

Thursday, January 11 at 12:00 PM

# GIBSON DUNN 2024 CA MCLE BLITZ

Supreme Court Roundup

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October Term 2022

# Overview of OT 2022

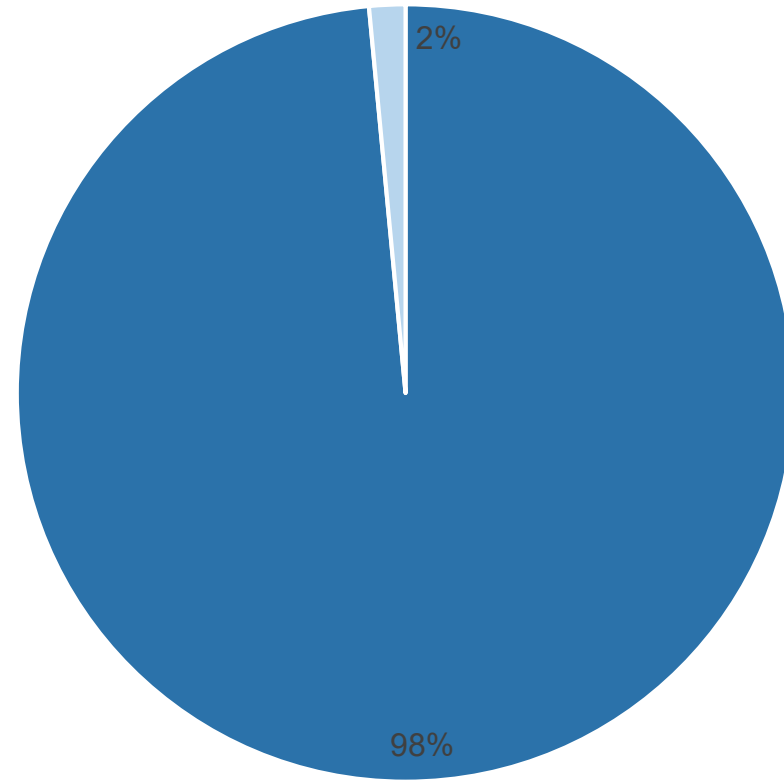
## Key Trends

- **Diminishing Docket:** SCOTUS filings declined by 15% year over year (4,159 total filings in OT 2022, compared to 4,900 in OT 2021) and the number of argued cases fell from 70 in OT 2021 to 68 in OT 2022.
- **Reverse/Affirm Rates:** Highest Reverse Rate (CA4, CA10, CADC); Highest Affirm Rate (CA11, CA Fed.).

## Selected Major Cases OT 2022

- Students for Fair Admissions Inc. v. President & Fellows of Harvard College, No. 20-1199; Students for Fair Admissions v. University of North Carolina, No. 21-707
- Mallory v. Norfolk Southern Railway Co., No. 21-1168
- 303 Creative LLC v. Elenis, No. 21-476
- Biden v. Nebraska, No. 22-506; Department of Education v. Brown, No. 22-535
- Coinbase v. Bielski, No. 22-105
- Groff v. DeJoy, No. 22-174

# Disposition of Cert Petitions



■ Denied ■ Granted

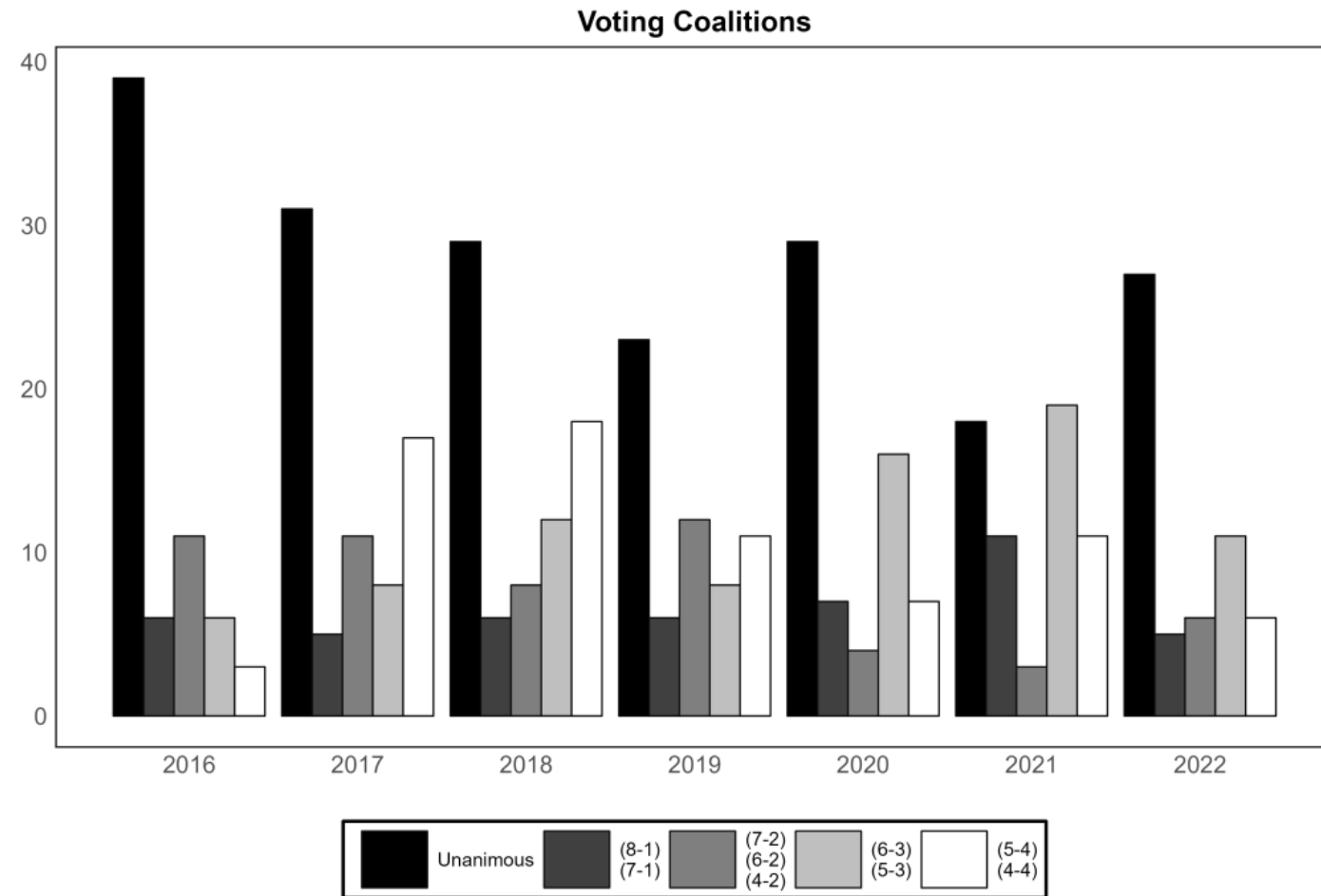
## Paid Cases

- 4.8% grant rate

## In Forma Pauperis Cases

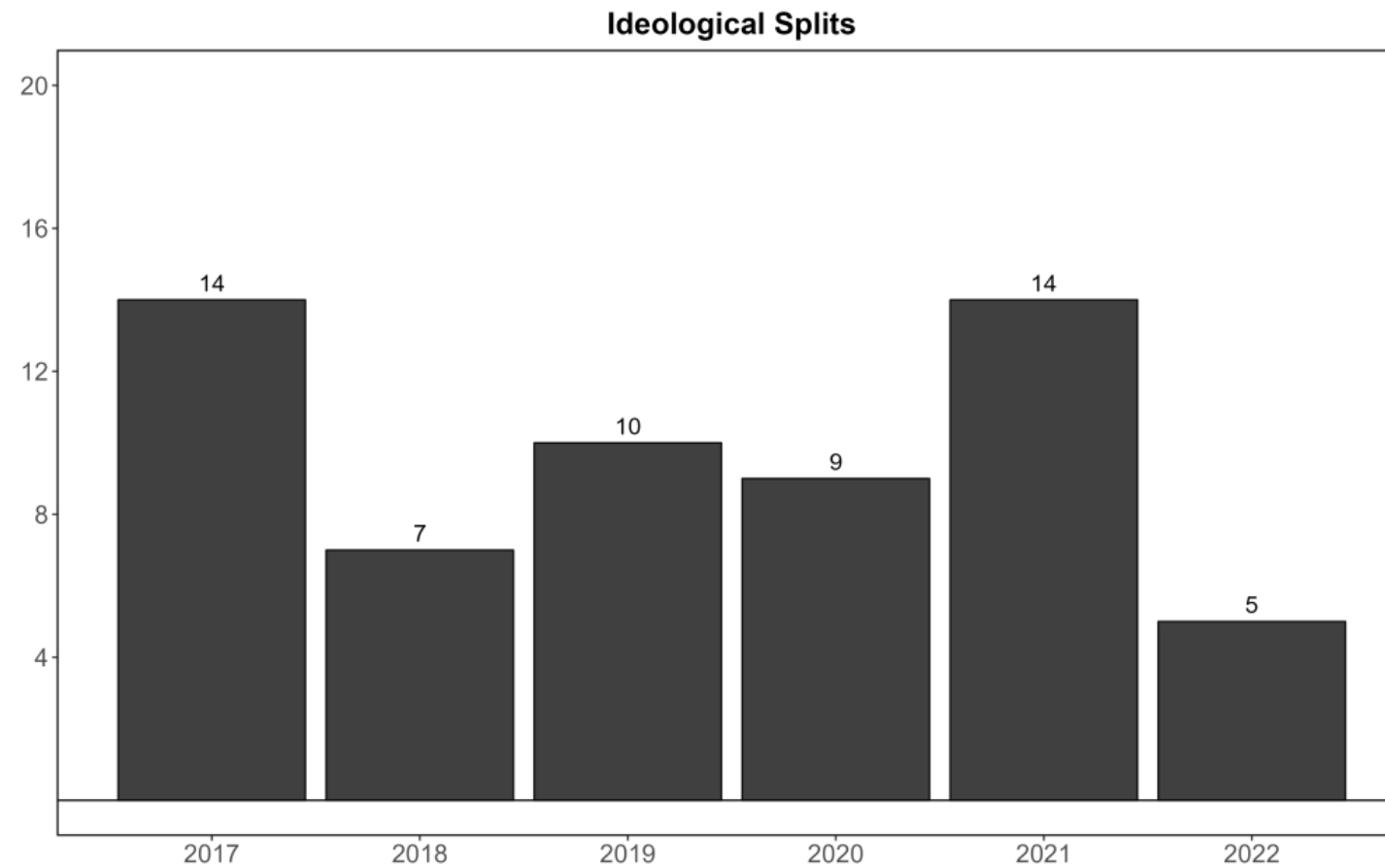
- 0.01% grant rate

# Voting Coalitions



Source: <https://empiricalsctus.com/2023/06/30/another-one-bites-2022/>

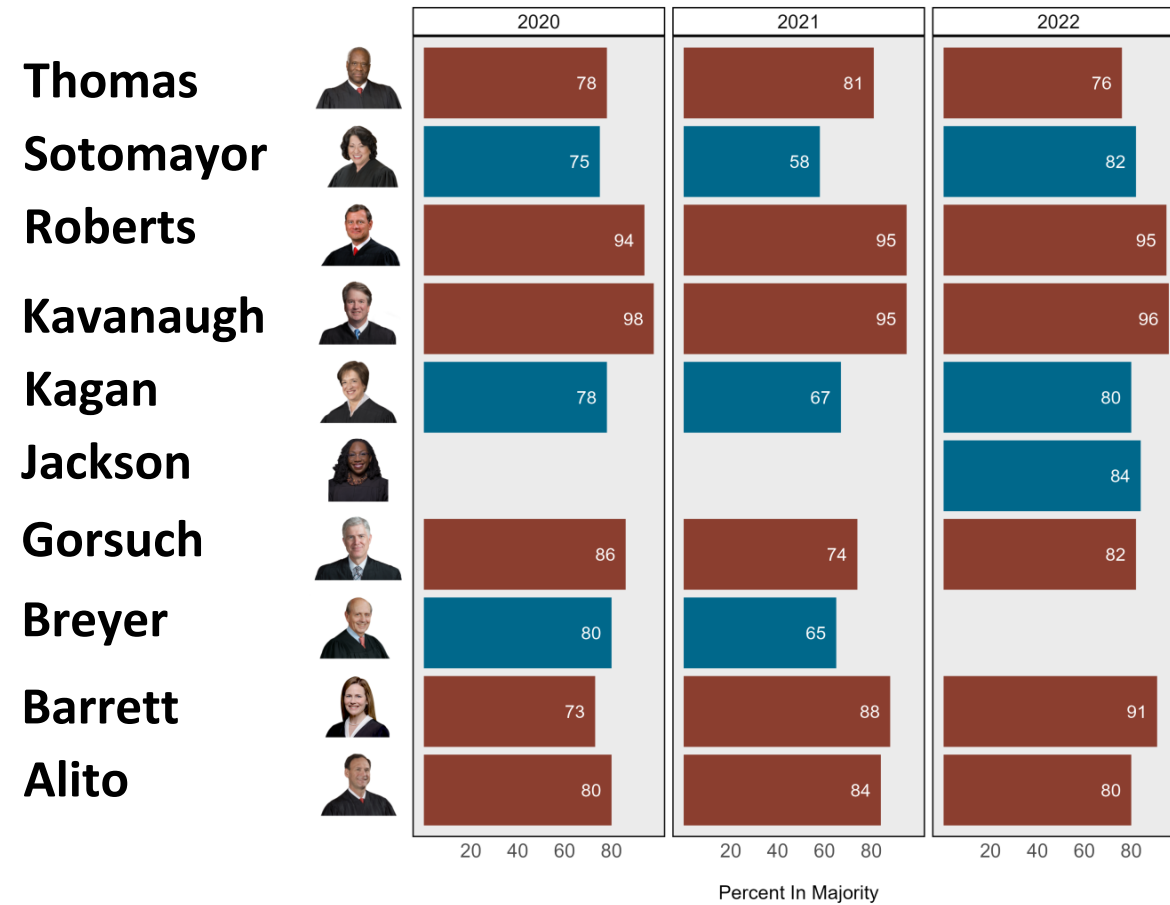
# Ideological Splits



Includes Strict Ideological Splits: (6-3), (5-4), and (5-3)

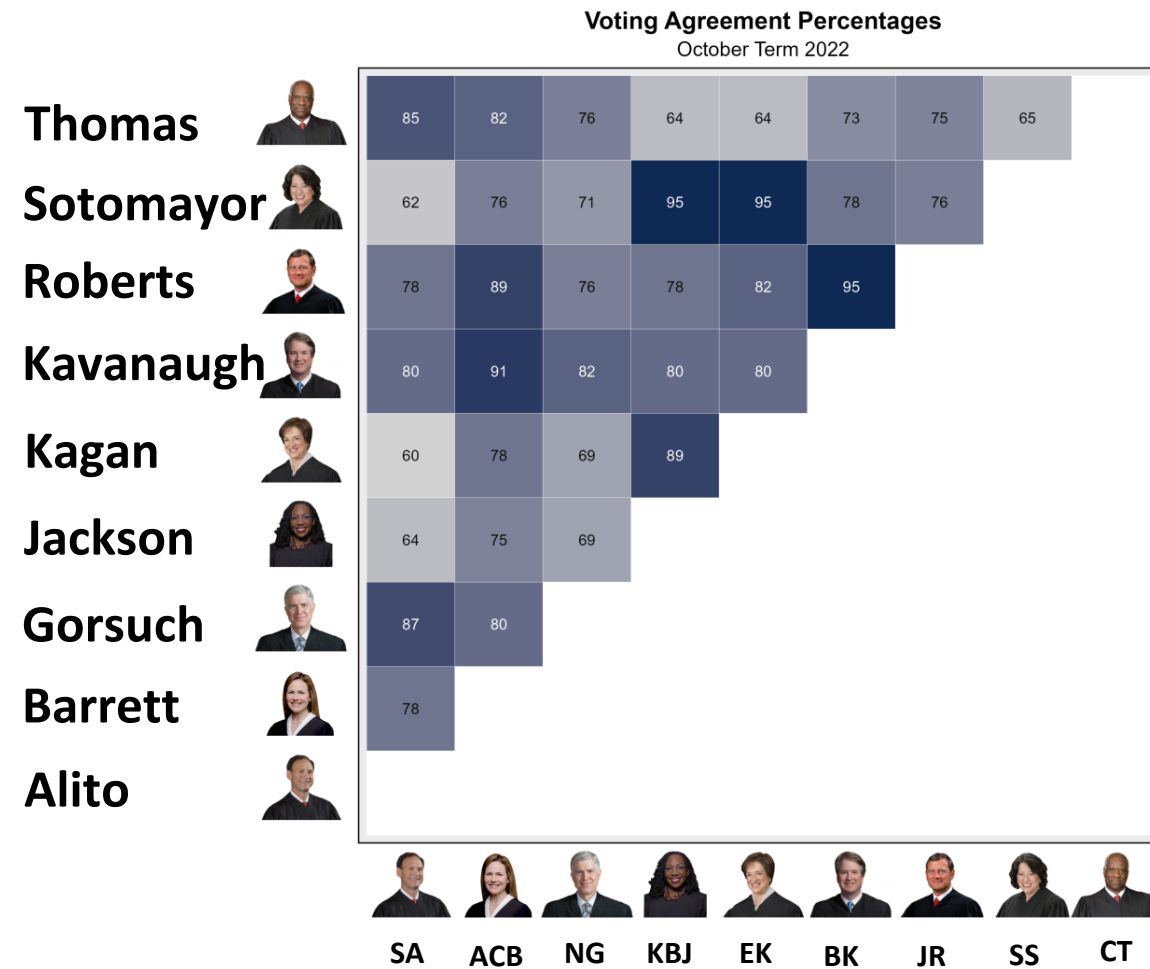
Source: <https://empiricalsctus.com/2023/06/30/another-one-bites-2022/>

# Frequency in the Majority



Source: <https://empiricalsctous.com/2023/06/30/another-one-bites-2022/>

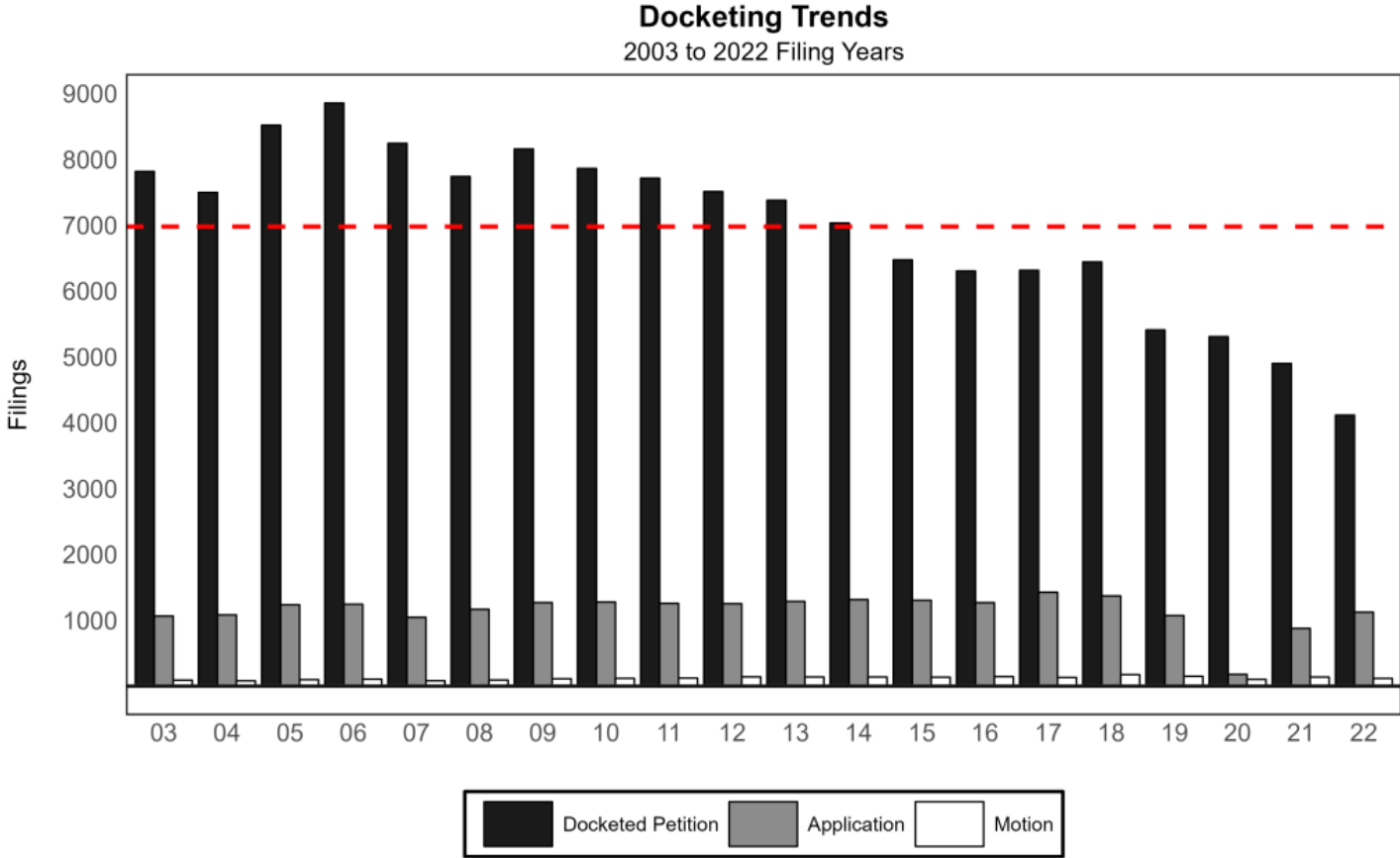
# Voting Agreement Percentages



Source: <https://empiricalsctous.com/2023/06/30/another-one-bites-2022/>



# Emergency Docket Trends



Note: Red Line Represents Longitudinal Mean re: Docketed Petitions

Source: <https://empiricalscotus.com/2023/06/30/another-one-bites-2022/>

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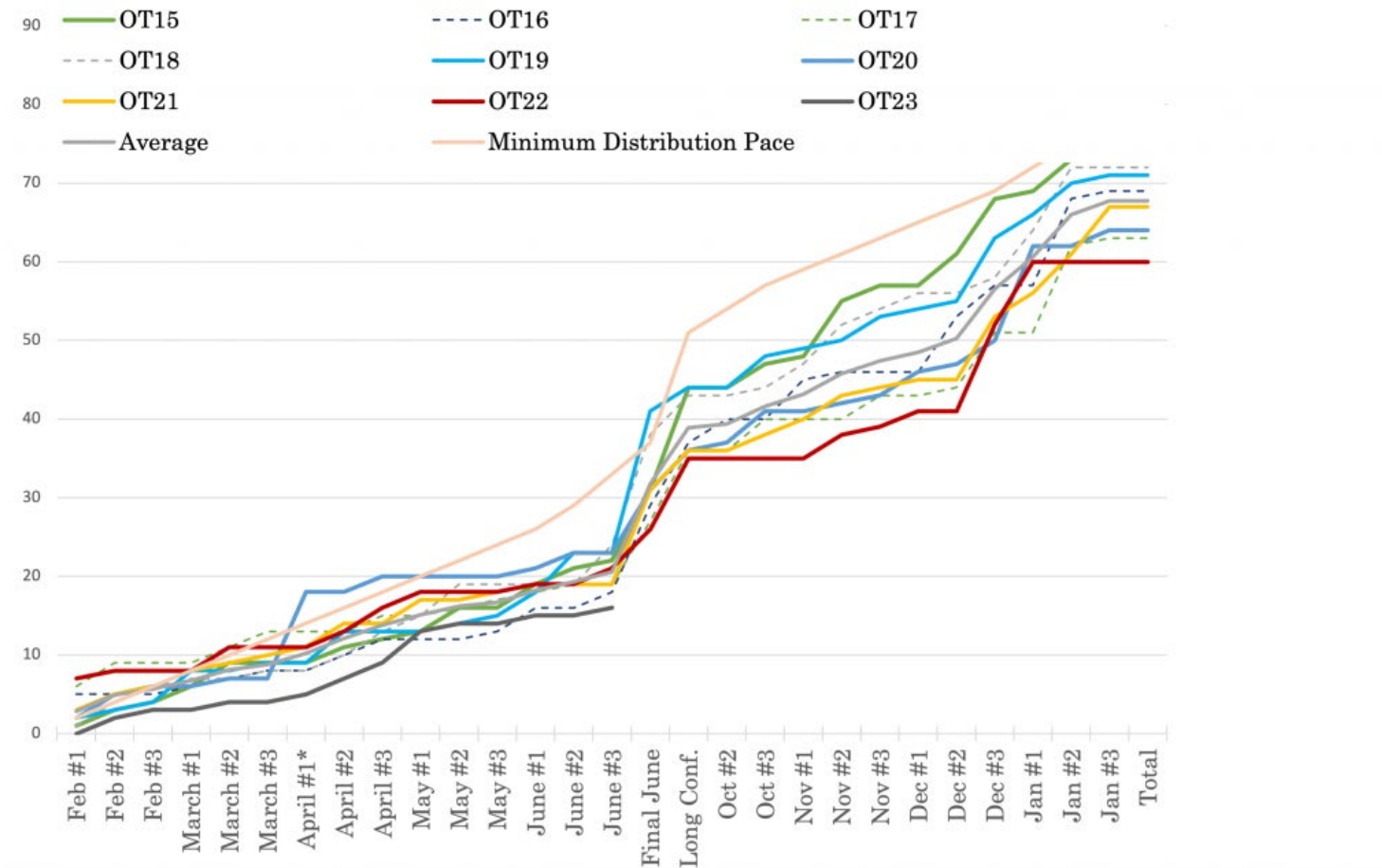
# Overview of OT 2023

## Introductory Statistics (January 4, 2023)

- Cases (Arguments): Petitions 58 (54) + Applications 5 (2) = 61 (54)
- Cases Disposed of Without Argument: 1 (*Carnahan v. Maloney*, No. 22-425)
- Cases Disposed of With Argument: 1 (*Acheson Hotels, LLC. v. Laufer*, No. 22-429)

Source: <https://www.supremecourt.gov/orders/23grantednotedlist.pdf>

# Pace of Grants



Source: <https://www.scotusblog.com/statistics/>

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Administrative Law

# Loper Bright Enterprises v. Raimando, No. 22-451

Argument: 01.17.2024

**Issue:** Whether the court should overrule *Chevron v. Natural Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.



# Consumer Financial Protection Bureau v. Community Financial Services Association of America, No. 22-448

Argument: 10.03.2023

**Issue:** Whether the court of appeals erred in holding that the statute providing funding to the Consumer Financial Protection Bureau, 12 U.S.C. § 5497, violates the appropriations clause in Article I, Section 9 of the Constitution, and in vacating a regulation promulgated at a time when the Bureau was receiving such funding.



# Securities and Exchange Commission v. Jarkesy, No. 22-859

Argument: 11.29.2023

**Issues:** (1) Whether statutory provisions that empower the Securities and Exchange Commission to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment; (2) whether statutory provisions that authorize the SEC to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the nondelegation doctrine; and (3) whether Congress violated Article II by granting for-cause removal protection to administrative law judges in agencies whose heads enjoy for-cause removal protection.





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IP & Technology

## **Moody v. NetChoice, LLC, No. 22-277**

**Issue:** (1) Whether the laws' content-moderation restrictions comply with the First Amendment; and (2) whether the laws' individualized-explanation requirements comply with the First Amendment.

## **NetChoice, LLC v. Paxton, No. 22-555**

**Issue:** Whether the First Amendment prohibits viewpoint-, content-, or speaker-based laws restricting select websites from engaging in editorial choices about whether, and how, to publish and disseminate speech — or otherwise burdening those editorial choices through onerous operational and disclosure requirements.

# The Public-Official Social Media Cases

Argument: 10.31.23

## **Lindke v. Freed, No. 22-611**

**Issue:** Whether a public official's social media activity can constitute state action only if the official used the account to perform a governmental duty or under the authority of his or her office.

## **O'Connor-Ratcliff v. Garnier, No. 22-324**

**Issue:** Whether a public official engages in state action subject to the First Amendment by blocking an individual from the official's personal social media account, when the official uses the account to feature their job and communicate about job-related matters with the public, but does not do so pursuant to any governmental authority or duty.

# Warner Chappell Music, Inc. v. Nealy, No. 22-1078

Argument: 02.21.2024

**Issue:** Whether, under the discovery accrual rule applied by the circuit courts and the Copyright Act's statute of limitations for civil actions, 17 U.S.C. § 507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.



# Vidal v. Elster, No. 22-704

Argument: 11.01.2023

**Issue:** Whether the refusal to register a trademark under 15 U.S.C. § 1052(c) violates the free speech clause of the First Amendment when the mark contains criticism of a government official or public figure.



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Constitutional Law &  
Civil Rights

# United States v. Rahimi, No. 22-915

Argument: 11.07.2023

**Issue:** Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.



# Moore v. United States, No. 22-800

Argument: 12.05.2023

**Issue:** Whether the 16th Amendment authorizes Congress to tax unrealized sums without apportionment among the states.





# Devillier v. Texas, No. 22-913

Argument: 01.16.2024

**Issue:** Whether a person whose property is taken without compensation may seek redress under the self-executing takings clause of the Fifth Amendment even if the legislature has not affirmatively provided them with a cause of action.



# Sheetz v. County of El Dorado, CA, No. 22-1074

Argument: 01.09.2024

**Issue:** Whether a building-permit exaction is exempt from the unconstitutional-conditions doctrine as applied in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard, Oregon* simply because it is authorized by legislation.



# The Mifepristone Cases

Argument: Not Yet Set

## **Danco Laboratories v. Alliance for Hippocratic Medicine, No. 22-236**

**Issues:** (1) Whether an association can demonstrate Article III standing to enjoin a government action by arguing that some unspecified member may be injured at some future time by the challenged action; and (2) whether the U.S. Court of Appeals for the 5th Circuit erred in upholding the preliminary injunction of the Food and Drug Administration's 2016 and 2021 actions with respect to mifepristone's approved conditions of use based on the court's review of an incomplete administrative record.

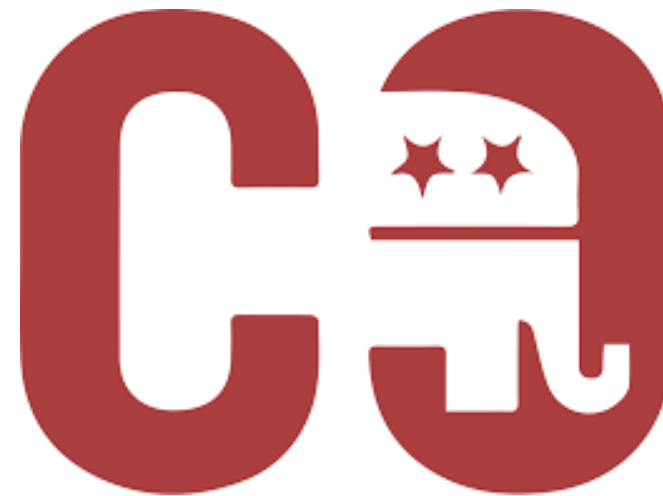
## **FDA v. Alliance for Hippocratic Medicine, No. 22-235**

**Issue:** (1) Whether respondents have Article III standing to challenge the Food and Drug Administration's 2016 and 2021 actions with respect to mifepristone's approved conditions of use; (2) whether the FDA's 2016 and 2021 actions were arbitrary and capricious; and (3) whether the district court properly granted preliminary relief.

# Trump v. Anderson, No. 23-719

Argument: 02.08.2024

**Issue:** Whether the Colorado Supreme Court erred in ordering former President Donald Trump excluded from the 2024 presidential primary ballot.



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Business and Labor

# Murray v. UBS Securities, LLC, No. 22-660

Argument: 10.11.2023

**Issue:** Whether, following the burden-shifting framework that governs cases under the Sarbanes-Oxley Act of 2002, a whistleblower must prove his employer acted with a “retaliatory intent” as part of his case in chief, or whether the lack of “retaliatory intent” is part of the affirmative defense on which the employer bears the burden of proof.



# Muldrow v. City of St. Louis, Missouri, No. 22-193

Argument: 12.06.2023

**Issue:** Whether Title VII of the Civil Rights Act of 1964 prohibits discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage.



# Bissonette v. LePage Bakeries Park St., LLC, No. 23-51

Argument: 02.20.2024

**Issue:** Whether, to be exempt from the Federal Arbitration Act, a class of workers that is actively engaged in interstate transportation must also be employed by a company in the transportation industry.





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Pending Petitions

# City of Grants Pass v. Johnson, No. 23-175

Status: Pending Petition

**Issues:** (1) Whether the enforcement of generally applicable laws regulating camping on public property constitutes “cruel and unusual punishment” prohibited by the Eighth Amendment.



# Coalition for TJ v. Fairfax County School Board, No. 23-170

Status: Pending Petition

**Issue:** Whether the Fairfax County School Board violated the 14th Amendment's equal protection clause when it overhauled the admissions criteria at Thomas Jefferson High School for Science and Technology.



# Additional Petitions

Status: Pending Petitions

- **Oklahoma v. United States, No. 23-402** (Whether the Horseracing Integrity and Safety Act of 2020 violates the private non-delegation doctrine; and (2) whether the act violates the anti-commandeering doctrine by coercing states into funding a federal regulatory program.)
- **Metropolitan School District of Martinsville v. A. C., No. 23-392** (Whether Title IX of the Education Amendments of 1972 or the equal protection clause of the 14th Amendment dictate a single national policy that prohibits local schools from maintaining separate bathrooms based on students' biological sex.)
- **Speech First v. Sands, No. 23-156** (Whether university bias-response teams — official entities that solicit, track, and investigate reports of bias; ask to meet with perpetrators; and threaten to refer students for formal discipline — objectively chill students' speech in violation of the First Amendment.)
- **United States v. Muñoz, No. 22-334** (Whether a consular officer's refusal of a visa to a U.S. citizen's noncitizen spouse impinges upon a constitutionally protected interest of the citizen; (2) whether, assuming that such a constitutional interest exists, notifying a visa applicant that he was deemed inadmissible under 8 U.S.C. § 1182(a)(3)(A)(ii) suffices to provide any process that is due; and (3) whether, assuming that such a constitutional interest exists and that citing Section 1182(a)(3)(A)(ii) is insufficient standing alone, due process requires the government to provide a further factual basis for the visa denial “within a reasonable time,” or else forfeit the ability to invoke consular nonreviewability in court.)

# Presenters



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