Issue Brief

# Why Does Business (Usually) Win in the Roberts Court?

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Participation by the U.S. Chamber of Commerce, the world's largest business federation, is a useful proxy for the interest of the general business community in the outcome of Supreme Court cases. The Chamber, through its litigating affiliate, the National Chamber Litigation Center, regularly files briefs in the Supreme Court on behalf of the business community, and never participates when there are member businesses on both sides of the case. In the five years since Samuel Alito became a justice, the Court has decided 64 cases in which the Chamber of Commerce filed a brief either as a party or *amicus curiae*. In these 64 cases, the party supported by the Chamber prevailed in 45, for a winning percentage of over 70 percent.

As the Chamber's success rate illustrates, there is little doubt that the Roberts Court is, broadly speaking, a business-friendly Court. This Issue Brief will examine five categories of cases in which the Chamber has participated—arbitration, preemption, pleading standards, punitive damages, and employment discrimination—in order to determine why the Court usually sides with business. In what contexts is the Court especially receptive to the arguments and interests of business, and for what reasons? In what areas has the Court remained relatively unreceptive, and why? Are the Court's pro-business leanings best explained in terms of legal doctrines or ideological preferences?

I conclude that the Court's decisions in business cases are characterized not so much by a bias in favor of business *per se*, but by a skepticism about litigation as a mode of regulation. Thus, businesses fare especially well when they are defendants; even better when the justices appear to view the litigation in question as having broad regulatory goals as opposed to individualized remedial objectives; and better still when the justices view the litigation as lawyer-driven rather than party-driven. These are broad themes rather than rigid rules; they hold more weight for some justices than for others; and they are asserted here provisionally rather than finally, absent further empirical testing. For now, though, it can be said that skepticism about litigation as a regulatory tool is a theme that features prominently in the Court's business cases.

## I. THE CHAMBER OF COMMERCE'S SUCCESS IN THE SUPREME COURT

The role of the Chamber of Commerce of the United States at the Supreme Court can be traced to a memorandum written in 1971.[1] The memo's author was Lewis F. Powell, Jr., a prominent Richmond lawyer who would be appointed to the Court by President Nixon two months later. Concerned that "the American economic system [was] under . . . attack," Powell recommended an increased role for the Chamber in the courts:

> [T]he Chamber would need a highly competent staff of lawyers. In

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[1] *See* Memorandum from Lewis J. Powell, Jr., to Eugene B. Sydnor, Jr., Chairman, Education Committee, U.S. Chamber of Commerce (August 23, 1971), *available at* http://reclaimdemocracy.org/corporate_accountability/powell_memo_lewis.html.

> special situations it should be authorized to engage, to appear as counsel amicus in the Supreme Court, lawyers of national standing and reputation. The greatest care should be exercised in selecting the cases in which to participate or the suits to institute. But the opportunity merits the necessary effort.[2]

The Chamber has responded to Powell's call. Its affiliated public policy law firm, the National Chamber Litigation Center, files briefs on behalf of the Chamber both as plaintiff and *amicus* in a wide range of cases of interest to the business community in areas as diverse as preemption, punitive damages, arbitration, the dormant Commerce Clause, campaign finance reform, environmental law, securities law, and employment discrimination. As Powell urged, the Chamber regularly enlists prominent members of the appellate bar to appear as counsel of record on its *amicus* briefs.[3]

Recently, the Chamber's success rate has been remarkable. Since the Roberts Court was formed in January 2006 with the elevation of Justice Samuel Alito, the Court has decided 64 cases in which the Chamber filed a brief either as a party or *amicus curiae* ("friend of the court," i.e., an interested non-party).[4] In these 64 cases, the party supported by the Chamber ended up prevailing in 45, for a winning percentage of more than seventy percent. This is a very impressive win/loss ratio for any *amicus* other than the United States. During some periods, the Chamber's win rate has been nothing short of extraordinary. For example, in the Court's October 2006 Term, the Chamber was on the winning side as an *amicus* in thirteen cases and on the losing side in only two, a win rate of almost eighty-seven percent. Nor, it should be added, did the parties supported by the Chamber typically squeak by with narrow, five-to-four victories—sixteen of the Chamber's 45 wins were by unanimous vote, and in twelve more, the Chamber or the party it supported got seven or eight votes. By comparison, during the eleven years in which the membership of the Rehnquist Court remained unchanged (1994–2005), the Chamber's success rate as *amicus* was a somewhat less impressive 62% (47 wins in 76 cases).

In the 64 Roberts Court cases that form the primary Roberts Court data set for this article, the party supported by the Chamber received a total of 343 votes, compared to 218 votes for the opposing party. In all of these cases, the Chamber sided with a business defendant (or declaratory judgment plaintiff), usually one that had been sued by an individual plaintiff. Thus, the important pattern to be explained in the Court's decisions is the relative success of business defendants, not business parties in general.

The Chamber's overall level of activity has also increased. During the Roberts Court, the Chamber has filed in an average of more than twelve cases per Term, compared to a rate of slightly less than seven cases per Term during the last Rehnquist natural Court. It is worth noting that the Chamber has been, if anything, even more successful at the certiorari stage of review in the Court than at the plenary stage. A 2007 study showed that the Chamber has filed more

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[2] *Id.*

[3] In the interest of full disclosure, my brother serves on the NCLC's Constitutional and Administrative Law Advisory Committee.

[4] For a table of such cases and a discussion of methodology, *see* Appendix, *infra.*

*amicus* briefs at the certiorari stage in recent years than any other nongovernmental entity.[5] When the Chamber filed as an *amicus* in support of a petition for certiorari, the study found, the petition was granted twenty-six percent of the time—a rate far higher than that for all petitions (less than one percent) or for all paid petitions (less than five percent). The Chamber's high levels of activity and success at the certiorari stage reflect its strategically sophisticated effort to shape the Court's shrinking docket.

## II. THE COURT'S DECISIONS IN BUSINESS CASES

The theme of skepticism toward litigation as a regulatory tool emerges clearly in five key categories of cases in which the Chamber has participated: arbitration, preemption, pleading standards, punitive damages, and employment discrimination. In the first four of these categories, the Chamber has fared quite well at the Roberts Court. In the final category—employment discrimination cases—the Chamber has been much less successful thus far, but its failures in this area may yield as much insight into the justices' attitudes toward business cases as do its successes in the others.

Before proceeding, it's worth pausing to take note of a category of cases that is *not* included in this Issue Brief: cases dealing with the First Amendment as it applies to the regulation of contributions and expenditures in political campaigns. The Chamber has enjoyed success as an *amicus* in this area as well, having supported the prevailing party in the landmark case of *Citizens United v. FEC*,[6] as well as in *FEC v. Wisconsin Right to Life, Inc.*[7] The campaign finance cases are not discussed here, primarily because they deal with the political activities of corporations rather than with their core business activities, and are accordingly perceived by the justices as being cases about the First Amendment rather than being about the regulation of business activity as such. Though it is necessarily speculative to say so, the Chamber of Commerce itself may care more about the fate of campaign finance laws than do most of its member businesses. The five categories of cases described here, by contrast, lie at the heart of the corporate bar's day-to-day concerns.

### A. Arbitration

Perhaps the Chamber's greatest success in the Roberts Court is one that has gone almost totally unnoticed: persuading the Court to enforce arbitration clauses in standard-form contracts that require employees, borrowers, and other claimants to make their claims in private arbitral forums as opposed to common-law courts. It seems clear that no justice on the current Court harbors substantial misgivings about the enforceability of arbitration clauses or about the propriety of arbitration as an alternative to traditional litigation. That counts as tremendous progress for the business community, which tends strongly to favor arbitration over litigation. Some examples:

- *Buckeye Check Cashing, Inc. v. Cardegna*,[8] a case brought by borrowers

[5] See Posting of Adam Chandler to SCOTUSblog, http://www.scotusblog.com (Sept. 27, 2007, 12:31 PM EST).
[6] 130 S. Ct. 876 (2010).
[7] 551 U.S. 449 (2007).
[8] 546 U.S. 440 (2006).

against an allegedly usurious lender, in which the Court held by a seven-to-one vote that when a contract contains an arbitration clause, issues concerning the validity of the contract as a whole must be resolved in the first instance by the arbitrator, not by a state court.

- *Preston v. Ferrer*,[9] which built upon *Buckeye* in holding—by a vote of eight to one—that an agreement to arbitrate supersedes state law requiring disputes over contract validity to be referred initially to an administrative agency.

- *Rent-a-Center, West, Inc. v. Jackson*,[10] which went beyond *Buckeye* and *Preston* by holding that a party seeking to challenge an arbitration agreement as unconscionable or otherwise unenforceable must submit that challenge in the first instance to the arbitrator rather than to a court. Writing for a five-justice majority, Justice Scalia stated that the plaintiff, an employee alleging unlawful discrimination, could bypass the arbitrator only if his challenge were expressly directed to the *specific clause* in the arbitration agreement vesting the arbitrator with authority.

- *14 Penn Plaza LLC v. Pyett*,[11] which held enforceable a collective bargaining agreement that required union members to submit claims under the federal Age Discrimination in Employment Act (ADEA) to arbitration. Writing for a five-member majority, Justice Thomas cast serious doubt on a 1974 precedent that referred collective bargaining claims to a court rather than an arbitrator, saying that it "rested on a misconceived view of arbitration that this Court has since abandoned," "reveal[ed] a distorted understanding of the compromise made when an employee agrees to compulsory arbitration," and, if read broadly, "would appear to be a strong candidate for overruling."[12]

### B. Preemption

Preemption cases, which address whether federal statutes or regulations displace state law, are of intense interest to the business community. This is especially true when the federal law in question is deregulatory. In such cases, the plaintiff tries to use state law to hold the business defendant to a more exacting standard, while the defendant claims that federal law sets not only a floor but a ceiling for its legal obligations.

The Chamber has been quite successful in preemption cases in the Roberts Court. Some examples:

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[9] 552 U.S. 346 (2008).
[10] 130 S. Ct. 2772 (2010).
[11] 129 S. Ct. 1456 (2009).
[12] *Pyett,* 129 S. Ct. at 1469-70 (discussing Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974)).

- *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*,[13] which held that the Securities Litigation Uniform Standards Act of 1998 preempted state-law securities fraud class actions brought by holders of securities. Justice Stevens, writing for a unanimous eight-justice Court, emphasized that "litigation under Rule 10b-5 presents a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general."[14]

- *Riegel v. Medtronic, Inc.*,[15] which construed the Medical Device Amendments of 1976 ("MDA") to mean that premarket approval of a medical device by the Food and Drug Administration ("FDA") preempts state common-law causes of action alleging defective design, labeling, and manufacturing. Writing for an eight-justice majority, Justice Scalia asserted that "solicitude for those injured by FDA-approved devices . . . was overcome in Congress's estimation by solicitude for those who would suffer without new medical devices if juries were allowed to apply the tort law of 50 States to all innovations."[16]

- *Watters v. Wachovia Bank, N.A.*,[17] which held by a five-to-three vote that the National Banking Act preempted state law with respect to state inspection and registration requirements imposed upon banks' operating subsidiaries, such as mortgage lending operations.

The Chamber has had some setbacks in the preemption area. In *Altria Group, Inc. v. Good*,[18] for example, the Court held that the Federal Cigarette Labeling and Advertising Act did not preempt state-law claims under a Maine anti-fraud statute. In *Altria Group*, though, the plaintiffs' state-law fraud claims survived preemption because they rested on a general duty not to deceive, not on a rule of law that purported to regulate smoking, safety, or health. The case does nothing to disturb the broader trend toward the primacy of federal statutes and rules over state tort litigation as a means of achieving regulatory objectives.

Somewhat more difficult to explain is the Chamber's subsequent setback in *Wyeth v. Levine*,[19] in which the Court held by a six-to-three vote that the federal drug labeling statute does not preempt state-law causes of action alleging that drug manufacturers placed inadequate warnings on their labels. The case probably does not signal a major change in the Roberts Court's approach to preemption cases, however, for three reasons. First, the federal statute in *Wyeth* contained no express preemption provision, so the case will not affect the Court's general tendency to read broadly those that do. Second, because the plaintiff in *Wyeth* was unusually sympathetic, her case may not have struck the justices as a lawyer-driven attempt at regulation via litigation. Third, the FDA for many years had taken the position that its regulation of drug

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[13] 547 U.S. 71 (2006).
[14] *Merrill Lynch*, 547 U.S. at 80.
[15] 552 U.S. 312 (2008).
[16] *Riegel,* 552 U.S. at 326.
[17] 550 U.S. 1 (2007).
[18] 555 U.S. 70 (2008).
[19] 129 S. Ct. 1187 (2009).

labeling could peacefully coexist with state tort claims, changing its position abruptly, well after the verdict in the *Wyeth* trial. *Wyeth*, therefore, may tell us little about how the Court will treat cases in which the government's support for implied preemption has been longstanding and consistent.

C. Pleading Standards

Perhaps nowhere do the Roberts Court's doubts about the efficacy of litigation come across more clearly than in its decisions making it easier for business defendants to get cases dismissed at the pleading stage. Two examples in which the Chamber participated:

- *Bell Atlantic Corp. v. Twombly*,[20] a large class action in which the plaintiffs alleged that the regional "baby Bell" telephone companies had engaged in "parallel conduct" that implied an antitrust conspiracy. By a vote of seven to two, the Court didn't just hold that the complaint failed to state a claim. It also overruled a fifty-year-old precedent, *Conley v. Gibson*,[21] that had stated that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[22] In its place, the Court substituted a requirement that the allegations in a complaint, in order to survive dismissal, must add up to a "plausible" entitlement to relief. The Court later built upon this requirement in *Ashcroft v. Iqbal*,[23] a case in which the Chamber did not participate.

- *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,[24] in which the Court enforced a strict definition of the Private Securities Litigation Reform Act's requirement that securities fraud complaints "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." Writing for an eight-justice majority, Justice Ginsburg stressed Congress's intent "to curb frivolous, lawyer-driven litigation."[25]

D. Punitive Damages

The Chamber has been successful in seeking to have punitive damage awards reduced on constitutional or other federal grounds. Here are the two key examples from the Roberts Court:

- *Philip Morris USA v. Williams*[26] held that the Due Process Clause precludes juries from basing punitive damage awards on the harm caused

[20] 550 U.S. 544 (2007).
[21] 355 U.S. 41 (1957).
[22] *Conley*, 355 U.S. at 45–46.
[23] 129 S. Ct. 1937 (2009).
[24] 551 U.S. 308 (2007).
[25] *Tellabs,* 551 U.S. at 322.
[26] 549 U.S. 346 (2007).

by the defendant to nonparties. Justice Breyer wrote the opinion for an unusual five-justice majority that included Chief Justice Roberts and Justices Kennedy, Souter, and Alito. The majority in *Philip Morris* accepted tort law as a method of remedying the effects of discrete wrongful conduct, but was openly skeptical about its use as a vehicle for achieving optimal safety regulation.

- *Exxon Shipping Co. v. Baker*[27] held that the ratio of punitive damages to compensatory damages should not exceed 1:1 in admiralty cases, at least when the defendant's conduct was not intentional or malicious. Writing for a five-justice majority, Justice Souter emphasized the unpredictability of punitive damage awards, suggesting that they are a poor vehicle for setting rational and effective safety standards.

E. Employment Discrimination

One category of cases presents a conspicuous exception to the Chamber's record of success thus far in the Roberts Court. The Chamber has a losing record in cases involving employment law—and those involving employment discrimination in particular. These cases complicate the picture of the Roberts Court as a reflexively pro-business or anti-plaintiff Court.

To be sure, the Chamber has had a couple of notable victories in the employment area:

- *Ledbetter v. Goodyear Tire & Rubber Co.*,[28] which held that an EEOC charge in a Title VII lawsuit alleging pay discrimination on the basis of sex must be filed within 180 days of the initial act of alleged discrimination. Writing for a five-member majority, Justice Alito reasoned that the plaintiff was seeking a remedy for the continuing effects of a discrete, time-barred act of discrimination rather than for any current actionable violation, and that precedent foreclosed claims based on later consequences of earlier, uncharged discriminatory acts. In her unusually strongly worded dissent, Justice Ginsburg emphasized the practical reality that pay discrimination often takes a long time to detect and that each disparate paycheck causes tangible harm. "Once again," Justice Ginsburg concluded, "the ball is in Congress' court."[29] Congress recently returned her serve by enacting the Lilly Ledbetter Fair Pay Act of 2009 to overturn the result in future cases.

- *Gross v. FBL Financial Services, Inc.*,[30] which held that a plaintiff bringing a claim under the ADEA must prove that age was the "but-for" cause of the adverse employment action. Writing for a five-justice majority, Justice Thomas declined to apply Title VII's familiar burden-

[27] 554 U.S. 471 (2008).
[28] 550 U.S. 618 (2007).
[29] *Ledbetter*, 550 U.S. at 661.
[30] 129 S. Ct. 2343 (2009).

> shifting framework—under which evidence that the defendant relied on impermissible factors shifts the burden of persuasion to the defendant to prove that those factors were not determinative—to ADEA cases. Along the way, the majority expressed serious doubts about the entire idea of "mixed-motive" discrimination claims.

But the Chamber has had more losses than wins in the employment discrimination domain. Some of the Chamber's losses came in technical cases that turned on statutory interpretation and whose broader importance seems marginal, such as *Arbaugh v. Y&H Corp.* (Title VII requirement that defendant have at least fifteen people on its payroll is not jurisdictional and therefore cannot be raised for the first time at trial);[31] *Meacham v. Knolls Atomic Power Laboratory*, (ADEA exemption for actions taken by employer based on reasonable factors other than age creates an affirmative defense as to which defendant bears the burdens of production and persuasion);[32] and *Federal Express Corp. v. Holowecki*, (defining "charge" filed with the Equal Employment Opportunity Commission as any document that can reasonably be construed as a request for relief).[33]

Four other losses for the Chamber, however, were far less technical, and they all came in cases involving claims of unlawful retaliation. In *Burlington Northern & Santa Fe Railway Co. v. White*,[34] the Court held that Title VII's prohibition on retaliation is not limited to employer actions that are themselves related to employment or occur at the workplace. The Court, however, went on to limit the retaliation cause of action to employer conduct that is "materially adverse," in the sense that it would deter the reasonable employee or applicant from pressing a claim of discrimination. In *CBOCS West, Inc. v. Humphries*,[35] the Court held that 42 U.S.C. § 1981, a civil rights statute enacted just after the Civil War, encompasses claims for retaliation. Probably in order to retain his seven-vote majority, Justice Breyer's opinion for the Court in *Humphries* said virtually nothing about whether protection against retaliation is generally called for as a prophylactic measure to fully effectuate broadly worded anti-discrimination statutes.

In *Crawford v. Metro. Gov't of Nashville and Davidson Cty.*,[36] the Court held that Title VII's prohibition on retaliation protects employees who complain about workplace discrimination in response to questions during an employer-initiated investigation, and not just those who complain on their own initiative. Most recently, in *Thompson v. North American Stainless, LP*,[37] the Court unanimously held that an employer violates Title VII when it fires an employee in retaliation for the filing of a gender discrimination charge against it by the employee's fiancee.

What are we to make of the Chamber's comparative failure in employment discrimination cases before the Roberts Court—particularly in the retaliation cases? The sample size is small, but the Court's decisions in this area may suggest that employment discrimination

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[31] 546 U.S. 500 (2006).
[32] 554 U.S. 84 (2008).
[33] 552 U.S. 389 (2008).
[34] 548 U.S. 53 (2006).
[35] 553 U.S. 442 (2008).
[36] 129 S. Ct. 846 (2009).
[37] 2011 WL 197638 (Jan. 24, 2011).

lawsuits do not raise the same concerns about regulation by litigation that arise in other areas. Because these cases usually involve individual plaintiffs who have suffered discrete and tangible harm, they may not appear to be lawyer-driven in the way that, say, securities class actions or contingency fee tort cases seeking large amounts of punitive damages often do. Moreover, the nature of the harm—intentional denial of equal treatment—may resonate especially well with the justices' basic conceptions of fair play. This atomistic vision of employment discrimination cases would help explain why a majority of the Court viewed the injury in *Ledbetter* as flowing from a discrete wrongful act rather than a structural disparity in pay based on sex. And even a justice who is generally suspicious of litigation, for example, may bridle at the notion of an employer retaliating against an employee for initiating litigation, as was alleged in cases like *Burlington Northern* and *Humphries*.

Some employment cases break this mold—such as "mixed-motive" claims, as in *Gross*; disparate impact claims, as in *Ricci v. DeStefano*,[38] a case in which the Chamber did not participate; or large class actions, as in the pending case of *Wal-Mart Stores, Inc. v. Dukes*—but the pattern of cases thus far indicates that the Roberts Court does not view employment discrimination suits with quite the same skepticism it brings to other forms of litigation, and that this may help account for the Chamber's less-than-stellar track record in this area.

## III. Conclusion

It is important to be cautious about drawing conclusions from such a relatively small sample of cases: the Roberts Court has been in existence for only five years, and especially little is known about the orientation to business cases of its newest members, Justices Sotomayor and Kagan. More empirical work remains to be done. Still, the data we have so far suggests that the Roberts Court's decisions in cases involving the Chamber of Commerce of the United States can best be explained not by a generalized pro-business (or even pro-defendant) orientation but by a broadly shared skepticism among the justices about litigation as a form of business regulation.

[38] 129 S. Ct. 2658 (2009).

## APPENDIX

### Outcomes and vote counts in Roberts Court cases in which the Chamber of Commerce of the United States participated as a party or amicus curiae

A note on methodology: Cases were drawn from the Westlaw "SCT" and "SCT-BRIEFS" databases. Cases in which the Chamber of Commerce of the United States filed a brief at the plenary stage of review are included. In slightly less than half of its amicus filings during this period, the Chamber was alone on its amicus brief; in the remainder of cases, the Chamber filed jointly with another amicus or other amici on the same brief. Cases with joint filings are included.

The data set includes five cases decided after Justice Alito joined the Court but in which he did not participate. It excludes cases in which the writ of certiorari was dismissed. It also excludes *Warner-Lambert Co. v. Kent*,[39] in which the Court affirmed the judgment below by an equally divided court, and *Mohawk Industries, Inc. v. Williams*, in which the judgment was vacated and remanded without opinion.[40]

Cases in which the Chamber supported (or was) the prevailing party are listed as a "win"; all other cases are listed as a "loss." The prevailing party is defined as the petitioner (or appellant) in cases in which the judgment below was reversed or vacated and as the respondent (or appellee) in cases in which the judgment below was affirmed. This has the effect of recording as losses for the Chamber some cases in which it got most of what it wanted but didn't get the outright reversal or affirmance it asked for. An example of this phenomenon is *Jones v. Harris Associates L.P.*, in which the Chamber, as amicus, sought affirmance of a Seventh Circuit decision barring all claims against investment advisors for excessive compensation, and the Court issued a largely defendant-friendly opinion but stopped short of outright affirmance.[41]

On the other hand, cases in which the Court granted a partial reversal on the grounds sought by the Chamber are recorded as wins for the Chamber, even if the judgment below was affirmed in part. An example here is *Skilling v. United States*, in which the Court reversed a conviction under the "honest services" fraud statute but did not declare the statute unconstitutional, and also affirmed on the issue of pretrial publicity, which was not discussed in the Chamber's brief.[42] At the end of the day, this kind of table is impossible to construct without making some judgment calls.

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[39] 128 S. Ct. 1168 (2008) (per curiam).
[40] 547 U.S. 516 (2006) (per curiam).
[41] 130 S. Ct. 1418 (2010).
[42] 130 S. Ct. 2896 (2010).

| Case | Subject matter | Chamber Result | Votes For | Votes Against |
|---|---|---|---|---|
| Thompson v. North American Stainless, LP, 2011 WL 197638 (Jan. 24, 2011) | Title VII retaliation | Loss | 0 | 8 |
| Black v. United States, 130 S. Ct. 2963 (2010) | Honest services fraud | Win | 9 | 0 |
| Skilling v. United States, 130 S. Ct. 2896 (2010) | Honest services fraud | Win | 9 | 0 |
| Morrison v. National Australia Bank Ltd., 130 S. Ct. 2869 (2010) | Securities fraud | Win | 9 | 0 |
| Granite Rock Co. v. International Broth. of Teamsters, 130 S. Ct. 2847 (2010) | Federal jurisdiction; collective bargaining | Win | 7 | 2 |
| Rent-a-Center, West, Inc. v. Jackson, 130 S. Ct. 2772 (2010) | Arbitration | Win | 5 | 4 |
| Monsanto Co. v. Geertson Seed Farms, 130 S. Ct. 2743 (2010) | Environmental law | Win | 7 | 1 |
| New Process Steel, L.P. v. NLRB, 130 S. Ct. 2635 (2010) | Federal agency quorum | Win | 5 | 4 |
| Merck & Co., Inc. v. Reynolds, 130 S. Ct. 1784 (2010) | Securities fraud; statute of limitations | Loss | 0 | 9 |
| Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 130 S. Ct. 1758 (2010) | Arbitration; class action | Win | 5 | 3 |
| Conkright v. Frommert, 130 S. Ct. 1640 (2010) | ERISA | Win | 5 | 3 |
| Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co., 130 S. Ct. 1431 (2010) | Class actions; Erie doctrine | Loss | 4 | 5 |

| Case | Subject matter | Chamber Result | Votes For | Votes Against |
|---|---|---|---|---|
| Jones v. Harris Associates L.P., 130 S. Ct. 1418 (2010) | Investment advisers' fees | Loss | 0 | 9 |
| Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson, 130 S. Ct. 1396 (2010) | False claims | Win | 7 | 2 |
| Hertz Corp. v. Friend, 130 S. Ct. 1181 (2010) | Diversity jurisdiction | Win | 9 | 0 |
| Citizens United v. FEC, 130 S. Ct. 876 (2010) | First Amendment; campaign finance | Win | 5 | 4 |
| Mohawk Industries, Inc. v. Carpenter, 130 S. Ct. 599 (2009) | Attorney-client privilege; immediate appeal | Loss | 0 | 9 |
| Cuomo v. Clearing House Ass'n, LLC, 129 S. Ct. 2710 (2009) | State regulation of national banks | Loss | 4 | 5 |
| Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343 (2009) | Employment discrimination | Win | 5 | 4 |
| Arthur Andersen LLP v. Carlisle, 129 S. Ct. 1896 (2009) | Arbitration; stay of proceedings | Win | 6 | 3 |
| Burlington Northern and Santa Fe Ry. Co. v. United States, 129 S. Ct. 1870 (2009) | Environmental law | Win | 8 | 1 |
| 14 Penn Plaza LLC v. Pyett, 129 S. Ct. 1456 (2009) | Collective bargaining; arbitration | Win | 5 | 4 |
| Entergy Corp. v. Riverkeeper, Inc., 129 S. Ct. 1498 (2009) | Clean Water Act; EPA regulations | Win | 5 | 4 |
| Vaden v. Discover Bank, 129 S. Ct. 1262 (2009) | Federal Arbitration Act | Loss | 4 | 5 |
| Wyeth v. Levine, 129 S. Ct. 1187 (2009) | FDA; preemption | Loss | 3 | 6 |

| Case | Subject matter | Chamber Result | Votes For | Votes Against |
|---|---|---|---|---|
| Crawford v. Metro. Gov't, 129 S. Ct. 846 (2009) | Title VII; retaliation | Loss | 0 | 9 |
| Altria Group, Inc. v. Good, 555 U.S. 70 (2008) | Labeling act; preemption | Loss | 4 | 5 |
| Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008) | Punitive damages | Win | 5 | 3 |
| Chamber of Commerce of the U.S. v. Brown, 554 U.S. 60 (2008) | National Labor Relations Act; preemption | Win | 7 | 2 |
| Meacham v. Knolls Atomic Power Lab., 554 U.S. 84 (2008) | ADEA | Loss | 1 | 7 |
| Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105 (2008) | ERISA | Loss | 2 | 7 |
| Engine Co. v. United States *ex rel.* Sanders, 553 U.S. 662 (2008) | False Claims Act | Win | 9 | 0 |
| Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639 (2008) | RICO; mail fraud | Loss | 0 | 9 |
| LaRue v. DeWolff, Boberg & Assocs., 552 U.S. 248 (2008) | ERISA | Loss | 0 | 9 |
| CBOCS West, Inc. v. Humphries, 553 U.S. 442 (2008) | Section 1981; retaliation | Loss | 2 | 7 |
| Fed. Express Corp. v. Holowecki, 552 U.S. 389 (2008) | ADEA; exhaustion | Loss | 2 | 7 |
| Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379 (2008) | Employment discrimination | Win | 9 | 0 |
| Preston v. Ferrer, 552 U.S. 346 (2008) | Federal Arbitration Act | Win | 8 | 1 |

| Case | Subject matter | Chamber Result | Votes For | Votes Against |
|---|---|---|---|---|
| Riegel v. Medtronic, Inc., 552 U.S. 312 (2008) | FDA preemption | Win | 8 | 1 |
| Rowe v. N.H. Motor Transp. Ass'n, 552 U.S. 364 (2008) | Federal Aviation Administration Authorization Act; preemption | Win | 9 | 0 |
| Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc., 552 U.S. 148 (2008) | Securities law; implied rights of action | Win | 5 | 3 |
| FEC v. Wis. Right to Life, Inc., 551 U.S. 449 (2007) | First Amendment; campaign finance | Win | 5 | 4 |
| Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007) | PSLRA; pleading | Win | 8 | 1 |
| Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264 (2007) | Securities law | Win | 7 | 1 |
| United States v. Atlantic Research Corp., 551 U.S. 128 (2007) | CERCLA | Win | 9 | 0 |
| Beck v. Pace Int'l Union, 551 U.S. 96 (2007) | ERISA | Win | 9 | 0 |
| Safeco Ins. Co. v. Burr, 551 U.S. 47 (2007) | Fair Credit Reporting Act | Win | 9 | 0 |
| Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007) | Title VII; filing requirements | Win | 5 | 4 |
| Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) | Federal Rules of Civil Procedure; pleading | Win | 7 | 2 |
| Watters v. Wachovia Bank, N.A., 550 U.S. 1 (2007) | National Bank Act; preemption | Win | 5 | 3 |

| Case | Subject matter | Chamber Result | Votes For | Votes Against |
|---|---|---|---|---|
| Rockwell Int'l Corp. v. United States, 549 U.S. 457 (2007) | False Claims Act; qui tam | Win | 6 | 2 |
| Philip Morris USA v. Williams, 549 U.S. 346 (2007) | Punitive damages | Win | 5 | 4 |
| Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., 549 U.S. 312 (2007) | Antitrust | Win | 9 | 0 |
| Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006) | Title VII; retaliation | Loss | 0 | 9 |
| Rapanos v. United States, 547 U.S. 715 (2006) | Clean Water Act; Commerce Clause | Win | 5 | 4 |
| Kircher v. Putnam Funds Trust, 547 U.S. 633 (2006) | Securities law; preemption; removal | Loss | 0 | 9 |
| Anza v. Ideal Steel Supply Corp., 547 U.S. 451 (2006) | Civil RICO; fraud; reliance | Win | 8 | 1 |
| DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006) | Dormant Commerce Clause; state taxation | Win | 9 | 0 |
| Sereboff v. Mid Atlantic Med. Servs., Inc., 547 U.S. 356 (2006) | ERISA | Win | 9 | 0 |
| Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71 (2006) | Securities law; preemption | Win | 8 | 0 |
| Texaco Inc. v. Dagher, 547 U.S. 1 (2006) | Antitrust | Win | 8 | 0 |
| Arbaugh v. Y&H Corp., 546 U.S. 500 (2006) | Title VII; federal jurisdiction | Loss | 0 | 8 |

| Case | Subject matter | Chamber Result | Votes For | Votes Against |
|---|---|---|---|---|
| Domino's Pizza, Inc. v. McDonald, 546 U.S. 470 (2006) | Section 1981; standing | Win | 8 | 0 |
| Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006) | Federal Arbitration Act | Win | 7 | 1 |
| **TOTALS** | | **45 – 19 (70.3%)** | **343** | **218** |