

## **Judicial Review of Congress Dataset Description of Variables**

Keith E. Whittington

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The Judicial Review of Congress dataset catalogs all the cases in which the U.S. Supreme Court has substantively reviewed the constitutionality of a provision or application of a federal law. The database currently includes 1308 cases decided by the Court from its founding through its October 2017 term and related pieces of information about those cases.

The cases were identified through a keyword search of full case records of all U.S. Supreme Court decisions archived in Lexis-Nexis and a reading of all plausible cases identified through that search as well as through secondary sources, including other Supreme Court opinions. The details of the process of identifying cases to include in the dataset can be found in the appendix to Keith E. Whittington, *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present* (Lawrence: University Press of Kansas, 2019). The Judicial Review of Congress dataset can be found at [www.princeton.edu/~kewhitt](http://www.princeton.edu/~kewhitt)

This document includes a description of the variables found in the Judicial Review of Congress dataset.

### **CASE**

The names of the parties to the case as it appears in the *U.S. Reports*. If there is a colloquial name for the case, that name is also included (e.g., The Trade-Mark Cases).

### **CITATION**

The volume and page citation of the case in the *U.S. Reports* or the *Supreme Court Reports* in 000 U.S. 000 or 000 S.Ct. 000 format.

### **DATE**

The date of the announcement of the decision in month/day/year format.

### **YEAR**

The year of the announcement of the decision.

### **DECADE**

The decade of the announcement of the decision.

### **DECISION**

If the Court holds that a statutory provision is upheld as valid against constitutional challenge as applied to the party in the case, the DECISION variable is coded as 0.

If the Court holds that a statutory provision cannot be constitutionally applied to the party in the case but does not resolve the question of whether the statutory provision might be constitutionally applied in other circumstances, the DECISION variable is coded as 1.

If the Court holds that a statutory provision at issue in the case is constitutionally invalid and void for all purposes, the DECISION variable is coded as 2.

## **DECISION2**

If the Court holds that a statutory provision is upheld as valid against constitutional challenge as applied to the party in the case, the DECISION2 variable is coded as 0.

If the Court holds that a statutory provision is constitutionally invalid as presented in the case, the DECISION2 variable is coded as 1. Any case that is coded as 1 or 2 for the DECISION variable is coded as 1 for the DECISION2 variable.

## **EFFECT**

If the DECISION variable is coded as 0, then this variable is listed as “upheld.”

If the DECISION variable is coded as 1, then this variable is listed as “struck down as applied.”

If the DECISION variable is coded as 2, then this variable is listed as “struck down on face.”

## **STAT NAME**

This variable lists the primary colloquial name of the statute within which the statutory provision at issue in the case is contained. If there is no colloquial name for the statute, the *Statutes-at-Large* citation for the statute is listed.

## **STAT CITE**

This variable lists the volume and page number in *Statutes-at-Large* in which the statutory provision at issue in the case can be found. The variable is listed in 000 Stat. 000 format.

## **PL#**

This variable lists the Public Law number for the law in which the statutory provision at issue in the case can be found, if applicable. The variable identifies each public law by the number of the Congress that adopted it and the point within the sequence of public laws passed by that Congress. The number of the Congress that adopted the statutory provision is also represented in the CONGRESS variable.

## **S-DATE**

This variable lists the date of passage for the law that contains the statutory provision at issue in the case. Note that the relevant date of passage is the latest substantive iteration of the statutory provision that Congress has adopted. Thus, statutory provisions that are incorporated into later legislation or that are amended by later legislation are coded by the date at which Congress last endorsed the provision,

not the date at which Congress first endorsed the provision. This variable is listed in month/day/year format.

### **TIME TO DECISION**

This variable provides the time between the adoption of the statute by Congress (embodied in the S-DATE variable) and the announcement of the decision by the Court (embodied in the DATE variable). The variable is expressed in months. In counting months, the DATE and S-DATE are rounded up if the event occurs after the 15<sup>th</sup> day of the month and rounded down otherwise.

### **CONGRESS**

This variable provides the number of the Congress that adopted the statutory provision at issue in the case. If the statutory provision was adopted prior to the adoption of the U.S. Constitution, the Congress is coded as 0.

### **AREA1**

This variable denotes the primary constitutional issue area considered by the Court in evaluating the constitutionality of the statutory provision at issue in the case.

- 1 = Due Process – criminal and administrative procedure
- 2 = Substantive Rights – religious liberty, free speech, “substantive due process” of personal liberty
- 3 = Equality – civil rights, discrimination on the basis of race, gender or other prohibited characteristics
- 4 = Economic – regulation of private economic actors and activities by central government, including taxation, takings, property rights and contract
- 5 = Federalism – boundaries of federal and subnational authority
- 6 = Separation of Powers – boundaries of executive, legislative and judicial branches

### **AREA2**

If applicable, this variable denotes a secondary constitutional issue area considered by the Court in evaluating the constitutionality of the statutory provision at issue in the case. If there is no secondary constitutional issue resolved in the case, then this variable is left blank.

- 1 = Due Process – criminal and administrative procedure
- 2 = Substantive Rights – religious liberty, free speech, “substantive due process” of personal liberty
- 3 = Equality – civil rights, discrimination on the basis of race, gender or other prohibited characteristics
- 4 = Economic – regulation of private economic actors and activities by central government, including taxation, takings, property rights and contract
- 5 = Federalism – boundaries of federal and subnational authority
- 6 = Separation of Powers – boundaries of executive, legislative and judicial branches

### **LNDMRK**

This variable denotes whether the statutory provision at issue in the case was originally included in a landmark statute as designated in the list provided in Stephen W. Stathis, *Landmark Legislation 1774-2012: Major U.S. Acts and Treaties*, 2<sup>nd</sup> ed. (Washington, D.C.: CQ Press, 2014). The variable is coded as

1 if the statute is included in the list of statutes in Stathis. The variable is coded as 0 if it does not appear on that list. The variable is left blank if the statute at issue in the case was passed by a later Congress than those reviewed in the Stathis volume.

### **LNDDTL**

This variable denotes whether the statutory provision at issue in the case was described in the abstract provided for each landmark statute as designated in the list provided in Stephen W. Stathis, *Landmark Legislation 1774-2012: Major U.S. Acts and Treaties*, 2<sup>nd</sup> ed. (Washington, D.C.: CQ Press, 2014). This variable is coded as a 1 if the statutory provision is described in the abstract of a statute in Stathis. The variable is coded as a 0 if the statutory provision at issue in the case either does not appear in a landmark statute (it is coded as 0 in the LNDMRK variable) or appears in a landmark statute but is not described in the abstract for that statute in Stathis. The variable is left blank if the statute at issue in the case was passed by a later Congress than those reviewed in the Stathis volume.

### **ATT GEN**

This variable denotes whether an attorney for the United States Department of Justice appeared at the Court to present arguments in the case. This variable is coded as 1 if the U.S. Attorney General, the U.S. Solicitor General, or some other attorney representing the U.S. Department of Justice presented oral arguments in the case. This variable is coded 0 if no one from the U.S. Department of Justice appeared to present oral arguments in the case.

### **CERT**

This variable denotes whether the case reached the docket of the U.S. Supreme Court via a writ of certiorari. The variable is coded as 1 if the case was granted cert. The variable is coded as 0 if the case reached the court by some other procedure.

### **REVERSD**

This variable denotes whether the disposition of the case by the U.S. Supreme Court reversed the decision of the lower court from which it received the case. The variable is coded as 1 if the lower court was reversed. The variable is coded as 0 if there was some other disposition of the case. If there are multiple cases bundled together, this variable is coded in accordance with the disposition of the primary case in that bundle.

### **CRS**

This variable denotes whether this case is listed among those cases in which an act of Congress was held unconstitutional in whole or in part by the Supreme Court of the United States in the appendix assembled by the Congressional Research Service in the current edition of *The Constitution of the United States of America: Analysis and Interpretation*, Centennial Edition (Washington, D.C.: Government Printing Office, 2017), also known as *The Constitution Annotated*. The variable is coded as 1 if the case appears in the Congressional Research Service list. The variable is coded 0 if the case does not appear on that list. The variable is left blank if the case has not yet been reviewed by the current edition of the Congressional Research Service document.

### **GVT PRTY**

This variable denotes whether an organ of the federal government is a party to the case at issue before the Court. The variable is coded 1 if a federal government official (in his or her official capacity) or governmental entity is a named party to the case. The variable is coded 0 if neither party in the case is a federal government official (in his or her official capacity) or a federal governmental entity.

### **DISSENT**

This variable denotes how many dissenting votes were cast in the case. This variable takes the value of the number of justices who expressed a dissenting vote on the record in the case. This variable does not reflect the number of published dissenting opinions. This variable is coded 0 if no justice recorded a dissent.

### **H-C**

This variable denotes partisan divergence between the enacting Congress and the reviewing Court. This variable measures whether the majority of the members of the House of Representatives that passed the statutory provision at issue in the case and the majority of the members of the U.S. Supreme Court that reviewed the constitutionality of the statutory provision in the case are from the same political party. The members of the U.S. Supreme Court are assigned to the political party of their appointing president. This variable is coded 0 if the enacting Congress and the reviewing Court are convergent and controlled by the same political party. This variable is coded 1 if the enacting Congress and the reviewing Court are divergent and controlled by different political parties.