

Fifth Edition

Lee Epstein
Jeffrey A. Segal
Harold J. Spaeth
Thomas G. Walker

Data,
Decisions,
and Developments



THE SUPREME
— COURT —
COMPENDIUM

The Supreme Court Compendium

Data, Decisions, and Developments

Fifth Edition

Lee Epstein

University of Southern California School of Law

Jeffrey A. Segal

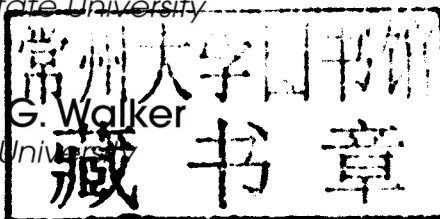
Stony Brook University

Harold J. Spaeth

Michigan State University

Thomas G. Walker

Emory University



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The Supreme Court Compendium

In memory of my grandfather, Martin Buxbaum

L.E.

For Michelle and Paul

J.A.S.

*For my coauthors, who made the compilation of this book
a thoroughly enjoyable endeavor*

H.J.S.

*For Coleman, Evan,
Clayton, and Carley*

T.G.W.

Preface to the Fifth Edition

As professors who teach courses and conduct research on courts and law, we became increasingly frustrated with the absence of a comprehensive collection of information on the U.S. Supreme Court. It seemed that each time we needed even the simplest datum, whether it be a Senate vote on a particular nominee or the number of cases argued during a given term, we had to consult three or four different books and articles to find the desired information. This sense of frustration led to the compilation of the first edition of *The Supreme Court Compendium: Data, Decisions, and Developments*.

Our goal for this fifth edition is the same as it was for the first four: to provide a comprehensive collection of data and relevant information on the U.S. Supreme Court. We have attempted to cover as many bases as possible, from characteristics of the Court and its members, to the environment in which it operates, to the public's views on its decisions and perceptions about the Court itself, and much more. We have sought to provide readers with some insight into how we collected the data and why we consider them important. We urge readers to use both the general introduction and the introductions included with each chapter as guides to the information presented in the tables and figures that follow. Readers should also pay particular attention to table notes, where we identify data sources and, when relevant, caution readers about potential irregularities in data interpretation.

Of course, there are differences between this and the previous editions. First, we updated virtually every table. So, for example, readers will find a wealth of information on the personal and professional backgrounds of the Court's two newest members—Sonia Sotomayor and Elena Kagan. At the same time, we have retained the backdating included in the last two editions. Such data will be of particular use to researchers who wish to conduct longitudinal analyses of the Court and its members; they now have highly reliable data for nearly six decades (1946–2009 terms). Second, we continue to refine the tables so that they are as useful as possible to a range of readers. Accomplishing this goal led us to rethink several. For example, we consolidated the interagreement tables so that they now run for the Justices' entire career. We also revised tables on *amicus curiae* participation (using Paul Collins's wonderful dataset) and on oral argument, among others, to convey as clearly as possible the information that we think (hope!) readers will find most useful.

In addition, given the dynamic nature of the data in this volume, CQ Press has rolled out an online version of the *Compendium* that allows for data downloads, as well as for more frequent updates. For example,

because we were unable to include reliable data for the 2010 term in this edition, we will post those data on CQ Press's Web site.

Two final notes about this edition. First, readers familiar with earlier editions should recheck the source notes. Many of the tables come from the modernized version of the U.S. Supreme Court Database (<http://supremecourtdatabase.org>) rather than from the original. This required us to rewrite all the source notes to conform to the new naming conventions.

Second, putting this edition together required us to work with a great deal of data. Although we took pains to check and recheck all the tables, it is possible that we committed errors of omission and commission. Naturally, we take responsibility for both. We ask readers who find errors in the text or tables to please contact us so that we may remedy them for subsequent editions and for the online version. Please direct e-mail to Lee Epstein at lepstein@law.usc.edu. In revising this (and previous) editions, we have benefited greatly from our readers and encourage them to contact us about this one as well.

Many people assisted us in producing this and earlier editions of *The Supreme Court Compendium*. The folks at CQ Press were, as always, terrific. We initially pitched the project to Brenda Carter, who provided a great deal of encouragement. Our editor for the first edition, Jeanne Ferris, could not have been more helpful or patient. She read the entire text and considered all the tables with an eye toward clarity and readability. This edition continues to reap the benefits of Jeanne's keen interest. Sarah J. Walker served as the development editor on this edition, and we thank her for a job very well done. We also appreciate the important contributions of the CQ Press staff who helped us with the new edition—Doug Goldenberg-Hart, senior acquisitions editor, Elizabeth Kline, production editor, and Jonathan Preimesberger, copy editor.

We have terrific colleagues in the law and courts field—many of whom took the time to offer suggestions and even data, for this and earlier editions. We are especially indebted to Judy Baer of Texas A&M, Gregory Caldeira of Ohio State University, Micheal Giles of Emory University, Leslie Goldstein of the University of Delaware, Valerie Hoekstra of Arizona State University, Tim Johnson of the University of Minnesota, Jack Knight of Duke University, William M. Landes of the University of Chicago, Richard Lazarus of Harvard University, Andrew D. Martin of Washington University, Jan Palmer of Ohio University, Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit and the University of Chicago, and James Stimson of the University of North Carolina.

Research assistants at our respective institutions performed various essential tasks throughout this undertaking. Since this edition builds on

the first three, we want again to acknowledge a generation or two of our former students (many of whom are now professors): Emily Baehl, Ellen Baik, Scott Comparato, Paul Fabrizio, Marjorie George, Tracey George, Scott Graves, Chris Hasselman, Marc Hendershot, Robert Howard, Tim Johnson, Chad King, Madhavi McCall, Robert Oritz, Kirk Randazzo, Melissa Schwartzberg, Eddie Sindaco, James Spriggs, and Jeff Staton. Ryan Black, Maxwell Mak, and Elyce Winters cheerfully gathered data and helped to assemble the final version of this edition. In addition, we are grateful to Paul Collins Andrew Koshner, Andrew Martin, Ryan Owens, Kevin Quinn, Rorie Spill, and Christina Wolbrecht, who have allowed us to use some of their data.

Although a four-person collaboration was a great deal of fun, it was our home institutions that bore many of the costs. We also thank the Law and Social Science Program of the National Science Foundation (NSF) for its support for our research on the Court, including U.S. Supreme Court Judicial Database, the U.S. Supreme Court Justices Database, and the digital archive of the Papers of Justice Harry A. Blackmun. Without NSF funding, this volume would be considerably less comprehensive.

L.E.
Los Angeles

J.A.S.
Stony Brook

H.J.S.
East Lansing

T.G.W.
Atlanta

About the Authors

Lee Epstein is Provost Professor and Rader Family Trustee Chair in Law & Political Science at the University of Southern California. She is also a fellow of the American Academy of Arts and Sciences and of the American Academy of Political and Social Science. She is the author of *Conservatives in Court* (1985); and coauthor of *Courts, Judges and Politics*, 6th ed. (2005), with Walter F. Murphy, C. Herman Pritchett, and Jack Knight; *Advice and Consent: The Politics of Judicial Appointments* (2005), with Jeffrey A. Segal; *The Supreme Court and Legal Change: Abortion and the Death Penalty* (1992), with Joseph Kobylka; the *Constitutional Law for a Changing America* series with Thomas G. Walker; and *The Choices Justices Make* (1998), with Jack Knight, which won the C. Herman Pritchett Award for the best book on law and courts.

Jeffrey A. Segal is SUNY Distinguished Professor and Chair of the Political Science Department at Stony Brook University. He is coauthor of eight books, including *Advice and Consent: The Politics of Judicial Appointments* (2005), with Lee Epstein; *The Supreme Court and the Attitudinal Model Revisited*, with Harold J. Spaeth (2002), the original edition of which won the 2005 Wadsworth Award for a book that has made a lasting influence on the field of law and courts; and *Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court* (1999), also with Harold J. Spaeth, which won the C. Herman Pritchett Award for best book on law and courts. He is a 2011–12 Guggenheim Foundation grant winner and will spend that year as a senior research fellow at the Center for the Study of Democratic Politics at Princeton University.

Harold J. Spaeth is Emeritus Professor of Political Science and Research Professor of Law at the Michigan State University College of Law. He is the recipient of a lifetime achievement award from the Law and Courts section of the American Political Science Association. He is the author or coauthor of *The Supreme Court and the Attitudinal Model Revisited* (2002), with Jeffrey A. Segal, the original edition of which won the Wadsworth Award; *Majority Rule or Minority Will* (1999), also with Jeffrey A. Segal, which won the C. Herman Pritchett Award; *Stare Indecisus: Alteration of Precedent on the Supreme Court* (1995), with Saul Brenner; *Supreme Court Policy Making: Explanation and Prediction* (1979); and *Supreme Court Decision Making* (1976), with David Rohde. He is also the creator and compiler of a series of National Science Foundation–supported U.S. Supreme Court databases.

Thomas G. Walker is the Goodrich C. White Professor of Political Science at Emory University, where he teaches courses in constitutional law and the judicial process. He is the coauthor of *A Court Divided* (1988), with Deborah Barrow, which won the V. O. Key, Jr. Award for the best book on southern politics, and the *Constitutional Law for a Changing America* series, with Lee Epstein. He is also author of *Eligible for Execution: The Story of the Daryl Atkins Case* (2009).

Introduction

Before the first edition of *The Supreme Court Compendium* was published in 1994, there was no comprehensive collection of data on the U.S. Supreme Court. This was unfortunate, not only because of the importance of the Court in the American government but also because the absence of reliable data makes it hard to understand the Court, the justices, and case decisions. This volume is our effort to rectify this deficiency.

We hope that readers will find useful the data and information presented in the following pages. Before continuing, though, we urge them to read this introduction and the introductions opening each chapter so that they might better understand the choices we made in compiling this work. Here, we provide information on data sources, the scope of the data, data presentation, and the overall organization of the volume. In the introductions preceding each chapter, we provide more specific details on the tables they contain.

Data Sources and Scope of the Data

Our sources of information vary widely, depending on what dimension of the Court we are examining. The reports of the Court's decisions are the primary sources. The official record is the *United States Reports*.¹ Three privately printed sources are also employed: *The Lawyers' Edition*,² *The Supreme Court Reporter*,³ and *United States Law Week*.⁴ In Tables 2-9 and 2-10 we provide additional information about these various systems. Two major legal electronic information retrieval systems, LEXIS-NEXIS and Westlaw, also contain the Court's decisions. We used these sources when gathering data requiring specific search delimiters. Other sources of electronically transmitted information are various Web sites (see Table 1-8).

We also obtained information from archived databases. The U.S. Supreme Court Database (originally developed by Harold J. Spaeth)⁵ focuses on Supreme Court cases, providing a wealth of data beginning with the Vinson Court through to the present. Among the many attributes of the Court decisions coded in the database are the names of the courts making the original decision, the identities of the parties to a case, the policy context of a case, and the votes of each justice. It and accompanying documentation are freely available at <http://supremecourtdatabase.org>. Along with the Gallup Poll, the Harris Survey, and unpublished press releases issued by the *New York Times*, we use data gathered by the National Opinion Research Center (and archived as the General Social Survey) as sources for information on public opinion. Because survey responses are extremely sensitive to question wording, we typically

eschew one-time “snapshots” of public opinion on questions relevant to the judiciary and focus instead on trends over time.

We compiled additional data from government reports. *Historical Statistics of the United States, Colonial Times to 1970*,⁶ and the *Statistical Abstract of the United States*⁷ (published annually since 1878) are “the standard summar[ies] of statistics on the social, political, and economic organization of the United States.”⁸ For our purposes, they are particularly useful sources of Court caseload statistics. Another very helpful source is *The Constitution of the United States of America: Analysis and Interpretation*.⁹ Among other things, it lists all Court decisions overruled by subsequent decisions and all cases in which the Court held unconstitutional acts of federal, state, and local governments. We also rely on reports issued by various government actors and agencies. Examples include the Administrative Office of the United States Courts,¹⁰ which issues annual reports on Court caseloads; and the *Annual Report of the Attorney General of the United States*,¹¹ which contains various data on the processing of Court litigation. Such data are increasingly available via the Internet. When we obtained information from a Web site, we list the URL.

Finally, we scoured historical accounts and secondary material to fill in blanks and verify other sources. This was particularly the case in collecting information about the lives of the justices. While there has been a great deal written about the most famous of the justices, little is known about many of the others. Much of the data on the justices come from well-established biographical sources, including Leon Friedman and Fred Israel’s *The Justices of the United States Supreme Court*,¹² *The Judicial Conference of the United States’s Judges of the United States*,¹³ *The National Cyclopaedia of American Biography*,¹⁴ and *The Dictionary of American Biography*.¹⁵ *The First One Hundred Justices*¹⁶ by Albert P. Blaustein and Roy M. Mersky was especially helpful. Similarly, a great deal of information was gleaned from John Schmidhauser’s classic study of the backgrounds of the justices.¹⁷ Data from this important work are archived at the Inter-University Consortium for Political and Social Research.¹⁸ And Lee Epstein, Thomas G. Walker, and Nancy Staudt have now updated Schmidhauser’s study, with their data housed in the U.S. Supreme Court Justices Database (<http://epstein.usc.edu/research/justicesdata.html>). Specifically, the database contains more than 300 variables, falling into four categories: background characteristics and personal attributes, nomination and confirmation, service on the Court, and departures from the bench. Nonetheless, even with the wealth of information contained in these sources, significant gaps remained. We filled these holes by consulting scores of biographies on the justices, newspaper accounts, and studies of the various historical periods. At the end of this process, we were still plagued with missing information and instances where contradictory claims in the biographical literature could not be resolved to our complete satisfaction.

Unfortunately, such difficulties are inevitable when dealing with incomplete historical records. Notes to the tables alert readers to these and other problems.

The scope of our information also varies considerably. Whenever possible we tried to present data dating back to the Court's inception in February 1790. Unfortunately, this was more the exception than the rule, as such longitudinal data have seldom been compiled and, when they have, are often riddled with inconsistency. We were especially handicapped in our ability to offer information on voting behavior prior to the Vinson Court era, as our most reliable sources, Spaeth's Supreme Court databases, do not antedate 1946.

For data other than voting behavior, though, we were often able to locate information going back to the early 1900s and occasionally even the 1800s. We want to alert readers to the fact that, while we sought to verify historical data against other sources, we did not attempt to research the primary data sources. In some instances, therefore, we cannot vouch for accuracy. Once again, table notes alert readers to these potential problems.

Presentation of the Data

Several major concerns guided our presentation of the data. First, we sought to be as comprehensive as possible. Accordingly, we provide data well fitted to tabular presentation as well as data that are not. Examples of the latter are a chronology of events in the Court's history (Table 1-1) and catalogs of landmark decisions (Tables 2-12 and 2-13). To organize and communicate the data in usable fashion, we exercised our judgment of how best to present them, as most of the data have either not been compiled at all or have not appeared in any systematic fashion. Where possible, we have conformed to customary and conventional categorization, such as chronological, alphabetical, or topical. But for the vast majority of the data, conventions simply do not exist. Hence, we proceeded on the bases of clarity and understanding.

Second, for those tables derived from the U.S. Supreme Court Database, we wanted to provide sufficient information for readers to understand, evaluate, build on, or reproduce them. Accordingly, for each table we provide at least two crucial pieces of information—the specific dataset we used and the “decisionType.” The first is important because the U.S. Supreme Court Database comes in different versions. Of primary interest here is whether we used the version based on citation or docket:

- **Citation:** Sometimes the Court decides several cases under one opinion. Using this version of the database will identify only the lead case. (For users of the original database, this is `analu=0`.)

- Docket: In those instances when the Court decided several cases under one opinion, this unit of analysis will bring up all cases, not just the lead case. This can be useful when differences exist between or among cases consolidated under one citation, such as the court in which the case originated, the court whose decision the Supreme Court reviewed, the parties to the case, and so on. (For users of the original database, this is analu=1.)

Within the database, “decisionType” refers to the types of decisions the Court renders. The database offers a number of options:

- decisionType=1: Cases in which the Court hears oral argument and which it decides by a signed opinion. These are the Court’s so-called formally decided full opinion cases.
- decisionType=2: Cases decided with an opinion but without hearing oral argument; i.e., *per curiam* opinions.
- decisionType=4: Decrees. This infrequent type of decision usually arises under the Court’s original jurisdiction and involves state boundary disputes. The justices will typically appoint a special master to take testimony and render a report, the bulk of which generally becomes the Court’s decision. The presence of the label, “decree,” distinguishes this type of decision from the others.
- decisionType=5: Cases decided by an equally divided vote. When a justice fails to participate in a case or when the Court has a vacancy, the participating justices may cast a tie vote. In such cases, the reports merely state that “the judgment is affirmed by an equally divided vote” and the name of any nonparticipating justice(s). Their effect is to uphold the decision of the court whose decision the Supreme Court reviewed.
- decisionType=6: This decision type is a variant of the formally decided cases (decisionType=1). It differs from type 1 only in that no individual justice’s name appears as author of the Court’s opinion. Instead, these unsigned orally argued cases are labeled as decided “*per curiam*.” The difference between this type and decisionType=2 is the occurrence of oral argument in the former but not the latter. In both types the opinion of the Court is unsigned; i.e., *per curiam*.
- decisionType=7: Judgments of the Court. This decision type is also a variant of the formally decided cases. It differs from type 1 in that less than a majority of the participating justices agree with the opinion produced by the justice assigned to write the Court’s opinion. Except for those interested only in the authors of the opinions of the Court, decisionType=7 should be included in analyses of the Court’s formally decided cases.¹⁹

Readers can learn more about `decisionType` (as well as citation versus docket) from the documentation to the database's Web site. We wish to note here that users need not select only `decisionType`. Indeed, among the most common combinations appearing in our tables is one in which we use the "docket" version of the dataset and the type of decision equals formally decided full-opinion cases, orally argued *per curiams*, and judgments of the Court (`decisionType` = 1, 6, or 7).

At the same time, while providing readers with sufficient information to replicate the tables, we sought to minimize the technical character of the data. This is not an easy task since the Court and its activities are complex matters typically characterized by a somewhat arcane vocabulary (notwithstanding the inroads made on legalese by the plain English movement of recent years). Although we eliminated technical terms to the extent possible, they are by no means absent. For this reason (and several others noted above), it is especially important that readers review the notes following the tables. Legal definitions typically lack even imprecise meaning. What rights, for example, are objectively within—or outside—"the very essence of a scheme of ordered liberty"?²⁰ What principles of justice are "so rooted in the traditions and conscience of our people as to be ranked as fundamental"?²¹ Is a declaration of unconstitutionality or the overruling of a precedent beyond dispute? Moreover, many legal definitions create distinctions between things that arguably have no meaningful differences. A jurisdictional dissent, for example, includes dissents from the Court's refusal to decide a case, from the Court's affirmation of a lower court's decision without oral argument, and from the Court's assertion of jurisdiction over a case. None addresses the merits of the controversy. Should they be distinguished from one another or simply lumped together? Does it really matter? In short, we had to formulate our own operationally meaningful definitions, as the notes to the tables point out.

In addition, technical terms do not necessarily have conventional meanings. Jurisdictional dissents provide a good example, as do concurring opinions. Is a concurring opinion that fully agrees with the contents of the majority opinion to be treated the same as one that agrees only with the result reached by the majority? We do not think so; hence, we separate them into "regular" and "special" concurrences. In our view, the justices who join the former type are full-fledged members of the majority opinion coalition, while those joining the latter are not. And if enough justices specially concur, no opinion of the Court will result—only a judgment. In such a case, the decision provides little guidance either to the litigants or to others similarly situated. Consider also the basic question of how to count cases. Should each citation be treated separately, or should one count the number of docketed cases under a given citation? Further, should one limit analysis only to "formally" decided cases—that is, to

those cases that have been orally argued? And if so, should orally argued cases with the prevailing opinion signed by a justice be included alone, or in tandem with those decided *per curiam* (in which no individual justice authors the prevailing opinion)? Because no convention dictates the answers to these and other matters, the explanatory notes following the tables (including the version and decision type we invoked when working with the Supreme Court Database) are particularly important.

Finally, apart from convention, certain matters are sufficiently unusual that they must be treated in an ad hoc fashion. Although we sometimes report anomalies in separate tables (see Table 4-19, for example), such peculiarities will often affect the contents of related tables. This too points to the need to pay close attention to the notes that accompany the tables.

The fact that the Court operates in a technical fashion need not cloud comprehension and understanding. We have defined terms in a nontechnical fashion, and the tables themselves do not require advanced interpretive skills. The book is based on simple numerical data, not the results of complicated statistical analyses. It should be useful to the methodologically skilled and unskilled alike.

The Organization of the Book

Chapter organization progresses logically. We begin in Chapters 1 through 3 with an institutional overview of the Court's history, the constitutional and congressional provisions that govern the Court and its jurisdiction, the Court's caseload, and landmark decisions. We also identify various chronological and topical trends apparent in the Court's decisions and opinions.

Chapters 4, 5, and 6 shift the focus from cases to the individual justices. We identify family backgrounds, childhood environments, marital status, educational and employment histories, and political experiences. Dates and circumstances of nomination and confirmation are supplied as well, as are dates of Court service. The circumstances surrounding retirements, resignations, and deaths are reviewed. The justices' scholarly credentials are identified and quotations from classic opinions excerpted. The justices' voting behavior is viewed ideologically, and trends in voting agreement are presented. We also identify the justices' opinion-writing proclivities, and those who agreed between themselves.

Chapter 7 considers the political and legal environments in which the Court operates. In the first part of the chapter we identify congressional legislation most frequently the subject of Court litigation, amendments ratified to alter Court decisions, and key congressional members whose legislative activities affect the judicial system (for example, the chairs of

the House and Senate judiciary committees). We map the organization of the Justice Department and list the names and dates of service of persons heading these agencies. We also chart the success of the United States as a party before the Supreme Court and note the rates of success of various administrative agencies. Finally, we enumerate the frequency with which states participate in Court litigation and the rates of success they achieve in so doing. In the second part of Chapter 7 we focus on other courts within the judicial system: federal district courts, circuit courts of appeal, specialized federal courts, and state courts. At the federal court level, we specify, among other things, the extent to which the Supreme Court has reversed and affirmed lower court decisions. For the state courts, we detail Supreme Court review of state court decisions.

Chapter 8 summarizes the public's views of the Court, both overall and by subgroup. Questions reviewed include "How knowledgeable is the public about the Court?" and "To what extent does the public support the Court's resolution of specific controversial issues?"

Chapter 9 addresses the impact of the Court on certain public policy questions. Abortion, capital punishment, school desegregation, voter registration, and reapportionment are examples of issues covered.

In compiling the data contained in the pages that follow, detailed and voluminous though they be, we have made no attempt to resolve the questions and controversies that presently surround the Court. Questions such as "Are the justices overworked, too old, too unrepresentative?" "Is the Court rendering too many liberal decisions, or too many conservative ones?" "Is the Court addressing pertinent issues of broad public concern?" "Does the U.S. solicitor general exercise too much influence over the justices?" are not answered here. The data we supply are simply that: information about the Court and its environment. We have compiled and reported these data as accurately and as objectively as possible. They do not cover the totality of the activity that occurs within the confines of the justices' "Marble Palace." Our data, rather, are an appropriate starting point for analysis. But by no means are they the last word on the subjects to which they pertain.

Notes

1. *United States Reports* (Washington, D.C.: Government Printing Office).
2. *The Lawyers' Edition* (Rochester, N.Y.: Lawyers Co-operative Publishing Co.).
3. *The Supreme Court Reporter* (Minneapolis, Minn.: West Publishing Co.).
4. *United States Law Week* (Washington, D.C.: Bureau of National Affairs).
5. <http://supremecourtdatabase.org>.
6. U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, D.C.: Government Printing Office, 1975).