

Recent Changes at the Texas Supreme Court

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Previously...

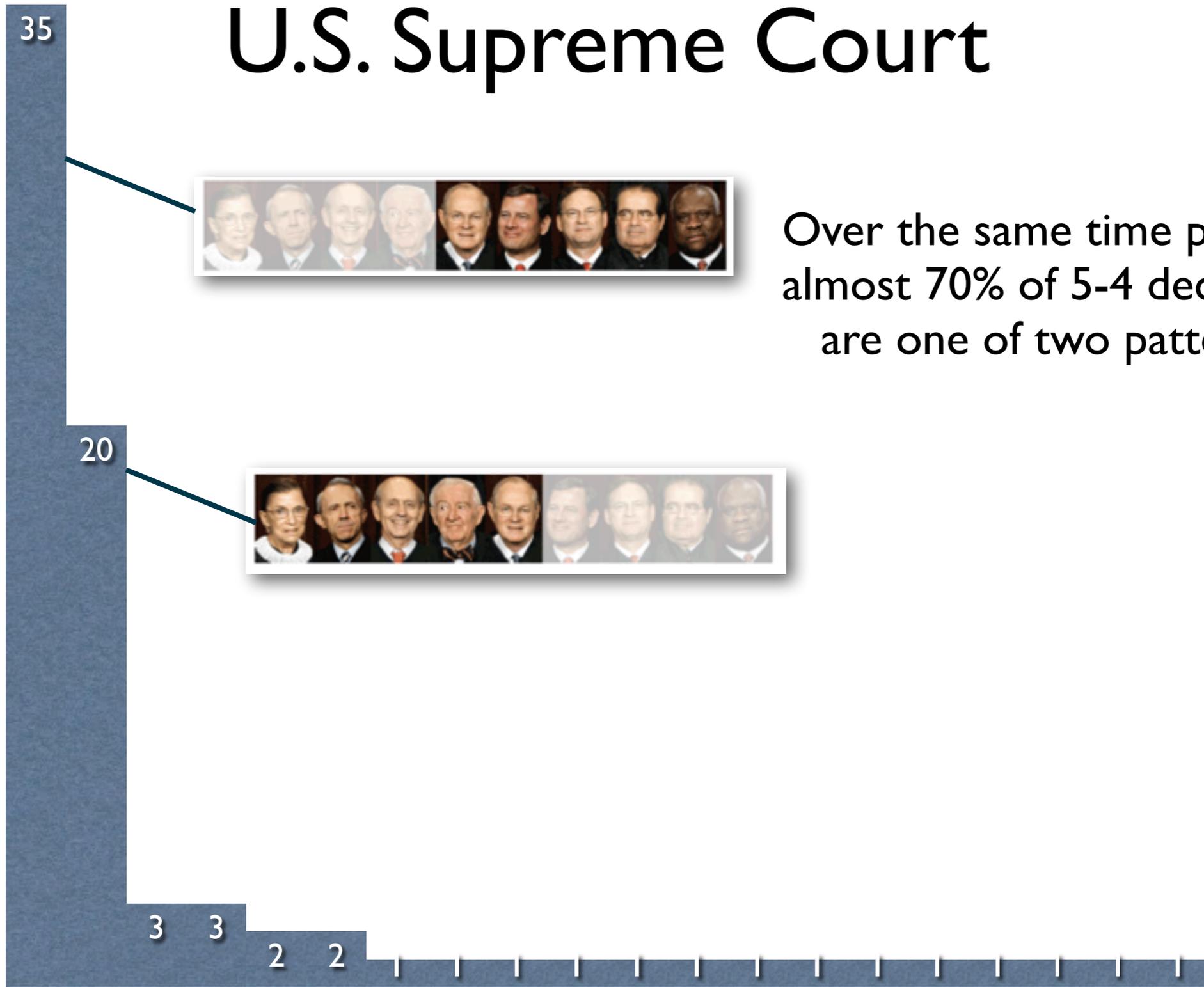
Austin Bar Appellate Section Talk

Special Focus: Five-Vote Majorities



Source: New York Times

U.S. Supreme Court

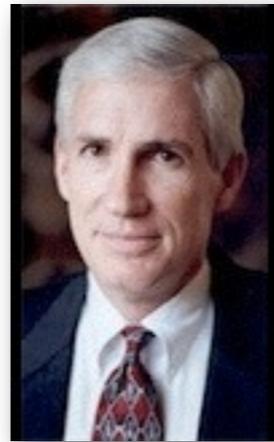
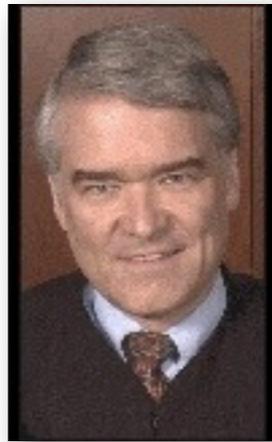
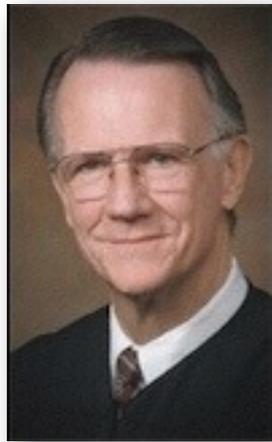


Over the same time period, almost 70% of 5-4 decisions are one of two patterns

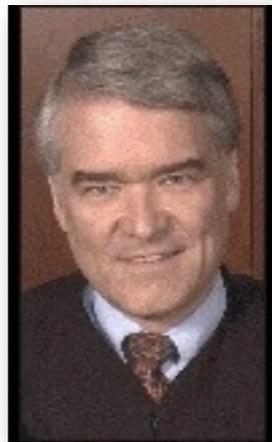
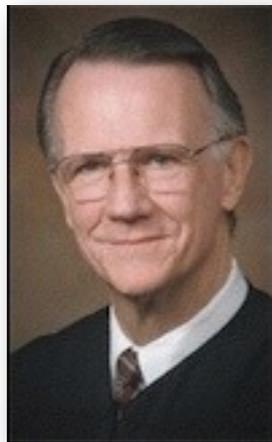


How did the Texas Supreme Court
divide up in these 37
5-4 decisions?

The two most common 5-vote majorities



4 times

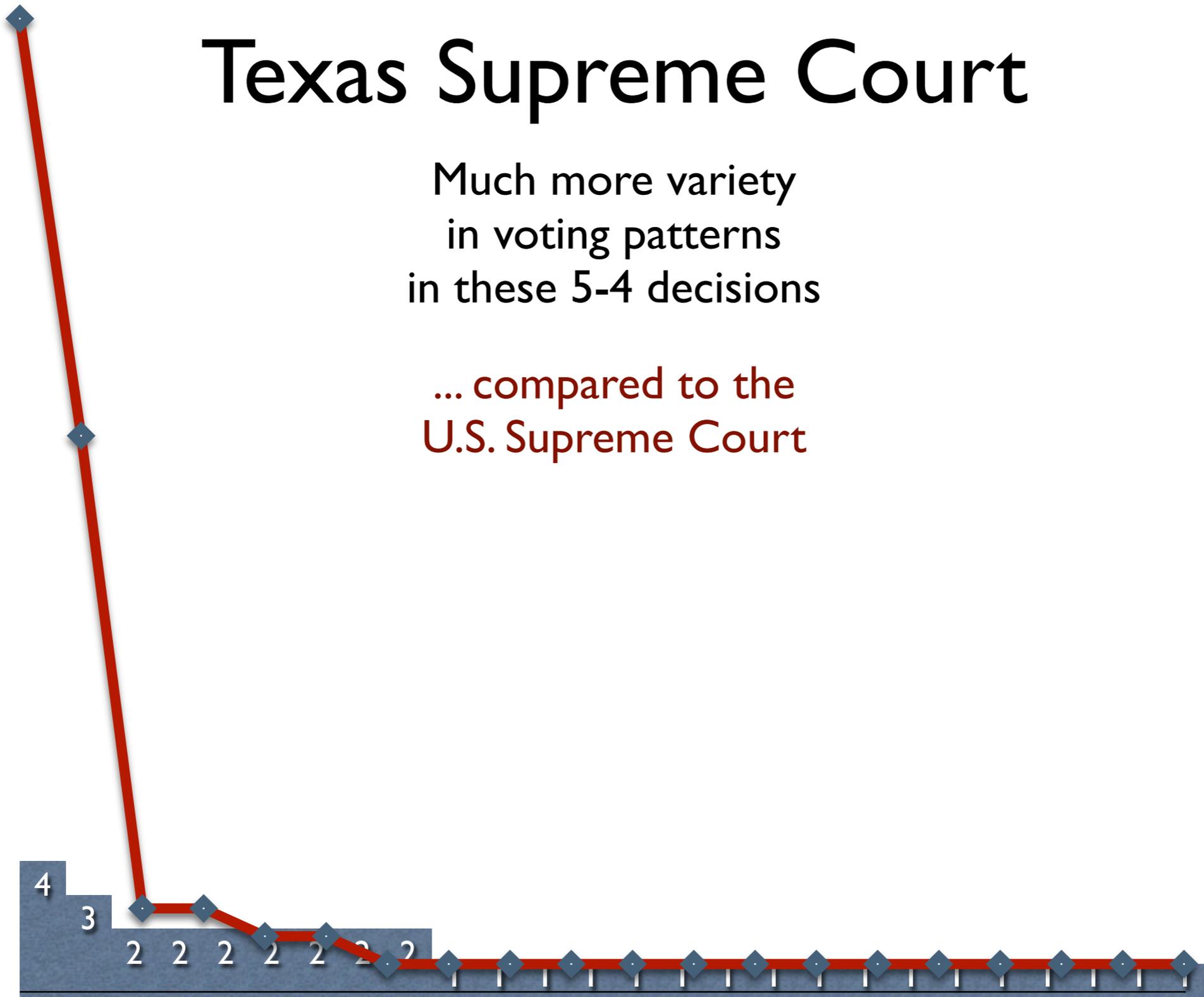


3 times

Texas Supreme Court

Much more variety
in voting patterns
in these 5-4 decisions

... compared to the
U.S. Supreme Court



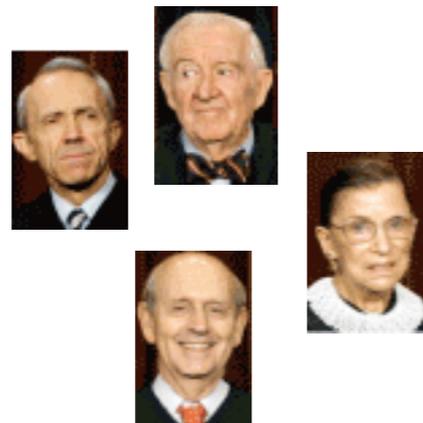
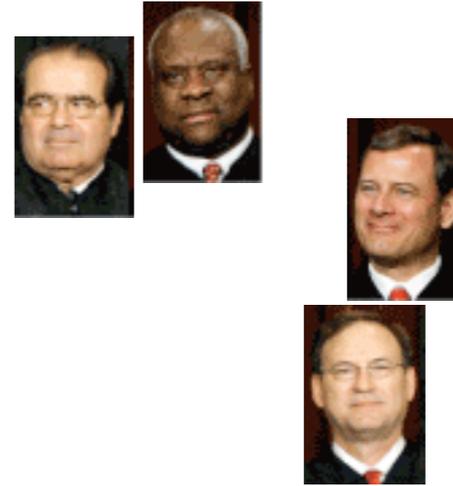
Looking for Patterns

U.S. Supreme Court

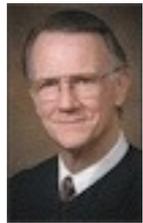


SCOTUS

Voting Affinity (in 79 5-4 decisions)

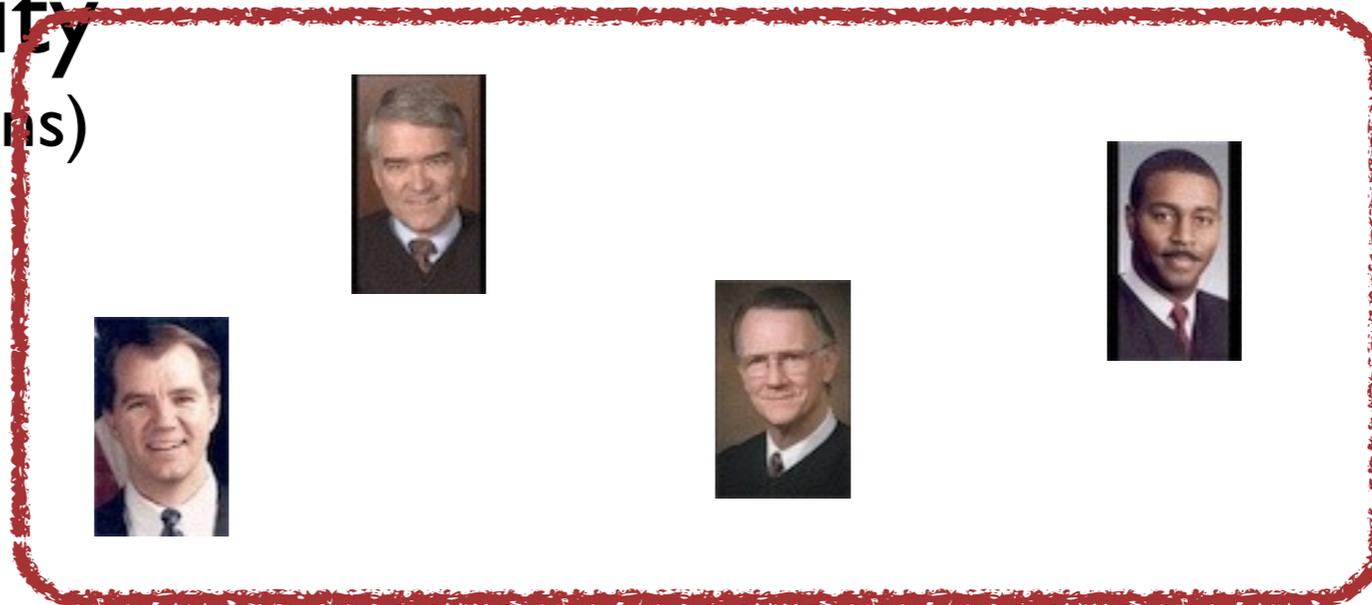


Texas Supreme Court



Voting Affinity

(in 37 5-4 decisions)



The Current Court

There Have Been Fewer Close Cases

2005-2009 Terms

- 39 cases with only 5 votes for the majority opinion
 - 3 more cases decided by a plurality opinion
- 34 cases with 6 votes for the majority opinion

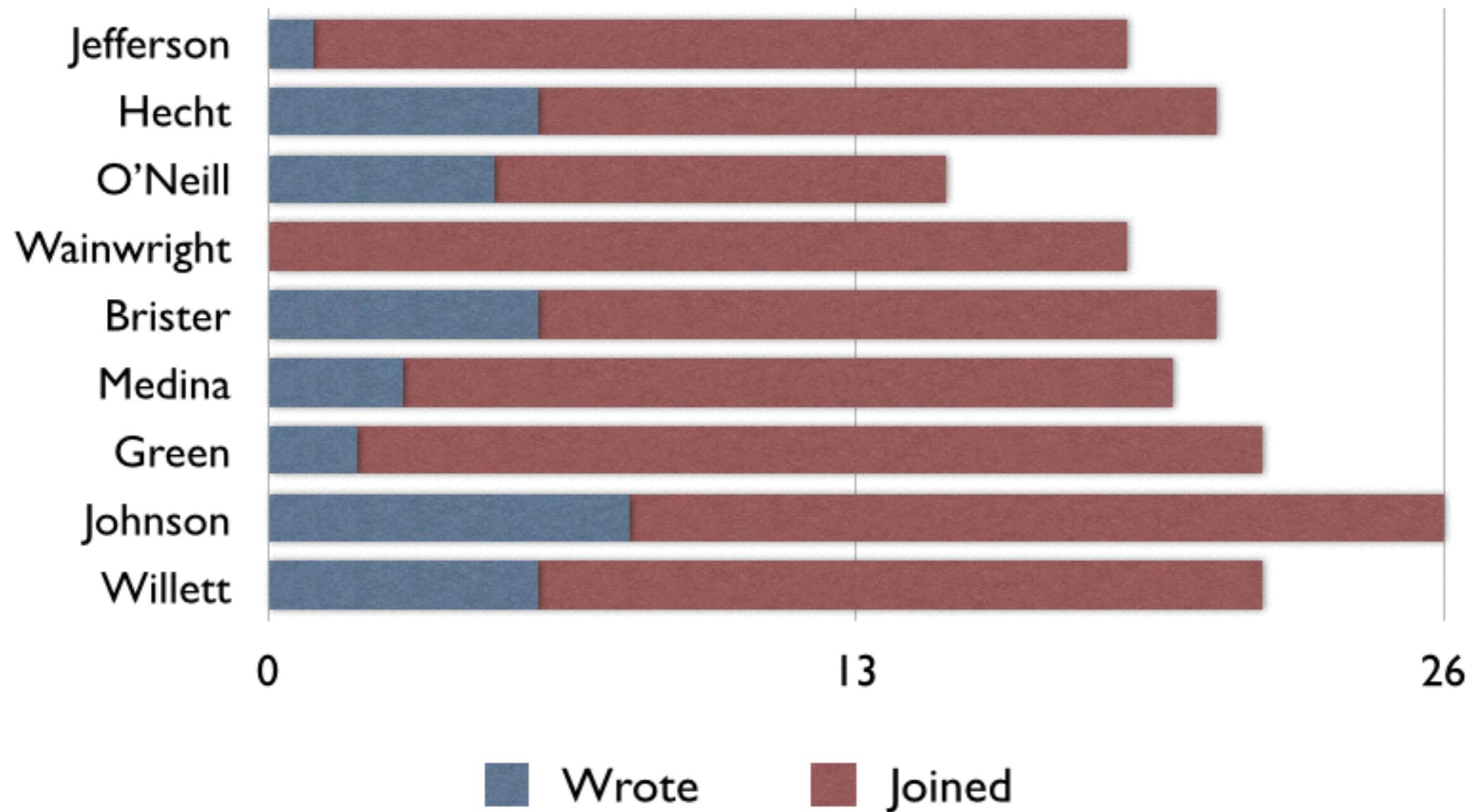
2010-2014 Terms*

- 15 cases with only 5 votes for the majority opinion
 - 2½ cases decided by a plurality opinion
- 31 cases with 6 votes for the majority opinion

* So far! (No spoilers.)

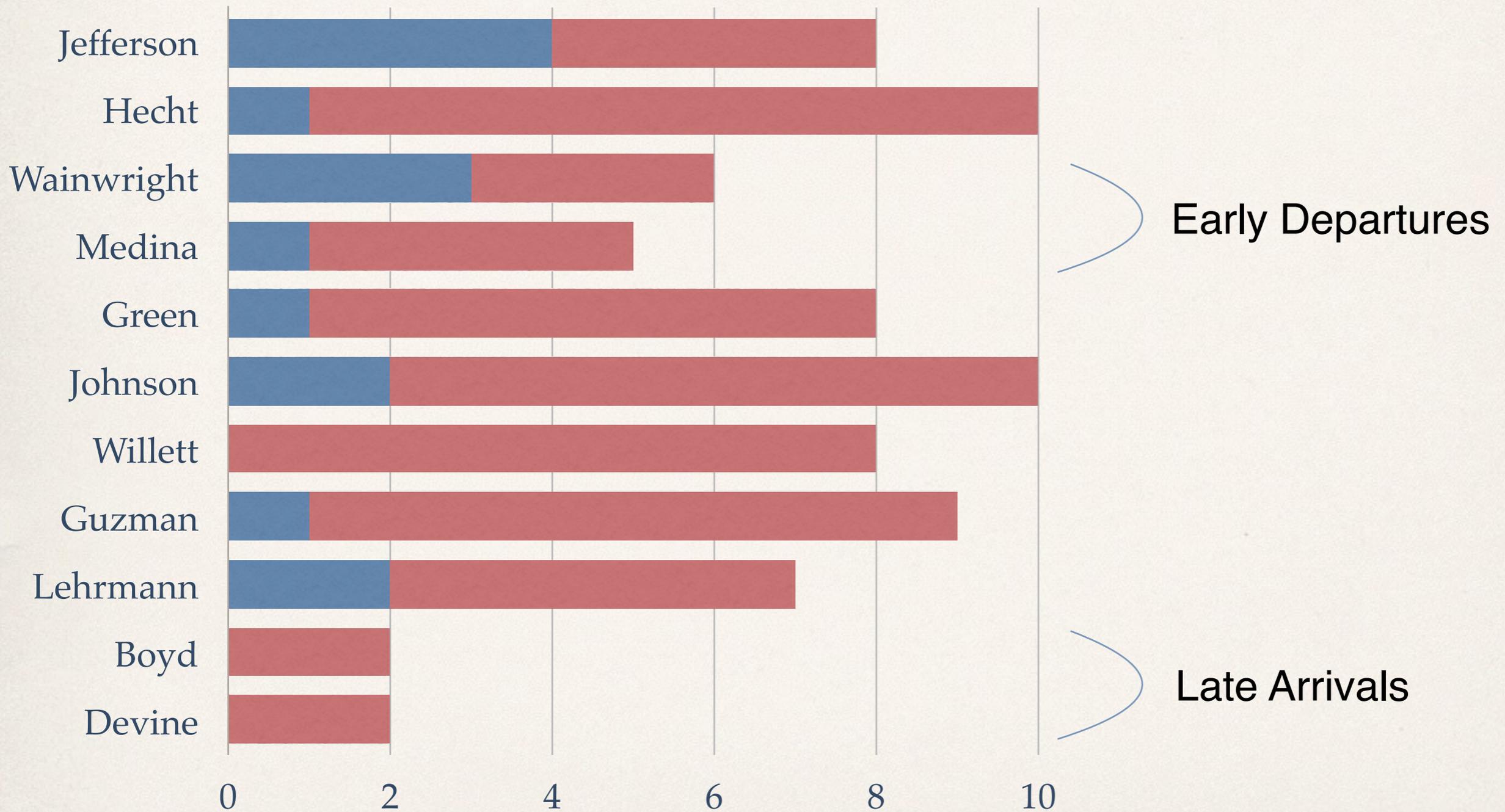
Who was in the 5-vote majorities?

In 5-vote cases only, 2005-2009 Terms



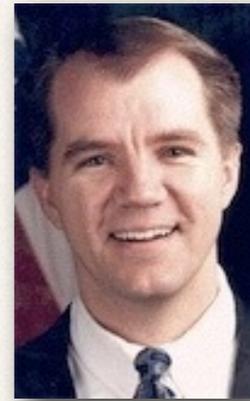
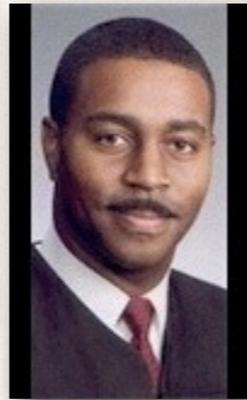
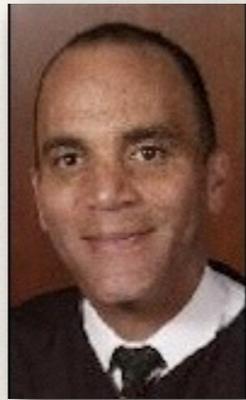
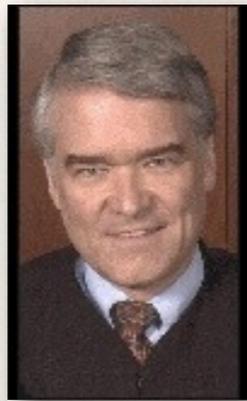
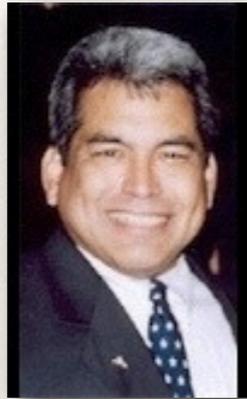
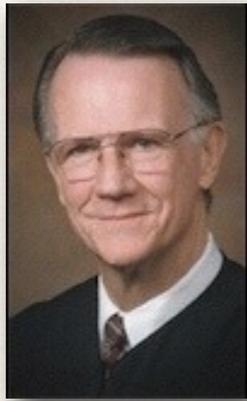
Who was in the 5-vote majorities?

In 5-vote cases only, 2010-2014 Terms



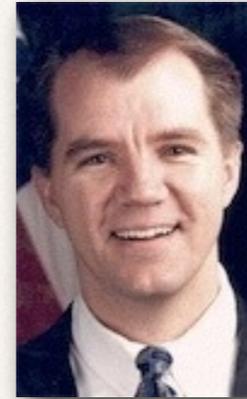
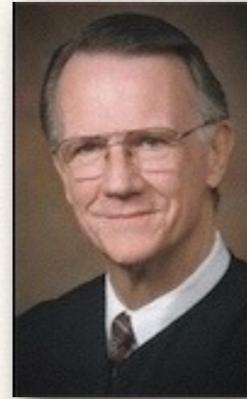
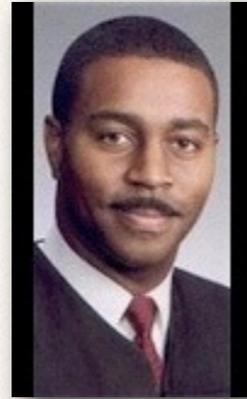
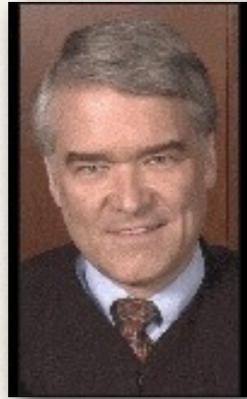
Who was in the 5-vote majorities?

In 5-vote cases only, 2010-2014 Terms

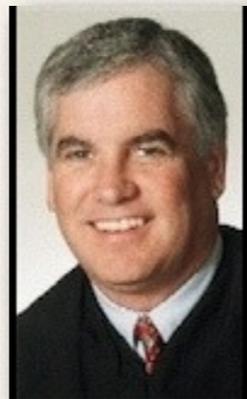
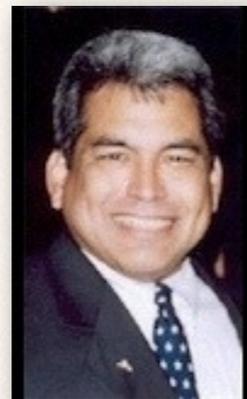
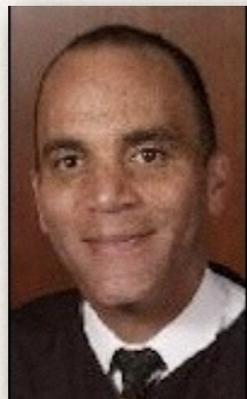


Who was in the 5-vote majorities?

In 5-vote cases only, 2010-2014 Terms



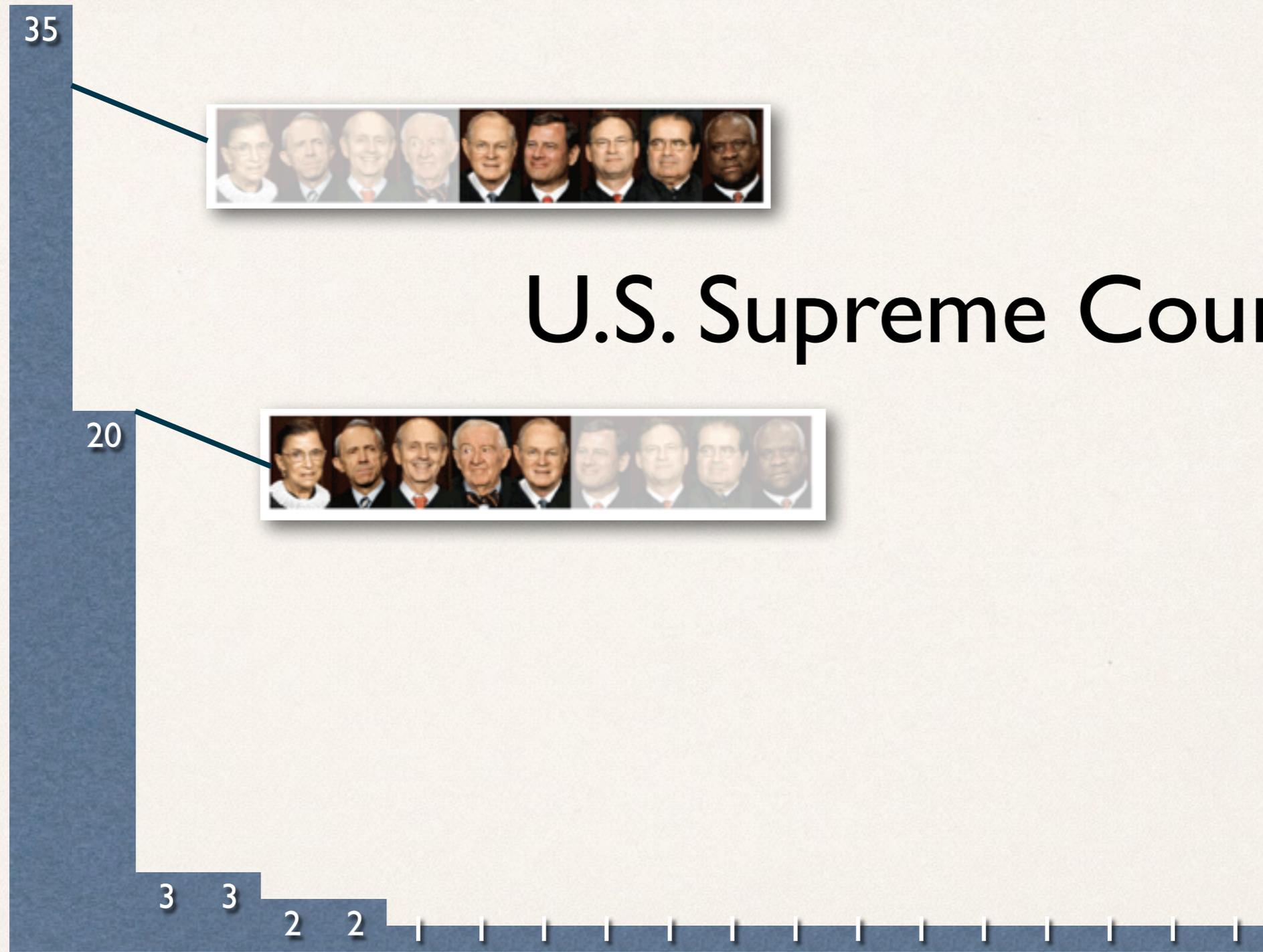
2 times



2 times

In 5-vote cases only, 2010-2014 Terms

Who was in the 5-vote majorities?



U.S. Supreme Court

Who was in the 5-vote majorities?

In contrast to the US Supreme Court, almost no patterns even repeated themselves among the five-vote majorities on the Texas Supreme Court.



In 5-vote cases only, 2010-2014 Terms

Vote Patterns

Opinions Issued in 2012-2013

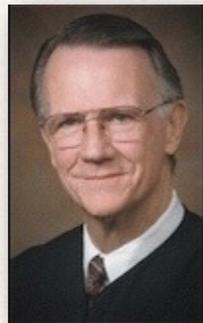
How often did each pair of Justices agree about the judgment, in those cases that drew at least one dissent?

	Hecht	Jefferson	Green	Johnson	Willett	Guzman	Lehrmann	Boyd	Devine	Wainwright	Medina
Hecht		71.4	71.4	42.9	35.7	46.2	35.7	38.5	50.0	--	50.0
Jefferson	71.4		75.0	56.2	31.2	40.0	43.8	26.7	35.7	--	50.0
Green	71.4	75.0		68.8	50.0	66.7	37.5	53.3	64.3	--	50.0
Johnson	42.9	56.2	68.8		62.5	73.3	25.0	60.0	57.1	--	50.0
Willett	35.7	31.2	50.0	62.5		53.3	50.0	80.0	71.4	--	--
Guzman	46.2	40.0	66.7	73.3	53.3		33.3	71.4	69.2	--	100.0
Lehrmann	35.7	43.8	37.5	25.0	50.0	33.3		60.0	35.7	--	50.0
Boyd	38.5	26.7	53.3	60.0	80.0	71.4	60.0		57.1	--	--
Devine	50.0	35.7	64.3	57.1	71.4	69.2	35.7	57.1		--	--
Wainwright	--	--	--	--	--	--	--	--	--		--
Medina	50.0	50.0	50.0	50.0	--	100.0	50.0	--	--	--	

Vote Patterns

Opinions Issued in 2012-2013

In cases with a divided judgment, these pairs of Justices agreed on the result the least often:



25%: Johnson - Lehrmann



26.7%: Boyd - Jefferson

And these pairs agreed on the result the most often:



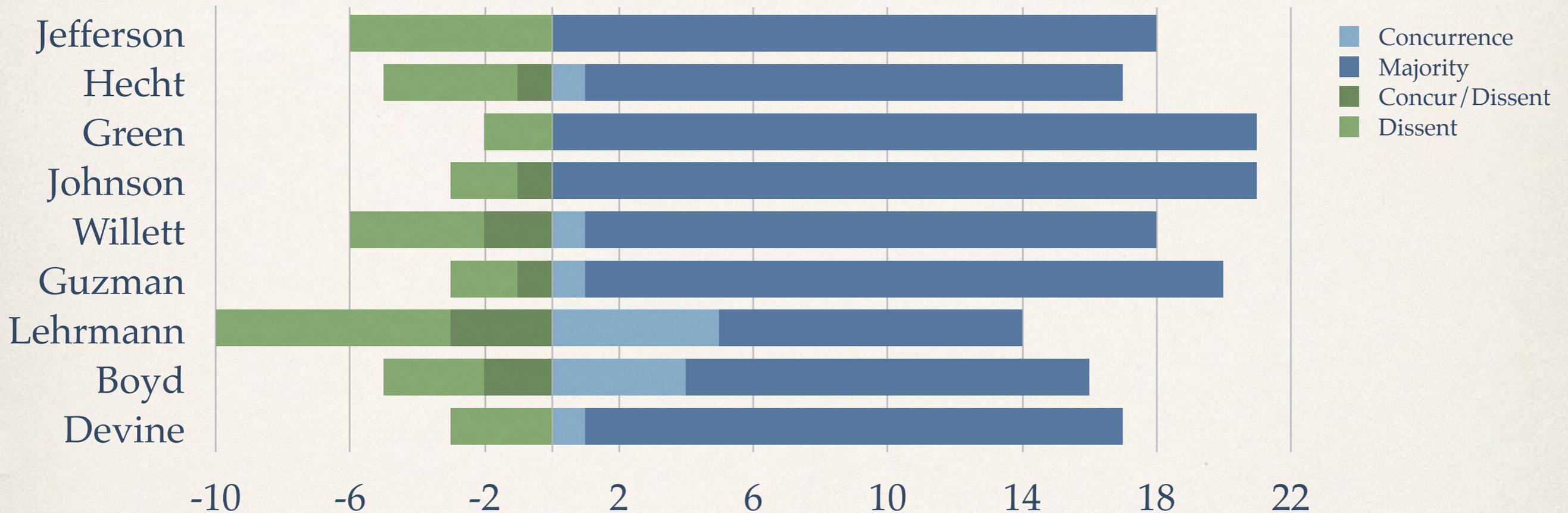
80%: Boyd - Willett



75%: Green - Jefferson

Who Joins Separate Opinions?

In cases with at least one separate opinion, 2012-2013

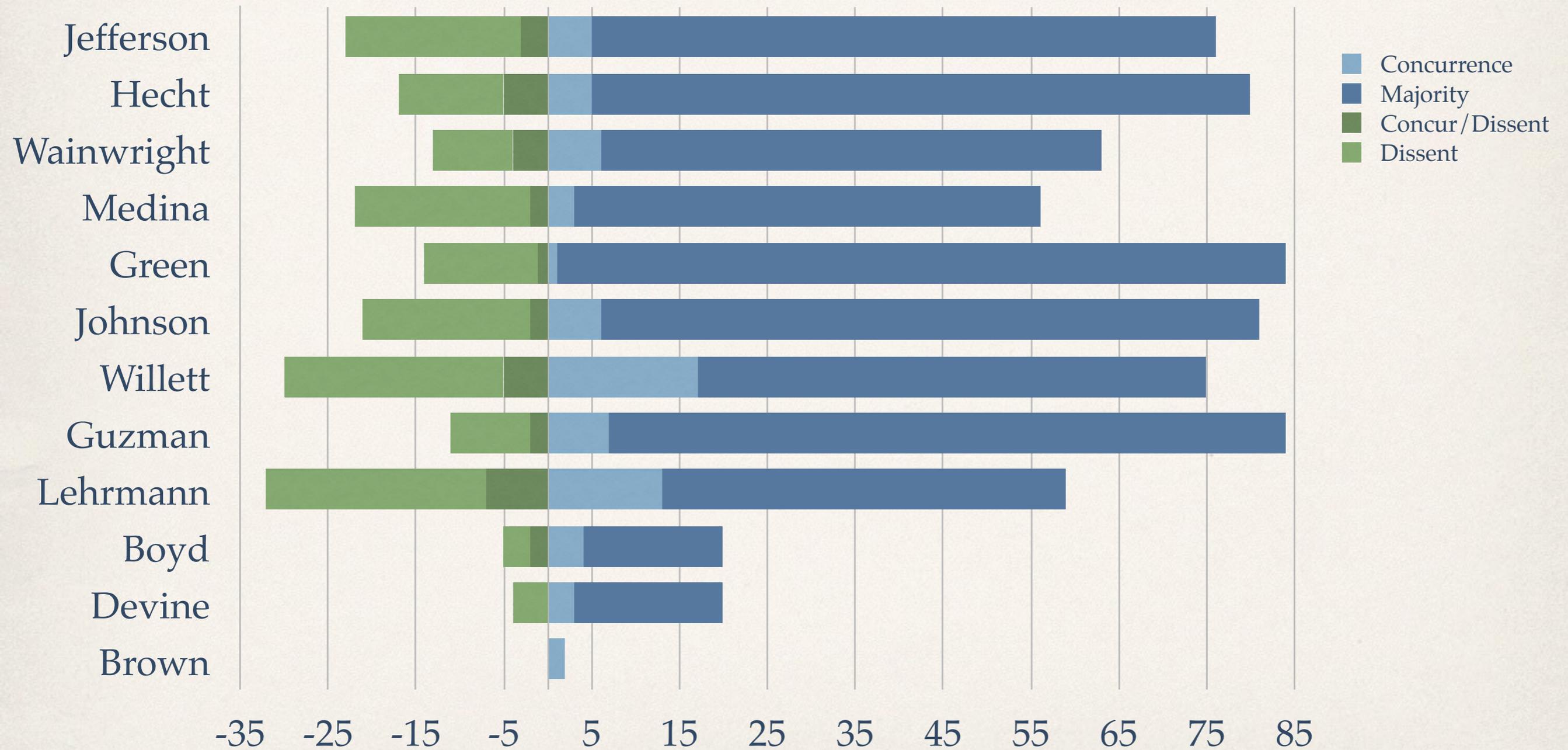


Every Justice joined at least two dissents. Justice Lehrmann joined dissenting opinions most often, followed by Chief Justice Jefferson and Justice Willett.

Chief Justice Jefferson, Justice Green, and Justice Johnson did not join any separate concurring opinions.

Who Joins Separate Opinions?

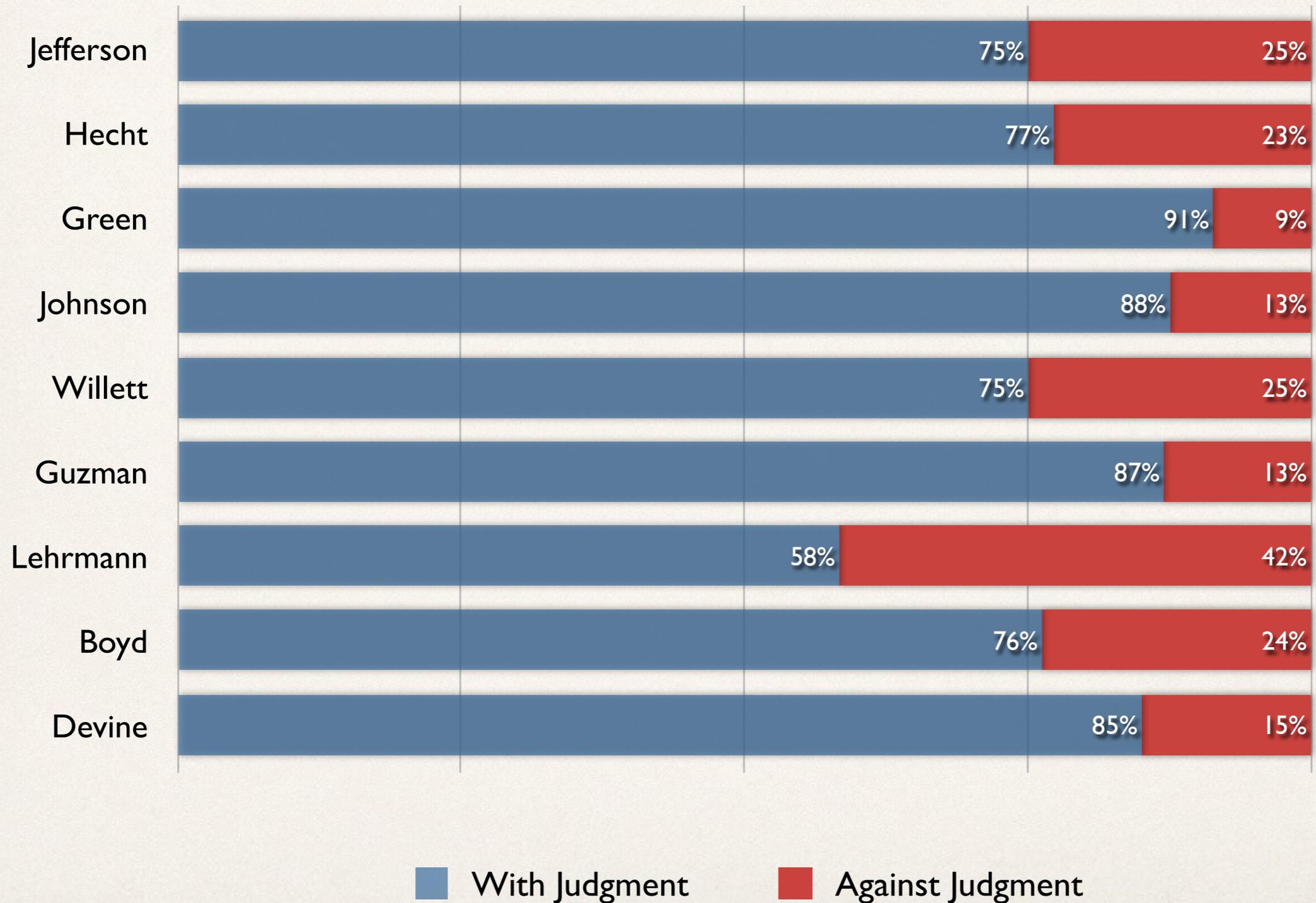
In cases with at least one separate opinion, 2010 Term to present



The Court Over Time

Who Votes With the Judgment?

Just in divided cases, 2012-2013



Who Votes With the Judgment?

Divided Cases Only



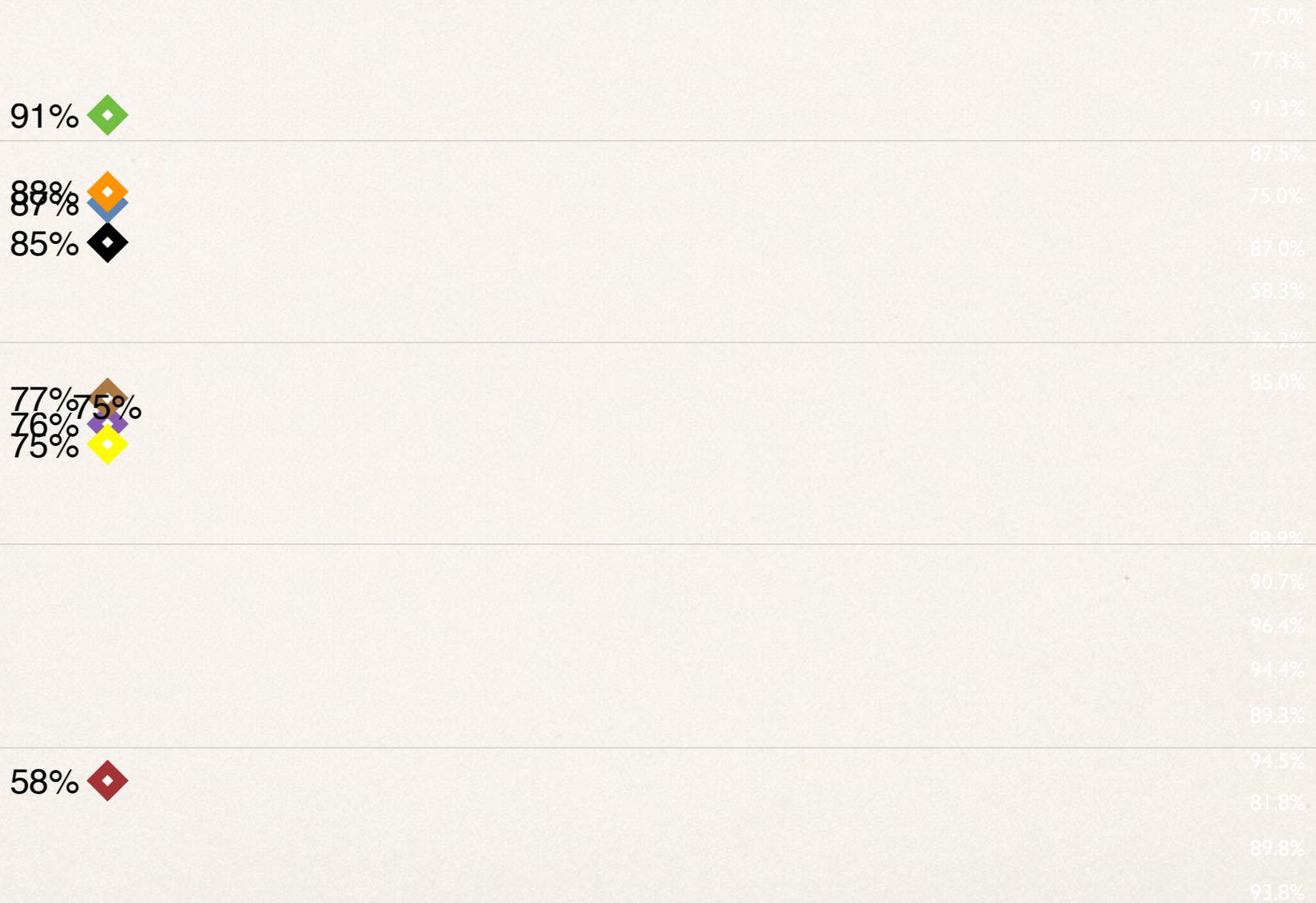
100%

90%

80%

70%

60%



2013

2012

2011

2010

2009

2008

2007

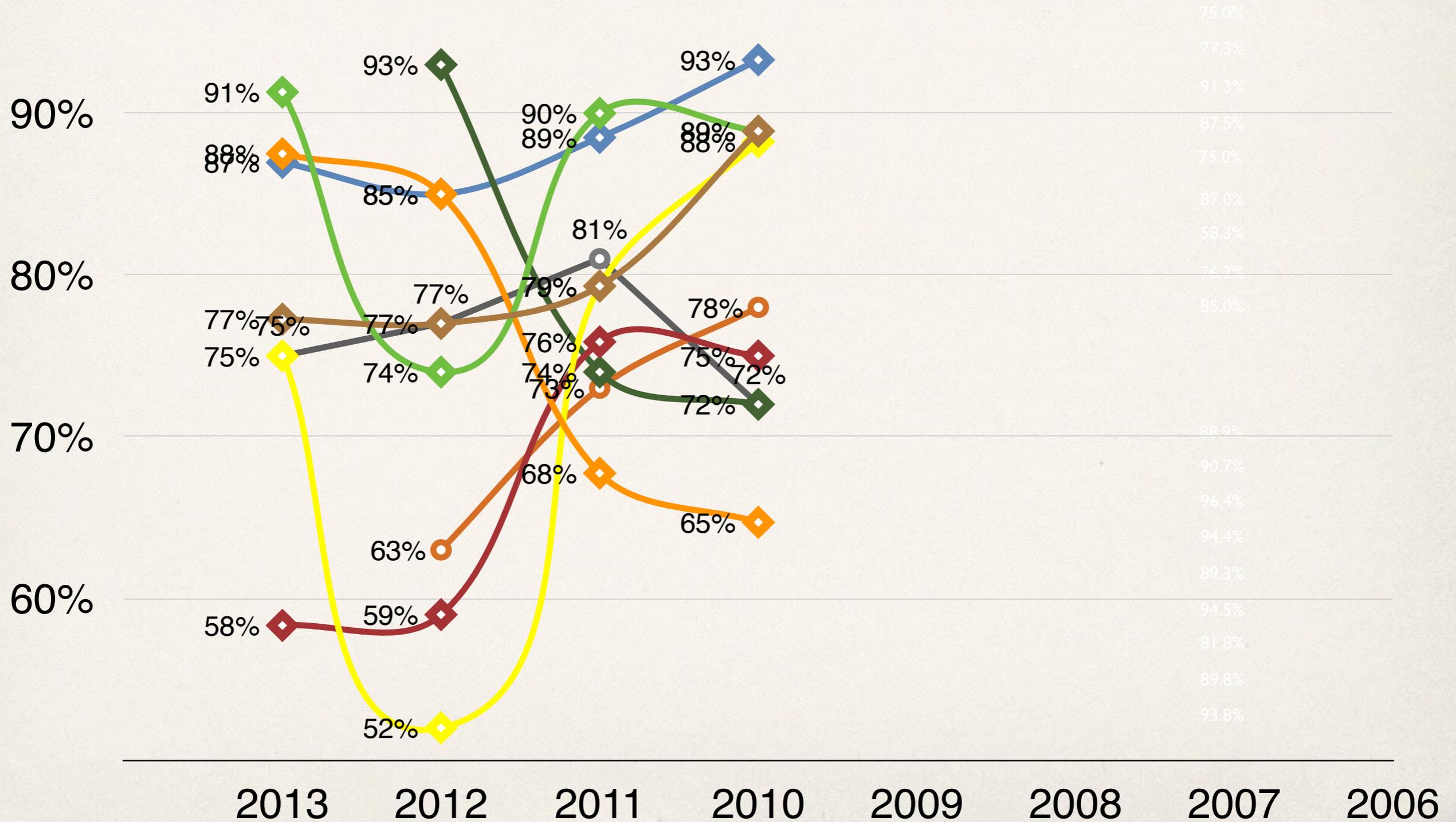
2006

Who Votes With the Judgment?

Divided Cases Only

- ◇ Hecht
- ◇ Green
- ◇ Johnson
- ◇ Willett
- ◇ Lehrmann
- ◇ Wainwright
- ◇ Guzman
- Medina
- Jefferson

100%



Who Votes With the Judgment?

Divided Cases Only

- ◆ Hecht
- ◆ Green
- ◆ Johnson
- ◆ Willett
- ◆ Wainwright
- Medina
- ◆ Jefferson
- O'Neill
- Brister

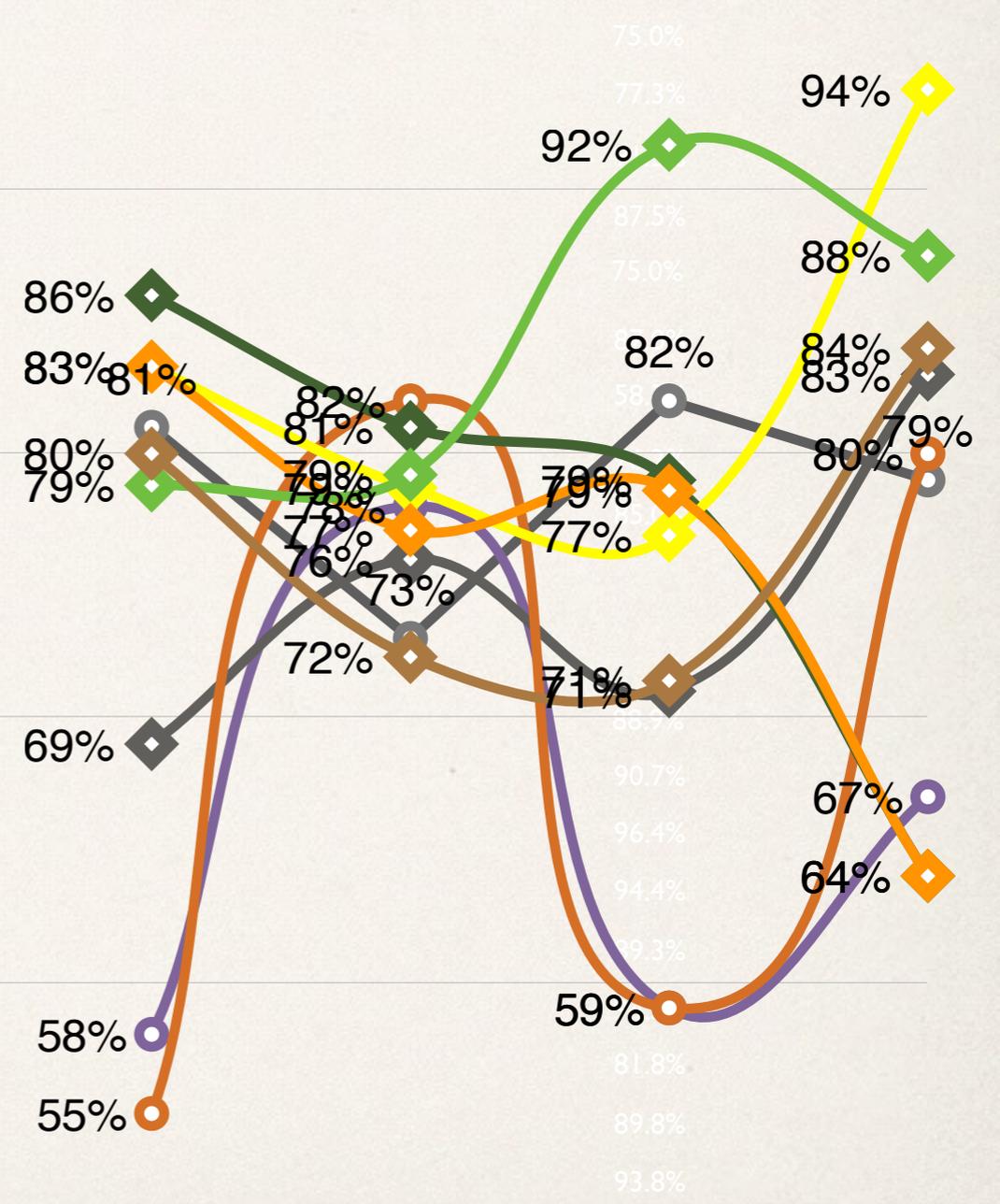
100%

90%

80%

70%

60%



2013

2012

2011

2010

2009

2008

2007

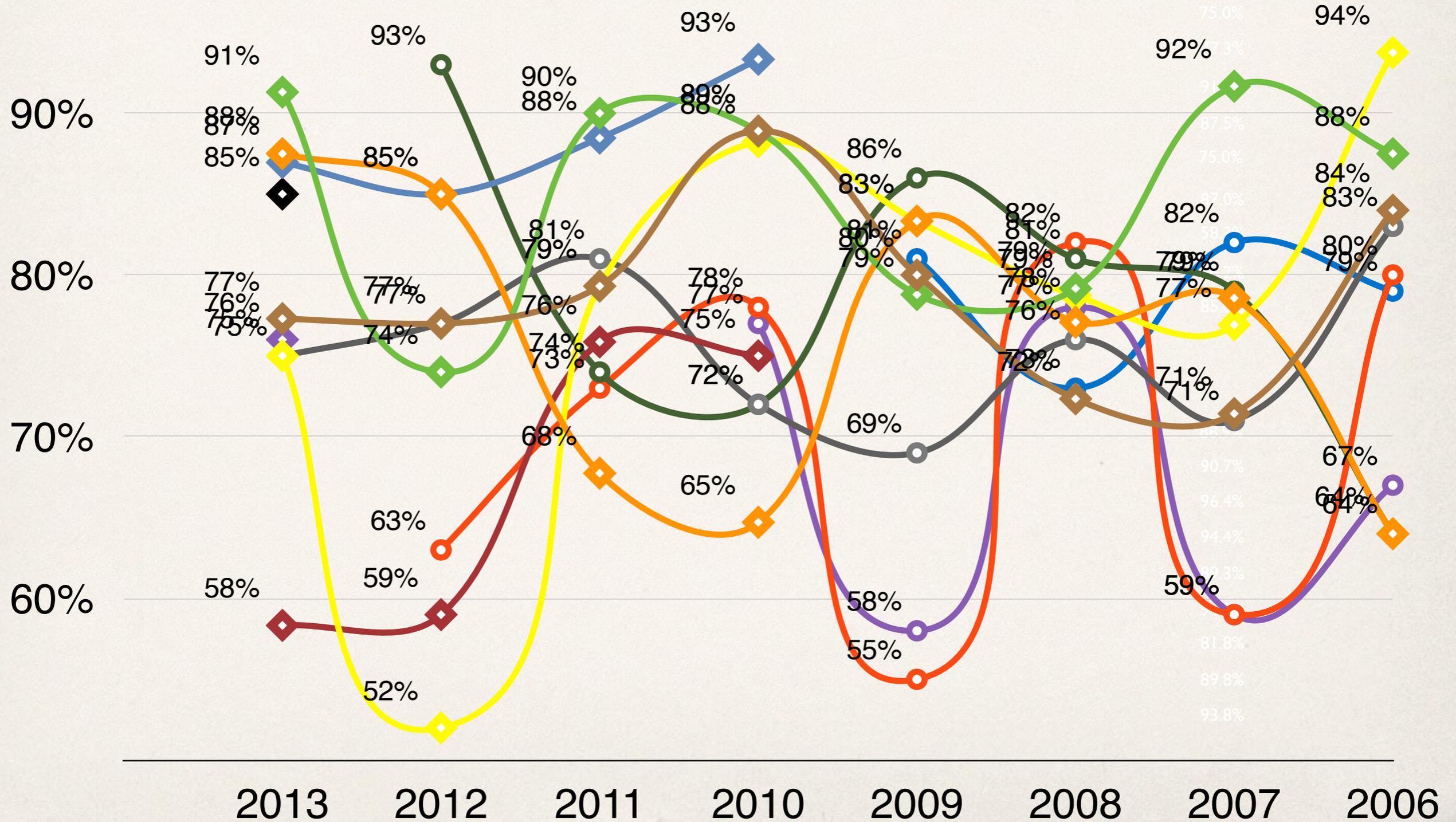
2006

Who Votes With the Judgment?

Divided Cases Only

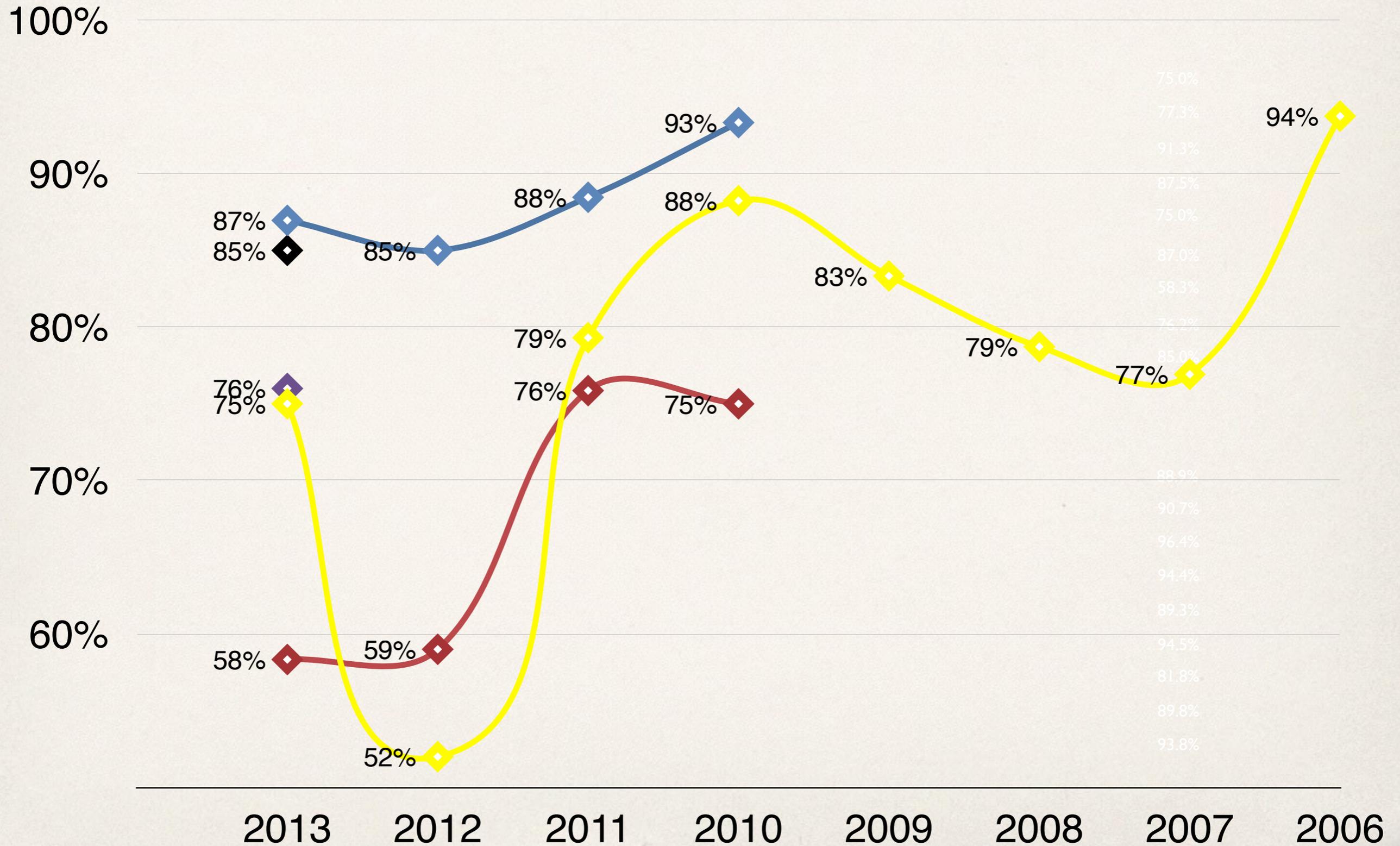
- ◆ Hecht
- ◆ Green
- ◆ Johnson
- ◆ Willett
- ◆ Lehrmann
- ◆ Boyd
- ◆ Guzman
- ◆ Devine
- Jefferson
- Wainwright
- Medina
- O'Neill
- Brister

100%

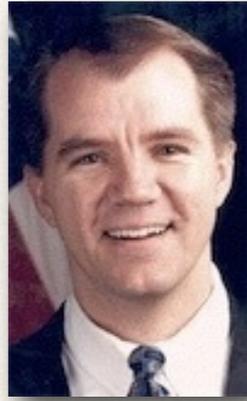
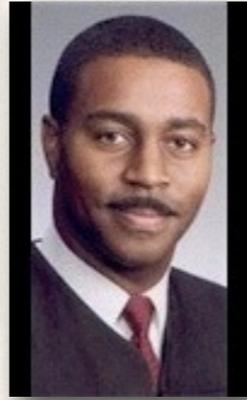
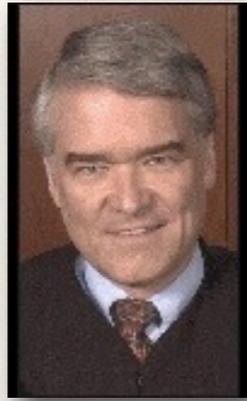
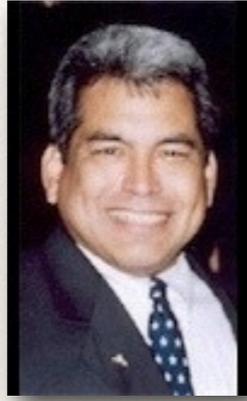
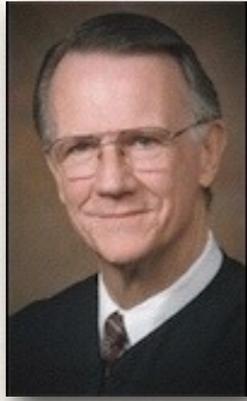


The Pattern for New Justices

◆ Willett ◆ Lehrmann ◆ Boyd ◆ Guzman ◆ Devine

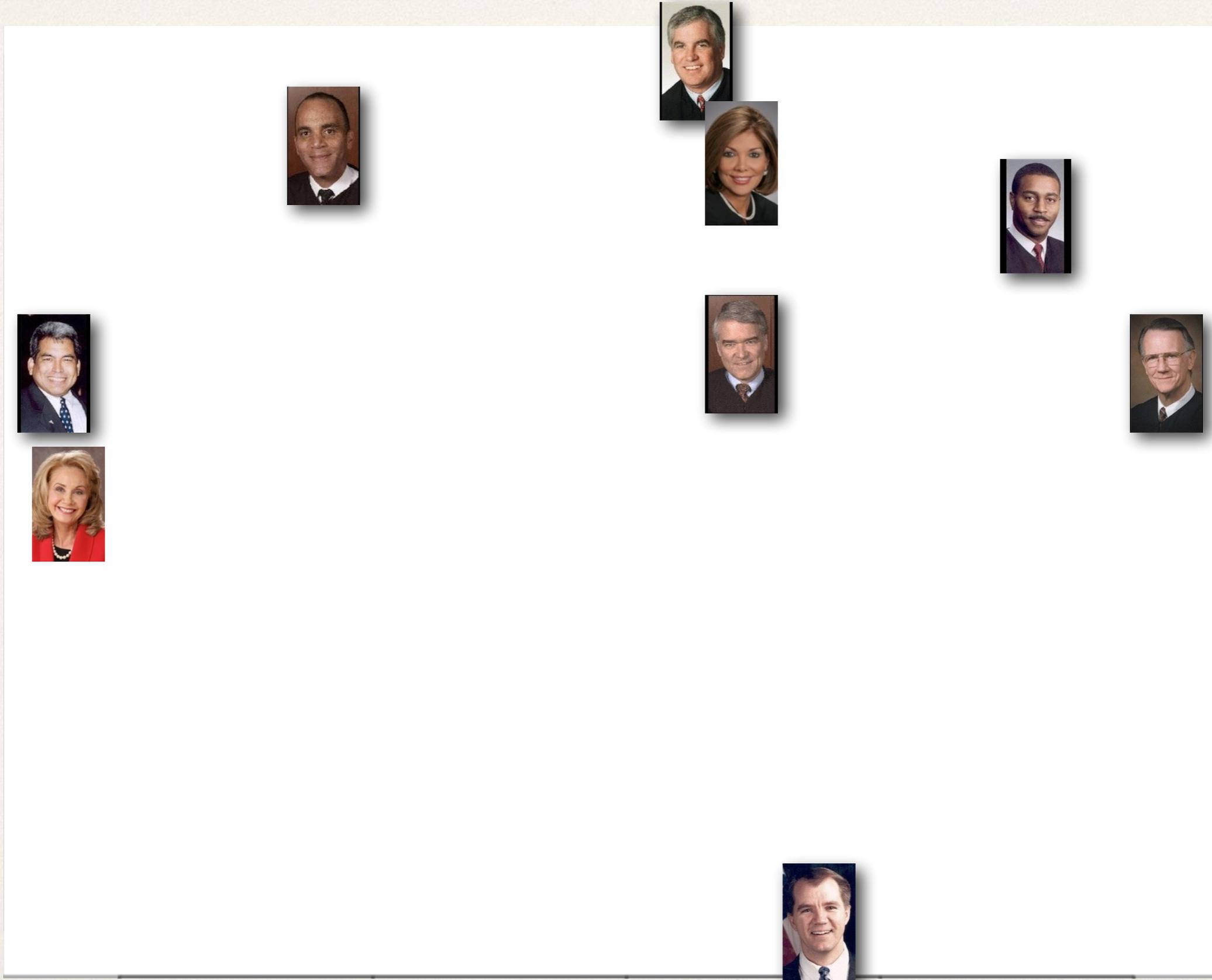


Looking for Voting Groups



Clusters of Justices

2010-present (those with the most data)



Current Justices*

2010-present (limited to current Justices)



*There is not yet enough data to plot Justice Brown.

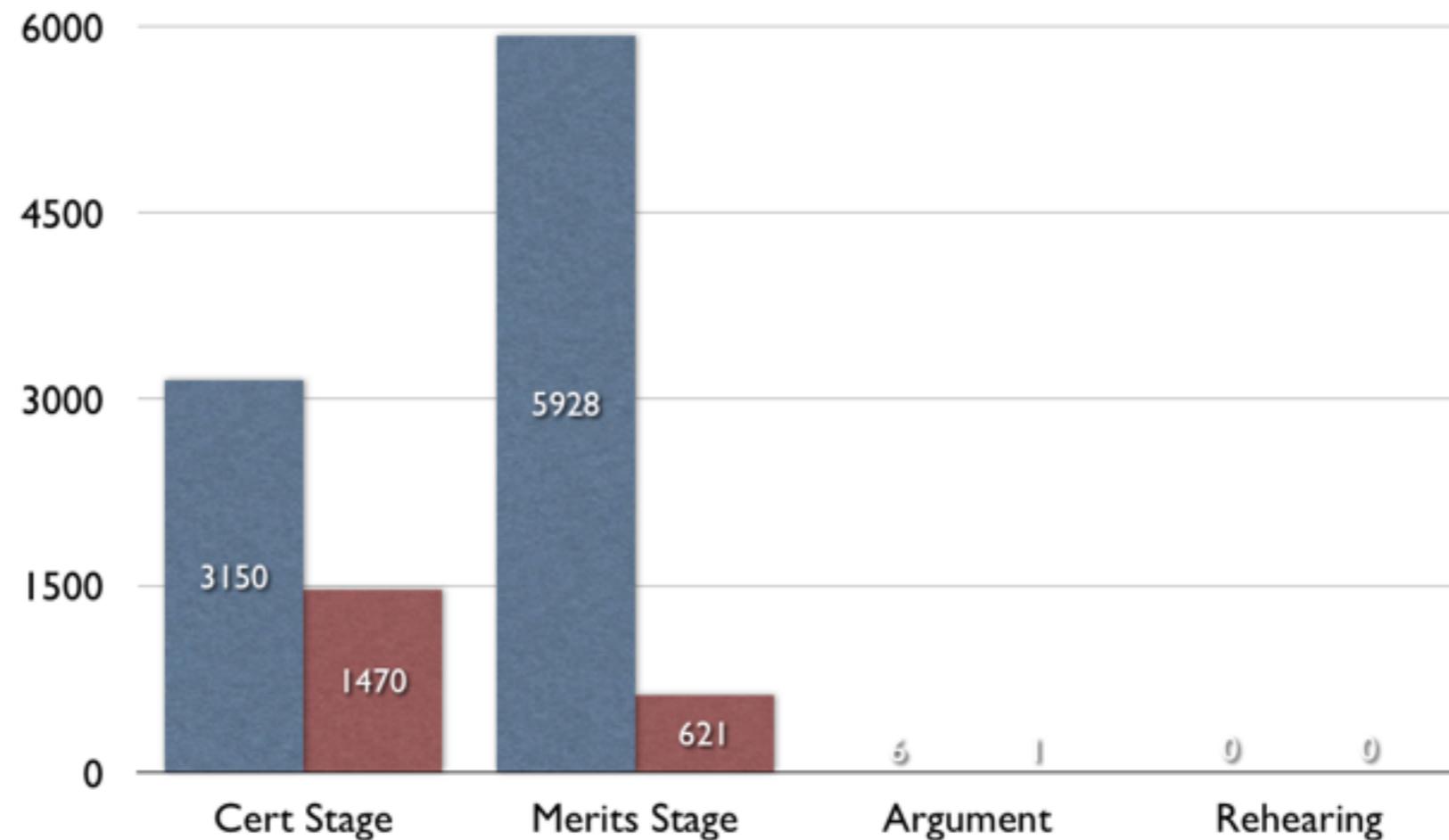
The Amicus Docket

At the federal level, there are many amicus filings at the cert stage.

No one files amicus briefs after merits briefing.

*Data from
May 2012*

When are SCOTUS amicus briefs filed?



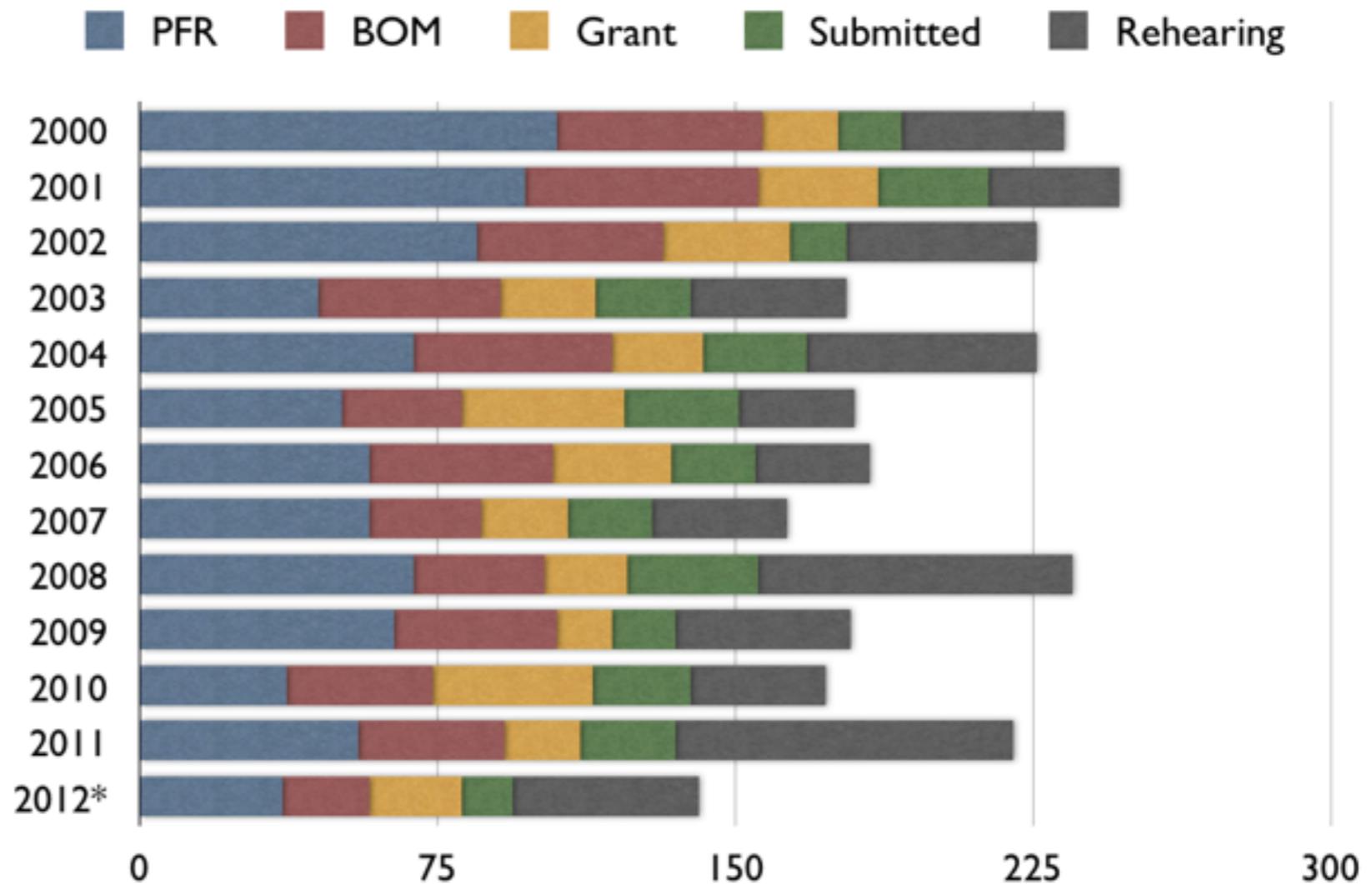
from 2003 Term to now
(data from CertPool.com)

In Texas, amici can appear anytime, and do.

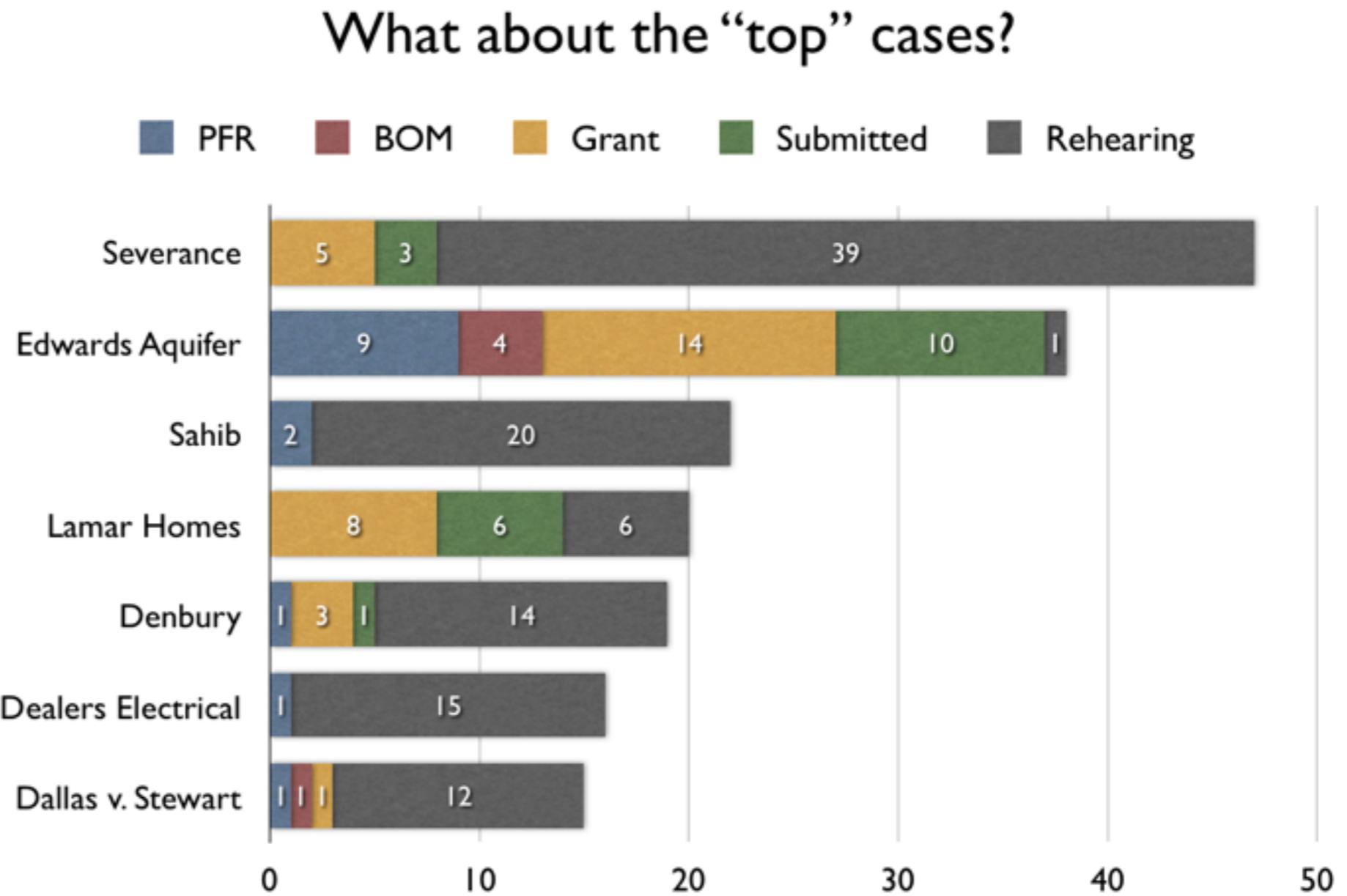
Many wait until grant or even after a decision is issued.

*Data from
May 2012*

When in the process are SCOTX briefs filed?

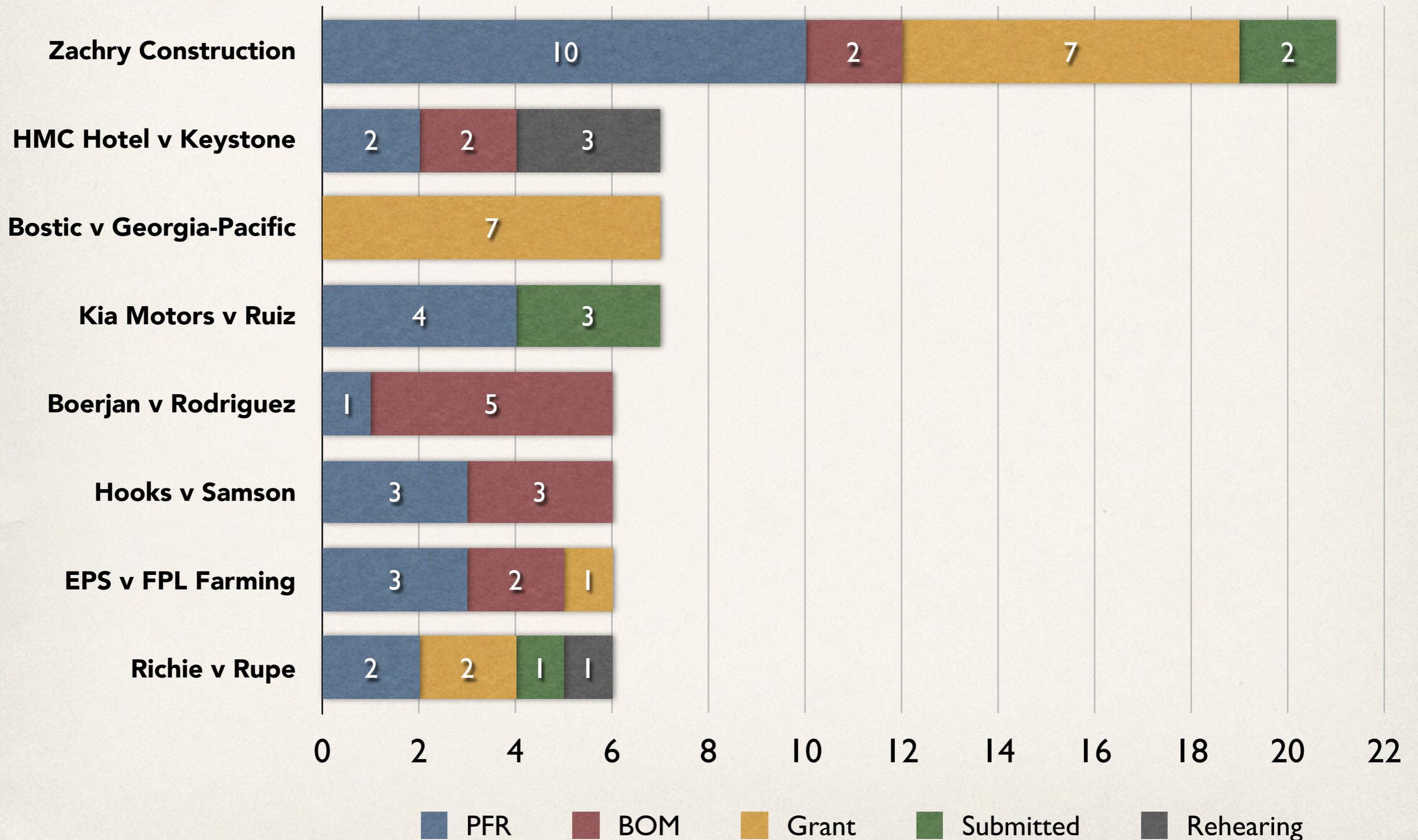


Having a swarm of amicus filings appear on rehearing is now a “thing.”



*Slides from a
May 2012 panel*

Cases Attracting the Most Amicus Briefs



How does the presence of amicus filers affect the odds of getting a response request for a petition?

~40%

Baseline for
all petitions

85%

With an amicus
brief on file

(~2% of petitions
had such a filing)

How does the presence of amicus filers affect the odds of getting a request for full merits briefing?

~25%

Baseline for
all petitions

82%

With an amicus
brief on file

(~7% of petitions
had such a filing)

How does the presence of amicus filers affect the odds of getting a grant or summary disposition after briefing?

~40%

Baseline for
all petitions

55%

With an amicus
brief on file

(~18% of briefed cases
had such a filing)

How does the presence of amicus filers affect the odds of getting a grant or summary disposition after briefing?

Per Curiam	~15%	~8%
Grants	~25%	~48%
Combined	~40%	55%
	Baseline for all petitions	With an amicus brief on file

Thanks!

Questions?