

THE SUPREME COURT'S FOURTH AMENDMENT SCORECARD

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One of the leading legal issues decided by the Supreme Court each term, as a proportion of its total docket, is the application of the Fourth Amendment. Despite the extensive attention the Court's Fourth Amendment jurisprudence receives in legal scholarship, there has been scant empirical research about how modern Justices have voted in Fourth Amendment cases. This Article offers several empirical analyses of the 173 cases in which the Supreme Court addressed Fourth Amendment issues between 1982 and 2015. The analyses show different voting patterns among the Justices depending upon the posture of the case and the nature of the relief sought by the litigants raising Fourth Amendment claims.

The key findings are: (1) the overwhelming majority of Fourth Amendment litigants (FALs) before the Supreme Court were criminal defendants rather than civil rights plaintiffs, and the overwhelming majority of Fourth Amendment issues addressed by the Court were substantive in nature (i.e., whether the Fourth Amendment had been violated) rather than remedial in nature (e.g., whether, in a criminal prosecution, suppression of incriminating evidence was an appropriate remedy for an unconstitutional search or seizure); (2) Fourth Amendment claims succeeded in slightly less than one in four plenary-review cases, and the Court reversed the judgment of the lower courts in the vast majority of Fourth Amendment cases in which certiorari was granted; (3) FALs were much more likely to succeed in cases concerning substantive issues than remedial issues; (4) civil rights plaintiffs were slightly more likely to succeed than criminal defendants; (5) individual Justices generally voted in Fourth Amendment cases in a manner that reflected their overall ideological dispositions, yet Justices Blackmun, Scalia, and Breyer bucked this trend, resulting in more ideologically mixed voting blocs in Fourth Amendment cases than in several other divisive areas of the Court's docket, such as abortion rights or voting rights; (6) the Court has granted more certiorari petitions filed by the government than petitions filed by FALs, and was much more likely to rule against a FAL when the Court granted the government's petition than when it granted a FAL's petition; and (7) the Court's per curiam cases addressing Fourth Amendment issues generally resembled the Court's plenary-review cases with respect to the nature of the litigants and the nature of the issues addressed, although the Court always ruled in favor of the petitioners, whether the government or FALs, in its per curiam Fourth Amendment decisions.

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INTRODUCTION

One of the leading legal issues decided by the Supreme Court—as a proportion of its total docket of cases receiving plenary consideration¹—is the application of the Fourth Amendment.^{2 3} On average, during the past four

1. “Plenary consideration” refers to cases in which the Court grants certiorari and later issues a decision only after additional briefing and oral argument. By comparison, the Court issues a smaller number of decisions on the merits each term in cases in “summary dispositions” (i.e., without full briefing and oral argument and, instead, solely based on the petition for writ of certiorari filed by the petitioner and any response filed by the respondent). *See* 16B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, *FEDERAL PRACTICE AND PROCEDURE* § 4004.5 (3d ed. 2012).

2. For instance, during the October Term 2014 (October 2014 through June 2015), the Supreme Court gave plenary consideration and rendered judgment in a total of only 70 cases. Of those cases, the leading five categories of discrete legal issues that the Court addressed were as follows: five interpreted federal bankruptcy statutes, four interpreted the Fourth Amendment, three interpreted the First Amendment, three interpreted federal immigration statutes, and three interpreted Title VII of the Civil Rights Act of 1964. For the Court’s opinions, sorted by term, see *Opinions*, SUPREME COURT OF THE UNITED STATES, <http://www.supremecourt.gov/opinions/opinions.aspx> (last visited Dec. 29, 2016). *See also, e.g.*, Erwin Chemerinsky, *Law Enforcement and Criminal Law Decisions*, 28 PEPP. L. REV. 517, 523-24 (2001) (“In an era in which the Supreme Court’s docket is dramatically shrinking, the number of Fourth Amendment cases is, if anything, increasing.”).

3. The Fourth Amendment provides that: “The right of the people to be secure in their

decades, the Court has decided more than four cases raising Fourth Amendment issues each term.⁴ Considering that the modern Court has afforded plenary consideration to less than 100 total cases per term, and that the Court addresses a wide variety of statutory and constitutional issues every term, the number of Fourth Amendment cases it decides each term is remarkable. The reason for such heightened attention likely relates to the fact that the Fourth Amendment, more so than any other constitutional check on governmental authority, is ubiquitous in Americans' everyday lives. It affects government actors' ability to search our persons and property (including our homes and cars), listen to our conversations and read our mail, and detain us. Everyday occurrences like traffic stops, olfactory searches by police dogs in airports and bus stations, and governmental surveillance of emails and phone records implicate the Fourth Amendment.⁵ Although the Fourth Amendment is often associated with "technicalities" invoked by guilty criminals to escape prosecution,⁶ Fourth Amendment issues arise in civil as well as criminal contexts and often concern searches and seizures by governmental actors other than law enforcement officers.⁷

In view of the heightened attention that the Court gives to the Fourth Amendment and the importance of the Court's interpretation of the amendment in everyday American life, this Article engages in an empirical analysis of modern Justices' voting patterns in Fourth Amendment cases. Despite the extensive attention the Fourth Amendment receives in legal scholarship,⁸ there have been no empirical studies in the modern era that have thoroughly examined how modern Justices vote in Fourth Amendment cases.⁹ This Article's empirical

persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

4. See *infra* Appendix A (148 Fourth Amendment decisions divided by thirty-four years—from 1982 to 2015—equals 4.2 cases per year).

5. See, e.g., *Heien v. North Carolina*, 135 S. Ct. 530, 534 (2014) (addressing whether the Fourth Amendment was violated during a traffic stop); *United States v. Place*, 462 U.S. 696, 697-98 (1983) (addressing whether Fourth Amendment was violated by a police drug dog that sniffed a traveler's luggage in an airport); *Smith v. Maryland*, 442 U.S. 735, 736 (1979) (addressing whether police officer's examination of telephone records of calls placed and received by the defendant violated the Fourth Amendment).

6. See, e.g., *United States v. Costa*, 356 F. Supp. 606, 609 (D.D.C. 1973) ("It is not an unnatural reaction for the average citizen to become upset with the Courts when he sees a narcotics peddler not prosecuted because a judge has suppressed the evidence on what some would call a legal 'technicality.'").

7. See, e.g., *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 648 (1995) (addressing whether a public high school's drug tests of students participating on school athletic teams violated the Fourth Amendment).

8. "There is a vast literature on this subject." Yale Kamisar, *In Defense of the Search and Seizure Exclusionary Rule*, 26 HARV. J.L. & PUB. POL'Y 119, 119 n.1 (2003) (citing numerous law review articles about the Fourth Amendment).

9. Surprisingly, considering the importance of the Fourth Amendment in the Supreme Court's docket, little empirical scholarship about the Court's Fourth Amendments decisions

analyses contribute to the burgeoning literature on judicial behavior, which includes the perspectives of law professors, political scientists, and economists.¹⁰

Part I discusses the methodologies of this Article's analyses of the Justices' voting patterns in Fourth Amendment cases as well as the limitations of the study. Part II provides a brief overview of the Court's Fourth Amendment jurisprudence in order to provide context to this Article's analyses and results. Part III presents the results of empirical analyses of the Court's 148 decisions in Fourth Amendment cases in which the Court granted plenary review from 1982 to 2015. Part IV examines the Court's twenty-five Fourth Amendment per curiam decisions during the same time period. Finally, Part V draws some broad conclusions from the analyses.

I. METHODOLOGY

This Article primarily analyzes the 148 cases from 1982 through 2015 in which the Supreme Court granted certiorari and gave plenary consideration to Fourth Amendment issues.¹¹ Those cases are listed in Appendix A.

The year 1982 was selected as the starting point for the analysis because in that year Justice Sandra Day O'Connor, who joined the Court in late 1981, first cast a vote as a Justice in a Fourth Amendment case. Many legal scholars consider Justice O'Connor to have been the most influential Justice on the Court in the modern era¹² and, thus, an analysis of cases during the time period in which she served on the Court (and of cases after she left the Court) is appropriate.

exists. The leading study, which is of the Warren and Burger Courts' Fourth Amendment jurisprudence, was published over three decades ago. *See generally* Jeffrey A. Segal, *Measuring Change on the Supreme Court: Examining Alternative Models*, 29 AM. J. POL. SCI. 461 (1985); Jeffrey A. Segal, *Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981*, 78 AM. POL. SCI. REV. 891 (1984).

10. *See generally, e.g.*, LEE EPSTEIN, WILLIAM M. LANDES & RICHARD A. POSNER, *THE BEHAVIOR OF FEDERAL JUDGES: A THEORETICAL AND EMPIRICAL STUDY OF RATIONAL CHOICE* (2013).

11. Not all cases implicating the Fourth Amendment in some manner were included in the analysis. For a case to be included, a majority of the Court had to address a "substantive" or "remedial" issue (terms discussed in footnote 22, *infra*, and also in Part II.C., *infra*). Thus, several cases in which the Court mentioned the Fourth Amendment in some manner were excluded because they did not address the merits of a substantive or remedial Fourth Amendment issue and, instead, addressed some other legal issue in regarding litigants' Fourth Amendment claims. *See, e.g.*, *Powell v. Nevada*, 511 U.S. 79, 79 (1994) (holding that a prior decision interpreting the Fourth Amendment, *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), applied to cases pending on direct appeal at the time *McLaughlin* was decided under the Court's retroactivity doctrine set forth in *Griffith v. Kentucky*, 479 U.S. 314 (1987)); *Los Angeles v. Lyons*, 461 U.S. 95, 95-96 (1983) (holding that there was no Article III "case or controversy" where a plaintiff in a Fourth Amendment civil rights action sought an injunction against chokeholds by municipal police officers when there was no proof such chokeholds would occur in the future).

12. *See, e.g.*, Eric J. Segall, *Justice O'Connor and the Rule of Law*, 17 U. FLA. J.L. & PUB. POL'Y 107, 108 (2006).

Moreover, by the time she became a Justice, the Court's modern Fourth Amendment jurisprudence had matured from its exuberant infancy in the 1960s (when the Court first applied the Fourth Amendment in a broad manner)¹³ and its more muted adolescence in the 1970s (when the Court began to retrench and limited the Fourth Amendment's reach).¹⁴ By the 1980s, the Court was applying the amendment in a world of growing crime rates¹⁵ and an escalating "war on drugs."¹⁶ Finally, by the 1980s, the Court increasingly grappled with the amendment's application to modern technology¹⁷ and, in a series of cases, decided that some violations of the Fourth Amendment did not warrant a judicial remedy.¹⁸ For all these reasons, this Article analyzes cases from 1982 through 2015.

This Article analyzes the current eight Justices' votes,¹⁹ as well as the votes

13. See, e.g., *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (applying the Fourth Amendment, including its exclusionary rule, in state as well as federal criminal prosecutions); *Katz v. United States*, 389 U.S. 347, 359 (1967) (holding that the Fourth Amendment protects people's reasonable expectations of privacy, thereby significantly extending the scope of the Fourth Amendment's protections from property interests to privacy interests).

14. See, e.g., *Stone v. Powell*, 428 U.S. 465, 482 (1976) (refusing to allow state prisoners to raise Fourth Amendment claims on federal habeas corpus review when they had an opportunity for "full and fair litigation" in state court); *United States v. Matlock*, 415 U.S. 164, 171 (1974) (applying the "third party consent" doctrine as an exception to the Fourth Amendment's warrant and probable cause requirements).

15. The overall crime rate in the United States rose dramatically in the 1960s and 1970s, initially peaking in 1980. The rate then declined slightly but peaked again in 1991. It has steadily declined since then but still remains high compared to the crime rates in the early and middle decades of the 1900s. See U.S. DEP'T OF JUSTICE, CRIME AND JUSTICE ATLAS 2000 36-37 (2000), http://www.jrsa.org/projects/Crime_Atlas_2000.pdf (showing the crime rate from 1933-1998 based on the FBI's Uniform Crime Reports). See also FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2014, tbl.1, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-1> (showing declining crime rates from 1996 through 2014). In a Fourth Amendment case decided in the mid-1980s, three Justices in dissent contended that the Court was abandoning its traditional role of deciding only cases raising important Fourth Amendment questions with national implications because of concerns about the high crime rate. See *Florida v. Meyers*, 466 U.S. 380, 385 (1984) (per curiam) (Stevens, J., dissenting) (contending that the majority opinion, which addressed a case-specific Fourth Amendment error, "may be regarded as a welcome step forward in the never-ending war against crime").

16. The so-called "war on drugs" began in the 1970s and expanded significantly in the ensuing three decades. See, e.g., Paul Finkelman, *The Second Casualty of War: Civil Liberties and the War on Drugs*, 66 S. CAL. L. REV. 1389, 1396 (1993). In the mid-1980s, in a Fourth Amendment case, two dissenting Justices accused the majority of being "transfixed by the specter of a drug courier escaping the punishment that is his due." *Florida v. Rodriguez*, 469 U.S. 1, 7 (1984) (per curiam) (Stevens, J., dissenting).

17. See, e.g., *Florida v. Riley*, 488 U.S. 445, 452 (1989) (deciding whether a police helicopter's flying over a residential home, which enabled officers to see within the defendant's fenced-in backyard, was an unconstitutional "search" when it occurred without a search warrant).

18. See, e.g., *United States v. Leon*, 468 U.S. 897, 925 (1984) (creating the "good-faith exception" to the Fourth Amendment's exclusionary rule).

19. The current eight Justices are Chief Justice Roberts and Associate Justices Kennedy,

of former Chief Justices Burger and Rehnquist and former Associate Justices Brennan, White, Marshall, Blackmun, Powell, Stevens, O'Connor, Scalia, and Souter in the cases decided between 1982 and 2015. Per curiam decisions of the Court addressing Fourth Amendment issues were excluded from this Article's primary analyses because they typically address "well settled" issues in which the lower court simply misapplied existing Supreme Court precedent.²⁰ The primary analyses in this Article are concerned with the Justices' voting patterns concerning Fourth Amendment issues of first impression or cases in which existing Fourth Amendment precedent was overruled or modified—in order to provide insight into the Justices' ideological viewpoints in Fourth Amendment cases. This Article contains a separate, brief analysis of the Court's twenty-five per curiam decisions addressing Fourth Amendment issues rendered between 1982 and 2015 (listed in Appendix B). Opinions issued by one or more Justices concerning the denial of certiorari or concurring in or dissenting from the denial of certiorari²¹ were not included in any of the analyses in this Article because such opinions were not issued in connection with decisions on the merits by the full Court.

Various types of analysis are offered. The most general analysis simply tallies the Justices' votes "for" or "against" litigants who contended that their Fourth Amendment rights were violated and that they were entitled to a corresponding remedy (henceforth referred to as "Fourth Amendment litigants" or FALs). The Justices' voting patterns in Fourth Amendment cases are also compared to their ideological voting patterns generally. More specific analyses include tallies of Justices' votes in criminal cases raising Fourth Amendment issues (almost always involving a criminal defendant's "motion to suppress" evidence) and in civil cases raising Fourth Amendment issues (almost always related to civil rights litigation in which plaintiffs sought money damages or injunctions). Finally, this Article analyzes voting patterns based on whether the Fourth Amendment issue before the Court was "substantive" or "remedial" in nature.²²

Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan.

20. *Presley v. Georgia*, 558 U.S. 209, 213 (2010) (per curiam); *see also Maryland v. Dyson*, 527 U.S. 465, 467 n.* (1999) (per curiam) ("[A] summary reversal [in a per curiam decision] does not decide any new or unanswered question of law, but simply corrects a lower court's demonstrably erroneous application of federal law.").

21. *See, e.g., Huber v. N.J. Dep't of Env'tl. Prot.*, 562 U.S. 1302, 1302 (2011) (Alito, J., respecting the denial of certiorari) (addressing a Fourth Amendment issue); *Overton v. Ohio*, 534 U.S. 982 (2001) (Breyer, J., respecting the denial of certiorari) (addressing a Fourth Amendment issue).

22. "Substantive" Fourth Amendment issues concern whether governmental officials violated the Fourth Amendment's guarantees against unreasonable searches and seizures. Regardless of whether a substantive Fourth Amendment issue is raised in the posture of a civil case or a criminal case, the Fourth Amendment generally applies in the same manner regarding substantive issues. "Remedial" Fourth Amendment issues concern whether a remedy should be granted as a judicial response to an alleged Fourth Amendment violation. In a criminal case, the remedial issue is almost always whether evidence obtained in violation of the Fourth

Although this Article's analysis of the Justices' voting patterns in the vast majority of the 148 cases is straightforward, the analysis is limited in certain respects regarding a small minority of the cases. First, in some cases, one or more Justice may have voted in favor of a specific Fourth Amendment rule that provides protections to property or privacy interests for large segments of society but, when applied to the particular litigant before the Court, resulted in a judgment against the litigant.²³ Similarly, one or more Justice may have voted in favor of a FAL on "substantive" grounds (finding a violation of the Fourth Amendment) but then ultimately voted against the litigant on "remedial" grounds (e.g., by applying the qualified immunity doctrine).²⁴ Because the Justices who voted in the foregoing two manners did not ultimately rule in favor of the particular FALs before the Court (in terms of the Court's judgment), this Article's analysis of the Justices' overall voting patterns deems the Justices' votes in such cases as "against" the FALs, even though their opinions could be viewed as favorable to many potential FALs in future cases.

Second, in other cases, the Justices may have decided two distinct Fourth Amendment issues related to the same event and ruled against a FAL on one issue but ruled in favor of the litigant on the other issue (in a manner that afforded the litigant the complete relief that he requested).²⁵ Such votes are deemed to have ruled "for" the FAL even though a portion of Justices' decision was adverse to the litigant. Third, in some cases, one or more Justice advocated for a Fourth Amendment rule more favorable to the FAL than the one applied by the lower court and voted to remand for the lower court to apply the new rule.²⁶ With a single exception,²⁷ this Article deems such a vote by a Justice as having ruled

Amendment should be "suppressed" under the Fourth Amendment's "exclusionary rule." In a civil case, the remedial issue is whether money damages or an injunction should be granted in response to a Fourth Amendment violation. The difference between "substantive" and "remedial" rulings is further discussed in Part II.C., *infra*.

23. *See, e.g.*, *Richards v. Wisconsin*, 520 U.S. 385, 395 (1997) (concluding as a general matter that, under the Fourth Amendment, the mere fact that police officers enter the residence of a suspected drug dealer to execute a warrant does not by itself allow officers to disregard the Fourth Amendment's "knock and announce" rule; further concluding, however, that, based on the particular facts in the case before the Court, the officers' "no-knock entry" did not violate the particular defendant's Fourth Amendment rights).

24. *See, e.g.*, *Wilson v. Layne*, 526 U.S. 603, 605-06 (1999) (finding a Fourth Amendment violation occurred but applying the qualified immunity doctrine and holding that money damages were not a proper remedy because the Fourth Amendment law was not "clearly established" at the time of the constitutional violation).

25. *See, e.g.*, *United States v. Place*, 462 U.S. 696, 707, 710 (1983) (a majority of the Court concluded that no "search" of the defendant's property occurred, yet all the Justices concluded that an unconstitutional "seizure" occurred, which resulted in the suppression of the evidence).

26. *See, e.g.*, *Wilson v. Arkansas*, 514 U.S. 927, 937 (1995).

27. The sole exception is *Murray v. United States*, 487 U.S. 533 (1988), a case in which only seven Justices participated (Rehnquist, White, Marshall, Blackmun, Stevens, O'Connor, and Scalia). The majority (Scalia, J., joined by Rehnquist, C.J., White & Blackmun, JJ.) ruled partially in favor of the Fourth Amendment litigants by announcing a Fourth Amendment rule

“for” the FAL even though the rule was not actually applied in the litigant’s favor in the Supreme Court itself.

Although this Article’s analyses of votes “for” or “against” FALs have these limitations, such limitations were not present in the vast majority of the 148 cases analyzed. Finally, this Article’s analyses of two of the nineteen Justices—Sotomayor and Kagan—are based on a relatively small number of Fourth Amendment cases. The analyses of those two Justices’ votes should be viewed with caution for that reason.

II. BRIEF OVERVIEW OF THE COURT’S FOURTH AMENDMENT JURISPRUDENCE

The Supreme Court’s Fourth Amendment jurisprudence is complex and will only be briefly summarized here. Because the sparsely worded amendment contains several undefined yet key concepts—among them, “searches,” “seizures,” “unreasonable[ness],” and “probable cause”—the Court has been required to interpret the amendment in myriad factual contexts to provide them meaning. In addition, because the amendment is silent about the consequences of its violation by government officials, the Court has had to decide what, if any, remedies exist for violations. As a result, a great deal of latitude in interpreting the amendment exists, which (as reflected in the analyses in Part III below) has given rise to frequent disputes among the Justices based on disparate value judgments. At bottom, the Fourth Amendment is a constitutional check on governmental power, requiring the Court to weigh the relative importance of individual liberty in a complex society plagued by crime and other social ills against the need for governmental intervention that infringes that liberty.²⁸

A. Unreasonable “Searches” and “Seizures” of People and Property

The Fourth Amendment protects against both unreasonable “searches” and unreasonable “seizures.” Whether a search or seizure was unreasonable turns on various factors, including not only whether it occurred pursuant to a warrant²⁹

more favorable to the litigants than the rule followed by the lower courts, vacated the judgment, and remanded for the lower courts to apply the new rule. *Id.* at 543-44. The dissent (Marshall, J., joined by Stevens & O’Connor, JJ.) contended that the majority’s Fourth Amendment rule “emasculate[d]” the Fourth Amendment’s warrant clause and further contended that the Court should hold that the evidence in question should be suppressed. *Id.* at 544, 551. In view of the particular legal issue in that case, and the division of the Justices (with the dissent contending that suppression should occur while the majority simply vacating and remanding the case), the majority opinion is treated as ruling on balance “against” the Fourth Amendment litigants and the dissenting opinion “for” them.

28. See, e.g., Morgan Cloud, *The Fourth Amendment During the Lochner Era: Privacy, Property, and Liberty in Constitutional Theory*, 48 STAN. L. REV. 555, 618-19 (1996).

29. Compare, e.g., *Payton v. New York*, 445 U.S. 573, 602-03 (1980) (concluding that ordinarily a warrant is required for a search or arrest inside a person’s home to be reasonable),

but also whether some important governmental interest justified it even when there was no warrant.³⁰ Ordinarily, “probable cause” is required for a search or seizure to be reasonable,³¹ although in some situations the Court has approved searches and seizures based on a lower standard of “reasonable suspicion”³² or, in limited situations, no level of suspicion.³³

Although the Fourth Amendment protects both privacy interests and property interests,³⁴ the amendment’s degree of protection of privacy and property is somewhat limited. With respect to searches that violate a person’s privacy interests, the Fourth Amendment protects only people’s “reasonable expectation[s] of privacy”³⁵ and only in certain contexts (such as their bodies, the words they speak or write in certain contexts, and their homes and the specific types of property mentioned in the Fourth Amendment).³⁶ A “search” that violates a person’s privacy interests typically involves a police officer’s use of one or more of the physical senses³⁷ (including the use of sense-enhancing technology)³⁸ that reveals information that the person reasonably expects to

with *United States v. Watson*, 423 U.S. 411, 433 (1976) (concluding that a warrantless arrest of a person in a “public” area is reasonable if it is based on probable cause).

30. *See, e.g., New Jersey v. T.L.O.*, 469 U.S. 325, 326 (1985) (concluding that warrantless searches of K-12 public school students based on reasonable suspicion of criminal activity or violation of school policies against contraband are “reasonable” because of public schools’ strong interest in protecting minor students).

31. *See, e.g., Maryland v. Pringle*, 540 U.S. 366, 369-70 (2003) (discussing the “probable cause” standard).

32. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 30-31 (1968) (permitting an investigatory detention—commonly called a “stop and frisk”—based on reasonable suspicion rather than probable cause); *see also United States v. Arvizu*, 534 U.S. 266 (2002) (discussing the “reasonable suspicion” standard).

33. *See, e.g., United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985) (permitting warrantless, suspicionless searches of persons coming into the United States at international borders, so long as such searches are “routine” in nature).

34. *See, e.g., Katz v. United States*, 389 U.S. 347, 359 (1967) (without a warrant, police officers eavesdropped on defendant’s telephone conversation, which the Court concluded was an unreasonable search); *Florida v. Jardines*, 133 S. Ct. 1409, 1417-18 (2013) (without a warrant, police officers trespassed on the curtilage of a person’s home using a drug dog to determine whether marijuana was being grown inside the home, which the Court deemed an unreasonable search in view of the defendant’s property interests).

35. *See, e.g., United States v. Jones*, 132 S. Ct. 945, 950 (2012) (quoting *Katz*, 389 U.S. at 360 (Harlan, J., concurring)).

36. *See, e.g., Hughes v. Virginia*, 524 S.E.2d 155, 159 (Va. Ct. App. 2000) (“Under the Fourth Amendment, a search is an invasion into a space or area where a person has a reasonable expectation of privacy in the ‘person,’ or the person’s ‘houses,’ ‘papers,’ or ‘effects.’”).

37. *See, e.g., Arizona v. Hicks*, 480 U.S. 321, 328 (1987) (holding that a police officer’s moving a stereo component a few inches away from the wall in order to see its serial number was a “search”); *Bond v. United States*, 529 U.S. 334, 338-39 (2000) (holding a police officer’s physical manipulation of luggage was a “search”); *Katz*, 389 U.S. at 358-59 (holding that a police officer’s eavesdropping on a phone conversation in a closed telephone booth was a “search”).

38. *See, e.g., Kyllo v. United States*, 533 U.S. 27, 30 (2001) (police officers used a thermal imaging device to detect heat emanating from within a house and used such information,

remain private. With respect to a “search” that violates a person’s property interests, the Fourth Amendment prohibits some—but not all³⁹—physical “trespasses” by police officers against personal or real property,⁴⁰ *regardless* of whether a “reasonable expectation of privacy” exists in the property that is trespassed upon or in the information that is obtained through the trespass.⁴¹

An unreasonable “seizure” of a person’s property is generally one without a search warrant that meaningfully interferes with the person’s property rights and in the absence of a sufficiently countervailing government interest justifying a warrantless seizure.⁴² An unreasonable “seizure” of a person’s body involves a warrantless detention or arrest of the person—whereby the person is not “free to leave” or free to “terminate the encounter” with a law enforcement officer—when the officer lacks probable cause or reasonable suspicion.⁴³

B. Warrants

The mere fact that a search or seizure occurs without a warrant issued by a judge does not make it “unreasonable.”⁴⁴ Indeed, in the vast majority of situations, a search warrant or an arrest warrant is *not* required for a search or seizure to be “reasonable.”⁴⁵ The one context in which a search or arrest warrant

along with other information, to establish probable cause that the defendant was illegally growing marijuana within his house); *see also id.* at 40 (“Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a ‘search’ and is presumptively unreasonable without a warrant.”).

39. The property interests protected by the amendment only include those types listed in the amendment: “houses, papers, and effects.” U.S. CONST. amend. IV. An original draft of the Fourth Amendment penned by James Madison had proposed extending the amendment’s protections to “other property,” yet that additional phrase was stricken from the final version adopted in 1791. *See* *Oliver v. United States*, 466 U.S. 170, 176-77 (1984).

40. *See* *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013) (“When the Government obtains information by physically intruding on persons, houses, papers, or effects, a ‘search’ within the original meaning of the Fourth Amendment has undoubtedly occurred.”) (citation and internal quotation marks omitted); *Jones*, 132 S. Ct. at 950 (“[F]or most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas (‘persons, houses, papers, and effects’) it enumerates.”).

41. *E.g.*, *Jones*, 132 S. Ct. at 950-52 (rejecting the argument that, when a police officer trespasses upon a type of property protected by the Fourth Amendment, a defendant also must show that he or she had a “reasonable expectation of privacy” in the item or area in order to claim a Fourth Amendment violation); *accord* *Alderman v. United States*, 394 U.S. 165, 179-80 (1969) (finding that a homeowner’s Fourth Amendment right to be free of an unreasonable search was violated when police officers engaged in warrantless eavesdropping of a conversation between two other persons who were inside the home).

42. *See, e.g.*, *Soldal v. Cook County*, 506 U.S. 56, 68 (1992).

43. *See, e.g.*, *Florida v. Bostick*, 501 U.S. 429, 436-37 (1991).

44. *See, e.g.*, *Grady v. North Carolina*, 135 S. Ct. 1368, 1370-71 (2015) (*per curiam*) (finding a warrantless “search” occurred through use of GPS monitoring but remanding for a determination of whether the search was “unreasonable”).

45. *See* Brent E. Newton, *The Real-World Fourth Amendment*, 43 HASTINGS CONST.

is generally required is when a police officer enters a person's home (or an equivalent place like a hotel room) in order to arrest the person or engage in a search of the home or its curtilage.⁴⁶ With respect to warrantless seizures of persons, the Supreme Court has held that an arrest warrant is not required for otherwise reasonable seizures (including arrests) that occur in "public" (meaning anywhere outside of the home).⁴⁷ With respect to warrantless searches, which in theory are "presumptively unreasonable" inside or outside the home,⁴⁸ the Supreme Court has rendered dozens of decisions creating "exceptions" to the general requirement of a search warrant, particularly when the search occurred outside of the home. Some Justices over the years have complained that the Court has created so many exceptions that there is no longer a meaningful "rule" against warrantless searches.⁴⁹

C. "Substantive" Versus "Remedial" Issues in Criminal and Civil Cases

The Supreme Court has distinguished between Fourth Amendment rights and Fourth Amendment remedies. A "right" means a person has a valid privacy or property interest in the thing searched or seized, while a "remedy" is a judicial consequence of a violation of a Fourth Amendment right.⁵⁰ Interpreting whether a person's rights under the Fourth Amendment have been violated is a "substantive" issue, while deciding whether a violation of the right requires some judicial remedy is a "remedial" issue.⁵¹

1. Criminal Cases

In a criminal prosecution of a person whose Fourth Amendment rights were violated, the normal remedy is to prevent introduction of evidence unconstitutionally searched or seized at the criminal trial. The Supreme Court

L.Q. 759, 766 (2016).

46. See *Payton v. New York*, 445 U.S. 573, 602 (1980).

47. *United States v. Watson*, 423 U.S. 411, 432 (1976). See also *United States v. Hensley*, 469 U.S. 221, 227-29 (1985) (permitting public warrantless arrest for past as well as present felonies and also for misdemeanors committed in an officer's presence); *United States v. Santana*, 427 U.S. 38, 42 (1976) (concluding that the defendant, who opened her door and appeared at the threshold, was in "public" and thus could be lawfully arrested without an arrest warrant because the officers had probable cause that she had committed a crime).

48. *Horton v. California*, 496 U.S. 128, 133, 133 n.4 (1990).

49. See, e.g., *Florida v. White*, 526 U.S. 559, 569 (1999) (Stevens, J., dissenting, joined by Ginsburg, J.) (contending that "the exceptions have all but swallowed the general rule").

50. See *United States v. Calandra*, 414 U.S. 338, 347-48 (1974) (discussing the difference between "rights" and "remedies" under the Fourth Amendment).

51. See Sam Kamin & Justin Marceau, *Double Reasonableness and the Fourth Amendment*, 68 U. MIAMI L. REV. 589, 618-19 (2014) (discussing "substantive" and "remedial" Fourth Amendment law as it relates to "rights" and "remedies"). As the authors note, the Supreme Court's jurisprudence often has "conflated" Fourth Amendment rights and remedies. See *id.* at 619-22.

has referred to this remedy as the Fourth Amendment “exclusionary rule.”⁵² In the language of the Court, the remedy excludes (or “suppresses”) the tainted “fruit of the poisonous tree”—that is, the incriminating evidence obtained as the result of a police officer’s unconstitutional search or seizure.⁵³ A criminal defendant who raises a Fourth Amendment claim does so in a “motion to suppress” the “tainted” evidence.⁵⁴ Most types of evidence obtained by law enforcement officers as a result of an unconstitutional search or seizure may be “suppressed.”⁵⁵

2. Civil Cases

A civil remedy also may exist for a person who was subjected to an unconstitutional search or seizure, regardless of whether the person was ever criminally prosecuted. In particular, in a civil rights lawsuit, the aggrieved person (here called a civil “plaintiff” rather than a criminal “defendant”) may have the ability to sue the government official (the civil “defendant”) who violated the person’s Fourth Amendment rights.⁵⁶ Persons whose Fourth Amendment rights were violated may not only attempt to recover money damages for *past* violations but also in some cases can seek an injunction to prevent *future* violations (that is, a court order requiring a government official to stop engaging in the conduct violating the Fourth Amendment).⁵⁷

3. Limits on Fourth Amendment Remedies in Criminal and Civil Cases

The Supreme Court has placed numerous limitations on both the Fourth Amendment exclusionary rule in criminal prosecutions and the ability of a civil plaintiff to recover money damages.⁵⁸ In other words, merely proving that the

52. See, e.g., *Mapp v. Ohio*, 367 U.S. 643, 651 (1961) (referring to the suppression of evidence tainted by an unconstitutional search or seizure as the “exclusionary rule”).

53. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). See also *Oregon v. Elstad*, 470 U.S. 298, 303 (1985).

54. See, e.g., *Michigan v. Fisher*, 558 U.S. 45, 46 (2009) (per curiam).

55. See, e.g., *Payton v. New York*, 445 U.S. 573, 602-03 (1980) (ordering suppression of evidence of murder weapon after officers entered defendant’s home without a warrant and observed murder weapon in plain view and seized it).

56. The primary vehicles for such civil rights lawsuits are 42 U.S.C. § 1983 (concerning when a state or local official violates the Fourth Amendment) and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (concerning when a federal official violates the Fourth Amendment).

57. Both 42 U.S.C. § 1983 and *Bivens* authorize lawsuits for injunctions as well as money damages. See, e.g., *Platte v. Thomas Township*, 504 F. Supp. 2d 227, 246-47 (E.D. Mich. 2007) (granting an injunction against state officials who violated the Fourth Amendment in a section 1983 lawsuit); *Ill. Migrant Council v. Pilliod*, 398 F. Supp. 882, 900-01 (N.D. Ill. 1975) (granting injunction against federal officials who violated the Fourth Amendment in a *Bivens* lawsuit).

58. See, e.g., *Anderson v. Creighton*, 483 U.S. 635, 646 (1987) (applying the “qualified

Fourth Amendment was violated does not automatically entitle an aggrieved person to a judicial remedy.

Regarding remedies in criminal cases, the Court has held that, when a law enforcement officer violates the Fourth Amendment but does so by acting in “good faith” based on some external factor, the “tainted” evidence resulting from the unconstitutional search or seizure should not be suppressed because the officer did not act unreasonably.⁵⁹ The Court has reasoned that the social costs of suppression in such a case outweigh the benefits of the Fourth Amendment’s exclusionary rule (the rationale for which is to deter police officers from violating the Fourth Amendment).⁶⁰

Regarding the remedy of money damages in a civil rights case, the Supreme Court has created a remedial hurdle known as “qualified immunity.” Qualified immunity is a shield that an officer or other governmental official may invoke as a defense to having to pay money damages for violating a person’s constitutional rights, including the Fourth Amendment right to be free of an unreasonable search or seizure. An officer may invoke qualified immunity if, at the time of the constitutional violation, the governing legal principle was not “clearly established” in binding appellate court decisions.⁶¹ The relevant legal principle does not refer broadly to the Fourth Amendment’s general protection against “unreasonable” searches and seizures; rather the relevant legal principle must be a *specific application* of the Fourth Amendment in a prior case by an appellate court in the jurisdiction in question.⁶² If, according to an “objective” standard, it was reasonably “debatable” or “arguable” that the officer acted in conformity with the Fourth Amendment based on existing case law at the time of the challenged search or seizure, a police officer is entitled to qualified immunity even if a court later determines that the officer in fact had violated the Fourth

immunity” doctrine in a civil rights case to prevent the recovery of money damages for a Fourth Amendment violation); *United States v. Leon*, 468 U.S. 897, 924-25 (1984) (applying the “good-faith exception” to the Fourth Amendment exclusionary rule in a criminal case to prevent suppression of illegally seized evidence).

59. *See, e.g., Davis v. United States*, 131 S. Ct. 2419, 2434 (2011) (applying the good-faith exception where police officers engaged in warrantless search in accordance with then binding appellate case law that authorized a particular type of search and was overruled only after the search); *Illinois v. Krull*, 480 U.S. 340, 360-61 (1987) (applying the good-faith exception in case of a police officer who relied on a statute that authorized a warrantless search; only after the warrantless search was the statute declared to violate the Fourth Amendment).

60. *See Herring v. United States*, 555 U.S. 135, 137-41 (2009).

61. *Anderson*, 483 U.S. at 640-45.

62. *See id. See also Golodner v. Berliner*, 770 F.3d 196, 205-06 (2d Cir. 2014) (“Few issues related to qualified immunity have caused more ink to be spilled than whether a particular right has been clearly established, mainly because courts must calibrate, on a case-by-case basis, how generally or specifically to define the right at issue. In a sense, we must apply the Goldilocks principle. If the right is defined too narrowly based on the exact factual scenario presented, government actors will invariably receive qualified immunity. If, on the other hand, the right is defined too broadly, the entire second prong of qualified immunity analysis will be subsumed by the first and immunity will be available rarely, if ever.”) (citations omitted).

Amendment.⁶³

III. RESULTS OF EMPIRICAL ANALYSES OF FOURTH AMENDMENT CASES

A. Overall Results

Considering the judgments of the Court in the 148 plenary-decision cases in which a majority of the Justices ruled on the merits of a Fourth Amendment claim—addressing either a substantive issue or a remedial issue, or both—the Court ruled in favor of FALs in thirty-six cases (24.3%) and ruled against them in 112 cases (75.7%). Of the 148 cases, the Court reversed the judgment of the lower court in the vast majority of cases (105, or 70.9%).

The following analysis considers the votes of individual Justices (ranked in order of their dates of appointment to the Court and noting the years in which they participated during the 1982-2015 time period):

1. Brennan (1982-1990): voted for FALs in 59 cases; voted against FALs in 8 cases = 88.1% of votes in favor of FALs
2. White (1982-1993): voted for FALs in 20 cases; voted against FALs in 55 cases = 26.7% of votes in favor of FALs
3. Marshall (1982-1991): voted for FALs in 65 cases; voted against FALs in 9 cases = 87.8% of votes in favor of FALs
4. Burger (1982-1987): voted for FALs in 4 cases; voted against FALs in 37 cases = 9.8% of votes in favor of FALs
5. Blackmun (1982-1995): voted for FALs in 24 cases; voted against FALs in 54 cases = 30.8% of votes in favor of FALs
6. Rehnquist (1982-2005): voted for FALs in 11 cases; voted against FALs in 102 cases = 9.7% of votes in favor of FALs
7. Powell (1982-1986): voted for FALs in 9 cases; voted against FALs in 41 cases = 18.0% of votes in favor of FALs
8. Stevens (1982-2010): voted for FALs in 78 cases; voted against FALs in 49 cases = 61.4% of votes in favor of FALs
9. O'Connor (1982-2006): voted for FALs in 24 cases; voted against FALs in 90 cases = 21.1% of votes in favor of FALs
10. Scalia (1986-2015): voted for FALs in 25 cases; voted against FALs in 80 cases = 23.8% of votes in favor of FALs
11. Kennedy (1987-2015): voted for FALs in 21 cases; voted against FALs in 75 cases = 21.9% of votes in favor of FALs

63. See, e.g., *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074, 2083 (2011) (“We do not require a case directly on point, but existing precedent must have placed the constitutional question beyond debate.”).

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12. Souter (1982-2015): voted for FALs in 29 cases; voted against FALs in 29 cases = 50.0% of votes in favor of FALs
13. Thomas (1991-2015): voted for FALs in 12 cases; voted against FALs in 62 cases = 16.2% of votes in favor of FALs
14. Ginsburg (1993-2015): voted for FALs in 42 cases; voted against FALs in 29 cases = 59.2% of votes in favor of FALs
15. Breyer (1995-2015): voted for FALs in 24 cases; voted against FALs in 46 cases = 34.3% of votes in favor of FALs
16. Roberts (2005-2015): voted for FALs in 5 cases; voted against FALs in 28 cases = 15.2% of votes in favor of FALs
17. Alito (2006-2015): voted for FALs in 3 cases; voted against FALs in 28 cases = 9.7% of votes in favor of FALs
18. Sotomayor (2009-2015): voted for FALs in 13 cases; voted against FALs in 7 cases = 65.0% of votes in favor of FALs
19. Kagan (2010-2015): voted for FALs in 12 cases; voted against FALs in 5 cases = 70.6% of votes in favor of FALs

Ranked according to their rates of voting in favor of FALs, the Justices' rankings are as follows:

- | | |
|----------------------|----------------------------|
| 1. Brennan (88.1%) | 11. Scalia (23.8%) |
| 2. Marshall (87.8%) | 12. Kennedy (21.9%) |
| 3. Kagan (70.6%) | 13. O'Connor (21.1%) |
| 4. Sotomayor (65.0%) | 14. Powell (18.0%) |
| 5. Stevens (61.4%) | 15. Thomas (16.2%) |
| 6. Ginsburg (59.2%) | 16. Roberts (15.2%) |
| 7. Souter (50.0%) | 17. Burger (9.8%) |
| 8. Breyer (34.3%) | 18. Rehnquist (9.7%) (tie) |
| 9. Blackmun (30.8%) | 19. Alito (9.7%) (tie) |
| 10. White (26.7%) | |

Excluding from the analysis the forty cases (27.0% of all Fourth Amendment cases) in which the participating Justices voted *unanimously* in favor or against FALs concerning substantive or remedial issues⁶⁴—on the assumption that unanimous-vote cases are generally uncontroversial and more likely to be preordained based on existing precedent—the percentage of cases in which the

64. The rate of Justices' unanimity in Fourth Amendment cases (27.0%) is noticeably lower than the modern Court's overall rate of unanimity (over 40% in recent years). See Kedar S. Bhatia, *Stat Pack for October Term 2014*, SCOTUSBLOG 1, 19-20 (June 30, 2015), http://sblog.s3.amazonaws.com/wp-content/uploads/2015/07/SB_Stat_Pack_OT14.pdf (noting that 40% of cases in October Term (OT) 2014 had no dissenting opinions); *id.* at 5 (noting that 66% of cases in OT 2013 had no dissents and that, on average, from OT 2008 through OT 2012, there were no dissents in 44% of cases).

Court ruled in favor of FALs decreased to 21.3% (twenty-three of 108 cases). Excluding unanimous-decision cases, the nineteen Justices' individual voting records are as follows:

- | | |
|-------------------------------|-------------------------------|
| 1. Brennan (100.0% for FALs) | 11. Scalia (19.7% for FALs) |
| 2. Marshall (98.3% for FALs) | 12. Kennedy (16.7% for FALs) |
| 3. Sotomayor (84.6% for FALs) | 13. O'Connor (16.1% for FALs) |
| 4. Ginsburg (78.3% for FALs) | 14. Powell (15.0% for FALs) |
| 5. Kagan (76.9% for FALs) | 15. Thomas (10.0% for FALs) |
| 6. Stevens (71.8% for FALs) | (tie) |
| 7. Souter (61.0% for FALs) | 16. Roberts (10.0% for FALs) |
| 8. Breyer (40.4% for FALs) | (tie) |
| 9. Blackmun (27.0% for FALs) | 17. Burger (3.3% for FALs) |
| 10. White (21.7% for FALs) | 18. Rehnquist (1.2% for FALs) |
| | 19. Alito (0.0% for FALs) |

For most Justices, when unanimous-vote cases are excluded, their proclivities for voting in favor of or against FALs are enhanced—some substantially. Contrast Justices Brennan and Marshall (at 100.0% and 98.3%, respectively, for FALs) with Chief Justice Rehnquist and Justice Alito (at 1.2% and 0.0%, respectively, for FALs).

The Justice whose voting pattern most resembles the Court's overall voting pattern in Fourth Amendment cases since 1982 is Justice Scalia. His voting record in favor of FALs (23.8%) is very close to the full Court's record in favor of FALs (24.3%). Excluding unanimous-decision cases, his voting record (19.7%) likewise is very close to the Court's record in such cases (21.3%).

B. Lack of Traditional Ideological Voting Blocs in Fourth Amendment Cases

Political scientists who study voting behaviors of the Justices have assigned "liberal" and "conservative" ideological labels⁶⁵ to the Justices based on what are known as Martin-Quinn scores, which are named after the two political scientists who developed the scoring method, Andrew D. Martin and Kevin M.

65. See, e.g., Lee Epstein et al., *Ideological Drift Among Supreme Court Justices: Who, When, and How Important*, 101 NW. U. L. REV. 1483, 1491 n.39 (2007) ("Conservative votes are those against defendants in criminal cases; women and minorities in civil rights cases; individuals (against the government) in First Amendment, privacy, and due process cases; unions (over individuals) and individuals (over business) in labor cases; and the government (over businesses) in economic regulation litigation. Liberal decisions are the reverse."); Jeffrey A. Segal & Albert D. Cover, *Ideological Values and the Votes of U.S. Supreme Court Justices*, 83 AM. POL. SCI. REV. 557, 559 (1989) ("Liberal [positions] include . . . those ascribing support for the rights of defendants in criminal cases, women and racial minorities in equality cases, and the individual against the government in privacy and First Amendment cases.").

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Quinn.⁶⁶ Martin-Quinn scores are based on the Justices' votes in all types of Supreme Court cases (excluding unanimous-decision cases) and employ a complex mathematical formula to assign an ideological score (with increasing positive scores above zero representing a more conservative ideology and decreasing scores below zero representing a more liberal ideology).⁶⁷

Based on the average Martin-Quinn scores of the nineteen Justices studied in this Article during their tenures on the Court (through the end of October Term 2014), the Justices' ideological rankings are as follows (from most conservative to most liberal based on their Martin-Quinn scores):

Thomas [3.47]	Roberts [1.30]
Rehnquist [2.84]	O'Connor [0.88]
Scalia [2.45]	Kennedy [0.68]
Alito [1.88]	Powell [0.93]
Burger [1.85]	White [0.44]

--- Conservative-Liberal Dividing Line ---

Blackmun [-0.12 lifetime; -0.93]	Kagan [-1.66]
	Stevens [-1.72]

66. See Ward Farnsworth, *The Use and Limits of Martin-Quinn Scores to Assess Supreme Court Justices, with Special Attention to the Problem of Ideological Drift*, 101 NW. U. L. REV. 1891, 1892-96 (2007) (explaining Martin-Quinn scores).

67. A relatively succinct explanation of Martin-Quinn scores is as follows:

Unlike other measures of judicial ideology, the "Martin-Quinn" scores are derived by actually looking at the votes of the justices over time. Martin and Quinn estimated scores for every justice serving from the 1937 term to the 2005 term using a dynamic item response theory model. The model takes into account not just case outcomes, but also voting patterns in each term.

Martin and Quinn designate ideal points, or an estimate of latent preferences, of each Supreme Court justice by modeling every imaginable combination of the justices' preferences that could explain the pattern of cases over their study period of time. Martin and Quinn also leverage voting coalitions to make inferences about the relative placement of justices. For example, a justice who is often a lone dissenter in conservative cases will be ranked as more liberal than a colleague in the minority of a 7-2 conservative decision.

This measure allows for standardized comparisons over time, using the manifold crossovers between justices' tenures to compare justices who were never on the Court together. Thus the rank order measure simultaneously accounts for change over time and across justices for all years, and therefore renders the ideal points of the justices a standardized comparison of justices with one another over time. The dynamic nature of the Martin-Quinn scores, which allow individual justices' scores to change over time, makes this measure of ideology more realistic than other measures that hold justices' ideology constant. . . .

Generally, the Martin-Quinn scores are treated as scores of ideology because it has been shown that judicial decision-making in many areas of law can be predicted by how the judges vote in other areas.

between 1981 and 1994] ⁶⁸	Sotomayor [-1.93]
Souter [-0.93]	Brennan [-1.94]
Breyer [-1.27]	Marshall [-2.83] ⁶⁹
Ginsburg [-1.60]	

Looking at the most basic statistics—the Justices’ voting records “for” and “against” FALs—one might assume that the Justices’ votes in Fourth Amendment cases generally follow the same “conservative”/“liberal” divide that appears in many other area of the Court’s modern docket, such as abortion rights,⁷⁰ voting rights,⁷¹ and the death penalty.⁷² Indeed, most liberal Justices in the past four decades have voted in favor of FALs in the clear majority of cases, and all conservative Justices have voted against them in a clear majority of cases. However, taking a closer look at the individual Justices’ voting records in the 148 cases reveals that some Justices’ voting patterns in Fourth Amendment cases often do not follow the traditional ideological divide seen in several other types of cases. Although multiple conservative Justices joined the majority in every case ruling against FALs (112 cases, or 75.7% of all Fourth Amendment cases), one or more liberal Justices very often did so as well in those cases (ninety-nine of the 112 cases)—meaning one or more liberal Justices voted against FALs in

68. More so than any other Justice, Justice Blackmun’s overall ideology went from conservative to liberal during his twenty-five years on the Court. See LINDA GREENHOUSE, BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN’S SUPREME COURT JOURNEY 186 (2005). His Martin-Quinn score was 1.896 (solidly conservative) in his first year on the Court (October Term 1970). By October Term 1993, Blackmun’s last as a sitting Justice, his score was -1.863 (solidly liberal). His average Martin-Quinn score between October Term 1981 and his last term on the Court—the time period covered in the analyses in this Article—was -0.93.

69. See *Measures*, MARTIN-QUINN SCORES, <http://mqscores.berkeley.edu/measures.php> (data contained in “justices.xls” file) (last visited Jan. 6, 2017); Andrew D. Martin & Kevin M. Quinn, *Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999*, 10 POL. ANALYSIS 134 (2002).

70. See, e.g., *Gonzales v. Carhart*, 550 U.S. 124, 130 (2007) (5-4 division in case about abortion rights, with Justice Kennedy, Chief Justice Roberts, and Justices Scalia, Thomas, and Alito in the majority, and Justices Ginsburg, Stevens, Souter, and Breyer dissenting); *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 496 (1989) (5-4 division in case about abortion rights, with Chief Justice Rehnquist and Justices White, O’Connor, Scalia, and Kennedy in the majority, and Justices Blackmun, Brennan, Marshall, and Stevens dissenting).

71. See, e.g., *Shelby County v. Holder*, 133 S. Ct. 2612, 2617 (2013) (5-4 division in voting rights case, with Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito in the majority, and Justices Ginsburg, Breyer, Sotomayor, and Kagan dissenting); *Shaw v. Hunt*, 517 U.S. 899, 900 (1996) (5-4 division in case about voting rights, with Chief Justice Rehnquist, and Justices O’Connor, Scalia, Kennedy, and Thomas in the majority, and Justices Stevens, Ginsburg, Breyer, and Souter dissenting).

72. See, e.g., *Glossip v. Gross*, 135 S. Ct. 2726, 2730-31 (2015) (5-4 division in death penalty case, with Justice Alito, Chief Justice Roberts, and Justices Scalia, Kennedy, and Thomas in the majority, and Justices Breyer, Ginsburg, Sotomayor, and Kagan dissenting); *Tison v. Arizona*, 481 U.S. 137 (1987) (5-4 division in death penalty case, with Justice O’Connor, Chief Justice Rehnquist, and Justices White, Powell, and Scalia in the majority, and Justices Brennan, Marshall, Blackmun, and Stevens dissenting).

66.9% of all cases. Furthermore, one or more conservative Justices either dissented in a case ruling against a FAL (seventeen of the 112 cases) or joined the majority (comprising mostly liberal Justices) in all of the thirty-six cases ruling in favor of FALs—meaning one or more conservative Justices voted for FALs in 35.8% of all cases.

This lack of ideological cohesion is particularly evident if the 148 cases are divided into three categories: (1) unanimous-decision cases; (2) cases in which all conservative justices on the Court joined forces to vote against FALs while all of liberal justices joined forces to vote for FALs (“ideologically divided” 5-4 decisions); and (3) cases in which at least one conservative justice and at least one liberal justice joined together to vote for or against a FAL (“ideologically mixed” decisions). Of the 148 cases from 1982 to 2015, there were forty unanimous cases (27.0%), thirteen ideologically divided cases (8.8%), and ninety-five ideologically mixed cases (64.2%). Excluding unanimous-decision cases, eighty-eight percent of Fourth Amendment cases since 1982 have been ideologically mixed cases.

Analyzing three different periods of time since 1982—when the Court contained distinct “conservative” and “liberal” voting blocs—it is apparent that this lack of ideological cohesion existed equally during all three time periods. During the earliest era (1982-1986), the following liberal/conservative divide existed as a general matter: Justices Brennan, Marshall, Blackmun, and Stevens on the “liberal” side; and Chief Justice Burger, Justices White, Powell, Rehnquist, and O’Connor on the “conservative” side.⁷³ In the Court’s Fourth Amendment cases from 1982 through 1986, the 5-4 conservative/liberal division occurred in only three of the Court’s forty-two Fourth Amendment cases (7.1%) decided during that time period. The same lack of ideological cohesion is seen in two subsequent distinct time periods in the modern era. From 1995 through 2005, the liberal bloc included Justices Stevens, Souter, Ginsburg, and Breyer, while the conservative bloc included Chief Justice Rehnquist and Justices O’Connor, Scalia, Kennedy, and Thomas.⁷⁴ Of the thirty-seven Fourth Amendment cases decided during that time period, only two (5.4%) had a 5-4 conservative/liberal division. During the most recent time period, 2011 to 2016, the liberal bloc included Justices Ginsburg, Breyer, Sotomayor, and Kagan, while the conservative bloc included Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito. Only one of the Court’s seventeen Fourth Amendment cases (5.9%) in the most recent period involved this 5-4 division.

A significant factor explaining the lack of the traditional ideological voting

73. See Kevin Jefferies, *More on Ideology on the Supreme Court*, WEAKER PARTY (Feb. 15, 2016, 5:36 PM), <http://theweakerparty.blogspot.com/2016/02/more-on-ideology-on-supreme-court.html> (ranking the Justices based on their ideological voting patterns using Martin-Quinn scores at various points in time from 1937 to 2015). Justices who appear in differing shades of red are deemed “conservative,” and Justices who appear in differing shades of blue are deemed “liberal.”

74. See *id.*

blocs during the past four decades has been the voting patterns of two otherwise liberal Justices, Blackmun (who served from 1972 until 1995) and Breyer (who replaced Blackmun in 1995 and continues to serve on the Court). These two Justices voted against FALs in the vast majority of cases in which they participated. Justice Souter, another liberal-leaning Justice overall, voted against FALs in half of the cases in which he participated. Another significant factor is that a leading conservative Justice, Antonin Scalia, voted in favor of FALs in significantly more cases than two Justices otherwise deemed less conservative than he (i.e., Justices O'Connor and Kennedy). The only truly "predictable" votes in Fourth Amendment cases have been some of the most liberal and most conservative Justices—such as Brennan and Marshall (on the left) and Burger, Rehnquist, and Alito (on the right).⁷⁵

As a result of these unusual voting patterns in Fourth Amendment cases, the Court has had divisions among the Justices in a majority of the cases that one would never see in ideologically divisive cases involving issues such as abortion rights, voting rights, or the death penalty. For instance, in *Kyllo v. United States*, a case addressing whether police officers' use of a thermal imaging device to detect heat emanating from marijuana plants growing within a suspect's home, the majority opinion (which found a Fourth Amendment violation) was written by Justice Scalia, who was joined by Justices Souter, Thomas, Ginsburg, and Breyer.⁷⁶ The dissenting opinion (against the FAL) was written by Justice Stevens, who was joined by Chief Justice Rehnquist, and Justices O'Connor and Kennedy.⁷⁷ In another example, *Navarette v. California*, a case addressing whether an anonymous 911 call about a suspected drunk driver provided a

75. A comparison of the Justices' ideological rankings based on their average Martin-Quinn scores over the course of their Supreme Court careers (as of the end of October Term 2014) with each Justice's rankings based on his or her voting percentage in favor of Fourth Amendment litigants is as follows:

JUSTICE: Rank Based on MQ Score/Rank Based on Fourth Amendment Voting Percentage

Thomas: MQS 1/15 (16.2% for FAL)	Blackmun: MQS 11/9 (30.8%)
Rehnquist: MQS 2/18 (tie) (9.7%)	Souter: MQS 12/7 (50.0%)
Scalia: MQS 3/11 (23.8%)	Breyer: MQS 13/8 (34.3%)
Alito: MQS 4/18 (tie) (9.7%)	Ginsburg: MQS 14/6 (59.2%)
Burger: MQS 5/17 (9.8%)	Kagan: MQS 15/3 (70.6%)
Roberts: MQS 6/16 (15.2%)	Stevens: MQS 16/5 (61.4%)
O'Connor: MQS 7/13 (21.1%)	Sotomayor: MQS 17/4 (65.0%)
Kennedy: MQS 8/12 (21.9%)	Brennan: MQS 18/1 (88.1%)
Powell: MQS 9/14 (18.0%)	Marshall: MQS 19/2 (87.8%)
White: MQS 10/10 (26.7%)	

The Justices' average Martin-Quinn scores appear at *supra* note 68 and accompanying text.

76. 533 U.S. 27, 29 (2001).

77. *Id.*

sufficient basis to stop a car on the highway without a search warrant and probable cause, the majority opinion (finding no Fourth Amendment violation) was written by Justice Thomas, who was joined by Chief Justice Roberts, and Justices Kennedy, Breyer, and Alito.⁷⁸ The dissenting opinion (in favor of the FAL) was written by Justice Scalia, who was joined by Justices Ginsburg, Sotomayor, and Kagan.⁷⁹

A review of 148 cases in Appendix A will reveal many other examples of such strange ideological bedfellows in Fourth Amendment cases decided since 1982.⁸⁰ It is apparent that, although liberal Justices generally are more likely to vote in favor of FALs and conservative Justices are generally more likely to vote against them, one or more Justices often vote inconsistently with their general ideological dispositions in a given case.

C. Analysis of Criminal Versus Civil Cases

The vast majority of Fourth Amendment cases (108 of 148, or 73.0%) decided by the Court from 1982 and 2015 were criminal cases, which almost always involved a criminal defendant who filed a pretrial motion to suppress evidence based on an alleged unconstitutional search or seizure. In criminal cases, the Court ruled in favor of the defendants in 23.1% of cases. The remaining forty cases were civil cases, which almost always were civil rights lawsuits in which plaintiffs sought money damages or an injunction as the remedy for the alleged Fourth Amendment violation. The Court ruled in favor of the civil plaintiffs in 27.5% of those cases.

Individual Justices voted in the following manner in criminal cases:

- | | |
|-------------------------------|----------------------------------|
| 1. Brennan (88.0% for FALs) | 11. White (23.2% for FALs) |
| 2. Marshall (87.3% for FALs) | 12. Roberts (21.7% for FALs) |
| 3. Sotomayor (78.6% for FALs) | 13. Kennedy (20.6% for FALs) |
| 4. Kagan (71.4% for FALs) | 14. Thomas (19.2% for FALs) |
| 5. Ginsburg (62.0% for FALs) | 15. Powell (15.4% for FALs) |
| 6. Stevens (59.2% for FALs) | 16. O'Connor (14.3% for FALs) |
| 7. Souter (50.0% for FALs) | (tie) |
| 8. Breyer (32.0% for FALs) | 17. Alito (14.3% for FALs) (tie) |
| 9. Blackmun (25.4% for FALs) | 18. Rehnquist (10.2% for FALs) |
| 10. Scalia (24.7% for FALs) | 19. Burger (6.5% for FALs) |

78. 134 S. Ct. 1683, 1686 (2014).

79. *Id.*

80. For instance, as shown in Appendix A, in seven Fourth Amendment cases in which they participated together as Justices from 1995 to 2015, Justice Breyer voted *against* a Fourth Amendment litigant while Justice Scalia voted *for* the same litigant.

Individual Justices voted in the following manner in civil cases:

- | | |
|------------------------------------|-----------------------------------|
| 1. Marshall (89.5% for FALs) | 11. Sotomayor (33.3% for FALs) |
| 2. Brennan (88.2% for FALs) | 12. Powell (27.3% for FALs) |
| 3. Stevens (67.6% for FALs) | 13. Kennedy (25.0% for FALs) |
| 4. Kagan (66.7% for FALs) | 14. Scalia (21.4% for FALs) |
| 5. Ginsburg (52.4% for FALs) | 15. Burger (20.0% for FALs) |
| 6. Souter (50.0% for FALs) | 16. Thomas (9.1% for FALs) |
| 7. Blackmun (47.4% for FALs) | 17. Rehnquist (7.7% for FALs) |
| 8. Breyer (40.0% for FALs) (tie) | 18. Roberts (0.0% for FALs) (tie) |
| 9. O'Connor (40.0% for FALs) (tie) | 19. Alito (0.0% for FALs) (tie) |
| 10. White (36.8% for FALs) | |

Although most Justices' voting records in criminal cases were consistent with their records in civil rights cases (i.e., within ten percentage points of each other),⁸¹ some Justices were notable exceptions. For instance, Justice Sotomayor's record in criminal cases (78.6% for criminal defendants) is substantially higher than her record in civil rights cases (33.3% for civil rights plaintiffs). Similarly, Chief Justice Roberts's record in criminal cases (21.7% for criminal defendants) stands in stark contrast to his record in civil rights cases (0.0% in favor of civil rights plaintiffs). Conversely, Chief Justice Burger's record in criminal cases (6.5% for criminal defendants) was substantially lower than his record in civil rights cases (20.0% for civil rights plaintiffs). Similarly, Justice Blackmun's record in criminal cases (25.4% for criminal defendants) was substantially lower than his record in civil rights cases (47.4% for civil rights plaintiffs). Therefore, it appears that whether a Justice was liberal or conservative did not consistently correspond to differences in his or her voting records in criminal cases compared to civil rights cases.

D. Analysis of Substantive Versus Remedial Rulings

A final type of analysis concerns "substantive" Fourth Amendment rulings versus "remedial" Fourth Amendment rulings (with the latter typically addressing the Fourth Amendment exclusionary rule in criminal case and the qualified immunity doctrine in civil rights cases). In 130 cases, the Court addressed a dispositive substantive Fourth Amendment issue, although in some

81. Ten of the nineteen Justices had similar records in criminal and civil rights cases. Those ten included both liberals (e.g., Brennan and Marshall) and conservatives (e.g., Rehnquist and Scalia).

of those cases the Court either first (as a threshold matter) ruled in favor of the FAL on remedial grounds or alternatively addressed a remedial issue (for or against the litigant) along with the substantive issue. In those 130 cases, the Court ruled for the FALs on substantive grounds in thirty-six cases (27.7%). In twenty-four cases,⁸² the Court addressed a dispositive Fourth Amendment remedial issue.⁸³ In only two of those twenty-four cases (8.3%) did the Court rule for the FALs on remedial grounds.⁸⁴

Although the individual Justices' voting records concerning substantive Fourth Amendment issues very closely resembled their overall voting records in Fourth Amendment cases,⁸⁵ their voting records concerning potentially dispositive Fourth Amendment remedial issues paint a different picture for some Justices. The following analysis shows how the nineteen Justices voted in the twenty-four cases raising potentially dispositive Fourth Amendment remedial issues (e.g., whether the exclusionary rule applied in a criminal case or whether

82. Those twenty-four cases were: *City and County of San Francisco v. Sheehan*, 135 S. Ct. 1765 (2015); *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014); *Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012); *Davis v. United States*, 564 U.S. 229 (2011); *Ashcroft v. Al-Kidd*, 563 U.S. 731 (2011); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364 (2009); *Pearson v. Callahan*, 555 U.S. 223 (2009); *Herring v. United States*, 555 U.S. 135 (2009); *Hudson v. Michigan*, 547 U.S. 586 (2006); *Groh v. Ramirez*, 540 U.S. 551 (2004); *Saucier v. Katz*, 533 U.S. 194 (2001); *Wilson v. Layne*, 526 U.S. 603 (1999); *Pa. Bd. of Prob. and Parole v. Scott*, 524 U.S. 357 (1998); *Arizona v. Evans*, 514 U.S. 1 (1995); *Murray v. United States*, 487 U.S. 533 (1988); *Anderson v. Creighton*, 483 U.S. 635 (1987); *Illinois v. Krull*, 480 U.S. 340 (1987); *Malley v. Briggs*, 475 U.S. 335 (1986); *Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Maryland v. Macon*, 472 U.S. 463 (1985); *Immigration and Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032 (1984); *Massachusetts v. Sheppard*, 468 U.S. 981 (1984); *United States v. Leon*, 468 U.S. 897 (1984); *Segura v. United States*, 468 U.S. 796 (1984).

83. In six of those twenty-four cases, the Court also addressed a disputed substantive Fourth Amendment issue (*Plumhoff*, *Al-Kidd*, *Redding*, *Groh*, *Wilson*, and *Macon*). Those six cases thus also are analyzed as part of the 130 "substantive" Fourth Amendment rulings.

84. The two cases in which the Court ruled in favor of the Fourth Amendment litigants on remedial grounds were *Groh* and *Malley*. As discussed in *supra* note 27, in *Murray*, the majority of the Court ruled partially in favor of the Fourth Amendment litigant on remedial grounds; however, in view of the dissenting opinion (which took a much more favorable remedial position), the majority opinion is deemed to have ruled "against" the litigant.

85. The Justices' voting records on substantive Fourth Amendment issues were as follows:

- | | |
|-------------------------------|--------------------------------|
| 1. Brennan (88.1% for FALs) | 11. Scalia (26.9% for FALs) |
| 2. Marshall (87.8% for FALs) | 12. Kennedy (25.0% for FALs) |
| 3. Kagan (83.3% for FALs) | 13. O'Connor (23.1% for FALs) |
| 4. Sotomayor (68.4% for FALs) | 14. Powell (20.0% for FALs) |
| 5. Ginsburg (64.6% for FALs) | 15. Roberts (19.2% for FALs) |
| 6. Stevens (64.0% for FALs) | 16. Thomas (19.4% for FALs) |
| 7. Souter (54.7% for FALs) | 17. Alito (12.5% for FALs) |
| 8. Breyer (38.7% for FALs) | 18. Burger (11.1% for FALs) |
| 9. Blackmun (33.3% for FALs) | 19. Rehnquist (10.8% for FALs) |
| 10. White (28.9% for FALs) | |

qualified immunity barred money damages in a civil rights case):

- | | |
|---------------------------------------|----------------------------|
| 1. Brennan (100.0% for FALs
(tie)) | 11. White (18.2%) |
| 2. Marshall (100.0%) (tie) | 12. Burger (14.3%) |
| 3. Stevens (57.9%) | 13. Scalia (5.9%) |
| 4. Ginsburg (57.1%) | 14. Kennedy (0.0%) (tie) |
| 5. Souter (44.4%) | 15. Powell (0.0%) (tie) |
| 6. Breyer (38.5%) | 16. Thomas (0.0%) (tie) |
| 7. Kagan (33.3%) | 17. Roberts (0.0%) (tie) |
| 8. O'Connor (20.0%) (tie) | 18. Rehnquist (0.0%) (tie) |
| 9. Sotomayor (20.0%) (tie) | 19. Alito (0.0%) (tie) |
| 10. Blackmun (20.0%) (tie) | |

Conservative Justices were much more likely to resolve cases against FALs on remedial grounds than liberal Justices—even more so than when the Justices addressed substantive Fourth Amendment issues. Indeed, six conservative Justices never cast a single vote in a favor of FAL when a potentially dispositive remedial issue was raised. Conversely, the most liberal Justices, Brennan and Marshall, always voted in favor of FALs on remedial issues. The remaining Justices (except for Justices Stevens and Ginsburg) voted against FALs much more often than they voted for FALs regarding remedial issues.

E. Fourth Amendment Litigant Appeals Versus Government Appeals

A final analysis of the Court's plenary-decision cases concerns the percentage of cases in which the Court granted the petition of certiorari filed by a FAL compared to the percentage of cases in which the Court granted a petition filed by a government (federal, state, or local) or an individual governmental official. Of the 148 plenary-decision cases, the Court granted a FAL's petition in forty-one cases (27.7%) and granted a government or government official's petition in 107 cases (72.3%).

As shown in Appendix A, of the cases in which the Court granted a FAL's petition, the Court ruled in favor of FALs in 41.5% of those cases. Conversely, in the cases in which the Court granted a government or government official's petition, the Court ruled in favor of FALs in only 17.8% of those cases.

IV. PER CURIAM DISPOSITIONS IN FOURTH AMENDMENT CASES

Between 1982 and 2015, the Court rendered twenty-five per curiam decisions addressing the merits of Fourth Amendment issues. Those cases are listed in Appendix B. In nineteen of those twenty-five cases (76.0%), the Justices who addressed the merits of the Fourth Amendment issues were unanimous in

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their voting for or against FALs.⁸⁶ In the six cases with one or more Justices who dissented on the merits concerning a Fourth Amendment issue, five had only a single dissenting Justice and one had only two dissenting Justices.

Of the twenty-five cases, eight (32.0%) ruled for the FALs, while seventeen (68.0%) ruled against the FALs. Sixteen cases (64.0%) were criminal cases, while eight (36.0%) were civil rights cases. Sixteen cases (64.0%) decided dispositive substantive Fourth Amendment issues, while eight (36.0%) decided dispositive remedial issues.

Of the twenty-five per curiam decision cases, the Court granted a FAL's petition in eight cases (32.0%) and granted a government or government official's petition in seventeen cases (68.0%). Of the cases in which the Court granted a FAL's petition, the Court ruled in favor of FALs in 100.0% of those cases. Of the cases in which the Court granted a government or government official's petition, the Court ruled in favor of FALs in 0.0% of those cases. Of the total twenty-five per curiam decision cases, the Court reversed the judgment of the lower court in 100.0% of cases. Therefore, unlike in its plenary-decision cases, the Court in its per curiam cases only grants certiorari to rule in favor of the petitioner (usually the government) and thereby reverse the judgment of the lower court.

Except for the overall percentage of reversals and the respective percentages of rulings for FALs in FAL appeals and in government appeals, the Court's per curiam decision Fourth Amendment cases generally resembled the Court's plenary decision cases—in terms of the percentage of decisions against FALs (the vast majority against them), the respective percentages of criminal and civil rights cases (the vast majority being criminal cases), and the respective percentages of substantive issues and remedial issues (the vast majority of cases ruling on dispositive substantive issues).

V. CONCLUSION

Based on historical trends since 1982, a FAL whose case receives plenary consideration by the Supreme Court has around a one-in-four chance of prevailing. This strong likelihood of losing is generally true in both criminal cases and civil rights cases, although FALs in the latter have a slightly better chance of prevailing than litigants in the former (27.5% compared to 23.1%). If the Court granted the certiorari petition of the federal, state, or local government or an individual governmental official, a FAL (as a respondent) is even more likely to lose (17.8% of the time in plenary-decision cases). Conversely, if the Court granted a FAL's petition, the litigant stands a better change of prevailing

86. In some of those nineteen cases, one or more Justices dissented on a ground unrelated to the Fourth Amendment—usually contending that the Court should afford plenary review of the issue or should simply deny certiorari but without addressing the merits of the Fourth Amendment issue.

(41.5% of the time in plenary-decision cases).

If the dispositive Fourth Amendment issue before the Court is a “substantive” one, a FAL has a 27.5% of prevailing. However, if the Court addresses a dispositive “remedial” issue, such as the good-faith exception or qualified immunity, the FAL is extremely likely to lose (91.7% of the time). If the Court decides a Fourth Amendment issue in a per curiam decision, a FAL has slightly better odds of prevailing (32.0%) compared to a FAL in a plenary-decision case (24.3%). However, in the Court’s per curiam decisions, the petitioner, whether the government or a FAL, has prevailed in every Fourth Amendment case since 1982. The Court simply has granted more government petitions than FALs’ petitions.

Although in plenary-decision Fourth Amendment cases individual Justices tend to vote in a manner that reflects their overall ideological dispositions—with more conservative Justices generally voting against FALs and more liberal Justices generally voting for FALs—important exceptions to this trend do exist. Certain Justices, such as Blackmun, Scalia, and Breyer, in many cases voted inconsistently with their overall ideological dispositions. As a result, there are relatively few Fourth Amendment cases with the traditional 5-4 conservative/liberal split that has been much more apparent in other types of cases in which the Court has addressed traditionally divisive issues, such as abortion rights, voting rights, or the death penalty. Instead, in Fourth Amendment cases, it is typical for one or more Justices from one ideological camp to join a majority or dissenting bloc of Justices from the other ideological camp.⁸⁷

87. This Article’s study of the Justices’ voting patterns in Fourth Amendment cases has offered a thorough empirical analysis of voting patterns, yet future research could dig deeper into the cases and attempt to offer reasons *why* certain Justices voted in the manner that they did. For instance, what particular ideological bases related to the Fourth Amendment caused Justices Breyer and Scalia to vote in the manner that they did in Fourth Amendment cases and can Justices’ future voting patterns be better predicted depending on the specific Fourth Amendment issue before the Court? *See generally, e.g.*, Timothy C. MacDonnell, *Justice Scalia’s Fourth Amendment: Text, Context, Clarity, and Occasional Faint-Hearted Originalism*, 3 VA. J. CRIM. L. 175 (2015); Anna C. Sweat, *Justice Breyer’s Fourth Amendment Jurisprudence*, 81 MISS. L. J. 199 (2012).

APPENDIX A

SUPREME COURT CASES (EXCLUDING PER CURIAM CASES) IN WHICH A MAJORITY OF THE COURT HAS ADDRESSED A FOURTH AMENDMENT SUBSTANTIVE OR REMEDIAL ISSUE, 1982-2015

Notes to Appendix A: Separate opinions concurring in majority or plurality opinions are not listed. Separate opinions concurring in the judgment are listed only when relevant (e.g., when one or more Justices significantly disagreed with the scope of the majority or plurality opinion's interpretation of the Fourth Amendment). The term "majority" and "dissent" in the case summaries below do not necessarily mean that the members of the "majority" (or "dissent") joined a single opinion. Rather, their votes (whether in a single opinion or separate opinions) were either in favor of or against the Fourth Amendment litigant in a particular case. Justices are listed in order of seniority (with the Chief Justice appearing first), except for Associate Justices who authored the majority, plurality, concurring, or dissenting opinions, who are listed before the Chief Justice and more senior Justices. **Unanimous** decision cases include those in which the Justices did not join together in a single opinion but did all vote in the same manner (for or against Fourth Amendment litigants) in separate opinions. "Government appeal" refers to cases in which the Court granted the petition for writ of certiorari filed by a federal, state, or local government (or an official of one of those governmental units) in a criminal or civil case. "Fourth Amendment litigant (FAL) appeal" refers to a case in which the Court granted a petition for writ of certiorari filed by Fourth Amendment litigant (i.e., a criminal defendant or civil rights plaintiff in the trial court). "Reversed" includes cases in which the Court vacated the lower court's judgment and remanded for the lower court to apply a different legal standard than the one applied originally.

1. *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015) (involving a civil rights action in which plaintiffs sought an injunction). Court decided substantive Fourth Amendment issue. Majority (for FALs): Justices Sotomayor, Kennedy, Ginsburg, Breyer, and Kagan. Dissent (against FALs): Justice Scalia, Chief Justice Roberts, and Justices Thomas and Alito. Government appeal/FAL prevailed. Lower court affirmed.

2. *City and County of San Francisco v. Sheehan*, 135 S. Ct. 1765 (2015) (involving a civil rights action in which plaintiff sued for money damages). Court decided remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (against the FAL): Justice Alito, Chief Justice Roberts, and Justices Kennedy, Thomas, Ginsburg, and Sotomayor. Justices Scalia and Kagan dissenting on a ground unrelated to the Fourth Amendment (contending that certiorari was improvidently granted). Justice Breyer did not participate. Government appeal/FAL did not prevail. Lower court reversed.

3. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) (involving a criminal prosecution in which defendant moved to suppress evidence). Court decided substantive Fourth Amendment issue. Majority (for FAL): Justice Ginsburg,

Chief Justice Roberts, and Justices Scalia, Breyer, Sotomayor, and Kagan. Dissent (against FAL): Justices Kennedy, Thomas, and Alito. FAL appeal/FAL prevailed. Lower court reversed.

4. *Heien v. North Carolina*, 135 S. Ct. 530 (2014) (involving a criminal prosecution in which defendant moved to suppress evidence). Court decided substantive Fourth Amendment issue. Majority (against FAL): Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, and Kagan. Dissent (for FAL): Justice Sotomayor. FAL appeal/FAL did not prevail. Lower court affirmed.

5. *Riley v. California*, 134 S. Ct. 2473 (2014) (involving a criminal prosecution in which defendant moved to suppress evidence). Court decided substantive Fourth Amendment issue. **Unanimous** Court (for FAL): Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor, and Kagan. Concurring in part in judgment (for FAL) on a narrower ground: Justice Alito. FAL appeal/FAL prevailed. Lower court reversed.

6. *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (involving a civil rights action in which plaintiff sued for money damages). Court decided substantive Fourth Amendment issue and, in the alternative, a remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (against the FAL). Majority (against FAL on both substantive and remedial grounds): Justice Alito, Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Sotomayor, and Kagan. Concurring (against FAL solely on remedial grounds): Justices Ginsburg and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

7. *Navarette v. California*, 134 S. Ct. 1683 (2014) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Thomas, Chief Justice Roberts, and Justices Kennedy, Breyer, and Alito. Dissent (for the FAL): Justices Scalia, Ginsburg, Sotomayor, and Kagan. FAL appeal/FAL did not prevail. Lower court affirmed.

8. *Fernandez v. California*, 134 S. Ct. 1126 (2014) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Alito, Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, and Breyer. Dissent (for the FAL): Justices Ginsburg, Sotomayor, and Kagan. FAL appeal/FAL did not prevail. Lower court affirmed.

9. *Maryland v. King*, 133 S. Ct. 1958 (2013) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Kennedy, Chief Justice Roberts, and Justices Thomas, Breyer, and Alito. Dissent (for the FAL): Justices Scalia, Ginsburg, Sotomayor, and Kagan. Government appeal/FAL did not prevail. Lower court reversed.

10. *Missouri v. McNeely*, 133 S. Ct. 1552 (2013) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Sotomayor, Scalia,

Kennedy, Ginsburg, and Kagan. Dissent (against the FAL): Chief Justice Roberts, and Justices Thomas, Breyer, and Alito. Government appeal/FAL prevailed. Lower court affirmed.

11. *Florida v. Jardines*, 133 S. Ct. 1409 (2013) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Scalia, Thomas, Ginsburg, Sotomayor, and Kagan. Dissent (against the FAL): Justice Alito, Chief Justice Roberts, and Justices Kennedy and Breyer. Government appeal/FAL prevailed. Lower court affirmed.

12. *Florida v. Harris*, 133 S. Ct. 1050 (2013) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Kagan, Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, and Sotomayor. Government appeal/FAL did not prevail. Lower court reversed.

13. *Bailey v. United States*, 133 S. Ct. 1031 (2013) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justice Kennedy, Chief Justice Roberts, and Justices Scalia, Ginsburg, Sotomayor, and Kagan. Dissent (against the FAL): Justices Breyer, Thomas, and Alito. FAL appeal/FAL prevailed. Lower court reversed.

14. *Florence v. Bd. of Chosen Freeholders of Burlington*, 132 S. Ct. 1510 (2012) (involving a civil rights action in which the plaintiff sought an injunction and money damages). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Kennedy, Chief Justice Roberts, and Justices Scalia, Thomas, and Alito. Dissent (for the FAL): Justices Breyer, Ginsburg, Sotomayor, and Kagan. FAL appeal/FAL did not prevail. Lower court affirmed.

15. *Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012) (involving a civil rights action in which the plaintiff sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). Majority (against the FAL): Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Breyer, and Alito. Dissent (for the FAL on substantive and remedial grounds): Justices Sotomayor, Ginsburg, and Kagan. Government appeal/FAL did not prevail. Lower court reversed.

16. *United States v. Jones*, 132 S. Ct. 945 (2012) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Majority: Justice Scalia, Chief Justice Roberts, and Justices Kennedy, Thomas, and Sotomayor. Concurring in judgment: Justices Alito, Ginsburg, Breyer, and Kagan. Government appeal/FAL prevailed. Lower court affirmed.

17. *Davis v. United States*, 564 U.S. 229 (2011) (involving a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue (good-faith exception to exclusionary rule after finding Fourth Amendment violation). Majority (against the FAL): Justice Alito, Chief

Justice Roberts, and Justices Scalia, Kennedy, Thomas, and Kagan. Concurring in judgment (against the FAL on remedial grounds but on narrower grounds than majority): Justice Sotomayor. Dissent (for the FAL on substantive and remedial grounds): Justices Breyer and Ginsburg. FAL appeal/FAL did not prevail. Lower court affirmed.

18. *Ashcroft v. Al-Kidd*, 563 U.S. 731 (2011) (involving a civil rights action in which the plaintiff sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity) and substantive issue. **Unanimous** Court (against the FAL). Majority (against Fourth Amendment on both substantive and remedial grounds): Justice Scalia, Chief Justice Roberts, and Justices Kennedy, Thomas, and Alito. Concurring in judgment (against the FAL only on remedial grounds): Justices Ginsburg, Breyer, and Sotomayor. Justice Kagan did not participate. Government appeal/FAL did not prevail. Lower court reversed.

19. *Kentucky v. King*, 563 U.S. 452 (2011) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Alito, Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Breyer, Sotomayor, and Kagan. Dissent (for the FAL): Justice Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

20. *City of Ontario v. Quon*, 560 U.S. 746 (2010) (involving a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Kennedy, Chief Justice Roberts, and Justices Stevens, Scalia, Thomas, Ginsburg, Breyer, Alito, and Sotomayor. Government appeal/FAL did not prevail. Lower court reversed.

21. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364 (2009) (involving a civil rights action in which the plaintiff sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity) and substantive issue. Majority opinion (for the FAL on the substantive issue but against the litigant on the remedial issue): Justice Souter, Chief Justice Roberts, and Justices Scalia, Kennedy, Breyer, and Alito. Concurring in part and dissenting in part (for the FAL on both the substantive issue and the remedial grounds): Justices Stevens and Ginsburg. Concurring in the judgment and dissenting in part (against the FAL on the substantive issue): Justice Thomas. Government appeal/FAL did not prevail. Lower court reversed.

22. *Arizona v. Gant*, 556 U.S. 332 (2009) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Stevens, Scalia, Souter, Thomas, and Ginsburg. Dissent (against the FAL): Justice Alito, Chief Justice Roberts, and Justices Kennedy, and Breyer. Government appeal/FAL prevailed. Lower court affirmed.

23. *Arizona v. Johnson*, 555 U.S. 323 (2009) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice

Ginsburg, Chief Justice Roberts, and Justices Stevens, Scalia, Kennedy, Thomas, Souter, Breyer, and Alito. Government appeal/FAL did not prevail. Lower court reversed.

24. *Pearson v. Callahan*, 555 U.S. 223 (2009) (involving a civil rights action in which the plaintiff sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (against the FAL): Justice Alito, Chief Justice Roberts, and Justices Stevens, Scalia, Kennedy, Thomas, Souter, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

25. *Herring v. United States*, 555 U.S. 135 (2009) (involving a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue (good-faith exception to exclusionary rule after finding Fourth Amendment violation). Majority (against the FAL): Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, and Alito. Dissent (for the FAL on substantive grounds and remedial grounds): Justices Stevens, Souter, Ginsburg, and Breyer. FAL appeal/FAL did not prevail. Lower court affirmed.

26. *Virginia v. Moore*, 553 U.S. 164 (2008) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Scalia, Chief Justice Roberts, and Justices Stevens, Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito. Government appeal/FAL did not prevail. Lower court affirmed.

27. *Brendlin v. California*, 551 U.S. 249 (2007) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice Souter, Chief Justice Roberts, and Justices Stevens, Scalia, Kennedy, Thomas, Ginsburg, Breyer, and Alito. FAL appeal/FAL prevailed. Lower court reversed.

28. *Scott v. Harris*, 550 U.S. 372 (2007) (involving a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Scalia, Chief Justice Roberts, and Justices Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito. Dissent (for FAL): Justice Stevens. Government appeal/FAL did not prevail. Lower court reversed.

29. *Samson v. California*, 547 U.S. 843 (2006) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Thomas, Chief Justice Roberts, and Justices Scalia, Kennedy, Ginsburg, and Alito. Dissent (for the FAL): Justices Stevens, Souter, and Breyer. FAL appeal/FAL did not prevail. Lower court affirmed.

30. *Hudson v. Michigan*, 547 U.S. 586 (2006) (involving a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue (whether exclusionary rule applies to particular type of Fourth Amendment violation). Majority (against the FAL): Justice Scalia, Chief Justice Roberts, and Justices Kennedy, Thomas, and Alito. Dissent (for the FAL on

substantive and remedial grounds): Justices Breyer, Stevens, Souter, and Ginsburg. FAL appeal/FAL did not prevail. Lower court affirmed.

31. *Brigham City v. Stuart*, 547 U.S. 398 (2006) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Roberts, and Justices Scalia, Stevens, Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito. Government appeal/FAL did not prevail. Lower court affirmed.

32. *Georgia v. Randolph*, 547 U.S. 103 (2006) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Souter, Stevens, Kennedy, Ginsburg, and Breyer. Dissent (against the FAL): Chief Justice Roberts, and Justices Scalia, and Thomas. Justice Alito did not participate. Government appeal/FAL prevailed. Lower court reversed.

33. *United States v. Grubbs*, 547 U.S. 90 (2006) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Scalia, Chief Justice Roberts, and Justices Stevens, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Justice Alito did not participate. Government appeal/FAL did not prevail. Lower court reversed.

34. *Muehler v. Mena*, 544 U.S. 93 (2005) (involving a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist, and Justices O'Connor, Scalia, Kennedy, and Thomas. Concurring in judgment: (for FAL on certain Fourth Amendment substantive issues): Justices Stevens, Souter, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

35. *Illinois v. Caballes*, 543 U.S. 405 (2005) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justices Stevens, O'Connor, Scalia, Kennedy, Thomas, and Breyer. Dissent (for the FAL): Justices Souter and Ginsburg. Chief Justice Rehnquist did not participate. Government appeal/FAL did not prevail. Lower court reversed.

36. *Devenpeck v. Alford*, 543 U.S. 146 (2004) (involving a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justices Scalia, Stevens, O'Connor, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Chief Justice Rehnquist did not participate. Government appeal/FAL did not prevail. Lower court reversed.

37. *Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177 (2004) (involving a criminal case in which defendant moved to dismiss charge based on Fourth Amendment). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Kennedy, Chief Justice Rehnquist, and Justices O'Connor, Scalia, and Thomas. Dissent (for the FAL): Justices Breyer, Souter,

and Ginsburg. Justice Stevens's separate dissenting opinion did not address the Fourth Amendment issue. FAL appeal/FAL did not prevail. Lower court affirmed.

38. *Thornton v. United States*, 541 U.S. 615 (2004) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Kennedy, Thomas, Ginsburg, and Breyer. Concurring in judgment on narrower grounds (against FAL): Justices Scalia and Ginsburg. Dissent (for the FAL): Justices Stevens and Souter. FAL appeal/FAL did not prevail. Lower court affirmed.

39. *United States v. Flores-Montano*, 541 U.S. 149 (2004) (involving a criminal case in which defendant moved to suppress evidence.). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

40. *Groh v. Ramirez*, 540 U.S. 551 (2004) (involving a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue and remedial issue (qualified immunity). Majority (for the FAL): Justices Stevens, O'Connor, Souter, Ginsburg, and Breyer. Dissent (against the FAL only on remedial grounds): Justice Kennedy and Chief Justice Rehnquist. Dissent (against the FAL on substantive grounds): Justices Scalia and Thomas. Government appeal/FAL prevailed. Lower court affirmed.

41. *Illinois v. Lidster*, 540 U.S. 419 (2004) (involving a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Breyer, Chief Justice Rehnquist, and Justices O'Connor, Scalia, Kennedy, and Thomas. Dissent (for the FAL): Justices Stevens, Souter, and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

42. *Maryland v. Pringle*, 540 U.S. 366 (2003) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

43. *United States v. Banks*, 540 U.S. 31 (2003) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Souter, Chief Justice Rehnquist, and Justices Stevens, O'Connor, Scalia, Kennedy, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

44. *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie v. Earls*, 536 U.S. 822 (2002) (a civil rights action in which plaintiff sought an injunction). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Thomas, Chief Justice Rehnquist, and Justices Scalia, Kennedy,

and Breyer. Dissent (for the FAL): Justices O'Connor, Stevens, Souter, and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

45. *United States v. Drayton*, 536 U.S. 194 (2002) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Kennedy, Chief Justice Rehnquist, and Justices O'Connor, Scalia, Thomas, and Breyer. Dissent (for the FAL): Justices Souter, Stevens, and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

46. *United States v. Arvizu*, 534 U.S. 266 (2002) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

47. *United States v. Knights*, 534 U.S. 112 (2001) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

48. *Saucier v. Katz*, 533 U.S. 194 (2001) (a civil rights action in which plaintiff sought money damages). Court addressed Fourth Amendment remedial issue (qualified immunity). Majority (against the FAL after assuming Fourth Amendment violation): Justice Kennedy, Chief Justice Rehnquist, and Justices Stevens, O'Connor, Scalia, Thomas, Ginsburg, and Breyer. Dissenting in part (against the FAL): Justice Souter would have remanded for lower court to apply the newly-announced qualified immunity standard. Government appeal/FAL did not prevail. Lower court reversed.

49. *Kyllo v. United States*, 533 U.S. 27 (2001) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Scalia, Souter, Thomas, Ginsburg, and Breyer. Dissent (against the FAL): Justice Stevens, Chief Justice Rehnquist, and Justices O'Connor and Kennedy. FAL appeal/FAL prevailed. Lower court reversed.

50. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Souter, Chief Justice Rehnquist, and Justices Scalia, Kennedy, and Thomas. Dissent (for the FAL): Justices O'Connor, Stevens, Ginsburg, and Breyer. FAL appeal/FAL did not prevail. Lower court affirmed.

51. *Ferguson v. City of Charleston*, 532 U.S. 67 (2001) (a civil rights action in which the plaintiffs sought an injunction). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Stevens, O'Connor, Kennedy, Souter, Ginsburg, and Breyer. Dissent (against the FAL): Justice Scalia, Chief Justice Rehnquist, and Justice Thomas. FAL appeal/FAL prevailed. Lower court reversed.

52. *Illinois v. McArthur*, 531 U.S. 326 (2001) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Breyer, Chief Justice Rehnquist, and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, and Ginsburg. Dissent (for the FAL): Justice Stevens. Government appeal/FAL did not prevail. Lower court reversed.

53. *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000) (a civil rights action in which the plaintiff sought money damages and injunction). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices O'Connor, Stevens, Kennedy, Souter, Ginsburg, and Breyer. Dissent (against the FAL): Chief Justice Rehnquist, and Justices Scalia and Thomas. Government appeal/FAL prevailed. Lower court affirmed.

54. *Bond v. United States*, 529 U.S. 334 (2000) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Kennedy, Souter, Thomas, and Ginsburg. Dissent (against the FAL): Justices Breyer and Scalia. FAL appeal/FAL prevailed. Lower court reversed.

55. *Florida v. J.L.*, 529 U.S. 266 (2000) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice Ginsburg, Chief Justice Rehnquist, and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, and Breyer. Government appeal/FAL prevailed. Lower court affirmed.

56. *Illinois v. Wardlow*, 528 U.S. 119 (2000) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, and Thomas. Dissent (for the FAL): Justices Stevens, Souter, Ginsburg, and Breyer. FAL Government appeal/FAL did not prevail. Lower court reversed.

57. *Wilson v. Layne*, 526 U.S. 603 (1999) (a civil rights action in which the plaintiffs sought money damages). Court addressed substantive Fourth Amendment issue and remedial issue (qualified immunity). Majority (for the FALs on the substantive issue but against them on the remedial issue): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Dissent (for the FAL on both substantive and remedial issues): Justice Stevens. FAL appeal/FAL did not prevail. Lower court affirmed.

58. *Florida v. White*, 526 U.S. 559 (1999) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Thomas, Chief Justice Rehnquist, and Justices O'Connor, Scalia, Kennedy, Souter, and Breyer. Dissent (for the FAL): Justices Stevens and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

59. *Wyoming v. Houghton*, 526 U.S. 295 (1999) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth

Amendment issue. Majority (against the FAL): Justice Scalia, Chief Justice Rehnquist, and Justices O'Connor, Kennedy, Thomas, and Breyer. Dissent (for the FAL): Justices Stevens, Souter, and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

60. *Knowles v. Iowa*, 525 U.S. 113 (1998) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, and Ginsburg. FAL appeal/FAL prevailed. Lower court reversed.

61. *Minnesota v. Carter*, 525 U.S. 83 (1998) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Thomas, and Breyer. Dissent (for the FAL): Justices Ginsburg, Stevens, and Souter. Government appeal/FAL did not prevail. Lower court reversed.

62. *Pa. Bd. of Prob. and Parole v. Scott*, 524 U.S. 357 (1998) (a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue (whether exclusionary rule applies to parole revocation proceedings). Majority (against the FAL on remedial grounds): Justice Thomas, Chief Justice Rehnquist, and Justices O'Connor, Scalia, and Kennedy. Dissent (for the FAL on both substantive and remedial grounds): Justices Stevens, Souter, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

63. *United States v. Ramirez*, 523 U.S. 65 (1998) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

64. *Richards v. Wisconsin*, 520 U.S. 385 (1997) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Stevens, Chief Justice Rehnquist, and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. FAL appeal/FAL did not prevail. Lower court affirmed.

65. *Chandler v. Miller*, 520 U.S. 305 (1997) (a civil rights action in which the plaintiffs sought injunction). Court addressed substantive Fourth Amendment issue. Majority (for the FALs): Justices Ginsburg, Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, and Breyer. Dissent (against the FALs): Chief Justice Rehnquist. FAL appeal/FAL prevailed. Lower court reversed.

66. *Maryland v. Wilson*, 519 U.S. 408 (1997) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Souter, Thomas, Ginsburg, and Breyer. Dissent (for the FAL): Justices Stevens and Kennedy. Government appeal/FAL did not prevail. Lower court reversed.

67. *Ohio v. Robinette*, 519 U.S. 33 (1996) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Dissent (for the FAL): Justice Stevens. Government appeal/FAL did not prevail. Lower court reversed.

68. *Whren v. United States*, 517 U.S. 806 (1996) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Scalia, Chief Justice Rehnquist, and Justices Stevens, O'Connor, Kennedy, Souter, Thomas, Ginsburg, and Breyer. FAL appeal/FAL did not prevail. Lower court affirmed.

69. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (a civil rights action in which the plaintiffs sought injunction). Court addressed substantive Fourth Amendment issue. Majority (against the FALs): Justice Scalia, Chief Justice Rehnquist, and Justices Kennedy, Souter, Thomas, Ginsburg, and Breyer. Dissent (for the FALs): Justices O'Connor, Stevens, and Souter. Government appeal/FAL did not prevail. Lower court reversed.

70. *Wilson v. Arkansas*, 514 U.S. 927 (1995) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice Thomas, Chief Justice Rehnquist, Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Ginsburg, and Breyer. FAL appeal/FAL prevailed. Lower court reversed.

71. *Arizona v. Evans*, 514 U.S. 1 (1995) (a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, and Breyer. Dissent (for the FAL on substantive and remedial Fourth Amendment grounds): Justices Stevens and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

72. *Minnesota v. Dickerson*, 508 U.S. 366 (1993) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices White, Stevens, O'Connor, Scalia, Kennedy, and Souter. Dissent (against the FAL): Chief Justice Rehnquist and Justices Blackmun, and Thomas. Government appeal/FAL prevailed. Lower court affirmed.

73. *Soldal v. Cook County*, 506 U.S. 56 (1992) (a civil rights action in which the plaintiffs sought money damages). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FALs): Justice White, Chief Justice Rehnquist, and Justices Blackmun, Stevens, O'Connor, Scalia, Kennedy, Souter, and Thomas. FAL appeal/FAL prevailed. Lower court reversed.

74. *Florida v. Bostick*, 501 U.S. 429 (1991) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice O'Connor, Chief Justice Rehnquist, and Justices White, Scalia, Kennedy, and Souter. Dissent (for the FAL): Justices Marshall, Blackmun, and Stevens. Government appeal/FAL did

not prevail. Lower court reversed.

75. *California v. Acevedo*, 500 U.S. 565 (1991) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Blackmun, Chief Justice Rehnquist, and Justices O'Connor, Scalia, Kennedy, and Souter. Dissent (for the FAL): Justices White, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

76. *Florida v. Jimeno*, 500 U.S. 248 (1991) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices White, Blackmun, O'Connor, Scalia, Kennedy, and Souter. Dissent (for the FAL): Justices Marshall and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

77. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991): (a civil rights action in which the plaintiffs sought an injunction). Court addressed substantive Fourth Amendment issue. Majority (against the Fourth Amendment FALs, insofar as the majority vacated the judgment of the lower court, which had ruled in favor of the FALs, and announcing a less favorable rule than had the lower court): Justice O'Connor, Chief Justice Rehnquist, and Justices White, Kennedy, and Souter. Dissent (for the FALs by taking a more favorable position with respect to the FALs): Justices Marshall, Blackmun, Stevens, and Scalia. Government appeal/FAL did not prevail. Lower court reversed (judgment vacated and remanded to apply less favorable Fourth Amendment rule).

78. *California v. Hodari D.*, 499 U.S. 621 (1991) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Scalia, Chief Justice Rehnquist, and Justices White, Blackmun, O'Connor, Kennedy, and Souter. Dissent (for the FAL): Justices Stevens and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

79. *Illinois v. Rodriguez*, 497 U.S. 177 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Scalia, Chief Justice Rehnquist, and Justices White, Blackmun, O'Connor, Kennedy. Dissent (for the FAL): Justices Marshall, Brennan, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

80. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (a civil rights action in which the plaintiffs sought an injunction). Court addressed substantive Fourth Amendment issue. Majority (against the FALs): Chief Justice Rehnquist and Justices White, Blackmun, O'Connor, Scalia, and Kennedy. Dissent (for the FALs): Justices Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

81. *Alabama v. White*, 496 U.S. 325 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice

Rehnquist, and Justices Blackmun, O'Connor, Scalia, and Kennedy. Dissent (for the FAL): Justices Stevens, Brennan, and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

82. *Horton v. California*, 496 U.S. 128 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Stevens, Chief Justice Rehnquist, and Justices White, Blackmun, O'Connor, Scalia, and Kennedy. Dissent (for the FAL): Justices Brennan and Marshall. FAL appeal/FAL did not prevail. Lower court affirmed.

83. *Minnesota v. Olson*, 495 U.S. 91 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices White, Brennan, Marshall, Stevens, O'Connor, Scalia, and Kennedy. Dissent (against the FAL): Chief Justice Rehnquist and Justice Blackmun. FAL appeal/FAL appealed. Lower court affirmed.

84. *New York v. Harris*, 495 U.S. 14 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Rehnquist, and Justices O'Connor, Scalia, and Kennedy. Dissent (for the FAL): Justices Marshall, Brennan, Blackmun, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

85. *Florida v. Wells*, 495 U.S. 1 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Rehnquist and Justices Brennan, White, Marshall, Blackmun, Stevens, O'Connor, Scalia, and Kennedy. Government appeal/FAL prevailed. Lower court affirmed.

86. *Maryland v. Buie*, 494 U.S. 325 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Rehnquist, and Justices Blackmun, Stevens, O'Connor, Scalia, and Kennedy. Dissent (for the FAL): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

87. *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices White, Stevens, O'Connor, Scalia, and Kennedy. Dissent (for the FAL): Justices Brennan, Marshall, and Blackmun. Government appeal/FAL did not prevail. Lower court reversed.

88. *James v. Illinois*, 493 U.S. 307 (1990) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Brennan, White, Marshall, Blackmun, and Stevens. Dissent (against the FAL): Justice Kennedy, Chief Justice Rehnquist, and Justices O'Connor and Scalia. FAL appeal/FAL prevailed. Lower court reversed.

89. *Graham v. Connor*, 490 U.S. 386 (1989) (a civil rights case in which the plaintiffs sought money damages). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Rehnquist and Justices Brennan, White, Marshall, Blackmun, Stevens, O'Connor, Scalia, and Kennedy. FAL appeal/FAL prevailed. Reversed (vacated and remanded).

90. *United States v. Sokolow*, 490 U.S. 1 (1989) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices White, Blackmun, Stevens, O'Connor, Scalia, and Kennedy. Dissent (for the FAL): Justices Marshall and Brennan. Government appeal/FAL did not prevail. Lower court reversed.

91. *Nat'l Treasury Emps. Union v. Von Rabb*, 489 U.S. 656 (1989) (a civil rights case in which the plaintiffs sought an injunction). Court addressed substantive Fourth Amendment issues. Majority (against the FALs except for partial ruling in which Court remanded for lower court to address whether Fourth Amendment violated with respect to certain litigants): Justice Kennedy, Chief Justice Rehnquist, and Justices White, Blackmun, and O'Connor. Dissent (for the FALs): Justices Marshall, Brennan, Stevens, and Scalia. FAL appeal/FAL did not prevail on major issues. Lower court affirmed in large part.

92. *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602 (1989) (a civil rights case in which the plaintiffs sought an injunction). Court addressed substantive Fourth Amendment issue. Majority (against the FALs): Justice Kennedy, Chief Justice Rehnquist, and Justices White, Blackmun, Stevens, O'Connor, and Scalia. Dissent (for the FALs): Justices Marshall and Brennan. Government appeal/FAL did not prevail. Lower court reversed.

93. *Brower v. County of Inyo*, 489 U.S. 593 (1989) (a civil rights action in which the plaintiffs sought money damages). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice Scalia, Chief Justice Rehnquist, and Justices Brennan, White, Marshall, Blackmun, Stevens, O'Connor, and Kennedy. FAL appeal/FAL prevailed. Lower court reversed.

94. *Florida v. Riley*, 488 U.S. 445 (1989) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Rehnquist, and Justices Scalia, Kennedy (in a plurality opinion), and O'Connor (in an opinion concurring in the judgment on a narrower ground than the plurality). Dissent (for the FAL): Justices Brennan, Marshall, Blackmun, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

95. *Murray v. United States*, 487 U.S. 533 (1988) (involving a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue ("independent source" doctrine). Majority (partially for the FAL by announcing a more favorable remedial rule than the lower court and remanding for application of that rule, yet partially against by not adopting the more favorable rule advocated by the dissent): Justice Scalia, Chief Justice Rehnquist, and Justices White and Blackmun. Dissent (for the FAL and

advocating for an even more favorable rule for the litigant): Justices Marshall, Stevens, and O'Connor. Justices Brennan and Kennedy did not participate. FAL appeal/FAL did not prevail in full. Lower court's judgment reversed but on narrower grounds than the dissent urged. *See supra* note 27.

96. *Michigan v. Chesternut*, 486 U.S. 567 (1988) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Blackmun, Chief Justice Rehnquist, and Justices Brennan, White, Marshall, Stevens, O'Connor, Scalia, and Kennedy. Government appeal/FAL did not prevail. Lower court reversed.

97. *California v. Greenwood*, 486 U.S. 35 (1988) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Rehnquist, and Justices Blackmun, Stevens, O'Connor, and Scalia. Dissent (for the FAL): Justices Brennan and Marshall. Justice Kennedy did not participate. Government appeal/FAL did not prevail. Lower court reversed.

98. *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (a criminal case prosecution in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Scalia, Chief Justice Rehnquist, and Justices White, Powell, and O'Connor. Dissent (for the FAL): Justices Blackmun, Marshall, Brennan, and Stevens. FAL appeal/FAL did not prevail. Lower court affirmed.

99. *Anderson v. Creighton*, 483 U.S. 635 (1987) (a civil rights action case in which the plaintiffs sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). Majority (against the FAL by remanding for the determination of whether qualified immunity would prevent the civil rights lawsuit): Justice Scalia, Chief Justice Rehnquist, and Justices White, Blackmun, Powell, and O'Connor. Dissent (for the FAL on substantive and remedial grounds): Justices Stevens, Marshall, and Brennan. Government appeal/FAL did not prevail. Lower court reversed.

100. *New York v. Burger*, 482 U.S. 691 (1987) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Blackmun, Chief Justice Rehnquist, and Justices White, Powell, Stevens, and Scalia. Dissent (for the FAL): Justices Brennan, Marshall, and O'Connor. Government appeal/FAL did not prevail. Lower court reversed.

101. *O'Connor v. Ortega*, 480 U.S. 709 (1987) (a civil rights action in which the plaintiffs sought money damages). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice O'Connor, Chief Justice Rehnquist, and Justices White, Powell, and Scalia. Dissent (for the FAL): Justices Blackmun, Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

102. *Illinois v. Krull*, 480 U.S. 340 (1987) (a criminal prosecution case in which defendant moved to suppress evidence). Court addressed remedial Fourth

Amendment issue (good-faith exception to the exclusionary rule). Majority (against the FAL after finding a Fourth Amendment violation): Justice Blackmun, Chief Justice Rehnquist, and Justices White, Powell, and Scalia. Dissent (for the FAL on substantive and remedial grounds): Justices O'Connor, Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

103. *Arizona v. Hicks*, 480 U.S. 321 (1987) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Scalia, Brennan, White, Marshall, Blackmun, and Stevens. Dissent (against the FAL): Justice Powell, Chief Justice Rehnquist, and Justice O'Connor. Government appeal/FAL prevailed. Lower court affirmed.

104. *United States v. Dunn*, 480 U.S. 294 (1987) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Rehnquist, and Justices Blackmun, Powell, Stevens, O'Connor, and Scalia. Dissent (for the FAL): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

105. *Maryland v. Garrison*, 480 U.S. 79 (1987) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Stevens, Chief Justice Rehnquist, and Justices White, Powell, O'Connor, and Scalia. Dissent (for the FAL): Justices Blackman, Brennan, and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

106. *Colorado v. Bertine*, 479 U.S. 367 (1987) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Rehnquist and Justices White, Blackmun, Powell, Stevens, O'Connor, and Scalia. Dissent (for the FAL): Justices Marshall and Brennan. Government appeal/FAL did not prevail. Lower court reversed.

107. *California v. Ciraolo*, 476 U.S. 207 (1986) (a criminal prosecution case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White, Rehnquist, Stevens, and O'Connor. Dissent (for the FAL): Justices Powell, Brennan, Marshall, and Blackmun. Government appeal/FAL did not prevail. Lower court reversed.

108. *Dow Chem. Co. v. United States*, 476 U.S. 227 (1986) (a civil rights action in which the plaintiffs sought an injunction). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White, Rehnquist, Stevens, and O'Connor. Dissent (for the FAL): Justices Powell, Brennan, Marshall, and Blackmun. FAL appeal/FAL did not prevail. Lower court affirmed.

109. *New York v. P.J. Video, Inc.*, 475 U.S. 868 (1986) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth

Amendment issue. Majority (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices White, Blackmun, Powell, and O'Connor. Dissent (for the FAL): Justices Marshall, Brennan, and Stevens. Governmental appeal/FAL did not prevail. Lower court reversed.

110. *Malley v. Briggs*, 475 U.S. 335 (1986) (a civil rights action in which the plaintiffs sought money damages). Court addressed remedial Fourth Amendment issues (absolute immunity and qualified immunity). Majority (for the FAL on remedial grounds by remanding to decide qualified immunity issue under a more favorable standard than that applied by the district court and rejecting the petitioner's argument for absolute immunity): Justice White, Chief Justice Burger, and Justices Brennan, Marshall, Blackmun, Stevens, and O'Connor. Dissent in part (against the FAL on remedial grounds): Justices Powell and Rehnquist. Government appeal/FAL prevailed. Lower court affirmed and remanded for district court to apply legal standard.

111. *New York v. Class*, 475 U.S. 106 (1986) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice O'Connor, Chief Justice Burger, and Justices Rehnquist, Blackmun, and Powell. Dissent (for the FAL): Justices Brennan, Marshall, White, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

112. *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices White, Blackmun, Powell, Stevens, and O'Connor. Dissent (for the FAL): Justices Marshall and Brennan. Government appeal/FAL did not prevail. Lower court reversed.

113. *Mitchell v. Forsyth*, 472 U.S. 511 (1985) (a civil rights action in which the plaintiff sought money damages). Court addressed remedial Fourth Amendment issues (absolute immunity and qualified immunity). Majority (against the FAL on qualified immunity issue): Justice White, Chief Justice Burger, and Justices Blackmun, Stevens, and O'Connor. Dissent (for the FAL on substantive and remedial grounds): Justices Brennan and Marshall. Justices Rehnquist and Powell did not participate. Government appeal/FAL did not prevail. Lower court reversed (in qualified immunity issue).

114. *Maryland v. Macon*, 472 U.S. 463 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive and remedial Fourth Amendment issues. Majority (against the FAL on both substantive and remedial issues): Justice O'Connor, Chief Justice Burger, and Justices White, Blackmun, Powell, Rehnquist, and Stevens. Dissent (for the FAL on the substantive and remedial issues): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

115. *California v. Carney*, 471 U.S. 386 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White,

Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Stevens, Brennan, and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

116. *Tennessee v. Garner*, 471 U.S. 1 (1985) (a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices White, Brennan, Marshall, Blackmun, Powell, and Stevens. Dissent (against the FAL): Justice O'Connor, Chief Justice Burger, and Justice Rehnquist. Government appeal/FAL prevailed. Lower court affirmed.

117. *Hayes v. Florida*, 470 U.S. 811 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice White, Chief Justice Burger, and Justices Brennan, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor. Justice Powell did not participate. FAL appeal/FAL prevailed. Lower court reversed.

118. *Winston v. Lee*, 470 U.S. 753 (1985) (a civil rights action in which the plaintiff sought an injunction). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice Brennan, Chief Justice Burger, and Justices White, Marshall, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Government appeal/FAL prevailed. Lower court affirmed.

119. *United States v. Sharpe*, 470 U.S. 675 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White, Marshall, Rehnquist, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Brennan and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

120. *United States v. Johns*, 469 U.S. 478 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice O'Connor, Chief Justice Burger, and Justices White, Blackmun, Powell, Rehnquist, and Stevens. Dissent (for the FAL): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

121. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Burger, and Justices Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

122. *United States v. Hensley*, 469 U.S. 221 (1985) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice O'Connor, Chief Justice Burger, and Justices Brennan, White, Marshall, Blackmun, Powell, Rehnquist, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

123. *Immigration & Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032

(1984) (an immigration case in which aliens sought to suppress evidence during deportation proceedings]. Court addressed remedial Fourth Amendment issue (applicability of exclusionary rule to deportation proceedings). Majority (against the FALs): Justice White, Chief Justice Burger, and Justices Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Dissent (for the FAL): Justices Brennan, White, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

124. *Massachusetts v. Sheppard*, 468 U.S. 981 (1984) (a criminal case in which defendant moved to suppress). Court addressed remedial Fourth Amendment issue (good-faith exception). Majority (against the FAL): Justice White, Chief Justice Burger, and Justices Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Dissent (for the FAL on substantive and remedial grounds): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

125. *United States v. Leon*, 468 U.S. 897 (1984) (a criminal case in which defendant moved to suppress). Court addressed remedial Fourth Amendment issue (good-faith exception). Majority (against the FAL): Justice White, Chief Justice Burger, and Justices Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

126. *Segura v. United States*, 468 U.S. 796 (1984) (a criminal case in which defendant moved to suppress). Court addressed remedial Fourth Amendment issue (independent source doctrine). Majority (against the FAL): Justice White, Chief Justice Burger, and Justices Powell, Rehnquist, and O'Connor. Dissent (for the FAL on substantive and remedial grounds): Justices Stevens, Brennan, Marshall, and Blackmun. FAL appeal/FAL did not prevail. Lower court affirmed.

127. *United States v. Karo*, 468 U.S. 705 (1984) (a criminal case in which defendant moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice White, Chief Justice Burger, and Justices Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Stevens, Brennan, and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

128. *Hudson v. Palmer*, 468 U.S. 517 (1984) (a civil rights action in which the plaintiff sought money damages). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Stevens, Brennan, Marshall, and Blackmun. Government appeal/FAL did not prevail. Lower court reversed.

129. *Sec. & Exch. Comm'n v. Jerry T. O'Brien, Inc.*, 467 U.S. 735 (1984) (a civil action in which plaintiffs sought injunction). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Marshall, Chief Justice Burger, and Justices Brennan, White, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Government appeal/FAL did not prevail.

Lower court reversed.

130. *Waller v. Georgia*, 467 U.S. 39 (1984) (a criminal case in which the defendant moved to suppress evidence). Court summarily addressed (in a footnote, 467 U.S. at 43 n.3) two different substantive Fourth Amendment issues. **Unanimous** Court (against the FAL): Justice Powell, Chief Justice Burger, and Justices Brennan, White, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor. FAL appeal/FAL did not prevail. Lower court affirmed.

131. *Welsh v. Wisconsin*, 466 U.S. 740 (1984) (a driver's license revocation proceeding related to a criminal prosecution; defendant moved to dismiss charges based on alleged Fourth Amendment violation). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Brennan, Blackmun, Marshall, Powell, Stevens, and O'Connor. Dissent (against the FAL): Justices White and Rehnquist. Dissent (on grounds unrelated to the Fourth Amendment issue): Chief Justice Burger. FAL appeal/FAL prevailed. Lower court reversed.

132. *Oliver v. United States*, 466 U.S. 170 (1984) (two criminal cases in which defendants moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Powell, Chief Justice Burger, and Justices White, Blackmun, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Marshall, Brennan, and Stevens. FAL appeal/FAL did not prevail. Lower court affirmed.

133. *Immigration & Naturalization Serv. v. Delgado*, 466 U.S. 210 (1984) (a civil rights action in which plaintiffs sought declaratory and injunctive relief). Court addressed substantive Fourth Amendment issue. Majority (against the FALs): Justice Rehnquist, Chief Justice Burger, and Justices White, Blackmun, Powell, Stevens, and O'Connor. Dissent (for the FALs): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

134. *United States v. Jacobsen*, 466 U.S. 109 (1984) (a criminal case in which defendants moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Stevens, Chief Justice Burger, and Justices White, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

135. *Donovan v. Lone Steer, Inc.*, 464 U.S. 408 (1984) (a civil rights action in which plaintiffs sought declaratory and injunctive relief). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices Brennan, White, Marshall, Blackmun, Powell, Stevens, and O'Connor. Government appeal/FAL did not prevail. Lower court reversed.

136. *Michigan v. Clifford*, 464 U.S. 287 (1984) (a criminal case in which defendants moved to suppress). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Powell, Brennan, White, Marshall, and Stevens. Dissent (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices Blackmun and O'Connor. Government appeal/FAL prevailed. Lower

court affirmed.

137. *Michigan v. Long*, 463 U.S. 1032 (1983) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice O'Connor, Chief Justice Burger, and Justices White, Blackmun, Powell, and Rehnquist. Dissent (for the FAL): Justices Brennan and Marshall. Dissent on grounds other than the Fourth Amendment: Justice Stevens. Government appeal/FAL did not prevail. Lower court reversed.

138. *Illinois v. Andreas*, 463 U.S. 765 (1983) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

139. *United States v. Place*, 462 U.S. 696 (1983) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Justice O'Connor, Chief Justice Burger, and Justices Brennan, White, Marshall, Blackmun, Powell, Rehnquist, and Stevens. Government appeal/FAL prevailed. Lower court affirmed.

140. *Illinois v. Lafayette*, 462 U.S. 640 (1983). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Burger and Justices Brennan, White, Marshall, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Government appeal/FAL did not prevail. Lower court reversed.

141. *United States v. Villamonte-Marquez*, 462 U.S. 579 (1983) (a criminal case in which defendants moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices White, Blackmun, Powell, and O'Connor. Dissent (for the FAL): Justices Brennan and Marshall. Justice Stevens dissented on a ground unrelated to the Fourth Amendment. Government appeal/FAL did not prevail. Lower court reversed.

142. *Illinois v. Gates*, 462 U.S. 213 (1983) (a criminal case in which defendants moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices Blackmun, Powell, and O'Connor. Concurring in judgment (against the FAL on Fourth Amendment remedial basis not addressed by majority as well as alternatively on substantive Fourth Amendment grounds): Justice White. Dissent (for the FAL): Justices Brennan, Marshall, and Stevens. Government appeal/FAL did not prevail. Lower court reversed.

143. *Texas v. Brown*, 460 U.S. 730 (1983) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices Brennan, White, Marshall, Blackmun, Powell,

Stevens, and O'Connor. Government appeal/FAL did not prevail. Lower court reversed.

144. *Florida v. Royer*, 460 U.S. 491 (1983) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices White, Brennan, Marshall, Powell, and Stevens. Dissent (against the FAL): Justices Blackmun and Rehnquist, Chief Justice Burger, and Justice O'Connor. Government appeal/FAL prevailed. Lower court affirmed.

145. *United States v. Knotts*, 460 U.S. 276 (1983) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Justice Rehnquist, Chief Justice Burger, and Justices Brennan, White, Marshall, Blackmun, Powell, Stevens, and O'Connor. Government appeal/FAL did not prevail. Lower court reversed.

146. *Taylor v. Alabama*, 457 U.S. 687 (1982) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (for the FAL): Justices Marshall, Brennan, White, Blackmun, and Stevens. Dissent (against the FAL): Justice O'Connor, Chief Justice Burger, and Justices Powell and Rehnquist. FAL appeal/FAL prevailed. Lower court reversed.

147. *United States v. Ross*, 456 U.S. 798 (1982) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Justice Stevens, Chief Justice Burger, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (for the FAL): Justices White, Marshall, and Brennan. Government appeal/FAL did not prevail. Lower court reversed.

148. *Washington v. Chrisman*, 455 U.S. 1 (1982) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Dissent (for the FAL): Justices White, Brennan, and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

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FOURTH AMENDMENT SCORECARD

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APPENDIX B

PER CURIAM DECISIONS OF THE SUPREME COURT ADDRESSING THE MERITS OF FOURTH AMENDMENT SUBSTANTIVE OR REMEDIAL ISSUES, 1982-2015

1. *Mullenix v. Luna*, 136 S. Ct. 305 (2015) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). Majority (against the FALs): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, and Kagan. Dissent (for the FAL): Justice Sotomayor. Government appeal/FAL did not prevail. Lower court reversed.

2. *Grady v. North Carolina*, 135 S. Ct. 1368 (2015) (per curiam) (a criminal case in which defendant objected to condition of supervision under the Fourth Amendment). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan. FAL appeal/FAL prevailed. Lower court reversed.

3. *Carroll v. Carman*, 135 S. Ct. 348 (2014) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (against the FAL): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan. Government appeal/FAL did not prevail. Lower court reversed.

4. *Tolan v. Cotton*, 134 S. Ct. 1861 (2014) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (for the FAL): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan. FAL appeal/FAL prevailed. Lower court reversed.

5. *Stanton v. Sims*, 134 S. Ct. 3 (2013) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (against the FAL): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan. Government appeal/FAL did not prevail. Lower court reversed.

6. *Ryburn v. Huff*, 132 S. Ct. 987 (2012) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). **Unanimous** Court (against the FAL): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan. Government appeal/FAL did not prevail. Lower court reversed.

7. *Michigan v. Fisher*, 558 U.S. 45 (2009) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, and Alito. Dissent (for the FAL): Justices Stevens and Sotomayor. Government appeal/FAL did not prevail.

Lower court reversed.

8. *Los Angeles County v. Rettele*, 550 U.S. 609 (2007) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the 8 Justices who addressed the merits). Majority (against the FAL on substantive grounds): Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Breyer, and Alito. Concurring in judgment (against the FAL on remedial grounds only): Justices Stevens and Ginsburg. Justice Souter voted to deny certiorari. Government appeal/FAL did not prevail. Lower court reversed.

9. *Brosseau v. Haugen*, 543 U.S. 194 (2004) (per curiam) (a civil rights action in which plaintiff sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). Majority (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Dissent (for the FAL): Justice Stevens. Government appeal/FAL did not prevail. Lower court reversed.

10. *Kaupp v. Texas*, 538 U.S. 626 (2003) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. FAL appeal/FAL prevailed. Lower court reversed.

11. *Kirk v. Louisiana*, 536 U.S. 635 (2002) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. FAL appeal/FAL prevailed. Lower court reversed.

12. *Arkansas v. Sullivan*, 532 U.S. 769 (2001) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Government appeal/FAL did not prevail. Lower court reversed.

13. *Flippo v. West Virginia*, 528 U.S. 11 (1999) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. FAL appeal/FAL prevailed. Lower court reversed.

14. *Hanlon v. Berger*, 526 U.S. 808 (1999) (per curiam) (a civil rights action in which plaintiffs sought money damages). Court addressed substantive and remedial Fourth Amendment issue (qualified immunity). Majority (for the FAL on the substantive issue but against the FAL on remedial grounds): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Partial Dissent (for the FAL on substantive and remedial grounds): Justice Stevens. Government appeal/FAL did not prevail. Lower court reversed.

15. *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam) (two criminal cases in which defendants moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the 7 Justices who addressed the merits) (against the FAL): Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, Thomas, and Breyer. Dissent (on grounds unrelated to the Fourth Amendment issue): Justices Stevens and Ginsburg. Government appeal/FAL did not prevail. Lower court reversed.

16. *United States v. Padilla*, 508 U.S. 77 (1993) (per curiam) (a criminal case in which defendants moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (against the FAL): Chief Justice Rehnquist and Justices White, Blackmun, Stevens, O'Connor, Scalia, Kennedy, Souter, and Thomas. Government appeal/FAL did not prevail. Lower court reversed.

17. *Hunter v. Bryant*, 502 U.S. 224 (1991) (per curiam) (a civil rights action in which plaintiff sought money damages). Court addressed remedial Fourth Amendment issue (qualified immunity). Majority (against the FAL): Chief Justice Rehnquist and Justices White, Blackmun, O'Connor, Scalia, and Souter. Dissent (for the FAL on substantive and remedial grounds): Justice Stevens. Dissent (on grounds unrelated to the Fourth Amendment issue): Justice Kennedy. Justice Thomas did not participate. Government appeal/FAL did not prevail. Lower court reversed.

18. *Smith v. Ohio*, 494 U.S. 541 (1990) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the eight Justices who addressed the merits) (for the FAL): Chief Justice Rehnquist and Justices Brennan, White, Blackmun, Stevens, O'Connor, Scalia, and Kennedy. Dissent (on grounds unrelated to the Fourth Amendment issue): Justice Marshall. FAL appeal/FAL prevailed. Lower court reversed.

19. *Lanier v. South Carolina*, 474 U.S. 25 (1985) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the eight Justices who addressed the merits) (for the FAL): Chief Justice Burger and Justices Brennan, White, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Dissent (on grounds unrelated to the Fourth Amendment issue): Justice Marshall. FAL appeal/FAL prevailed. Lower court reversed.

20. *Thompson v. Louisiana*, 469 U.S. 17 (1984) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (for the FAL): Chief Justice Burger and Justices Brennan, White, Marshall, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. FAL appeal/FAL prevailed. Lower court reversed.

21. *Florida v. Rodriguez*, 469 U.S. 1 (1984) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. Majority (against the FAL): Chief Justice Burger and Justices White, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (on

grounds unrelated to the Fourth Amendment issue): Justices Stevens and Brennan. Justice Marshall dissented without giving reasons. Government appeal/FAL did not prevail. Lower court reversed.

22. *Massachusetts v. Upton*, 466 U.S. 727 (1984) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the seven Justices who addressed the merits) (against the FAL): Chief Justice Burger and Justices Stevens, White, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (on grounds unrelated to the Fourth Amendment issue): Justices Brennan and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

23. *Florida v. Meyers*, 466 U.S. 380 (1984) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the six Justices who addressed the merits) (against the FAL): Chief Justice Burger and Justices White, Blackmun, Powell, Rehnquist, and O'Connor. Dissent (on grounds unrelated to the Fourth Amendment issue): Justices Stevens, Brennan, and Marshall. Government appeal/FAL did not prevail. Lower court reversed.

24. *Cardwell v. Taylor*, 461 U.S. 571 (1983) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed remedial Fourth Amendment issue (whether Fourth Amendment claims are cognizable on federal habeas corpus review). **Unanimous** Court (among the 7 Justices who addressed the merits) (against the FAL): Chief Justice Burger and Justices White, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Justices Brennan and Marshall did not address the merit of the Fourth Amendment issue and, instead, stated that they would set the case for oral argument. Government appeal/FAL did not prevail. Lower court reversed.

25. *Michigan v. Thomas*, 458 U.S. 259 (1982) (per curiam) (a criminal case in which defendant moved to suppress evidence). Court addressed substantive Fourth Amendment issue. **Unanimous** Court (among the seven Justices who addressed the merits) (against the FAL): Chief Justice Burger and Justices White, Blackmun, Powell, Rehnquist, Stevens, and O'Connor. Justices Brennan and Marshall did not address the merit of the Fourth Amendment issue and, instead, stated that they would set the case for oral argument. Government appeal/FAL did not prevail. Lower court reversed.