

The Roberts Five: Siding with Conservative Amici Curiae 92% of the Time

An examination of the Roberts Court's 5-4 decisions reveals that, when the Roberts Five (Chief Justice Roberts, Justice Alito, Justice Kennedy, Justice Scalia/Gorsuch, and Justice Thomas) forms the Court's majority, they agree with conservative amici curiae ("friends of the court") 92% of the time. Further, in these cases, the Roberts Five has aligned with the positions advanced by the high-profile conservative groups the Chamber of Commerce, the Criminal Justice Legal Foundation, and the Washington Legal Foundation 100% of the time. In its 5-4 decisions, the Roberts Five have opened up the doors for dark money to flood the political system, rolled back important voting rights and environmental protections, and made it easier for employers to discriminate against their employees.

Methodology

- All 5-4 and 4-3 cases during the Roberts Court era were identified, with special attention paid to those decisions in which the Roberts Five (Chief Justice Roberts, Justice Alito, Justice Kennedy, Justice Scalia/Gorsuch, and Justice Thomas) formed the Court's majority.
- More than 2,500 amicus curiae briefs were filed in the Roberts Court's 5-4 and 4-3 decisions.
- The Court's opinions and the amicus curiae briefs were coded according to their ideological direction based on a well-established methodology in the social scientific study of the law.¹
- The Roberts five supported amici curiae advocating for conservative positions 92% of the time, compared to only 7% of the time for amici curiae advocating for liberal positions.
- In cases where they formed the majority, the Roberts Five agreed with the positions advanced in the amicus curiae briefs filed by the United States Chamber of Commerce, Washington Legal Foundation, and Criminal Justice Legal Foundation 100% of the time.

¹ Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2018. *The Supreme Court Database*. <http://scdb.wustl.edu/documentation.php?var=decisionDirection>.