Similar directional changes across a number of tables, however, would strengthen the hypothesis that a genuine shift in attitude has occurred. This is true because variation in the nature of the cases should be random and thus is unlikely to account for a pronounced directional change in several tables.[10]

For the 1988 Term, reported a year ago, the data showed a significant directional change for the Court as a whole toward greater conservatism, as compared with the two immediately preceding years.[11] This year, at least statistically, the conservative movement on the Court lost ground. Change over time in the decisions of the Court is indicated

10. There is, of course, the possibility that a change in the priorities or attitudes of members of the Court could introduce some hidden bias into the process by which cases are selected for review, resulting in the selection of cases in which the government's (or the individual's) position is particularly strong. We know of no way to identify the existence, or explain the impact, of such a variable, however.

11. *See* Riggs & Urban, *supra* note 1, at 11-13.

by the percentage figures in the bottom three rows of each table, which show how the majority of the Court voted. The first of the three rows gives figures on all cases included in the table. The second row is limited to decisions with one or more dissenting votes, while figures in the bottom row are calculated only from cases with no dissent. For all cases (row one), a more conservative result appears in Tables 2 and 6 (federal civil cases, equal protection) when compared with the 1988 Term. No significant change is shown in Tables 1, 3, 5, and 8 (state civil cases, state criminal cases, first amendment issues, jurisdictional issues).[12] In Tables 4, 7, and 9 (federal criminal cases, statutory civil rights, federalism issues), the shift runs in a more liberal direction.

In some respects, a better measure is found in the second row from the bottom, which includes only decisions in which a dissenting vote was cast. Excluding decisions taken without dissent[13] has the disadvantages of a smaller universe of cases, but the advantage of including only those cases in which ideological differences might have affected the outcome. When split decisions alone are counted, the movement toward a less conservative position is even more evident. Tables 1, 4, 5, 7, and 9 point in a more liberal direction; Tables 2 and 3 show no significant change; and only Table 8 (jurisdiction) suggests movement in the conservative direction. On its face, Table 6 (equal protection) appears to indicate a more conservative result for 1989 than 1988, and the figures are in that respect totally misleading. Only one equal protection issue was resolved by a split decision during the 1989 Term.[14] Although the decision went against the claim, a nominally conservative outcome, in fact the vote had the liberal result of upholding the FCC preference for minority applicants and was opposed by the four most conservative members of the Court, as noted above. With that interpretation, Table 6 also points in a more liberal direction, although a single case is a very weak basis for generalization.[15]

The swing-vote table (Table 10) further confirms the shift to a

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12. "Significant change" as used here does not refer to statistical significance, a measurement that in this context would at best lend spurious precision to the analysis, but rather to a rule-of-thumb judgment that any change of five percentage points or less is probably not very significant, as that term is used in common parlance.

13. This refers mainly to unanimous decisions but includes a few in which one or more Justices did not participate or did not address the issue.

14. *See* Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990).

15. The conservative retreat in 1989 makes the Court's record, statistically, only slightly more conservative than the 1987 Term. Comparing all cases for those two Terms, and excluding the deceptive equal protection tabulation, four tables (Tables 2, 3, 5, 9) point in a more conservative direction for 1989, three in a more liberal direction (Tables 4, 7, 8), and one shows no significant change (Table 1). For split decisions only, five tables (Tables 2, 3, 4, 5, 8) show more conservative voting in 1989, and three show more liberal (Tables 1, 7, 9).

less conservative position. In cases decided by a single vote during the 1988 Term, the majority agreement scores for the four liberal members of the Court (Brennan, Marshall, Blackmun, Stevens) range from a low of 23.5% (Marshall) to a high of 38.2% (Blackmun); by contrast, the five more conservative Justices voted with the majority in a range of 73.5% to 82.4%. During the most recent (1989) Term, the liberals scored in a somewhat higher range, 33.3% (Blackmun) to 42.9% (Stevens), and the conservatives scored lower, 66.7% (O'Connor, Rehnquist, Scalia) to 78.6% (White). Moreover, Justice White, who scored the highest in 1989-90, achieved that eminence by voting in eight close cases with a liberal coalition, in addition to twenty-five votes with a conservative majority.

The same contrast appears in a comparison of the majority coalitions (rather than individual behavior) in cases decided by a five-to-four vote during the two Terms. In 1988, the conservative coalition dominated in twenty-six of thirty-four votes, or 76.5% of close cases. In 1989, the conservative position prevailed in twenty-seven of forty-two decisions, or 64.3%.[16] Looking at the liberal end of the scale, Justices Brennan and Marshall together voted with the majority in just eight of thirty-four (23.5%) close cases during the 1988 Term, compared with fifteen of forty-two (34.1%) in 1989. A modest recession from the 1988 conservative high water mark is thus evident in these figures as well as in Tables 1-9.[17]

We turn now to a more detailed examination of individual voting behavior.

A. Civil Cases with Government Opposing a Private Party

Table 1 lists summary percentages and the number of times each Justice voted for and against the state government in a civil dispute with a private litigant. Table 2 gives the same kind of data for civil disputes between the federal government and private parties. The rankings are generally as expected, with conservative Justices at the top

16. One case, Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990), was decided by an unusual majority consisting of Justices Brennan, Marshall, Kennedy, O'Connor, and Scalia. The issue was admissibility of evidence against a criminal defendant who had not received a *Miranda* warning. Although three of the five Justices in the majority are generally conservative, Justices Brennan and Marshall are the most consistently liberal voters. Given this odd coalition, the five-to-four portion of the Court's decision was classified as "liberal" because it went in favor of the defendant.

17. The conservative scores were somewhat higher and the liberal scores lower than the 1987 Term when the conservatives prevailed in just over half the close cases, 17 of 31 (54.8%). To recapitulate, conservative dominance was 65.9%, 73.5%, and 54.8% for the 1989, 1988, and 1987 Terms, respectively. The Brennan-Marshall majority voting percentages for the same Terms were 34.1%, 20.6%, and 38.7%.

(pro-government) of the scale and liberal Justices at the bottom. Chief Justice Rehnquist occupies his customary spot at the top of both lists, and Justices Brennan and Marshall, as usual, are at the bottom. Justice White also holds his customary position in the middle of the state government table (but closer to the conservative than the liberal pole in percentage support of government) and near the top of the federal government table. Justice Blackmun again scores relatively high in support of the federal government (64.3%, ranked third) but much lower (43.2%, ranked fifth) for state government. Justice Kennedy, the newest member of the Court, is still clearly conservative but nevertheless near the middle in both rankings. As compared with the preceding Term, every member of the Court registered higher percentage support of both state and federal governments, except Justice Kennedy (60.7%, 66.7%) and Justice O'Connor (60.7% both Terms) in the federal government table. This individual voting translated into a somewhat higher percentage of Court decisions favoring the federal government (71.4% to 64.3%) but no significant change in majority support of state government (51.4%, 51.0%). Justice Brennan showed the biggest individual change on either table, rising nearly seventeen percentage points on the federal table. This changed his ranking only from ninth to eighth, however, 3.6 percentage points above Justice Marshall. The greatest variations in the federal table all occurred at the bottom of the list—Justices Brennan, Marshall, and Stevens all substantially increased their support of the federal government. As in past years, the federal government prevailed in a larger percentage of its cases than did the states.

Examination of the state cases in which Justices at the extremes voted contrary to their anticipated pro- or anti-government leanings shows that the discrepancy is largely accounted for by the unanimous decisions, in which, we assume, the case on one side or the other was strong enough to transcend ideological differences. Chief Justice Rehnquist, at the top of the scale, voted only three times against the state when the Court was divided. One such case was *Board of Education of Westside Community Schools v. Mergens*,[18] in which the Court, with only a single dissent (Stevens), rejected an establishment clause challenge to a federal statute requiring high schools to grant student religious groups access to high school facilities on an equal basis with other extracurricular student groups. A second case, *Kansas v. Utilicorp United, Inc.*,[19] held that the two states had no standing to sue on behalf of their citizens for illegal overcharges by pipeline and gas producers. Voting on the issue was almost a straight liberal-conservative split, but

18. 110 S. Ct. 2356 (1990).
19. 110 S. Ct. 2807 (1990).

not in the expected direction. Justices Brennan, Marshall, Blackmun, and White supported the government cause, and Justices Kennedy, O'Connor, Scalia, and Stevens joined the Chief Justice in opposing standing. In the third case, *Pennsylvania Department of Public Welfare v. Davenport*,[20] the Chief Justice voted with six other members of the Court (Justices Blackmun and O'Connor dissenting) to hold that restitution obligations imposed for welfare fraud are, under federal statute, debts dischargeable in bankruptcy.

At the bottom of the scale in Table 1, Justices Brennan and Marshall voted only twice for the government in a divided vote. The two cases were *Utilicorp*, noted above, and *Austin v. Michigan Chamber of Commerce*.[21] *Austin*, like *Utilicorp*, was decided by a primarily liberal majority (Brennan, Marshall, Blackmun, Stevens, White, and Rehnquist), and it upheld a Michigan regulation of political campaign spending by corporations. In both cases, the government was attempting to control the activities of large corporations, which may account for liberal support of the government cause. If so, the liberal voting record of Justices Brennan and Marshall was perfect for the Term in this category.

In Table 2, civil cases involving a federal government party, several of the unexpected votes occurred in unanimous decisions. This accounts for three of Chief Justice Rehnquist's six votes against the government as well as three of Justice White's seven anti-government votes. The other three Rehnquist votes against the government occurred in *United States v. Energy Resources Co.*,[22] a tax case decided by an eight-to-one majority (Blackmun dissenting), and in two ideologically-charged five-to-four decisions, *Spallone v. United States*[23] and *Metro Broadcasting, Inc. v. FCC*,[24] where a vote against the government was in fact the conservative position. The conservative five-to-four majority in *Spallone* reversed contempt sanctions against individual Yonkers City Council Members for refusing to vote in favor of a court-ordered housing desegregation decree. In *Metro Broadcasting*, the Chief Justice joined three fellow conservatives in dissenting from a decision upholding policies of minority and gender preference in awarding broadcasting licenses. Justice White voted with the Chief Justice in the tax case *Energy Resources Group, Inc.* and *Spallone*. He also voted against the government in two other cases having no obvious ideological

20. 110 S. Ct. 2126 (1990).
21. 110 S. Ct. 1391 (1990).
22. 110 S. Ct. 2139 (1990).
23. 110 S. Ct. 625 (1990).
24. 110 S. Ct. 2997 (1990).

significance.[25]

At the bottom of the scale, Justice Marshall voted for the government four times and Justice Brennan five times when the Court was divided. Both supported the government position in *Spallone* (housing desegregation), *Metro Broadcasting* (minority preference), *Pension Benefit Guaranty Corp.* (reinstatement of pension fund), and *NLRB v. Curtin Matheson Scientific, Inc.* (pro-union decision),[26] which, in each case, meant an outcome favoring the "underdog," worker or union interests. Justice Brennan's fifth vote supported government refusal to disclose documents sought by a defense contractor in connection with a grand jury investigation of his suspected fraudulent conduct.[27] Apparently the defense contractor did not fit the underdog mold well enough to enlist Justice Brennan as his champion.

B. Criminal Cases

The two criminal case tables (Tables 3 and 4), as in previous Terms, reflect the same ideological divisions as the civil case tables, and, as usual, the voting is somewhat more polarized, particularly in the state table. Of the thirty-four state-court decisions brought for review, Justice Marshall voted only three times for the prosecution and Justice Brennan but four times. At the conservative end of the spectrum, Chief Justice Rehnquist sided with the defendant on just five occasions. More than in any other table, the Court tends to divide into "lenient" and "law and order" blocs in dealing with state criminal questions. The four liberals ranged from 8.8% (Marshall) to 35.3% (Blackmun) support of the prosecution, while the conservatives scored 73.5% (Kennedy, Scalia, White) to 85.3% (Rehnquist). A 38.2 percentage-point gap separates the least lenient liberal from the most lenient conservative, and fourteen of the twenty-seven five-to-four decisions supported by a conservative majority (see Table 10) dealt with state criminal cases.

Individual departures from the anticipated vote by Justices at the extremes of the scale are readily explicable. Of the five cases in which Chief Justice Rehnquist voted for the defendant, three were decided

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25. Pension Benefit Guar. Corp. v. LTV Corp., 110 S. Ct. 2668 (1990) (Justices O'Connor, Stevens, and White dissenting), and Maislin Indus., U.S., Inc. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990) (Justices Rehnquist and Stevens dissenting). In *Pension Benefit Guaranty Corp.*, the Court upheld a PBGC order requiring LTV to "restore" a pension plan earlier terminated when LTV went through corporate reorganization. The *Maislin* decision found an Interstate Commerce Commission policy to be in violation of federal statute.

26. 110 S. Ct. 1542 (1990).

27. John Doe Agency v. John Doe Corp., 110 S. Ct. 471 (1989).

without dissent.[28] Another was an eight-to-one decision in which Justice Marshall objected only to disposing of the case summarily,[29] and the fifth case presented a question of Indian tribal-court jurisdiction over a non-member Indian who committed a crime within the tribal territory.[30] In opposing tribal-court jurisdiction, the Chief Justice (joined by six others) was essentially casting his vote against Indian tribal rights—substantively a conservative position—rather than against "state government" in the ordinary sense.[31] Justice Marshall, at the bottom of the scale, voted for government only twice in a divided court—once to support Indian tribal jurisdiction in *Duro v. Reina*[32] and once merely to register his objection to summary disposition of the case.[33] His vote in *Duro*, and that of Justice Brennan, were votes for tribal rights rather than for state government. Justice Brennan supported the prosecution in two other split-decision cases. One, *Illinois v. Perkins*,[34] decided that an undercover officer posing as a fellow jail inmate need not give a *Miranda* warning before eliciting information from a suspect. The other, *Pennsylvania v. Muniz*,[35] held admissible defendant's responses to several "booking" questions he had answered prior to his receiving a *Miranda* warning.[36] The only dissent in each case was cast by Justice Marshall.[37] For other members of the Court, somewhat less committed to either the defense or the prosecution than their brethren at the extremes, percentages and rankings remained very stable in comparison with the preceding Term.

Table 4 (federal criminal cases) includes fewer decisions than the state table. As in the previous Term, it exhibits a more regular progression in the rankings from very frequent to very infrequent support for the prosecution. The government's success rate also continues to be higher in federal than in state criminal cases by a slight margin (66.7%

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28. Osborne v. Ohio, 110 S. Ct. 1691 (1990) (faulty instructions); Florida v. Wells, 110 S. Ct. 1632 (1990) (lack of police policy for inventory search); and Selvage v. Collins, 110 S. Ct. 974 (1990) (remanded to determine impact of intervening Supreme Court decision).

29. Smith v. Ohio, 110 S. Ct. 1288 (1990).

30. Duro v. Reina, 110 S. Ct. 2053 (1990).

31. This case raised a problem of classification. Indian tribal government is "local," but is also national in its direct subjection to congressional control. We concluded that it was more analogous to state than national government, which accounts for its inclusion in Table 3 rather than in Table 4.

32. 110 S. Ct. 2053 (1990).

33. Smith v. Ohio, 110 S. Ct. 1288 (1990).

34. 110 S. Ct. 2394 (1990).

35. 110 S. Ct. 2638 (1990).

36. Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990).

37. Marshall's dissent was presumably based on the belief that the fifth amendment right against self-incrimination is important enough to nullify the government's interest in undercover investigation and expeditious booking of suspects.

to 64.7%) when all decisions, unanimous and non-unanimous are included, but by a substantial margin (83.3% to 70%) for the split decisions. During the 1988 Term, the federal government lost only one criminal case and that in a divided court. This Term the federal government lost three of nine cases, two by unanimous votes[38] and one (the flag-burning case) by a five-to-four decision.[39] Justices Brennan and Marshall voted for the prosecution only once, joining a unanimous Court in upholding a federal statute providing for a Crime Victim's Fund.[40] Justice O'Connor and the Chief Justice, at the other extreme, espoused the defendant's cause only twice, both in unanimous decisions.[41] This Term Justice Kennedy dropped a rank or two in both state and federal criminal tables, and Justice O'Connor moved closer to the top of the pro-prosecution rankings.

C. Individual Rights

Tables 5, 6, and 7 deal with claims of constitutional and statutory rights. Table 5 (first amendment claims) and Table 7 (statutory civil rights claims) show the same broad voting patterns as Tables 1 through 4 (government versus private party claims). Although the rankings vary, Justices Brennan and Marshall are at the liberal extreme in both scales. Chief Justice Rehnquist is at the other extreme, accompanied by Justices O'Connor and Scalia, and by Justice White in the first amendment table. Justice Kennedy, while closer to the conservatives in his percentage support of such claims, is near the center of the rankings in both tables. Justice White is the one anomaly—among the least supportive of first amendment claims but highly supportive of statutory civil rights claims.

Table 6 (equal protection) shows virtually nothing that might be expected—the conservatives rank higher than the liberals, and the liberal Justices show no support at all for equal protection claims. This strange alignment probably reflects changes occurring over the past two decades in the legal position of women and minorities. Laws discrimi-

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38. Taylor v. United States, 110 S. Ct. 2143 (1990); Hughey v. United States, 110 S. Ct. 1979 (1990).

39. United States v. Eichman, 110 S. Ct. 2404 (1990).

40. United States v. Munoz-Flores, 110 S. Ct. 1964 (1990). The criminal defendant, who was required to contribute to the fund, unsuccessfully argued that the statute violated the origination clause of the Constitution (art. I, § 7, cl. 1) because it was a "revenue" measure that had originated in the Senate rather than the House.

41. Taylor v. United States, 110 S. Ct. 2143 (1990) (remanded to determine if the offenses charged constituted burglary, so as to merit an enhanced sentence); Hughey v. United States, 110 S. Ct. 1979 (1990) (The court can order restitution, under the applicable statute, only for the crime for which defendant was convicted, not for other alleged crimes).

nating on the basis of race and gender are subject to heightened scrutiny under the equal protection clause of the Constitution which has been an important refuge for these legally disadvantaged groups. Such discriminatory laws are now virtually a thing of the past. When governmental officials now engage in discriminatory acts, they are very likely to be in violation of some state or federal statute that protects women and minorities. As a result, equal protection claims are now most often raised in areas where government action requires only a rational basis for its justification, and equal protection issues are often peripheral to the case. This Term, in particular, equal protection claims were raised in only five cases, and in three of them several Justices found no need to express an opinion on the issue.[42]

Equal protection issues still occasionally appear in a context of race and gender discrimination, but now the shoe is on the other foot. Laws, facially at least, are more likely to discriminate in favor of women and racial minorities than against them. The most controversial equal protection claims are now being brought by individuals and groups claiming reverse discrimination, i.e., injury resulting from government favoritism to minorities.[43] In such cases, the customary divisions on the Court for or against individual rights are reversed: the conservatives support the claimed right and the liberals oppose it. All of these trends help explain Table 6. The only claim of equal protection resolved by a split vote during the 1989 Term was *Metro Broadcasting, Inc. v. FCC*,[44] challenging the FCC's minority preference policy. The case was decided by a five-to-four vote on a straight liberal-conservative division—conservatives for the claim, liberals against, and Justice White providing the swing vote in favor of the minority preference. The one other equal protection claim to merit the attention of all nine members of the Court, all of whom rejected it, was Sperry Corporation's argument that assessing a user fee against successful, but not unsuccessful, claimants before the Iran-United States Claims Tribunal was constitutionally unequal treatment.[45] The equal protection argument was secondary to other (also unsuccessful) constitutional arguments (due process, takings clause), and the Court had no difficulty

42. Sullivan v. Stroop, 110 S. Ct. 2499 (1990) (Justices Brennan, Marshall, Blackmun, and Stevens not addressing the issue); Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391 (1990) (Justices Kennedy, O'Connor, and Scalia not addressing the issue); United States v. Verdugo-Urquidez, 110 S. Ct. 1056 (1990) (Justices Brennan, Marshall, Blackmun, and Stevens not addressing the issue).

43. *E.g.*, Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

44. 110 S. Ct. 2997 (1990).

45. United States v. Sperry Corp., 110 S. Ct. 387 (1989).

finding a rational basis for the government's action.

Table 5 (first amendment claims) follows the anticipated voting pattern. The fit is even closer when cases without dissent are eliminated. In the split decisions, Justices Brennan and Marshall voted to uphold the first amendment claim in every instance but one. The one exception was *Austin v. Michigan Chamber of Commerce*[46] in which a business organization sought first amendment protection against a Michigan statute regulating political campaign spending by large corporations. The law was upheld by a six-to-three vote with three conservative Justices (Kennedy, O'Connor, Scalia) unsuccessfully championing the first amendment claim. When first amendment rights of business corporations are at issue, the solicitude of some liberal and conservative Justices for first amendment values apparently is reversed. The Chief Justice, however, remained consistently negative, rejecting every first amendment claim decided by a non-unanimous vote. Justice Blackmun rebounded from his low score of the previous Term and once again supported most first amendment claims. Justice Stevens returned to his former pattern of less aggressive support, and Justice Kennedy maintained his position of the past two Terms at the middle of the rankings.

Table 7 (statutory civil rights) generally falls within the anticipated pattern, except that Justice White supported the rights-claimant more often than expected. In the past three Terms, his support has been near sixty percent; this Term it approached ninety percent. Majority support for statutory rights claims was also considerably higher this Term. Justices Brennan and Marshall, at the top of the table, voted for the claimant in every instance. The Chief Justice, at the bottom of the scale, voted four times for the claimant and five times against. Three of his four favorable votes were unanimous decisions;[47] the fourth was an eight-to-one decision in the *Mergens* case[48] which upheld a federal statute giving student religious groups access to high school facilities on terms equal to other extracurricular groups. Justices between the extremes are ranked at fairly regular intervals.

D. Jurisdiction and Justiciability Questions

Table 8 (jurisdiction claims) again conforms in general outline to our initial assumptions about judicial restraint—the liberal Justices appearing more inclined to exercise jurisdiction and the conservative Jus-

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46. 110 S. Ct. 1391 (1990).

47. Howlett v. Rose, 110 S. Ct. 2430 (1990); University of Pennsylvania v. E.E.O.C., 110 S. Ct. 577 (1990); Yellow Freight Sys., Inc. v. Donnelly, 110 S. Ct. 1566 (1990).

48. Board of Educ. of Westside Community Schools v. Mergens, 110 S. Ct. 2356 (1990).

tices less so. Justices O'Connor, Stevens, and White occupy the mid-range of the table with Justices Brennan and Marshall most receptive to the exercise of jurisdiction and Justice Scalia and the Chief Justice the least. For the most part, this is comparable to the pattern of the past two Terms, although differing significantly from the 1986 Term when voting on jurisdiction appeared unusually affected by judicial concern for substantive outcomes.[49] The number of jurisdiction and justiciability questions is quite large every Term, but often the issue is not controversial enough to draw a single dissent. As shown by the figures on the second row from the bottom of Table 8, the issue was disputed in only nine of twenty-five decisions. The rankings in Table 8 are about as expected, although the percentage differences among the Justices are small. The percentage differences are amplified only when the non-unanimous decisions are tabulated, as follows:

Justice	*For Jurisdiction*	*Against*	*% For*
Brennan	8	0	100
Marshall	8	0	100
Blackmun	6	2	75
O'Connor	4	5	44.4
Stevens	4	5	44.4
White	4	5	44.4
Kennedy	3	6	33.3
Rehnquist	2	7	22.2
Scalia	2	7	22.2

These numbers show a total spread of 78 percentage points (compared with 27.5 percentages points in Table 8), and a gap of more than thirty percentage points emerges between Justice Blackmun and Justices O'Connor, Stevens, and White. At the extremes, Justices Brennan and Marshall had a perfect record in support of jurisdiction, while Justice Scalia and the Chief Justice supported jurisdiction in only two of the nine decisions—both decided by an eight-to-one vote. Justice Stevens was the lone dissenter in each case.[50] If judicial restraint is identified with reluctance to exercise jurisdiction, it is also identified—in recent Terms at least—with ideological conservatives on the Court. Conversely, activism, as measured by willingness to exercise jurisdiction in

49. At least this seemed the most likely explanation for the aberrant voting pattern during the 1986 Term. *See* Riggs, *supra* note 1, at 15, 25-26.

50. Cooter & Gell v. Hartmarx Corp. 110 S. Ct. 2447 (1990); Northbrook Nat'l Ins. Co. v. Brewer, 110 S. Ct. 297 (1989).

a disputed case, characterizes the liberal members of the Court.

E. Federalism Issues

Table 9 (federalism issues) deals with questions raised by conflict between federal and state governmental authority. Federalism, for purposes of this category, includes such matters as preemption, intergovernmental taxation, application of the tenth and eleventh amendments, and federal court interference with state court activities (other than review of state court decisions). Table 9 does not include cases in which the only conflict is alleged incompatibility of the state action with the United States Constitution. Nor does it include issues of "horizontal" (interstate) federalism arising under the dormant commerce clause or the privileges and immunities clause in response to state-erected barriers to interstate commerce.

In examining issues of federalism, we assume that the more conservative Justices—Rehnquist, O'Connor, Scalia, and Kennedy—are likely to favor state authority, while Justices Brennan, Marshall, and Blackmun will support federal authority. For the 1987 Term, reported two years ago,[51] the results were largely the reverse of what we expected: Justices Brennan and Marshall appeared most supportive of states; Justices Blackmun, Rehnquist, and Stevens were in the middle; and Justices O'Connor, Kennedy, White, and Scalia were least supportive. We explained this anomaly by reference to the relatively few split decisions (six of thirteen in the table) and the specific subject matter of the disputes which led the liberals to support the state position more frequently than the conservatives.[52] This explanation, in retrospect, is still plausible. For the 1988 Term, no such explanation was necessary because the judicial ranking on the federalism issue fell cleanly into the anticipated pattern. The same is true for the 1989 Term, despite the very small number of split decisions (four). Percentages for the three most recent Terms are presented in Table 9.

F. Swing-Vote Analysis

Table 10 shows the number of times each Justice voted with the majority in cases close enough to be decided by a single vote. For the 1989 Term, we identified forty-one decisions made by a five-to-four vote.[53] In these cases, a shift of any one Justice from the majority to the

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51. *See* Riggs & Moss, *supra* note 1, at 59, 65, 75-76.

52. *Id.* at 75-77.

53. This is the usual "close case." During the 1987 Term, however, when the Court consisted of only eight members before Justice Kennedy's confirmation, we included in the swing-vote category 14 cases decided five-to-four, 14 decided five-to-three, and 3 decided four-to-three. Seven

minority coalition would have created a new majority and a different result. We call this "swing-vote" analysis because it identifies members of the Court who most frequently shift or "swing" from one voting coalition to another in order to form majorities. Because each vote is crucial to the outcome, frequency of voting with the majority in such cases may be regarded as one index of influence on Court decision-making.

The archetypical swing voter on the Court is a person not staunchly committed to a liberal or a conservative position who votes sometimes with one group and sometimes with the other, making the crucial difference in close cases. Justice White has to some extent filled this role in recent years, as did Justice Powell before his retirement.[54] During the 1987 Term, the first year we included swing voting in this survey, Justice White voted most frequently with the majority in cases decided by a single vote.[55] During the 1988 Term, Justice Kennedy had that honor.[56] This Term Justice White regained his position at the top of the rankings by voting with the majority in thirty-three of forty-two decisions. Justice Kennedy ranked second with thirty majority votes, Justice O'Connor was third with twenty-nine, and the Chief Justice and Justice Scalia followed with twenty-eight each. The four more liberal members of the Court—Stevens, Brennan, Marshall, and Blackmun—voted with the majority 18, 15, 15, and 14 times, respectively. As in the preceding Term, this configuration suggests conservative dominance on the Court, although not to the same extent. The bottom row in Table 10 gives the number and percentage of decisions dominated by a conservative coalition during the 1989 Term, and the percentage of such decisions for the 1988 and 1987 Terms.[57] The conservative majority percentages for the 1987, 1988, and 1989 Terms are 64.5%, 76.5%, and 64.3%, respectively.[58] These figures, like those in the preceding tables, show a modest retreat from the peak of conserva-

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additional five-to-three decisions were not included because they were affirmances rather than reversals of a lower court decision. With five-to-three affirmances, the shift of one vote would not change the outcome because the case would be affirmed without opinion by a four-to-four vote.

54. *See, e.g.*, Bender, Book Review, 82 MICH. L. REV. 635 (1984) (reviewing V. BLASI, THE BURGER COURT (1983)); Fallon, *A Tribute to Justice Lewis F. Powell, Jr.*, 101 HARV. L. REV. 399 (1987).

55. *See* Riggs & Moss, *supra* note 1, at 77-78.

56. Riggs & Urban, *supra* note 1, at 8, 21.

57. In most instances, the composition of the prevailing majority and the substantive outcome of the decision were consistent and left no doubt whether the conservatives or liberals had won. In a very few cases, an unusual coalition made classification difficult. *See, e.g.*, Idaho v. Wright, 110 S. Ct. 3139 (1990); Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990).

58. Percentages are derived from 20 of 31 decisions in 1987, 26 of 34 in 1988, and 27 of 41 in 1989.

tive influence during the 1988 Term.

Statistically, the change is explained by an increase in genuine swing voting by Justices White and Kennedy. During the 1988 Term, Justice White voted just four times with a liberal coalition in thirty-four close cases—twice on the winning side and twice on the losing side. This year he voted with the liberal side in ten of forty-two cases, providing the winning vote in eight of them. Justice Kennedy also voted with five winning (and two losing) liberal majorities this year, as compared with two (and zero) last year.[59] Voting straight conservative was still good enough to score high in the swing-vote table during the 1989 Term but not as high as in the previous Term.

IV. Conclusion

The preceding discussion has highlighted some of the relationships appearing in patterns of Supreme Court voting without exhausting all credible interpretations of the data. The availability of information for earlier Terms gives an important temporal dimension to the analysis. In last year's report on the 1988 Term, the tables indicated a significant shift in a conservative direction as compared with the two previous Terms. Data for 1988 also showed the voting to be more polarized than before with a greater point spread between the extremes of the tables. This year the polarization declined, along with a slight moderation in conservative dominance. We had not anticipated the conservative decline, modest as it was, because the composition of the Court was the same this Term as last. Random factors may account for the difference, but given the known propensities of members of the Court, we would have predicted outcomes closer to last year's pattern. For next year, the resignation of Justice Brennan could make a significant difference in the behavior of the Court, especially if Justice Souter demonstrates the judicial and ideological conservatism that most observers expect.

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59. Chief Justice Rehnquist voted once with a liberal majority (NLRB v. Curtin Matheson Scientific, Inc., 110 S. Ct. 1542 (1990)); Justice O'Connor twice (Idaho v. Wright, 110 S. Ct. 3139 (1990); Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990)); and Justice Scalia three times (Idaho v. Wright, 110 S. Ct. 3139 (1990); Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990); United States v. Eichman, 110 S. Ct. 2404 (1990)). Justices Brennan and Marshall never voted with a conservative majority in a five-to-four decision.

V. APPENDIX

A. *Explanation of Criteria for Selection and Classification of Cases*

1. *The universe of cases*

Only cases decided during the 1989 Term by a full opinion setting forth reasons for the decision are included in the data. Decisions on motions are excluded, even if accompanied by an opinion. Cases handled by summary disposition are included if accompanied by a full opinion for the Court, but not if the only opinion is a dissent. Cases decided by a four-to-four vote, hence resulting in affirmance without written opinion, are excluded. Both signed and per curiam opinions are considered full opinions if they set forth reasons in a more than perfunctory manner. Cases not fitting any of the ten categories are, of course, not included in the data base for any of the tables.

2. *Cases classified as civil or criminal*

Classification of cases as civil or criminal follows commonly accepted definitions; generally, the nature of the case is clearly identified in the opinion. Only occasionally does a case pose a problem of classification. One case that raised a question this year was *Michigan Department of State Police v. Sitz*,[60] discussed above at note five.

3. *Cases classified by nature of the parties*

Cases are included in Tables 1 through 4 only if governmental and private entities appear as opposing parties. This is necessarily true of criminal cases. Civil cases are excluded if they do not satisfy this criterion. The governmental entity might be the government itself, one of its agencies or officials, or, with respect to state government, one of its political subdivisions. A suit against an official in her personal capacity is included if she is represented by government attorneys or if the interests of the government are otherwise clearly implicated. In instances of multiple parties, a civil case is excluded if governmental entities appear on both sides of the controversy. If both a state and a federal entity are parties to the same suit on the same side with only private parties on the other, the case is included in both Tables 1 and 2. A case is included more than once in the same table if it raises two or more distinct issues affecting the outcome of the case and the issues are resolved by differing voting alignments.

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60. 110 S. Ct. 2481 (1990).

4. Classification by nature of the issue

A case is included in each category (Tables 5 through 9) for which it raises a relevant issue that is addressed in the written opinion(s). One case may thus be included in two or more tables. A case is also included more than once in the same table if it raises two or more distinct issues in that category affecting the disposition of the case and if the issues are resolved by differing voting alignments. A case is not included for any issue which, though raised by one of the litigants, is not addressed in any opinion.

Identification of first amendment and equal protection issues poses no special problem. In each instance, the nature of the claim is expressly identified in the opinion. Issues of speech, press, association, and free exercise of religion are included. Establishment clause cases are excluded, however, because one party's claim of religious establishment is often arrayed against another party's claim of free exercise or some other individual right, thus blurring the issue of individual rights.

Cases included in Table 7, statutory civil rights claims, are limited to those invoking relevant sections of the Civil Rights Act of 1964, as amended; the Voting Rights Act of 1965; the civil rights statutes appearing in 42 U.S.C. §§ 1981 to 1988; and other federal statutes expressly barring discrimination on the basis of race, color, national origin, sex, religion, age, or physical handicap. Actions brought under 42 U.S.C. § 1983 are included if the substantive right asserted is based on a federal statute or if the issue is the application of section 1983—that is, whether or how that section's protections apply in the case at hand. However, section 1983 actions are excluded if the substantive right asserted is based on the United States Constitution and the issue relates to the constitutional right. The purpose of the section 1983 exclusion is to preserve a distinction between constitutional and non-constitutional claims.

For Table 8, jurisdictional questions are defined to include not only jurisdiction *per se* but also standing, mootness, ripeness, abstention, equitable discretion, and justiciability. Jurisdictional questions are excluded if neither party challenges jurisdiction and no member of the Court dissents on the question, even though the Court may comment on its jurisdiction.

Table 9 (federalism cases) is limited to issues raised by conflicting actions of federal and state or local governments. Common examples are preemption, intergovernmental immunities, application of the tenth and eleventh amendments as a limit on action by the federal government, and federal court interference with state court activities (other than review of state court decisions). Issues of "horizontal" federalism

or interstate relationships, such as those raised by the dormant commerce clause or the privileges and immunities clause, are excluded from the table.

5. *The "swing-vote" cases*

Table 10 includes all cases decided by a single vote. This year all such cases were decided by a five-to-four vote. The category also is intended to include four-to-three decisions, as well as five-to-three and four-to-two decisions resulting in reversal of a lower court decision. Affirmances by a vote of five-to-three or four-to-two are not included because a shift of one vote from the majority to the minority position would still result in affirmance, by a tie vote, and the outcome would not be changed. A case is included more than once in the table if it raises two or more distinct issues affecting the disposition of the case and the issues are resolved by differing five-to-four (four-to-three, etc.) voting alignments. No case from the swing-vote category was included more than once this Term.

B. *Cases Included in Statistical Tables*[61]

Table 1: Civil Cases: State/Local Government versus Private Party

American Trucking Ass'ns v. Smith, 110 S. Ct. 2323 (1990).
Ashland Oil, Inc. v. Caryl, 110 S. Ct. 3202 (1990).
Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391 (1990).
Baltimore City Dep't of Social Serv. v. Bouknight, 110 S. Ct. 900 (1990).
Board of Educ. of Westside Community Schools v. Mergens, 110 S. Ct. 2356 (1990).
Butterworth v. Smith, 110 S. Ct. 1376 (1990).
California v. American Stores Co., 110 S. Ct. 1853 (1990).
Cruzan v. Director, Missouri Dep't of Health, 110 S. Ct. 2841 (1990).
Employment Div., Dep't of Human Resources v. Smith, 110 S. Ct. 1595 (1990).
Franchise Tax Bd. v. Alcan Aluminum, Ltd., 110 S. Ct. 661 (1990).
FW/PBS, Inc. v. City of Dallas, 110 S. Ct. 596 (1990).
Golden State Transit Corp. v. City of Los Angeles, 110 S. Ct. 444 (1989).
Hallstrom v. Tillamook County, 110 S. Ct. 304 (1989).
Hodgson v. Minnesota, 110 S. Ct. 2926 (1990).
Howlett v. Rose, 110 S. Ct. 2430 (1990).
Jimmy Swaggart Ministries v. Board of Equalization, 110 S. Ct. 688 (1990).
Kansas v. Utilicorp United, 110 S. Ct. 2807 (1990).
Keller v. State Bar of California, 110 S. Ct. 2228 (1990).
Lewis v. Continental Bank, 110 S. Ct. 1249 (1990).
McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 110 S. Ct. 2238 (1990).
Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481 (1990).
Missouri v. Jenkins, 110 S. Ct. 1651 (1990).
National Mines Corp. v. Caryl, 110 S. Ct. 3205 (1990).
Ngiraingas v. Sanchez, 110 S. Ct. 1737 (1990).

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61. Cases listed more than once in a table are those with more than one voting alignment within the category.

Ohio v. Akron Center for Reproductive Health, 110 S. Ct. 2972 (1990).
Peel v. Attorney Registration & Disciplinary Comm'n, 110 S. Ct. 2281 (1990).
Pennsylvania Dep't of Pub. Welfare v. Davenport, 110 S. Ct. 2126 (1990).
Port Auth. Trans-Hudson Corp. v. Feeney, 110 S. Ct. 1868 (1990).
Preseault v. Interstate Commerce Comm'n, 110 S. Ct. 914 (1990).
Rutan v. Republican Party of Illinois, 110 S. Ct. 2729 (1990).
United States Dep't of Labor v. Triplett, 110 S. Ct. 1428 (1990).
Washington v. Harper, 110 S. Ct. 1028 (1990).
Wilder v. Virginia Hosp. Ass'n, 110 S. Ct. 2510 (1990).
Zinermon v. Burch, 110 S. Ct. 975 (1990).

Table 2: Civil Cases: Federal Government versus Private Party

Begier v. I.R.S., 110 S. Ct. 2258 (1990).
Comm'r v. Indianapolis Power & Light Co., 110 S. Ct. 589 (1990).
Comm'r, I.N.S. v. Jean, 110 S. Ct. 2316 (1990).
Crandon v. United States, 110 S. Ct. 997 (1990).
Davis v. United States, 110 S. Ct. 2014 (1990).
Dole v. United Steelworkers of America, 110 S. Ct. 929 (1990).
FTC v. Superior Court Trial Lawyers Ass'n, 110 S. Ct. 768 (1990).
General Motors Corp. v. United States, 110 S. Ct. 2528 (1990).
John Doe Agency v. John Doe Corp., 110 S. Ct. 471 (1989).
Lujan v. National Wildlife Fed'n, 110 S. Ct. 3177 (1990).
Maislin Indus., U.S. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990).
Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990).
NLRB v. Curtin Matheson Scientific, Inc., 110 S. Ct. 1542 (1990).
Office of Personnel Management v. Richmond, 110 S. Ct. 2465 (1990).
Pension Benefit Guar. Corp. v. LTV Corp., 110 S. Ct. 2668 (1990).
Portland Golf Club v. Comm'r, 110 S. Ct. 2780 (1990).
Preseault v. Interstate Commerce Comm'n, 110 S. Ct. 914 (1990).
Spallone v. United States, 110 S. Ct. 625 (1990).
Sullivan v. Everhart, 110 S. Ct. 960 (1990).
Sullivan v. FInkelstein, 110 S. Ct. 2658 (1990).
Sullivan v. Stroop, 110 S. Ct. 2499 (1990).
Sullivan v. Zebley, 110 S. Ct. 885 (1990).
United States v. Energy Resources Co., 110 S. Ct. 2139 (1990).
United States v. Goodyear Tire and Rubber Co., 110 S. Ct. 462 (1989).
United States v. Sperry Corp., 110 S. Ct. 387 (1989).
United States v. Dalm, 110 S. Ct. 1361 (1990).
United States Dep't of Labor v. Tirplett, 110 S. Ct. 1428 (1990).
University of Pennsylvania v. E.E.O.C., 110 S. Ct. 577 (1990).

Table 3: State Criminal Cases

Alabama v. White, 110 S. Ct. 2412 (1990).
Blystone v. Pennsylvania, 110 S. Ct. 1078 (1990).
Boyde v. California, 110 S. Ct. 1190 (1990).
Butler v. McKellar, 110 S. Ct. 1212 (1990).
Clemons v. Mississippi, 110 S. Ct. 1441 (1990).
Collins v. Youngblood, 110 S. Ct. 2715 (1990).
Delo v. Stokes, 110 S. Ct. 1880 (1990).
Demosthenes v. Baal, 110 S. Ct. 2223 (1990).
Duro v. Reina, 110 S. Ct. 2053 (1990).
Florida v. Wells, 110 S. Ct. 1632 (1990).
Grady v. Corbin, 110 S. Ct. 2084 (1990).
Holland v. Illinois, 110 S. Ct. 803 (1990).

Horton v. California, 110 S. Ct. 2301 (1990).
Idaho v. Wright, 110 S. Ct. 3139 (1990).
Illinois v. Perkins, 110 S. Ct. 2394 (1990).
Illinois v. Rodriguez, 110 S. Ct. 2793 (1990).
James v. Illinois, 110 S. Ct. 648 (1990).
Lewis v. Jeffers, 110 S. Ct. 3092 (1990).
Maryland v. Buie, 110 S. Ct. 1093 (1990).
Maryland v. Craig, 110 S. Ct. 3157 (1990).
McKoy v. North Carolina, 110 S. Ct. 1227 (1990).
Michigan v. Harvey, 110 S. Ct. 1176 (1990).
Minnesota v. Olson, 110 S. Ct. 1684 (1990).
New York v. Harris, 110 S. Ct. 1640 (1990).
Osborne v. Ohio, 110 S. Ct. 1691 (1990).
Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990).
Saffle v. Parks, 110 S. Ct. 1257 (1990).
Sawyer v. Smith, 110 S. Ct. 2822 (1990).
Selvage v. Collins, 110 S. Ct. 974 (1990).
Smith v. Ohio, 110 S. Ct. 1288 (1990).
Terrell v. Morris, 110 S. Ct. 4 (1989).
Walton v. Arizona, 110 S. Ct. 3047 (1990).
Whitmore v. Arkansas, 110 S. Ct. 1717 (1990).

Table 4: Federal Criminal Cases

Dowling v. United States, 110 S. Ct. 668 (1990).
Hughey v. United States, 110 S. Ct. 1979 (1990).
Taylor v. United States, 110 S. Ct. 2143 (1990).
United States v. Eichman, 110 S. Ct. 2404 (1990).
United States v. Kokinda, 110 S. Ct. 3115 (1990).
United States v. Montalvo-Murillo, 110 S. Ct. 2072 (1990).
United States v. Munoz-Flores, 110 S. Ct. 1964 (1990).
United States v. Rios, 110 S. Ct. 1845 (1990).
United States v. Verdugo-Urquidez, 110 S. Ct. 1056 (1990).

Table 5: Cases Raising a Challenge to First Amendment Rights of Expression, Association, and Free Exercise

Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391 (1990).
Butterworth v. Smith, 110 S. Ct. 1376 (1990).
Employment Div., Dep't of Human Resources v. Smith, 110 S. Ct. 1595 (1990).
FTC v. Superior Court Trial Lawyers Ass'n, 110 S. Ct. 768 (1990).
FW/PBS, Inc. v. City of Dallas, 110 S. Ct. 596 (1990).
Jimmy Swaggart Ministries v. Board of Equalization, 110 S. Ct. 688 (1990).
Keller v. State Bar of California, 110 S. Ct. 2228 (1990).
Milkovich v. Lorain Journal Co., 110 S. Ct. 2695 (1990).
Osborne v. Ohio, 110 S. Ct. 1691 (1990).
Peel v. Attorney Registration & Disciplinary Comm'n, 110 S. Ct. 2281 (1990).
Rutan v. Republican Party of Illinois, 110 S. Ct. 2729 (1990).
United States v. Eichman, 110 S. Ct. 2404 (1990).
United States v. Kokinda, 110 S. Ct. 3115 (1990).
University of Pennsylvania v. E.E.O.C., 110 S. Ct. 577 (1990).

Table 6: Cases Involving Equal Protection Claims

Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391 (1990).
Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990).
Sullivan v. Stroop, 110 S. Ct. 2499 (1990).
United States v. Sperry Corp., 110 S. Ct. 387 (1989).
United States v. Verdugo-Urquidez, 110 S. Ct. 1056 (1990).

Table 7: Cases Involving Statutory Civil Rights Claims

Board of Educ. of Westside Community Schools v. Mergens, 110 S. Ct. 2356 (1990).
Golden State Transit Corp. v. City of Los Angeles, 110 S. Ct. 444 (1989).
Hoffmann-La Roche Inc. v. Sperling, 110 S. Ct. 482 (1989).
Howlett v. Rose, 110 S. Ct. 2430 (1990).
Missouri v. Jenkins, 110 S. Ct. 1651 (1990).
Ngiraingas v. Sanchez, 110 S. Ct. 1737 (1990).
University of Pennsylvania v. E.E.O.C., 110 S. Ct. 577 (1990).
Yellow Freight Sys., Corp. v. Donnelly, 110 S. Ct. 1566 (1990).
Wilder v. Virginia Hosp. Ass'n, 110 S. Ct. 2510 (1990).

Table 8: Cases Raising a Challenge to the Exercise of Jurisdiction

Adams Fruit Co. v. Barrett, 110 S. Ct. 1384 (1990).
Breininger v. Sheet Metal Workers Int'l Ass'n Local Union No. 6, 110 S. Ct. 424 (1989).
Carden v. Arkoma Assoc., 110 S. Ct. 1015 (1990).
Cooter & Gell v. Hartmarx Corp., 110 S. Ct. 2447 (1990).
Franchise Tax Bd. v. Alcan Aluminum, Ltd., 110 S. Ct. 661 (1990).
FW/PBS, Inc. v. City of Dallas, 110 S. Ct. 596 (1990).
Hoffmann-La Roche, Inc. v. Sperling, 110 S. Ct. 482 (1989).
Holland v. Illinois, 110 S. Ct. 803 (1990).
Illinois v. Rodriguez, 110 S. Ct. 2793 (1990).
Kansas v. Utilicorp United, Inc., 110 S. Ct. 2807 (1990).
Lewis v. Continental Bank, 110 S. Ct. 1249 (1990).
Lujan v. National Wildlife Fed'n, 110 S. Ct. 3177 (1990).
Lytle v. Household Mfg., Inc., 110 S. Ct. 1331 (1990).
McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 110 S. Ct. 2238 (1990).
Missouri v. Jenkins, 110 S. Ct. 1651 (1990).
Northbrook Nat'l Ins. Co. v. Brewer, 110 S. Ct. 297 (1989).
Port Auth. Trans-Hudson Corp. v. Feeney, 110 S. Ct. 1868 (1990).
Sisson v. Ruby, 110 S. Ct. 2892 (1990).
Sullivan v. Finkelstein, 110 S. Ct. 2658 (1990).
Tafflin v. Levitt, 110 S. Ct. 792 (1990).
United States v. Dalm, 110 S. Ct. 1361 (1990).
United States Dep't of Labor v. Triplett, 110 S. Ct. 1428 (1990).
United States v. Munoz-Flores, 110 S. Ct. 1964 (1990).
Washington v. Harper, 110 S. Ct. 1028 (1990).
Whitmore v. Arkansas, 110 S. Ct. 1717 (1990).

Table 9: Cases Raising a Federalism Issue

Adams Fruit Co. v. Barrett, 110 S. Ct. 1384 (1990).
California v. F.E.R.C., 110 S. Ct. 2024 (1990).
English v. General Elec. Co., 110 S. Ct. 2270 (1990).
Franchise Tax Bd. v. Alcan Aluminum, Ltd., 110 S. Ct. 661 (1990).
Howlett v. Rose, 110 S. Ct. 2430 (1990).
McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 110 S. Ct. 2238 (1990).
Missouri v. Jenkins, 110 S. Ct. 1651 (1990).
North Dakota v. United States, 110 S. Ct. 1986 (1990).

Pennsylvania Dep't of Pub. Welfare v. Davenport, 110 S. Ct. 2126 (1990).
Perpich v. Department of Defense, 110 S. Ct. 2418 (1990).
Port Auth. Trans-Hudson Corp. v. Feeney, 110 S. Ct. 1868 (1990).
Tafflin v. Levitt, 110 S. Ct. 792 (1990).
United Steelworkers of America v. Rawson, 110 S. Ct. 1904 (1990).
Yellow Freight Sys., Inc., v. Donnelly, 110 S. Ct. 1566 (1990).

Table 10: Swing-Vote Cases

American Trucking Ass'ns v. Smith, 110 S. Ct. 2323 (1990).
Blystone v. Pennsylvania, 110 S. Ct. 1078 (1990).
Boyde v. California, 110 S. Ct. 1190 (1990).
Butler v. McKellar, 110 S. Ct. 1212 (1990).
Carden v. Arkoma Assoc., 110 S. Ct. 1015 (1990).
Clemons v. Mississippi, 110 S. Ct. 1441 (1990).
Cruzan v. Director, Missouri Dep't of Health, 110 S. Ct. 2841 (1990).
Delo v. Stokes, 110 S. Ct. 1880 (1990).
Demosthenes v. Baal, 110 S. Ct. 2223 (1990).
Ferens v. John Deere Co., 110 S. Ct. 1274 (1990).
Grady v. Corbin, 110 S. Ct. 2084 (1990).
Hodgson v. Minnesota, 110 S. Ct. 2926 (1990).
Holland v. Illinois, 110 S. Ct. 803 (1990).
Idaho v. Wright, 110 S. Ct. 3139 (1990).
James v. Illinois, 110 S. Ct. 648 (1990).
Kaiser Aluminum & Chem. Corp. v. Bonjorno, 110 S. Ct. 1570 (1990).
Kansas v. Utilicorp United, Inc., 110 S. Ct. 2807 (1990).
Lewis v. Jeffers, 110 S. Ct. 3092 (1990).
Lujan v. National Wildlife Fed'n, 110 S. Ct. 3177 (1990).
Maryland v. Craig, 110 S. Ct. 3157 (1990).
Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990).
Michigan v. Harvey, 110 S. Ct. 1176 (1990).
Missouri v. Jenkins, 110 S. Ct. 1651 (1990).
New York v. Harris, 110 S. Ct. 1640 (1990).
NLRB v. Curtin Matheson Scientific, Inc., 110 S. Ct. 1542 (1990).
North Dakota v. United States, 110 S. Ct. 1986 (1990).
Peel v. Attorney Registration & Disciplinary Comm'n, 110 S. Ct. 2281 (1990).
Pennsylvania v. Muniz, 110 S. Ct. 2638 (1990).
Reves v. Ernst & Young, 110 S. Ct. 945 (1990).
Rutan v. Republican Party of Illinois, 110 S. Ct. 2729 (1990).
Saffle v. Parks, 110 S. Ct. 1257 (1990).
Sawyer v. Smith, 110 S. Ct. 2822 (1990).
Spallone v. United States, 110 S. Ct. 625 (1990).
Sullivan v. Everhart, 110 S. Ct. 960 (1990).
Sullivan v. Stroop, 110 S. Ct. 2499 (1990).
Terrell v. Morris, 110 S. Ct. 4 (1989).
United States v. Eichman, 110 S. Ct. 2404 (1990).
United States v. Kokinda, 110 S. Ct. 3115 (1990).
Walton v. Arizona, 110 S. Ct. 3047 (1990).
Wilder v. Virginia Hosp. Ass'n, 110 S. Ct. 2510 (1990).
Zinermon v. Burch, 110 S. Ct. 975 (1990).