

**MIDTERM EXAM:  
A Pre-View and a Post-View  
of the 2015-16 Supreme Court Term**

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2016 District Conferences  
Guam & CNMI

**I. Criminal Cases**

**A. Fourth Amendment**

*Utah v. Strieff* (whether evidence seized incident to a lawful arrest on an outstanding warrant must be suppressed because the outstanding warrant was discovered during an investigatory stop later found to have been unlawful.)

**B. Fifth Amendment**

*Bernard v. Minnesota, Beylund v. Levi, Birchfield v. North Dakota* (whether state can make it a crime for person to refuse to take test to determine blood alcohol level, in absence of a warrant)

*Puerto Rico v. Sanchez-Valle* (whether Puerto Rico and the federal government are separate sovereigns for purposes of the Double Jeopardy Clause)

**C. Sixth Amendment**

*Betterman v. Montana* (whether Speedy Trial Clause applies to sentencing phase)

*Luis v. United States* (whether freezing assets that cannot be traced to any criminal activity violates a criminal defendant's right to counsel where the assets are needed to pay for the defendant's attorney of choice)

## **D. Eighth Amendment**

*Montgomery v. Louisiana* (whether *Miller v. Alabama* applies retroactively on collateral review to juveniles sentenced to life without the possibility of parole)

## **E. Criminal Law**

*McDonnell v. United States* (whether “official action” under federal fraud statutes is limited to exercising actual governmental power, threatening to exercise such power, or pressuring others to exercise such power; or if not, whether the Hobbs Act and honest-services fraud statute are unconstitutional)

*Musacchio v. United States* (whether jury instructions that erroneously require additional findings or elements become law-of-the-case governing a sufficiency of the evidence inquiry on appeal, and whether a statute of limitations defense not raised below is reviewable on appeal)

*Taylor v. United States* (whether, in a prosecution under 18 USC § 1951 (Hobbs Act), the government may rely on evidence that the robbery of a drug dealer is an inherent economic enterprise in order to satisfy the interstate commerce element)

## **II. Civil Cases**

### **A. Civil Procedure**

*Americold Realty Trust v. ConAgra Foods* (how determine citizenship of trust for purpose of diversity jurisdiction)

*Campbell-Ewald Company v. Gomez* (whether settlement offer that would give plaintiff all asked for in the complaint renders a case moot)

*Spokeo v. Robbins* (whether Congress can create Article III standing)

by authorizing a private right of action for a violation of a federal statute, where a plaintiff has suffered no concrete harm)

**B. Class Actions**

*Tyson Foods v. Bouaphakeo* (whether, under Rule 23 and FLSA, a class may be certified where damages will be based on statistical models of a representative sample of the class, and whether a class action under Rule 23 or a collective action under FLSA may be certified where the class contains members who did not suffer damages)

**C. Bankruptcy Pre-emption**

*Acosta-Febo v. Franklin Cal. Tax-Free Trust, Puerto Rico v. Franklin Cal. Tax-Free Trust* (whether Chapter 9 of the federal Bankruptcy Code preempts a Puerto Rico statute that provides a mechanism for public utility companies to restructure their debts)

**D. Employment Discrimination**

*Green v. Brennan* (for purposes of federal employment discrimination law, whether the filing period for a constructive discharge claims begins to run when an employee resigns, or at the time of the employer's last allegedly discriminatory act giving rise to the resignation)

**III. First Amendment**

**A. Religious Liberty**

*East Texas Baptist Univ. v. Burwell, Roman Catholic Archbishop of Wash. v. Burwell, Little Sisters of the Poor v. Burwell, Zubik v. Burwell, Priests for Life v. Burwell, Southern Nazarene Univ. v. Burwell, Geneva College v. Burwell* (whether providing a regulatory method for nonprofit religious employers to claim an exemption from the contraceptive mandate imposes a substantial burden on religious

exercise or violates RFRA)

*Trinity Lutheran Church of Columbia v. Pauley* (whether exclusion of churches from a secular aid program (here, Missouri's Scrap Tire Grant Program) violates the EPC and the Free Exercise Clause when the state has no Establishment Clause concern)

## **B. Free Speech**

*Friedrichs v. California Teachers Association* (whether *Abood v. Detroit Bd. of Educ.* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment, and whether it violates the First Amendment to require public employees to affirmatively object to subsidizing speech by public-sector unions, rather than requiring employees to affirmatively consent to subsidizing union speech)

*Heffernan v. City of Paterson* (whether a local police department may reassign an officer to another department based on a supervisor's perception that the officer supports a particular candidate in a mayoral race, where the officer was seen holding a lawn sign supporting a particular candidate)

## **IV. Other Constitutional Rights**

### **A. Voting Rights**

*Evenwel v. Abbott* (whether one person, one vote principle allows states to use total population, not voter population, in apportioning state legislative districts)

### **B. Abortion**

*Whole Women's Health v. Cole* (whether the *Casey* undue burden standard requires a court to consider the extent to which laws restricting abortion actually serve the state's stated interest in promoting women's health, and whether the reduction in the

availability of abortion services caused by the regulations here causes an undue burden)

**C. Equal Protection**

*Fisher v. University of Texas at Austin* (whether UT's admissions policy, which takes into account a student's race as a "special circumstance" in admissions, is consistent with Supreme Court precedent/survives strict scrutiny)

**D. Separation of Powers**

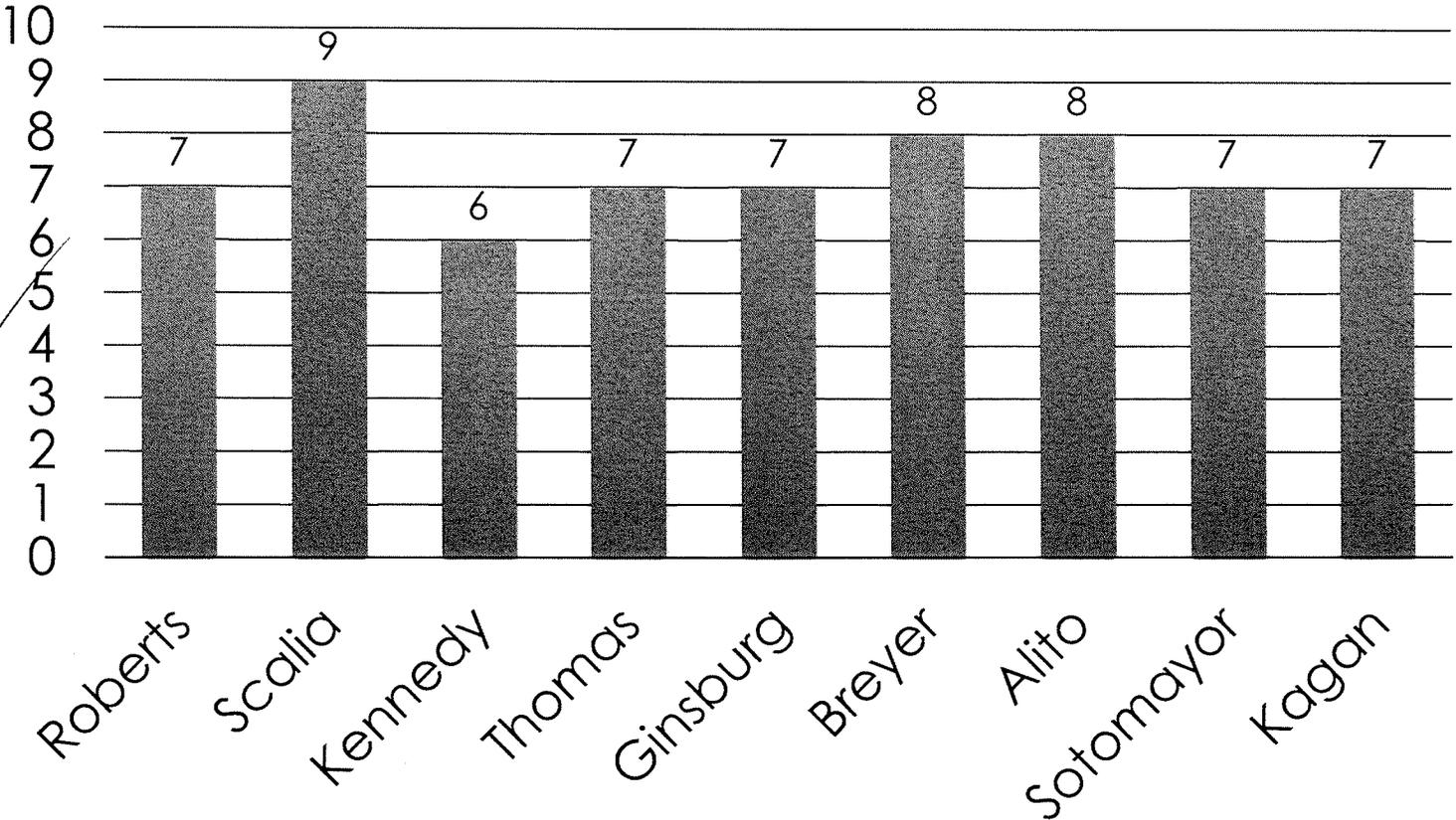
*United States v. Texas* (whether a state has standing and a cause of action under the APA to challenge DHS's guidance seeking to establish a process for considering deferred action for certain aliens; whether the guidance is arbitrary and capricious and subject to the APA's notice and comment procedures; and whether the guidance violates the Take Care Clause of the Constitution)

**Appendix**

Statistics from the 2014-15 Term.

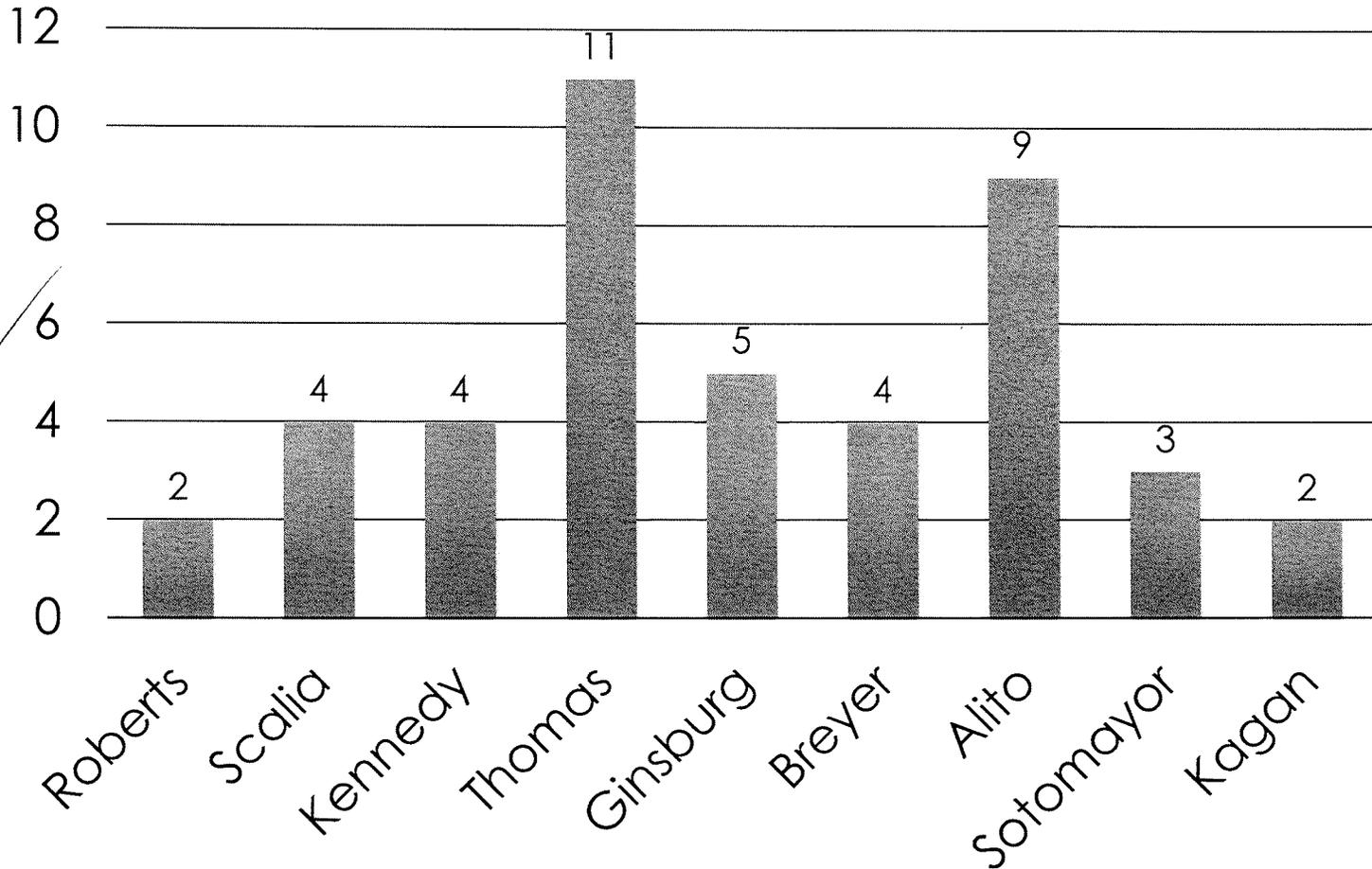


# Majority Opinions

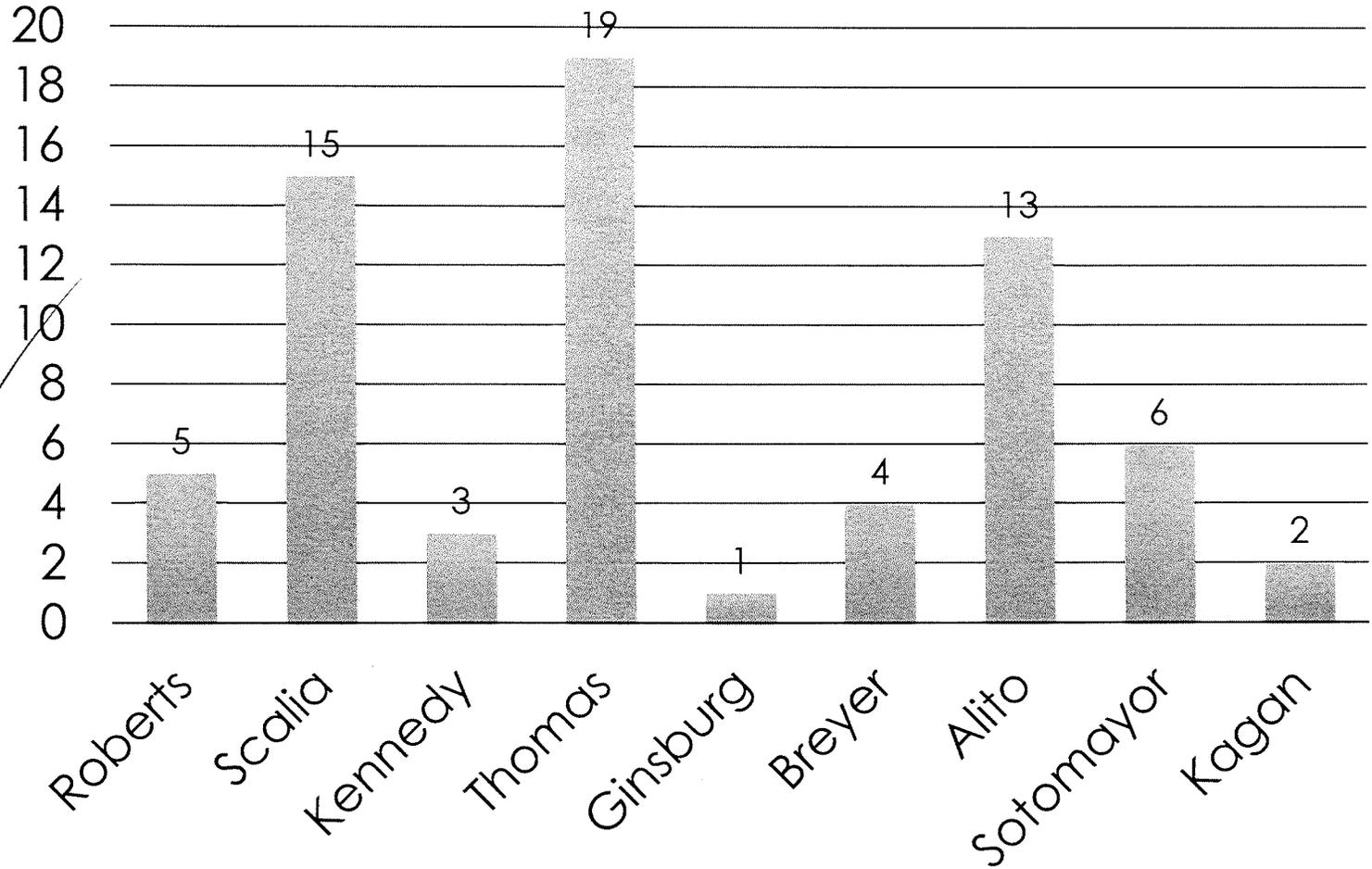




# Concurring Opinions

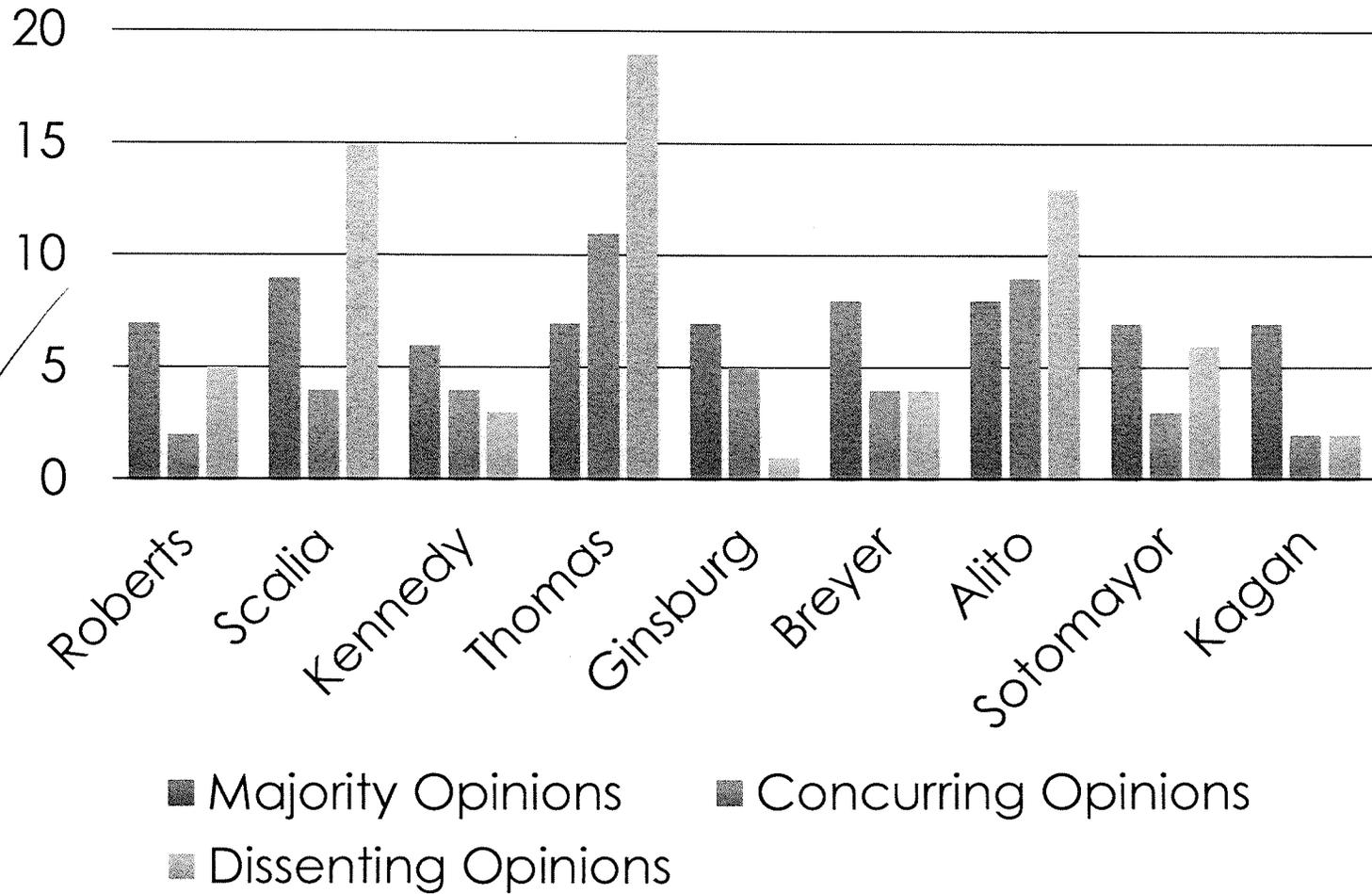


# Dissenting Opinions

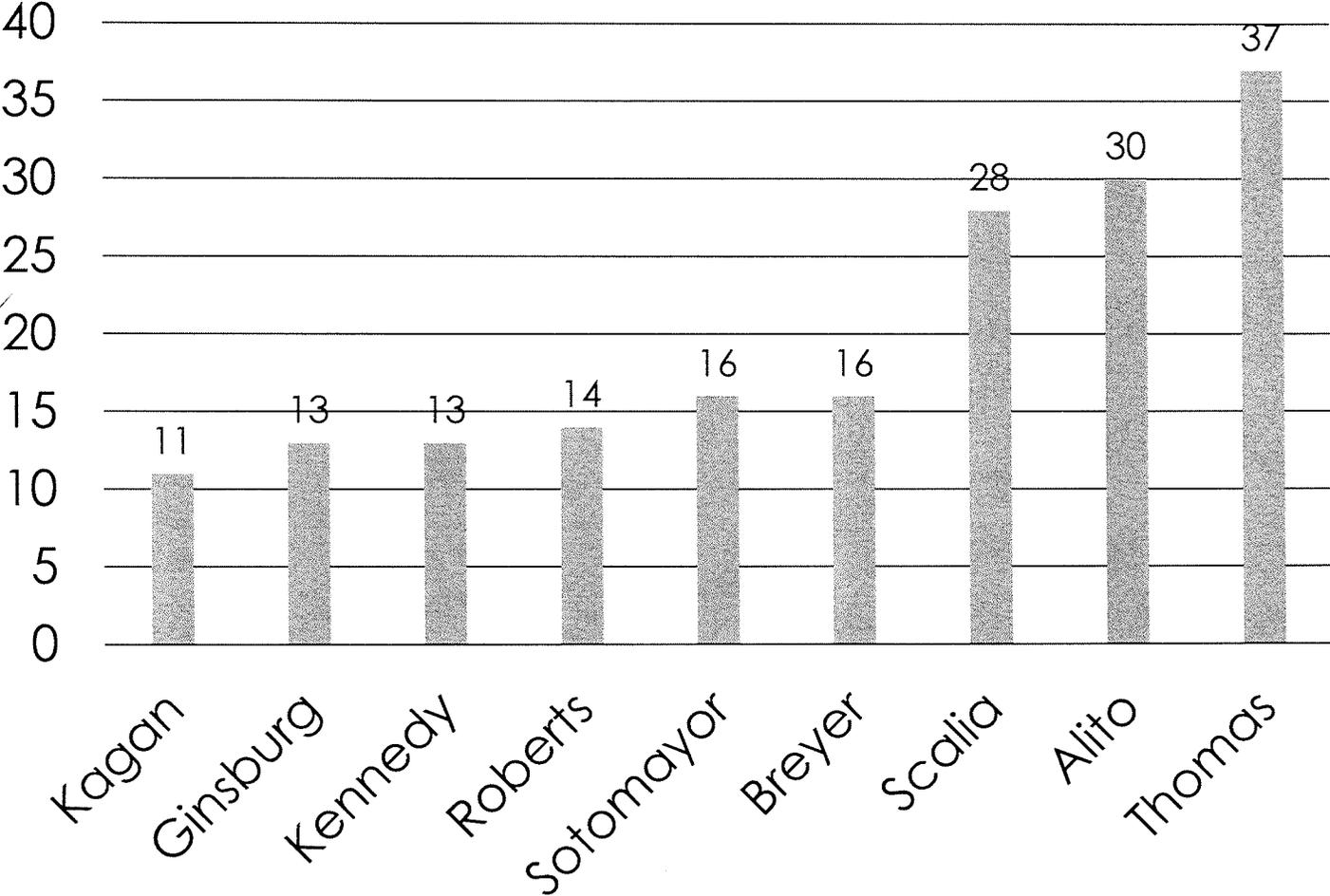




## Total Opinion Authorship



# Total Opinions

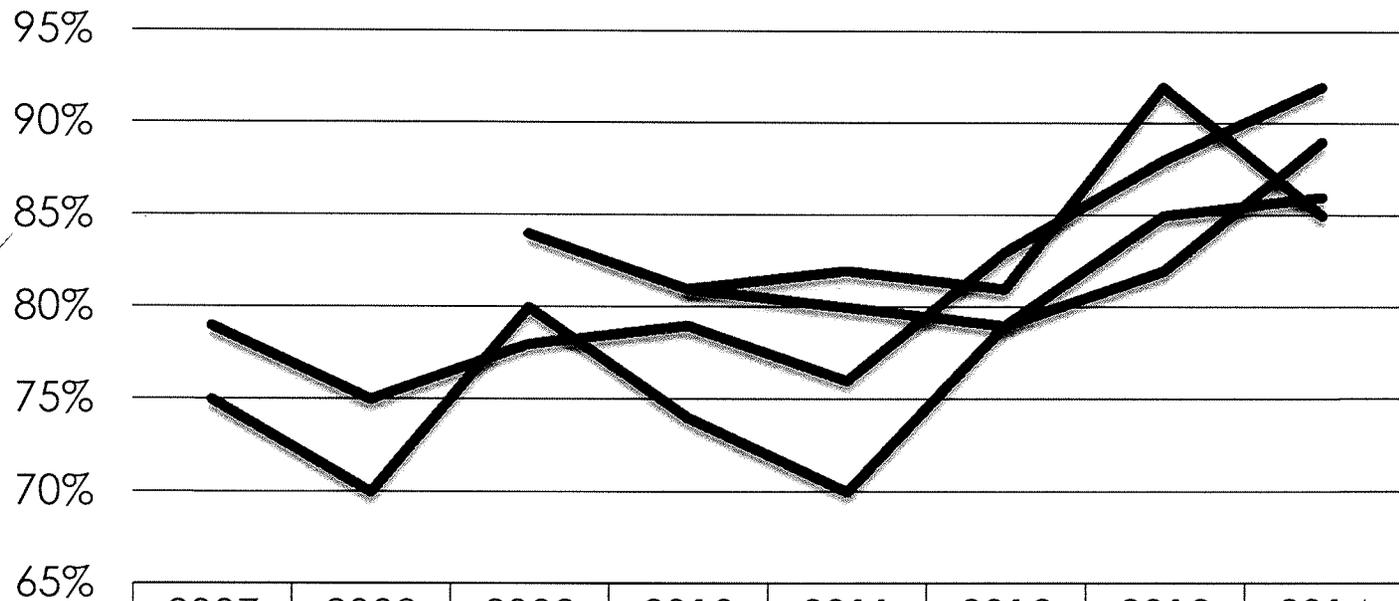




## Frequency in the Majority

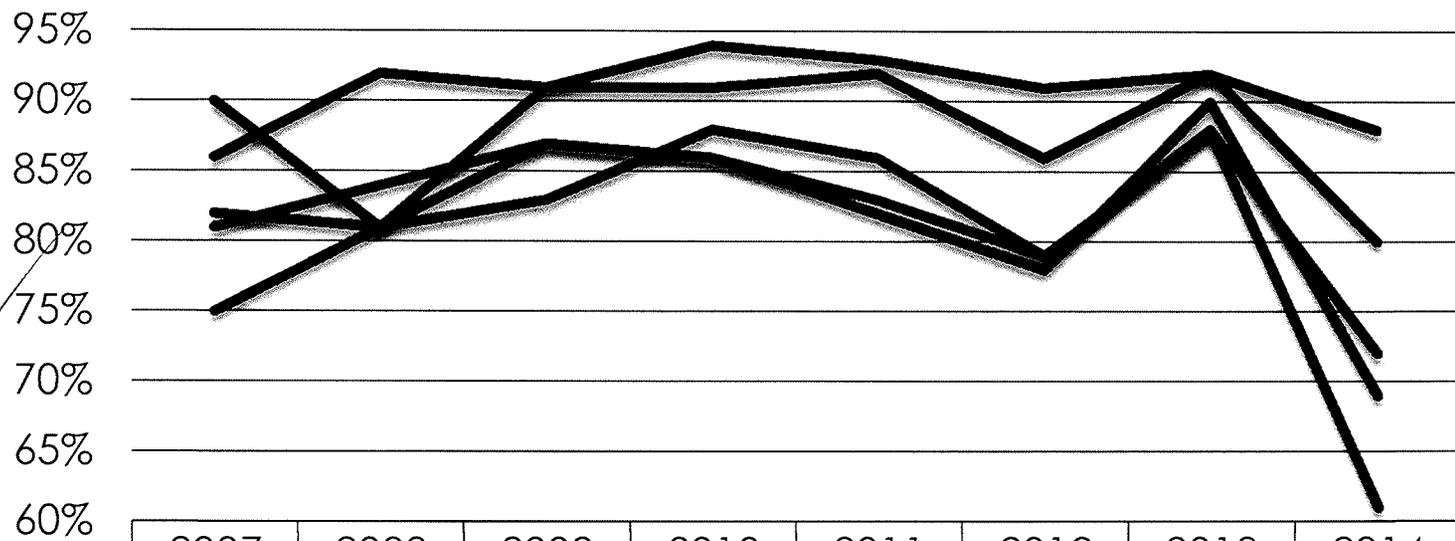
Justice	Total Votes	Majority Votes	Frequency in the Majority
Breyer	<b>72</b>	<b>66</b>	92%
Sotomayor	74	<b>66</b>	89%
Kennedy	74	65	88%
Ginsburg	74	64	86%
Kagan	74	63	85%
Roberts	74	59	80%
Alito	74	53	72%
Scalia	74	51	69%
Thomas	74	45	61%

## Frequency in the Majority Over Time: "Left"



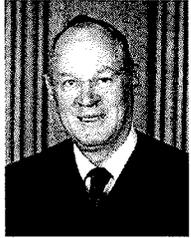
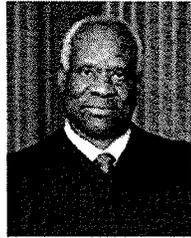
	2007	2008	2009	2010	2011	2012	2013	2014
—Breyer	79%	75%	78%	79%	76%	83%	88%	92%
—Sotomayor			84%	81%	80%	79%	82%	89%
—Kagan				81%	82%	81%	92%	85%
—Ginsburg	75%	70%	80%	74%	70%	79%	85%	86%

## Frequency in the Majority Over Time: "Right"



	2007	2008	2009	2010	2011	2012	2013	2014
—Kennedy	86%	92%	91%	94%	93%	91%	92%	88%
—Roberts	90%	81%	91%	91%	92%	86%	92%	80%
—Alito	82%	81%	87%	86%	83%	79%	88%	72%
—Scalia	81%	84%	87%	86%	82%	78%	90%	69%
—Thomas	75%	81%	83%	88%	86%	79%	88%	61%

# 5-4 Cases: Alignment of the Majority

Majority					19
					8
					5
Roberts, Ginsburg, Breyer, Alito, Sotomayor					2
Roberts, Scalia, Thomas, Breyer, Alito					1
Roberts, Kennedy, Alito, Breyer, Sotomayor					1
Roberts, Ginsburg, Breyer, Sotomayor, Kagan					1
Thomas, Ginsburg, Breyer, Sotomayor, Kagan					1



## Circuit Scorecard

Circuits	Decided	Reversed	Reversal Rate
First	1	0	0%
Second	1	1	100%
Third	3	3	100%
Fourth	6	3	50%
Fifth	8	6	75%
Sixth	5	4	80%
Seventh	3	3	100%
Eighth	8	7	88%
Ninth	16	10	63%
Tenth	4	3	75%
Eleventh	5	5	100%
D.C.	4	3	75%
Federal	3	2	67%