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The State of the Term

Monday, November 19th, 2007 11:26 am | Tom Goldstein | [Print This Post](#)

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With the October and November argument calendars completed, I thought this would be a good time to update the State of the Term.

Decisions. The Court has not issued any signed opinions from merits cases. Last Term at this point, the Justices had issued one signed opinion.

The volume of cert grants. Thus far the Court has granted certiorari in 48 cases (with consolidated petitions considered one “case.”) That is one more than at the same point last Term and 12 less than at the same point two Terms ago.

The volume of arguments by sitting. The Court heard argument in nine cases in October and 10 in November. It has announced that it will hear eight in December and 12 in January. Although the Court has not released the February calendar, given the available cases, we anticipate 11 arguments in that sitting. So, in the five-month period between October and February, the Court will hear argument in 50 cases.

In that period, there were a total of 56 argument slots available (assuming two arguments per day). So, in order to return to a pace of 78 arguments for the Term, the Court would have to hear an additional six cases in the remaining available months - March and April.

Looking forward. The Court has granted one case that will be set for argument in March. That means that there are 23 argument slots remaining for the Term (again, assuming two arguments per day).

Cases granted in November and December can be argued in March. There are three conferences - spanning four calendar weeks - remaining in that period. So, to fill March, the Court must grant a total of 11 cases from the conferences of November 20, November 30, and December 7. Statistically, if the Court were trying to fill 78 cases evenly over the course of the Term, it would grant roughly seven cases in that period; if it were trying to fill 70 cases, it would grant roughly six. So the pace of grants would

have to be disproportionately high compared to an annual average. Last Term, in the same period, the Court granted eight cases.

From those three conferences, I have flagged 31 cases as having a reasonable prospect of being granted: November 20 (nine possible grants, including the relist of the D.C. guns case); November 30 (10 possible grants); December 7 (not yet published) (12 possible grants).

Cases granted in January can be argued in April. There are three conferences - spanning six calendar weeks - that month. So, to fill April, the Court would have to grant a total of 12 cases from the conferences of January 4, 11, and 18. (Statistically, if the Court were trying to fill 78 cases, it would grant roughly nine cases; if it were trying to fill 70, it would grant roughly eight.) Last Term, in the same period, the Court granted 16 cases.

From the January conferences, I have thus far flagged significantly more cases (55) as potential grants than for November/December (none of these lists are published): January 4 (25 possible grants); January 11 (24 possible grants); and January 18 (6 possible grants).

But those figures will change significantly for three reasons. First and most importantly, many of the cases currently set for the January conferences - approximately 7 from January 4 and 14 from January 11 - will be moved to February when the respondent takes an extension of time.

Second, those losses from extensions will be offset by procedural moves by the petitioners that will bring some of the cases back into January. In some cases, the petitioner will waive the 10 day period to file its reply brief, moving the case up to the January 18 conference. In other cases, the petitioner will ask the Clerk's office to cut short any extension for the respondent on the ground that the petition was filed early in order to ensure that the case could be heard this Term. I have identified 8 pending petitions where this may occur, and I estimate that a total of 4 cases will be "moved up" from February to January.

Third, roughly four important cases will be added to the January 11 and 18 lists when the Solicitor General files invitation briefs in pending cases.

So, in total, I expect that there will be a total of 42 petitions with a reasonable chance considered in the January conferences: 55 (the current number) - 21 (petitions presumptively moved to February through extensions) + 4 (petitions moved back to January by the petitioner) + 4 (CVSGs).

I ultimately expect the January conferences to shape up as follows: January 4 (roughly 18 petitions with a reasonable chance); January 11 (roughly 13); January 18 (roughly 12). Last term, in those conferences the Court granted seven (January 5), four (January 12), and five (January 19) cases.

Given that the Court must grant a disproportionately high number of cases if it intends to fill the March and April argument calendars, the remaining November/December and January conferences are favorable to petitioners. As between November/December (31 reasonable petitions) and January (42 petitions), it is slightly better to be a petitioner in November/December. There are not only fewer competing petitions, but they tend to be of lower quality. In January, the CVSGs are all serious prospects for grants and the petitions "moved up" tend to be significant candidates as well. On the other hand, last January, the Court granted an exceptionally high number of cases, bringing up the total numbers for the Term.

Beyond the numbers, to the cases themselves. Thus far, the Court has granted a number of interesting

cases. My leading cases of the Term to date (in terms of public interest) are (links via SCOTUSwiki):

- *Al Odah / Boumediene* - Guantanamo detainees
- *Baze* - Lethal Injection
- *Crawford* - Voter ID
- *Exxon* - Valdez oil spill
- *Kimbrough* - Crack / powder
- *Medellin* - Presidential powers
- *Stoneridge* - Securities fraud
- *Williams* - Child porn

There are two other petitions with an unusually high chance of being granted that would generate significant public interest:

- *Heller* - Second Amendment
- *Kennedy* - Death penalty for child rape

I ultimately expect that the Court will hear argument in 72 cases, and that the leading cases of the Term will be *Heller* and *Al Odah / Boumediene*.

No Comments »

1. Has there been any commentary on Chief Justice Roberts' remarkable decision, as Circuit Justice for the District of Columbia, in the *Boumediene* case, 127 S.Ct. 1725 (April 26, 2007)?

On October 9, 2007, a motion was made to the Chief Justice to clarify his single-judge decision in *Boumediene* — being utilized by the Court's Clerk's Office to repudiate the Court's published rules and established practice pertaining to extensions of time for petitions for rehearing of denials of cert. The motion, containing a devastating analysis of the Chief Justice's decision, disappeared in the Clerk's Office, as if in "a black hole", with the Clerk and his staff refusing to provide any information as to its status.

This MUST-READ October 9, 2007 motion is posted on the website of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc., www.judgewatch.org, most conveniently accessible via the sidebar panel "Latest News".

The motion is part of a MUST-READ petition for rehearing in the "disruption of Congress" case, *Elena Ruth Sassower v. United States of America*, #07-228, on the Court's November 20, 2007 conference calendar. It is also part of two misconduct complaints against the Court's Clerk's Office and Counsel. These, too, are posted on the "Latest News" webpage, as, likewise, a summarizing press release "How Does the U.S. Supreme Court Handle Misconduct Complaints against its Staff?"

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Comment by [Elena Ruth Sassower](#) — November 19, 2007 @ 9:18 pm

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