

OBSESSIVE OVER THE POSSESSIVE AT THE SUPREME COURT OF THE UNITED STATES: EXPLORING SCOTUS' /SCOTUS'S USE OF POSSESSIVE APOSTROPHES

Ryan C. Black and Timothy R. Johnson*

Recently, Johnson co-authored an article for this journal about Justice Clarence Thomas.¹ Throughout the text, he referred to opinions, dissents, concurrences, and oral argument behavior of Justice Thomas. As he worked through drafts, he and his co-authors discussed how they would refer to the aforementioned opinions and behavior of Justice Thomas.

From a purely stylistic perspective, the present article probably should have been rejected by *The Journal of Appellate Practice and Process* editor based simply on the horrific writing in the opening paragraph, even though we purposefully tied ourselves in phrasing knots to avoid the possessive form of Thomas.² This choice,

* Ryan C. Black (rblack@msu.edu) is Professor of Political Science and Faculty Affiliate in the College of Law, both at Michigan State University. Timothy R. Johnson (trj@umn.edu) is Horace T. Morse Distinguished Professor of Political Science and Law at the University of Minnesota.

1. Timothy R. Johnson et al., *COVID-19 and Supreme Court Oral Argument: The Curious Case of Justice Clarence Thomas*, 21 J. APP. PRAC. & PROCESS 113 (2021).

2. Merriam-Webster provides more common examples of grammatically correct sentence knots: “the car that belongs to Smith.” *Plural and Possessive Names: A Guide*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/words-at-play/what-happens-to-names-when-we-make-them-plural-or-possessive> (last visited Oct. 24, 2020). A similar legal example is “the lawsuit that Smith brought.”

however, would not have been tenable for the entire 15,000-word essay to which we refer. As such, Johnson and his co-authors were left with two choices to make their writing smoother and easier for readers to digest: denote the possessive with an apostrophe at the end of his name (i.e., Thomas' dissent) or, alternatively, add a "bonus s" to make it Thomas's.

The authors settled on the former choice with minimal discussion. However, when they sent the final draft to *The Journal* editor she queried as to why they made this stylistic choice.³ Sadly, they did not have an altogether compelling answer for her beyond that it simply seemed more aesthetically pleasing to their eyes. But this exchange with the editor, coupled with the dog days of the 2020 pandemic summer, led us to ponder how the main subjects of our research—U.S. Supreme Court Justices—deal with this very question. And, as quantitatively inclined students of the Court, it struck us as a decidedly empirical (if not an actually interesting) question.

Thus opened the rabbit hole into which we promptly jumped and which, having emerged sometime later, puts us in a position to provide an embarrassingly comprehensive accounting of how the country's top legal minds deal with our query. That is, in the pages that follow, we explore whether Supreme Court Justices, when using possessive nouns (proper or common) that end in *s* (e.g., Thomas or *amicus*), utilize a *single s* (i.e., *s*) or a *double s* (i.e., *s's*). We assume their choice, as the nation's highest court, must hold some weight—even among career grammaticians and law review editors, alike!

To gain traction on our question of interest, we first consult several general and legal style guides as well as

3. It turns out the current Editor-in-Chief (who gave us permission to use this anecdote) holds a very strong opinion about the "possessive s" controversy. Having a son named James, she is very clear that there is one, and only one, rule. To wit, "Those are James's parents, and these are James's toys." Professionally, we apparently stirred a rather heated debate among *The Journal* editorial board that, knowing law-minded individuals, will undoubtedly rage on for years.

two anecdotal accounts of Justices' possessive *s* usage. From there, we throw some real-world data at the question. Specifically, we analyze more than seventy terms' worth of Supreme Court opinions to determine how the Justices respond to this clearly critically important debate within the overlapping fields of grammar and law.

I. GUIDANCE ON SINGLE *S* (*S'*) AND DOUBLE *S* (*S'S*) USAGE

Though it was Justice Thomas (and one keen-eyed, grammatically opinionated editor) who motivated our initial inquiry, his name is hardly alone in spurring on our project. Throughout the Court's history, fully sixteen of the 115 total individuals to serve as a Justice have a surname ending in the letter *s*.⁴ This helps motivate the importance of an otherwise purely academic inquiry because Justices regularly refer to their colleagues' opinions in their own writing. And, when they do, they also have a choice to write “J. Thomas dissenting” or to stir up trouble with grammaticians by using a possessive: “In Justice Douglas'(s) dissent.” What is more, a host of nouns ending in *s* regularly appear in opinions, including parties (often states) and other participants—*amicus*, Kansas, Arkansas, Texas, Illinois, and Massachusetts to name a few.

Consider *Kahler v. Kansas*,⁵ decided during the 2020 October Term. In her majority opinion, Justice Elena Kagan used the double *s* when she referred to Kansas: “This case is about Kansas's treatment of a

4. We used the U.S. Supreme Court Justices Database to compile our list. Lee Epstein et al., *The U.S. Supreme Court Justices Database*, WASH. U. ST. LOUIS, <http://epstein.wustl.edu/research/justicesdata.html> (last visited Oct. 24, 2020). They are, in order of date nominated: Benjamin Robbins Curtis; David Davis; William Burnham Woods; Stanley Matthews; George Shiras, Jr.; Oliver Wendell Holmes, Jr.; Charles Evan Hughes; James Clark McReynolds; Louis Dembitz Brandeis; Owen Josephus Roberts; William Orville Douglas; James Frances Byrnes; Abe Fortas; John Paul Stevens; Clarence Thomas; and John G. Roberts, Jr. We also offer a bit of bonus knowledge: one additional “*s*-Justice” was confirmed (1811) but never served: John Quincy Adams. Two additional *s*-named individuals had their nominations withdrawn: George H. Williams (nominated in 1873) and Harriet E. Miers (nominated in 2005).

5. 140 S. Ct. 1021 (2020).

criminal defendant's insanity claim."⁶ In contrast, Justice Stephen Breyer used the single *s*: "Under Kansas' rule, it can convict the second but not the first."⁷ Which usage is correct? Do the Justices follow a universal rule of possessives, or do they vary in their usage? To answer these questions, we turn to style guides—general grammatical ones and ones specific to the law and to the U.S. Supreme Court.

We begin our search by examining general rules of grammar. The Holy Grail of guides, *The Elements of Style* (commonly known as Strunk and White—as in E. B. White of *Charlotte's Web* fame), comes down strongly on the side of using the double *s*.⁸ Specifically, it argues writers should always add an 's to a possessive singular even if the last letter is, itself, an *s* (e.g., Holmes's).⁹ For our purposes, Strunk and White's treatise comports with Justice Kagan's usage in *Kahler*.

But not all style guides agree on the hard-and-fast double *s* rule. In fact, the majority of guides add nuance to the single *s* versus double *s* debate.¹⁰ For instance, the Modern Language Association (MLA) notes that "when a word ending in *s* is the same in the plural as it is in the singular, you just add an apostrophe: scissors' blades [or] identity politics' critics."¹¹ This certainly seems to contradict *Elements*, but when it comes to proper nouns MLA style actually agrees with *Elements*. That is, proper nouns ending in *s*, and that are singular, follow the general rule of adding 's. For example, a

6. *Id.* at 1024.

7. *Id.* at 1038 (Breyer, J., dissenting).

8. WILLIAM STRUNK, JR. & E. B. WHITE, *THE ELEMENTS OF STYLE* (4th ed. 1999).

9. Mary Norris, *Mary Norris's Thoughts on Pesky Possessives*, *NEW YORKER* (Oct. 30, 2019), <https://www.newyorker.com/culture/comma-queen/mary-norriss-thoughts-on-pesky-possessives> (quoting relevant examples from *The Elements of Style*).

10. An exception is the *American Psychological Association Style Guide*. It walks the same stringent line as Strunk and White when it comes to the double *s* controversy. *PUBLICATION MANUAL OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION* 96 (6th ed. 2013).

11. Jennifer Rappaport, *Apostrophes: One Mark, Three Ways*, *MLA STYLE CTR.* (SEP. 20, 2017), <https://style.mla.org/apostrophes-three-ways/>.

writer should quote Diogenes's theories or, in the case of the Supreme Court, Chief Justice Hughes's opinions.

The Chicago Manual of Style adds even more distinctions, devoting a whopping four subsections of its guide to possessive nouns (we were not joking about the rabbit hole).¹² However, its general rule is that “[p]lural forms ending in *s* take an apostrophe without a second *s*, whether the word is singular or plural: The United States' reputation. But singular forms like *Kansas* take the second *s*, and thus it's *Kansas's*.”¹³ *The Chicago Manual* adds exceptions for words that end in a silent *s* (Camus becomes Camus's), for classical proper names (Ganges becomes Ganges's), and for singular nouns that end in *s* (politics becomes politics's). *The New York Times Manual of Style and Usage* is largely in line with the *Chicago Manual* but recommends omitting the *s* “when a word ends in two sibilant sounds (the *ch*, *j*, *s*, *sh*, *ts*, or *z* sounds) separated only by a vowel sound: Kansas' Governor; Texas' population; Moses' behalf.”¹⁴

But what of legal grammatical advice? Do style guides that govern most academic legal writing—law reviews—take a position on the single *s* versus double *s* debate? As it turns out, not so much.¹⁵ In a search for law review style guides we came upon only one that does so: the *Yale Law Journal*, the top-ranked law review in the U.S.¹⁶ Its rules for possessives are a muddy morass of distinctions:

12. 7: *Spelling, Distinctive Treatment of Words, and Compounds*, CHI. MANUAL STYLE ONLINE, <https://www.chicagomanualofstyle.org/book/ed17/part2/ch07/toc.html>. accessed 8/9/2020 (last visited Oct. 24, 2020).

13. *Possessives and Attributes*, CHI. MANUAL STYLE ONLINE, <https://www.chicagomanualofstyle.org/qanda/data/faq/topics/PossessivesandAttributives/faq0051.html>, (last visited Oct. 24, 2020).

14. No, I promise I'm not talking to myself, I'm just checking my grammar sounds. Andy Taylor, *Punctuation*, STYLE MANUAL, <http://stylemanual.org/> (last visited Oct. 24, 2020).

15. The guides we found for most law reviews only included language about Bluebooking and formatting of final article submissions.

16. *W&L Law Journal Rankings*, WASH. & LEE U. SCH. L., <https://managementtools4.wlu.edu/LawJournals/Default.aspx> (last visited Oct. 24, 2020). We also found a guide for Columbia Law School's writing center, but it has no section on apostrophes and possessives. See *Punctuation Guide*, COLUM.

The possessive of a singular noun is normally formed by the addition of an apostrophe and an “s.” The possessive of a plural noun ending in “s” is formed by the addition of an apostrophe only. For example, “Mars’s moons,” “Mr. Jones’s car,” “the Joneses’ divorce,” “the princesses’ jewels,” “Ms. Schmitz’s purse,” and “Congress’s pay raise.” The possessive of “United States” is “United States’s.”¹⁷

Despite it taking us several reads to ensure we fully understood the Yale rules, it seems to take the middle ground. That is, it partially agrees with *Elements* and *APA* and partially agrees with the *MLA* and *Chicago* manuals. But, for our purposes, this middle ground still leaves us with no definitive answer to our inquiry (and doubting our choice of research topics).¹⁸

Perhaps, then, the two ultimate resources for legal citations offer answers. We turn first to *The Bluebook: A Uniform Style of Citation*.¹⁹ Again, we overestimated style guide gurus. Indeed, the only reference we found to possessives in *The Bluebook* occurs in Table T6: “Unless otherwise indicated, plurals are formed by adding the letter ‘s.’ Abbreviate any word in the possessive form by adding an apostrophe if the word is plural and an apostrophe with the letter ‘s’ if the word is singular (Thus, abbreviate ‘Employees’ to ‘Emps.’ and ‘Employ-

L. SCH. WRITING CTR., https://web.law.columbia.edu/sites/default/files/microsites/writing-center/files/effective_punctuation_handout.pdf (last visited Oct. 24, 2020).

17. YALE L. J., THE YALE LAW JOURNAL VOLUME 129 STYLE SHEET 25, https://www.yalelawjournal.org/files/Vol.129StyleSheet_quv1qjso.pdf (last visited Jul. 23, 2021).

18. The City University of New York (CUNY) Grammar and Style Guide takes an even more wishy-washy approach. It argues that a double s approach is “generally needed” but that “[t]his is not incorrect: Officer Gonzales’ gun was stolen.” *Punctuation*, CUNY SCH. L., <https://www.law.cuny.edu/legal-writing/students/grammar/punctuation/#apos> (last visited Oct. 24, 2020).

19. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 21st ed. 2020).

ee's' to 'Emp.'s')."²⁰ In other words, we are still left aimless in our quest for answers.²¹

A second, and perhaps more widely respected resource, at least in legal academia, is Bryan Garner's *The Redbook*.²² Garner is widely known in the legal world for his writing and grammatical prowess and is, according to his publisher, "now the most frequently cited author in opinions of the U.S. Supreme Court."²³ Given his writing expertise, it is intuitive for us to consider his position as well. And, as a bonus, it is actually clear! Unlike *The Bluebook*, but just like Strunk and White, Garner's argument is strong and definitive in favor of using the double *s*. As he puts it, "But the prevailing rule among nonjournalists of all kinds is to keep the 's.'"²⁴ Thus, the top two legal writing guides, like the top general grammar guides, do not agree on how to treat possessives when the noun ends in an *s*.

Not to be deterred, we decided to go to the source of our query itself: the U.S. Supreme Court. Perhaps its style guide provides guidance on the single *s* versus double *s* debate.²⁵ Secret until 2016, Jack Meltzer edited, and made public, *The Supreme Court Style Guide*, which is used, "by the Reporter of Decisions to prepare the Court's opinions for release to the public and for publication in the United States Reports."²⁶ Unlike *The*

20. *Id.* at 304 tbl.T.6. Of course, we may find no help because the *Bluebook* is a citation guide rather than a grammatical style guide. Thus, we can hardly blame the writers of the volume for not helping us with this issue.

21. This lack of consistency similarly manifests in a convenience sample of individuals whose surname ends with the letter *s*. More specifically, Black's wife's maiden name is Jenkins. While working on this article, he asked her, her parents, and her two sisters how they would write a sentence using the possessive. The vote came back 3–2 in favor of the single *s* (along with pointed questions about whether their husband/in-law possessed a "real job").

22. BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* (4th ed. 2018).

23. Description of *Bryan A. Garner's Redbook: A Manual on Legal Style, 4th Edition*, W. PUB., <https://faculty.westacademic.com/Book/Detail?id=276371#description> (last visited Jul. 15, 2021).

24. GARNER, *supra* note 22, at 142.

25. JACK MELTZER, *THE SUPREME COURT'S STYLE GUIDE* (2016), <https://budgetcounsel.files.wordpress.com/2018/10/supreme-courts-style-guide.pdf>.

26. *Id.* at ii.

Bluebook, Meltzer makes clear the Court's guide is more than a primer on proper citation. Rather, "It also sets the Court's style in matters like spelling, compound words, capitalization, italics, and the use of quotations" (Chapters IV–VII).²⁷ Surely, then, there must be a Supreme Court Rule about our grammatical issue of interest. Alas, there is not. Upon searching for the terms "possessive" or "apostrophe" in the PDF version of the guide, we found only a single reference: "'Attorney's fees.' Use the singular possessive case 'attorney's' (not 'attorneys') in the term 'attorney's fees,' even though in the particular case more than one attorney may be involved."²⁸

This treatment is interesting because it ignores the possibility that one would even contemplate using the double *s* in this example (i.e., attorneys's). Moreover, it is telling that the Court's advice is to simply sidestep the issue altogether by making the blanket recommendation to always treat a possible plural as singular. As another famous judge once opined, "I am the law!"²⁹

We hoped a careful reading of these various style guides would offer us a definitive answer but, as the foregoing reveals, it did not. In retrospect, this was almost cutely naïve given that we ourselves subscribe to the idea that appellate judges have considerable discretion when it comes to deciding on controlling precedents in cases they decide. As it turns out, we are not the first to ponder this problem. Jill Barton argues that the Justices are hardly unanimous in their use of grammatical quirks (e.g., sentence fragments, conjunctions, and possessives).³⁰ For our purposes we focus on Barton's 2014–2015 term analysis of how the Justices use possessives. As she put it, "The Justices have long disagreed on whether a singular word ending in *s* should get a lone apostrophe or an apostrophe-plus-*s* to indi-

27. *Id.*

28. *Id.* at X-9.

29. See *JUDGE DREDD* (Hollywood Pictures et al., 1995).

30. Jill Barton, *Supreme Court Splits on Grammar and Writing Style*, 17 *SCRIBES J. LEG. WRITING* 33, 33 (2016–2017).

cate the possessive.”³¹ Interestingly, her analysis reveals that only a minority of the Court—Chief Justice Roberts and Justices Alito, Kagan, and Scalia—used the double *s* for possessives (e.g., Congress’s authority) during the term she examined.

Ross Guberman reaches results similar to Barton’s—at least for the single case he analyzed.³² Specifically, in *Kansas v. Marsh* he finds disagreement among the Justices.³³ On one hand, Justice David Souter falls on the side of Strunk and White by using a double *s* for possessives ending in *s*.³⁴ In contrast, Justice Thomas opts for the single *s* approach.³⁵ And, finally, Guberman suggests Justice Antonin Scalia took a more nuanced approach: “He uses the possessive *s* in general, but appears to cut it if he wouldn’t pronounce it: He writes ‘Justice Stevens’ contention,’ for example.”³⁶

II. DATA, ANALYSIS, AND FINDINGS

The style guides and existing findings are suggestive but also far from conclusive. To provide a more complete examination of our obsession with possessives, we examine a corpus of opinions compiled by Black as part of his published work on the Court’s opinion writing.³⁷ The data span the Court’s 1946–2019 terms and contain all opinions (majority and separate) from orally argued cases that resulted in a signed majority opinion or judgment of the Court. This resulted in nearly 17,000 opinions containing a total of approximately 53.1 mil-

31. *Id.* at 41.

32. Ross Guberman, *Feeling Possessive?*, LEGAL WRITING PRO, <https://www.legalwritingpro.com/articles/feeling-possessive/> (last visited Oct. 24, 2020).

33. *Id.* (analyzing the opinions in *Kansas v. Marsh*, 548 U.S. 163 (2006)).

34. *Id.*

35. *Id.*

36. *Id.*

37. See generally RYAN C. BLACK, RYAN J. OWENS, PATRICK C. WOHLFARTH & JUSTIN WEDEKING, U.S. SUPREME COURT OPINIONS AND THEIR AUDIENCES (2016).

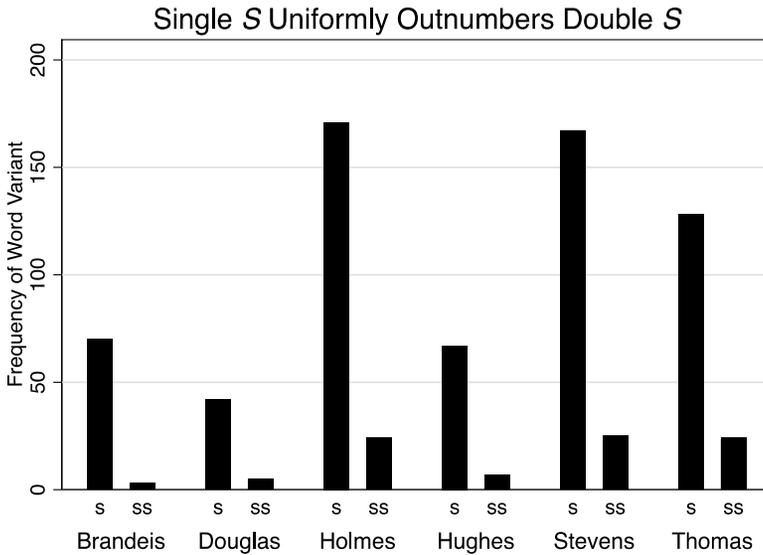
lion words.³⁸ We used some basic regular expressions to identify words ending in either *s'* or *s's*, which we then manually reviewed to remove instances where no conflict in usage existed. For example, we excluded words like *accountants'*, for which there is no doubt about how it should be written (it is already a plural and therefore governed by the *s'* rule). In comparison, we retain word pairings like *appeals'* and *appeals's* where a divide exists within the dataset about exactly which form should be used.

Lest we forget our initial motivation for this “study,” we begin with how Justices refer to one another in written opinions. Of the sixteen Justices with surnames ending in *s*, our data mining reveals only six of them appear in our corpus of written opinions with a cumulative total of just over 730 occurrences.³⁹ The bar plot below illustrates our results. Along the bottom of the plot, we identify each of the six Justices whose names appear in our data. The individual bars for single *s* and double *s* denote the frequency with which that

38. This is the footnote where we typically put our word count in perspective with regards to the lengths of other well-known literary works (e.g., the *Harry Potter* or *Fifty Shades* series). For this project we wondered how long of a chain these words would create if laid end-to-end in a single continuous line. The 53+ million words contain roughly 265.3 million characters (not including the spaces that appear between words). Using the Court’s preferred 12-point Century Schoolbook font means we could fit about seventy-seven characters of text in a 6.5-inch space. Thus, 265.3 million characters would span around 22.4 million inches, 1.86 million feet, or around 350 miles—approximately the distance between Washington, D.C. and Providence, Rhode Island. It is also well within the 1,000-mile distance that some would walk home to fall down at another’s door (see, e.g., the Proclaimers/Proclaimers’s one-hit wonder song that is misleadingly titled).

39. Our preliminary results suggested three additional justices: Benjamin Curtis, David Davis, and William Woods. We will wait while you go and look those up but, it turns out these surnames are also quite common among litigants and parties involved in actual court cases (as opposed to these relatively unknown justices). Thus, we subsequently excluded them from our results. This is not to say our remaining results are wholly uncontaminated by false positives (i.e., other justices’ names could be litigant names, too) but, to the extent that we care about the relative mixture of *s'* versus *s's*, we are not especially concerned. And to be completely honest, when we started having to quickly close computer windows when our spouses looked over our shoulders to see if we were “still working on that stupid apostrophe paper,” we knew it was one of those “perfect is the enemy of done” situations.

variant of their name appeared in the Court’s opinion texts. For example, Justice Holmes is the most name-cited Justice, with a total of 195 references to his name. And, it turns out, fully 171 of those references use the single *s* compared to only twenty-four uses of the double *s*.

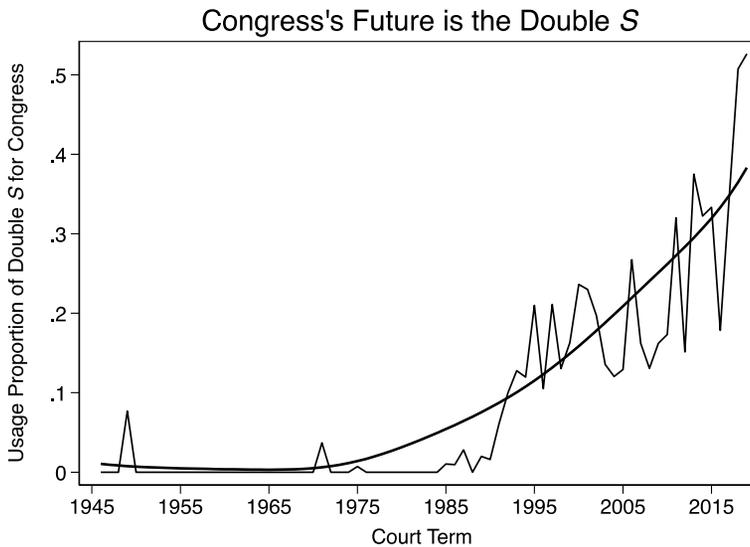


The key takeaway from the figure is that the single *s* trounces the double *s* as a matter of usage in the Court’s opinions. For all six of the Justices, we find overwhelming evidence that the single *s* is preferred. We were a bit surprised to see this given the cacophony of advice provided by styles guides. That said, we do observe some modest variation in the extent to which Justices prefer the single *s*. To wit, the relative percentage of Brandeis’ versus Brandeis’s is 96% to 4%, but the analogous split for Thomas’ versus Thomas’s is only 84% to 16%.

Though we began this project with the intention of reporting only on variation in treatment of Justices’ names, the results from our opinion search revealed a host of other *s*-ending nouns that also receive differen-

tial treatment. All told, we identified 213 words that appeared in our corpus approximately 28,500 times in either the single *s* or double *s* forms. This total includes the Justices' names, but these data points account for a paltry 2.6% of the total words of interest.

In contrast to the infrequent use of Justices' names, the undisputed ruler of possessive frequency use is Congress'/Congress's, which appears just over 8,000 times in our data (i.e., more than ten times more often than an *s*-ending Justice's name).⁴⁰ But wait; the story is even more nuanced than the raw count. Although it is true that, much like the Justice names result, the single *s* possessive of Congress is much more prevalent than the double *s* version (88% versus 12%), there is good evidence that the double *s* is displacing the single *s* on the current Supreme Court for this important proper noun. But don't take our word for it; feast your eyes upon the next figure.



40. This was no surprise to us given that the sheer volume of statutory construction cases the Court decides. See HAROLD J. SPAETH ET AL., 2020 SUPREME COURT DATABASE (2020), <http://supremecourtdatabase.org> (Release 1).

The bottom of the figure identifies the Court term, and the left side depicts the proportion of the times the double *s* possessive (Congress’s) appears in each term as opposed to its counterpart, Congress’. The jagged line depicts the per-term usage, while the smooth line is the moving average of the overall trend in the data.

The first use of Congress’s (in our dataset, at least)⁴¹ occurs in Justice Hugo Black’s dissent in *U.S. v. Bryan* (1950).⁴² As the plot suggests, it was more than twenty terms before Congress’s again appears in our corpus.⁴³ Starting in the late 1980s, however, there is considerable growth in Justices’ use of the double *s* and a corresponding decline of the single *s*. Indeed, double *s* was actually the preferred approach for opinions written during the Court’s 2018 and 2019 terms, appearing in 51% and 53% of Congress possessives, respectively. This is even more remarkable given that, as recently as the 2016 term, the single *s* dominated with 82% of the uses for Congress’.

Finally, we take a step back to consider Justice-level variation in overall usage of single *s* versus double *s* possessives. A total of 39 Justices appears in our data. The number of *s*-ending possessives they use ranges from as few as eighteen (Justice Murphy) to almost 3,000 (Justice Stevens). The median value is just below

41. You’re probably wondering, “But what about the first usage ever?” We leave this as a character-building exercise (teach a reader to fish . . .). Let us know what you find out.

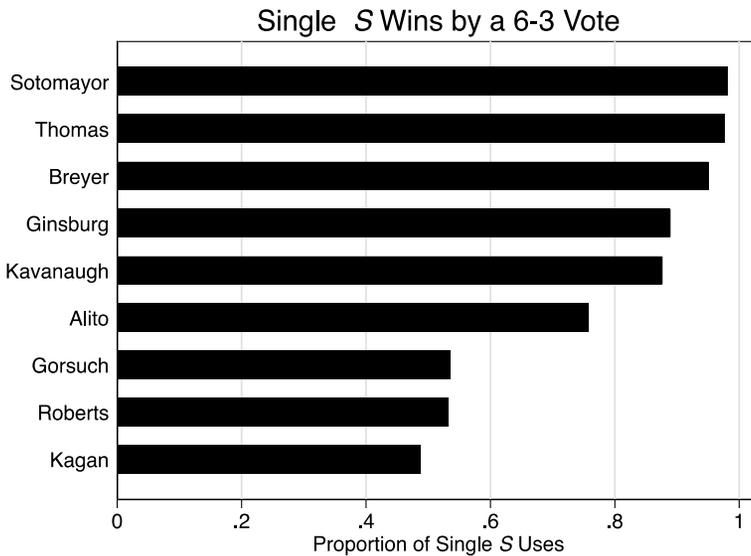
42. 339 U.S. 323, 346 (1950). As with all the cases in our sample, we used the opinion downloaded from either Lexis (1946–2016 terms) or Westlaw (2017–2019 terms). There appears to be some variation in how other sources report the Court’s opinions. For example, if readers check our claim against, say, Justia’s version of the case (<https://supreme.justia.com/cases/federal/us/339/323/>), they will not find the double *s* usage. Ultimately, the U.S. Reports is the official version of the opinion and thus we are comfortable with our coding choice.

43. Here it was Justice Thurgood Marshall writing in dissent in *Jefferson v. Hackney*, 406 U.S. 535, 573 (1972). This occurrence is a bit misleading, however, because Justice Marshall is actually quoting a lower court that used the double *s*. It appears Justice Marshall was, through and through, a single *s* man. Not only does he deploy single *s* usage in this very same opinion, but he only used the double *s* for Congress a total of five other times across his more than 550 results in our data.

500, and individuals such as Chief Justice Burger (537) and Justices Stewart (496), Harlan (492), and Kagan (466) all hover around it.

These aggregated data, however, are just the possessive equivalent of at-bats in baseball. The true statistic of interest (like on base percentage or slugging percentage) is the mixture of single *s* versus double *s* usage by Justices. Fully 30 of the 39 Justices in our data (or about 77%) demonstrate a very strong preference for the single *s* possessive, which we define as using it at least 95% of the time in their written opinions. An impressive 44% of our Justices go even further, with a single *s* usage rate that is 99% or higher.

Although the Court is clearly moving toward the double *s* possessive when referring to Congress, we wondered whether this is the case for all possessives. To make this determination we conclude with a final visualization focused on the more general possessive preferences among the Justices sitting on the Court at the end of its October 2019 Term. The bottom of the figure shows the proportion of time each of the nine Justices used the single *s* possessive. The title of the figure telegraphs the ultimate punchline: the Court showed a strong, and nearly unanimous, preference for the single *s*.



Three Justices—Sotomayor, Thomas, and Breyer—anchored the Court’s single *s* wing of the bench, with usage rates above 90%.⁴⁴ Nipping at their heels were Justices Ginsburg and Kavanaugh, whose usage was in the upper-80s, while Justice Alito’s single *s* usage rate was 76%. From there, however, we observe a rather sharp drop-off, with Justice Gorsuch at the 54% mark and Chief Justice Roberts at 53%. Finally, Justice Kagan was the only sitting Justice to show a preference—albeit a slight one—for the double *s* over the single *s*. Of the 466 occurrences in her opinions, she used the single *s* 48.7% of the time and double *s* 51.3% of the time. This puts Kagan in fairly rarified territory, as she shared a preference for the double *s* with only one other Justice in our data: David Souter. He used the double *s* nearly

44. Because our analysis ends with the 2019 term, it does not include the newest Associate Justice, Amy Coney Barrett. However, we conducted the same search we used for our sample of cases on the seven opinions she wrote during the 2020 October Term. The results, importantly, comport with the 8–1 majority in our final figure. Specifically, Justice Barrett has a very strong preference for the single *s*. Of the nineteen instances where she had the opportunity to use a single *s* or double *s*, she chose the single *s* 100% of the time (data available from the authors on request). The Court, it seems, will continue its single *s* ways despite *The Redbook’s* admonition not to do so.

two-thirds of the time, in roughly 1,000 usages, during his tenure on the bench.⁴⁵

III. CONCLUSION

If possession really is nine-tenths of the law, then it may be intuitive that the nation's highest court has some say in how to represent possessive forms of nouns. After all, the Justices seem to possess a high regard for the single *s* approach to possessive nouns that end in the letter *s*. Of course, they are not grammaticians, but they do, as we note above, set precedent. Thus, perhaps style guides that endeavor to control how authors (academic, legal, or otherwise) write, should take a lesson from the Justices as our results provide strong support for our preferred approach—the single *s*.

45. We can never keep straight who replaced whom among President Obama's appointees to the Court. Alas, it would have been too perfect for our narrative for Justice Kagan to have filled Justice Souter's seat, but she filled Justice Stevens' (or, as she would likely write it, Stevens's) seat. Instead, it was Justice Sotomayor, the leading single *s* voice on the current Court, who succeeded Souter. This may bode well for the future of the single *s* majority—at least for nouns that are not "Congress."