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Supreme Court Statistical Overview, October Term 2003

Georgetown University Law Center, Supreme Court Institute

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Georgetown Law
Supreme Court Institute

Supreme Court
Statistical Overview

October Term 2003

Compiled by:
Liz Hollander, Research Assistant
Supreme Court Institute

June 30, 2004

Number of cases heard in oral argument: 75*

Number of cases in which opinions were released: 73 (also two released *per curiam*)

Unanimous Opinions****:** 19 cases, 26% overall

Split Decisions (5-4): 17 cases, 23% overall

- McConnell v. FEC, Groh v. Ramirez, Till v. SCS Credit Corp, Alaska Dept. of Environmental Protection v. E.P.A., Tennessee v. Lane, Hibbs v. Winn, Yarborough v. Alvarado, Vieth v. Jubelirer, Grupo Dataflux v. Atlas Global Group, Hiibel v. 6th Judicial District Court of Nevada, Beard v. Banks, Blakely v. Washington, Schriro v. Summerlin, Missouri v. Seibert, United States v. Patane, Rumsfeld v. Padilla, Ashcroft v. A.C.L.U.

Breakdown of split decisions:

- **8 of the 17** split cases included Rehnquist, O'Connor, Scalia, Kennedy, and Thomas in the majority.
- **7 of the 17** split cases included Stevens, Souter, Ginsburg, Breyer, and either O'Connor, Thomas, or Kennedy in the majority.
- **1** case included Stevens, Scalia, Souter, Thomas, and Ginsburg in the majority.
- **1** case included Stevens, Souter, Ginsburg, Kennedy, and Thomas in the majority.

High profile cases (13):

- McConnell v. FEC (5-4), Locke v. Davey (7-2), O.I.C. v. Favish (9-0), Vieth v. Jubelirer (5-4), Elk Grove Unified School District v. Newdow (8-0), Hiibel v. 6th Judicial District Court of Nevada (5-4), Aetna Health Inc. v. Davila (9-0), Cheney v. USDC DC (5-2-2), Blakely v. Washington (5-4), Rasul v. Bush/Al Odah v. United States (6-3), Hamdi v. Rumsfeld (8-1), Rumsfeld v. Padilla (5-4), Ashcroft v. A.C.L.U. (5-4)
- **6/13 or 46% of the High Profile cases decided were split (5-4) decisions**

Most often in the majority in high profile cases:

- O'Connor and Stevens (9/13 cases, 69% of the time)

Least often in the majority in high profile cases:

- Scalia (5/12 cases thus far, 42% of the time, did not participate in *Newdow* decision)

Most often in the majority in general:

1. O'Connor/ 82% overall
2. Kennedy/ 79% overall
3. Ginsburg/ 78% overall
4. Souter and Breyer/ 75% overall

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* Including *McConnell v. FEC*, which was heard in September, but decided during the Term.
** Only including decisions in which all Justices joined in the majority opinion in its entirety.

Least often in the majority in general:

1. Scalia/ 66% overall
2. Thomas/ 70% overall

Case Breakdown by Vote:

9-0[*]: 32 (including one 7-0 and three 8-0)
8-1: 7 (including one partial dissent, one 7-1, and *Hamdi*[**])
7-2: 10 (including one partial dissent)
6-3: 7
5-4: 16
5-2-2: 1

Justice Voting Alignment (by percentage of cases in agreement[†]):

93.00%	Breyer/Ginsburg
92.00%	Rehnquist/Kennedy
90.00%	Stevens/Ginsburg
89.00%	Scalia/Thomas
89.00%	Rehnquist/O'Connor
89.00%	Stevens/Souter
86.00%	Stevens/Breyer
83.00%	Rehnquist/Scalia
78.00%	O'Connor/Scalia
77.50%	Scalia/Kennedy
74.00%	Stevens/O'Connor
72.00%	Stevens/Kennedy
70.00%	Rehnquist/Breyer
68.00%	Souter/Kennedy
67.00%	Rehnquist/Ginsburg
65.00%	Rehnquist/Stevens
65.00%	Rehnquist/Souter
64.00%	Thomas/Ginsburg
63.00%	Thomas/Breyer
62.00%	Stevens/Scalia
61.00%	Scalia/Ginsburg
61.00%	Scalia/Breyer
60.00%	Scalia/Souter

Scalia and Souter have agreed the least, and they have still agreed on 42 out of 70 cases.

[*] Not necessarily unanimous opinions, merely cases in which all Justices agreed with the judgment itself. For example, *Elk Grove Unified School District v. Newdow*, in which the vote was 8-0, but 3 of the Justices wrote opinions concurring in the judgment and did not join in the majority opinion.
[**] In which all but one of the Justices would have gone in the same direction as the judgment, but some would have taken their decisions even further. Only Thomas actually dissented entirely.
[†] Percentage in agreement calculated counting only cases in which both Justices participated in the decision; if either Justice did not participate in a decision, that case was not counted in the number of total cases for the purposes of the percentage.

Number of Opinions Each Justice Authored*
Rehnquist: 8
Stevens: 8
O'Connor: 7
Scalia: 9
Kennedy: 8
Souter: 9
Thomas: 9
Ginsburg: 9
Breyer: 6

J. Kennedy wrote more opinions for the High Profile cases than the other Justices (4 of 13), followed by C.J. Rehnquist, Scalia, J., and Stevens, J., (2 of 13 each).

Lost majorities: There appear to have been lost majorities in both the January and February sessions. For the January session, J. Kennedy authored no opinions. Since he wrote the lead dissent in *Hibbs v. Winn*, it looks like he lost a majority in that case. For the February session, J. Breyer authored no opinions. He wrote the lead dissent, however, in both *Yarborough v. Alvarado* and *Ashcroft v. A.C.L.U.*. Thus, a lost majority is possible for either of those cases, although since J. O'Connor wrote a middle-ground concurrence in *Yarborough*, it makes *Yarborough* the more likely of the two.

Summaries of High Profile Cases:

McConnell v. FEC
Issue: Whether the provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) are within constitutional limits. The BCRA was challenged on First, Fifth, and Tenth Amendment grounds.
Holding: Overall, affirmed in part and reversed in part. The portions of the District Court's decision which upheld two sections of the BCRA were reversed, while the portions of its decision which found sections of the BCRA unconstitutional were reversed, except for the provision prohibiting campaign contributions by children under 18, which the Court held to "sweep too broadly," and therefore to be unconstitutional. The Court did determine that the statute's two principal, complementary features – Congress' effort to plug the soft-money loophole and its regulation of electioneering communications – must be upheld, although separate decisions were issued for each of several sections of the BCRA. Multiple section-specific concurrences, partial concurrences and partial dissents were also issued by various Justices.
Vote: 5-4, Stevens, O'Connor, Souter, Ginsburg and Breyer, JJ., were in the majority, and Rehnquist, C.J., Scalia, Kennedy and Thomas, JJ., in the dissent. This vote was not clear-cut, however, as 8 Justices wrote opinions, most agreeing in some part and disagreeing in part with a provision in another section. In fact, Stevens, J., who co-authored the lead opinion with O'Connor, J., also wrote a dissent.

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* Excluding *McConnell v. FEC*, as the majority opinion was written by both Stevens and O'Connor, and there were multiple other opinions issued on the different sections of the legislation.

Locke v. Davey
Issue: Does the Free Exercise Clause of the 1st Amendment require a state to fund religious instruction, in the face of a state constitution that provides that no public money shall be appropriated or applied to religious instruction, if the state provides college scholarships for secular instruction?
Holding: The Court decided against Davey, holding that the state of Washington was not violating the 1st Amendment's free exercise clause by declining to provide state scholarship money for a devotional theology degree.
Vote: 7-2, opinion by Rehnquist, C.J., with Scalia and Thomas, JJ., dissenting.

O.I.C. v. Favish
Issue: Whether the Office of Independent Counsel properly withheld as "an unwarranted invasion of personal privacy", under exemption 7(C) of the Freedom of Information Act, photographs relating to the death of former Deputy White House Counsel Vincent Foster?
Holding: Reversed, holding that the Freedom of Information Act recognizes the personal privacy of surviving family members with respect to their close relative's death-scene images, and concluding that the Foster family's privacy interest outweighs the public interest in disclosure in this case.
Vote: Unanimous, opinion by J. Kennedy.

Vieth v. Jubelirer
Issue: (1) Whether the District Court erred in effectively concluding that voters affiliated with a major political party may never state a claim for unconstitutional partisan gerrymandering, thereby nullifying the Supreme Court opinion in Davis v. Bandemer, 478 U.S. 109 (1986)? (2) Whether a state presumptively violates the Equal Protection clause when it subordinates all traditional, neutral, districting principles to the overarching goal of drawing a congressional redistricting map that achieves maximum partisan advantage for one political party? (3) Whether a state exceeds its delegated authority under Article I of the Constitution when it draws congressional district boundaries to ensure that candidates from one political party will consistently capture a supermajority of the state's congressional seats even if those candidates win less than half the popular vote statewide?
Holding: Judgment affirmed, holding that Pennsylvania's newly passed Act 34 was a sufficient remedy for Act 1 (against which the claims were made), and generally, that gerrymandering claims are nonjusticiable because no judicially discernable and manageable standards for adjudicating such claims exist.
Vote: 5-4, for Jubelirer, opinion by J. Scalia, J. Kennedy concurring. Justices Stevens, Souter, Ginsburg and Breyer dissented in three separate dissents.

Ashcroft v. A.C.L.U.
Issue: Whether the Child Online Protection Act (COPA) violates the 1st Amendment to the U.S. Constitution, and specifically, whether the court of appeals properly barred enforcement of the COPA on First Amendment grounds because it relies on community standards to identify material that is harmful to minors?

Holding: Affirmed and remanded for trial. The Third Circuit was correct to affirm the District Court's ruling that enforcement of COPA should be enjoined because the statute likely violates the First Amendment.
Vote: 5-4, opinion by J. Kennedy, in which Stevens, Souter, Thomas, and Ginsburg, JJ., joined. J. Scalia filed a dissenting opinion. J. Breyer also wrote a dissenting opinion, in which Rehnquist, C.J., and O'Connor, J., joined.

Aetna Health Inc. v. Davila
Issue: Whether the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. ("ERISA"), as construed by the Supreme Court in Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41 (1987), and its progeny, completely preempts state-law claims by ERISA plan participants or beneficiaries who assert that a managed care company tortiously "failed to cover" (i.e., pay for) medical care?
Holding: Found in favor of HMOs, holding that the state causes of action fall within ERISA §502(a)(1)(B), and are therefore completely pre-empted by ERISA §502 and removable to federal court.
Vote: 9-0, opinion written by J. Thomas. Ginsburg, J., filed a concurring opinion, in which Breyer, J., joined.

Hiibel v. 6th Judicial District Court of Nevada
Issue: Whether it is a violation of the 4th Amendment protection against unreasonable searches and seizures to require someone to identify himself when stopped by police for reasonable suspicion?
Holding: It is not a violation of the 4th Amendment to require someone to identify himself when stopped by police as long as the person was stopped for reasonable suspicion; therefore petitioner's conviction does not violate his 4th Amendment rights or the 5th Amendment's prohibition on self-incrimination.
Vote: 5-4, opinion by J. Kennedy, in which Rehnquist, C.J, and O'Connor, Scalia, and Thomas, JJ., joined. Stevens, J. filed a dissenting opinion. Breyer, J. filed a dissenting opinion, in which Souter and Ginsburg, JJ., joined.

Elk Grove Unified School District v. Newdow
Issue: 1) Whether Michael Newdow has standing to challenge as unconstitutional a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance? (2) Whether a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance, which includes the words "under God," violates the Establishment Clause of the 1st Amendment, as applicable through the 14th Amendment?
Holding: The Court did not address the issue of the Establishment Clause; instead holding that because California law deprives Newdow of the right to sue as next friend, he lacks standing to challenge the school district's policy in federal court.
Vote: 8-0, opinion by J. Stevens, J. Scalia did not participate in the decision. J. O'Connor, J. Thomas, and C.J. Rehnquist wrote concurrences that stated that they would have reached the merits, and found that the Pledge with the words "under God" did not create an unconstitutional establishment of religion.

Blakely v. Washington
Issue: Whether it is constitutionally required under the 6th Amendment that a jury be presented with and allowed to find all facts legally essential to the determination of a defendant's sentencing, or whether a judge has the authority to impose an enhanced sentence as a result of facts that the judge alone has found, when the enhanced sentence is greater than what the law authorized on the jury's verdict alone?
Holding: The sentence violated Blakely's 6th Amendment right to a trial by jury, since the facts supporting the sentence were neither admitted by him nor found by a jury. A judge may not impose an enhanced sentence which is greater than the law authorizes based on the jury verdict. Per Scalia, the majority held that a main goal of the framers had been to preserve the role of the jury.
Vote: 5-4, opinion by J. Scalia, with Stevens, Thomas, Souter, and Ginsburg, JJ., joining. O'Connor, Kennedy, and Breyer, JJ., each wrote dissents. C.J. Rehnquist joined J. O'Connor's dissent in part, and each dissenting Justice also joined in another dissenting opinion. The dissenting Justices, and J. O'Connor in particular, stated that the holding would have a "disastrous impact" on federal and state sentencing, and would hinder 20 years of sentencing guideline reforms, besides opening up an "untold number" of criminal sentences issued since the *Apprendi* verdict to challenges.

Rasul v. Bush/Al Odah v. United States
Issue: Whether United States courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba? (Did the DCCA err in holding that the Constitution does not entitle the detainees to due process and they therefore cannot invoke the jurisdiction of the courts in the U.S. to test the constitutionality or the legality of restraints on their liberty?)
Holding: Reversed and remanded. United States courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at Guantanamo Bay. No decision made on the merits.
Vote: 6-3, opinion by J. Stevens, in which O'Connor, Souter, Ginsburg, and Breyer, JJ., joined. J. Kennedy filed an opinion concurring in the judgment. J. Scalia filed a dissenting opinion in which Rehnquist, C.J., and Thomas, J., joined.

Cheney v. USDC DC
Issue: (1) Whether the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, §§ 1 et seq., can be construed, consistent with the Constitution, principles of separation of powers, and this Court's decisions governing judicial review of Executive Branch actions, to authorize broad discovery of the process by which the Vice President and other senior advisors gathered information to advise the President on important national policy matters, based solely on an unsupported allegation in a complaint that the advisory group was not constituted as the President expressly directed and the advisory group itself reported? (2) Whether the court of appeals had mandamus or appellate jurisdiction to review the district court's unprecedented discovery orders in this litigation?
Holding: Vacated and remanded, holding that Court of Appeals concluded too quickly that Cheney could not appeal. Cheney has no need to assert Executive Privilege, case

sent back to Court of Appeals, where he can make an argument not to allow discovery or that the rule is too broad. This is a partial victory for Cheney – small on a legal scale, but probably big on a political scale, as the information about industry involvement in Energy Plan meetings, if its release is required by the Court of Appeals, will likely not come out until after the election.
Vote: 5-2-2, opinion by J. Kennedy, with 4 Justices joining. Scalia and Thomas, JJ., concurred in part and dissented in part, stating that they would not have granted a writ of mandamus at all, while Ginsburg and Souter, JJ., dissented, stating that they would have affirmed the trial court.

Hamdi v. Rumsfeld
Issue: Did the court of appeals err in holding that the U.S. has established the legality of the military's detention of Yaser Esam Hamdi, a presumed American citizen who was captured in Afghanistan during the combat operations in late 2001, and was determined by the military to be an enemy combatant who should be detained in connection with the ongoing hostilities in Afghanistan?
Holding: Vacated and remanded, holding that although Congress authorized the detention of combatants in the narrow circumstances alleged in this case, due process demands that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decision-maker.
Vote: 8-1, opinion by O'Connor, J., with Rehnquist, C.J., and Kennedy and Breyer, JJ., joining. Souter, J. wrote an opinion (which Ginsburg, J. joined) concurring in part, dissenting in part, and concurring in the judgment, in which he advocated not only vacating the judgment, but also Hamdi's release. Scalia, J. wrote a dissenting opinion in which he advocated a position even more in favor of Hamdi than the plurality, and in which Stevens, J. joined. J. Thomas was the only Justice to really vote in favor of granting unquestioned detention powers to the Executive and holding against Hamdi entirely.

Rumsfeld v. Padilla
Issue: (1) Whether the President has authority as Commander in Chief and in light of Congress's Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224, to seize and detain a United States citizen in the United States based on a determination by the President that he is an enemy combatant who is closely associated with al Qaeda and has engaged in hostile and war-like acts, or whether 18 U.S.C. 4001(a) precludes that exercise of Presidential authority? (2) Whether the district court has jurisdiction over the proper respondent to the amended habeas petition?
Holding: Reversed and remanded. The district court does not have jurisdiction over the respondent, therefore the Court does not reach the question whether the President has the authority to detain Padilla militarily.
Vote: 5-4, opinion by C.J. Rehnquist, with O'Connor, Scalia, Kennedy, and Thomas, JJ., joining. Kennedy, J., filed a concurring opinion, in which O'Connor, J., joined. Stevens, J., filed a dissenting opinion, in which Souter, Ginsburg, and Breyer, JJ., joined.