

# 6+ Decades of Freedom of Expression in the U.S. Supreme Court\*

Lee Epstein, Andrew D. Martin & Kevin Quinn

June 30, 2018

## 1 Summary

Using a dataset consisting of the 2,967 votes cast by the Justices in the 338 freedom of expression cases decided over 65 terms (1953-2017), we analyze trends in the docket, parties, outcomes and votes. Key findings are:

1. Despite some claims that free speech is a special project of the Roberts Court, the current Court hasn't decided more expression cases than its predecessors; on some measures, it's decided fewer.
2. More than any other modern Court, the Roberts Court has trained its sights on speech promoting conservative values: Only the current Court has resolved a higher fraction of disputes challenging the suppression of conservative rather than liberal expression.
3. The current Court seems to favor speech promoting (or allied with) conservative causes, and seems to disfavor speech promoting (or allied with) liberal causes.
4. Comparing all Justices appointed by Democratic (D) and Republican (R) Presidents, only the Roberts Court's Ds and Rs exhibit statistically significant differences in their support for liberal *and* conservative expression. The Rs voted in favor of conservative expression in 68% the cases versus 42% for the Ds; and the Ds supported liberal expression in 47% of the cases versus 24% for the Rs.

## 2 Creating the Dataset

**Expression Cases.** We used the legal provision (*lawSupp*) variable in the [U.S. Supreme Court Database](#) to identify freedom of expression cases. We included cases coded as First Amendment “speech, press, and assembly,” “association,” and “petition clause.”<sup>1</sup>

---

\*[Lee Epstein](#) is the Ethan A.H. Shepley Distinguished University at Washington University in St. Louis; [Andrew D. Martin](#) is the Dean of the College of Literature, Science, and the Arts and Professor of Political Science and Statistics at the University of Michigan; [Kevin Quinn](#) is Professor of Political Science at the University of Michigan. We thank [Christopher M. Parker](#) for his help in coding some of the 2015-2017 term data. Epstein thanks the National Science Foundation and the John Simon Guggenheim Foundation for supporting her research on judicial behavior. The project's web site [<http://epstein.wustl.edu/research/FreedomOfExpression.html>] will house the data.

<sup>1</sup>In the Supreme Court Database, values 200 “First Amendment (speech, press, and assembly),” 201 “First Amendment (association)” and 204 “First Amendment (petition clause).”

**Orally Argued Cases.** We retained only orally argued cases (including per curiams).<sup>2</sup>

**1953-2017 Terms.** We included cases decided during the Warren (1953-68 Terms), Burger (1969-85 Terms), Rehnquist (1986-04), and Roberts (2005-17 Terms) Courts.

Applying these rules results in a dataset of **338** free expression cases over the 65 terms and **2,967** votes cast by 34 Justices, from Black to Gorsuch. Put another way, the dataset covers about 5% of all cases decided and votes cast during the 1953-2017 terms.<sup>3</sup>

Unless otherwise indicated, we base this report on the 338 cases and 2,967 votes. Also, throughout we use the term “significant” or “statistically significant” only when  $p \leq .05$ .

### 3 Free Expression (Plenary) Docket Over Time

We consider both the number (Section 3.1) and fraction (Section 3.2) of free expression cases on the Court’s plenary docket by Chief Justice era and by term. Despite claims that free speech is a special project of the Roberts Court, the data show that the current Court hasn’t decided more expression cases than its predecessors; on some measures, it’s decided fewer.

#### 3.1 Number of Free Expression Cases

Table 1 focuses on the raw number of free expression cases on the Court’s plenary docket since the 1953 term. On this measure, the Roberts Court has decided *significantly fewer* cases than any Court era since the 1969 term—averaging under 3.1 per term; the Rehnquist Court’s mean was nearly double and the Burger Court’s bordering on triple.

---

<sup>2</sup>In the Supreme Court Database, *decisionType*= 1 (opinion of the court), 6 (orally argued per curiam), 7 (judgment of the Court).

<sup>3</sup>For cases, 338/6,966; for votes 2,967/60,824.

<b>Chief Justice Era (Terms)</b>	<b>N of Terms</b>	<b>N of Free Expression Cases</b>	<b>Average Number of Free Expression Cases Per Term</b>
Warren (1953-1968)	16	60	3.75
Burger (1969-1985)	17	136	8.00
Rehnquist (1986-2004)	19	102	5.37
Roberts (2005-2017)	13	40	3.08
<b>Total (1953-2017)</b>	<b>65</b>	<b>338</b>	<b>5.20</b>

Table 1. Number of Free Expression Cases, 1953-2017 Terms. The difference in means between the Warren and Burger Courts is statistically significant, as is the difference between the Burger and Rehnquist Courts, the Burger and Roberts Courts, and the Rehnquist and Roberts Courts.

### 3.2 Fraction of Free Expression Cases

Of course, Table 1 could reflect the decline in the number of cases decided—from, on average, 141 per term during the Burger years to 98 in the Rehnquist era to the present Court’s 70. To account for the decline, we turn to the fraction of free expression cases on the plenary docket.

We begin with Figure 1, which shows the fraction by term. Across the 65 terms the on-average fraction is about 0.05 (5%), with a low of 0 in the early years of the Warren Court (1954 and 1955 terms) to a high of over 0.10 (10%) at the start of the Burger Court (1970 term). Overall, the fraction seems to have increased during the Warren Court and leveled off or even declined ever since (with a few upticks during the Rehnquist and Roberts years).

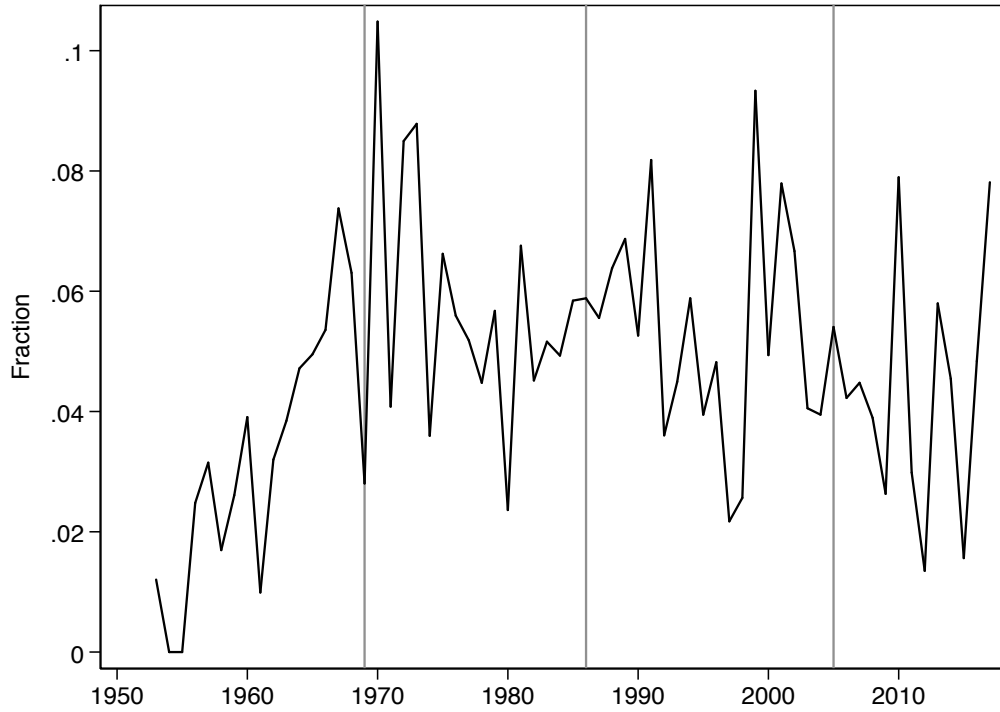
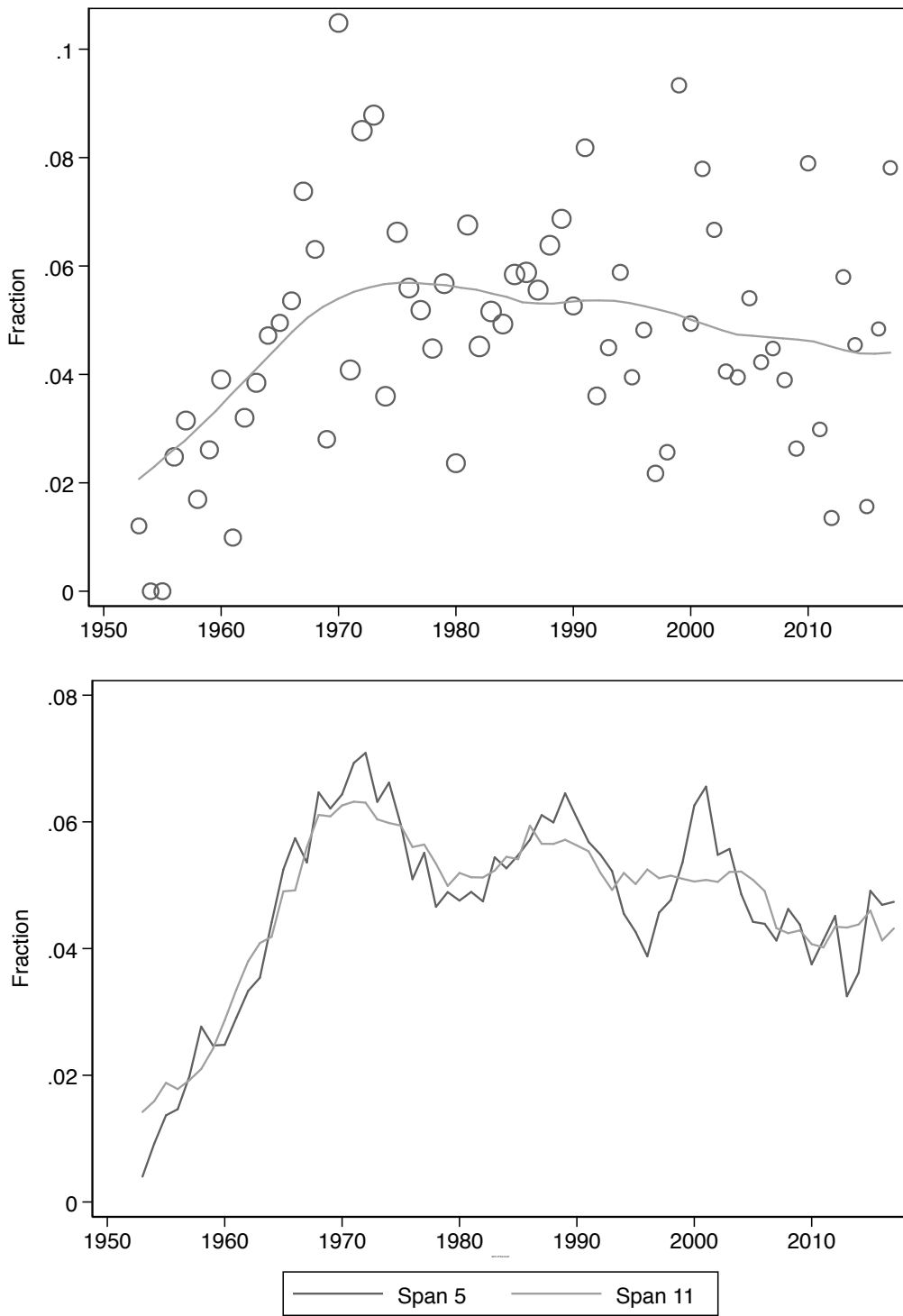


Figure 1. Fraction of Free Expression Cases on the Court's Plenary Docket, By Term, 1953-2017

Confirming as much are Figures 2a (top panel) and 2b (bottom panel), both of which are designed to detect trends in the data. Figure 2a is a scatterplot, depicting each fraction as a circle, with a smoothing line; Figure 2b shows moving averages in the fraction. Both plots reinforce the increase during the Warren Court, followed by a small (though significant) decline.<sup>4</sup>

<sup>4</sup>A quadratic regression confirms the increase and subsequent decline.



Figures 2a and 2b. Detecting Trends in the Fraction of Free Expression Cases on the Court's Plenary Docket, 1953-2017 Terms. In the top panel, the line is a LOESS smoothing line. The circles are the fraction of free expression cases each term. The circles are weighted by the total number of orally argued cases each term: the smaller the circle, the fewer the number of cases. The bottom panel shows (uniformly weighted) moving averages. Span 5 averages the first two lagged values, the current value, and the first two forward terms; Span 11 averages the first five lagged values, the current value, and the first five forward terms.

Aggregating the data to the Chief Justice level, as we do in Figure 3, further illustrates the decline in the fraction of free expression cases. Starting with the Warren Court, the fraction (0.034, or 3.4%) is the lowest of all the Chief Justice eras but, as Figures 1 and 2 show, that figure masks an upward trend: during the Warren Court, the fraction increased by 0.004 with each passing term ( $p < .05$ ). Nonetheless, the two-sample differences in proportions for the Warren versus the Rehnquist and Burger Courts are statistically significant; the difference between the Warren and Roberts Courts is not. Put another way, and focusing only on the mean fraction of cases, the Roberts Court’s expression docket is more similar to the Warren Court’s than to either of its immediate predecessors.

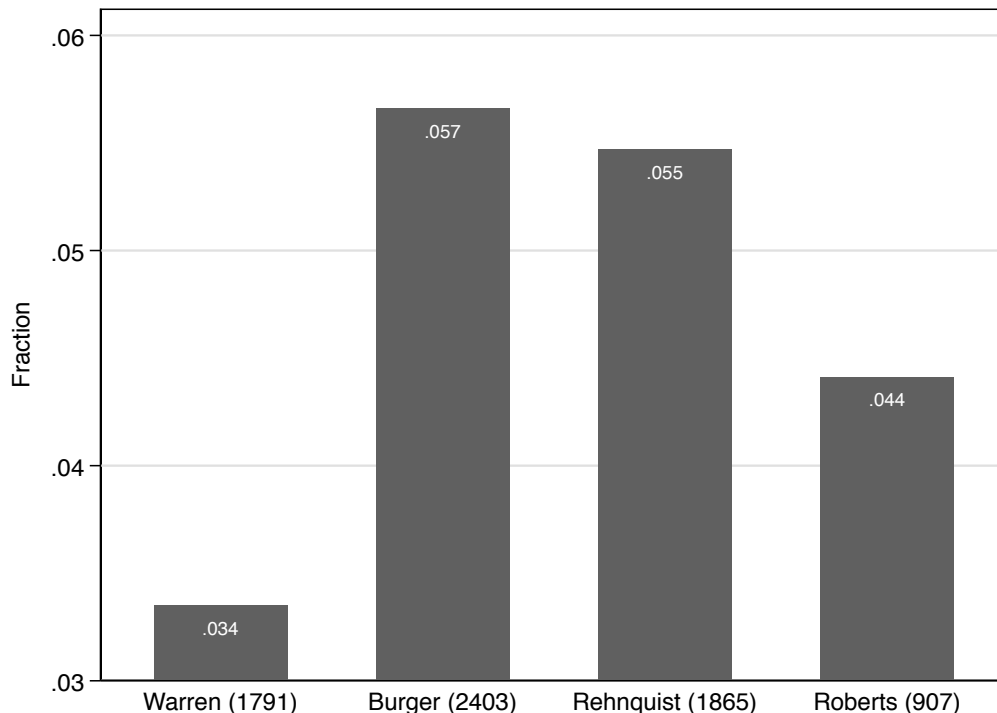


Figure 3. Fraction of Free Expression Cases, By Chief Justice Era, 1953-2017 Terms. Numbers in parentheses are the total number of orally argued cases during each Chief era. Total number of all cases across all eras= 6,966. The total number of expression cases=338. The total expression cases for each Chief Justice are: Warren=60; Burger=136; Rehnquist=102; Roberts=40.

## 4 Parties in Free Expression Cases

Here we classify the parties in two ways: by whether they were a business or not (Section 4.1) and by the ideology of their expression (Section 4.2). With the exception of Table 3, this Section uses data from the 1953-2017 terms (n=338 cases).

A key finding is that the Roberts Court—more than any modern Court—has trained its sights on speech promoting conservative values: Only the current Court has resolved a higher fraction of disputes challenging the suppression of conservative rather than liberal expression.

## 4.1 Business/Commercial Actors versus All Other Litigants

Some commentators (including one of the authors) suggest that the Roberts Court is especially friendly to business in all types of cases<sup>5</sup>—including free expression. Others suggest that business-friendliness in free speech litigation began not with the Roberts Court but with the Burger Court’s 1976 decision in *Virginia State Pharmacy Board v. Virginia Citizens Consumer Council*.<sup>6</sup>

Adapting protocols used by Coates and Epstein, et al.,<sup>7</sup> we coded the party alleging a rights violation into one of two categories: business or all other litigants (mostly individuals and organizations). Table 2 shows the results, by Court era and pre- and post-*Virginia Pharmacy*.

	Party Alleging Expression Violation	
	<i>Business</i>	<i>All Other Litigants</i>
<b>Chief Justice Era</b>		
Warren (60)	26.7	73.3
Burger (136)	41.9	58.1
Rehnquist (102)	26.5	73.5
Roberts (40)	12.5	87.5
Total (338)	31.1	68.9
<b><i>Virginia Pharmacy</i></b>		
Before (113)	32.7	67.3
After (215)	30.2	69.8
Total (328)	31.1	68.9

Table 2. Percentage of Cases in which Business versus All Other Litigants Claimed an Expression Violation, By Chief Justice Era and Pre-/Post-*Virginia Pharmacy*, 1953-2017 Terms. The Pre-/Post-*Virginia Pharmacy* numbers are smaller because they omit the 1975 term.

No obvious trends emerge. Looking first at the Chief Justice eras (and using a chi-square test), only the contrasts between the Burger Court and the others are statistically significant: the 1969-85 term Court decided a larger percentage of cases in which business claimed the expression violation than the Warren, Rehnquist, and Roberts Courts.

This finding could suggest that *Virginia Pharmacy* had an effect, however short-lived, on the Court’s plenary docket but, again, the data do not seem to support it. The mean of the 113 pre-*Virginia* cases in the Business category (32.7%) is virtually identical to the mean of the 215 post-*Virginia* cases (30.2%); the difference is not statistically significant.

Perhaps the best that can be said is that the Burger Court was more focused on business than the other Courts. But even that claim rests on shaky ground because the Burger Court decided a smaller fraction of cases involving business than other litigants (as did all other Courts).

<sup>5</sup>*E.g.*, Lee Epstein, William M. Landes, & Richard A. Posner, “When It Comes to Business, the Right and Left Sides of the Court Agree,” 54 *Journal of Law & Policy* 33 (2017); Jeffrey Rosen, *Supreme Court Inc.*, *New York Times Magazine*, (March 16, 2008); Mark Tushnet, *In the Balance: Law and Politics on the Roberts Court* (2013).

<sup>6</sup>425 U.S. 478 (1976). See John C. Coates, IV, “Corporate Speech and the First Amendment: History, Data, and Implications,” 30 *Constitutional Commentary* 223 (2015).

<sup>7</sup>Coates, “Corporate Speech,” at note 6; Epstein et al., “When It Comes to Business,” at note 5.

Although commercial interests have not dominated the Court’s free expression docket, it’s possible that they’ve been especially successful. Table 3 considers this possibility, showing the win rates (% success) of business and all other litigants, by Chief Justice era and pre- and post-*Virginia Pharmacy*.

	<b>Win Rate</b>	
	<i>Business</i>	<i>All Other Litigants</i>
<b>Chief Justice Era</b>		
Warren	62.5 (16)	88.6 (44)
Burger	56.1 (57)	49.4 (79)
Rehnquist	48.1 (27)	54.7 (75)
Roberts	80.0 (5)	48.6 (35)
<b>Virginia Pharmacy</b>		
Pre (1953-74 terms)	54.1 (37)	72.4 (76)
Post (1976-17 terms)	56.9 (65)	51.3 (150)

Table 3. Win Rates (in Percentages) for Business and All Other Litigants Claiming an Expression Violation, By Chief Justice Era and *Virginia Pharmacy*, 1953-2017 Terms. For the within-era comparisons, only the difference for the Warren Court is statistically significant: that Court was more likely to rule in favor of all other litigants than business. As for the pre- and post-*Virginia Pharmacy* comparisons: The Court significantly favored individuals over business before *Virginia Pharmacy*, but it did not significantly favor business over individuals after *Virginia Pharmacy*. Comparing across eras, the Warren Court was more favorable to individuals than any of the other eras; and, overall, the Court was significantly more favorable to individuals pre-*Virginia Pharmacy* than post but it was no more or less favorable to business. (All tests are two-sample difference in proportions tests.)

Starting with Chief Justice eras, there are two ways to analyze the data: within-era comparisons (*e.g.*, whether the Roberts Court favors individuals claiming a violation of their expression rights more often than it favors business claimants) and across-Court comparisons (*e.g.*, whether the Roberts Court is more favorable to business than the Warren Court). For the within-era comparisons, the raw percentages suggest a fundamental difference between the Warren Court and two others. During the Warren Court, individuals won more often than business. For the Burger and Roberts Courts, the reverse held: Business won more often. The comparison for the current Court seems especially stark: an 80% win rate for business versus 48.6% for all others. But only the difference for the Warren Court is statistically significant (in part because the numbers are quite small).

Comparing the win rate for business across Chief Justice eras, the pro-speech Warren Court actually decided a higher percentage of cases in favor of business than the Burger and Rehnquist Courts. But the differences aren’t significant (which also could reflect the small number of cases). Only in the comparisons for all other litigants—again, mostly individuals and organizations—does a statistical difference emerge: the Warren Court was significantly more likely to rule in their favor than any of the other Courts.

The pre- and post-*Virginia Pharmacy* comparisons produce similar (mostly non-) results. Prior



to *Virginia Pharmacy*, the Court favored individuals over business and this gap is at the cusp of statistical significance (two-tailed  $p = 0.54$ ) but after *Virginia Pharmacy*, the Court did not significantly favor business over individuals. Across the two periods, the Court was slightly more business-friendly after *Virginia Pharmacy* than before it (56.9% versus 54.1%) but the difference is not statistically significant. Only individual win rates declined significantly (from 72% to 51%) after *Virginia Pharmacy*. But that result may trace less to *Virginia Pharmacy* than to majorities increasingly inclined to rule against expression claims (see Section 5 below, especially Figure 6).

## 4.2 Ideology of Expression

The findings on business are inconclusive at best; the results for the ideological content of the expression are not. Even as the Roberts Court has decided a smaller number of expression cases than its predecessors, it has accepted significantly more petitions in which the government (or some other body) suppressed *conservative* expression.

To develop this claim we used Epstein, Parker, and Segal’s data, which classify the content of expression as tending to promote (or be more closely aligned with) “liberal” or “conservative” organizations or causes (*e.g.*, pro-gay rights or pro-life expression).<sup>8</sup>

Figure 4 displays the initial results: the fraction of “liberal expression” cases on the plenary docket for each of the four Chief eras (that is, number of liberal expression cases/number of total expression cases). The decline in the fraction is evident—and statistically significant: with each passing era, the Court heard fewer cases with expression aligned with liberal causes and, of course, many more involving conservative expression. Of the Warren Court’s 60 cases, only 5 challenged suppression of conservative speech; of the Roberts Court’s 40 cases, 26 (nearly two-thirds) fell into the conservative category.

---

<sup>8</sup>Lee Epstein, Christopher M. Parker & Jeffrey A. Segal, “Do Justices Defend the Speech They Hate? An Analysis of In-Group Bias on the U.S. Supreme Court,” *Journal of Law and Courts*, forthcoming. Their data end with the 2014 term. With Parker’s help, we identified the ideological direction of the expression for the 2015-2017 term cases; we also made several relatively minor adjustments to their data.

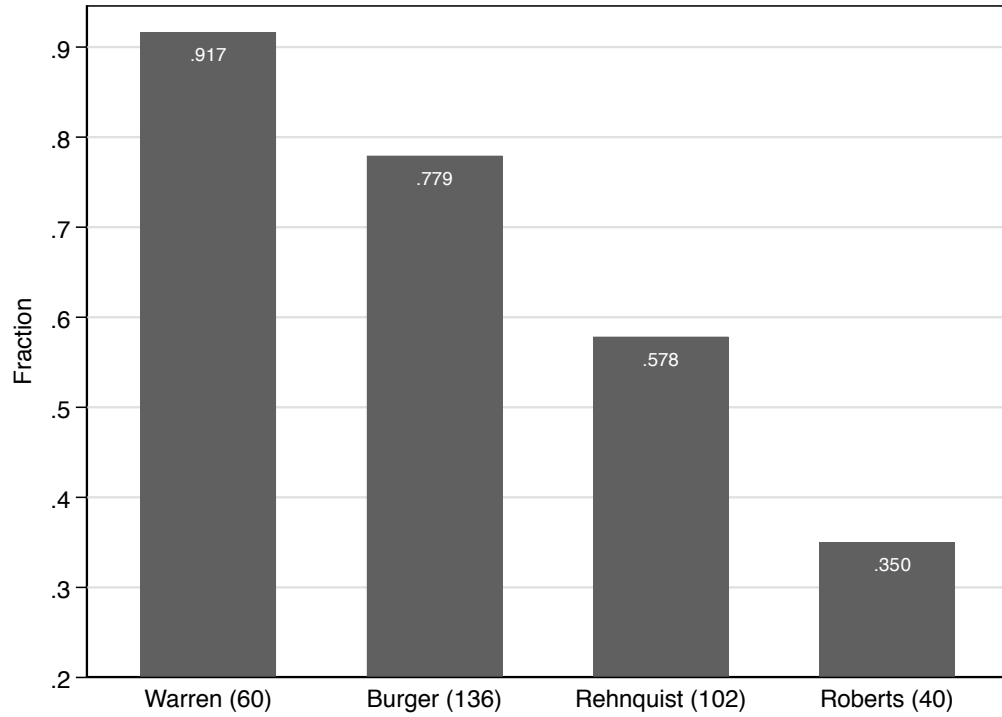


Figure 4. Fraction of Liberal Expression Cases By Chief Justice Era, 1953-2017 Terms. The fraction= number of liberal expression cases/number of total expression cases. Numbers in parentheses are the total number of free expression cases orally argued during each Chief era. The total across all eras is 338. The differences from the Warren to Burger to Rehnquist to Roberts Court are each statistically significant. (All tests are two-sample difference in proportions tests.)

Figure 4 suggests a fundamental transformation of the Court’s free expression agenda likely spearheaded by a combination of attorneys, organizations, and the case-selection process. Figure 5 considers the latter, focusing on liberal expression cases and then on the sides that claimed an infringement of their rights. (We exclude the respondent bar for the Warren Court because n=1.)

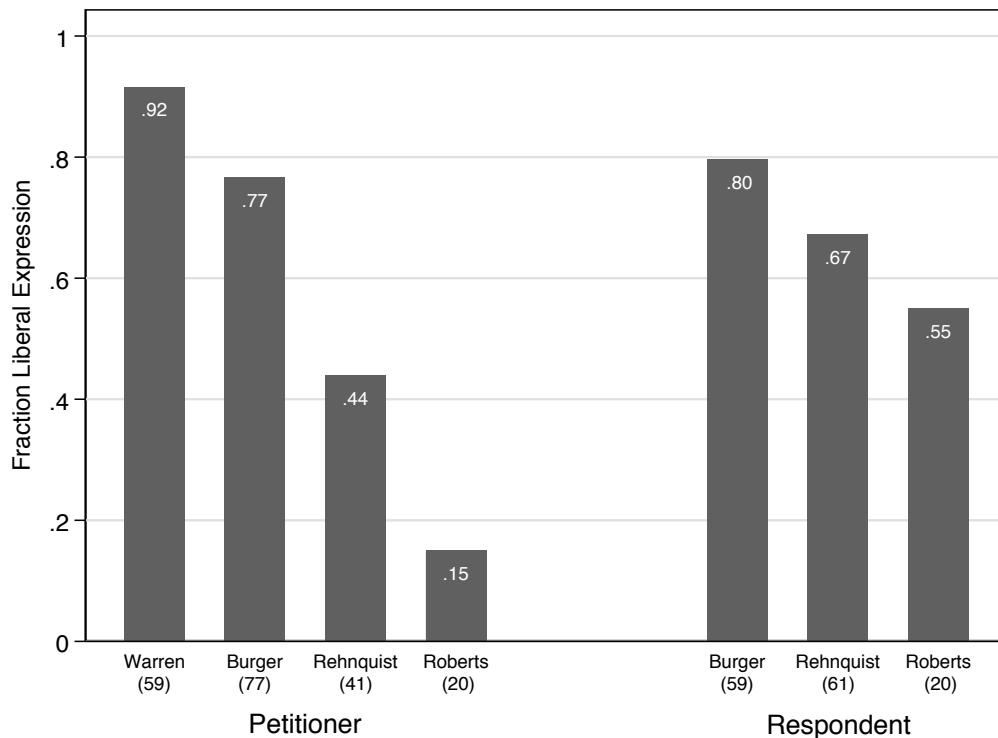


Figure 5. Fraction of Liberal Expression Cases, By Chief Justice Era and the Side Alleging Suppression of Expression, 1953-2017 Terms. Petitioner fraction= number of liberal expression cases/number of total cases in which the petitioner alleged the expression violation; Respondent fraction= number of liberal expression cases/number of total cases in which the respondent alleged the expression violation. The numbers in parentheses are the total number of cases falling into each category (*e.g.*, there were 59 total expression cases during the Warren Court in which the petitioner claimed the expression violation). We exclude the respondent bar for the Warren Court because  $n=1$ . The differences from the Warren to Burger to Rehnquist to Roberts Court are statistically significant for petitioner. For respondent, the difference is significant for Burger versus Roberts but not for Rehnquist versus Roberts. (All tests are two-sample difference in proportions tests.)

Note that the Roberts Court has decided a smaller fraction of liberal expression cases regardless of whether the party claiming infringement was the petitioner or respondent. That only 15% of petitioners' speech falls under the liberal grouping is especially notable because the current Court usually takes cases to reverse. Of the Roberts Court's 21 pro-expression holdings, 80% ( $n=16$ ) were for the petitioner ( $p \leq .05$ ).

The implication here is that when the Roberts Court takes an expression case, it is looking to vindicate conservative expression—although we can't confirm as much because only a small number of cases fall into each of the four categories (petitioner/liberal, petitioner/conservative, respondent/liberal, respondent/conservative). What we can say is that, overall, the Roberts Court is significantly more likely to issue decisions favoring conservative expression than liberal expression (69% versus 21% win rate). We develop this result momentarily (see especially Figure 7).

## 5 Outcomes in Free Expression Cases

Despite the comparatively infrequent appearance of free expression cases on the Roberts Court's docket, perhaps the current Court has earned its reputation as a champion of free speech by favoring the party alleging an expression violation.

This much the raw data do not show. As Figure 6 makes clear, the Roberts Court rules in favor of speech claims at about the same rate as it holds against them. And the difference between the Roberts Court and either the Rehnquist or Burger Court is not statistically significant—meaning that the Roberts Court is as much or as little a champion of free expression than the other Republican Courts in place since 1969. To the extent that it was significantly more likely to support expression than any other Court, only the Warren Court emerges as a true pro-speech court.

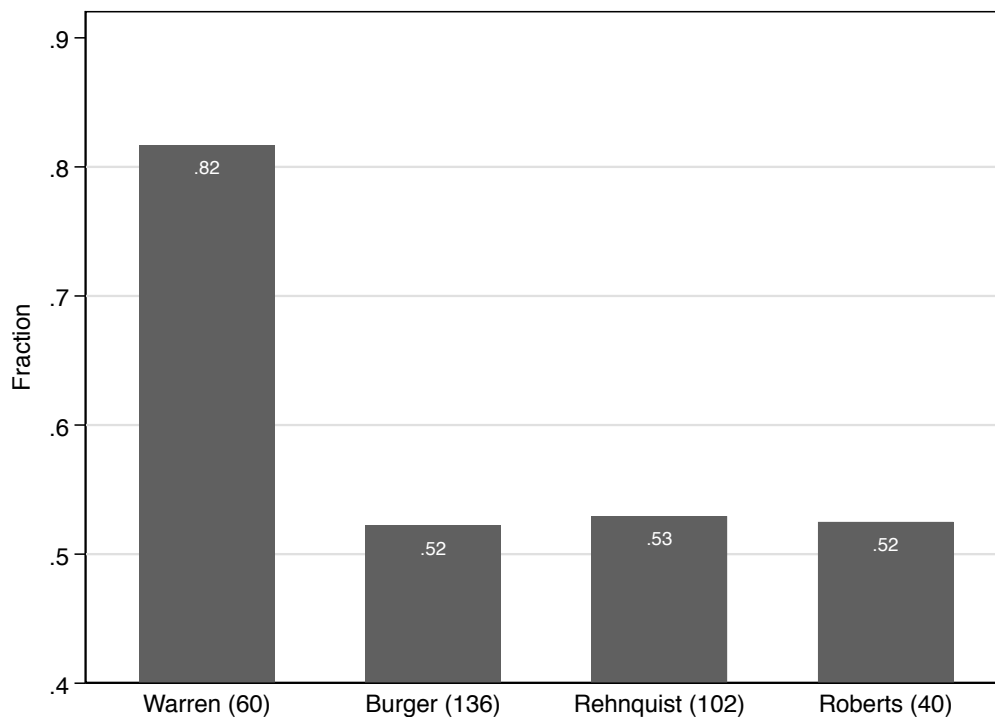
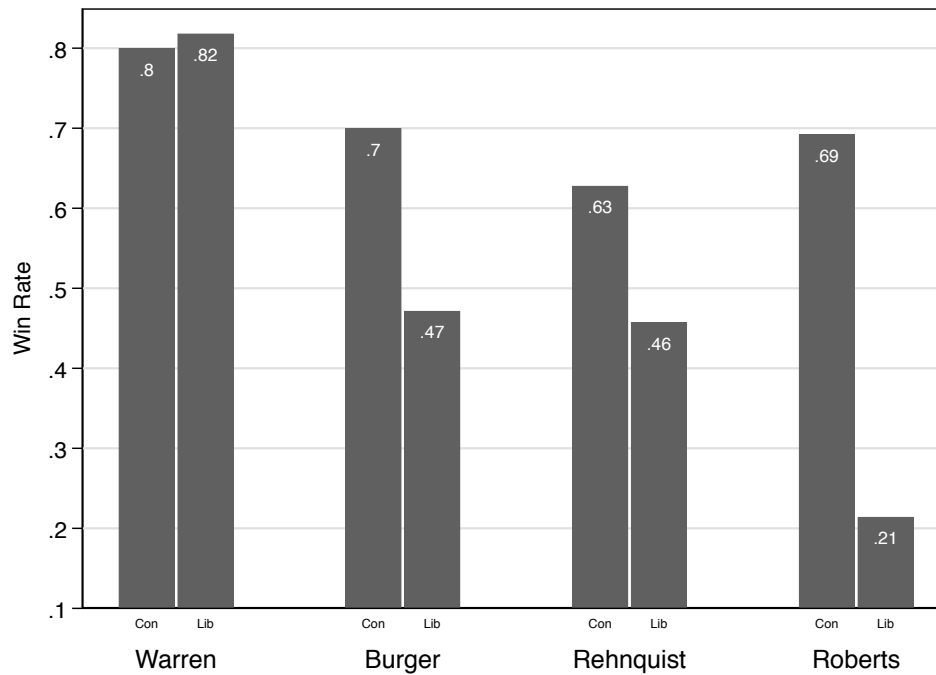
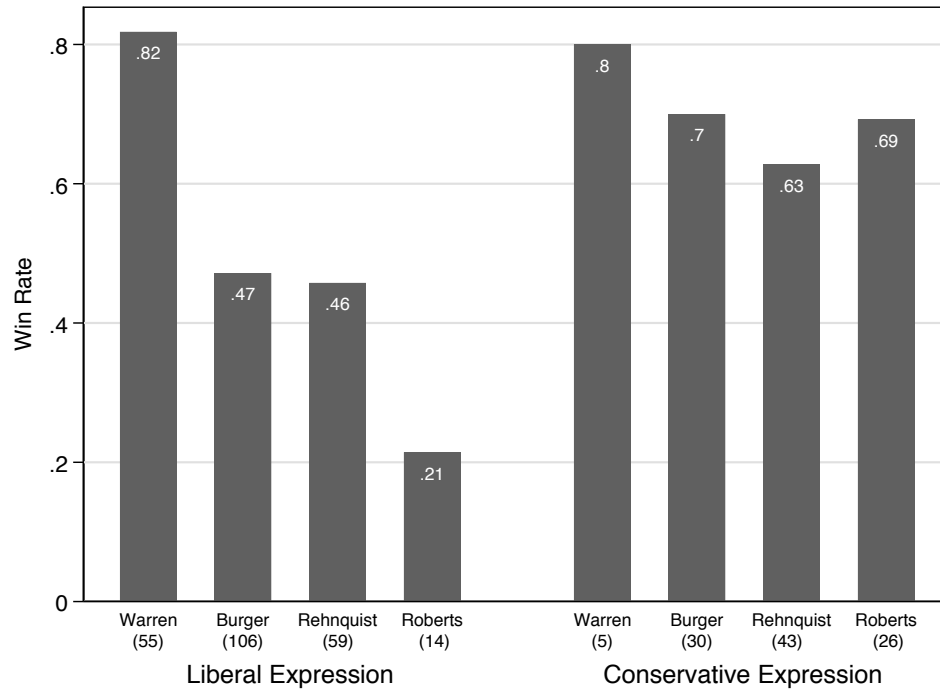


Figure 6. Fraction of Pro-Expression Decisions By Chief Justice Era, 1953-2017 Terms. The differences between the Warren Court and all others are statistically significant; the differences between the Burger, Rehnquist, and Roberts Court are not statistically significant. (All tests are two-sample difference in proportions tests.)

Driving these results may be the Roberts Court's tendency to differentiate between liberal and conservative expression, as Figures 7a and 7b show. The two plots draw two different comparisons but the upshot is similar: the current Court seems to disfavor speech promoting (or allied with) liberal causes, and seems to favor speech promoting (or allied with) conservative causes.



Figures 7a and 7b. Fraction of Pro-Expression Decisions (“Win Rate”) by Liberal/Conservative Expression and Chief Justice Era, 1953-2017 Terms. The numbers in parentheses in Figure 7a are the total number of cases falling into each category (*e.g.*, there were 55 total liberal expression cases during the Warren Court). In Figure 7b “Con”= conservative expression and “Lib”= liberal expression. Comparing across Chief Justice eras, as Figure 7a does, the Warren Court was significantly more likely to favor liberal speech than the others; there are no significant differences for conservative speech. Drawing within-Court comparisons (7b) shows that all Courts after Warren favored conservative over liberal expression but only for the Burger and Roberts Courts is the difference statistically significant. (All tests are two-sample difference in proportions tests.)

Figure 7a compares liberal and conservative expression across Chief Justice eras. On liberal expression, the Warren Court is in a league of its own, favoring the party alleging an infringement in 82% of the cases. This percentage is significantly higher than it is for all other Court eras, but the raw percentage-point difference of 61 between it and the Roberts Court is especially stark. Still, the means are not statistically different between the Roberts Court and either the Burger or Rehnquist Court. For conservative expression, no significant differences emerge between the Court eras.

Figure 7b draws within-Court comparisons between support for conservative versus liberal expression. Again, the Warren Court emerges as a speech-protective era regardless of the content of the speech. Not so for the Burger, Rehnquist, and Roberts Courts—each of which favors conservative over liberal expression. Only for the Burger and Roberts Courts is the difference statistically significant, though the difference is especially noticeable for the Roberts Court. Its 48 percentage-point gap between liberal and conservative expression is more than double the Burger Court’s gap of 23 percentage points.

## 6 Votes in Free Expression Cases

Of the 2,967 votes cast in the free expression cases, a majority (58%) were pro-expression. But considerable variation exists among the Justices, from Goldberg’s 100% support to Rehnquist’s 25%, as Table 4 shows. There we rank the Justices according to their support for expression claims. (We exclude Burton, Gorsuch, Jackson, Minton, and Reed because they voted in fewer than 10 cases.)

Justice	% Support for Free Expression Claim	N of Votes
1. Goldberg	100.0	14
2. Douglas	95.5	111
3. Brennan	87.7	227
4. Warren	86.2	58
5. Black	85.3	75
6. Marshall	83.9	186
7. Fortas	79.2	24
8. Stewart	72.2	144
9. Stevens	62.6	190
10. Souter	61.3	80
11. Kennedy	60.5	129
<b>Average/Total</b>	57.9	2967
12. Blackmun	57.2	187
13. Roberts	56.4	39
14. Alito	55.3	38
15. Whittaker	53.3	15
16. Ginsburg	51.1	88
17. Frankfurter	50.0	18
18. Sotomayor	48.1	27
19. Powell	47.9	119
20. Kagan	47.8	23
21. White	45.5	231
22. Thomas	44.9	98
23. Scalia	42.9	133
24. Harlan	42.7	75
25. O'Connor	40.8	142
26. Breyer	40.5	84
27. Burger	39.3	135
28. Clark	38.6	44
29. Rehnquist	25.0	216

Table 4. Justices' Support for Free Expression Claims, 1953-2017 Terms. We exclude Burton, Gorsuch, Jackson, Minton, and Reed because they voted in fewer than 10 cases (but the Average row includes their votes).

The rankings in Table 4 suggest an ideological component to judging in the expression context, with the liberals Goldberg, Douglas, Brennan, and Warren at the top and the conservatives Rehnquist and Burger at or near the bottom; and Figure 8 confirms the importance of ideology. It shows the relationship between the Justices' ideology (measured by newspaper editorials prior to their confirmation<sup>9</sup>) and their support for free expression.

<sup>9</sup>These are the Segal-Cover scores. Jeffrey A. Segal & Albert D. Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices," 83 *American Political Science Review* 557 (1989). The scores are available at: <http://www.stonybrook.edu/polsci/jsegal/#>

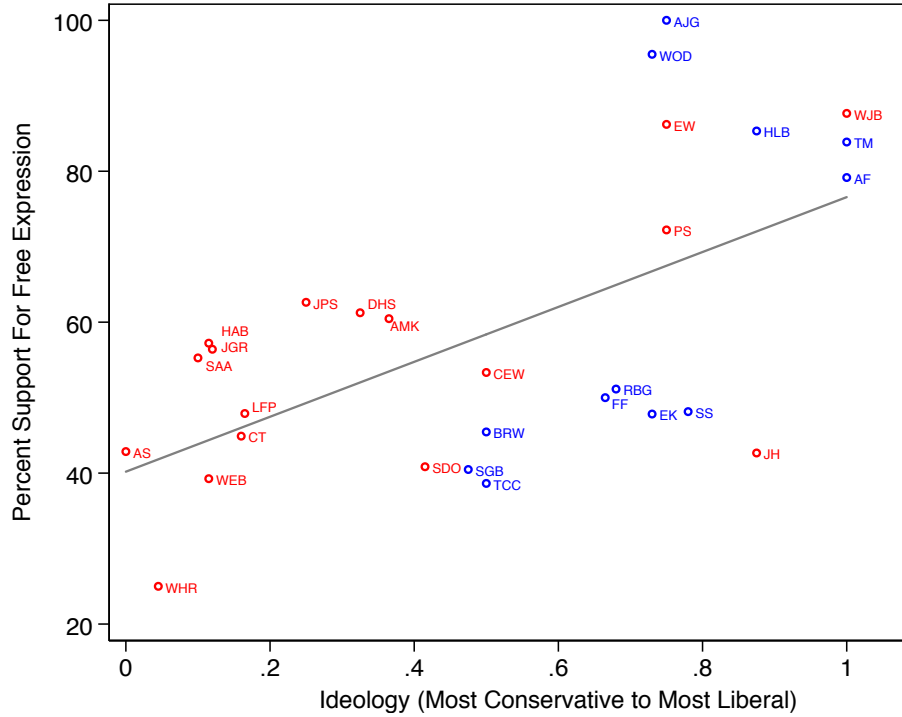


Figure 8. Relationship between the Justices' Ideology and Their Support for Free Expression Claims, 1953-2017 Terms. Ideology is the Justice's Segal-Cover (editorial) score (see note 9). Justices appointed by Republican Presidents are in red; Democratic appointees are in blue. The line represents a prediction of the Justice's support for free expression based on the Justice's ideology; the closer a Justice is to the line, the better the prediction. The correlation between ideology and support is 0.59. We exclude Burton, Gorsuch, Jackson, Minton, and Reed because they voted in fewer than 10 cases.

The overall correlation between ideology and support for expression is 0.59; and the fit is especially good for the extreme liberal, Abe Fortas (a nearly perfect prediction of 77.6%) and the extreme conservatives, Clarence Thomas and Antonin Scalia (error rates of under 3%).

But for other Justices, notably some members of the current Court, the predictions are off the mark. Breyer, Ginsburg, Kagan, and Sotomayor are 14 to 20 percentage points less supportive of expression than their ideology predicts; and Alito and Roberts are nearly 12 percentage points more supportive than expected. It seems as if today's Justices don't fit the classic "liberals support speech and conservatives support regulation" model.

On the theory that the increase in conservative expression cases explains this unanticipated pattern, we compared the fraction of support for liberal and conservative expression by whether the Justice was appointed by a Democratic or Republican President. Table 5 shows the results.



	%Support for Free Expression	
	Republican Appointees	Democratic Appointees
Warren Court		
<i>Conservative Expression</i> (42)	76.2	71.4
<i>Liberal Expression</i> (484)	72.7	76.9
Burger		
<i>Conservative Expression</i> (261)	61.9	62.7
<i>Liberal Expression</i> (922)*	49.4	68.7
Rehnquist		
<i>Conservative Expression</i> (382)	61.3	49.4
<i>Liberal Expression</i> (525)*	47.5	58.2
Roberts		
<i>Conservative Expression</i> (229)*	67.9	42.4
<i>Liberal Expression</i> (122)*	23.8	47.4
All Eras		
<i>Conservative Expression</i> (914)*	63.3	52.1
<i>Liberal Expression</i> (2,053)*	51.0	69.0

Table 5. Justices' Support for Free Expression by Ideological Content of the Expression and the Party of the Appointing President, 1953-2017 Terms. \* indicates a significant difference between the Democratic and Republican appointees.

Note that for liberal expression, significant gaps emerge between the Democratic (D) and Republican (R) appointees serving on the Burger, Rehnquist, and Roberts Court but the difference is somewhat larger for the Roberts Justices: a 23.6 percentage-point gap versus 19.3 (Burger) and 10.7 (Rehnquist). For conservative expression, only the Roberts Court's Ds and Rs are statistically different, with the Rs supporting speech in nearly two-thirds of the cases and the Ds in fewer than a majority.