THE 107 LONGEST SUPREME COURT CASES*

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This Article presents an empirical study of every Supreme Court case from 1 U.S. Reports through the slip opinions for the 2023-2024 term. We reviewed all of these cases to find the very longest ever written: the cases that take up eighty-five pages or more in the U.S. Reports format. It turns out there are only 107 such cases out of more than 35,000 decisions, making these cases extreme outliers, the longest 0.3%. This Article presents the list and then uses it to answer a series of fascinating questions: What are the topic areas that have most challenged the Court? What are the longest majority, concurring, and dissenting opinions ever? Which Justices are the most verbose? What cases have the most separate opinions? It turns out there is one case where nine Justices managed to produce ten separate opinions. Have these overlong opinions become more common recently? Has there been an increase in separate dissents and concurrences?

It turns out that these overlong and splintered cases are becoming more common and the pace is accelerating. Between 1791 and 1950, the first 159 years of the Court's existence, there were just fifteen cases of eighty-five pages or longer. The Roberts Court has produced seventeen such opinions between just 2020 and 2024, so the years 2020-2024 have more overlong opinions than the first century and a half of the Court. It also turns out that cases with multiple concurrences and dissents are more frequent in the twenty-first century. This Article then makes the normative case that this trend is bad for the Court and the country. It concludes by suggesting that Congress should impose a page limit on the Court and a brief argument that such a move would be constitutional under Article I.

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INTRODUCTION

We are living through a time of great change on the Supreme Court. The Justices on the Court are different and much more elite than those of the past.[1] The current Justices are, in many ways, the "best" Justices to ever serve on the Court: they are better-educated former Supreme Court clerks who held high-powered jobs before they became Federal Circuit Court Judges.[2] Taken together, the list of accomplishments is pretty breathtaking:

Seven Justices have an Ivy League undergraduate degree.[3]

Eight Justices attended Yale or Harvard Law School.[4]

1. *See infra* notes 3–9, 467–75 and accompanying text.

2. *See* BENJAMIN H. BARTON, THE CREDENTIALED COURT 1–21 (2022) [hereinafter BARTON, CREDENTIALED COURT].

3. *Biographies of the Justices*, SCOTUSBLOG, https://www.scotusblog.com/biographies-of-the-justices/ [https://perma.cc/38DG-CCBC] (Roberts, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, and Jackson).

4. *Id.* (Roberts, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, and Jackson).

> Six Justices clerked on the Supreme Court and three *replaced* the Justices they clerked for.[5]
>
> Six Justices practiced law at a large corporate law firm in Washington, D.C., often focused on appellate court and Supreme Court matters.[6]
>
> Six Justices have significant government practice experience in the Solicitor General's office, the Department of Justice, the U.S. Sentencing Commission, the White House, or the Senate Judiciary Committee.[7]
>
> Seven Justices taught law as an adjunct or full professor at an elite law school before joining the Court.[8]
>
> Eight Justices were elevated from a federal circuit court judgeship, including four from the D.C. Circuit.[9]

In many ways this is the most academically accomplished group of legal technicians to ever sit on the Court.

These changes in Court personnel have resulted in changes in how the Court works. As expert legal technicians, these Justices are more likely to utilize unusual procedural steps—like the shadow docket—than past Justices.[10] They take fewer cases and take longer to decide those cases,[11] then write longer, more

5. Roberts, Kagan, Gorsuch, Kavanaugh, Barrett, and Jackson clerked on the Supreme Court; Roberts, Kavanaugh, and Jackson replaced the Justices they clerked for. *Id.*

6. *Id.* (Roberts, Kagan, Gorsuch, Kavanaugh, Barrett, and Jackson).

7. *Id.* (Roberts, Alito, Kagan, Gorsuch, Kavanaugh, and Jackson).

8. *See* Alex Schank, *Roberts Nominated to Supreme Court*, HOYA (Sep. 2, 2005), https://thehoya.com/uncategorized/roberts-nominated-to-supreme-court/ [https://perma.cc/W5PZ-UTE8] (Roberts—Georgetown); *Samuel Alito*, BIOGRAPHY, https://www.biography.com/legal-figures/samuel-alito [https://perma.cc/F4CS-LDPE] (last updated June 11, 2024, at 09:39 ET) (Alito—Seton Hall); Colin McEvoy, *Sonia Sotomayor*, BIOGRAPHY, https://www.biography.com/legal-figures/sonia-sotomayor [https://perma.cc/2MRM-8WVR] (last updated Mar. 6, 2023, at 17:11 ET) (Sotomayor—NYU); *Elena Kagan*, BIOGRAPHY, https://www.biography.com/legal-figures/elena-kagan [https://perma.cc/U526-KLHV] (last updated Mar. 26, 2021, at 15:55 ET) (Kagan—Chicago/Harvard); *Gorsuch, Trump's Pick for Supreme Court, a Visiting Professor at Colorado Law*, COLO. L. (Jan. 31, 2017), https://www.colorado.edu/law/2017/01/31/gorsuch-trumps-pick-supreme-court-visiting-professor-colorado-law [https://perma.cc/V283-B2GT] (Gorsuch—Colorado); *Judge Brett Kavanaugh, HLS Williston Lecturer on Law, Nominated to Supreme Court*, HARV. L. TODAY (July 9, 2018), https://hls.harvard.edu/today/judge-brett-kavanaugh-hls-williston-lecturer-on-law-nominated-to-supreme-court/ [https://perma.cc/8E5Q-NA6Y] (Kavanaugh—Harvard); *Amy Coney Barrett*, BIOGRAPHY, https://www.biography.com/legal-figures/amy-coney-barrett [https://perma.cc/GCZ3-J9L2] (last updated Oct. 27, 2020 11:07 ET) (Barrett—Notre Dame).

9. Roberts, Thomas, Alito, Sotomayor, Gorsuch, Kavanaugh, Barrett, and Jackson were each elevated from a circuit court; Roberts, Thomas, Kavanaugh, and Jackson all came from the D.C. Circuit. *Biographies of the Justices*, *supra* note 3.

10. Benjamin H. Barton, *Why Are These Justices Using the Shadow Docket More than Past Justices?*, 23 NEV. L.J. 845, 849–54 (2023) [hereinafter Barton, *Shadow Docket*].

11. On taking fewer cases, see Anastasia P. Boden, *The Court Is All Right*, 22 CATO SUP. CT. REV. ix, xi (2023) ("[T]he Court is taking fewer cases than ever. In recent years, it's taken about 80 cases per term, nearly half of what it took in the 1980s."). On taking longer to decide cases, see Adam Feldman,

splintered opinions.[12] In a possibly related trend, this Court is also at an all-time low in public trust.[13]

The trend towards longer opinions has been measured empirically in different ways. The most comprehensive study by Ryan Black and James Spriggs considered every majority opinion written from 1791 until 2005 and demonstrated that average majority opinion length (in word count) has grown substantially over time.[14] The indefatigable (and ever-excellent) Adam Feldman at Empirical SCOTUS studied majority opinion length (again using word count) from 1951 to 2013 and found a similar trend.[15] The methodology and findings from these studies are discussed below.

The trend towards longer majority opinions tells us something about this Court vis-à-vis past Courts. At a minimum, it establishes increased verbosity. Nevertheless, as Spriggs and Black note, there are multiple reasons besides changes in personnel that have driven longer opinions, like the arrival of law clerks and the rise of technologies like the typewriter and computer.[16] Moreover, as a generic trend, additional length may be salutary, or at least not a bad thing, assuming the extra words are used to elucidate.

This study focuses on the very longest Supreme Court cases ever written through 2024 as counted by pages in the U.S. Reports. There are several advantages and insights to be gleaned from such a study. First, the study measures overall case length, rather than just majority opinion length. The Justices themselves have taken the time to write these dissents and concurrences, so they certainly believe they are meaningful and important. Further, in a case of significant public interest like *Dobbs v. Jackson Women's*

It's Not Your Imagination—The Supreme Court Is Less Efficient, EMPIRICAL SCOTUS (Jan. 23, 2023), https://empiricalscotus.com/2023/01/23/its-not-your-imagination-the-supreme-court-is-less-efficient/ [https://perma.cc/6LJR-HXKH] [hereinafter Feldman, *The Supreme Court Is Less Efficient*].

12. On the opinions getting longer, see Adam Feldman, *Empirical SCOTUS: An Opinion Is Worth at Least a Thousand Words (Corrected)*, SCOTUSBLOG (Apr. 3, 2018), https://www.scotusblog.com/2018/04/empirical-scotus-an-opinion-is-worth-at-least-a-thousand-words/ [https://perma.cc/7MYB-X97H] [hereinafter Feldman, *An Opinion Is Worth at Least a Thousand Words*]. On the rise in additional concurrences and dissents, see Adam Feldman, *Concurrences Are All the Rage*, EMPIRICAL SCOTUS (June 5, 2024), https://empiricalscotus.com/2024/06/05/concurrences-are-all-the-rage/ [https://perma.cc/BY8L-QA5E] [hereinafter Feldman, *Concurrences*].

13. *See* Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RSCH. CTR., https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low/ [https://perma.cc/777V-VYX5] (last updated Sep. 3, 2025); Jeffrey M. Jones, *Supreme Court Trust, Job Approval at Historical Lows*, GALLUP (Sep. 29, 2022), https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx [https://perma.cc/26YK-B8H2]; *Trust in U.S. Supreme Court Continues To Sink*, ANNENBERG PUB. POL'Y CTR. U. PA. (Oct. 2, 2024), https://www.annenbergpublicpolicycenter.org/trust-in-us-supreme-court-continues-to-sink/ [https://perma.cc/4GZY-JKBT].

14. *See* Ryan C. Black & James F. Spriggs II, *Empirical Analysis of the Length of U.S. Supreme Court Opinions*, 45 HOU. L. REV. 621, 630–37 (2008).

15. Feldman, *An Opinion Is Worth at Least a Thousand Words*, *supra* note 12.

16. *See* Black & Spriggs, *supra* note 14, at 640–42.

Health Organization[17] or *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*,[18] a lay reader may try to digest each of the various opinions, rather than just the majority, in an effort to understand the full scope of the decision.

Focusing on majority opinion length also excuses this new crop of Justices for the extra length, law, and confusion packed into these opinions. These Justices apparently think it is appropriate to hold that access to abortion is no longer constitutionally protected in an opinion spanning 200-odd pages including the opinions and the appendices.[19] Just crediting the seventy-nine-page majority opinion fails to capture the sheer length and challenge of the opinion.[20]

Second, while a generic rise in opinion length may be neutral or even helpful, a rise in very long and splintered opinions is much harder to defend. The study lists every case of over eighty-five pages in the U.S. Reports since the Court began, a list of 107 cases. These cases are often splintered and/or marred by multiple concurrences, dissents, and even stray per curiam opinions.[21] At this length it is unlikely that any ordinary American will read the cases, and honestly most lawyers, law students, and law professors probably won't either.[22]

Third, while there is much to be learned from a study of the average length of every opinion, there is also wisdom to be gleaned from outliers. These cases are extreme outliers. As of 2018, there were more than 35,000 total Supreme Court cases.[23] Only 107 of these cases span eighty-five pages or more in the U.S. Reports, so these are not just the ninety-ninth percentile in length, they are the top 0.3%.[24]

Malcolm Gladwell famously studied outliers to draw commonalities between uniquely successful individuals like the Beatles and Bill Gates.[25] The

17. 142 S. Ct. 2228 (2022).

18. 143 S. Ct. 2141 (2023).

19. *Dobbs*, 142 S. Ct. at 2228–354.

20. *See, e.g.*, Dobbs v. Jackson Women's Health Org., No. 19-1392, slip op. at 1–79 (U.S. June 24, 2022), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf [https://perma.cc/54MG-EMA4].

21. *See infra* Section III.D.

22. *See* Ray Forrester, *Supreme Court Opinions—Style and Substance: An Appeal for Reform*, 47 HASTINGS L.J. 167, 177 (1995).

23. *Historical Supreme Court Cases Now Online: More Than 35,000 Decisions Now Available*, LIBR. CONG. (Mar. 12, 2018), https://www.loc.gov/item/prn-18-026/historical-supreme-court-cases-now-online/2018-03-13/ [https://perma.cc/9ZLH-U5VF].

24. This Article refers to these cases as "ultralong" or "overlong" in spots and this is why: they are the longest of the longest opinions and historical anomalies.

25. *See generally* MALCOLM GLADWELL, OUTLIERS: THE STORY OF SUCCESS (2008) (exploring the social, cultural, and situational conditions that enable certain individuals and groups to attain extraordinary success).

study of outliers has also been used to fuel breakthroughs in areas as diverse as medicine, finance, and manufacturing.[26] Here, we study these longest opinions to answer a series of critical questions: Is the rate of appearance of these ultralong opinions increasing? Do certain areas of law drive ultralong opinions? Are these opinions more or less influential than shorter opinions?

The answers to these questions help build a normative argument against overlong opinions. Most notably, the regularity of overlong opinions is increasing at an alarming rate. Between 1791 and 1950, the first 159 years of the Court's existence, there were just fifteen cases of eighty-five pages or longer.[27] The Roberts Court has produced sixteen such opinions in the last five years, so the years 2020–2024 have had more overlong opinions than the first century and a half of the Court.[28] But these cases are not particularly influential, as measured by citation counts or qualitative rankings.[29]

Fourth, the resulting list is pretty fun. We have a list of 107 opinions that span the entirety of the Court. It allows us to see the issues that have truly bedeviled the Court over the years. We can also see how certain issues (like the Court's struggle with the anticommunism laws) rose in prominence and then eventually faded as the country and the Court moved on to other matters.[30] We can see how other issues, like slavery and its aftermath, or what the great W.E.B. DuBois declared as "[t]he problem of the Twentieth Century,"[31] remain divisive as ever.

Some of the opinions are almost comically dysfunctional. *Furman v. Georgia*[32] has ten opinions: one per curiam and nine more concurrences from each Justice.[33]

26. Ghayath Janoudi, Mara Uzun (Rada), Deshayne B. Fell, Joel G. Ray, Angel M. Foster, Randy Griffen, Tammy Clifford & Mark C. Walker, *Outlier Analysis for Accelerating Clinical Discovery: An Augmented Intelligence Framework and a Systematic Review*, PLOS DIGIT. HEALTH (May 22, 2024), https://journals.plos.org/digitalhealth/article?id=10.1371/journal.pdig.0000515 [https://perma.cc/2YRV-2UWG].

27. *See infra* Part IV.

28. *See infra* Part IV.

29. *See infra* tbl. 7.

30. For example, *Schneiderman v. United States*, 320 U.S. 118 (1943), is the first overlong anti-communism case on this list. *See infra* Part II. *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1 (1961), is the last overlong anti-communism case on the list. *See infra* Part II.

31. W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 15 (Brent Hayes Edwards ed., Oxford Univ. Press Inc. 2007) (1903).

32. 408 U.S. 238 (1972).

33. *See id.* at 238–374.

Last, a few of these cases are legitimately famous and deserve their length. *Dred Scott v. Sandford*[34] is the third-longest case on this list, for example.[35] Many, many more are long and yet extremely forgettable.[36]

From these findings, this Article makes the normative argument that, on the whole, these opinions are too long to be effective, and the accelerating growth in the number of these ultralong cases is bad for the Supreme Court and the country. The Justices may think they are doing America a favor by explaining every detail of their thoughts on abortion, affirmative action, or the Second Amendment across lengthy majority opinions, multiple concurrences, and dissents. To the contrary, they are discouraging citizens from reading their decisions and forcing reliance on whatever the media (or worse yet, social media) reports about them. In a time where attention spans are under more duress than ever,[37] the Court has chosen to write historically long and splintered opinions that no one, save a few constitutional law professors, will read in their entirety.[38]

This Article proceeds as follows. In Part I, we cover the previous studies of majority opinion length and the methodology of this study. In Part II, we present the list itself, challenging readers to count the number of these cases they have heard of, read some of, or read all of. All but the most dedicated readers will find that the great bulk of these cases are unread and unheralded. In Part III, we present sublists—the longest majority opinions, dissents, and concurrences, as well as a list of the cases with the most total opinions. In Part IV, we analyze the list over time and demonstrate that the number of overlong opinions is increasing at a concerning rate. Part V covers the most frequent issues on the list, showing what areas of law have been most challenging for the Court. Part VI argues that these overlong opinions are a bad sign for the Court and the country. Part VII discusses why these opinions are becoming more frequent and briefly offers a controversial solution: Congress can and should impose a reasonable page limit on Supreme Court opinions. Such a limit should be allowable under their Article I powers.

I. PRIOR STUDIES AND METHODOLOGY

There have been relatively few empirical studies of the length of the U.S. Supreme Court's longest opinions. The first and best study is Ryan C. Black &

34. 60 U.S. (19 How.) 393 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

35. *Id.*; *see infra* Part II.

36. *See, e.g.*, United States v. Castillero, 67 U.S. (2 Black) 17 (1862).

37. Jamie Ducharme, *Why Everyone's Worried About Their Attention Span—and How To Improve Yours*, TIME (Aug. 10, 2023, at 12:27 ET), https://time.com/6302294/why-you-cant-focus-anymore-and-what-to-do-about-it/ [https://perma.cc/PR6B-92G7 (staff-uploaded archive)].

38. *See, e.g.*, Sec. & Exch. Comm'n v. Jarkesy, 144 S. Ct. 2117 (2024) (applying the Seventh Amendment to SEC civil enforcement actions).

James F. Spriggs' 2008 *Empirical Analysis of the Length of U.S. Supreme Court Opinions*.[39] There, the authors used word count to track the average length of Supreme Court opinions from 1791 until 2005, a total of 26,715 cases.[40] The article demonstrated that the average length of majority opinions has grown substantially over the centuries and proposed some possible causes.[41] For example, the authors rejected the arrival of Supreme Court clerks as a likely determinant of opinion length, but accepted the role of technology (typewriters, word processors).[42] It's an excellent piece of scholarship. The article did not, however, focus much attention on the very longest opinions, only listing the seven longest cases in a footnote.[43]

Adam Feldman of the Empirical SCOTUS blog did a shorter study of the length of signed majority opinions written between 1951 and the end of the 2013 term.[44] Like the Black and Spriggs study, Feldman demonstrated that the average majority opinion length had risen over that period, from roughly 4,000 words to 6,000.[45] Feldman also did some additional analysis, showing that more divided cases resulted in longer majority opinions, abortion cases resulted in the longest average majority opinions (and this was before *Dobbs*!), Justice Stevens wrote the longest opinions, and Justice Minton wrote the shortest.[46] Like all of Feldman's work, it is well written and insightful.

This Article adds to that literature by a) updating from 2005/2013 to include a modern period where longer opinions became much more prevalent, b) including the entire length of a case, rather than just the majority, and c) using a different, and more intuitive measure of "length," the number of pages any case takes up in the U.S. Reports. Further, as the list establishes, opinion length has changed *a lot* since 2005,[47] so a new list is quite helpful, even if we are in the middle of a sea change towards more overlong opinions. Insofar as you are worried that this methodology might be substantially different, note that this study's list of the longest cases overlaps substantially with the Black and Spriggs list of the longest majority opinions.[48]

39. *See* Black & Spriggs, *supra* note 14.
40. *Id.* at 630.
41. *See id.* at 634–47.
42. *See id.* at 640–42.
43. *See id.* at 631 & n.42.
44. Feldman, *An Opinion Is Worth at Least a Thousand Words*, *supra* note 12.
45. *Id.*
46. *See id.*
47. Thirty-seven of the 107 longest cases have been written between 2006 and 2024. *See infra* Part II.
48. Black & Spriggs, *supra* note 14, at 631–32, 631 n.42.

A. *Methodology: Finding the Cases*

The methodology was relatively simple. In the summer of 2024, a research assistant and I split up the U.S. Reports starting with Volume 1 and continuing through Volume 583 and every opinion released in slip opinion format from 2018 through 2024.[49] We started by looking at cases longer than fifty pages but quickly realized there would be too many. We eventually settled on eighty-five pages in the U.S. Reports, not including the syllabus or any recounting of the arguments by the parties but including any appendices.[50] We included appendices because the Justices themselves felt strongly enough to add them. We excluded the syllabi and other items not written or included by the Justices themselves.

These selections do, of course, affect the overall page count. For example, the syllabus in the second longest case, *McConnell v. Federal Election Commission*,[51] is nineteen pages directly in front of the Court's 289 pages.[52] Interestingly, the syllabus for the longest case, *Buckley v. Valeo*,[53] is a more modest six pages.[54] Syllabus style and length deserves its own study, as the difference between *Buckley* and *McConnell* suggests that the contemporary Justices may be asking for more and longer detail in the syllabi.[55] Or maybe *Buckley* is just more digestible.

The syllabi for the modern cases are clearly demarcated in the U.S. Reports and always a fraction of the length of the actual opinions. This was not necessarily the case in nineteenth century. From 1790 to 1883, the cases in the U.S. Reports came from a series of different individual reporters who gathered the cases over that period.[56] J.S. Black had the shortest tenure (1861–1862) and

49. Supreme Court opinions are officially published in the U.S. Reports. *See* 28 U.S.C. § 411. There are final, bound versions, as well as preliminary versions. *See U.S. Reports*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/opinions/USReports.aspx [https://perma.cc/8JCY-YTVL]. The preliminary volumes are published in soft cover before being combined into a single, final version. *See id.* The most recent cases through 2024 are released as slip opinions and can be found by year. *See Opinions of the Court*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/opinions/slipopinion/24 [https://perma.cc/9DY9-JNEY].

50. Early versions of the U.S. Reports included a detailed summary of the arguments prior to the opinion itself. Robert G. Schwemm, Strader v. Graham*: Kentucky's Contribution to National Slavery Litigation and the* Dred Scott *Decision*, 97 KY. L.J. 353, 401 (2009). This tradition changed at the turn of the twentieth century when a syllabus was added to the beginning of most cases. *Id.* at 401 n.293.

51. 540 U.S. 93 (2003).

52. *See id.* at 93–111.

53. 424 U.S. 1 (1976).

54. *See id.* at 1–6.

55. *Compare id.* (syllabus spanning six pages), *with McConnell*, 540 U.S. at 93–111 (syllabus spanning nineteen pages).

56. *See Reporters: Supreme Court Reporters*, OKLA. CITY UNIV. L. LIBR., https://libguides.okcu.edu/c.php?g=225281&p=1492959 [https://perma.cc/3P4D-ZF6J] (last updated Sep. 24, 2020, at 14:41 ET).

Benjamin C. Howard had the longest (1843–1860).[57] The reporters were pretty idiosyncratic, so the material that is included in addition to the opinions themselves varies over the years and by the case.[58]

Reporters would sometimes include the briefs or a summary of oral argument or both, especially in more important cases. So, for example, in *Marbury v. Madison*,[59] the reporter, William Cranch, includes a long summary of the facts, procedural posture, and the arguments of the parties in a fifteen page "syllabus" before the opinion itself.[60] Marshall's famous opinion runs another twenty-seven pages, so the ratio of Cranch material to Marshall's writing is 15:27.[61] In some of the older cases, the non–case material can be pretty lengthy and extensive.[62] In the longest case from the nineteenth century, *United States v. Castillero*, the reporter includes an additional 115 pages of non–opinion material that was, theoretically at least, of use and interest to practitioners of the day.[63]

The oddities of the nineteenth century cases made some false positives inevitable. For example, *Green v. Biddle*,[64] an 1823 case about property rights in Kentucky, takes up 107 pages in the U.S. Reports, and includes two majority opinions (by Story and Washington) and a dissent (by Johnson), so it was counted at first on the list.[65] Closer examination showed that the bulk of those pages were written by the reporter and interposed between the opinions, so *Green v. Biddle* was cut.[66]

There were, naturally, complications with this method. First, Volumes 1 and 2 of the U.S. Reports are the first two volumes of the original Dallas Reports and are mostly Pennsylvania cases collected before the Supreme Court published any cases.[67] Those cases were not included in the study, and they were also very short, so would not have been considered regardless.[68]

Second, and not surprisingly, there were some light changes in typeface over the centuries. Notably, the font size and typeface in the U.S. Reports

57. *See id.*

58. *See* Ryan Schwier, *William T. Otto: The Supreme Court's First "Anonymous" Reporter, 1875–1883*, IND. LEGAL ARCHIVE (May 28, 2015), http://www.indianalegalarchive.com/journal/otto [https://perma.cc/3YAS-X8CK].

59. 5 U.S. (1 Cranch) 137 (1803).

60. *See id.* at 137–53.

61. *See id.* at 153–80 (Marshall, C.J., majority opinion).

62. *See, e.g.*, United States v. Castillero, 67 U.S. (2 Black) 17, 17–132 (1862).

63. *See id.*

64. 21 U.S. (8 Wheat) 1 (1823).

65. *See id.* at 1–108.

66. *See id.* at 10–17 (Story, J., majority opinion); *id.* at 69–94 (Washington, J., majority opinion); *id.* at 94–108 (Johnson, J., dissenting).

67. Diane P. Wood, *Generalist Judges in a Specialized World*, 50 S.M.U. L. REV. 1755, 1756–57 (1997).

68. *See, e.g.*, West v. Barnes, 2 U.S. 401, 401 (1791).

before the early twentieth century are slightly smaller than the modern version.[69] There were comparatively few cases that made the cut among the longest over this period but still note that those opinions might be longer yet in the larger typeface of the modern U.S. Reports. There are also small differences in typesetting and formatting between the slip opinions and the final editions.[70] After having reviewed the full body of the Court's work, the list would look basically the same regardless of these typeface discrepancies. There are just so few of these cases.

B. *Methodology: Issue Areas*

The study assigns two issue area classifications to each case so we can see what areas of law have driven the longest cases.

The first issue classification system used is from the Supreme Court Database, hosted by the Washington University School of Law.[71] The database is the "most widely used dataset" for empirical study of the Supreme Court.[72] Harold Spaeth started it with a National Science Foundation grant in the 1980s, and it has grown in terms of case coverage and categories ever since.[73] Here we use their "issue" and "issue area" codes for each of the cases studied and refer to these categories as the "Spaeth" categories in honor of the professor who launched the entire project. "Issue" is listed first, because it is more general.[74] "Issue area" is more specific and "separates the issues identified in the preceding variable (issue) into . . . [separate] categories."[75]

Spaeth's "issue" category "identifies the issue for each decision. Although criteria for the identification of issues are hard to articulate, the focus here is on the subject matter of the controversy (e.g., sex discrimination, state tax, affirmative action) rather than its legal basis (e.g., the equal protection clause)."[76] As you might imagine, creating a classification system for issues that

69. Based on the eye test, it looks like the font size changed between 226 U.S. Reports and 227 U.S. Reports.

70. So, for example, the final version of *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 223–423 (2022) is 200 pages in the U.S. Reports, while the slip opinion version checked in at 205 pages. You can find the slip opinion here: *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, slip op. (U.S. June 24, 2022), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf [https://perma.cc/54MG-EMA4].

71. SUP. CT. DATABASE, http://scdb.wustl.edu [https://perma.cc/NY28-69PN].

72. Jesse Merriam, *Preemption as a Consistency Doctrine*, 25 WM. & MARY BILL RTS. J. 981, 1002 (2017).

73. *The Genesis of the Database*, SUP. CT. DATABASE, http://scdb.wustl.edu/about.php [https://perma.cc/54FJ-XM5N].

74. *Id.*

75. *Online Codebook, Issue Area*, SUP. CT. DATABASE, http://scdb.wustl.edu/documentation.php?var=issueArea [https://perma.cc/48BJ-5VJ2].

76. *Online Codebook, Issue*, SUP. CT. DATABASE, http://scdb.wustl.edu/documentation.php?var=issue [https://perma.cc/8YDM-7CUP].

span from the eighteenth century to 2025 is a challenge, and the Database authors are well aware of this:

> This variable and its counterpart, issue area, cover the waterfront of the Court's decisions. However, neither of them provide the specificity that users commonly want . . . .
>
> Because the database extends over four centuries of the Court's decisions during which time the Court's jurisdiction changed drastically, the description of many specific variables does not provide a good fit. Thus, for example, 'debtors' rights,' which locates in the civil rights issue area, contains many nineteenth century cases that have little, if anything, to do with civil rights as understood today. Nor do a vast majority of early takings cases have any reference to due process, and many of the early criminal procedure cases don't involve crimes at all. Conversely, to have lumped all railroad cases, bar none, into one variable would have erased the many types of situations in which nineteenth and early twentieth century railroads found themselves.[77]

The other challenge, of course, is the subjectivity of choosing what "issue" predominates, and naturally the Database has faced criticism in that regard.[78] Nevertheless, the Database is the largest and best-known collection, so their issue classifications are presented here.[79]

The Database also sometimes has more than one issue per case, so the list of issues has more entries than 107, reflecting that some cases raised several issues.[80] Typically, the extra issue was standing, but not always.[81]

The second classification system is cheekily named "Barton" because I wanted a more straightforward way to group these cases. The process was relatively simple; I read each case (or I read enough to understand the issue)

77. *Id.*

78. Daniel E. Ho & Kevin M. Quinn, *How Not To Lie with Judicial Votes: Misconceptions, Measurement, and Models*, 98 CALIF. L. REV. 813, 852 (2010) (arguing that the "prevailing practice in the Supreme Court Database is to reduce some of the most complex cases in the legal system to a single issue," which may ignore "complex doctrines that defy 'liberal' or 'conservative' classification").

79. One other issue is that the database is organized by docket number. Harold J. Spaeth, Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, Sara C. Benesh & Michael J. Nelson, *2025 Supreme Court Database, Version 2025 Release 01*, SUP. CT. DATABASE (Sep. 1, 2025), http://scdb.wustl.edu/data.php?s=1 [https://perma.cc/KQ57-HQCE]. As such the Supreme Court Database will sometimes have more than one entry for a particular case, typically due to different docket numbers that have been grouped into one opinion. *Id.* For example, *Buckley v. Valeo* has two different docket numbers (75-436 and 75-437) and thus has two different entries in the database. *Id.* In the situation where there are multiple docket numbers, the study considers it as one case and counts issue areas accordingly.

80. There are 127 Spaeth issues in these 107 cases. *See infra* app.

81. *See, e.g.*, *infra* Part II (listing two issues for *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003): First Amendment and Standing to Sue).

and tried to choose a single umbrella term that fairly captured the other like cases on the list.

So, for example, in Spaeth, the "Issue Area" and "Issue" that is used for the recent spate of Second Amendment cases (*McDonald*, *Heller*, *Bruen*, and *Rahimi*) is the counterintuitive "Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure)."[82] In the Barton classification, we just group these cases under "Second Amendment."[83]

Again, having gone through this process personally, I have a lot of sympathy for the Spaeth categories. The database was developed over decades, and they started with the Warren Court,[84] so they did not have the opportunity to look at every case in the history of the Court before creating their categories. The rolling nature of the Spaeth project helps explain why the Second Amendment cases, for example, were lumped into a "miscellaneous" issue category in criminal procedure.[85] When they started the project, prior to *Heller*, the Second Amendment was basically a backwater.[86] As such, listing it as Miscellaneous likely seemed harmless in the 1980s, but less so now that it is so heavily litigated. And now, the list.

II. 107 LONGEST SUPREME COURT OPINIONS

Below is the list of every Supreme Court opinion to clock in at over eighty-five pages in the U.S. Reports, from the longest to the 107th longest. It includes the number of pages for the case, the case name, the citation, and two different descriptions of the issue area of the case. If there is a footnote with a link to the slip opinion in the case, we used the slip opinion pagination because the official U.S. Reports version was not available.

The list is here in the text, rather than in a footnote or appendix, because it is fun to just read through and see how many cases you immediately recognize. There are certainly some cases that any reader of an article like this will recognize due to fame, or recency, or both, like *Dred Scott*, *Dobbs v. Jackson Women's Health*, or *SFFA v. Harvard*.[87] Then there are cases you may have heard of but never read.[88] There are also certainly cases that even the most dedicated

82. *See infra* app.

83. *See infra* app.

84. *See The Genesis of the Database*, *supra* note 73.

85. See, for example, *District of Columbia v. Heller*, 554 U.S. 570 (2008), which is classified as miscellaneous criminal procedure in the Spaeth database. *See infra* app.

86. Kyle Hatt, *Gun-Shy Originalism: The Second Amendment's Original Purpose in* District of Columbia v. Heller, 44 SUFFOLK U. L. REV. 505, 505 n.5 (2011) ("[P]rior to Heller, despite its political prominence, the Second Amendment has historically been an academic backwater.").

87. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023).

88. *See, e.g.*, S.A. Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

current constitutional law buff will not have heard of or read, like *United States v. Castillero*.[89]

If you care to, treat the list below like one of those "listicles" that ask you how many great books you have read[90] or how many of the American Film Institute's top-100 films have you seen.[91] The suggested quiz asks you to mark each case as: 0) I have never heard of this case; 1) I have heard of this opinion; 2) I have read some of this opinion, but not all of it; 3) I have read this opinion in its entirety, including concurrences and dissents.[92] Suggested scoring is in the footnote below.[93]

89. 67 U.S. (2 Black) 17 (1863).

90. *E.g.*, Katie Russell, *Quiz: How Many Classics Have You Read?*, PENGUIN BOOKS (Jan. 15, 2025), https://www.penguin.co.uk/articles/2025/01/quiz-how-many-classics-have-you-read [https://perma.cc/DQY9-FSKF].

91. *E.g.*, *AFI'S 100 Years . . . 100 Movies—10th Anniversary Edition: The 100 Greatest American Films of All Time*, AM. FILM INST., https://www.afi.com/afis-100-years-100-movies-10th-anniversary-edition/ [https://perma.cc/E7AN-CRXW].

92. If you can honestly say you have read every page of each of these cases, feel free to contact me (bbarton@utk.edu) for your prize, but be prepared to answer some pointed questions first!

93. For every case you have heard of, give yourself 1 point. For every case you have read an excerpt of, score 2 points. For any case you have read in its entirety score 3 points. So, the maximum possible score is 321 (if you have read every one of these cases in their entirety). Try not to cheat. Here is what your total score means:

0–50:	Bruh, do you even Supreme Court?
50–100:	Beginner.
100–150:	Average Supreme Court fan.
150–200:	Average constitutional law professor
200–250:	Yoda-level constitutional law professor.
250–300:	WOWSA! Is your hobby just reading super long opinions?
300–321:	This is just weird, actually.

Table 1: Overall List of 107 Longest Supreme Court Cases

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
1	*Buckley v. Valeo*, 424 U.S. 1 (1976)	289	First Amendment: Campaign Spending (cf. Governmental Corruption)	Campaign Finance
2	*McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003)	252	First Amendment: Campaign Spending (cf. Governmental Corruption); Standing to Sue: Personal Injury	Campaign Finance
3	*Dred Scott v. Sandford*, 60 U.S. 393 (1857)	235	a. Civil Rights: Slavery or Indenture; b. Judicial Power: Judicial Administration: Supreme Court Jurisdiction or Authority on Appeal or Writ of Error, from Highest State Court; c. Economic Activity: Liability, Other than as in Sufficiency of Evidence, Election of Remedies, Punitive Damages	Slavery

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
4	*Furman v. Georgia*, 408 U.S. 238 (1972)	232	Criminal Procedure: Cruel and Unusual Punishment, Death Penalty (cf. Extra-Legal Jury Influence, Death Penalty)	Death Penalty
5	*Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023)[94]	229[95]	Civil Rights: Affirmative Action	Affirmative Action/ Considering Race
6	*United States v. Castillero*, 67 U.S. (2 Black) 17 (1863)	228	Economic Activity: State and Territorial Land Claims	Property Dispute
7	*Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)[96]	205[97]	Privacy: Abortion: Including Contraceptives	Abortion

94. This case is not yet published in the U.S. Reports. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141 (2023).

95. This page count is from the slip opinion for this case. No. 20-1199, slip op. (U.S. June 29, 2023), https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf [https://perma.cc/UN8Z-JCJC].

96. This case is not yet published in the U.S. Reports. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

97. This page count is from the slip opinion for this case. No. 19-1392, slip op. (U.S. June 24, 2022), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf [https://perma.cc/54MG-EMA4].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
8	*Communist Party of the U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1 (1961)	199	First Amendment: Federal or State Internal Security Legislation: Smith, Internal Security, and Related Federal Statutes	Anti-communism
9	*McDonald v. City of Chicago*, 561 U.S. 742 (2010)	196	Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure)	Second Amendment
10	*Myers v. United States*, 272 U.S. 52 (1926)	190	Miscellaneous: Executive Authority vis-à-vis Congress or the States	Presidential Power
11	*Smith v. Turner (The Passenger Cases)*, 48 U.S. (7 How.) 283 (1849)	181	Economic Activity: State or Local Government Tax	Commerce Clause
12	*Oregon v. Mitchell*, 400 U.S. 112 (1970)	180	Civil Rights: Voting	Voting Rights
13	*Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)	179	Federalism: National Supremacy: Miscellaneous	Taxing and Spending Clause/ Commerce Clause

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
14	*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)	169	Criminal Procedure: Habeus Corpus	Habeus Corpus
15 (tie)	*Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007)	168	Civil Rights: Desegregation, Schools	School Desegregation
15 (tie)	*Bostock v. Clayton County*, 590 U.S. 644 (2020)[98]	168[99]	Civil Rights: Sex Discrimination in Employment (cf. Sex Discrimination)	Employment Discrimination
15 (tie)	*Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010)	168	First Amendment: Campaign Spending (cf. Governmental Corruption)	Campaign Finance

98. This case is not yet published in the U.S. Reports. Bostock v. Clayton County, 140 S. Ct. 1731 (2020).

99. This page count is from the slip opinion for this case. No. 17-1618, slip op. (U.S. June 15, 2020), https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf [https://perma.cc/W8SM-Y3HM].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
18	*Baker v. Carr*, 369 U.S. 186 (1962)	163	a. Civil Rights: Reapportionment: Other than Plans Governed by the Voting Rights Act; b. Judicial Power: Standing to Sue: Justiciable Question; c. Judicial Power: Standing to Sue: Legal Injury	Voting Rights
19 (tie)	*McGowan v. Maryland*, 366 U.S. 420 (1961)	160	First Amendment: Establishment of Religion (Other than as Pertains to Parochiaid)	First Amendment Religion Clauses
19 (tie)	*Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992)	160	Privacy: Abortion: Including Contraceptives	Abortion
21 (tie)	*Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)	153	Civil Rights: Affirmative Action	Affirmative Action/ Considering Race
21 (tie)	*Legal Tender Cases*, 79 U.S. (12 Wall) 457 (1870)	153	Economic Activity: Miscellaneous Economic Regulation	Paper Money

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
23	*District of Columbia v. Heller*, 554 U.S. 570 (2008)	151	Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure)	Second Amendment
24 (tie)	*U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)	145	Federalism: Miscellaneous Federalism; Ballot Access: Ballot Access (of Candidates and Political Parties)	Term Limits
24 (tie)	*Downes v. Bidwell (The Insular Cases)*, 182 U.S. 244 (1901)	145	a. Miscellaneous: Executive Authority vis-à-vis Congress or the States; b. Federal Taxation: Federal Taxation of Gifts, Personal, Business, or Professional Expenses; c. Miscellaneous: Incorporation of Foreign Territories	Insular Cases
26	*Seminole Tribe v. Florida*, 517 U.S. 44 (1996)	139	Federalism: National Supremacy: Miscellaneous	Congressional Power/ Eleventh Amendment

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
27	*Morris v. United States*, 174 U.S. 196 (1899)	138	Private Action: Real Property	Property Dispute
28	*S.A. Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973)	134	Civil Rights: Poverty Law, Constitutional	School Funding
29 (tie)	*June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299 (2020)	133	Privacy: Abortion: Including Contraceptives	Abortion
29 (tie)	*Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425 (1977)	133	First Amendment: Libel, Privacy: True and False Light Invasions of Privacy	Presidential Privilege
31	*N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)[100]	129[101]	Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure)	Second Amendment

100. This case is not yet published in the U.S. Reports. N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022).

101. This page count is from the slip opinion for this case. No. 20-843, slip op. (U.S. June 23, 2022), https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf [https://perma.cc/8CRA-XNVB].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
32	*McGautha v. California*, 402 U.S. 183 (1971)	128	Criminal Procedure: Extra-Legal Jury Influences: Jurors and Death Penalty (cf. Cruel and Unusual Punishment)	Death Penalty
33	*Haaland v. Brackeen*, 599 U.S. 255 (2023)[102]	125[103]	Civil Rights: Indians (Other than Pertains to State Jurisdiction over)	Indian Law
34	*United States v. United Mine Workers of Am.*, 330 U.S. 258 (1947)	124	Criminal Procedure: Contempt of Court or Congress	Labor Law
35	*Bush v. Vera*, 517 U.S. 952 (1996)	122	Civil Rights: Reapportionment: Other than Plans Governed by the Voting Rights Act	Redistricting and Race
36	*Bell v. Maryland*, 378 U.S. 226 (1964)	120	Civil Rights: Sit-In Demonstrations (Protests Against Racial Discrimination in Places of Public Accommodation)	Desegregation Sit-Ins

102. This case is not yet published in the U.S. Reports. Haaland v. Brackeen, 143 S. Ct. 1609 (2023).

103. This page count is from the slip opinion for this case. No. 21-376, slip op. (U.S. June 15, 2023), https://www.supremecourt.gov/opinions/22pdf/21-376_7l48.pdf [https://perma.cc/RR2D-9D94].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
37	*United States v. Louisiana*, 363 U.S. 1 (1960)	117	Federalism: Submerged Lands Act (cf. Federal-State Ownership Dispute)	Property Dispute
38	*Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963)	116	First Amendment: Establishment of Religion (Other than as Pertains to Parochiaid)	First Amendment Religion Clauses
39 (tie)	*Carpenter v. United States*, 585 U.S. 296 (2018)[104]	115[105]	Criminal Procedure: Search and Seizure (Other than as Pertains to Vehicles or Crime Control Act)	Fourth Amendment
39 (tie)	*Brown v. Allen*, 344 U.S. 443 (1953)	115	a. Criminal Procedure: Involuntary Confession; b. Civil Rights: Desegregation (Other than as Pertains to School Desegregation, Employment Discrimination, and Affirmative Action); c. Judicial Power: Comity: Habeas Corpus	Habeus Corpus

104. This case is not yet published in the U.S. Reports. Carpenter v. United States, 138 S. Ct. 2206 (2018).

105. This page count is from the slip opinion for this case. No. 16-402, slip op. (U.S. June 22, 2018), https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf [https://perma.cc/WEF6-KHGH].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
41	*Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607 (1980)	114	Unions: Occupational Safety and Health Act	OSHA
42	*Mitchell v. Helms*, 530 U.S. 793 (2000)	113	First Amendment: Parochiaid: Government Aid to Religious Schools, or Religious Requirements in Public Schools	First Amendment Religion Clauses
43	*Glossip v. Gross*, 576 U.S. 863 (2015)	112	Criminal Procedure: Cruel and Unusual Punishment, Death Penalty (cf. Extra-Legal Jury Influence, Death Penalty)	Death Penalty
44	*Trump v. United States*, 603 U.S. 593 (2024)[106]	111[107]	Criminal Procedure: Self-Incrimination, Immunity from Prosecution	Presidential Privilege
45 (tie)	*New Haven Inclusion Cases*, 399 U.S. 392 (1970)	110	Judicial Power: Judicial Review of Administrative Agency's or Administrative Official's Actions and Procedures	Railroad Law

106. This case is not yet published in the U.S. Reports. Trump v. United States, 144 S. Ct. 2312 (2024).

107. This page count is from the slip opinion for this case. No. 23-939, slip op. (U.S. July 1, 2024), https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf [https://perma.cc/W9VX-N75P].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
45 (tie)	*Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010)	110	Miscellaneous: Executive Authority vis-à-vis Congress or the States; Economic Activity: Federal or State Regulation of Securities	Presidential Power
47	*United States v. Booker*, 543 U.S. 220 (2005)	109	Criminal Procedure: Statutory Construction of Criminal Laws: Sentencing Guidelines; Criminal Procedure: Jury Trial (Right to, as Distinct from Extra-Legal Jury Influences)	Jury Right/Sixth Amendment
48	*Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94 (1973)	108	First Amendment: First Amendment, Miscellaneous (cf. Comity: First Amendment)	First Amendment Speech
49 (tie)	*Miranda v. Arizona*, 384 U.S. 436 (1966)	107	Criminal Procedure: Miranda Warnings	Fifth Amendment Confessions

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
49 (tie)	*Denver Area Educ. Telecomms. Consortium, Inc. v. Fed. Commc'ns Comm'n*, 518 U.S. 727 (1996)	107	First Amendment: First Amendment, Miscellaneous (cf. Comity: First Amendment)	First Amendment Speech
51 (tie)	*Fulton v. City of Philadelphia*, 593 U.S. 522 (2021)[108]	106[109]	Civil Rights: Sex Discrimination (Excluding Sex Discrimination in Employment). First Amendment: Free Exercise of Religion	First Amendment Religion Clauses
51 (tie)	*Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)[110]	106[111]	Economic Activity: Natural Resources—Environmental Protection (cf. National Supremacy: Natural Resources, National Supremacy: Pollution)	Administrative Law

108. This case is not yet published in the U.S. Reports. Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021).

109. This page count is from the slip opinion for this case. No. 19-123, slip op. (U.S. June 17, 2021), https://www.supremecourt.gov/opinions/20pdf/19-123_g3bi.pdf [https://perma.cc/FM9M-KPYE].

110. This case is not yet published in the U.S. Reports. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).

111. This page count is from the slip opinion for this case. No. 22-451, slip op. (U.S. June 28, 2024), https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf [https://perma.cc/L48S-VUVM].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
53	*Balt. & Ohio R.R. Co. v. United States*, 386 U.S. 372 (1967)	105	Economic Activity: Mergers	Railroad Law
54 (tie)	*Missouri v. Jenkins*, 515 U.S. 70 (1995)	104	Civil Rights: Desegregation, Schools	School Desegregation
54 (tie)	*Alden v. Maine,* 527 U.S. 706 (1999)	104	Federalism: National Supremacy: Miscellaneous	Congressional Power/Eleventh Amendment
56 (tie)	*County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989)	102	Establishment of Religion (Other than as Pertains to Parochiaid)	First Amendment Religion Clauses
56 (tie)	*Morse v. Republican Party of Va.*, 517 U.S. 186 (1996)	102	Civil Rights: Voting Rights Act of 1965, plus Amendments	Voting Rights
56 (tie)	*Pollock v. Farmers' Loan & Tr. Co.*, 157 U.S. 429 (1895)	102	Federal Taxation: Federal Taxation, Typically Under Provisions of the Internal Revenue Code	Federal Tax

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
56 (tie)	*Fullilove v. Klutznick*, 448 U.S. 448 (1980)	102	Civil Rights: Affirmative Action	Affirmative Action/ Considering Race
60	*Stenberg v. Carhart*, 530 U.S. 914 (2000)	101	Privacy: Abortion: Including Contraceptives	Abortion
61	*Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197 (2020)[112]	100[113]	Miscellaneous: Executive Authority vis-à-vis Congress or the States	Presidential Power
62 (tie)	*United States v. Rahimi*, 602 U.S. 680 (2024)[114]	99[115]	Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure)	Second Amendment

112. This case is not yet published in the U.S. Reports. Seila L. LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183 (2020).

113. This page count is from the slip opinion for this case. No. 19-7, slip op. (U.S. June 29, 2020), https://www.supremecourt.gov/opinions/19pdf/19-7_n6io.pdf [https://perma.cc/5TMG-QR9Q].

114. This case is not yet published in the U.S. Reports. United States v. Rahimi, 144 S. Ct. 1889 (2024).

115. This page count is from the slip opinion for this case. No. 22-915, slip op. (U.S. June 21, 2024), https://www.supremecourt.gov/opinions/23pdf/22-915new_ihdk.pdf [https://perma.cc/78GS-BLSH].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
62 (tie)	*Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024)[116]	99[117]	Civil Rights: Voting	Redistricting and Race
62 (tie)	*Pollock v. Farmers' Loan & Tr. Co.* (rehearing), 158 U.S. 601 (1895)	99	Federal Taxation: Federal Taxation, Typically Under Provisions of the Internal Revenue Code	Federal Tax
65 (tie)	*Simpson v. Shepard* (*Minnesota Rate Cases*), 230 U.S. 352 (1913)	98	Economic Activity: Federal or State Regulation of Transportation Regulation: Railroad	Railroad Law
65 (tie)	*Nat'l Lab. Rels. Bd. v. Noel Canning*, 573 U.S. 513 (2014)	98	Miscellaneous: Executive Authority vis-à-vis Congress or the States	Presidential Power
65 (tie)	*Dennis v. United States*, 341 U.S. 494 (1951)	98	First Amendment: Federal or State Internal Security Legislation: Smith, Internal Security, and Related Federal Statutes	Anti-communism

116. This case is not yet published in the U.S. Reports. Alexander v. S.C. State Conf. of the NAACP, 144 S. Ct. 1221 (2024).

117. This page count is from the slip opinion for this case. No. 22-807, slip op. (U.S. May 23, 2024), https://www.supremecourt.gov/opinions/23pdf/22-807_3e04.pdf [https://perma.cc/A7AE-GEPB].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
65 (tie)	*Vieth v. Jubelirer*, 541 U.S. 267 (2004)	98	Standing to Sue: Justiciable Question. Civil Rights: Reapportionment: Other than Plans Governed by the Voting Rights Act	Voting Rights
65 (tie)	*Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448 (1957)	98	Unions: Labor-Management Disputes: Miscellaneous Dispute	Labor Law
65 (tie)	*Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016)	98	Privacy: Abortion: Including Contraceptives	Abortion
65 (tie)	*Skilling v. United States*, 561 U.S. 358 (2010)	98	Criminal Procedure: Statutory Construction of Criminal Laws: fraud; Criminal Procedure: Extra-Legal Jury Influences: Pretrial Publicity	Vagueness
72 (tie)	*Arizona v. California*, 373 U.S. 546 (1963)	97	Economic Activity: Natural Resources—Environmental Protection (cf. National Supremacy: Natural Resources, National Supremacy: Pollution)	Water Rights

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
72 (tie)	*Reynolds v. Sims*, 377 U.S. 533 (1964)	97	Civil Rights: Reapportionment: Other than Plans Governed by the Voting Rights Act; Judicial Power: Standing to Sue: Justiciable Question	Voting Rights
74 (tie)	*Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020)[118]	95[119]	Civil Rights: Deportation (cf. Immigration and Naturalization)	Immigration
74 (tie)	*Milliken v. Bradley*, 418 U.S. 717 (1974)	95	Civil Rights: Desegregation, Schools	School Desegregation
74 (tie)	*United States v. Winstar Corp.*, 518 U.S. 839 (1996)	95	Economic Activity: Liability, Governmental: Tort or Contract Actions by or Against Government or Governmental Officials Other than Defense of Criminal Actions Brought Under a Civil Rights Action	Sovereign Immunity

118. This case is not yet published in the U.S. Reports. Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959 (2020).

119. This page count is from the slip opinion for this case. No. 19-161, slip op. (U.S. June 25, 2020), https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf [https://perma.cc/22BC-86Z8].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
74 (tie)	*N. Secs. Co. v. United States*, 193 U.S. 197 (1904)	95	Economic Activity: Antitrust (Except in the Context of Mergers and Union Antitrust)	Antitrust
74 (tie)	*Schuette v. Coal. to Def. Affirmative Action*, 572 U.S. 291 (2014)	95	Civil Rights: Affirmative Action	Affirmative Action
79 (tie)	*Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983)	94	Miscellaneous: Legislative Veto	Article I Congressional Powers
79 (tie)	*Rapanos v. United States*, 547 U.S. 715 (2006)	94	Economic Activity: Natural Resources—Environmental Protection (cf. National Supremacy: Natural Resources, National Supremacy: Pollution)	Environmental Law
79 (tie)	*United States v. Lopez*, 514 U.S. 549 (1995)	94	Federalism: National Supremacy: Miscellaneous	Commerce Clause
79 (tie)	*Gaines v. Relf*, 53 U.S. (12 How.) 472 (1851)	94	Private Action: Evidence	Property Dispute

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
83 (tie)	*Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109 (2024)[120]	93[121]	Economic Activity: Federal or State Regulation of Securities	Jury Right/ Seventh Amendment
83 (tie)	*Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990)	93	Privacy: Right to Die	Right to Die
85 (tie)	*Obergefell v. Hodges*, 576 U.S. 644 (2015)	92	Due Process: Due Process: Miscellaneous (cf. Loyalty Oath), the Residual Code	Gay Marriage
85 (tie)	*Monroe v. Pape*, 365 U.S. 167 (1961)	92	Civil Rights: Liability, Civil Rights Acts (cf. Liability, Governmental; Liability, Nongovernmental; Cruel and Unusual Punishment, Non–Death Penalty)	Section 1983

120. This case is not yet published in the U.S. Reports. Sec. & Exch. Comm'n v. Jarkesy, 144 S. Ct. 2117 (2024).

121. This page count is from the slip opinion for this case. No. 22-859, slip op. (U.S. June 27, 2024), https://www.supremecourt.gov/opinions/23pdf/22-859_1924.pdf [https://perma.cc/8UF3-NCTN].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
85 (tie)	*Sessions v. Dimaya*, 584 U.S. 148 (2018)[122]	92[123]	Due Process: Due Process: Hearing or Notice (Other than as Pertains to Government Employees or Prisoners' Rights)	Immigration
88	*United States v. Barnett*, 376 U.S. 681 (1964)	91	Criminal Procedure: Contempt of court or congress; Criminal Procedure: Jury Trial (Right to, as Distinct from Extra-Legal Jury Influences)	Jury Right/ Sixth Amendment
89	*Moody v. NetChoice LLC*, 603 U.S. 707 (2024)[124]	90[125]	First Amendment: First Amendment, Miscellaneous (cf. Comity: First Amendment)	Section 230 of the Communications Decency Act
89 (tie)	*Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123 (1951)	90	Judicial Power: Standing to Sue: Justiciable Question	Anti-communism/ Anti-fascism

122. This case is not yet published in the U.S. Reports. Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

123. This page count is from the slip opinion for this case. No. 15-1498, slip op. (U.S. Apr. 17, 2018), https://www.supremecourt.gov/opinions/17pdf/15-1498_1b8e.pdf [https://perma.cc/7PH7-XCSJ].

124. This case is not yet published in the U.S. Reports. Moody v. NetChoice LLC, 144 S. Ct. 2383 (2024).

125. This page count is from the slip opinion for this case. No. 22-277, slip op. (U.S. July 1, 2024), https://www.supremecourt.gov/opinions/23pdf/22-277new_8mjp.pdf [https://perma.cc/NG3M-NQDR].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
91 (tie)	*Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464 (2020)[126]	89[127]	First Amendment: Parochiaid: Government Aid to Religious Schools, or Religious Requirements in Public Schools	First Amendment Religion Clauses
91 (tie)	*Schneiderman v. United States*, 320 U.S. 118 (1943)	89	Civil Rights: Deportation (cf. Immigration and Naturalization)	Anti-communism
91 (tie)	*Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970)	89	a. Civil rights: Desegregation (Other than as Pertains to School Desegregation, Employment Discrimination, and Affirmative Action); b. Civil Rights: Liability, Civil Rights Acts (cf. Liability, Governmental; Liability, Nongovernmental; Cruel and Unusual Punishment, Non–Death Penalty	Desegregation Sit-Ins

126. This case is not yet published in the U.S. Reports. Espinoza v. Mont. Dep't of Revenue, 140 S. Ct. 2246 (2020).

127. This page count is from the slip opinion for this case. No. 18-1195, slip op. (U.S. June 30, 2020), https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf [https://perma.cc/CT4Z-8M5L].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
91 (tie)	*S&E Contrs. v. United States*, 406 U.S. 1 (1972)	89	Judicial Power: Judicial review of Administrative Agency's or Administrative Official's Actions and Procedures	Administrative Law
91 (tie)	*Verizon Commc'ns*, *Inc. v. Fed. Commc'ns Comm'n*, 535 U.S. 467 (2002)	89	Economic Activity: Federal and Some Few State Regulations of Public Utilities Regulation: Telephone or Telegraph Company	Telecommunica-tions Act of 1996
96	*Abbott v. Perez*, 585 U.S. 579 (2018)[128]	88[129]	Civil Rights: Voting Rights Act of 1965, plus Amendments	Redistricting and Race
96	*Reid v. Covert*, 354 U.S. 1 (1957)	88	Civil Rights: Military: Active Duty	Jury Right/Sixth Amendment
96 (tie)	*Hannah v. Larche*, 363 U.S. 420 (1960)	88	Due Process: Due Process: Miscellaneous (cf. Loyalty Oath), the Residual Code	Jury Right/Sixth Amendment

128. This case is not yet published in the U.S. Reports. Abbott v. Perez, 138 S. Ct. 2305 (2018).

129. This page count is from the slip opinion for this case. No. 17-586, slip op. (U.S. June 25, 2018), https://www.supremecourt.gov/opinions/17pdf/17-586_o7kq.pdf [https://perma.cc/S7BJ-ZQMT].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
96(tie)	*Osborn v. Bank of the U.S.*, 22 U.S. (9 Wheat) 738 (1824)	88	a. Federalism: National Supremacy: State Tax (cf. State Tax); b. Economic Activity: State or Local Government Tax; c. Judicial Power: Judicial Administration: Jurisdiction or Authority of Federal Courts of Appeals	Congressional Power/Eleventh Amendment
100 (tie)	*Trump v. Hawaii*, 585 U.S. 667 (2018)[130]	87[131]	Civil Rights: Immigration and Naturalization: Miscellaneous. First Amendment: Establishment of Religion (Other than as Pertains to Parochiaid)	Immigration

130. This case is not yet published in the U.S. Reports. Trump v. Hawaii, 138 S. Ct. 2392 (2018).

131. This page count is from the slip opinion for this case. No. 17-695, slip op. (U.S. June 16, 2018), https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf [https://perma.cc/J483-M6SS].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
100 (tie)	*Dep't of Com. v. New York*, 588 U.S. 752 (2019)[132]	87[133]	Judicial Power: Judicial Review of Administrative Agency's or Administrative Official's Actions and Procedures	Administrative Law
100 (tie)	*Metro Broad., Inc. v. Fed. Commc'ns Comm'n*, 497 U.S. 547 (1990)	87	Civil Rights: Affirmative Action	Affirmative Action
103 (tie)	*Williams v. Illinois*, 567 U.S. 50 (2012)	86	Criminal Procedure: Confrontation (Right to Confront Accuser, Call and Cross-Examine Witnesses)	Confrontation Clause
103 (tie)	*Sacher v. United States*, 343 U.S. 1 (1952)	87	Criminal Procedure: Contempt of Court or Congress	Anti-communism
103 (tie)	*Berger v. New York*, 388 U.S. 41 (1967)	87	Criminal Procedure: Search and Seizure (Other than as Pertains to Vehicles or Crime Control Act)	Fourth Amendment

132. This case is not yet published in the U.S. Reports. Dep't of Com. v. New York, 139 S. Ct. 2551 (2019).

133. This page count is from the slip opinion for this case. No. 18-966, slip op. (U.S. June 27, 2019), https://www.supremecourt.gov/opinions/18pdf/18-966_bq7c.pdf [https://perma.cc/U5T4-VXPG].

Rank	Case	# of Pages	Subject (Spaeth)	Subject (Barton)
106 (tie)	*Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786 (2011)	85	First Amendment: First Amendment, Miscellaneous (cf. Comity: First Amendment)	First Amendment Speech
106 (tie)	*Gamble v. United States*, 587 U.S. 678 (2019)[134]	85[135]	Criminal Procedure: Double Jeopardy	Double Jeopardy

This is a fun list! Reading from first to 107th, here are a few quick and dirty observations. First, there are more of these cases than one would think, and they are not always well known. There are, in fact, some quite obscure overlong cases.

Second, if you are not a fan of these overlong cases, it is very concerning how much more common they have become over the decades. In the first 159 years of the Court's existence, there were just fifteen cases of this length written. There have been forty-four in the twenty-first century.[136]

Third, some issue areas seem obvious, like abortion, campaign finance, voting rights, presidential powers, and affirmative action. If you have been paying attention to the Court over the last few decades and were asked to guess which areas had been so controversial as to result in historically long opinions, you might have guessed those off the top of your head. Other areas, like the Court's struggles with the persecution of communist party members in the 1950s, the railroad cases, or the property disputes of the nineteenth century, were all harder to predict. Let's break the cases down a little more.

III. SOME SUBLISTS–LONGEST MAJORITIES, CONCURRENCES, DISSENTS, AND THE CASES WITH THE MOST SEPARATE OPINIONS

Once we had the dataset, it was possible to make some shorter lists that are also illuminating. Here, we look at the longest opinions of various types, as

134. This case is not yet published in the U.S. Reports. Gamble v. United States, 139 S. Ct. 1960 (2019).

135. This page count is from the slip opinion for this case. No. 17-646, slip op. (U.S. June 17, 2019), https://www.supremecourt.gov/opinions/18pdf/17-646_d18e.pdf [https://perma.cc/A8SA-88QV].

136. *See infra* Part IV.

well as cases that include the most separate opinions. We cover the twenty-four longest majority opinions, the twenty-four longest dissents, the eighteen longest concurrences, and the nineteen cases with the most separate opinions.

A. *The Twenty-Four Longest Majority Opinions*

Table 2: Twenty-Four Longest Majority Opinions in the Dataset[137]

Rank	Case	# of Pages *(majority opinion)*	Majority Author(s)	Subject
1	*Buckley v. Valeo*, 424 U.S. 1 (1976)	230 (including appendices)	Per Curiam	Campaign Finance
2	*McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003)	134	Chief Justice William H. Rehnquist and Justices John Paul Stevens, Sandra Day O'Connor, and Stephen G. Breyer	Campaign Finance
3	*Communist Party of the U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1 (1961)	112	Justice Felix Frankfurter	Anti-communism

137. *See infra* app.

Rank	Case	# of Pages *(majority opinion)*	Majority Author(s)	Subject
4	*Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022)	108 (including appendices)	Justice Samuel A. Alito, Jr.	Abortion
5 (tie)	*New Haven Inclusion Cases*, 399 U.S. 392 (1970)	98	Justice Potter Stewart	Railroad Law
5 (tie)	*Simpson v. Shepard (Minnesota Rate Cases)*, 230 U.S. 352 (1913)	98	Chief Justice Charles Evans Hughes	Railroad Law
7	*United States v. Louisiana*, 363 U.S. 1 (1960)	82	Justice John Marshall Harlan	Property Dispute
8	*Myers v. United States*, 272 U.S. 52 (1926)	72	Chief Justice William Howard Taft	Presidential Power
9 (tie)	*Morris v. United States*, 174 U.S. 196 (1899)	70	Justice George Shiras, Jr.	Property Dispute

Rank	Case	# of Pages *(majority opinion)*	Majority Author(s)	Subject
9 (tie)	*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)	70	Justice John Paul Stevens	Habeas Corpus
11 (tie)	*Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992)[138]	68	Justices Sandra Day O'Connor, Anthony M. Kennedy, and David H. Souter	Abortion
11 (tie)	*United States v. Winstar Corp.*, 518 U.S. 839 (1996)	68	Justice David H. Souter	Sovereign Immunity
13	*United States v. Castillero*, 67 U.S. (2 Black) 17 (1862)	66	Justice Nathan Clifford	Property Dispute
14	*Verizon Commc'ns, Inc. v. Fed. Commc'ns Comm'n*, 535 U.S. 467 (2002)	65	Justice David H. Souter	Telecommunications Act of 1966

138. This opinion is a mixed majority opinion/concurring opinion. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992), *overruled by*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

Rank	Case	# of Pages *(majority opinion)*	Majority Author(s)	Subject
15	*District of Columbia v. Heller*, 554 U.S. 570 (2008)	64	Justice Antonin Scalia	Second Amendment
16	*N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)	63	Justice Clarence Thomas	Second Amendment
17	*Miranda v. Arizona*, 384 U.S. 436 (1965)	61	Chief Justice Earl Warren	Fifth Amendment Confessions
18	*Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)	60	Chief Justice John G. Roberts, Jr.	Taxing and Spending Clause/Commerce Clause
19	*U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)	57	Justice John Paul Stevens	Term Limits
20 (tie)	*Dred Scott v. Sandford*, 60 U.S. 393 (1856)	56	Chief Justice Roger Brooke Taney	Slavery

Rank	Case	# of Pages *(majority opinion)*	Majority Author(s)	Subject
20 (tie)	*S.A. Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973)	56	Justice Lewis F. Powell, Jr.	School Funding
20 (tie)	*Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425 (1977)	56	Justice William J. Brennan, Jr.	Presidential Privilege
20 (tie)	*Osborn v. Bank of the U.S.*, 22 U.S. 738 (1824)	56	Chief Justice John Marshall	Congressional Power/Eleventh Amendment
24	*Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010)	55	Justice Anthony M. Kennedy	Campaign Finance

Just looking at the five longest majority opinions is a nice encapsulation of the strangeness of these cases. The longest majority opinion ever written is the per curiam majority opinion in *Buckley v. Valeo*.[139] Per curiam opinions are a curiosity on the Court. They are unsigned opinions "sometimes used in important cases," as here in *Buckley*, "to express the institutional view of a court or to summarize the points of consensus among a fractured court."[140] Alternatively, "Per Curiam has been accused of writing the opinions for the

139. Black & Spriggs, *supra* note 14, at 631, also find that this is the longest majority ever written.

140. Robert J. Hume, *The Impact of Judicial Opinion Language on the Transmission of Federal Circuit Court Precedents*, 43 LAW & SOC'Y REV. 127, 133 (2009).

court, when out of cowardice others do not wish to."[141] One could certainly understand a desire to disown *Buckley,* a case "synonymous with turgidity in the United States Reports."[142] Election law expert Rick Hasen views *Buckley* as an "incoherent set of compromises."[143] *Buckley* is not alone in presenting a per curiam opinion as a fig leaf for a disjointed Court. The fourth-longest case of all time, *Furman v. Georgia* also featured a per curiam majority opinion as a front for a fractured Court.[144]

The second-longest majority opinion is *McConnell v. Federal Election Commission*, another campaign finance case.[145] The combination of *McConnell* and *Buckley* show how length is sometimes just a proxy for dysfunction and how that dysfunction repeats as the issues recur. At least *McConnell* avoided the shame of a per curiam majority. Instead, the Court presented an equally puzzling Frankenstein combination of "majority" opinions.[146] If you look at the voting groups in the three (yes, three) different majority opinions, it does not look like a per curiam opinion could even be cobbled together.[147]

If you think it is an exaggeration to call *McConnell* a brutal mess, just take a look at the syllabus's attempt to explain who wrote what and who agreed with whom and see if you can make heads or tails of what to expect across the next 251 pages:

> STEVENS and O'CONNOR, JJ., delivered the opinion of the Court with respect to BCRA Titles I and II, in which SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., delivered the opinion of the Court with respect to BCRA Titles III and IV, in which O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined, in which STEVENS, GINSBURG, and BREYER, JJ., joined except with respect to BCRA § 305, and in which THOMAS, J., joined with respect to BCRA §§ 304, 305, 307, 316, 319, and 403(b), *post*, p. 224. BREYER, J., delivered the opinion of the Court with respect to BCRA Title V, in

141. *Id.* In some ways per curiam opinions are like "Alan Smithee" films, a helpful pseudonym when no individual Justice wants to own a piece of writing. *See Alan Smithee*, IMDB, https://www.imdb.com/name/nm0000647/ [https://perma.cc/Q4N5-KQFQ].

142. John P. Elwood, *What Were They Thinking: The Supreme Court in Revue*, *October Term 1999*, 4 GREEN BAG 2D 27, 37 n.13 (2000).

143. Barry Sullivan, *Democratic Conditions*, 51 LOY. U. CHI. L.J. 555, 611 n.202 (2019).

144. Furman v. Georgia, 408 U.S. 238, 238–40 (1972).

145. McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003), *overruled by*, Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010); *see also* Black & Spriggs, *supra* note 14, at 631 (finding that this is the second longest majority ever written).

146. *McConnell*, 540 U.S. at 114–224 (Stevens & O'Connor, JJ., majority opinion); *id.* at 224–33 (Rehnquist, C.J., majority opinion); *id.* at 233–47 (Breyer, J., majority opinion).

147. There are some stretches of all three majority opinions that garnered a stable five-Justice majority (Stevens, O'Connor, Souter, Ginsburg, and Breyer), but there were defections and additions throughout, so they settled on this structure. *See* Richard L. Hasen, *The Untold Drafting History of* Buckley v. Valeo, 2 ELECTION L.J. 241, 243–60 (2003) (relating a chronology of the Court's internal deliberations concerning *Buckley*, from the post-argument conference to the issuance of the decision).

> which STEVENS, O'CONNOR, SOUTER, and GINSBURG, JJ., joined, *post*, p. 233. SCALIA, J., filed an opinion concurring with respect to BCRA Titles III and IV, dissenting with respect to BCRA Titles I and V, and concurring in the judgment in part and dissenting in part with respect to BCRA Title II, *post*, p. 247. THOMAS, J., filed an opinion concurring with respect to BCRA Titles III and IV, except for BCRA §§ 311 and 318, concurring in the result with respect to BCRA § 318, concurring in the judgment in part and dissenting in part with respect to BCRA Title II, and dissenting with respect to BCRA Titles I, V, and § 311, in which opinion SCALIA, J., joined as to Parts I, II–A, and II–B, *post*, p. 264. KENNEDY, J., filed an opinion concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II, in which REHNQUIST, C. J., joined, in which SCALIA, J., joined except to the extent the opinion upholds new FECA § 323(e) and BCRA § 202, and in which THOMAS, J., joined with respect to BCRA § 213, *post*, p. 286. REHNQUIST, C. J., filed an opinion dissenting with respect to BCRA Titles I and V, in which SCALIA and KENNEDY, JJ., joined, *post*, p. 350. STEVENS, J., filed an opinion dissenting with respect to BCRA § 305, in which GINSBURG and BREYER, JJ., joined, *post*, p. 363.[148]

From here, the confusion unfolds. For the first 110 pages we get an almost-per curiam opinion: Justices Stevens and O'Connor co-wrote the majority opinion as to Titles I and II of the Bipartisan Campaign Reform Act ("BCRA").[149] Then we get nine pages from Chief Justice Rehnquist on Titles III and IV, and last Justice Breyer with thirteen more pages on BCRA V.[150] I will not try to disentangle which combination of Justices made all three of these "majority opinions," but you can imagine that the lineup and four different authors did not create much continuity. Hasen has called *McConnell* "unusually sloppy and incomplete," and he liked the opinion![151] It is little wonder that the case suffers from "logical and theoretical inconsistency," given that it was written by four different Justices.[152]

Communist Party of the United States v. Subversive Activities Control Board is a nice third selection, as it spotlights how controversial and difficult (and thus *long*) the mid-twentieth century cases dealing with communism and the First Amendment were.[153] Justice Frankfurter writes an 112-page majority opinion

148. *McConnell*, 540 U.S. at 110–11.

149. *Id.* at 114–224.

150. *Id.* at 224–33 (Rehnquist, C.J., majority opinion); *id.* at 233–47 (Breyer, J., majority opinion).

151. Richard L. Hasen, Buckley *Is Dead, Long Live* Buckley*: The New Campaign Finance Incoherence of* McConnell v. Federal Election Commission, 153 U. PA. L. REV. 31, 33 (2004).

152. Daniel R. Ortiz, *The Informational Interest*, 27 J.L. & POL. 663, 681 (2012).

153. *See* Communist Party of the U.S. v. Subversive Activities Control Bd., 367 U.S. 1, 19–22, 94–103 (1961).

with forty-four footnotes.[154] On the one hand, the case merits writing at length, and Frankfurter carefully explains why the Subversive Activities Control Board did not violate the Bill of Attainder Clause or the First Amendment when it declared the Communist Party a communist-action organization required to register with the Attorney General.[155] On the other hand, by 1961 the anti-communist hysteria in the United States was starting to abate, so it is a strange spot for the definitive case upholding tactics later considered controversial at best, and anti-American at worst.[156]

The next two are also a nice pair. *Buckley* and *McConnell* are emblematic of the hash this Court has made of campaign finance. The *New Haven Inclusion Cases* and the *Minnesota Rate Cases* are a reminder that, for a time, the railroad business was among the most important (and thus litigious) in the country.[157] These cases are quite distinct from those covering the First Amendment or other complex constitutional issues. Instead, they present detailed and very complicated facts over long pages.[158] The *Minnesota Rate Cases* majority is ninety-eight pages and is the only opinion in the case,[159] so you might wonder why it is so long. It is long because the railroad business is complicated.[160] Here is a randomly selected paragraph from a section near the end of the opinion applying the Court's decision to a specific railroad company:

> *Minneapolis & St. Louis Railroad Company*. This [company] presents distinct considerations. The lines of this company consist of about 1028 miles of track, of which 396 miles are operated under lease or trackage rights. Of its owned mileage (632 miles) approximately sixty per cent is in the State of Minnesota. The Master thus describes it: "It runs south from the inland cities of St. Paul and Minneapolis to Des Moines, with a branch to Storm Lake, Iowa, and a branch to the South Dakota grain fields. Along its entire line it comes in sharp competition with strong intersecting railroad lines, and while, as before stated, it subserves a useful public purpose and is operated in response to public demand, it can be maintained only by the exercise of the highest economy and

154. *Id.* at 4–115.

155. *Id.*

156. On the anti-communist fever breaking in the 1960s, see Emily C. Chi, *Star Quality and Job Security: The Role of the Performers' Unions in Controlling Access to the Acting Profession*, 18 CARDOZO ARTS & ENT. L.J. 1, 30 n.183 (2000). On the Subversive Activities Control Board being controversial and un-American, see Sam J. Ervin & William Proxmire, *An 'Alien Creature*,' N.Y. TIMES, June 23, 1972, https://timesmachine.nytimes.com/timesmachine/1972/06/23/83448136.pdf?pdf_redirect=true&ip=0 [https://perma.cc/WLT6-DJ4Y (staff-uploaded, dark archive)] (calling the Board "a distasteful relic of the McCarthy era").

157. New Haven Inclusion Cases, 399 U.S. 392 (1970); Simpson v. Shepard (Minnesota Rate Cases), 230 U.S. 352 (1913).

158. *See New Haven Inclusion Cases*, 399 U.S. at 398–495; *Minnesota Rate Cases*, 230 U.S. at 376–473.

159. *Minnesota Rate Cases*, 230 U.S. at 352–473.

160. *Id.* at 469–70.

> watchfulness in its operation and to succeed must be given greater latitude than is necessary with respect to the more favorably located and prosperous lines of railway."[161]

Sometimes complicated things are complicated and here, the details as to this exact railroad line are required to decide this issue. In other words, not all length is wasteful or unnecessary.

There is a tie for the Justices with the most overlong majority opinions: Stevens and Souter each have two and one-third (the fractions come from *McConnell* and *Casey*).[162] Stevens is no surprise. Feldman's study found he wrote, on average, the longest majority opinions from 1951 to 2013.[163] Stevens was a long-lasting "liberal lion" on the Court[164] and presumably wrote at length to present his views fully. Souter, by contrast, was known as a moderate conservative with rather humble tastes.[165] His verbosity seems uncharacteristic, but he was often a swing Justice, so he may have gotten stuck writing long opinions trying to please a fractured majority.

B. *The Twenty-Five Longest Dissents*

The dissents are in some ways more interesting than the majority opinions. The length of the majority opinions may well be a proxy for the complexity of the issues before the Court. The dissents, in contrast, are much more of a proxy for the level of disagreement within the Court. Here is a list of the twenty-five longest dissents from the dataset.[166] The page number listed is the length of the dissent itself.

161. *Id.*

162. McConnell v. Fed. Election Comm'n, 540 U.S. 113–224 (2003), *overruled by*, Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 843–911 (1992), *overruled by*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

163. *See* Feldman, *An Opinion Is Worth at Least a Thousand Words*, *supra* note 12.

164. *See* Christopher L. Eisgruber, *How the Maverick Became a Lion: Affirmative Action in the Jurisprudence of John Paul Stevens*, 99 GEO. L.J. 1279, 1279–80 (2011).

165. JEFFREY TOOBIN, THE OATH: THE OBAMA WHITE HOUSE AND THE SUPREME COURT 122–23 (2013).

166. *See infra* app.

Table 3: Twenty-Five Longest Dissents in the Dataset[167]

Rank	Case	# of Pages *(dissent)*	Author	Subject
1	*United States v. Castillero*, 67 U.S. (2 Black) 17 (1863)	160	Justice James Moore Wayne	Property Dispute
2	*Bostock v. Clayton County*, 590 U.S. 644 (2020)	107 (including appendix)	Justice Samuel Alito	Employment Discrimination
3	*Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448 (1957)	87	Justice Felix Frankfurter	Labor Law
4	*Seminole Tribe v. Florida*, 517 U.S. 44 (1996)	86	Justice David H. Souter	Congressional Power/Eleventh Amendment
5	*U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)	82	Justice Clarence Thomas	Term Limits

167. *See infra* app.

Rank	Case	# of Pages *(dissent)*	Author	Subject
6	*Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010)	79	Justice Stephen G. Breyer	Presidential Power
7	*Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007)	74 (including appendix)	Justice Stephen G. Breyer	School Desegregation
8	*Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857)	70	Justice Benjamin Robbins Curtis	Slavery
9 (tie)	*Students for Fair Admissions, Inc. v. President.& Fellows of Harvard Coll.*, 600 U.S. 181 (2023)[168]	69[169]	Justice Sonia Sotomayor	Affirmative Action/ Considering Race

168. This case is not yet published in the U.S. Reports. 143 S. Ct. 2141 (2023).

169. This page count is from the slip opinion for this case. No. 20-1199, slip op. (U.S. June 29, 2023), https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf [https://perma.cc/UN8Z-JCJC].

Rank	Case	# of Pages *(dissent)*	Author	Subject
9 (tie)	*Morris v. United States*, 174 U.S. 196 (1899)	69	Justice Edward Douglass White	Property Dispute
11 (tie)	*S.A. Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1972)	68	Justice Thurgood Marshall	School Funding
11 (tie)	*S & E Contractors v. United States*, 406 U.S. 1 (1972)	68 (including appendix)	Justice William J. Brennan, Jr.	Administrative Law
13 (tie)	*Sacher v. United States*, 343 U.S. 1 (1952)	67 (including appendix)	Justice Felix Frankfurter	Anti-communism
14	*Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)[170]	66[171] (including appendix)	Justices Stephen G. Breyer, Sonia Sotomayor, and Elena Kagan	Abortion
15 (tie)	*Baker v. Carr*, 369 U.S. 186 (1962)	65	Justice Felix Frankfurter	Voting Rights

170. This case is not yet published in the U.S. Reports. 142 S. Ct. 2228 (2022).

171. This page count is from the slip opinion for this case. No. 19-1392, slip op. (U.S. June 24, 2022), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf [https://perma.cc/54MG-EMA4].

Rank	Case	# of Pages *(dissent)*	Author	Subject
15(tie)	*McGautha v. California*, 402 U.S. 183 (1970)	65	Justice William J. Brennan, Jr.	Death Penalty
17 (tie)	*Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)	62	Justices Antonin Scalia, Anthony M. Kennedy, Clarence Thomas, and Samuel A. Alito, Jr.	Taxing and Spending Clause/ Commerce Clause
17 (tie)	*Myers v. United States*, 272 U.S. 52(1926)	62	Justice James Clark McReynolds	Presidential Power
19 (tie)	*Gaines v. Relf*, 53 U.S. 472 (1851)	58	Justice James Moore Wayne	Property Dispute
19 (tie)	*Monroe v. Pape*, 365 U.S. 167 (1961)	58	Justice Felix Frankfurter	Section 1983
21 (tie)	*Myers v. United States*, 272 U.S. 52 (1926)	56	Justice Louis Dembitz Brandeis	Presidential Power

Rank	Case	# of Pages *(dissent)*	Author	Subject
21 (tie)	*Schuette v. Coal. to Def. Affirmative Action*, 572 U.S. 291 (2014)	56	Justice Sonia Sotomayor	Affirmative Action
23 (tie)	*McDonald v. City of Chicago*, 561 U.S. 742 (2010)	55	Justice John Paul Stevens	Second Amendment
24 (tie)	*Smith v. Turner (The Passenger Cases)*, 48 U.S. (7 How.) 283 (1849)	55	Justice Levi Woodbury	Commerce Clause
25	*N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 83 (2022)[172]	52[173]	Justice Stephen G. Breyer	Second Amendment

This list is surprising in a few ways. First, it is exceedingly strange that the longest dissent in Supreme Court history was written in an otherwise unremarkable case about a title dispute to a California quicksilver mine.[174] Some of this study's findings will strike readers as obvious. For example, if you quizzed a few constitutional law professors on the longest Supreme Court case

172. This case is not yet published in the U.S. Reports. 142 S. Ct. 2111 (2022).

173. This page count is from the slip opinion for this case. No. 20-843, slip op. (U.S. June 23, 2022), https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf [https://perma.cc/8CRA-XNVB].

174. United States v. Castillero, 67 U.S. (2 Black) 17, 17–144 (1862).

ever, some or even many of them would guess *Buckley v. Valeo*.[175] However, virtually none would pick Justice Wayne's dissent in *Castillero*, a largely forgotten case, as the longest dissent ever written.

Castillero is, admittedly, pretty salacious as land disputes go, based upon this summary of the oral arguments:

> The Court has heard a speech, teeming with imputations on the claimant's good faith. Every fact asserted in his behalf has been flatly denied. One of the counsel imputed fraud, forgery, subornation of witnesses, and consequent perjury. He has unqualifiedly charged falsification of the public archives and corruption of public officers of every grade, from the grave ecclesiastic, who was Bishop of Puebla and Minister of State, down to the humble rustic who administered legal remedies as a Justice of the Peace.[176]

Intriguing! But maybe not requiring a sixty-five-page majority opinion or another 159 pages in dissent, all largely arguing factual matters rather than legal ones.[177]

The second-longest dissent requires some explanation. Justice Alito's dissent in *Bostock v. Clayton County* runs fifty-four pages with another fifty-three pages of appendices.[178] On the one hand, it is perhaps unkind to lump Alito's four appendices into his already voluminous dissent in *Bostock*. After all, this dissent would have been tied for the twenty-fourth longest just based on the dissent proper.[179] On the other hand, Alito is the one who felt it necessary to include four different appendices on top of his fifty-four pages.[180] Appendices A and B list the definitions of the word "sex" from nine (yes, I counted them) different twentieth and twenty-first century dictionaries.[181] Appendix C lists federal statutes where sex is relevant, and Appendix D reproduces federal forms where sex is relevant.[182] If Alito thought it was important enough to fill fifty-three pages with his appendices, it is certainly fair to count those pages as part of his dissent. Between *Bostock* and *Dobbs*, Alito is becoming the foremost perpetrator of expanding already overlong cases with pages and pages of

175. That said, an informal and unscientific quiz of my friends who teach constitutional law has come up with a great number of cases, from *Buckley* to *Sebelius* and various cases in between.

176. *Castillero*, 67 U.S. at 132.

177. *Id.* at 144–209 (Clifford, J., majority opinion); *id.* at 212–371 (Wayne, J., dissenting).

178. These page counts are from the slip opinion for this case. No. 17-1618, slip op. (U.S. June 15, 2020), https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf [https://perma.cc/W8SM-Y3HM].

179. *Id.*; *see supra* tbl. 3.

180. This page count is from the slip opinion for this case. No. 17-1618, slip op. 1–107 (U.S. June 15, 2020), https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf [https://perma.cc/W8SM-Y3HM].

181. Bostock v. Clayton County, 140 S. Ct. 1731, 1784–91 (2020).

182. *Id.* at 1791–1822.

appendices.[183] And in both cases, a simple string cite would arguably have sufficed.

Students of the Court may be surprised to find Justices Stevens and Scalia only represented once apiece on this list. After all, Stevens and Scalia are the two Justices with the most dissents in the modern era.[184] There may be an explanation, however. A less scientific list of the Court's greatest dissenters (Justices Harlan, Johnson, Scalia, Brandeis, or Ginsburg) shows that only two of the five appear on the longest dissents list at all, and Scalia is iffy, as his only entry is the jointly drafted dissent in *Sebelius* (discussed below).[185]

There are, however, two dissents on this list that are rightfully considered among the best ever: Justice Wayne's dissent in *Dred Scott* and Frankfurter's dissent in *Baker v. Carr*. Both are featured among the sixteen dissents chosen for a full write up in Mark Tushnet's excellent collection of essays, *I Dissent: Great Opposing Opinions in Landmark Supreme Court Cases*.[186]

Another surprise is the most prolix dissenter: Felix Frankfurter with four dissents of fifty pages or longer.[187] Frankfurter went on a heater between 1952 and 1962. While Frankfurter is not typically listed as a "great dissenter," he did, in fact, write more dissents than majority opinions in his career (as well as 132 "often tedious concurrences").[188]

The list also features a pair of jointly written super-long dissents by four conservative Justices in *Sebelius* (Scalia, Kennedy, Thomas, and Alito)[189] and three liberal Justices in *Dobbs* (Breyer, Sotomayor, Kagan).[190] These dissents are

183. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2285–300 (2022) (listing every prior American abortion ban in two appendices); *Bostock*, 140 S. Ct. at 1784–1822.

184. Adam Feldman, *The Dissenting-est Dissenters on the Modern Court*, EMPIRICAL SCOTUS (Feb. 26, 2018), https://empiricalscotus.com/2018/02/26/the-dissentingest-dissenters/ [https://perma.cc/3STW-W5HC].

185. *See* Scott Bomboy, *Remembering the Supreme Court's First Dissenter*, NAT'L CONST. CTR. (Dec. 27, 2021), https://constitutioncenter.org/blog/remembering-the-supreme-courts-first-dissenter [https://perma.cc/GK62-C6AJ].

186. *See generally* I DISSENT: GREAT OPPOSING OPINIONS IN LANDMARK SUPREME COURT CASES (Mark Tushnet ed., 2008) (including chapters on *Dred Scott* and *Baker v. Carr*).

187. Breyer has four as well, but only if you count the jointly drafted *Dobbs* dissent as his alone. *See infra* app.

188. Paul Finkelman, *The Many Faces of Felix Frankfurter: On Brad Snyder's "Democratic Justice*," L.A. REV. BOOKS (Dec. 13, 2022), https://lareviewofbooks.org/article/the-many-faces-of-felix-frankfurter-on-brad-snyders-democratic-justice-contributor-paul-finkelman/ [https://perma.cc/34RX-UJ44] [hereinafter Finkelman, *Many Faces*] (noting that Frankfurter wrote "247 majority opinions, 132 concurring opinions, and 251 dissents").

189. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 646–707 (2012) (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting).

190. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2317–50 (2022) (Breyer, Sotomayor, Kagan, JJ., dissenting).

interesting because of the relative rarity of jointly written dissents, presumably signaling especially strong feelings and unity amongst the dissenters.[191]

Only one case has two super long dissents: *Myers v. United States*, where Brandeis and McReynolds each wrote dissents of longer than fifty pages.[192] *Myers* held that the President has exclusive power to fire executive branch officials.[193] Ironically, a third dissenter, Holmes, actually wrote separately in this case as well, but limited himself to one page.[194] Brandeis' *Myers* dissent is certainly not among his most famous, unlike *Olmstead v. United States* or *New State Ice Co. v. Liebmann*.[195] Again, length is not necessarily correlated with excellence.

Other readers may disagree, but the longest dissents list is oddly more compelling than the list of the longest cases because it includes more decisions that seem monumental to a modern reader, like *Dred Scott*, *Monroe v. Pape*, *Baker v. Carr*, *Furman v. Georgia*, *McDonald v. City of Chicago*, *Seminole Tribe v. Florida*, *Sebelius*, *Dobbs*, *Bruen*, and *SFFA v. Harvard*.[196] These same cases appear on the list of the 107 longest, of course, but seem much more buried amongst more prosaic cases there.[197]

One other strange trend to note is that while the prevalence of overlong opinions is ramping up significantly over the decades, the lengths of dissents do not show the same trend. Five of the twenty-six longest dissents were written in the nineteenth century. Only nine of the twenty-six have been in the twenty-first century, so the recent wave of longer cases has not primarily been due to longer dissents.

C. *The Eighteen Longest Concurrences*

When you become familiar with the cases on the list, you can notice patterns. For example, more of the longest majority and dissenting opinions come from nineteenth and twentieth-century cases than twenty-first century cases.[198] There is a logical explanation for this trend: the rise of the concurrence

191. Jointly written opinions are considered a rarity on the Court. *Cf.* Richard C. Reuben, *The Case of a Lifetime,* 80 ABA J. 70, 74 (1994) (describing the jointly written plurality opinion in *Planned Parenthood of Pennsylvania of Southeastern Pennsylvania v. Casey* as "rare").

192. Myers v. United States, 272 U.S. 52, 178–239 (1926) (McReynolds, J., dissenting); *id.* at 240–95 (Brandeis, J., dissenting).

193. *Id.* at 106–77 (Taft, C.J., majority opinion).

194. *Id.* at 177 (Holmes, J., dissenting).

195. Olmstead v. United States, 277 U.S. 438, 471–85 (1928) (Brandeis, J., dissenting); New State Ice Co. v. Liebmann, 285 U.S. 262, 280–311 (1932) (Brandeis, J., dissenting); *see also* Dean Andrew Mazzone, Book Review, 93 MASS. L. REV. 411, 413 (2011) (reviewing MELVIN I. UROFSKY, LOUIS D. BRANDEIS: A LIFE (Panthean Books 2009)) (listing *Olmstead* and *Liebmann* as two of Brandeis' great dissents).

196. *See supra* tbl. 3.

197. *See supra* Part II.

198. *See supra* tbls. 2 & 3.

and multiple concurrences. Older cases reached eighty-five pages the old-fashioned way, with majority and dissenting opinions.[199] Modern cases feature those opinions as well, of course, but also increasingly feature concurrences, swelling page totals.[200]

The concurrence is in some ways the most confusing and least likable type of opinion. The majority announces the decision and states the relevant law.[201] The dissent disagrees with the majority and marshals what support it can for the opposite result.[202] The concurrence, by contrast, either agrees with the outcome but not the reasoning of the majority (Justice Scalia considers these sorts of concurrences quasi-dissents),[203] or joins the reasoning of the majority opinion but has more to say on the subject.[204]

In short, the majority is a necessary and salutary part of the process. The dissent is less necessary but still serves an important role.[205] Originalists might note that "published dissents were reluctant and apparently uncommon" in the early days of the Court and were more circumspect than they currently appear to be.[206] In the rare early cases with a written dissent, the Justices were chagrined to write separately. Consider the first line of Justice Iredell's dissent in *Georgia v. Brailsford*, counted as the first written dissent in the Court's history: "It is my misfortune to dissent from the opinion entertained by the rest of the Court upon the present occasion; but I am bound to decide, according to the dictates of my own judgment."[207] Yet, the dissent offers the possibility for the Justices to clearly explain their disagreement in the case and state an alternative version of the law. The best dissents can outshine the majority opinions, as was arguably

199. *See, e.g.*, Osborn v. Bank of the U.S., 22 U.S. (9 Wheat.) 738 (1824).

200. *See, e.g.*, Obergefell v. Hodges, 576 U.S. 644 (2015).

201. *How To Read a U.S. Supreme Court Opinion*, ABA (May 4, 2022), https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/how-to-read-a-u-s-supreme-court-opinion/ [https://perma.cc/YB94-FX3E (staff-uploaded archive)].

202. *Id.*

203. Antonin Scalia, *Dissents*, 13 OAH MAG. HIST. 18, 18 (1998).

204. *Id.* at 20. For an expanded description of these two categories, see Benjamin H. Barton, Dobbs *v.* Brown, 129 DICK. L. REV. 457, 496–99 (2025) [hereinafter Barton, Dobbs *v.* Brown].

205. *See, e.g.*, I DISSENT, *supra* note 186, at XI–XXVI.

206. Rory K. Little, *Reading Justice Brennan: Is There a "Right" To Dissent?*, 50 HASTINGS L.J. 683, 689 (1999); Clarke D. Forsythe & Regina Maitlen, *Stare Decisis, Settled Precedent, and* Roe v. Wade*: An Introduction*, 34 REGENT U. L. REV. 385, 413 (2022) (noting that "dissents were uncommon during the Marshall Court").

207. Georgia v. Brailsford, 2 U.S. (2 Dall.) 415, 415 (1793). This is considered the first written dissent, but because of the vagaries of the way these cases were reported in the eighteenth century and possible existence of oral dissents we cannot be sure that this is the first ever dissent. *See* Little, *supra* note 206, at 689 & n.25 ("[B]ecause judicial opinions were delivered orally at this time, and the reporting of court opinions was unofficial and somewhat haphazard, we cannot be certain that we have a full and accurate record of all such opinions.").

the case in *Dred Scott*, *Plessy v. Ferguson*, *Olmstead v. United States*, and *Lawrence v. Texas*.[208]

In contrast, concurrences often "raise more questions than they answer" and can be "especially confusing."[209] A concurrence that agrees with the reasoning of the majority but writes separately is confusing because you cannot tell whether the other Justices in the majority agree or disagree with this separate offshoot of reasoning.[210] Was this position considered and rejected for inclusion in the majority? Or is this new take an acceptable reading of the law that the other Justices did not feel was necessary to include in the majority opinion?

And those are concurrences with a majority. The most confusing concurrence comes in the dreaded plurality opinion, where no opinion garners five votes, and readers, lower court judges, and the American public are left with little to no guidance on the issue.[211] Plurality opinions have been correctly described as events of "extreme dissensus" that "erode the Court's credibility."[212] Some of the most infamous plurality opinions include the *Passenger Cases*, the *Insular Cases*, and *Bakke*.[213] These broken cases of "pathological decisionmaking" are only made possible due to the existence of the concurrence.[214]

The rise of the very long concurrence is, thus, among the more unfortunate trends that this study establishes. Here is a list of the longest concurrences and mixed "concurring in part and dissenting in part" opinions (every concurrence from the dataset over forty pages).

208. An extensive argument for the importance of the dissents is covered in I DISSENT, *supra* note 186, at XI–1.

209. Barton, Dobbs *v.* Brown, *supra* note 204, at 497.

210. *Id.*

211. *See generally* Pamela C. Corley, Udi Sommer, Amy Steigerwalt & Artemus Ward, *Extreme Dissensus: Explaining Plurality Decisions on the United States Supreme Court*, 31 JUST. SYS. J. 180 (2010) (presenting an empirical study of plurality decisions).

212. *Id.* at 180.

213. *See, e.g.*, Annie M. Chan, *Community and the Constitution: A Reassessment of the Roots of Immigration Law*, 21 VT. L. REV. 491, 536 (1996) (discussing how the plurality opinion in the *Passenger Cases* was "in itself controversial at the time"); Christina Duffy Ponsa-Kraus, *The* Insular Cases *Run Amok: Against Constitutional Exceptionalism in the Territories*, 131 YALE L.J. 2449, 2452 (2022); Ryan James Hagemann, Comment, *Diversity as a Compelling State Interest in Higher Education: Does* Bakke *Survive Affirmative Action Jurisprudence?*, 79 OR. L. REV, 493, 508 (2000).

214. Note, *Plurality Decisions and Judicial Decisionmaking*, 94 HARV. L. REV. 1127, 1127 (1981).

Table 4: Eighteen Longest Concurrences in the Dataset[215]

Rank	Case	# of Pages *(concurrence)*	Author	Subject
1	*McGowan v. Maryland*, 366 U.S. 420(1961)	102 (including appendix)	Justice Felix Frankfurter	First Amendment Religion Clauses
2	*Citizens United v. Fed. Election Comm'n*, 558 U.S. 310(2010)	87	Justice John Paul Stevens[216]	Campaign Finance
3	*Oregon v. Mitchell*, 400 U.S. 112 (1970)	78 (including appendix)	Justice John Marshall Harlan[217]	Voting Rights
4	*Fulton v. City of Philadelphia*, 593 U.S. 522 (2021)[218]	77[219]	Justice Samuel A. Alito, Jr.	First Amendment Religion Clauses

215. *See infra* app.

216. Concurring in part, dissenting in part. Citizens United v. Fed. Election Comm'n, 588 U.S. 310, 393–479 (2010).

217. Concurring in part, dissenting in part. Oregon v. Mitchell, 400 U.S. 112, 152–229 (1970).

218. This case is not yet published in the U.S. Reports. Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021).

219. This page count is from the slip opinion for this case. No. 19-123, slip op. (U.S. June 17, 2021), https://www.supremecourt.gov/opinions/20pdf/19-123_g3bi.pdf [https://perma.cc/FM9M-KPYE].

Rank	Case	# of Pages *(concurrence)*	Author	Subject
5	*Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963)	75	Justice William J. Brennan, Jr.	First Amendment Religion Clauses
6	*McConnell v. Fed. Election Comm'n*, 540 U.S. 93(2003)	65	Justice Anthony M. Kennedy[220]	Campaign Finance
7	*Furman v. Georgia*, 408 U.S. 238 (1972)	61 (including appendix)	Justice Thurgood Marshall	Death Penalty
8 (tie)	*Downes v. Bidwell (The Insular Cases)*, 182 U.S. 244 (1901)	58	Justice Edward Douglass White	Insular Cases
8 (tie)	*Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)	58	Justice Ruth Bader Ginsburg[221]	Taxing and Spending Clause/ Commerce Clause

220. Concurring in part, dissenting in part. McConnell v. Fed. Election Comm'n, 540 U.S. 93, 286–350 (2003).

221. Concurring in part, dissenting in part. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 589 (2012).

Rank	Case	# of Pages *(concurrence)*	Author	Subject
10	*Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)	56	Justices William J. Brennan, Byron Raymond White, Thurgood Marshall, and Harry A. Blackmun[222]	Affirmative Action/Considering Race
11	*McDonald v. City of Chicago*, 561 U.S. 742 (2010)	54	Justice Clarence Thomas	Second Amendment
12	*Oregon v. Mitchell*, 400 U.S. 112 (1970)	53	Justices William J. Brennan, Byron Raymond White, and Thurgood Marshall[223]	Voting Rights
13	*Furman v. Georgia*, 408 U.S. 238 (1972)	49	Justice William J. Brennan	Death Penalty

222. Concurring in part, dissenting in part. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 324 (1978).

223. Concurring in part, dissenting in part. Oregon v. Mitchell, 400 U.S. 112, 229 (1970).

Rank	Case	# of Pages *(concurrence)*	Author	Subject
14	*Nat'l Lab. Rels. Bd. v. Noel Canning*, 573 U.S. 513 (2014)	47	Justice Antonin Scalia	Presidential Power
15 (tie)	*Brown v. Allen*, 344 U.S. 443 (1953)	45	Justice Felix Frankfurter	Habeus Corpus
15 (tie)	*Dennis v. United States*, 341 U.S. 494 (1951)	45	Justice Felix Frankfurter	Anti-communism
17	*Bell v. Maryland*, 378 U.S. 226 (1964)	44	Justice William Orville Douglas	Desegregation Sit-Ins
18	*Balt. & Ohio R.R. Co. v. United States*, 386 U.S. 372 (1967)	41	Justice William J. Brennan	Railroad Law

Justice Brennan wrote the most overlong concurrences in history, which is surprising given his reputation as one of the greatest Justices of all time.[224] Brennan is frequently celebrated for his "unique capacity to cobble together

224. *See, e.g.*, Bernard Schwartz, *Supreme Court Superstars: The Ten Greatest Justices*, 31 TULSA L.J. 93, 94 (1995) (listing John Marshall, Joseph Story, Roger Brooke Taney, Stephen J. Field, Oliver Wendell Holmes, Louis Dembitz Brandeis, Charles Evans Hughes, Hugo Lafayette Black, Earl Warren, and William J. Brennan as the ten greatest Supreme Court Justices); Laurence H. Tribe, *In Memoriam: William J. Brennan, Jr.*, 111 HARV. L. REV. 41, 41 (1997) ("William J. Brennan, Jr., was one of the greatest Justices of all time.").

majorities" for liberal results, but here he accomplished the opposite.[225] In some of the most important decisions of his tenure (*Bakke* and *Furman v. Georgia*), he wrote at length precisely because he failed to gather a majority for his analysis.[226] Students of those opinions will note that Brennan's concurrences did not prove influential. To the contrary, his reasoning in those cases was emphatically rejected by future Courts.[227]

Frankfurter wrote three of the longest concurrences ever, including an unconscionable eighty-four page concurrence (and then included a seventeen page appendix!) in *McGowan v. Maryland*, where he wrote in support of a Maryland statute involving state mandated Sunday closures of businesses on "the Lord's Day."[228] Paul Finkelman describes Frankfurter as "over-the-top in supporting this discrimination against Jews with a massive eighty-four-page concurrence."[229] The statute at issue harmed observant Jews and Seventh Day Adventists because Sunday closures meant that Jewish businesses that closed on Saturday for the Jewish sabbath were closed all weekend.[230] Nor could Frankfurter have missed this point; in a different Sunday closings case Justice Brennan highlighted the harmful effect on observant Jews.[231]

This list also makes clear what a difficult colleague Frankfurter was.[232] Frankfurter was infamous for "domineering" and "bullying"[233] behavior, allegedly driving Justice Whittaker to a nervous breakdown[234] and browbeating Justice Clark in conference.[235] Frankfurter was well-known for writing concurrences designed to show his superior intellect as much as his differing

225. Howard Ball, *Frank I. Michelman, Brennan and Democracy*, 44 AM. J. LEGAL HIST. 459, 460 (2000).

226. *Bakke*, 438 U.S. at 324–79 (1978) (Brennan, White, Marshall, & Blackmun, JJ., concurring); Furman v. Georgia, 408 U.S. 238, 257–306 (1972) (Brennan, J., concurring).

227. *See* Gregg v. Georgia, 428 U.S. 153, 227–31 (1976) (Brennan, J., dissenting); Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2164, 2173–74 (2023) (describing Bakke as "fractured" and treating the Brennan concurrence as without precedential effect).

228. Paul Finkelman, *The Tragedy of Felix Frankfurter: From Civil Liberties and Civil Rights Activist to Reactionary Justice*, 14 COLUM. J. RACE & L. 1086, 1145 (2024).

229. *Id.*

230. *Id.* at 1144–45.

231. Braunfeld v. Brown, 366 U.S. 599, 613 (1961) (Brennan, J., concurring in part, dissenting in part).

232. H.N. HIRSCH, THE ENIGMA OF FELIX FRANKFURTER 208 (1981) (describing Frankfurter as an ego-defensive, big personality with a "history of difficult interpersonal relationships" and a need to dominate others).

233. Tonja Jacobi & Matthew Sag, *Taking Laughter Seriously at the Supreme Court*, 72 VAND. L. REV. 1423, 1470 (2019).

234. *Id.*

235. Charles A. Reich, *Deciding the Fate of Brown the Populist Voices of Earl Warren and Hugo Black*, 7 GREEN BAG 2D 137, 138 (2004) (describing the "bullying side of Frankfurter's persona" by alleging that Frankfurter "verbally and then physically" tore a Clark draft opinion "to shreds" in conference, "contemptuously tossing the sheets of paper all over the ornate private room").

views.[236] Unsurprisingly, these dissents and concurrences did not prove especially influential: "Frankfurter wrote more dissents than majority opinions and felt the necessity of persistently concurring, often to disagree with his colleagues even if he accepted the outcome of a case, illustrat[ing] his failure to build coalitions and majorities to achieve his jurisprudential goals."[237]

There are two cases here that include *two* different lengthy concurrences: *Furman v. Georgia* and the *Legal Tender Cases*. We have already briefly discussed how *Furman v. Georgia* and Marshall's sixty-page concurrence proved no longer lasting than Brennan's forty-nine-page offering.[238] The *Legal Tender Cases* may have required writing at length because they reversed a binding precedent from the very last term of the Court.[239] Neither of these cases are an advertisement for the practice of writing lengthy concurrences.

D. *The Nineteen Cases with the Most Separate Opinions*

One explanation for the length of these cases is an overlong majority opinion, dissent, or concurrence. Another is a large number of opinions overall.[240] The average number of opinions per case on the list is 4.4, well above the typical unanimous result with one opinion, or just one majority and dissent.[241] Unsurprisingly, additional opinions result in more pages.

Even more than the appearance of lengthy concurrences or dissents, the appearance of multiple opinions is a bad sign for the usefulness of any precedent, as every Justice who writes separately makes it harder to figure out what the Court is trying to say.[242] Cases that end in a dreaded plurality also naturally have multiple opinions.[243] The number of cases with multiple opinions has increased substantially over the history of the Court.[244]

236. RICHARD KLUGER, SIMPLE JUSTICE 682 (1977).

237. Finkelman, *Many Faces*, *supra* note 188, at 1137.

238. *See* Gregg v. Georgia, 428 U.S. 153, 231–41 (1976) (Marshall, J., dissenting).

239. Legal Tender Cases, 79 U.S. (12 Wall.) 457, 457–554 (1870).

240. *See supra* Sections III.A & III.C.

241. Before 1925 the rate of unanimity was around eighty percent. It has ranged between forty and fifty percent since then. *See* Elizabeth Slattery, *National Review: The Supreme Court Isn't as Divided as You Think*, PAC. LEGAL FOUND. (June 12, 2023), https://pacificlegal.org/national-review-the-supreme-court-isnt-as-divided-as-you-think/ [https://perma.cc/75DD-74D8].

242. Mike Madden, *Judging Readability: A Study of Opinions by Apex-Court Judges from Australia, Canada, South Africa, the United Kingdom, and the United States*, 21 SCRIBES J. LEGAL WRITING 15, 53 (2023) ("More opinions, or more fractured opinions . . . cause greater confusion about the actual holding in a case [and] reduce the efficiency of a court's overall operations.").

243. *See, e.g.*, David W. Craig, *Courting Confusion with Multiple Opinions in a Land Use Case*, LAND USE L. & ZONING DIG., May 1986, at 3, 3. (noting the confusion in the legal community that flows from plurality decisions).

244. Ruth Bader Ginsburg, *Remarks on Writing Separately,* 65 WASH. L. REV. 133, 147 (1990) (noting major increase in multiple opinions at the Supreme Court); Laura K. Ray, *The Justices Write Separately: Uses of the Concurrence by the Rehnquist Court*, 23 U.C. DAVIS L. REV. 777, 778 (1990) (noting major increase in concurring opinions).

Here is the list of the nineteen[245] Supreme Court cases with the most separate opinions.

Table 5: Nineteen Cases with the Most Separate Opinions[246]

Rank	Case	# of Opinions	Subject
1	*Furman v. Georgia*, 408 U.S. 238 (1972)	10	Death Penalty
2 (tie)	*Dred Scott v. Sandford*, 60 (19 How.) U.S. 393 (1857)	9	Slavery
2 (tie)	*The Passenger Cases*, 48 U.S. (7 How.) 283 (1849)	9	Commerce Clause
4	*Stenberg v. Carhart*, 530 U.S. 914 (2000)	8	Abortion
5 (tie)	*United States v. Rahimi*, 607 U.S. 680 (2024)	7	Second Amendment
5 (tie)	*Espinoza v. Mont. Dep't of Revenue*, 588 U.S. 920 (2020)	7	First Amendment Religion Clauses
5 (tie)	*Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425 (1977)	7	Presidential Privilege
8 (tie)	*Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023)	6	Affirmative Action/Considering Race
8 (tie)	*June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299 (2020)	6	Abortion
8 (tie)	*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)	6	Habeus Corpus

245. We choose nineteen because there is a large tie for twentieth with five opinions. *See infra* app.

246. *See infra* app.

Rank	Case	# of Opinions	Subject
8 (tie)	*McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003)	6	Campaign Finance
8 (tie)	*Bush v. Vera*, 517 U.S. 952 (1996)	6	Redistricting and Race
8 (tie)	*Denver Area Educ. Telecomms. Consortium, Inc. v. Fed. Commc'ns Comm'n*, 518 U.S. 727 (1996)	6	First Amendment Speech
8 (tie)	*United States v. Lopez*, 514 U.S. 549 (1995)	6	Commerce Clause
8 (tie)	*Buckley v. Valeo*, 424 U.S. 1 (1976)	6	Campaign Finance
8 (tie)	*Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94 (1973)	6	Redistricting and Race
8 (tie)	*Berger v. New York*, 388 U.S. 41 (1967)	6	Fourth Amendment
8 (tie)	*Baker v. Carr*, 369 U.S. 186 (1962)	6	Voting Rights
8 (tie)	*Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123 (1951)	6	Anti-communism/ Anti-fascism

First, yes, you read the table correctly, *Furman v. Georgia* has ten different opinions.[247] Here's the first page and a half of the opinion:

PER CURIAM.

. . .

247. Furman v. Georgia, 408 U.S. 238, 240 (1972).

> Certiorari was granted limited to the following question: "Does the imposition and carrying out of the death penalty in (these cases) constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?" The Court holds that the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The judgment in each case is therefore reversed insofar as it leaves undisturbed the death sentence imposed, and the cases are remanded for further proceedings. So ordered.
>
> Mr. Justice DOUGLAS, Mr. Justice BRENNAN, Mr. Justice STEWART, Mr. Justice WHITE, and Mr. Justice MARSHALL have filed separate opinions in support of the judgments.
>
> THE CHIEF JUSTICE, Mr. Justice BLACKMUN, Mr. Justice POWELL, and Mr. Justice REHNQUIST have filed separate dissenting opinions.[248]

The Court wrote a 210-word, one-page per curiam opinion, followed by *nine* different opinions (five concurrences and then another four dissents) across another 230 pages.[249] Read the per curiam opinion again to try to determine what the Court was saying they agreed on. Apparently only the outcome.

Furman famously found that the death penalty (as applied in the cases at issue) was a cruel and unusual punishment, resulting in a *de facto* moratorium on executions from 1972 until *Gregg v. Georgia* in 1976.[250] Because there are five different concurrences, it is not easy to say what *Furman* held or why, but all five mentioned that the death penalty was unequally applied, and that seems to have been the takeaway from the case.[251] Justice Stewart's concurrence includes the pithiest quote on the randomness of death penalties: "death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual."[252]

In the interim, state legislatures passed new death penalty statutes that (theoretically) lessened its arbitrariness, and the Court allowed new executions under those laws in *Gregg*.[253] There is an open debate over whether *Gregg*

248. *Id.* at 239–40.

249. *Id.*

250. Jonathan Yehuda, *Tinkering with the Machinery of Death: Lethal Injection, Procedure, and the Retention of Capital Punishment in the United States*, 88 N.Y.U. L. REV. 2319, 2323–24 (2013) (describing the journey from *Furman* to *Gregg*).

251. *Furman*, 408 U.S. at 240–374; Penny J. White, *A Response and Retort*, 33 CONN. L. REV. 899, 901 (2001) ("Despite their differences, a consistent theme throughout the opinions of the five justices in the majority was the presence of arbitrariness and discrimination in the existing application of the states' capital punishment laws.").

252. *Furman*, 408 U.S. at 309 (Stewart, J., concurring).

253. Eric Schnapper, *The Capital Punishment Conundrum*, 84 MICH. L. REV. 715, 717–18 (1986) (describing the journey from *Furman* to *Gregg*).

actually overruled *Furman* or just approved the new state death penalty regimes passed in response to *Furman* without overruling it.[254] However, this debate was of little meaning to the incarcerated people on a resuscitated death row. For those individuals, the effect of *Gregg* was pretty obvious. Death penalty opponents naturally considered the resumption of executions after *Gregg* a tragedy.[255]

But perhaps the real tragedy was the shambles the Justices made of *Furman* itself. As Robert Weisburg argued, *Furman* "is not so much a case as a badly orchestrated opera, with nine characters taking turns to offer their own arias."[256] When there are five concurrences, with no Justice joining any other, the logical assumption is that none of the five justifications could draw the support of even one other Justice.[257] It may be that the Justices were truly riven in this case, but they should have known that a ten-opinion monstrosity with not even one rationale gathering a second vote was a very shaky foundation for something as monumental as trying to ban the death penalty judicially.

The next two cases (and the only Supreme Court cases with nine separate opinions) show the yin and yang of this list. Obviously, it is small-minded to complain about the length of *Dred Scott*, especially since it includes a majority opinion by Chief Justice Taney that garnered seven votes.[258] So while the concurrences may sow some confusion, it is not a *Furman* situation where the extra opinions made the holding or reasoning unclear.[259] Tragically, the reasoning and holding of *Dred Scott* were crystal clear.[260] If the other Justices wanted to write separately in one of the most important cases ever, that seems fair enough.

The *Passenger Cases* are discussed at greater length below, but they are the opposite of *Dred Scott*: early cases where the nine opinions sowed "confusion and uncertainty" in the area of the dormant commerce clause.[261] In some ways, the *Passenger Cases* are even worse than *Furman*, because the opinions that were

254. *See* Corinna Barrett Lain, *Deciding Death*, 57 DUKE L.J. 1, 21 (2007) ("In sum, *Gregg* may not have explicitly overruled *Furman*, but it was a wholesale repudiation of *Furman*'s spirit and constitutional command. *Gregg*'s opinions read like *Furman*'s dissents, and even cited them from time to time.").

255. *See, e.g.*, F. Patrick Hubbard, *"Reasonable Levels of Arbitrariness" in Death Sentencing Patterns: A Tragic Perspective on Capital Punishment*, 18 U.C. DAVIS L. REV. 1113, 1113–14 (1985).

256. Robert Weisberg, *Deregulating Death*, 1983 SUP. CT. REV. 305, 315.

257. *See* B. Rudolph Delson, *Typography in the U.S. Reports and Supreme Court Voting Protocols*, 76 N.Y.U. L. REV. 1203, 1225 (2001) (noting that in *Furman v. Georgia*, "a terse *per curiam* opinion was supported by five separate concurring opinions, none of them garnering more than one vote, each of them offering separate reasoning in support of the judgment").

258. Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 399 (1856).

259. *See supra* notes 256–57 and accompanying text.

260. *Dred Scott*, 60 U.S. at 404.

261. Louis M. Greeley, *What Is the Test of a Regulation of Foreign or Interstate Commerce?*, 1 HARV. L. REV. 159, 166, 171 (1887).

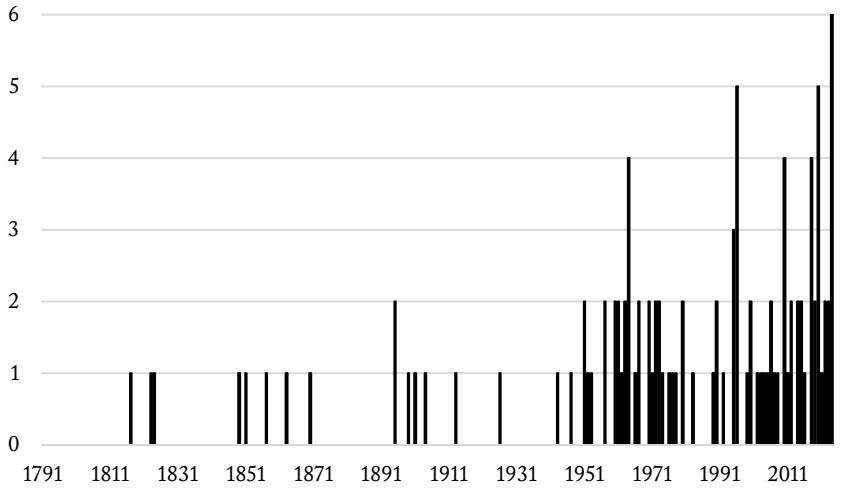
cobbled together in support of the result cannot be read to support even a single idea like "the death penalty is too random to be constitutional."[262] The reasoning in the nine opinions in the *Passenger Cases* is all over the map.[263]

Unlike the list of longest opinions, this list clearly skews toward cases decided more recently. Seventeen of nineteen cases were decided post-1950, and ten are from 1995 or later, showing the rising trend towards multiple opinions in controversial cases. The issues listed here are, in fact, a decent cross section of the issues that have most bedeviled the Court in recent decades.[264]

IV. TEMPORAL ANALYSIS

Ultralong opinions were rare occurrences for the first 159 years of the Court's existence. Between 1791 and 1950, there were only fifteen cases that were eighty-five pages or longer, leaving ninety-two such cases to appear from 1951 to 2024.[265] Figure 1 presents the year along the x-axis and the number of ultralong opinions per year (ranging from 0 to 6) on the y-axis.

Figure 1: Ultralong Opinions by Year



There are several fun details from this graph. First, there have been some long historic droughts. The longest lasted from 1825 to 1849, but the Court took a long break from ultralong opinions as late as 1926–1943.[266] The last minibreak

262. *Id.*
263. *See id.* at 166, 171–73.
264. *See infra* app.
265. *See infra* app.
266. *See infra* app.

was from 1984 to 1988.[267] The Court has, sadly, been on a roll since 2018, drafting at least one ultralong opinion in every sitting through 2024.[268]

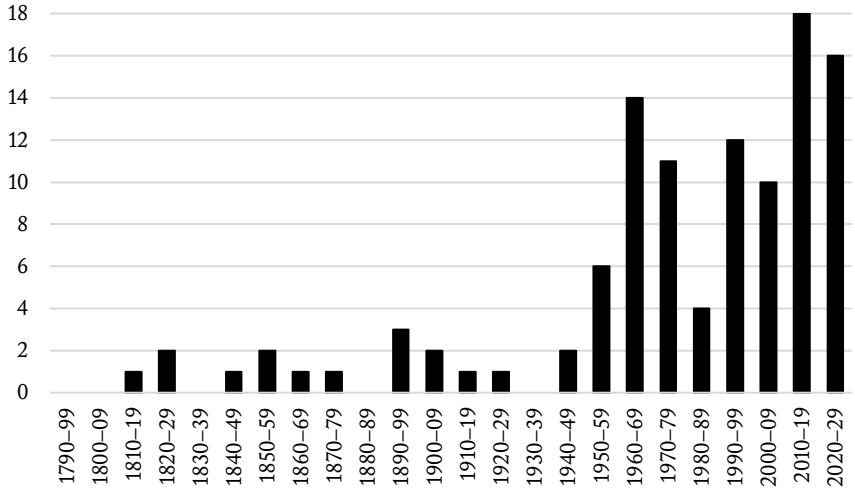
The trend is accelerating. The first year that saw six ultralong opinions was 1995, and if you look at that peak historically it appears to be a one-off anomaly.[269] True, the period from 1959 through 1972 was quite busy,[270] reflecting the controversy of the Warren and early Burger Courts' work. But the rest of the 1970s and 1980s seemed calmer, and the record six cases in 1995 seemingly came out of the blue.[271] Unfortunately, that feat was matched in 2020 and again in 2024.[272] The current Roberts Court's output is historical and shows little sign of slowing.[273]

The prevalence of these cases has really grown in the last century. There were just fifteen overlong cases from 1791 to 1950, so just 0.9 per year (or one per decade if you prefer).[274] From 1951 to 2024, there were ninety-two such cases, so 1.3 a year.[275] From 2000 to 2024, there were forty-four overlong cases, so 1.76 per year.[276] In just the first five years of the current decade (2020–2024) there were sixteen, with the pace rising to 3.2 per year.[277]

The typewriter did not come to the Court until the late-nineteenth century, and Justices still wrote by hand or dictated for much longer.[278] Correspondingly, the boom in longer opinions did not arrive until the 1950s.[279] In Figure 2, we see the number of ultralong opinions by decade.

267. *See infra* app.
268. *See infra* app.
269. *See infra* app.
270. *See infra* app.
271. *See infra* app.
272. *See infra* app.
273. *See infra* app.
274. *See infra* app.
275. *See infra* app.
276. *See infra* app.
277. *See infra* app.
278. JOHN G. ROBERTS, JR., 2023 YEAR-END REPORT ON THE FEDERAL JUDICIARY 3–4 (2023), https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf [https://perma.cc/D5LH-V9EY].
279. Black & Spriggs, *supra* note 14, at 641.

Figure 2: Ultralong Opinions by Decade



This graph effectively illustrates the modern trend towards overlength. Ultralong cases were relatively rare before the 1950s. The prior high point for a decade was three cases in the 1890s, and before the 1950s, these cases were so spread out they seemed extraordinarily rare. Since 1950, however, these cases have become increasingly prevalent. The 1950s had six such cases, twice as many as any earlier decade. From there, the cases more than doubled again to fourteen in the 1960s, a record number before the 2010s.

The most startling, but maybe predictable, finding is in the last decade and a half. John Roberts was sworn in as Chief Justice in 2005, so the Roberts Court covers nineteen years, and has dominated the longest opinions chart.[280] At forty-four ultralong cases since 2000, the Court has produced almost forty percent of its longest opinions in just the last twenty-five years. It is particularly startling to see that there have already been sixteen such cases from 2020 to 2024. This decade has thus nearly tied the all-time high for overlong opinions and we are only halfway through. If the trend continues, the Roberts Court will produce thirty-four overlong opinions this decade, crushing all previous records.

V. SUBJECT MATTER ANALYSIS

Once you have a list of the longest Supreme Court opinions ever, you can learn some things about the issues that have bedeviled the Court over the years. Remember that there are two different issue classification systems used: the

280. *Justices from 1789 to Present*, SUP. CT OF THE U.S., https://www.supremecourt.gov/about/members_text.aspx [https://perma.cc/989F-KUSU].

Spaeth categories that come from the Supreme Court Database, and the custom-made Barton categories.[281] Here, we report the results and then glean some lessons from the list.

A. *The Barton Issues List*

Here is a list of the Barton issues that arose two or more times among the longest opinions and their frequency. It is followed by a consolidated list of the singleton issues.

Table 6: Count of Barton Issues[282]

First Amendment Religion Clauses	6
Abortion	5
Anti-communism/Anti-fascism	5
Affirmative Action/Considering Race	5
Property Dispute	5
Voting Rights	5
Jury Right/Sixth Amendment	4
Presidential Power	4
Second Amendment	4
Administrative Law	3
Campaign Finance	3
Congressional Power/Eleventh Amendment	3
Death Penalty	3
First Amendment Speech	3
Immigration	3
Railroad Law	3
Redistricting and Race	3
School Desegregation	3
Commerce Clause	2
Desegregation Sit-Ins	2
Federal Tax	2
Fourth Amendment	2
Habeus Corpus	2

281. *See supra* Section I.B.
282. *See infra* app.

Labor Law	2
Presidential Privilege	2

One time issues: Antitrust, Article I Congressional Powers, Confrontation Clause, Double Jeopardy, Employment Discrimination, Environmental Law, Fifth Amendment Confessions, Gay Marriage, Indian Law, Insular Cases, Jury Right/Seventh Amendment, OSHA, Paper Money, Right to Die, School Funding, Section 230 of the Communications Decency Act, Section 1983, Slavery, Sovereign Immunity, Taxing and Spending Clause/Commerce Clause, Telecommunications Act of 1996, Term Limits, Vagueness, and Water Rights.

The most frequent Spaeth categories are reported in the footnote below.[283] The categories are wordier, but you can see significant overlap with the Barton categories.

B. *Lessons*

With these lists in mind, we can glean some lessons about the Court and its work. The frequency with which these topics appear is a nice proxy for the hardest issues the Court has faced over its existence. Which issues have been the hardest? Which have predominated in different eras? In the moment, the challenges seem like they will continue unabated, but some of these issues rise and then disappear.

1. The Religion Clauses Are First?

At first blush, it may seem surprising that the First Amendment religion clauses would be first on this list. If you asked a person on the street to name the all-time most challenging issue before the Supreme Court, they would likely guess abortion, affirmative action, or desegregation. Those issues have, indeed, taken up many pages in the U.S. Reports.[284] But if you look at these religion

283. Here are the most frequently represented Spaeth categories:

5 cases: 1) Civil Rights: Affirmative Action; 2) Miscellaneous: Executive Authority vis-à-vis Congress or the States; 3) Privacy: Abortion: Including Contraceptives.

4 cases: 1) Civil Rights: Reapportionment: Other than Plans Governed by the Voting Rights Act; 2) Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure); 3) Federalism: National Supremacy: Miscellaneous; 4) First Amendment: Establishment of Religion (Other than as Pertains to Parochiaid).

3 cases: 1) Civil Rights: Desegregation; 2) Schools, Economic Activity: Liability, Other than as in Sufficiency of Evidence; 3) Election of Remedies: Punitive Damages; 4) Economic Activity: Natural Resources—Environmental Protection (cf. National Supremacy: Natural Resources, National Supremacy: Pollution); 5) First Amendment: Campaign Spending (cf. Governmental Corruption); 6) Judicial Power: Judicial Review of Administrative Agency's or Administrative Official's Actions and Procedures; 7) Judicial Power: Standing to Sue: Justiciable Question.

284. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

cases as a set, you can see why they finished first here and what kinds of issues tend to drive the Court into ultralong opinions.

But first, a defense of lumping the religion clauses together. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[285] These two clauses are called the "Establishment Clause" and the "Free Exercise Clause."[286] If you tried to separate these cases into two different areas (establishment versus free exercise), religion would not be first. Instead, you would have four Establishment Clause cases (*McGowan v. Maryland*; *Abingdon School District v. Schempp*; *Mitchell v. Helms*; and *County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter*)[287] and two Free Exercise Clause cases (*Fulton v. City of Philadelphia* and *Espinoza v. Montana Department of Revenue*).[288]

Combining these issues into one is not only conceptually defensible, but perhaps even preferable. Commentators have long noted that these two clauses are actually "two sides of the same coin," because when the government limits free exercise of one religion, it is arguably also establishing a different religion and vice versa.[289] In fact, one reason these cases are often ultralong is the Justices do not always agree on which clause or test should be applied to the issue at hand.[290] In *Espinoza*, for example, the majority held that Montana could not discriminate against religious private schools by refusing them funding while providing funds to secular private schools.[291] Justice Thomas wrote a separate concurrence (joined by Gorsuch) to explain why the Establishment Clause would have been a more appropriate justification for the judgement than the Free Exercise Clause.[292]

285. U.S. CONST. amend I.

286. *See* Menachem Polishuk, *RLUIPA's Hidden Third-Party Harms on Landowners and Local Governments*, 42 CARDOZO L. REV. 2615, 2630 (2021) ("The religion clause is generally broken into two parts: the first part is called the 'Establishment Clause'; the second part is called the 'Free Exercise Clause.").

287. McGowan v. Maryland, 366 U.S. 420, 430–53 (1961) (applying Establishment Clause); Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 222–27 (1963) (same); Mitchell v. Helms, 530 U.S. 793, 809–36 (2000) (same); County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter, 492 U.S. 573, 589–621 (1989) (same).

288. Fulton v. City of Philadelphia, 141 S. Ct. 1868, 1876–82 (2021) (applying Free Exercise Clause); Espinoza v. Mont. Dep't of Revenue, 140 S. Ct. 2246, 2254–63 (2020) (same).

289. Michael Paulsen famously championed this view as early as the 1980s. *See* Michael A. Paulsen, *Religion, Equality, and the Constitution: An Equal Protection Approach to Establishment Clause Adjudication*, 61 NOTRE DAME L. REV. 311, 313 (1986) (arguing that "the two clauses are but two sides of the same coin"); Michael A. Paulsen, *The First Amendment Religion Clauses: Two Sides of the Same Coin*, 8 CHRISTIAN LEG. SOC'Y Q. 13, 13 (1987); *see also* Thomas R. McCoy, *A Coherent Methodology for First Amendment Speech and Religion Clause Cases*, 48 VAND. L. REV. 1335, 1337 (1995) (stating that the religion clauses are "two sides of the same coin—a single constitutional restriction on the power of government to interfere with the religious liberty of its citizens").

290. *See, e.g.*, *Espinoza*, 140 S. Ct. at 2253–97.

291. *Id.*

292. *Id.* at 2263–67.

Another reason these religion cases run extra long is because the case law itself is a mess. This jurisprudence has aptly been described as "unprincipled . . . and unworkable,"[293] "illogical,"[294] "chaotic, controversial[,] and unpredictable,"[295] and "intellectually inconsistent and ultimately incoherent."[296] Jessica Knouse gathered these critiques into a single evocative string of quotes: "Commentators have described the Supreme Court's Religion Clause jurisprudence as a 'doctrinal quagmire,' 'schizophrenia,' 'inconsistent and unprincipled,' 'a conceptual disaster area,' 'a mess,' [and an] 'incantation of verbal formulae devoid of explanatory value.'"[297] In light of the jurisprudential confusion plaguing the religion clauses, it makes sense that the Justices would write long, complex, split decisions in this area.

The other irony is that five of these six ultralong religion cases, while somewhat important as religion cases, are not among the most influential cases in the area. For example, none of those five cases are featured in Noah Feldman and Kathleen Sullivan's leading First Amendment casebook.[298] If you look at the Westlaw citation count for each of these cases, you can see why. On December 14, 2025, I used Westlaw to gather the citation count for each of these cases.[299] Citations are a decent proxy for influence or importance of a Supreme Court case.[300] Here are the total number of case citations for each of these cases, starting with the most cited:

293. Mary Ann Glendon & Raul F. Yanes, *Structural Free Exercise*, 90 MICH. L. REV. 477, 478 (1991).

294. Stuart Buck, *The Nineteenth-Century Understanding of the Establishment Clause*, 6 TEX. REV. L. & POL. 399, 400 (2002).

295. Michael W. McConnell, *Neutrality, Separation and Accommodation: Tensions in American First Amendment Doctrine*, *in* LAW AND RELIGION 63, 63 (Rex J. Ahdar ed., 2000).

296. PAUL HORWITZ, THE AGNOSTIC AGE: LAW, RELIGION, AND THE CONSTITUTION xxvii (2010).

297. Jessica Knouse, *Civil Marriage: Threat to Democracy*, 18 MICH. J. GENDER & L. 361, 407 n.228 (2012) (gathering these quotes and their citations).

298. None of these cases are listed among the featured cases in the table of contents for NOAH R. FELDMAN & KATHLEEN M. SULLIVAN, FIRST AMENDMENT LAW xiii–xiv (8th ed., 2023).

299. The numbers below were generated on December 14, 2025, searching for each of these cases in Westlaw, and then clicking on "Citing References," and then on "Cases." This is thus a case citation list as of that date. WESTLAW, *McGowen v. Maryland*, 2,614 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *Sch. Dist. of Abington Twp. v. Schempp*, 1,280 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter*, 867 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *Fulton v. City of Philadelphia*, 477 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *Mitchell v. Helms*, 178 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *Espinoza v. Mont. Dep't of Revenue*, 165 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

300. *See, e.g.*, Frank B. Cross & James F. Spriggs II, *The Most Important (and Best) Supreme Court Opinions and Justices*, 60 EMORY L.J. 407, 431–39 (2010) (using case citation counts to measure case importance); Matthew C. Stephenson, *Mixed Signals: Reconsidering the Political Economy of Judicial*

Table 7: Total Citation Count

Case	# of Case Citations
McGowan v. Maryland, 366 U.S. 420 (1961)	2,614
Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963)	1,280
County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter, 492 U.S. 573 (1989)	867
Fulton v. City of Philadelphia, 593 U.S. 522 (2021)	477
Mitchell v. Helms, 530 U.S. 793 (2000)	178
Espinoza v. Mont. Dep't of Revenue, 591 U.S. 464 (2020)	165

At first glance, this list may appear relatively straightforward. It is mostly chronological, and it makes sense that older cases would be cited more. A second look clarifies that these overlong cases, excluding *McGowan*, are not that influential. In fact, the chronological explanation is not as clearcut as it seems. *McGowan* and *Schempp* are rough contemporaries, and yet *McGowan* has been cited more than twice as often as *Schempp*. The same phenomenon appears when comparing *Fulton* and *Espinoza*, with *Fulton* more than doubling its slightly older sibling. Even more dramatically, the twenty-five-year-old *Mitchell v. Helms* has hardly been cited at all.

Further, outside of *McGowan*, two other cases, *Lemon v. Kurtzman* and *Employment Division, Department of Human Resources of Oregon v. Smith*, have been cited much more in this area.[301] *Smith* has 2,846 case citations and *Lemon* 2,240.[302] *Lemon* states a longstanding Establishment test (abrogated by *Kennedy*

Deference to Administrative Agencies, 56 ADMIN. L. REV. 657, 686 (2004) ("[C]itation counts are a reasonable proxy for case influence and importance.").

301. Lemon v. Kurtzman, 403 U.S. 602 (1971); Emp. Div., Dep't of Hum. Res. of Or. v. Smith, 494 U.S. 872 (1990).

302. The calculations and process here are the same as described *supra* note 299. WESTLAW, *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 2,846 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *Lemon v. Kurtzman*, 2,240 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"); WESTLAW, *Kennedy v. Bremerton Sch. Dist.*, 446 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

v. Bremerton School District).[303] *Smith* states a longstanding Free Exercise test.[304] *Smith* is cited more than any of these cases and clocks in at a tidy forty-seven pages.[305] *Lemon* is only out-cited by *McGowan* and is just thirty-six pages.[306] Thus, length does not necessarily correlate with influence.

The citation total is a messy rubric because it does not consider time. Here is a list of the six ultralong religion opinions, plus three shorter, but well-cited, ones (*Lemon*, *Smith*, and *Kennedy*) ranked by average citations per year.[307] This ranking should also be taken with a grain of salt because Supreme Court cases are cited most often when they are newest, so it overrates newer opinions.[308] Nevertheless, adjusting for time helps elucidate the relative lack of influence of these overlong opinions.

Table 8: Average Annual Citation Count

Case	Average # of Case Citations per Year
Kennedy v. Bremerton Sch. Dist., 597 U.S. 507 (2022)	148.67
Fulton v. City of Philadelphia, 593 U.S. 522 (2021)	119.25
Emp. Div., Dep't of Hum. Res. of Or. v. Smith, 494 U.S. 872 (1990)	81.31
Lemon v. Kurtzman, 403 U.S. 602 (1971)	41.48
McGowan v. Maryland, 366 U.S. 420 (1961)	40.84

303. On the background and application of the *Lemon* test, see Charles J. Russo & William E. Thro, Lemon v. Kurtzman *at 50: From a Wall of Separation to a Chain Link Fence?*, 47 U. DAYTON L. REV. 453, 458–70 (2022). For *Lemon*'s abrogation, see *Groff v. DeJoy*, 143 S. Ct. 2279 *passim* (2023) (describing the "now-abrogated decision in *Lemon v. Kurtzman*"), and *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2414 (2022) (stating that "this Court long ago abandoned *Lemon* and its endorsement test offshoot").

304. For a brief explanation of *Smith*, see James G. Dwyer, *The Good, the Bad, and the Ugly of* Employment Division v. Smith *for Family Law*, 32 CARDOZO L. REV. 1781, 1781–90 (2011).

305. *Smith*, 494 U.S. at 874–921.

306. *Lemon*, 403 U.S. at 606–42.

307. The math here is relatively easy. The total number of citations is divided by the number of years the case has existed (counting 2025 as the current year).

308. *See* Frank B. Cross, *Determinants of Citations to Supreme Court Opinions (and the Remarkable Influence of Justice Scalia)*, 18 SUP. CT. ECON. REV. 177, 185 (2010) (measuring the rate at which Supreme Court opinions "depreciate" over time).

Case	Average # of Case Citations per Year
Espinoza v. Mont. Dep't of Revenue, 591 U.S. 464 (2020)	33
County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter, 492 U.S. 573 (1989)	24.08
Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963)	20.65
Mitchell v. Helms, 530 U.S. 793 (2000)	7.12

Here you can see again that *Mitchell v. Helms* is an outlier in its lack of influence. But the annualization does clarify that, for the older cases, *Smith* and *Lemon* are more influential than any of the overlong cases, and that *Kennedy* (which abrogated the *Lemon* test) is the most influential amongst the newest cases.

2. If You Combine the Cases with Issues that Cluster Around Race, that Category Dominates

Unlike the Religion Clauses, it seemed too broad to create a single issue category entitled "struggles with race." But if you were to create such an umbrella category, it would easily dominate this list.[309] Here are the categories one might combine: affirmative action (5 cases), redistricting and race (3 cases), school desegregation (2 cases), desegregation sit-ins (2 cases), and slavery (1 case). This combo package has thirteen cases and is thus roughly twelve percent of the list.[310] This makes sense. As W.E.B DuBois declared in 1903, "The problem of the twentieth century is the problem of the color-line,"[311] and that prediction certainly remains relevant in the twenty-first century.

This list is evidence of the years and pages we have spent trying to dig ourselves out of the foundational error at the heart of the Constitution and the country.[312] The first of these overlong race cases is, of course, the infamous *Dred Scott*, the third-longest opinion of all time at 235 pages.[313] *Dred Scott* includes

309. *See supra* note 77 and accompanying text.

310. This is just math. 13/107=12.15%.

311. DU BOIS, *supra* note 31, at 15.

312. *Cf.* U.S. CONST. art. I, § 2, cl. 3 ("Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.").

313. *See* Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 399–633 (1857).

nine separate opinions between the majority, concurrences, and dissents.[314] It has been rightly and repeatedly described as the worst Supreme Court opinion in history.[315] Unlike other overlong cases with multiple opinions, *Dred Scott* may well be an appropriate length, given the topic area.

In contrast, the affirmative action cases are just a mess. *Bakke* itself was a plurality opinion where a single Justice (Powell) seemed to set the legal standard for the ensuing decades.[316] Table 9 lists the five affirmative action cases in chronological order.

Table 9: Page Counts of Affirmative Action Cases[317]

Case	# of Pages
Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978)	152
Fullilove v. Klutznick, 448 U.S. 448 (1980)	101
Metro Broad., Inc. v. Fed. Commc'ns Comm'n, 497 U.S. 547 (1990)	86
Schuette v. Coal. to Def. Affirmative Action, 572 U.S. 291 (2014)	94
Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023)	229

Unsurprisingly, the 152-page split decision with no clear guidance from the Court in *Bakke* did not settle this issue.[318] Instead, we returned again and again with the most recent effort, *SFFA v. Harvard*, the longest affirmative

314. *See id.*

315. Dred Scott v. Sandford *(1857)*, NAT'L ARCHIVES, https://www.archives.gov/milestone-documents/dred-scott-v-sandford [https://perma.cc/T787-AZXQ] ("The decision of *Scott v. Sandford* [is] considered by many legal scholars to be the worst ever rendered by the Supreme Court."); Justice Stephen Breyer, Giving the Supreme Court Historical Society Annual Lecture: Guardian of the Constitution: The Counter Example of *Dred Scott* (June 1, 2009) (transcript available at https://www.supremecourt.gov/publicinfo/speeches/sp_06-01-09.html) [https://perma.cc/FD9J-5TZF] (discussing *Dred Scott* as "a case that many believe is the Court's worst mistake").

316. *See* Kimberly West-Faulcon, *Affirmative Action After* SFFA v. Harvard*: The Other Defenses*, 74 SYRACUSE L. REV. 1101, 1116–17 (2024) (arguing that as the deciding fifth vote Powell's opinion in *Bakke* was treated as the controlling law).

317. *See infra* app.

318. *See* Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 266–68 (1978).

action case yet.[319] *SFFA* is the fifth-longest case ever.[320] It seems very unlikely that *SFFA* will be the last word, and very likely that race will remain a central constitutional flashpoint and preoccupation.[321]

3. Some Issues Cluster Over Time, Reflecting the Most Controversial Issues of Certain Eras

The easiest example of this is abortion, where the Supreme Court wrote five different overlong opinions between 1992 and 2022 in an effort to settle this most disquieting issue, only to reverse everything they had previously written in *Dobbs*. Table 10 lists those five cases in chronological order.

Table 10: Page Counts of Abortion Cases[322]

Case	# of Pages
Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992)	160
Stenberg v. Carhart, 530 U.S. 914 (2000)	101
Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016)	98
June Med. Servs. L.L.C. v. Russo, 591 U.S. 299 (2020)	133
Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022)	205

The Supreme Court wrote these cases totaling almost 700 pages over thirty years in an attempt to settle the abortion question once and for all. But word counts clearly do not settle issues. *Dobbs* is the longest case here by almost fifty pages and is the seventh-longest opinion ever written.[323] Perhaps *Dobbs*' verbosity will at last settle this issue, but that seems unlikely.[324]

319. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2141–279 (2023).

320. *See supra* tbl. 1.

321. *See, e.g.*, Amy Howe, *Student Group from Harvard and UNC Cases Seeks To Block West Point from Considering Race in Admissions*, SCOTUSBLOG (Jan. 27, 2024), https://www.scotusblog.com/2024/01/student-group-from-harvard-and-unc-cases-seeks-to-block-west-point-from-considering-race-in-admissions/ [https://perma.cc/8H7Y-P75K].

322. *See infra* app.

323. *See supra* tbl. 1.

324. *See, e.g.*, David S. Cohen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 4 (describing the myriad complexities the *Dobbs* decision presents going forward); David S. Cohen, Greer Donley & Rachel Rebouché, *Rethinking Strategy after* Dobbs, 75 STAN. L. REV. ONLINE 1, 2 (2022) (examining possible litigation strategies after *Dobbs*).

There are several other "runs" of an issue, where a particular issue dominates for a few decades. As covered above, affirmative action has been a mess.[325] Other relatively recent obsessions include voting rights (5 cases), the Sixth Amendment Jury Right (4 cases), presidential power (4 cases), and the Second Amendment (4 cases).[326] Like abortion and affirmative action, it seems likely that presidential power and the second amendment will keep rising up these charts.[327]

The earlier issue "runs" are a little more fun because they eventually ended. For example, the Supreme Court struggled mightily with what I call the "anti-communism" cases from 1943 to 1963.[328] Table 11 lists those cases in chronological order.

Table 11: Page Counts of Anti-Communism Cases[329]

Case	# of Pages
Schneiderman v. United States, 320 U.S. 118 (1943)	89
Dennis v. United States, 341 U.S. 494 (1951)	98
Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951)	90
Sacher v. United States, 343 U.S. 1 (1952)	87
Communist Party of the U.S. v. Subversive Activities Control Bd., 367 U.S. 1 (1964)	199

Like the other case areas we have covered, this issue area is marred by uncertainty in terms of approach and results.[330] The Court wrote a total of twenty-three different opinions across these five cases (*Schneiderman* (3 opinions), *Dennis* (5 opinions), *McGrath* (6 opinions), *Sacher* (4 opinions), *Communist Party* (5 opinions)) and was just at sea as to how to best balance the

325. *See supra* tbl. 9.

326. *See supra* Part V.

327. *See, e.g.*, United States v. Rahimi, 144 S. Ct. 1889, 1894 (2024).

328. *See infra* tbl. 11.

329. *See infra* app.

330. For a contemporary take, see Kenneth Culp Davis, *Judicial Notice*, 55 COLUM. L. REV. 945, 969–70 & n.86 (1955) (discussing *McGrath*, *Schneiderman*, and *Dennis* and arguing that on the central issue of what communism actually is, these cases are "quite elusive").

fear of communism's spread with the obvious constitutional issues.[331] The good news about the anti-communism cases is that they ended. The fever broke,[332] and we did not need any more overlong cases in that area. May we be so lucky in some of our contemporary issue areas.

4. The Nine Oldest Cases Are Pretty Fun

There are just nine overlong cases before 1900. In chronological order they are:

Table 12: Pre-1900 Overlong Cases[333]

Case	# of Pages	Subject
Osborn v. Bank of the U.S., 22 U.S. (9 Wheat.) 738 (1824)	88	Congressional Power Eleventh Amendment
Smith v. Turner (The Passenger Cases), 48 U.S. (7 How.) 283 (1849)	181	Commerce Clause
Gaines v. Relf, 53 U.S. (12 How.) 472 (1851)	94	Property Dispute
Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)	235	Slavery
United States v. Castillero, 67 U.S. (2 Black) 17 (1862)	228	Property Dispute
Legal Tender Cases, 79 U.S. (12 Wall.) 457 (1870)	153	Paper Money
Pollock v. Farmer's Loan & Trust Co., 157 U.S. 429 (1895)	102	Income Tax

331. *See infra* app. *Compare* Schneiderman v. United States, 320 U.S. 118, 131 (1943) (disallowing the U.S. government's attempt to strip a communist of citizenship), *with* Communist Party of the U.S. v. Subversive Activities Control Bd., 367 U.S. 1, 115 (1961) (upholding the constitutionality of the Subversive Activities Control Board).

332. *See infra* app.

333. *See infra* app.

Case	# of Pages	Subject
Pollock v. Farmer's Loan & Trust Co. (rehearing), 158 U.S. 601 (1895)	99	Income Tax
Morris v. United States, 174 U.S. 196 (1899)	137	Property Dispute

These cases are a fun counterpoint to our modern obsessions. There are nine cases here and they can be separated into different groups to compare to our current spate of lengthy opinions. One of these cases, *Dred Scott*, is one of one.[334] It is among the most important (and unfortunate) opinions ever written and remains famous/infamous.[335] While the case itself is rarely read in its entirety, the existence of the case is taught in every American history class and excerpts of the opinion are read in most constitutional law classes.[336] We discussed the case above,[337] but here we will note that this is one of those cases and issues where the length of the case is richly deserved.[338] If the Supreme Court was going to try to settle the issue of slavery in one fell swoop, it is certainly an apt place to dissent at length.[339]

This collection of cases includes some of the nineteenth century's other great constitutional questions, but many have not retained the lasting historical impact of *Dred Scott*. On the contrary, most have faded from view.

Take, for example, the *Legal Tender Cases* from 1871.[340] At the time, it would be hard to overstate the impact of the opinion.[341] In fact, when contemporaries ask me whether the current Roberts Court is the most unpopular and politicized in history, I chuckle and tell them the story of the *Legal Tender Cases*.

334. *See, e.g.*, Daniel A. Farber, *A Fatal Loss of Balance:* Dred Scott *Revisited*, 39 PEPP. L. REV. 13, 38 (2011).

335. *Id.*

336. For how *Dred Scott* is taught in U.S. History, see Jason W. Stevens, Dred Scott v. Sandford, TEACHING AM. HISTORY, https://teachingamericanhistory.org/document/dred-scott-v-sandford-2/ [https://perma.cc/QQ5G-QR69].

337. *See supra* notes 258–60 and accompanying text.

338. *See* Farber, *supra* note 334, at 44.

339. On what the Court hoped to accomplish in *Dred Scott*, see 1 G. EDWARD WHITE, LAW IN AMERICAN HISTORY: FROM THE COLONIAL YEARS THROUGH THE CIVIL WAR 367 (2012) (noting that the *Dred Scott* majority attempted to "constitutionalize proslavery ideology").

340. Legal Tender Cases, 79 U.S. (12 Wall.) 457 (1871).

341. *See infra* notes 368–74 and accompanying text.

The story begins with *Dred Scott*, which is not just reviled today, it was roundly despised and rejected in its own time.[342] There were seven Justices in the majority in *Dred Scott*: Roger Taney, James Wayne, John Catron, Peter Daniel, Samuel Nelson, Robert Grier and John Campbell.[343] At the start of the Civil War, all seven remained on the Court.[344] Congress was obviously not pleased, and so they added a tenth Justice in 1863 to allow Lincoln to appoint another Justice to dilute the pro-slavery majority on the Court.[345]

This all took place against the backdrop of the Civil War itself, which raised multiple constitutional issues.[346] The war was so expensive that it caused a financial crisis in the Union and, in 1861–1862, then-Treasury Secretary Salmon P. Chase and President Abraham Lincoln were looking for ways to create liquidity and funds for the war effort as quickly as possible.[347] They settled on a bill establishing paper money.[348] The Act was controversial at the time and Chase harbored serious doubts about its wisdom and constitutionality.[349]

The constitutional argument here was not complicated. The Constitution itself only granted Congress the power "[t]o coin money [and] regulate the Value thereof" in Article I, Section 8, Clause 5.[350] It seems clear that when the Framers chose the word "coin," they meant to exclude federal power to create paper money.[351] Chase seemingly concurred and expressed "a great aversion to making anything but coin a legal tender in payment of debts."[352] Nevertheless, President Lincoln attempted to reassure Chase as to the constitutional question by stating that "I have that sacred instrument [the U.S. Constitution] here at

342. Rebecca E. Zietlow, *The Ideological Origins of the Thirteenth Amendment*, 49 HOUS. L. REV. 393, 397–98 (2012) (describing how the "antislavery constitutionalists"—the Republicans who rejected the *Dred Scott* analysis of the Constitution—gained prominence both before and after the Civil War).

343. Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 399, 454, 457, 469, 493, 518 (1856).

344. You can figure this out by looking at the list of the Justices on the Supreme Court's own website. *Justices from 1789 to Present*, *supra* note 280.

345. Dave Roos, *Why Do 9 Justices Serve on the Supreme Court?*, HISTORY (Sep. 23, 2020), https://www.history.com/news/supreme-court-justices-number-constitution [https://perma.cc/9U6P-XXTA].

346. *See, e.g.*, 2 JOHN W. BURGESS, THE CIVIL WAR AND THE CONSTITUTION, 1859–1865, at 214–15 (1901).

347. *See* WALTER STAHR, SALMON P. CHASE: LINCOLN'S VITAL RIVAL 378–80 (2021).

348. *Id.*

349. *See id.*

350. U.S. CONST. art. I, § 8, cl. 5.

351. John M. Bickers, *Greenbacks, Consent, and Unwritten Amendments*, 73 ARK. L. REV. 669, 680 (2021) ("If one's guiding star for understanding the Constitution is the intent of those who drafted it, there are few areas in which that intent is as clear as in the question of [the unconstitutionality of] paper money as legal tender.")

352. Gerard N. Magliocca, *A New Approach to Congressional Power: Revisiting the* Legal Tender Cases, 95 GEO. L.J. 119, 135 (2006).

the White House, and I am guarding it with great care."[353] And of course necessity is frequently the mother of invention, and the Union desperately needed the funds, so Chase and Lincoln successfully pressed Congress into passing the Legal Tender Act in 1862.[354]

April 14, 1865, Abraham Lincoln was assassinated and Andrew Johnson became President the next day.[355] The Republicans in Congress and President Johnson, a southern Democrat, clashed immediately and forcefully.[356] For example, in 1866 Congress shrank the number of Justices on the Supreme Court from ten to seven to bar Johnson from appointing any new Justices when any retirements occurred.[357]

As a result, when the first case assessing the constitutionality of paper money, *Hepburn v. Griswold*, arose in 1870, only seven Justices were available to decide the case.[358] In a four-to-three decision, those Justices held the Legal Tender Act unconstitutional.[359] Ironically, Salmon P. Chase, the Treasury Secretary who had guided the Bill through Congress was now the Chief Justice of the Supreme Court (appointed by Lincoln), and wrote the opinion holding the Act unconstitutional.[360]

As one might imagine, the case was exceedingly controversial at the time.[361] The "political and economic effects of such a decision" were mind-

353. 1 CARL SANDBURG, ABRAHAM LINCOLN: THE WAR YEARS 652 (1939) (internal quotation marks omitted).

354. Ch. 33, 12 Stat. 345 (1862); *see* Ajit V. Pai, *Congress and the Constitution: The Legal Tender Act of 1862*, 77 OR. L. REV. 535, 538, 543–44 (1998).

355. *Andrew Johnson's Inauguration*, NAT'L PARK SERV., https://www.nps.gov/articles/000/andrew-johnson-s-inauguration.htm [https://perma.cc/CA84-44VF].

356. The issues got so out of hand that Johnson faced an impeachment trial in the Senate in 1868. *See Impeachment Trial of President Andrew Johnson, 1868*, U.S. SENATE, https://www.senate.gov/about/powers-procedures/impeachment/impeachment-johnson.htm [https://perma.cc/P6F6-GQAW]. Ironically, Lincoln had chosen Johnson as Vice President in an attempt to unite the country. *See* JOHN C. WAUGH, REELECTING LINCOLN: THE BATTLE FOR THE 1864 PRESIDENCY 197 (1997).

357. Bruce Fein, *A Circumscribed Senate Confirmation Role*, 102 HARV. L. REV. 672, 676 n.25 (1989) ("The Radical Reconstruction Congress reduced the Supreme Court's size from ten members to seven . . . to prevent President Andrew Johnson from filling vacancies with persons hostile to Congress' Reconstruction Program.").

358. The Judicial Circuits Act of 1866, ch. 210, 14 Stat. 209 (codified as amended at 28 U.S.C. § 1).

359. *See* Hepburn v. Griswold, 75 U.S. (8 Wall.) 603, 625 (1869). The votes in *Hepburn* are actually difficult to decipher, but Ballotpedia and the Supreme Court Database has the case as 4-3. *See Hepburn v. Griswold (1870)*, BALLOTPEDIA, https://ballotpedia.org/HEPBURN_v._GRISWOLD_(1870) [https://perma.cc/Y8J5-ESN8].

360. *Id.* On Chase's appointment as Chief Justice, see *Justices from 1789 to Present*, *supra* note 280.

361. Erik M. Jensen, *The Apportionment of "Direct Taxes": Are Consumption Taxes Constitutional?*, 97 COLUM. L. REV. 2334, 2418 n.432 (1997); Henry Paul Monaghan, *Stare Decisis and Constitutional Adjudication*, 88 COLUM. L. REV. 723, 744 (1988) (discussing *Hepburn v. Griswold* and the later *Legal Tender Cases* among "the leading constitutional controversies in American history").

boggling and might have "wreaked havoc" with the U.S. Treasury.[362] If paper money were not legal, debt repayments might have to be made in gold rather than U.S. currency, and the Treasury Department might have needed to create a replacement currency based in coins.[363]

Instead, Republican Ulysses S. Grant was elected in 1868, and, in 1869, Congress abruptly raised the number of Justices on the Court back to nine.[364] So the number of Justices on the Court allowed by statute whipsawed from nine in 1862 to ten in 1863 to seven in 1866 and back to nine in 1869.[365]

The 1869 change allowed Grant to immediately appoint two new Justices, William Strong and Joseph Bradley, and surprise, surprise, they proved much more open-minded to the constitutionality of the Legal Tender Act.[366] *Hepburn v. Griswold* was announced on February 7, 1870.[367] President Grant nominated Bradley and Strong as Justices the same day.[368] Strong and Bradley joined the Court on March 14 and 23 respectively.[369] Just *two days* after Bradley's appointment, on March 25, the Attorney General asked the Court to reconsider the question of the Legal Tender Act's constitutionality.[370] The Supreme Court granted this request on April 1, strongly suggesting that *Hepburn* was in line for overruling by the newly formed nine member Court.[371] This predication proved true thirteen months later in the *Legal Tender Cases*.[372] Though the majority and dissent in the *Legal Tender Cases* wrote at length, the bizarre circumstances of the case, as well as the ugliness of a complete reversal within two years, offers some excuse.

Forgive a detour here but remember this story next time someone tells you "the country has never been more divided" or "the Supreme Court has never been less popular or more politicized." First, we fought a literal Civil War in this country, so we certainly were more divided then than now.[373] Second, Congress jerked around the number of Justices three times in seven years all in

362. William Watts Folwell, *Evolution of Paper Money in the United States*, 8 MINN. L. REV. 561, 573 (1924).

363. *See* MURRAY N. ROTHBARD, A HISTORY OF MONEY AND BANKING IN THE UNITED STATES 152–53 (Joseph T. Salerno ed., 2002) (noting that railroads, among others, were concerned about being forced to repay their debts in gold rather than paper money); Folwell, *supra* note 362, at 574.

364. Roos, *supra* note 345.

365. *See supra* notes 345, 357, 364 and accompanying text.

366. 1 JOAN BISKUPIC & ELDER WITT, GUIDE TO THE U.S. SUPREME COURT 25 (1997).

367. Hepburn v. Griswold, 75 U.S. (8 Wall.) 603, 603 (1869).

368. Charles Fairman, *Mr. Justice Bradley's Appointment to the Supreme Court and the* Legal Tender Cases, 54 HARV. L. REV. 1128, 1128 (1941).

369. *Justices from 1789 to Present*, *supra* note 280.

370. Fairman, *supra* note 368, at 1128.

371. *Id.*

372. *Id.* (discussing the *Legal Tender Cases*, 79 U.S. (12 Wall) 457 (1871)).

373. *See generally* SHELBY FOOTE, THE CIVIL WAR: A NARRATIVE (1958) (discussing the American Civil War and the divisiveness it caused).

an effort to reward Presidents they liked (Lincoln and Grant) and punish Presidents they hated (Johnson).[374] And in the end, Grant appointed the two necessary votes to overturn *Hepburn*, which barely lasted a year on the books and was never put into effect at all.[375] Now *that* is a politicized Court.

The *Legal Tender Cases* are also an abject lesson in not over-ranking the actual impact of even the most controversial Supreme Court cases. The *Legal Tender Cases* settled the issue for good apparently, and they have thus been relatively infrequently cited, with just 410 court citations in the past 155 years.[376] Henry Monaghan described the *Legal Tender Cases* as having "disappeared below the surface of American constitutional law," and that seems like a fair reading on what was once a true constitutional and financial crisis.[377]

The issue of the constitutionality of the federal income tax is similar, if less dramatic. In 1895, in *Pollock v. Farmers Loan & Trust Co.*, the Court held a federal income tax unconstitutional as a "direct tax" not once but twice under the same case name.[378] The first opinion was 101 pages, and then the Court wrote another ninety-eight pages on "rehearing" the same term.[379] This issue was obviously critical to the country and was not settled for good until the ratification of the Sixteenth Amendment in 1913.[380] And yet, *Pollock* is also a reminder that the cases that seem of utmost importance at the time can fade. The first *Pollock* case has been cited in just 557 cases over the last 135 years.[381] The *Pollock* rehearing has been even less influential and has been cited just 363 times.[382]

374. *See supra* note 365 and accompanying text.

375. *See supra* note 364 and accompanying text.

376. The methodology for this count is identical to that described in note 299, *supra*. WESTLAW, *Legal Tender Cases*, 410 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

377. Henry Paul Monaghan, *supra* note 361, at 773 (quoting Kenneth W. Dam, *The* Legal Tender Cases, 1981 SUP. CT. REV. 367, 367 (1981)).

378. *See* Pollock v. Farmers' Loan & Tr. Co., 157 U.S. 429, 555–86 (1895); Pollock v. Farmers' Loan & Tr. Co. (rehearing), 158 U.S. 601, 617–37 (1895).

379. *Pollock*, 157 U.S. at 429; *Pollock* (rehearing), 158 U.S. at 601.

380. U.S. CONST. amend. XVI.

381. The methodology for this count is identical to that described in note 299, *supra*. WESTLAW, *Pollock v. Farmers' Loan & Tr. Co.*, 557 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

382. The methodology for this count is identical to that described in note 299, *supra*. WESTLAW, *Pollock v. Farmers' Loan & Tr. Co.* (rehearing), 363 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases"). Once again, the sequel disappoints after the original. *Cf.* Darren Franich, *The Sequel Map Proves Scientifically that the Sequel Is Almost Always Worse than the Original*, ENT. WKLY. (Jan. 6, 2011, at 16:50 ET), https://web.archive.org/web/20170429052545/https:/ew.com/article/2011/01/06/sequel-map-worse-original/ [https://perma.cc/9FF9-E4MX] (describing the empirical data to support this hypothesis for movies).

You have surely heard of *McCulloch v. Maryland*, one of the most famous Supreme Court opinions ever.[383] There, the State of Maryland levied a tax on the Second Bank of the United States.[384] The great John Marshall had to decide the constitutionality of the Bank itself, and then whether Maryland could tax it.[385] Marshall held that Congress had the power to create the Bank under the Necessary and Proper Clause and that Maryland could not interfere with its operation because the "power to tax involves the power to destroy."[386] *McCulloch* is a go-to citation for two critical constitutional concepts: the breadth of the Necessary and Proper Clause and the inability of the states to interfere with certain types of federal activities, and it has been cited in 3,793 cases as a result.[387]

You may be less familiar with another much longer case covering the legality of the Second Bank of the United States: *Osborn v. Bank of the United States*.[388] In *Osborn*, the State of Ohio also taxed the bank and went so far as to physically seize more than $100,000 from it.[389] The bank sued to have the funds returned, and the case ended up in the Supreme Court. The main issue was whether the Bank could sue in federal court based on an earlier precedent about the inability of the First Bank of the United States to bring such a suit.[390]

It is a less sexy topic than *McCulloch*, but the case has been cited 2,090 times in future court opinions, suggesting its fundamental importance on issues of jurisdiction and congressional power vis-à-vis the states.[391] Some of the opinion length is driven by a rare dissent in the Marshall era by Justice William Johnson, who filed a thirty-two page dissent on the question of jurisdiction.[392] But in all honesty, much of the length is a rare overlong Marshall opinion, with a fifty-five page majority opinion in a six-to-one decision that might have been more neatly and briskly decided with a citation to *McCulloch*.[393]

383. 17 U.S. 316 (1819). On *McCulloch*'s fame, see, for example, Steven G. Calabresi, *Originalism and James Bradley Thayer*, 113 NW. U. L. REV. 1419, 1449 (2019) ("*McCulloch* . . . is famous for its expansive, Hamiltonian conception of federal power under the Necessary and Proper Clause.").

384. *McCulloch*, 17 U.S. 400–37.

385. *See id.*

386. *Id.* at 431–37.

387. The methodology for this count is identical to that described in note 299, *supra*. WESTLAW, *McCulloch v. Maryland*, 3,793 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

388. 22 U.S. (9 Wheat) 738 (1824).

389. *Id.* at 739–44.

390. *Id.* at 817–18 (discussing Bank of the U.S. v. Deveaux et al., 9 U.S. 61 (1809)).

391. The methodology for this count is identical to that described in note 299, *supra*. WESTLAW, *Osborn v. Bank of the U.S.*, 2,097 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

392. *Osborn*, 22 U.S. at 871–903 (Johnson, J., dissenting).

393. *Compare id.* at 816–71 (Marshall, C.J., majority opinion), *with* McCulloch v. Maryland, 17 U.S. 316, 400–37 (1819).

The other older cases range from those that seemed critical only at the time to others that are more modern in their fractiousness, and to others still that have simply faded from view. The *Passenger Cases* is an example of an early fractious case.[394] It dealt with whether the Commerce Clause barred New York and Massachusetts from taxing ship passengers entering or exiting the state.[395]

The Court held five-to-four that the levies were not allowable but couldn't settle on a reason why across nine different opinions, including four concurrences, four more dissents, and no true majority opinion.[396] Fans of Supreme Court dysfunction will appreciate this very early example of a Supreme Court just completely at sea on an important legal issue. It is also an early example of how bad personal relations on a Court can drive dysfunction and length. Justice Wayne's twenty-seven-page concurrence shows both.[397] Here is Wayne's attempt to disentangle who agrees with whom on the rationale for the case:

> Those of us who are united with Mr. Justice Catron in giving the judgments in these cases concur with him in those opinions. Mr. Justice McKinley and Mr. Justice Grier have just said so, my own concurrence has been already expressed, and the second division of Mr. Justice McLean's opinion contains conclusions identical with those of Mr. Justice Catron concerning the unconstitutionality of the laws of Massachusetts and New York, on account of the conflict between them with the legislation of Congress and with treaty stipulations. I also concur with Mr. Justice McKinley in his interpretation of the ninth section of the first article of the Constitution; also with Mr. Justice Grier, in his opinion in the case of Norris *v.* The City of Boston.[398]

You may think that this description would make more sense in context, but reading each of these opinions would not help that much, I promise.

Wayne also includes an eight page postscript on the case of *City of New York v. Miln* that goes into rich detail about who voted in what way on that case, all for the apparent purpose of calling Chief Justice Taney a liar for his version of that case and its deliberations.[399] So, the case is certainly of interest to Court historians,[400] and scholars of the dormant commerce clause cite it as an example

394. Smith v. Turner (The Passenger Cases), 48 U.S. (7 How.) 283 (1849)

395. *Id.* at 389–94.

396. David P. Currie, *The Constitution in the Supreme Court: Contracts and Commerce, 1836-1864*, 1983 DUKE L.J. 471, 502–05.

397. *The Passenger Cases*, 48 U.S. at 410–37 (Wayne, J., concurring).

398. *Id.* at 412.

399. *Id.* at 429–37 (discussing City of New York v. Miln, 36 U.S. 102 (1837)). On what Wayne was trying to accomplish, see Currie, *supra* note 396, at 504 n.229.

400. *See, e.g.*, AUSTIN ALLEN, ORIGINS OF THE DRED SCOTT CASE: JACKSONIAN JURISPRUDENCE AND THE SUPREME COURT, 1837–57, at 91 (2006) (discussing the *Passenger Cases* as a precursor to *Dred Scott*).

of the confusion around that doctrine in the nineteenth century,[401] but for contemporaries, "the *Passenger Cases* generated little except confusion on the Court and among the Public."[402]

In terms of cases of little future import, we already discussed *United States v. Castillero* above. *Morris v. United States* is nearly just as inconsequential.[403] It dealt with who owned the bottom of the Potomac River, the United States or private property holders (spoiler alert: the United States does).[404] Like *Castillero*, it was a very fact-intensive property dispute, and as such it had little staying power as precedent.[405] *Morris* has been cited by just fifty-four courts, among the least impactful of these cases.[406]

A review of the cases allows for some general observations. Length does not typically increase clarity. There is an inverse relationship between the number of opinions and coherence. Nor does length necessarily make an opinion more influential over time.

VI. THE CASE AGAINST OVERLONG SUPREME COURT OPINIONS

With the list in mind, here is a normative argument against the existence of these very long Supreme Court opinions. First, longer Supreme Court cases are not, generally, a good thing.[407] To some readers this will be obvious—longer opinions are by nature harder to read, and that is worse for a public-facing body like the Supreme Court.[408]

Others will disagree and think that length is neutral or even positive. The Supreme Court deals with difficult and fractious issues, so it makes sense that they must sometimes write at length.[409] There is a natural assumption that

401. *See, e.g.*, Brannon P. Denning, *Reconstructing the Dormant Commerce Clause Doctrine*, 50 WM. & MARY L. REV. 417, 434–35 (2008) (describing the *Passenger Cases* as an "unedifying airing of multiple points of view" on the dormant commerce clause).

402. ALLEN, *supra* note 400, at 91; *see also* DAVID P. CURRIE, THE CONSTITUTION IN THE SUPREME COURT: THE FIRST HUNDRED YEARS, 1789–1888, at 229–30 (1985) (arguing that the *Passenger Cases* "submerge the unhappy reader in a torrent of verbiage . . . without providing any meaningful guidance," creating "almost total incoherence").

403. *See infra* note 406 and accompanying text.

404. 174 U.S. 196, 291 (1899).

405. *Id.* at 222–34.

406. The methodology for this count is identical to that described in note 299, *supra*. WESTLAW, *Morris v. United States*, 54 results (Dec. 14, 2025) (on file with the North Carolina Law Review) (filtered by "Citing References," "Cases").

407. *See, e.g.*, Meg Penrose, *Enough Said: A Proposal for Shortening Supreme Court Opinions*, 18 SCRIBES J. LEG. WRITING 49, 49–50 (2018) [hereinafter Penrose, *Shortening*].

408. *See id.* at 50–60.

409. *See* Albert W. Alschuler, *Failed Pragmatism: Reflections on the Burger Court*, 100 HARV. L. REV. 1436, 1454 n.117 (1987) ("As law has grown more complicated and precedents have multiplied . . . the need to draw careful distinctions ha[s] increased. In general, Supreme Court opinions probably tend to become longer [and] more complicated . . . the more the accretion of precedent grows and the more involved the issues presented to the Court become.").

opinion length is likely a result of the complexity of the issues presented.[410] So in a particularly complex area, it may be better to write out everything the Court hopes to cover than to cut down and lose nuance or detail. For example, the rise of originalism necessarily entails increased citation to history and tradition and that takes time (and pages) to elucidate.[411] Nevertheless, on balance, the longest Supreme Court opinions are largely failures to be avoided and the trend towards more of these ultralong opinions will only lead to frustrated readers and public distrust.

Let us start with the Supreme Court's role in our democracy ever since *Marbury v. Madison*: that of the final arbiter of some of the most challenging political questions of any given historical era. As Alexis De Tocqueville famously noted: "There is hardly a political question in the United States which does not sooner or later turn into a judicial one."[412] In civil law countries like France or Germany, the constitutional courts are separate from the highest courts that decide statutory or regulatory matters.[413] In the United States, those functions are combined into a single Supreme Court, where supremely political decisions on gay marriage, affirmative action, or abortion sit cheek to jowl next to technical tax law decisions.[414] This means the Court actually does at least two different types of work: political and technical. The technical work typically involves interpreting statutes or regulations and settling circuit splits. This more technical framework can be fairly described as aimed at lawyers, regulators, and legislators.[415] It may be that length is acceptable in these cases if it actually drives clarity (a dubious empirical claim).

But the modern Court is best known for its broader constitutional/policy work. Richard Posner has described the modern Court as a "superlegislature," making broad decisions on political issues that have a massive impact on ordinary Americans.[416] With this audience, and especially in the cases with broad public impact and interest, the Court should avoid long opinions

410. RICHARD POSNER, FEDERAL COURTS: CRISIS AND REFORM 73 (1985) (averring that longer opinions could signal greater complexity of the underlying issues).

411. On how originalism and historical fact-finding interact, see Joseph Blocher & Brandon L. Garrett, *Originalism and Historical Fact-Finding*, 112 GEO. L.J. 699, 708–47 (2024).

412. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 315 (Gerald E. Bevan, tr., 2003) (1840).

413. *See* JOHN HENRY MERRYMAN & ROGELIO PEREZ-PERDOMO, THE CIVIL LAW TRADITION 134–42 (2007).

414. *See* BARTON, CREDENTIALED COURT, *supra* note 2, at 21.

415. *See, e.g.*, Kousisis v. United States, 145 S. Ct. 1382 (2025) (resolving a circuit split on the scope of the federal wire fraud statute, 18 U.S.C. § 1343).

416. Richard D. Posner, *Foreword: A Political Court*, 119 HARV. L. REV. 31, 35–39, 60 (2005).

demonstrating technical legal excellence and explain what they are doing in a manner that a typical American can understand.[417]

Here, a reader may be tempted to object that constitutional law is complicated and cannot possibly be explained in a manner that lay people can understand. This claim is demonstrably false.[418] By any account, *Brown v. Board of Education* and *Marbury v. Madison* are among the greatest and most influential opinions ever written.[419] They are also shorter and much more straightforward than the cases on this list.[420]

Consider *Brown*. It is a simple, short, and plain opinion that relies more on logic, morality, and social science than expert legal argumentation.[421] The case itself clocks in at a tidy thirteen pages in the official U.S. Reports and the opinion proper is under ten pages.[422] It has only fourteen footnotes and just thirteen textual case citations.[423] The opinion is not a lengthy, tedious history lesson on the reconstruction amendments or a careful deconstruction of every case since then.[424] Instead, Warren relied on human decency. Here's the stirring conclusion, which includes no legal citation whatsoever:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.[425]

417. *Cf.* JOHN RAWLS, POLITICAL LIBERALISM 233–36 (1993) (asserting that because of its unique role in American society, the Supreme Court should employ "public reasons" to explain and justify their decisions to the public at large).

418. *See infra* notes 438–40, 465–66 and accompanying text.

419. *See, e.g.*, BERNARD SCHWARTZ, A BOOK OF LEGAL LISTS: THE BEST AND WORST IN AMERICAN LAW 47–67 (1997) (ranking *Brown* and *Marbury* as two of the ten greatest Supreme Court opinions).

420. *Compare* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022) (illustrating the paradigmatic overlong case), *with* Brown v. Bd. of Educ., 347 U.S. 483 (1954) (illustrating a short, straightforward opinion). For further comparison, see Barton, Dobbs *v.* Brown, *supra* note 204, at 458–63.

421. *See Brown*, 347 U.S. at 483–95.

422. *Id.* at 483–96.

423. *Id.*

424. For a comparison point, see *Dobbs*, 597 U.S. at 215. Barton, Dobbs *v.* Brown, *supra* note 204, at 458–63 (contrasting the short, straightforward reasoning in *Brown*, to the lengthy reasoning in *Dobbs*).

425. *Brown*, 347 U.S. at 495.

Marbury is cut from the same cloth.[426] It states a relatively simple and logical case for judicial review.[427]

Compare *Brown* and *Marbury* to *Dobbs v. Jackson Health*, a paradigmatic, overlong case.[428] The *Dobbs* majority opinion is seventy-nine pages long and includes sixty-eight footnotes (including footnote 48 that spans multiple pages).[429] There are *two* appendices to the majority opinion that span another twenty-nine pages and add another fifty-one footnotes to bring the majority's cumulative page total to 108.[430] We get another three concurring opinions adding another thirty-one pages.[431] The dissent is sixty-six pages (including another appendix) and has another thirty footnotes.[432] There, the Supreme Court decided perhaps its most momentous decision since *Roe* and maybe since *Brown v. Board of Education*, and it did so in a manner that almost no ordinary American would, or even could, read comfortably.

Nor did the opinion use its length to create certainty. The case was quite clear that *Roe* and its progeny were overruled.[433] Nevertheless, *Dobbs* created many more quandaries than it solved.[434] As Monika Jordan has argued: "The Supreme Court's ruling in *Dobbs* raises legal questions in nearly every area of law, with the decision having far-reaching implications for tax purposes, traffic violations, criminal prosecutions, IVF, child abuse, manslaughter, and even murder prosecutions."[435]

And note that by choosing *Dobbs* as the paradigmatic overlong case, this Article is being generous. One might, instead, choose the *ten* opinions written in *Furman v. Georgia*, where the Supreme Court held that the death penalty was cruel and unusual punishment (at least as applied in the cases before them).[436] How do nine Justices draft ten opinions? One laughably short per curiam opinion followed by nine concurrences and dissents, with no Justice joining any other Justice's opinion/reasoning, all swallowing up 231 pages in the U.S. Reports.[437]

426. *See* Christopher W. Schmidt, Cooper v. Aaron *and Judicial Supremacy*, 41 U. ARK. LITTLE ROCK L. REV. 255 (2019) (comparing *Marbury* and *Brown* as "brillian[t]," "bold," and "common-sense" cases).

427. *See* Gary Lawson, *Thayer Versus Marshall*, 88 NW. U. L. REV. 221, 222 (1993) ("*Marbury* [presents] a simple conception of constitutional adjudication in which one places a statute alongside the Constitution and then decides whether the two texts are consistent.").

428. Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).

429. *Id.* at 223–302 (footnote 48 starts on 265).

430. *Id.* at 302–30.

431. *Id.* at 330–59.

432. *Id.* at 359–423 (including the appendix).

433. *Id.* at 231–32.

434. *See* Monika Jordan, *The Post*-Dobbs *World: How the Implementation of Fetal Personhood Laws Will Affect In Vitro Fertilization*, 57 UIC L. REV. 249, 268 (2024).

435. *Id.*

436. Furman v. Georgia, 408 U.S. 238, 238–470 (1972).

437. *Id.*

Of course, the idea that length creates uncertainty rather than clarity should not be surprising in a common law system. Every additional page offers new questions of holding versus dicta, additional or alternative grounds for decision, citations that may recast old precedents, and so forth, and thus adds complexity to the law.[438]

Concurrences and dissents are both less impactful than majority opinions but nonetheless add complexity and confusion to the law in their own ways.[439] As Meg Penrose has ably argued: "Modern Supreme Court opinions are too long. They are too fractured. And they often lack clarity. Separate opinions, particularly concurring opinions, are largely to blame."[440]

As noted above, concurrences are especially noxious because it is not always clear why they exist at all. Sometimes they propose a different rationale for the judgement.[441] Other times they agree with the judgement of another opinion, but the Justice has more to say.[442] As you might guess, these overlong cases are packed with extra opinions.[443] The average number of opinions in these cases is 4.4, suggesting the regular occurrence of additional dissents and concurrences.[444] In total, these 107 cases generated 147 different concurring opinions, a sure sign of confusion and complexity.[445]

The Supreme Court itself requires concision and clarity from its litigants. Certiorari petitions are capped at 9,000 words.[446] Merits briefs have a 13,000

438. *See* Judith M. Stinson, *Why Dicta Becomes Holding and Why It Matters*, 76 BROOK. L. REV. 219, 250 (2010) ("Longer opinions mean the writer includes more, and that 'more' is often dicta.").

439. Linda Przybyszewski, Book Review, 56 AM. J. LEGAL HIST. 360, 360 (2016) (reviewing MELVIN I. UROFSKY, DISSENT AND THE SUPREME COURT: ITS ROLE IN THE COURT'S HISTORY AND THE NATION'S CONSTITUTIONAL DIALOGUE (2015)) (noting data that "demonstrates the increasing frequency and ineffectiveness of concurrences and dissents, the result of increasing complexity, poor leadership, and enormous egos").

440. Meg Penrose, *Goodbye to Concurring Opinions*, 15 DUKE J. CONST. L. & PUB. POL'Y 25, 27 (2020) [hereinafter Penrose, *Concurring Opinions*].

441. *How To Read a U.S. Supreme Court Opinion*, *supra* note 201 ("Justices who agree with the result of the main opinion, or the resolution of the dispute between the two parties, but base their decision on a different rationale may issue one or more concurring opinion(s).").

442. *See* Sonja R. West, *Concurring in Part & Concurring in the Confusion*, 104 MICH. L. REV. 1951, 1953–54 (2006). Sometimes, these sorts of concurrences may actually be dissents. When Justice Scalia wrote on "dissents," he defined them thusly:

> In speaking of dissenting opinions, I mean to address opinions that disagree with the Court's *reasoning*. Some such opinions, when they happen to reach the same disposition as the majority (that is, affirmance or reversal of the judgment below), are technically concurrences rather than dissents. To my mind, there is little difference between the two.

Scalia, *supra* note 203, at 18.

443. *See, e.g.*, Furman v. Georgia, 408 U.S. 238 (1972).

444. *See infra* app.

445. *See infra* app.

446. SUP. CT. R. 33(1)(g)(i).

word limit (recently lowered from 15,000 words).[447] The words "concise" or "concisely" appear four times in Supreme Court Rule 14 governing certiorari.[448] Petitions for certiorari "should be stated briefly and in plain terms."[449] The questions presented for review must be "expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive."[450] But here, what is good for the goose is apparently unwelcome for the gander.

Admittedly, some of these cases are long but not necessarily splintered.[451] Others are among the most infamously splintered opinions ever written.[452] The *Passenger Cases* includes nine different opinions over 180 pages, all without a controlling majority opinion, or even a discernable theme.[453] Brannon Denning has well described the *Passenger Cases* as an "unedifying airing of multiple points of view,"[454] and David Currie has called the upshot of the case "almost total incoherence."[455]

More recent opinions with extreme length and little precedential value include *Furman*, the *Insular Cases* (144 pages of "multiple and . . . incoherent opinions" deciding citizenship issues in American territories with no controlling majority opinion),[456] and *Regents of California v. Bakke* (a "fractured . . . erratic, wayward, and . . . incoherent" 152 pages of opinions on affirmative action with no controlling majority).[457] These opinions cannot be defended on the basis that length equals clarity. To the contrary, the length is a proxy for dysfunction and confusion.

It also does not help the "length=excellence" argument that the two longest cases of all time feature a grueling 138-page per curiam opinion in *Buckley v. Valeo* and a 132-page trio of weird majority opinions written by four different Justices and featuring a shifting majority of Justices in *McConnell v. Federal Election Commission*.[458] The lack of attribution in *Buckley* and the over-

447. *Id.* 33(1)(g)(v)–(vi). For a discussion on the lowering of the word limit, see Penrose, *Concurring Opinions*, *supra* note 440, at 27 & nn.4–5.

448. SUP. CT. R. 14.

449. *Id.* 14(3).

450. *Id.* 14(1)(a). Imagine if these rules were applied to Supreme Court opinions.

451. *See, e.g.*, Osborn v. Bank of the U.S., 22 U.S. 738 (1824).

452. *See, e.g.*, Furman v. Georgia, 408 U.S. 238 (1972).

453. Smith v. Turner (The Passenger Cases), 48 U.S. (7 How.) 283 (1849).

454. Brannon P. Denning, *Reconstructing the Dormant Commerce Clause Doctrine*, 50 WM. & MARY L. REV. 417, 434 (2008).

455. DAVID P. CURRIE, THE CONSTITUTION IN THE SUPREME COURT: THE FIRST HUNDRED YEARS, 1789–1888, at 230 (1985).

456. Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 GEO. L.J. 405, 432 (2020).

457. Robert J. Delahunty, *"Constitutional Justice" or "Constitutional Peace"? The Supreme Court and Affirmative Action*, 65 WASH. & LEE L. REV. 11, 13 (2008).

458. *See* Buckley v. Valeo, 424 U.S. 1, 6–144 (1976); McConnell v. Fed. Election Comm'n, 540 U.S. 93, 114–246 (2003).

attribution in *McConnell* hardly suggests pride in the Court's work in those cases.

Nor are these overlong cases as impactful as one might think. In 2018, the *HeinOnline Blog* posted a list of the twenty-five Supreme Court cases cited most by other courts, and a separate list of the twenty-five Supreme Court cases cited most in law review articles.[459] In the twenty-five most cited by other courts list, only one overlong case makes the cut: *Miranda v. Arizona*.[460] Law professors are, naturally, fonder of these cases, so *Miranda* is joined by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, *San Antonio Independent School District v. Rodriguez*, and *Buckley v. Valeo* in the list of opinions most cited in law review articles.[461] Note that the *HeinOnline* list is cumulative,[462] so the newer cases that populate this list are naturally not going to be featured. It is interesting that *Miranda* is on both lists and appears to be the most impactful of these cases.[463] Its impact on other courts makes sense. Indeed, the bulk of the *HeinOnline* courts list consists of civil procedure or criminal procedure cases (because those are the cases most likely to be cited repeatedly).[464]

Last, for the reader who maintains that it is impossible to shorten these opinions, I would ask you to grab a modern constitutional law casebook to see how these overlong opinions can be captured in ten pages or so.[465] I asked Brannon Denning, co-author of *American Constitutional Law: Powers and Liberties* if it was hard to excerpt these new ultra long cases like *Dobbs*, *SFFA*, or *Bruen*. "Nope," he replied, "you can cut them pretty short and still get the idea."[466] Or just read the syllabus before these cases and decide if it captures the main takeaways with a small percentage of the verbiage. Spoiler alert: it usually does!

459. Lauren Mattiuzzo, *Most-Cited U.S. Supreme Court Cases in HeinOnline: Part III*, HEINONLINE BLOG (Sep. 26, 2018), https://home.heinonline.org/blog/2018/09/most-cited-u-s-supreme-court-cases-in-heinonline-part-iii/ [https://perma.cc/HRV8-WQEE].

460. *Id.*

461. *Id.*

462. *Id.*

463. *Id.*

464. Adam Steinman did a similar ranking to HeinOnline's based on the Shepard's citation service and came up with a similar list. *See* Adam Steinman, *Ever Wonder Which SCOTUS Cases Have Been Cited the Most?*, CIV. PROC. & FED. CTS. BLOG (Sep. 21, 2016), https://lawprofessors.typepad.com/civpro/2016/09/ever-wonder-which-scotus-cases-have-been-cited-the-most.html [https://perma.cc/Z6AF-9K4P (staff-uploaded)]. In commenting on this list, Steinman noted that "the top ranked cases" all concern civil procedure. *Id.*

465. *See, e.g.*, JESSE CHOPER, MICHAEL C. DORF, RICHARD H. FALLON, JR. & FREDERICK SCHAUER, CONSTITUTIONAL LAW: CASES, COMMENTS, AND QUESTIONS 131–39 (14th ed. 2023) (covering *Sebelius* in nine pages).

466. *See generally* CALVIN B. MASSEY & BRANNON P. DENNING, AMERICAN CONSTITUTIONAL LAW: POWERS AND LIBERTIES (7th ed. 2023) (excerpting ultralong cases).

VII. A FEW LESSONS AND A RADICAL SOLUTION

At this point you should be persuaded that a) ultralong Supreme Court opinions are historically rare; b) the ones we have tend to cluster in controversial areas; c) generally, the addition of extra opinions and length is unhelpful; and d) the prevalence of these opinions is on the rise and spiking in the current decade. With these rough conclusions in mind, here are a few thoughts.

A. *Why Is This Happening? Clever Is as Clever Does*

Why might these Justices be more prone to write very long opinions, and extra concurrences and dissents than their predecessors? As noted above, these Justices are by training and background the "best" Justices ever.[467] They have spent a lifetime demonstrating technical legal excellence by jumping through every hoop possible, from an ivy league undergraduate degree, to Yale or Harvard Law School, to clerking on the Supreme Court, to serving as a federal circuit court judge.[468] Today's Justices are thus uniquely qualified for the Court, and it shows in their work. When you hire individuals who have triumphed early and often in these high level academic and legal contests, you have sorted for a particular type of person with a specific set of skills. I have called these Justices "hoop-jumpers extraordinaire."[469]

The qualifications and achievements of the current Justices are quite unusual for the Court. Justices used to come from much more diverse educational and professional backgrounds.[470] The Court used to include former politicians from presidents, state legislators, and former cabinet members to attorneys general and postmasters general.[471] The Court used to feature Justices whose sole qualification was success in the practice of law.[472] The Court used to seat combat veterans and entrepreneurs.[473] The Court used to represent educational diversity.[474] Fourteen different Supreme Court Justices (almost a

467. *See supra* notes 2–9 and accompanying text.

468. *See supra* notes 2–9 and accompanying text.

469. *See* BARTON, CREDENTIALED COURT, *supra* note 2, at 201–21.

470. *See id.*

471. *Id.* at 129–48. The obvious example is William Howard Taft himself, former President of the United States, but there are a ton of examples. Forty different Justices had experience as a state legislator before joining the Court, roughly a third of all Justices. *Id.* at 139. Sandra Day O'Connor is the last Justice with any experience as a politician. *Id.*

472. *Id.* at 105–28. Louis Brandeis is a fantastic example of the lawyer's lawyers who used to serve on the Court. *Id.* at 105–12.

473. *Id.* at 223–42. The most famous veteran on the Court is Oliver Wendell Holmes, who saw brutal combat that nearly killed him several times during the civil war. *See* STEPHEN BUDIANSKY, OLIVER WENDELL HOLMES: A LIFE IN WAR, LAW, AND IDEAS 72–126 (2019). For entrepreneurship consider Joseph P. Bradley, who worked as an actuary and started his own insurance company before joining the Court. BARTON, CREDENTIALED COURT, *supra* note 2, at 223–29.

474. BARTON, CREDENTIALED COURT, *supra* note 2, at 201–21.

seventh of all Justices) had no formal higher education whatsoever before joining the Court.[475] This mix of experiences naturally brought different skills and predilections to the Court.

But when you sort for technical legal excellence, you can expect it to carry over to the work itself. This Court takes fewer cases.[476] They take longer to decide cases.[477] When they decide cases, there are extra opinions, including many more concurrences.[478] The cases are harder to read, with longer sentences and more polysyllabic words.[479] As the New York Times' Adam Liptak has aptly stated, these "justices are long on words but short on guidance."[480]

Further, these brilliant Justices have also become celebrities. Suzanna Sherry has called it "Our Kardashian Court" because of their fame seeking.[481] The fame seeking is, of course, partially ego, but it is also worth noticing the financial incentives. The main way that Justices can ethically supplement their incomes is to write a book.[482] Fame is a main driver of book sales, so standing out on the Court matters financially as well. Regardless of the cause, the effect is obvious. Each Justice is jockeying for the spotlight, especially in high impact cases. The result is more dissents, more concurrences, and more grandstanding.

I have argued elsewhere that our current model of hoop-jumping Justices is a poor match for the work our current Court does, so I will not belabor that point again here.[483] Instead, I will briefly note that one easy solution to our

475. *Id.* at 206.

476. Boden, *supra* note 11, at xi ("[T]he Court is taking fewer cases than ever. In recent years, it's taken about 80 cases per term, nearly half of what it took in the 1980s."); Ian Millhiser, *The Supreme Court: The Most Powerful, Least Busy People in Washington*, VOX (May 3, 2024), https://www.vox.com/scotus/24145279/supreme-court-shrinking-docket-quiet-quitting [https://perma.cc/RK2Z-9D79].

477. Feldman, *The Supreme Court Is Less Efficient*, *supra* note 11; Lawrence Hurley, *This Supreme Court Is Slow To Issue Rulings—Glacially Slow*, NBC NEWS (Apr. 30, 2023), https://www.nbcnews.com/politics/supreme-court/supreme-court-slow-issue-rulings-glacially-slow-rcna81536 [https://perma.cc/79KB-2CBG (staff-uploaded archive)].

478. Feldman, *Concurrences*, *supra* note 12.

479. Ryan Whalen, *Judicial Gobbledygook: The Readability of Supreme Court Writing*, 125 YALE L.J.F. 200, 200 (2015), https://www.yalelawjournal.org/pdf/Whalen_PDF_5spbaaeu.pdf [https://perma.cc/S3JH-TV3W] (analyzing "the readability of over six thousand Supreme Court opinions by measuring the length of sentences and the use of long, polysyllabic words" and demonstrating that "legal writing at the Court has become more complex and difficult to read in recent decades").

480. Adam Liptak, *Justices Are Long on Words but Short on Guidance*, N.Y. TIMES (Nov. 17, 2010), https://www.nytimes.com/2010/11/18/us/18rulings.html [https://perma.cc/9NSV-G8JW (staff-uploaded, dark archive)].

481. Suzanna Sherry, *Our Kardashian Court (and How To Fix It)*, 106 IOWA L. REV. 181, 183–85 (2020).

482. Amy Howe, *Justices Earned Extra Money from Books and Teaching in 2021, Disclosures Show*, SCOTUSBLOG (June 9, 2022), https://www.scotusblog.com/2022/06/justices-earned-extra-money-from-books-and-teaching-in-2021-disclosures-show/ [https://perma.cc/8H3Q-ASX4].

483. *See* BARTON, CREDENTIALED COURT, *supra* note 2, at 1–26.

current prolixity is to return to an earlier version of the Court that included fewer genius legal technocrats and more practical minded jurists.

B. *Can Anything Be Done About These Overlong Opinions?*

Assuming the current model of Supreme Court Justice is here to stay, we are left with the uncomfortable topic of how to remedy the growing number of overlong opinions. Meg Penrose has written persuasively against metastasizing opinion lengths and the rise of the concurring opinion.[484] Her solutions are voluntary, as she hopes the Supreme Court will self-impose discipline by either agreeing to ban concurring opinions or setting internal page limits.[485] Sadly, this is like asking an alcoholic to monitor their drinking. That said, it is hard to come up with other possible solutions, given that the Court has basically operated as an island unto itself since the end of mandatory circuit riding in the late-nineteenth Century.[486]

And yet, the Court itself imposes page limits on litigants, and there is a kind of "what's good for the goose should be good for the gander" logic to imposing such limits on the Justices themselves. Penrose suggests we limit majority opinions to 9,000 words, the current limit for petitions for certiorari.[487] She would limit secondary opinions (all dissents and concurrences) to 3,000 words, the current limit for a motion for rehearing.[488] In 2010, Adam Liptak reported that the average Supreme Court opinion was roughly 5,000 words that year, a new record in length.[489] If 5,000 is the average opinion, 9,000 should be fine.

Or, as long as we are speculating, maybe make the limits even shorter! Or give the Justices a word budget for the entire sitting. That would encourage budgeting across the entire year, and from scarcity the words would gain value. Further, perhaps a cap-and-trade system, where Justices can trade other perks or future words for current words. The possibilities are endless and all sorts of fun.

Less fun is the question of who, if anyone, would have the power to install and enforce such limits. Here, I recommend that Congress do exactly that. It is beyond the scope of this Article to launch a full constitutional inquiry into whether Congress could actually do this. The question of congressional power

484. Penrose, *Concurring Opinions*, *supra* note 440, at 25; Penrose, *Shortening*, *supra* note 407, at 49.

485. Penrose, *Concurring Opinions*, *supra* note 440, at 47–52; Penrose, *Shortening*, *supra* note 407, at 64–70.

486. For more on the end of circuit riding, see BARTON, CREDENTIALED COURT, *supra* note 2, at 309–19.

487. Penrose, *Shortening*, *supra* note 407, at 65.

488. *Id.*

489. Liptak, *supra* note 480.

over the federal courts, and especially the Supreme Court, is one of great interest to federal courts scholars and has been written about at great length.[490]

That said, I will make a brief defense of the constitutionality of enacting reasonable page limits on the Supreme Court here.[491] The first thing to note is that the debate over Congress's power over the Supreme Court is especially robust because we know very little about the topic.[492]

There are some obvious touchstones. The first is the nature and structure of the Constitution itself, which strongly suggests that Congress has a significant amount of power over the Supreme Court.[493] The Constitution starts with Article I, which establishes the legislative branch, and clocks in at 2,268 words, roughly fifty-two percent of the entire document.[494] Article II, establishing the executive branch, comes next, and is the second-longest part of the Constitution at 1,025 words, roughly another twenty-three percent. Combined, Articles I and II comprise three quarters of the Constitution.[495] This makes sense, as the nature and powers of these two branches were among the

490. As an example, Suzanna Sherry has collected a lovely string cite of famous articles on congressional power over the jurisdiction of the Court, sometimes called the "jurisdiction stripping" debate. *See* Sherry, *supra* note 481, at 209–10 n.144 (citing Richard H. Fallon, Jr., *Jurisdiction-Stripping Reconsidered*, 96 VA. L. REV. 1043 (2010); William A. Fletcher, *Congressional Power Over the Jurisdiction of Federal Courts: The Meaning of the Word "All" in Article III*, 59 DUKE L.J. 929 (2010); James E. Pfander, *Federal Supremacy, State Court Inferiority, and the Constitutionality of Jurisdiction-Stripping Legislation*, 101 NW. U. L. REV. 191 (2007); Steven G. Calabresi & Gary Lawson, *The Unitary Executive, Jurisdiction Stripping, and the* Hamdan *Opinions: A Textualist Response to Justice Scalia*, 107 COLUM. L. REV. 1002 (2007); Janet Cooper Alexander, *Jurisdiction-Stripping in a Time of Terror*, 95 CALIF. L. REV. 1193 (2007); Michael G. Collins, *The Federal Courts, the First Congress, and the Non-Settlement of 1789*, 91 VA. L. REV. 1515 (2005); Barry Friedman, *A Different Dialogue: The Supreme Court, Congress, and Federal Jurisdiction*, 85 NW. U. L. REV. 1 (1990); Daniel J. Meltzer, *The History and Structure of Article III*, 138 U. PA. L. REV. 1569 (1990); Robert N. Clinton, *A Mandatory View of Federal Court Jurisdiction: A Guided Quest for the Original Understanding of Article III*, 132 U. PA. L. REV. 741 (1984); Gerald Gunther, *Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate*, 36 STAN. L. REV. 895 (1984); Paul M. Bator, *Congressional Power Over the Jurisdiction of the Federal Courts*, 27 VILL. L. REV. 1030 (1982); Lawrence Gene Sager, *Foreword: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 HARV. L. REV. 17 (1981); Martin H. Redish, *Constitutional Limitations on Congressional Power to Control Federal Jurisdiction: A Reaction to Professor Sager*, 77 NW. U. L. REV. 143 (1982); Theodore Eisenberg, *Congressional Authority To Restrict Lower Federal Court Jurisdiction*, 83 YALE L.J. 498 (1974); Henry M. Hart, Jr., *The Power of Congress To Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362 (1953)).

491. Special thanks are due here to Howard Wasserman, who raised this entire issue with me for the first time and also wrote a lovely and probing blog post about it at PrawfsBlawg. Howard Wasserman, *Page Limits?*, PRAWFSBLAWG (Aug. 2, 2023), https://prawfsblawg.blogs.com/prawfsblawg/2023/08/page-limits.html [https://perma.cc/WLH5-9DM6 (staff-uploaded archive)].

492. Caprice L. Roberts, *Jurisdiction Stripping in Three Acts: A Three String Serenade*, 51 VILL. L. REV. 593, 599 (2006) ("The Supreme Court has never conclusively resolved the ultimate issue of whether Congress has the power to preclude the federal forum over constitutional cases, and although scholarly treatment is rich, genuine consensus remains elusive.").

493. *See* U.S. CONST. art. I.

494. BARTON, CREDENTIALED COURT, *supra* note 2, at 309.

495. *Id.*

most important (and lengthy) debates at the Constitutional Convention of 1787.[496]

In contrast, Article III and the federal judiciary were a relative afterthought to the Framers of the Constitution.[497] The length and nature of Article III itself reflect this status. Article III clocks in at a tidy 377 words, or just eight percent of the Constitution.[498] Even those words tend to emphasize the limited powers of the federal courts vis-à-vis Congress:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish . . . . The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution . . . . In all [such] Cases . . . the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.[499]

If you are unconvinced that the federal courts were pretty roughly sketched out, consider that under the Constitution the *only* federal court that must exist is the Supreme Court. The existence of other federal courts is at Congress's discretion.[500] Congress *may* (and presumably may not) establish such courts.[501] Likewise, Article III explicitly grants Congress power to make "[e]xceptions" to and "[r]egulations" on the appellate jurisdiction of the Supreme Court, suggesting that even this most basic question of the nature of the Court is left to Congress.[502]

Article I itself supports this idea. Congress's powers are specifically and carefully written out, and Congress has the Necessary and Proper Clause as an exclamation point on their powers generally, and their power over the other branches specifically.[503] As Suzanna Sherry has argued, the Necessary and Proper Clause "gives Congress the authority to adopt laws that implement not only its own powers, but the powers of the other two branches."[504] Thus, the Constitution itself supports broad congressional power over the Supreme Court.

496. William Josephson, *States May Statutorily Bind Presidential Electors, the Myth of National Popular Vote, the Reality of Elector Unit Rule Voting and Old Light on Three-Fifths of Other Persons*, 76 U. MIAMI L. REV. 761, 766–67 & n.16 (2022).

497. Henry J. Bourguignon, *The Federal Key to the Judiciary Act of 1789*, 46 S.C. L. REV. 647, 651–52 (1995) (surveying "the debates at the Constitutional Convention" and concluding that "Article III of the Constitution was practically an afterthought for the delegates").

498. BARTON, CREDENTIALED COURT, *supra* note 2, at 309.

499. U.S. CONST. art. III.

500. *Id.* (referring to "such inferior Courts as the Congress may from time to time ordain and establish").

501. *Id.*

502. *Id.*

503. Sherry, *supra* note 481, at 208.

504. *Id.*

The caselaw does not derail that conclusion. The most relevant case is *United States v. Klein*.[505] Howard Wasserman has argued that while the *Klein* case itself is confusing, its importance as a precedent is not.[506] *Klein* stands for the proposition that "Congress cannot dictate to courts the outcome of particular litigation or command how courts should resolve particular legal and factual questions in a case."[507]

Plaut v. Spendthrift Farm, Inc. states two less relevant restrictions on Congress's power over the Supreme Court: 1) "Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch,"[508] and 2) Congress may not "retroactively command[] the federal courts to reopen [a] final judgment."[509]

A page limit would not remove finality of any judgments, so any *Plaut* pitfalls are avoided. *Klein* poses a closer question, because just as "unlimited power to tax involves, necessarily, a power to destroy," an unlimited power to limit words might allow a ridiculously low word limit of one word, essentially allowing Congress to eliminate written opinions altogether.[510] Even that sort of limitation might be constitutional if you agree with the most muscular reading of Article I and Article III. For example, Sherry has argued that Congress could require the Supreme Court to issue only per curiam opinions, eliminating attribution, dissents, and concurrences, which is not far from the same outcome.[511]

Regardless, this Article only argues for the imposition of "reasonable" word limits, which should avoid any *Klein* problems altogether. Whether Congress could limit Supreme Court opinions to ten words is a close question.[512] Limiting the Court to 9,000 words, however, is hardly ordering the Court to decide any particular case in any particular manner.[513] To the contrary, any and all results are left open, this law would only limit (and not very substantially) the Court's written reasons for the decision.

CONCLUSION

There is much to be learned from gathering the longest opinions in Supreme Court history. You get a look at the peaks and valleys of the longest

505. 80 U.S. 128 (1871).

506. Howard M. Wasserman, *The Irrepressible Myth of Klein*, 79 U. CIN. L. REV. 53, 53–56 (2010) [hereinafter Wasserman, *Myth of Klein*].

507. *Id.* at 56.

508. 514 U.S. 211, 218 (1995).

509. *Id.*

510. McCulloch v. Maryland, 17 U.S. 316, 327 (1819).

511. Sherry, *supra* note 481, at 207–15.

512. *See* Wasserman, *Myth of Klein*, *supra* note 506, at 53–56.

513. *See* United States v. Klein, 80 U.S. (13 Wall.) 128, 146 (1871).

opinions.[514] You can see what issues most bedeviled the Court over the years, and how they move in and out of fashion.[515] You can see what Courts and what Justices were most prone to logorrhea.[516]

And perhaps most importantly, you can see just how much more common these overlong cases have become. This is not a sign of health for the Court or the country. The Supreme Court is at an all-time nadir of public trust.[517] Correlation does not prove causation, but it can't help the Court that the opinions accompanying their most controversial decisions are so long and densely written that no ordinary Americans will ever read (or be persuaded by) them.[518] If the Court is going to insist on deciding these hot-button issues for the country, they could at least do us the courtesy of telling us why in a manner and length accessible to the affected. As such, Congress should put a word limit on the Supreme Court.

514. *See supra* tbl. 1.

515. *See supra* tbl. 6.

516. *See infra* app.

517. *See* Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RSCH. CTR. (Aug. 18, 2024), https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low/ [https://perma.cc/86AA-YVJB]; Jeffrey M. Jones, *Supreme Court Trust, Job Approval at Historical Lows*, GALLUP (Sep. 29, 2022), https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx [https://perma.cc/6W5W-RXR4 (staff-uploaded archive)]; *Trust in U.S. Supreme Court Continues To Sink*, ANNENBERG PUB. POL'Y CTR. (Oct. 2, 2024), https://www.annenbergpublicpolicycenter.org/trust-in-us-supreme-court-continues-to-sink/ [https://perma.cc/7AWC-W4QA].

518. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

APPENDIX: DATA TABLE

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Abbott v. Perez, 585 U.S. 579 (2018)	88	Civil Rights (Voting Rights Act of 1965); Redistricting Gerrymander	41	Thomas (1)	Sotomayor (46)
Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970)	89	Civil Rights (Desegregation); Desegregation Sit-Ins	29	Black (4)	Douglas (11), Brennan (47)
Alden v. Maine, 527 U.S. 706 (1999)	104	Federalism (National Supremacy); Congressional Power/Eleventh Amendment	50	N/A	Souter (55)
Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1 (2024)	99	Civil Rights: Voting; Redistricting and Race	35	Thomas (29)	Kagan (35)
Arizona v. California, 373 U.S. 546 (1963)	97	Economic Activity (Natural Resources); Water Rights	53	N/A	Harlan (25), Douglas (20)
Baker v. Carr, 369 U.S. 186 (1962)	163	Civil Rights (Reapportion-ment); Voting Rights	55	Douglas (10), Clark (14), Stewart (2)	Frankfurter (65), Harlan (20)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Balt. & Ohio R.R. Co. v. United States, 386 U.S. 372 (1967)	105	Economic Activity (Mergers); Railroad Law	24	Brennan (44)	Douglas (22), Fortas (20)
Bell v. Maryland, 378 U.S. 226 (1964)	120	Civil Rights (Sit-In Demonstrations); Desegregation Sit-Ins	16	Douglas (44), Goldberg (33)	Black (29)
Berger v. New York, 388 U.S. 41 (1967)	87	Criminal Procedure (Search and Seizure); Fourth Amendment	22	Douglas (5), Stewart (3)	Black (20), Harlan (18), White (23)
Bostock v. Clayton County, 590 U.S. 644 (2020)	168	Civil Rights (Sex Discrimination in Employment); Employment Discrimination	32	N/A	Alito (107), Kavanaugh (28)
Brown v. Allen, 344 U.S. 443 (1953)	115	Criminal Procedure (Involuntary Confession); Habeas Corpus	42	Frankfurter (45), Jackson (17)	Black (7), Frankfurter (7)
Brown v. Ent. Merchs. Ass'n, 564 U.S. 786 (2011)	85	First Amendment (Miscellaneous); First Amendment and Video Games	18	Alito (17)	Thomas (19), Breyer (33)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Buckley v. Valeo, 424 U.S. 1 (1976)	289	First Amendment (Campaign Spending); Campaign Finance	230	Burger (23), White (30), Marshall (5), Blackmun (1), Rehnquist (5)	N/A
Bush v. Vera, 517 U.S. 952 (1996)	122	Civil Rights (Reapportion-ment); Redistricting and Race	34	O'Connor (6), Kennedy (4), Thomas (5)	Stevens (43), Souter (33)
Carpenter v. United States, 585 U.S. 296 (2018)	115	Criminal Procedure (Search and Seizure); Fourth Amendment	23	N/A	Kennedy (23), Thomas (21), Alito (27), Gorsuch (21)
Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010)	168	First Amendment (Campaign Spending); Campaign Finance	55	Roberts (14), Scalia (9)	Stevens (87), Thomas (6)
Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm., 412 U.S. 94 (1973)	108	First Amendment (Miscellaneous); Fairness Doctrine	36	Stewart (15), White (2), Blackmun (2), Douglas (23)	Brennan (35)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Communist Party of the U.S. v. Subversive Activities Control Bd., 367 U.S. 1 (1961)	199	First Amendment (Federal or State Internal Security Legislation); Anti-communism	112	N/A	Warren (23), Black (33), Douglas (22), Brennan (12)
County of Allegheny v. Am. C.L. Union, Greater Pittsburgh Chapter, 492 U.S. 573 (1989)	102	First Amendment (Parochaid); First Amendment Religion Clauses	45	O'Connor (15)	Brennan (10), Stevens (10), Kennedy (25)
Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (1990)	93	Privacy (Right to Die); Right to Die	23	O'Connor (6), Scalia (10)	Brennan (30), Stevens (28)
Dennis v. United States, 341 U.S. 494 (1951)	98	First Amendment (Federal or State Internal Security Legislation); Anti-communism	23	Frankfurter (45), Jackson (19)	Black (3), Douglas (12)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Denv. Area Educ. Telecomms. Consortium v. Fed. Commc'ns Comm'n, 518 U.S. 727 (1996)	107	First Amendment (Miscellaneous); First Amendment Indecency	37	Stevens (7), Souter (5)	O'Connor (2), Kennedy (33), Thomas (27)
Dep't of Com. v. New York, 588 U.S. 752 (2019)	87	Judicial Power (Judicial Review of Agency); Administrative Law	29	N/A	Thomas (15), Breyer (23), Alito (20)
Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103 (2020)	95	Civil Rights (Deportation); Immigration	36	Thomas (10), Breyer (9)	Sotomayor (40)
District of Columbia v. Heller, 554 U.S. 570 (2008)	151	Criminal Procedure (Miscellaneous Criminal Procedure); Second Amendment	64	N/A	Stevens (45), Breyer (43)
Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022)	205	Privacy (Abortion); Abortion	108	Thomas (7), Kavanaugh (12), Roberts (12)	Breyer, Sotomayor, Kagan (together) (66)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Downes v. Bidwell (The Insular Cases), 182 U.S. 244 (1901)	145	Miscellaneous (Executive Authority); Insular Cases	41	White (58), Gray (3)	Fuller (29), Harlan (17)
Espinoza v. Mont. Dep't of Revenue, 591 U.S. 464 (2020)	89	First Amendment (Parochaid); First Amendment Religion Clauses	22	Thomas (9), Alito (13), Gorsuch (8)	Ginsburg (6), Breyer (20), Sotomayor (11)
Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477 (2010)	110	Miscellaneous (Executive Authority); Presidential Power	32	N/A	Breyer (79)
Fullilove v. Klutznick, 448 U.S. 448 (1980)	102	Civil Rights (Affirmative Action); Affirmative Action/Consider-ing Race	43	Powell (23), Marshall (6)	Stewart (11), Stevens (23)
Fulton v. City of Philadelphia, 593 U.S. 522 (2021)	106	Civil Rights (Sex Discrimination); First Amendment Religion Clauses.	15	Barrett (3), Alito (77), Gorsuch (11)	N/A

Case (*alphabetical*)	# of Pages (*total*)	Subject (Spaeth; Barton)	# of Pages (*majority*)	Author(s) and # of Pages (*concurrence(s)*)	Author(s) and # of Pages (*dissent(s)*)
Furman v. Georgia, 408 U.S. 238 (1972)	232	Criminal Procedure (Cruel and Unusual Punishment, Death Penalty); Death Penalty	2	Douglas (18), Brennan (32), Stewart (5), White (5), Marhsall (61)	Burger (31), Blackmun (10), Powell (52), Rehnquist (6)
Gaines v. Relf, 53 U.S. (12 How.) 472 (1852)	93	Private Action (Evidence); Property Dispute	36	N/A	Wayne (58)
Gamble v. United States, 587 U.S. 678 (2019)	85	Criminal Procedure (Double Jeopardy); Double jeopardy	31	Thomas (17)	Ginsburg (12), Gorsuch (25)
Glossip v. Gross, 576 U.S. 863 (2015)	112	Criminal Procedure (Cruel and Unusual Punishment, Death Penalty); Death Penalty	27	Scalia (7), Thomas (10)	Breyer (41), Sotomayor (30)
Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823)	97	Economic Activity (State and Territorial Land Claims); Property Dispute	83	N/A	Johnson (15)
Haaland v. Brackeen, 599 U.S. 255 (2023)	125	Civil Rights (Indians); Indian law	34	Gorsuch (38), Kavanaugh (2)	Thomas (40), Alito (11)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Hamdan v. Rumsfeld, 548 U.S. 557 (2006)	169	Criminal Procedure (Habeas Corpus); Habeas Corpus	70	Breyer (1), Kennedy (20)	Scalia (24), Thomas (48), Alito (10)
Hannah v. Larche, 363 U.S. 420 (1960)	88	Due Process (Miscellaneous (cf. Loyalty Oath)); Half Jury Trial, Half Desegregation.	65	Frankfurter (8), Harlan (1)	Douglas (16)
Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst., 448 U.S. 607 (1980)	114	Unions (OSHA); OSHA	52	Burger (3), Powell (8), Rehnquist (18)	Marshall (37)
Immigr. & Naturalization Serv. v. Chadha, 462 U.S. 919 (1983)	94	Miscellaneous (Legislative Veto); Article I Congressional Powers.	37	Powell (9)	White (47), Rehnquist (4)
Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951)	90	Judicial Power (Standing to Sue); Anti-communism	19	Black (8), Frankfurter (26), Douglas (10), Jackson (5)	Reed (27)

Case (*alphabetical*)	# of Pages (*total*)	Subject (Spaeth; Barton)	# of Pages (*majority*)	Author(s) and # of Pages (*concurrence(s)*)	Author(s) and # of Pages (*dissent(s)*)
June Med. Servs. v. Russo, 591 U.S. 299 (2020)	133	Privacy (Abortion); Abortion	40	Roberts (16)	Thomas (20), Alito (34), Gorsuch (21), Kavanaugh (2)
Legal Tender Cases, 79 U.S. (12 Wall.) 457 (1870)	153	Economic Activity (Miscellaneous Economic Regulation); Paper Money	26	Bradley (17)	Chase (18), Clifford (48), Field (48)
Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024)	106	Economic Activity: Natural Resources—Environmental Protection (cf. National Supremacy: Natural Resources, National Supremacy: Pollution); Administrative Law	35	Thomas (4), Gorsuch (34)	Kagan (33)
McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003)	252	First Amendment (Campaign Spending); Campaign Finance	134	Scalia (17), Thomas (23), Kennedy (65),	Rehnquist (14), Stevens (3)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
McDonald v. City of Chicago, 561 U.S. 742 (2010)	196	Criminal Procedure (Miscellaneous Criminal procedure); Second Amendment	43	Scalia (15), Thomas (54)	Stevens (55), Breyer (33)
McGautha v. California, 402 U.S. 183 (1971)	128	Criminal Procedure (Extra-Legal Jury Influences); Death Penalty	41	Black (2)	Douglas (23), Brennan (65)
McGowan v. Maryland, 366 U.S. 420 (1961)	160	First Amendment (Establishment of Religion); First Amendment Religion Clauses	38	Frankfurter (102)	Douglas (21)
Metro Broad., Inc. v. Fed. Commc'ns Comm'n, 497 U.S. 547 (1990)	87	Civil Rights (Affirmative Action); Affirmative Action	50	Stevens (2)	O'Connor (30), Kennedy (8)
Milliken v. Bradley, 418 U.S. 717 (1974)	95	Civil Rights (Desegregation, Schools); School Desegregation	33	Stewart (5)	Douglas (6), White (20), Marshall (35)

Case (*alphabetical*)	# of Pages (*total*)	Subject (Spaeth; Barton)	# of Pages (*majority*)	Author(s) and # of Pages (*concurrence(s)*)	Author(s) and # of Pages (*dissent(s)*)
Simpson v. Shepard (Minnesota Rate Cases), 230 U.S. 352 (1913)	98	Economic Activity (Federal or State Regulation of Transportation); Railroad law	98	N/A	N/A
Miranda v. Arizona, 384 U.S. 436 (1966)	107	Criminal Procedure (Miranda Warnings); Fifth Amendment	61	Clark (6)	Harlan (23), White (20)
Mitchell v. Helms, 530 U.S. 793 (2000)	113	First Amendment (Parochaid); First Amendment Religion Clauses.	36	O'Connor (32)	Souter (47)
Missouri v. Jenkins, 515 U.S. 70 (1995)	104	Civil Rights (Desegregation Schools); School Desegregation	26	O'Connor (12), Thomas (25)	Souter (38), Ginsburg (2)
Monroe v. Pape, 365 U.S. 167 (1961)	92	Civil Rights (Liability, Civil Rights Acts); Section 1983	25	Harlan (11)	Frankfurter (58)
Moody v. NetChoice LLC, 603 U.S. 707 (2024)	90	First Amendment: First Amendment, Miscellaneous (cf. Comity: First Amendment); Section 230 of the Communications Decency Act.	31	Barrett (4), Jackson (3), Thomas (18), Alito (34)	N/A

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Morris v. United States, 174 U.S. 196 (1899)	138	Private Action (Real Property); Property Dispute	70	N/A	White, Peckham (together) (69)
Morse v. Republican Party of Va., 517 U.S. 186 (1996)	102	Civil Rights (Voting Rights Act); Voting Rights	46	Breyer (6)	Scalia (7), Kennedy (6), Thomas (39)
Myers v. United States, 272 U.S. 52 (1926)	190	Miscellaneous (Executive Authority); Presidential Power	72	N/A	Holmes (1), McReynolds (62), Brandeis (56)
Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012)	179	Federalism (National Supremacy); Taxing and Spending Clause/ Commerce Clause	60	Ginsburg (58)	Scalia, Kennedy, Thomas, Alito (together) (62), Thomas (2)
Nat'l Lab. Rels. Bd. v. Noel Canning, 573 U.S. 513 (2014)	98	Miscellaneous (Executive Authority); Presidential Power	52	Scalia (47)	N/A

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
New Haven Inclusion Cases, 399 U.S. 392 (1970)	110	Judicial Power (Judicial Review of Administrative Agency's or Administrative Official's Actions and Procedures); Railroad Law	98	N/A	Black (13)
N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022)	129	Criminal Procedure (Miscellaneous Criminal procedure); Second Amendment	63	Alito (9), Kavanaugh (3), Barrett (2)	Breyer (52)
Nixon v. Adm'r of Gen. Servs., 433 U.S. 425 (1977)	133	First Amendment (Libel Privacy); Presidential Privilege	56	Stevens (4), White (5), Blackmun (2), Powell (13)	Burger (42), Rehnquist (17)
N. Secs. Co. v. United States, 193 U.S. 197 (1904)	95	Economic Activity (Antitrust); Antitrust	44	Brewer (5), White (37)	Holmes (12)
Obergefell v. Hodges, 576 U.S. 644 (2015)	92	Due Process (Miscellaneous); Gay Marriage	36	N/A	Roberts (28), Scalia (8), Thomas (16), Alito (7)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Oregon v. Mitchell, 400 U.S. 112 (1970)	180	Civil Rights (Voting); Voting Rights	19	Douglas (18), Harlan (78)	Brennan, White, Marshall (together) (53), Stewart (16)
Osborn v. Bank of the U.S., 22 U.S. (9 Wheat.) 738 (1824)	88	Federalism National Supremacy: State Tax (cf. State Tax); Congressional Power/Eleventh Amendment	56	N/A	Johnson (33)
Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007)	168	Civil Rights (Desegregation, Schools); School Desegregation	40	Thomas (35), Kennedy (17)	Stevens (6), Breyer (74)
Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992)	160	Privacy (Abortion); Abortion	68	N/A	Stevens (12), Blackmun (22), Rehnquist (36), Scalia (24)
Pollock v. Farmers' Loan & Tr. Co., 157 U.S. 429 (1895)	102	Federal Taxation: Federal Taxation, Typically Under Provisions of the Internal Revenue Code; Federal Taxation	34	Field (23)	White (45), Harlan (3),

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Pollock v. Farmers' Loan & Tr. Co. (rehearing), 158 U.S. 601 (1895)	99	Federal Taxation (Federal Taxation); Federal Taxation	21	N/A	Harlan (49), Brown (10), Jackson (11), White (10)
Rapanos v. United States, 547 U.S. 715 (2006)	94	Economic Activity (Natural Resources); Environmental Law	39	Roberts (3), Kennedy (29)	Stevens (24), Breyer (2)
Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978)	153	Civil Rights (Affirmative Action); Affirmative Action	56	Brennan, White, Marshall, Blackmun (together) (56), White (9), Marshall (16), Blackmun (7)	Stevens (14)
Reid v. Covert, 354 U.S. 1 (1957)	88	Civil Rights (Military: Active Duty); Jury Right	39	Frankfurter (24), Harlan (14)	Clark (13)
Reynolds v. Sims, 377 U.S. 533 (1964)	97	Civil Rights (Reapportion-ment); Voting Rights.	52	Clark (2), Stewart (2)	Harlan (44)
S & E Contractors v. United States, 406 U.S. 1 (1972)	89	Judicial Power (Judicial Review of Agency); Government Contracts	18	Blackmun (5)	Brennan (68)

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Sacher v. United States, 343 U.S. 1 (1952)	87	Criminal Procedure (Contempt of Court or Congress); Anti-communism	12	N/A	Black (10), Frankfurter (67), Douglas (1)
S.A. Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)	134	Civil Rights (Poverty Law); School Funding	56	Stewart (4)	Brennan (2), White (8), Marshall (68)
Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963)	116	First Amendment (Establishment of Religion); First Amendment Religion Clauses	23	Douglas (4), Brennan (75), Goldberg (4)	Stewart (13)
Schneiderman v. United States, 320 U.S. 118 (1943)	89	Civil Rights (Deportation); Immigration and Communism.	43	Douglas (5), Rutledge (6)	Stone (38), Jackson (1)
Schuette v. Coal. to Def. Affirmative Action, 572 U.S. 291 (2014)	95	Civil Rights (Affirmative Action); Affirmative Action	18	Roberts (2), Scalia (17), Breyer (6)	Sotomayor (56)
Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)	235	Civil Rights (Slavery); Slavery	56	Wayne (3), Nelson (13), Grier (1), Daniel (25), Campbell (26), Catron (12)	McLean (36), Curtis (70)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Sec. & Exch. Comm'n v. Jarkesy, 603 U.S. 109 (2024)	93	Economic Activity: Federal or State Regulation of Securities; Jury Right	27	Gorsuch (28)	Sotomayor (38)
Seila L. LLC v. Consumer Fin. Prot. Bureau, 591 U.S. 197 (2020)	100	Miscellaneous (Executive Authority); Presidential Power	37	Thomas (24)	Kagan (39)
Seminole Tribe v. Florida, 517 U.S. 44 (1996)	139	Federalism (Miscellaneous Federalism); Congressional Power/Eleventh Amendment	30	N/A	Stevens (25), Souter (86)
Sessions v. Dimaya, 584 U.S. 148 (2018)	91	Due Process (Hearing or Notice); Immigration	25	Gorsuch (19)	Roberts (15), Thomas (32)
Skilling v. United States, 561 U.S. 358 (2010)	98	Criminal Procedure (Statutory Construction of Criminal Laws); Vagueness	49	Scalia (11), Alito (3)	Sotomayor (38)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Smith v. Turner (The Passenger Cases), 48 U.S. (7 How.) 283 (1849)	181	Economic Activity (State or Local Government Tax); Commerce Clause	N/A	McLean (19), Wayne (28), Catron (16), McKinley (4), Grier (10)	Taney (31), Daniel (25), Nelson (1), Woodbury (55)
Stenberg v. Carhart, 530 U.S. 914 (2000)	101	Privacy (Abortion); Abortion	27	Stevens (2), O'Connor (5), Ginsburg (2)	Rehnquist (1), Scalia (4), Kennedy (24), Thomas (41)
Students For Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023)	229	Civil Rights (Affirmative Action); Affirmative Action	40	Thomas (58), Gorsuch (25), Kavanaugh (8)	Sotomayor (69), Jackson (29)
Textile Workers Union of Am. v. Lincoln Mills of Ala., 353 U.S. 448 (1957)	98	Unions (Labor Management Dispute); Labor Law	11	Burton (2)	Frankfurter (87)
Trump v. Hawaii, 585 U.S. 667 (2018)	87	Civil Rights (Immigration and Naturalization); Immigration Law.	39	Kennedy (2), Thomas (10)	Breyer (8), Sotomayor (28)

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Trump v. United States, 603 U.S. 593 (2024)	111	Criminal Procedure: Self-Incrimination, Immunity from Prosecution; Presidential Privilege	43	Thomas (9), Barrett (7)	Sotomayor (30), Jackson (22)
United States v. Rahimi, 602 U.S. 680 (2024)	99	Criminal Procedure: Miscellaneous Criminal Procedure (cf. Due Process, Prisoners' Rights, Comity: Criminal Procedure); Second Amendment	18	Sotomayor (6), Gorsuch (7), Kavanaugh (24), Barrett, (5), Jackson (7)	Thomas (32)
U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995)	145	Federalism (Miscellaneous); Term Limits	57	Kennedy (8)	Thomas (82)
United States v. Barnett, 376 U.S. 681 (1964)	91	Criminal Procedure (Contempt of Court or Congress); Jury Right	43	N/A	Black (5), Goldberg (45)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject (Spaeth; Barton)**	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
United States v. Booker, 543 U.S. 220 (2005)	109	Criminal Procedure (Contempt of Court or Congress); Jury Right	46	N/A	Stevens (32), Scalia (11), Thomas (14), Breyer (9)
United States v. Castillero, 67 U.S. (2 Black) 17 (1863)	228	Economic Activity (State and Territorial Land Claims); Property Dispute	66	N/A	Catron (4), Wayne (160)
United States v. Lopez, 514 U.S. 549 (1995)	94	Federalism (National Supremacy); Commerce Clause	18	Kennedy (16), Thomas (19)	Stevens (2), Souter (13), Breyer (30)
United States v. Louisiana, 363 U.S. 1 (1960)	117	Federalism (Submerged Lands Act); Property Dispute	82	N/A	Black (17), Douglas (20)
United States v. United Mine Workers of Am., 330 U.S. 258 (1947)	124	Criminal Procedure (Contempt of Court or Congress); Labor Law	46	Frankfurter (22), Black, Douglas (together) (8)	Murphy (8), Rutledge (44)
United States v. Winstar Corp., 518 U.S. 839 (1996)	95	Economic Activity (Liability, Governmental); Sovereign Immunity.	68	Breyer (9), Scalia (6)	Rehnquist (14)

Case (*alphabetical*)	**# of Pages** (*total*)	**Subject** (Spaeth; Barton)	**# of Pages** (*majority*)	**Author(s) and # of Pages** (*concurrence(s)*)	**Author(s) and # of Pages** (*dissent(s)*)
Verizon Commc'ns, Inc. v. Fed. Commc'ns Comm'n, 535 U.S. 467 (2002)	89	Economic Activity (Public Utilities Regulation); Telecommunica-tions Act of 1996	65	N/A	Breyer (25)
Vieth v. Jubelirer, 541 U.S. 267 (2004)	98	Judicial Power (Standing to Sue); Redistricting/ Gerrymandering.	36	Kennedy (12)	Stevens (26), Souter (13), Breyer (14)
Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016)	98	Privacy (Abortion); Abortion	40	Ginsburg (2)	Thomas (16), Alito (42)
Williams v. Illinois, 567 U.S. 50 (2012)	86	Criminal Procedure (Confrontation); Confrontation Clause	31	Breyer (18), Thomas (16)	Kagan (24)