SALIENT AND NONSALIENT CASES IN THE SUPREME COURT'S DECISION CYCLE

By: Brandon Bartels

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Document Outline

The Supreme Court releases its most hot-button "salient" rulings (on important issues that receive ample media attention) in June, the effective end of the term. From November to May, most the Court's rulings are not as salient as the June rulings. In this Court Report, Supreme Court expert Brandon Bartels breaks down these issues in recent historical context and also analyzes some of the nonsalient rulings that have been released so far during the 2024–25 term. Many of these nonsalient cases involve technical and procedural issues and are not marked by the types of ideological divisions and close votes typically seen in June.

Salient and Nonsalient Cases

The Supreme Court hears and decides cases covering some of the most important issues in U.S. politics: abortion, religion, free speech, civil rights, health care, campaign finance, and environmental policy. Political scientists and legal scholars often call these "salient" cases since they are widely regarded to be highly important legal and policy issues to elected officials and the American people. These cases thus receive more substantial media attention than their nonsalient counterparts.

Adding to their salience and newsworthiness is the fact that the votes in many of these cases are very close (5–4 or 6–3 votes) and decided along ideological and party lines. Moreover, the Court releases most of these salient decisions in a spree of anticipated activity occurring at the end of every June, which marks the effective end of the Supreme Court's term. With the Court's term beginning the first Monday of October, the Court decides and releases a handful of more nonsalient cases each month from November through May. This latter period can be called the "calm before the storm" as Court-watchers anticipate the most important decisions in June.

One measure, developed by political scientists Lee Epstein and Jeffrey Segal, defines issue salience as whether the New York Times included coverage of the case on its front page the day after the decision. Since commencement of the Roberts Court, about 10% of Supreme Court decisions on the merits have been salient (by this measure). The Court's average caseload during this timeframe (2005 to present) has been about 68 cases per term. Salient cases elicit closer votes among the justices and result in more ideologically divided votes than nonsalient cases. During this same period, the median vote split in salient cases is 6–3, while the median vote split in nonsalient cases is 8–1. The percentage of unanimous cases is about 42%. We have a Supreme Court of two minds: The justices are closely divided along ideological and partisan lines in highly salient cases, yet they generally show less disagreement in cases of lower salience.

Nonsalient Decisions in the 2024–2025 Term

This fraction of salient cases, then, that receives the most attention is actually quite small. Since the Supreme Court hears and decides some of the most important issues that percolate through the appellate process, it seems worthwhile to ask what kinds of issues are actually decided in these nonsalient cases. To answer this question, I review decisions from the current term thus far (from November 2024 through April 2025). The short answer is that many of these cases involve technical, detailed procedural rules (e.g., criminal and civil procedure) and intricate interpretations of federal statutory provisions—not exactly the hot-button constitutional issues that represent the bulk of salient cases. Vote splits are also discussed, as many of these cases are decided unanimously or via large majorities.

To summarize, for the 27 cases decided on the merits from November 2024 through April 22, 2025, nearly 50% (13 out of 27) were unanimous and 7 more were decided by either a 7–2 or 8–1 vote. Thus, nearly 75% of these cases contained "not close" votes, while just over 25% were close votes (one 6–3, one 5–3, and five 5–4s). So far then, the level of division on the Court has been tempered compared to what we should expect in June, though there have been a handful of close votes and divisive opinions thus far. The following paragraphs review some of these cases in which the justices were not divided. Also, comparisons are made to some of the cases that have involved more division among the justices.

The Court dismissed two cases— *Facebook, Inc. v. Amalgamated Bank* and *NVIDIA v. E. Ohman J:or Fonder AB* —in November and December 2024 as "improvidently granted." This practice typically draws consensus among the justices. In this type of case, also known as a "DIG" (dismissed as improvidently granted), the Court hears oral argument on a case that was already granted certiorari, but the justices discover that the case actually should not have been granted certiorari due to some intervening factor or a previously unrealized procedural or technical issue. The Court does not give its reason for a DIG.

In this "calm before the storm" period, the Court will also issue a handful of "per curiam," or "by the Court," decisions. So far, the Court has issued 7 of these (including the two DIGs). While most Supreme Court decisions have a majority opinion author, per curiam decisions do not have an author attributed to the opinion. The actual "Court opinion" itself issues the ruling with brevity. Some of these rulings are noncontroversial and allow the justices to bypass the writing, exchange, and revision of majority and dissenting opinions. Ironically enough, per curiam does not imply unanimity, which introduces a contradiction to the idea of an "opinion of the Court." Many per curiam cases elicit the types of divisions among the justices that we see in typical cases. For example, in *Trump v. J.G.G.* (decided on April 7, 2025), the Court issued a 4-page per curiam opinion declining to grant federal relief to noncitizens designated as members of a Venezuelan gang whom President Trump had ordered removed from the country. The Court ruled that the Venezuelans must challenge their claim in Texas, where they are being held. A D.C. court had previously granted them federal relief. Justice Sotomayor penned a vigorous 17-page dissent that was joined by Justices Kagan, Jackson, and Barrett (in part). This per curiam was actually a 5–4 ruling.

An example of a per curiam that was truly unanimous is *TikTok v. Garland* from January 18, 2025. This case was also a "salient" one that received ample media attention, particularly because it upheld Congress's ban on TikTok. Yet, even before he was inaugurated, Trump pledged to delay enforcement of the ban to give TikTok more time to secure a domestic buyer.

Some other cases, not in the per curiam category, that have elicited consensus among the justices involve quite technical and procedural matters covering federal statutory law and rules of procedure. In *Bouarfa v. Mayorkas* (from December), the Court unanimously ruled that federal courts do not have jurisdiction (under the

Immigration and Nationality Act) to review discretionary determinations by the Secretary of Homeland Security regarding the denial of visa applications in the face of evidence of a sham marriage between a citizen and non-citizen. In another federal statutory matter involving jurisdictional questions, the Court ruled in *Royal Canin U.S.A. v. Wullschleger* that in civil suits, once a plaintiff amends a complaint to remove the federal claim, the federal court loses supplemental jurisdiction over the state claims, and the case must be decided in state court. While not covering hot-button social issues, these types of rulings have important implications for federal statutory law concerning federal question jurisdiction, or when the federal courts have the power to hear a case. They also matter for litigants seeking an ideal forum —state or federal—for settling disputes.

In another federal statutory case, *E.M.D. Sales, Inc. v. Carrera* (decided in January), the Court unanimously applied an evidentiary standard of proof (the preponderance of evidence standard) to a provision of the Fair Labor Standards Act (FSLA) covering situations when an employer seeks to demonstrate that an employee is exempt from minimum-wage and overtime-pay provisions of the FLSA. In another statutory case covering the Foreign Sovereign Immunities Act (FSIA), *Republic of Hungary v. Simon* (from February) unanimously declared that because foreign nations have presumptive immunity from lawsuits in the United States, plaintiffs seeking to retrieve expropriated property (in this case, the context is the Holocaust) from a foreign nation must demonstrate a clear commercial connection between financial proceeds from that property and activity (e.g., banking activity) in the United States.

In a case involving the Federal Rules of Civil Procedure, the Court in *Waetzig v. Halliburton Energy Services, Inc.* (February) unanimously decided a technical procedural issue that when an employee voluntarily dismisses a suit (in this case involve age discrimination) against an employer, but loses at arbitration, the voluntary dismissal constitutes a "final proceeding" that makes the employee eligible to appeal in the federal court system. In *Glossip v. Oklahoma* from February, the Court also decided a more high-profile criminal procedure case on constitutional due process grounds that was more closely divided (5–3). In that case, the Court granted a death row inmate a new trial on the grounds that the criminal prosecutor knowingly used false evidence to secure the original criminal conviction.

Not all federal statutory cases elicit consensus, however. Cases involving environmental law and the Environmental Protection Agency (EPA) are often an exception. In *San Francisco v. Environment Protection Agency* (from early March), the Court was divided 5–4, largely on ideological grounds. This case was "salient" and received ample media coverage. The Court ruled that the EPA exceeded its statutory authority under the Clean Water Act (CWA) by imposing "end result" requirements that measure compliance with EPA permits by governmental entities (San Francisco in this case) on the basis of whether water quality standards are actually achieved. The Court ruled that the CWA only authorizes the EPA to issue concrete steps to entities to ensure water quality standards.

Conclusion

While some of the June decisions will elicit degrees of consensus like some of the aforementioned cases, most of the salient cases that receive the ample media attention will be 5–4 or 6–3 decisions decided along ideological and partisan lines. Recall, however, that these salient decisions make up just 10% (approximately) of the Court's caseload during its term. Many of the Court's less salient rulings draw higher degrees of consensus among the justices (recall that roughly 40% of the Court's rulings are unanimous). That is because in many of these technical and procedural matters, justices' ideological and partisan preferences are not activated to the same extent as they are in hot-button social issues. We can refer to the November through April and May period, then, as a "calm before the storm" in that this period generally produces relatively high degrees of consensus among the justices but mostly concerning technical and procedural matters. Come June, that narrative will change, of course, as the small fraction of highly salient cases will come to define the Court's term.

Further Readings

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