



The Roberts Court and Corporations: The Numbers Tell the Story

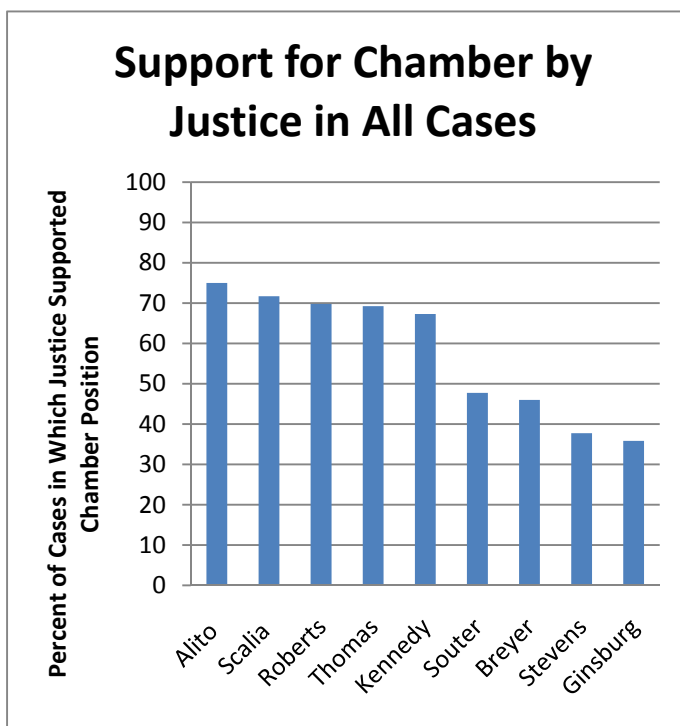
The Supreme Court's 5-4 decision this past January in *Citizens United v. Federal Election Commission*, holding that corporations have the same constitutional right as individuals to spend money to influence elections, has focused a national spotlight on the rulings of the Roberts Court in cases involving the interests of big business and led to charges that the conservative majority on the Roberts Court is being "activist" in favoring corporate interests. This charge is supported anecdotally by ideologically-divided rulings in other high-profile cases such as *Ledbetter v. Goodyear* (2007) and *Exxon v. Baker* (2008).

To test empirically the idea that the five conservatives on the Roberts Court tend to side with corporate interests, at least more than their colleagues do, we have examined, for those cases in which the United States Chamber of Commerce participated as a party or as an *amicus curiae*, every opinion released by the Roberts Court since Justice Samuel Alito began participating in decisions in early 2006 through May 2010 -- a universe of 53 cases -- and we tracked the votes of each Justice in each of the cases. Over that period, a cohesive five-Justice majority on the Court has produced victories for the Chamber's side in 64% of cases overall, and 71% of closely divided cases.

Results

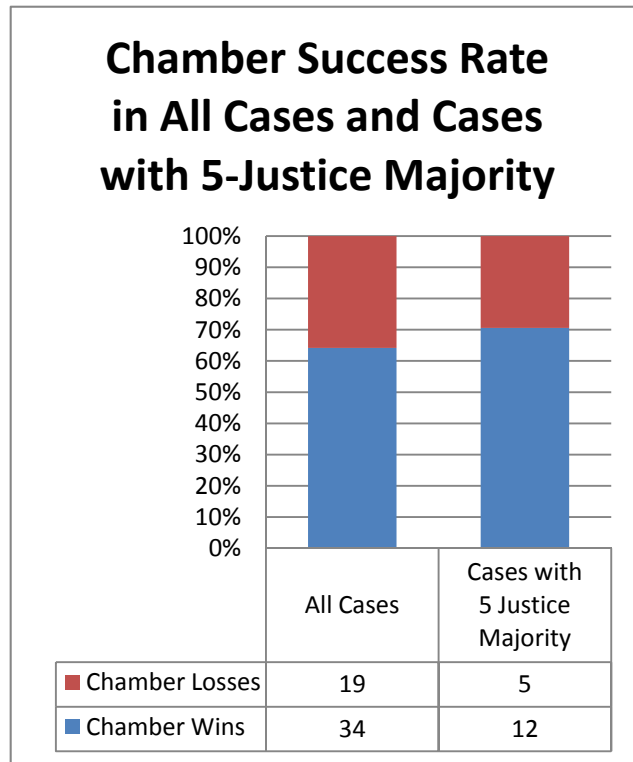
The data support the proposition that there is a strong ideological component to the Justices' rulings in business cases, with the Court's conservatives tilting more decisively toward the Chamber's position than the Court's remaining justices tilt in the other direction. The members of the Court's conservative majority (Chief Justice Roberts and Justices Alito, Kennedy, Scalia, and Thomas) were very close together in their overall support for the Chamber's position. Justice Kennedy does not "swing" much in business cases: he supported the Chamber

67% of the time, close to the voting pattern of Justice Alito, who had the highest percentage support for the Chamber -- voting for the Chamber's position in 75% of the cases. This cohesion has produced an overall success rate for the Chamber of 64% (34 victories in 53 cases). The Court's moderate/liberal "bloc" (including former Justice David Souter, who was on the Court for most of these rulings) was more centrist: collectively, the Court's conservative "bloc" (Roberts, Scalia, Alito, Thomas, and Kennedy) cast only 29% of their votes against the Chamber, while the moderate/liberal bloc cast 41% of its votes in favor of the Chamber.



Cases Decided by a Narrow Majority

Obviously, not all business cases are the same. Some of these cases apparently were not difficult for the Court to decide, at least in terms of the ability of the Justices to reach consensus. Indeed, more than

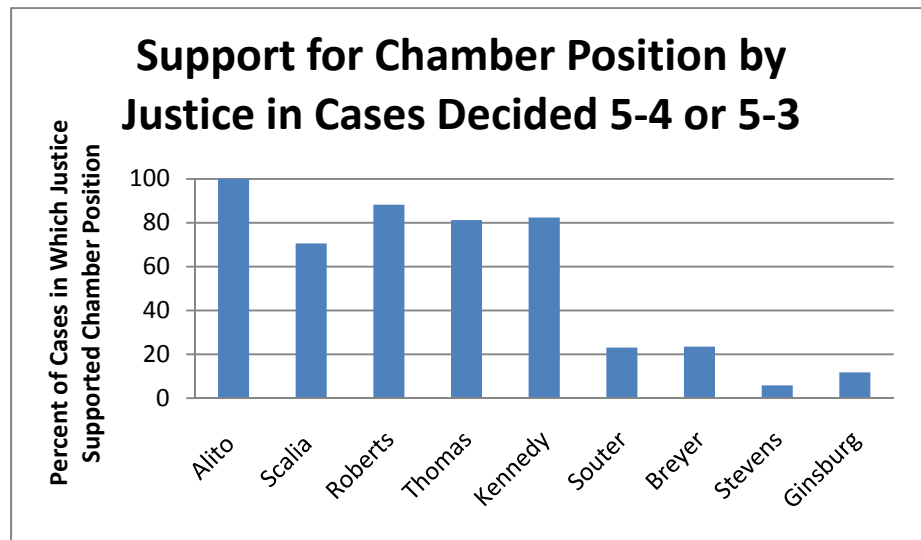


one-third of the business decisions we examined were decided by a unanimous Court; the Chamber won 11 of those 19 cases (58%). At the other end of the spectrum, about one-third of the cases in our survey sharply divided the Court, and it is in this subset that ideological voting is most pronounced. These cases include all of the blockbuster rulings decided during the period of this study, including *Citizens United v. FEC* (2010), *Ledbetter v. Goodyear* (2007) and *Massachusetts v. EPA* (2007). Of the 17 cases decided by a five-Justice majority, 12 (71%) resulted in victories for the Chamber. In these cases, the conservative bloc voted for the Chamber 84% of the time, compared to only 15% for the moderate/liberal bloc. Strikingly, in these close cases, Justice Alito *never* cast a vote against the Chamber of Commerce's position.

Methodology

on the Roberts Court, we looked at the success rate of the Chamber of Commerce because the Chamber's litigation wing, the National Chamber Litigation Center (NCLC), by its own account, serves "as the voice of business in the courts on issues of national concern to the business community,"¹ and files *amicus curiae* briefs in every major case pitting business interests against the government or an individual plaintiff or other private party. (The NCLC typically does not file in cases pitting one corporation against another.)

In testing the pro-corporate leanings of the Justices



¹ National Chamber Litigation Center 30th Anniversary Report, available at www.uschamber.com/NR/rdonlyres/euefda5z2fmlalmfh3fvql2gvas7wwz4ez3xedc74ytjspl4aj6fokrsgag76xmy6gnbcnhisv5jvrX2rmqimjy62db/nclc30thanniversaryreportfinal.pdf

We developed the examined database of cases simply. We began by searching Westlaw for Supreme Court cases in which the Chamber had filed a brief. We identified the position taken by the Chamber and compared it to the result reached by the Supreme Court, classifying each case as either a “win” or a “loss” for the Chamber. We then compared our results to the Chamber’s own reports of these cases. The NCLC publishes periodic “CaseList” reports identifying the cases in which the Chamber is involved throughout the federal and state court systems, including the U.S. Supreme Court.² Once these cases have been decided, the Chamber reports them as a victory, a loss, or, more rarely, a partial victory or “other.”

Our classification of these cases was consistent with the Chamber’s, with minor exceptions. First, we’ve scored the two cases the Chamber identified as “partial victories” -- *Rapanos v. United States* and *Jones v. Harris Associates* -- as wins for the Chamber, both to fit our binary statistical presentation (win or loss), and, more important, because the outcomes of the two cases were much more like victories for the Chamber than losses. In two other cases, we have accepted the Chamber’s characterization of cases over our own, even though it makes the Chamber’s success rate appear lower than it arguably is. We read *Boyle v. United States* to be at least a partial victory for the Chamber. We have nonetheless scored *Boyle* as a loss, following the Chamber’s characterization. Similarly, in *DaimlerChrysler v. Cuno*, the Chamber-supported party prevailed in the Supreme Court on standing, an issue of interest to the Chamber. But because the Chamber’s *amicus* brief addressed a different issue, which the Court did not reach, the Chamber characterized the case as “other” and we followed its lead and did not include *Cuno* in the database.

We have excluded from our dataset four other cases in which the Chamber filed briefs -- *Warner-Lambert Co. v. Kent* (judgment below affirmed by an equally divided Court), *Mohawk Industries v. Williams* (vacated and remanded without opinion), *Phillip Morris v. Williams* (after being decided by an opinion in 2007, the case returned to the Court in 2008 and was dismissed as improvidently granted), and *BCI Coca-Cola Bottling Company of Los Angeles v. EEOC* (dismissed before argument by agreement of the parties) -- because they did not produce written opinions by the Court.

Finally, readers may notice that our charts do not include the Court’s newest Justice, Sonia Sotomayor. Justice Sotomayor participated in only seven of the decisions that we’ve tracked, not a big enough sample to be particularly meaningful in our opinion. We did include her votes for and against the Chamber along with Justice Souter’s, when calculating the votes of what we call “the moderate/liberal bloc.” For those interested, in those seven cases, Justice Sotomayor voted in favor of the Chamber’s position twice (both times in unanimous decisions) and voted against the Chamber’s position five times. In these seven cases, she voted against the Chamber more than any other member of the Court did, providing some support for an argument that she will be less inclined to support the Chamber than was her predecessor, Justice Souter, who voted for the Chamber in almost 50% of the cases he heard during the period of our study.

² For links to all electronically available CaseList reports, see www.uschamber.com/nclc/caselist/archive.htm