

**Washington Legal Foundation Briefing**

**U.S. Supreme Court October Term 2020:  
What's in Store for Free Enterprise?**

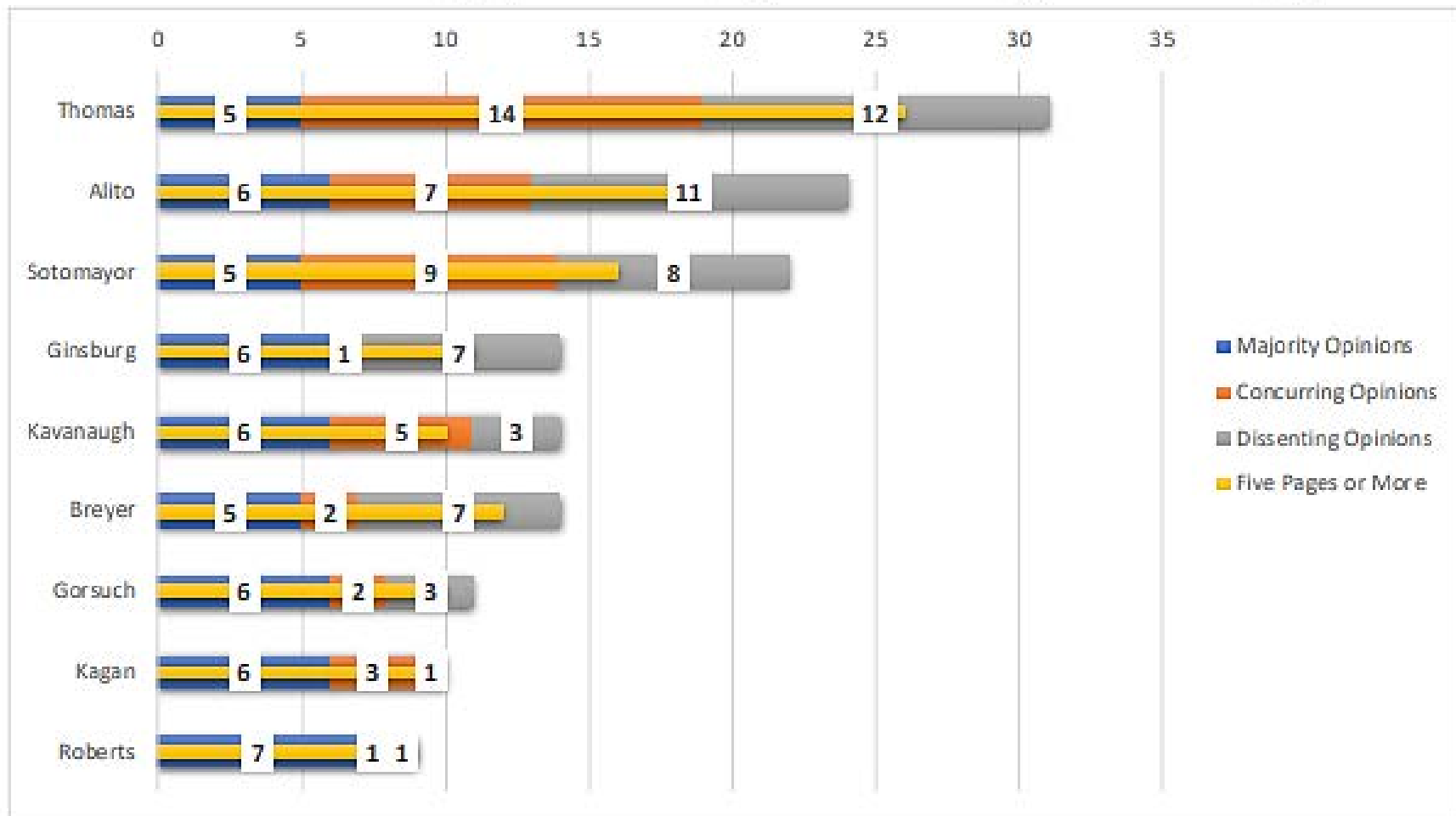
**Presentation of Dr. Adam Feldman**

**September 22, 2020**

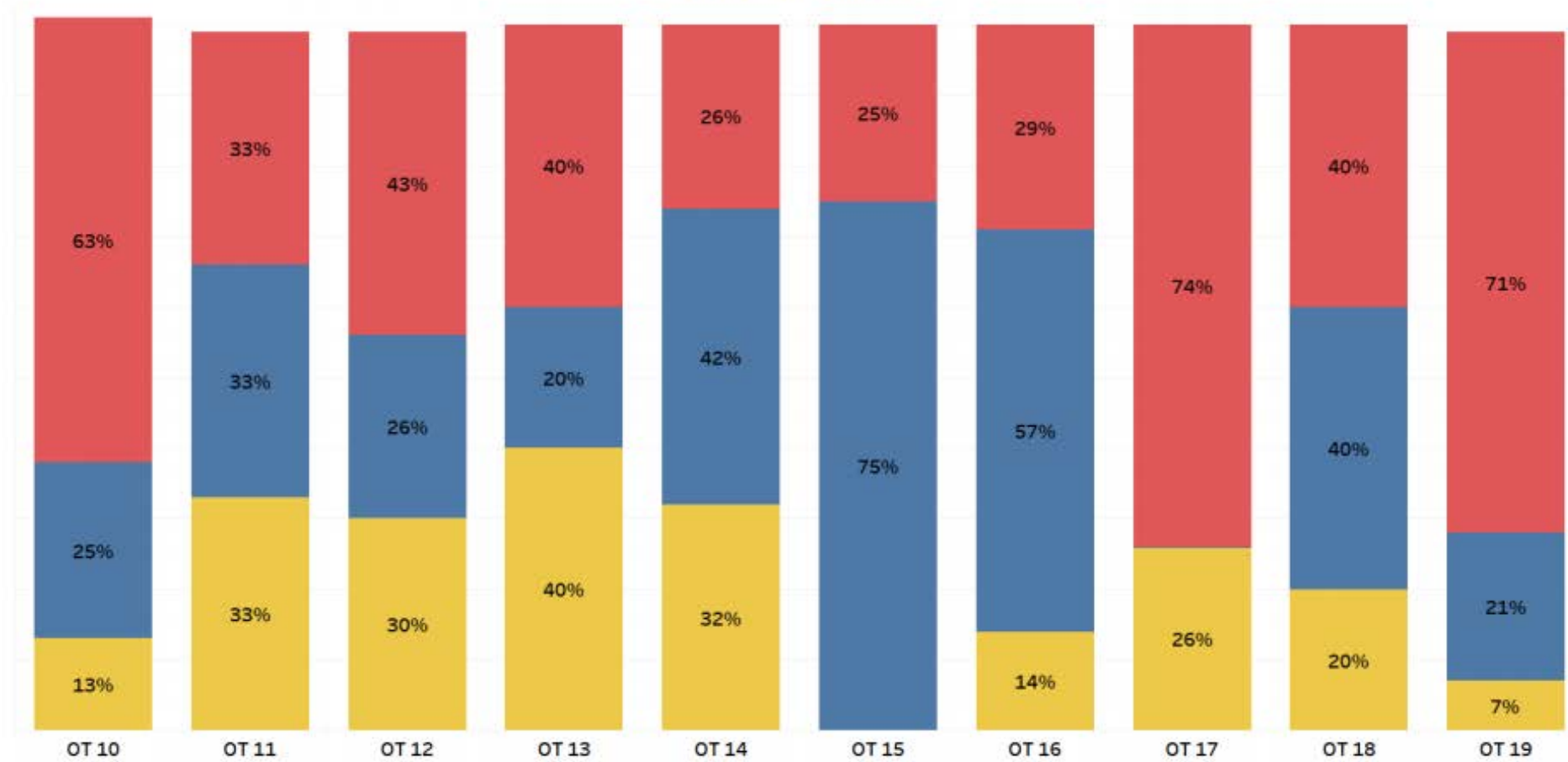
All Cases										
Justice	Votes	Frequency in Majority		OT18	OT17	OT16	OT15	OT14	OT13	OT12
Roberts	61	59	97%	85%	93%	93%	92%	80%	92%	86%
Thomas	61	44	72%	75%	81%	82%	72%	61%	88%	79%
Ginsburg	61	45	75%	75%	73%	85%	88%	86%	85%	79%
Breyer	61	47	77%	76%	73%	90%	94%	92%	88%	83%
Alito	61	45	73%	82%	79%	86%	84%	72%	88%	79%
Sotomayor	61	44	72%	75%	68%	90%	83%	89%	82%	79%
Kagan	60	47	78%	82%	74%	93%	95%	85%	92%	81%
Gorsuch	61	54	89%	75%	85%	82%	-	-	-	-
Kavanaugh	60	56	93%	91%	-	-	-	-	-	-

Divided Cases										
Justice	Votes	Frequency in Majority		OT18	OT17	OT16	OT15	OT14	OT13	OT12
Roberts	39	37	95%	75%	89%	83%	84%	66%	76%	73%
Thomas	39	22	56%	59%	69%	57%	49%	34%	64%	60%
Ginsburg	39	23	59%	59%	56%	63%	78%	77%	56%	60%
Breyer	39	25	64%	61%	56%	77%	89%	86%	64%	67%
Alito	39	23	58%	70%	67%	67%	70%	52%	63%	59%
Sotomayor	39	22	56%	59%	49%	76%	68%	82%	46%	59%
Kagan	38	25	66%	70%	59%	83%	91%	75%	75%	63%
Gorsuch	39	32	82%	59%	75%	63%	-	-	-	-
Kavanaugh	39	35	90%	79%	-	-	-	-	-	-

Adam Feldman  
*Empirical SCOTUS*



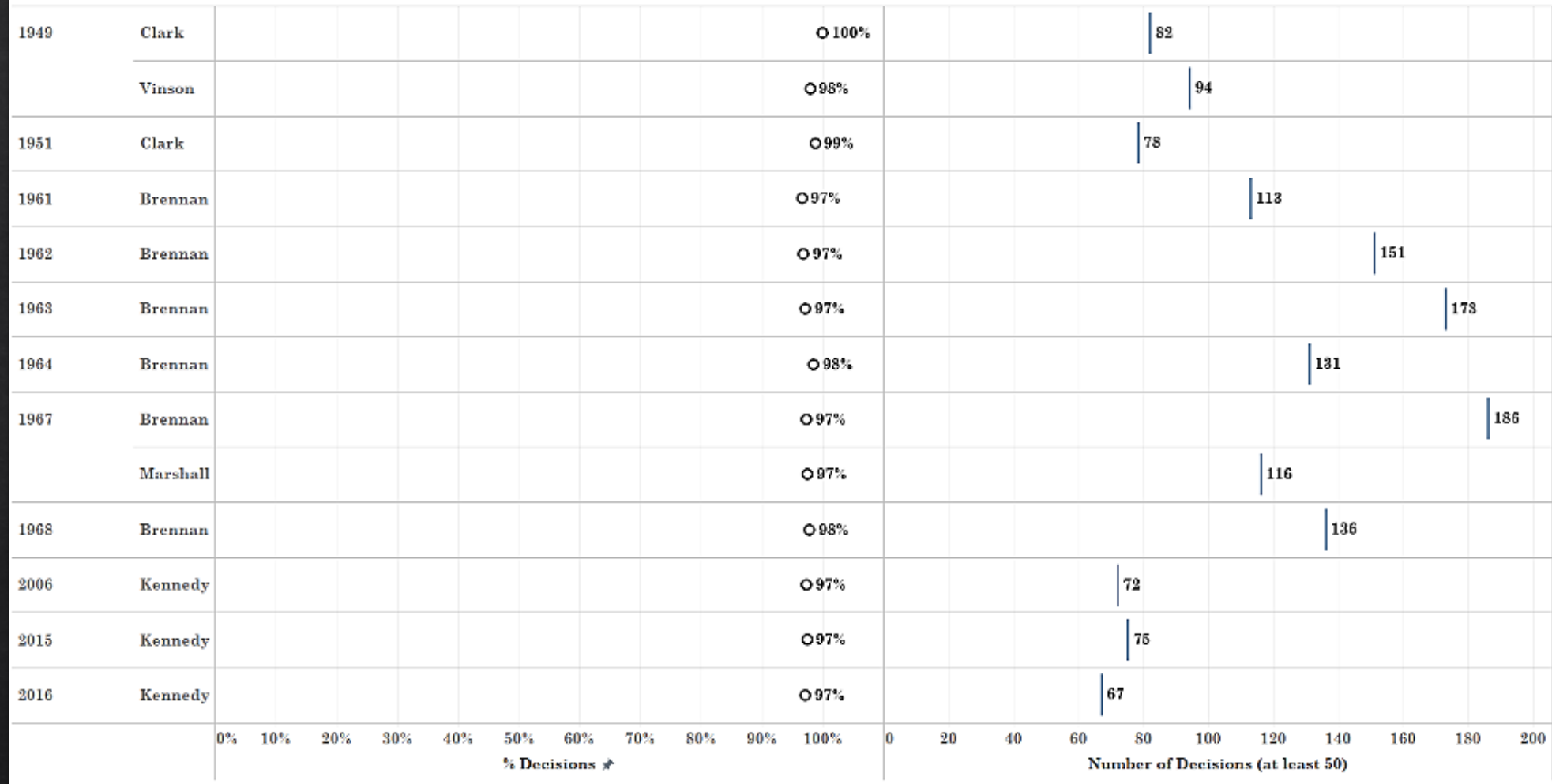
## 5-4 Cases

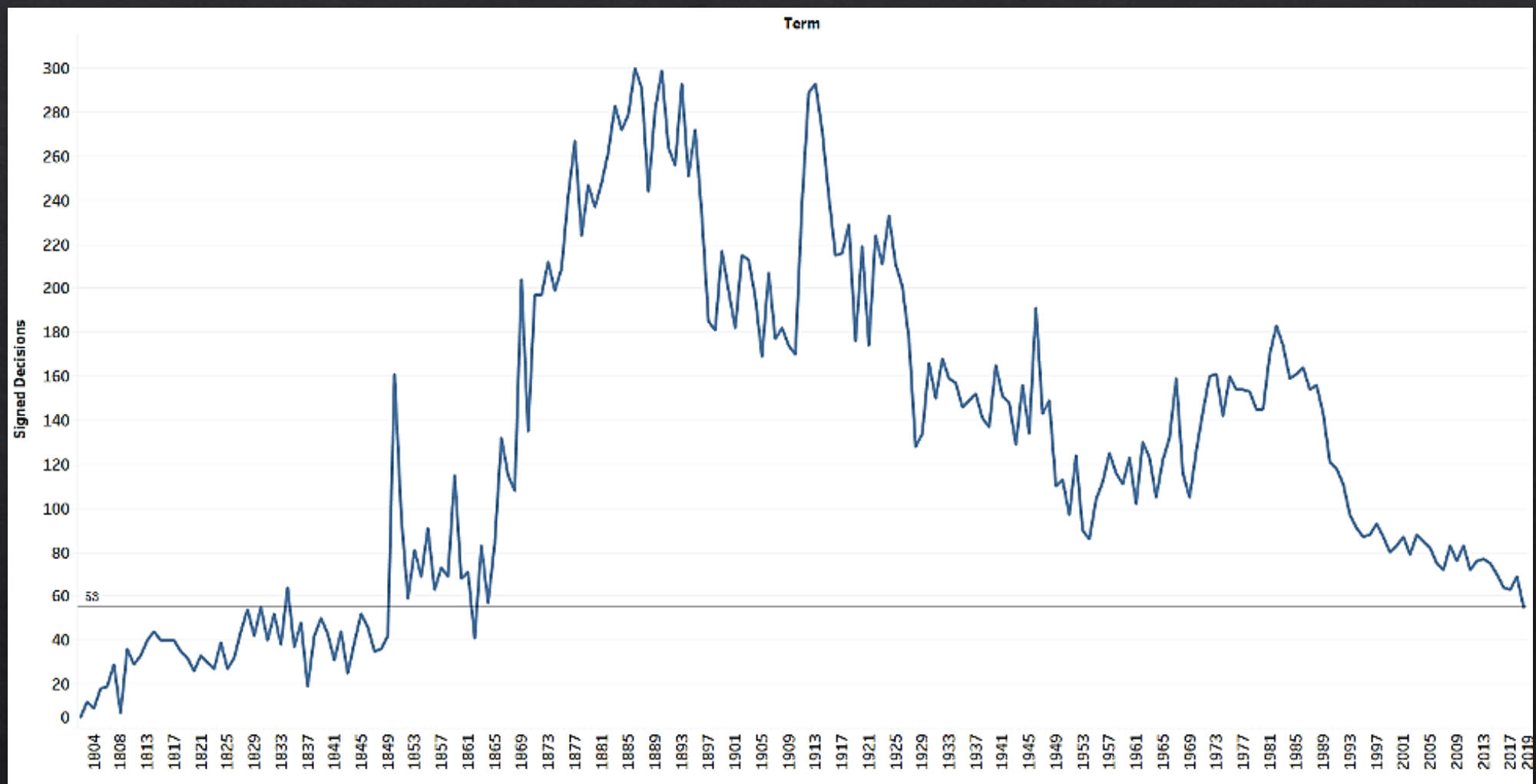


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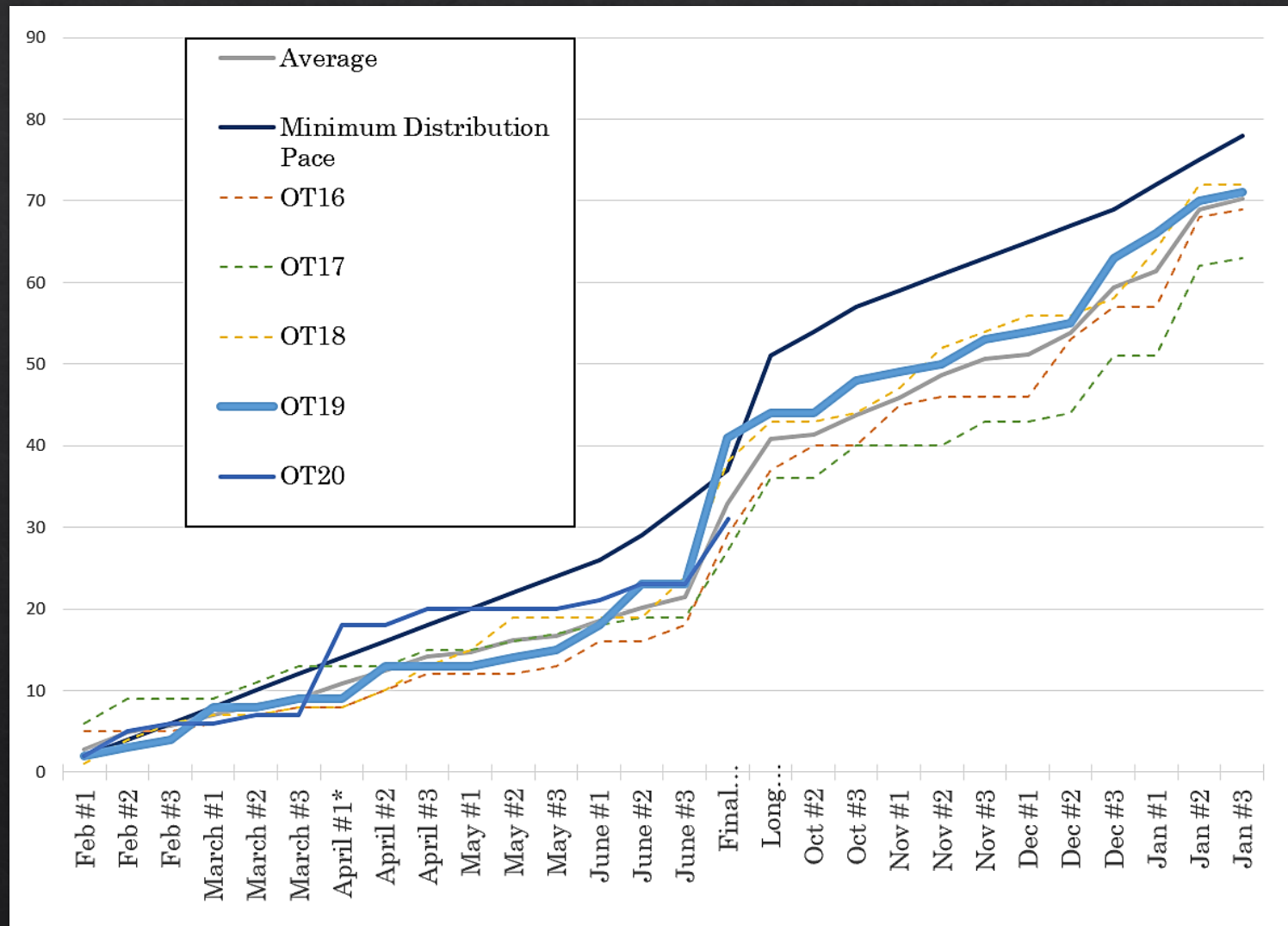


# At Least 97% Frequency in the Majority since OT 1946





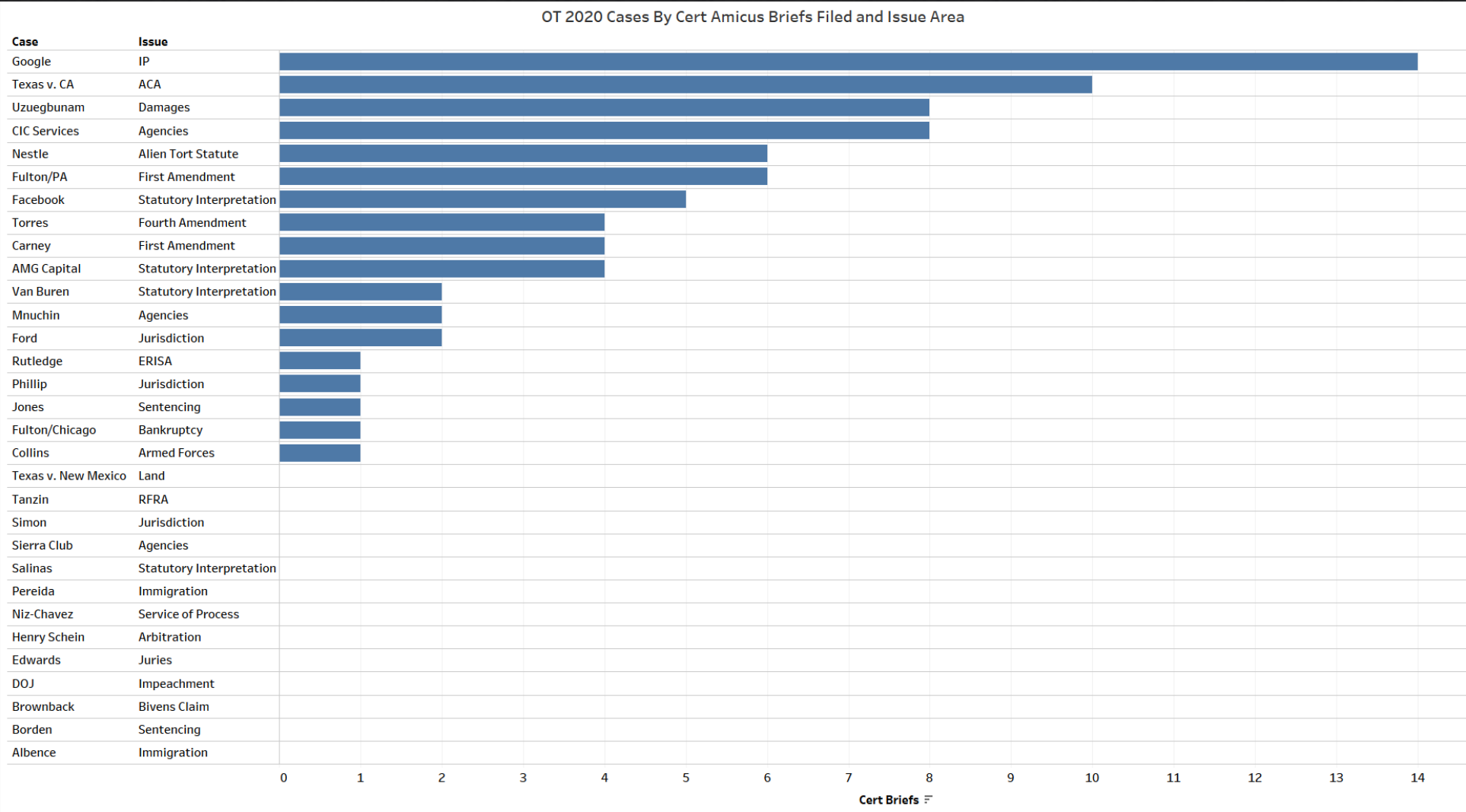
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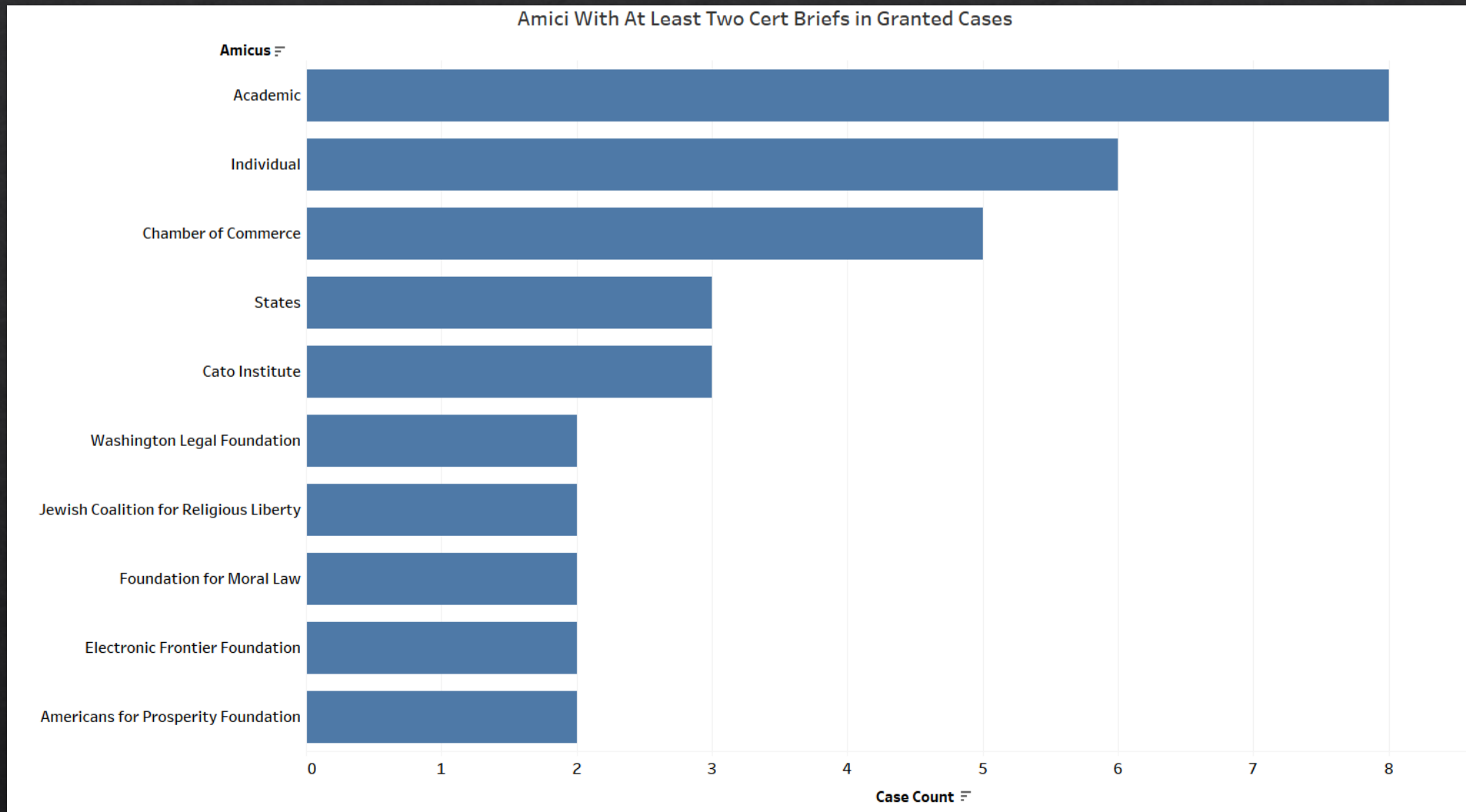


October Term 2020		
	Number	Percent
CA1	0	0%
CA2	1	3%
CA3	2	5%
CA4	1	3%
CA5	7	19%
CA6	4	11%
CA7	2	5%
CA8	2	5%
CA9	3	14%
CA10	1	3%
CA11	2	5%
CA DC	3	8%
CA Fed	1	3%
CA AF	2	5%
State	3	8%
Dist. Court	0	0%
Original	1	3%
	37	100%

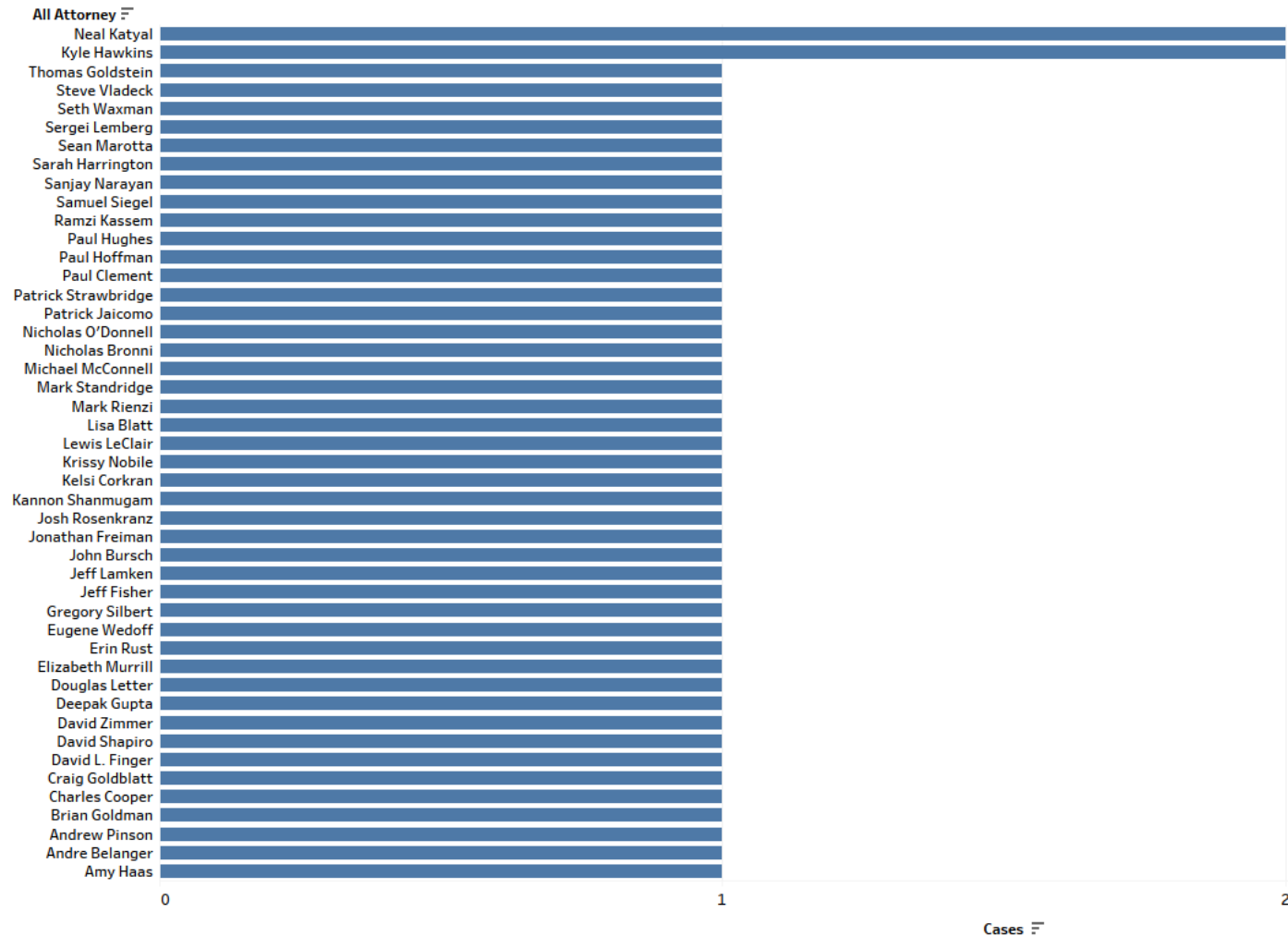
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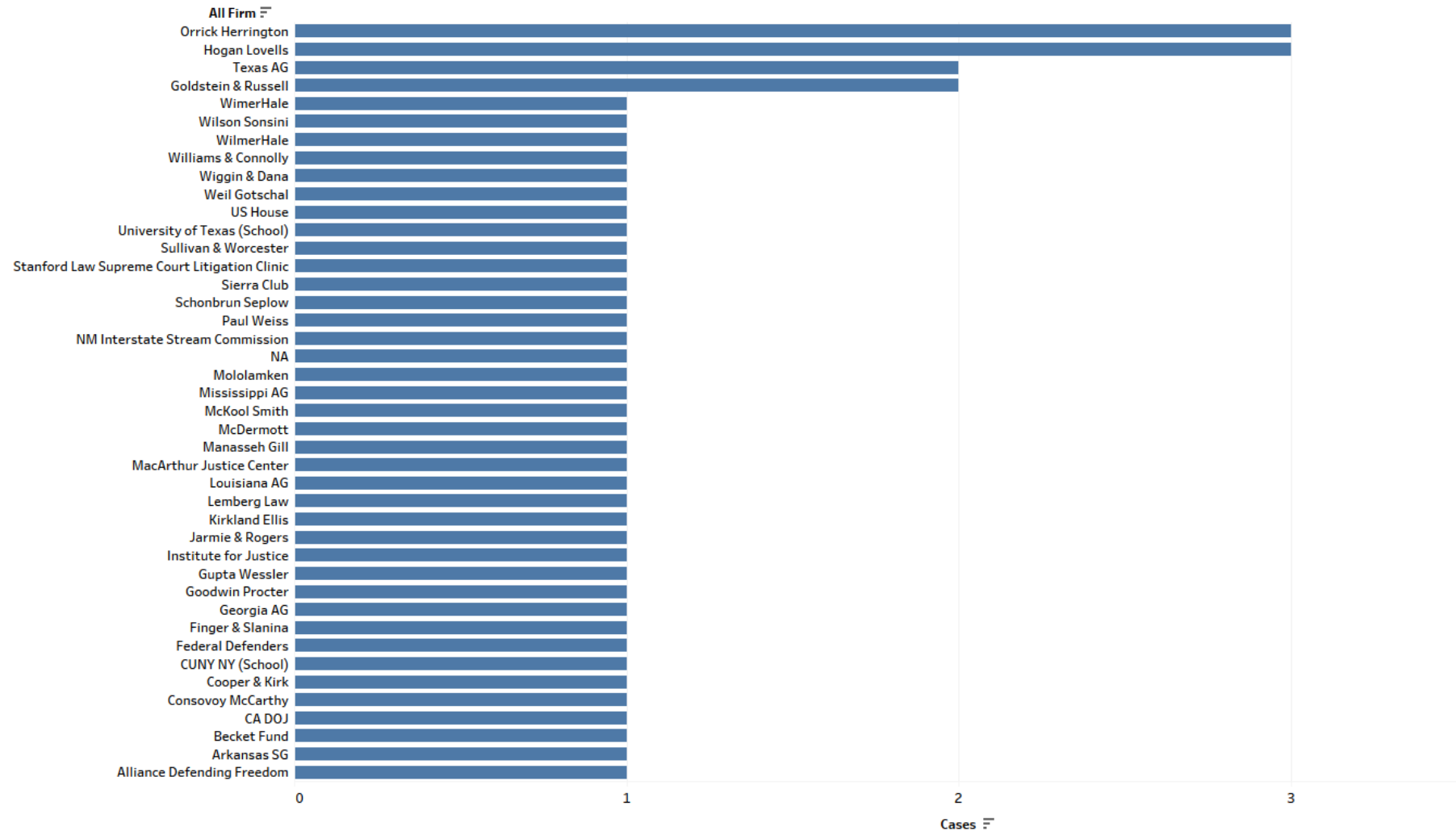




# Law Firm Participation in OT 2020 Granted Cases



## Law Firm Participation in OT 2020 Granted Cases





### Calls for the Views of the Solicitor General

Case	Issue(s)
<a href="#"><u>Texas v. California</u></a>	Whether California's sanctions against Texas and Texans – prohibiting state-funded or state-sponsored travel to Texas because Texas protects the religious freedom of faith-based child welfare providers within its borders – are born of religious animus and violate the Constitution's privileges and immunities clause, interstate commerce clause and guarantee of equal protection.
<a href="#"><u>FMC Corp. v. Shoshone-Bannock Tribes</u></a>	(1) Whether the U.S. Court of Appeals for the 9th Circuit correctly holds that tribal jurisdiction over nonmembers is established whenever an exception under <a href="#"><u>Montana v. United States</u></a> is met, or whether, as the U.S. Courts of Appeals for the 7th and 8th Circuits have held, a court must also determine that the exercise of such jurisdiction stems from the tribe's inherent authority to set conditions on entry, preserve tribal self-government or control internal relations; and (2) whether the 9th Circuit has construed the <i>Montana</i> exceptions to swallow the general rule that tribes lack jurisdiction over nonmembers.
<a href="#"><u>PennEast Pipeline Co. v. New Jersey</u></a>	Whether the Natural Gas Act delegates to Federal Energy Regulatory Commission certificate-holders the authority to exercise the federal government's eminent-domain power to condemn land in which a state claims an interest.
<a href="#"><u>Thomas More Law Center v. Becerra</u></a>	(1) Whether exacting scrutiny or strict scrutiny applies to disclosure requirements that burden nonelectoral, expressive association rights; and (2) whether California's disclosure requirement violates charities' and their donors' freedom of association and speech facially or as applied to the Thomas More Law Center.
<a href="#"><u>Americans for Prosperity Foundation v. Becerra</u></a>	Whether the exacting scrutiny the Supreme Court has long required of laws that abridge the freedoms of speech and association outside the election context – as called for by <a href="#"><u>NAACP v. Alabama ex rel. Patterson</u></a> and its progeny – can be satisfied absent any showing that a blanket governmental demand for the individual identities and addresses of major donors to private nonprofit organizations is narrowly tailored to an asserted law-enforcement interest.

## High Cert Amicus Count

Briefs	Case Page	Issue(s)
<u>6</u>	Joshua Baker, South Carolina Department of Health and Human Services v. Planned Parenthood South Atlantic,	(1) Whether Medicaid recipients have a private right of action under <u>42 U.S.C. § 1983</u> and <u>42 U.S.C. § 1396a(a)(23)</u> to challenge a state's determination that a specific provider is not qualified to provide certain medical services; and (2) what framework properly decides whether a statute creates a private right enforceable under 42 U.S.C. § 1983.
<u>6</u>	Ted Lieu, United States Congressman, et al. v. Federal Election Commission	Whether the federal statutory limit on contributions to political committees, 52 U.S.C. § 30116(a)(1)(C), comports with the First Amendment as applied to committees that make only independent expenditures
<u>9</u>	Marvin Washington, et al. v. William P. Barr, Attorney General, et al.	Can Congress, consistent with the Due Process Clause of the Fifth Amendment to the U.S. Constitution, criminalize medical cannabis without exception, even for patients who require its daily administration to live?
<u>8</u>	Thomas E. Dobbs, State Health Officer v. Jackson Women's Health Organization	(1) Whether all pre-viability prohibitions on elective abortions are unconstitutional; (2) whether the validity of a pre-viability law that protects women's health, the dignity of unborn children and the integrity of the medical profession and society should be analyzed under <u>Planned Parenthood v. Casey's</u> "undue burden" standard or <u>Whole Woman's Health v. Hellerstedt's</u> balancing of benefits and burdens
<u>13</u>	Mark Brnovich, Attorney General of Arizona, et al. v. Democratic National Committee,	(1) Whether Arizona's out-of-precinct policy, which does not count provisional ballots cast in person on Election Day outside of the voter's designated precinct, violates Section 2 of the Voting Rights Act;
<u>10</u>	Jonathan Reisman v. Associated Faculties of the University of Maine	Whether it violates the First Amendment to designate a labor union to represent and speak for public-sector employees who object to its advocacy on their behalf.
<u>10</u>	Nikki Bruni, et al. v. City of Pittsburgh, Pennsylvania	Petitioners are sidewalk counselors who engage in quiet, one-on-one conversations with women visiting an abortion clinic. Under the City's buffer-zone law, the counselors may not speak—or even pray—in this zone. Whether Pittsburgh's buffer-zone ordinance violates the Free Speech Clause.