

# ENDING THE PAPER CHASE AT THE U.S. SUPREME COURT

WILLIAM J. ACEVES\*

*This Article offers the first systematic analysis of the administrative impact and practical consequences of the U.S. Supreme Court's filing requirements. The lack of meaningful research on this subject reveals how Justices, clerks, and lawyers have become inured to these requirements and their attendant costs.*

*Every year, the Supreme Court receives approximately five thousand petitions for certiorari. With some exceptions, the Court compels litigants to file multiple paper copies of their submissions. When combined, these submissions exceed two hundred thousand documents, which include over five million separate pieces of paper. If stacked, these documents would reach beyond the height of the tallest building in the United States. If weighed, these filings would require over thirty-three tons of paper to produce. Significantly, these documents are filed with the Court every year before it has even granted the petition for certiorari, which occurs in less than 2 percent of cases.*

*Because litigants must submit electronic copies of their filings through the Court's online filing system, requiring them to submit paper copies is unnecessary and wasteful. For these*

---

\*William J. Aceves is the Chief Justice Roger Traynor Professor of Law at California Western School of Law. The Public Information Office of the U.S. Supreme Court provided details about the Court's filing requirements. The clerks of the Fourth Circuit, Sixth Circuit, Ninth Circuit, and D.C. Circuit also provided helpful information regarding their internal practices. I am grateful for comments offered by several attorneys who have practiced before the U.S. Supreme Court. My colleagues Pooja Dadhania, Nancy Marcus, Joshua Jones, and Sean Scott provided helpful feedback on early drafts. The library staff at California Western helped with several aspects of this project. The library staff at several U.S. Supreme Court repository libraries offered valuable feedback. I am grateful to Art Lien for granting permission to include his artwork in this Article. Eden Arthur, Sofia Carrasco, Kaylina Castellanos, Malia Chowdhury, Amanda Comings, Ariana D'Agostino, Alexis Garcia, Michelle Guitard, Heather Hunter, Madison McCormick, Nicolette Saddic, and Livia Stahle provided excellent research assistance.

*reasons, the Court should revise the Rules of the Supreme Court (“the Court’s Rules”) to eliminate the requirement of paper submissions, particularly at the certiorari stage.*

*Litigation costs are already significant at the Supreme Court. The Court’s Rules reinforce the inaccessibility of justice to economically marginalized litigants by forcing them to spend hundreds, if not thousands, of dollars on processing, printing, filing, and serving unneeded documents. Environmental harm should not be added to the costs of seeking judicial review. By quantifying the effects of the Court’s filing requirements, their administrative impact and practical consequences can be measured, highlighted, and hopefully changed.*

INTRODUCTION .....	1084
I. THE PETITION PROCESS AT THE U.S. SUPREME COURT.....	1089
II. PETITION STATISTICS.....	1094
III. MEASURING THE CONSEQUENCES OF THE SUPREME COURT’S SUBMISSION REQUIREMENTS .....	1097
A. Calculating the Costs of the Paper Chase .....	1097
B. Ending the Paper Chase .....	1101
IV. WHY THE SUPREME COURT REQUIRES PAPER SUBMISSIONS, WHY IT MATTERS, AND WHY IT SHOULD END.....	1105
CONCLUSION .....	1113
APPENDIX .....	1115

## INTRODUCTION

Every year, the U.S. Supreme Court releases a statistical report that summarizes work from the Court’s preceding term.<sup>1</sup> The report offers several data points, including the number of cases docketed during the term, the number of petitions for

---

1. See, e.g., CLERK OF THE SUPREME COURT, JOURNAL OF THE SUPREME COURT OF THE UNITED STATES: OCTOBER TERM 2021 (2022). The Harvard Law Review also publishes an annual review of Supreme Court statistics. See *The Statistics*, 137 HARV. L. REV. 490, 498 (2023); *The Statistics*, 136 HARV. L. REV. 500, 508 (2022); *The Statistics*, 135 HARV. L. REV. 491, 505 (2021); *The Supreme Court, 1948 Term*, 63 HARV. L. REV. 119, 119 (1949).

certiorari granted, the number of cases argued, and the number of opinions written.<sup>2</sup> Each statistic tells a unique story about the Court. There are, however, essential stories that exist within the data and yet remain untold.<sup>3</sup> This Article presents one of those stories.

With some exceptions, the U.S. Supreme Court requires litigants to file multiple paper copies of every submission.<sup>4</sup> The Rules of the Supreme Court (“the Court’s Rules”) require petitioners to submit forty paper copies of their petitions for writ of certiorari as well as an appendix that includes the relevant lower court opinions and orders.<sup>5</sup> If the respondents choose to respond, they must submit forty copies of their opposition briefs.<sup>6</sup> Reply briefs filed by the petitioners also require forty copies.<sup>7</sup> Significantly, all these documents must be filed with the Court before it has even granted the petition for writ of certiorari.

The Supreme Court receives approximately five thousand petitions for certiorari every year.<sup>8</sup> When combined with opposition and reply briefs, these submissions exceed two hundred thousand documents every year.<sup>9</sup> These documents use over five million separate pieces of paper.<sup>10</sup> Because additional documents are often submitted by litigants, these numbers likely represent a significant undercount. Moreover, these numbers do not include filings once certiorari is granted. They also do not include countless other filings outside the Court’s merits docket.

Because litigants must submit electronic copies of their filings through the Court’s online filing system, requiring multiple paper submissions is redundant, unnecessary, and

---

2. CLERK OF THE SUPREME COURT, *supra* note 1, at II.

3. Determining the accuracy of Supreme Court statistics is itself a story. See Jon O. Newman, *The Mistake in Supreme Court Statistics and How to Correct It*, 26 GREEN BAG 2d 9 (2022).

4. See generally SUP. CT. R. 29(1) (“Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk in paper form.”). See also SUPREME COURT PRACTICE 1–73 (Stephen M. Shapiro et al. eds., 11th ed. 2019).

5. SUP. CT. R. 12(1), 14(1)(i).

6. *Id.* at R. 15(3).

7. *Id.* at R. 15(6).

8. See *infra* Part II.

9. See *infra* Section III.A.

10. *Id.*

wasteful.<sup>11</sup> For these reasons, the Supreme Court should eliminate its requirement of paper submissions, particularly at the certiorari stage.<sup>12</sup> Part I of this Article describes the petition process at the Supreme Court, which requires most parties to submit multiple copies of their filings in a unique booklet format. Part II then reviews statistics on annual submissions to the Court's merits docket. These statistics highlight the sheer volume of material submitted to the Court every year. Part III examines the practical consequences of the Court's Rules, which require parties to produce and file millions of pieces of paper every year, even though the Court grants less than 2 percent of petitions.<sup>13</sup> This number is even more troubling in light of the Court's disclosure that only 3 percent of petitions are subject to joint discussion among the Justices.<sup>14</sup>

Finally, Part IV considers why the Supreme Court may prefer multiple paper submissions and finds that these reasons do not justify such onerous requirements. The Court's Rules impose significant and unnecessary costs to litigants and to the

---

11. SUP. CT. R. 29(7). *See generally* GUIDELINES FOR THE SUBMISSION OF DOCUMENTS TO THE SUPREME COURT'S ELECTRONIC FILING SYSTEM (2003) [hereinafter ELECTRONIC FILING GUIDELINES], <https://www.supremecourt.gov/filingandrules/ElectronicFilingGuidelines.pdf> [<https://perma.cc/M74U-64VL>]. The Court began requiring litigants to submit electronic copies of their filings along with paper copies in 2007. Bennett Boskey & Eugene Gressman, *Supreme Court 2007 Rules Changes Squarely Confront the Electronic Age*, 243 F.R.D. 484 (2006). The Court's internal electronic filing system was implemented on November 13, 2017. SUPREME COURT PRACTICE, *supra* note 4.

12. Commentators have identified the wasteful and unnecessary nature of these filing requirements. *See, e.g.*, Josh Blackman, *SCOTUS Drives a Stake Through the Heart of Rule 33.1*, VOLOKH (Apr. 15, 2020, 12:07 PM), <https://reason.com/volokh/2020/04/15/scotus-drives-a-stake-through-the-heart-of-rule-33-1> [<https://perma.cc/L5C7-35FP>] ("The Supreme Court imposes a byzantine policy for submitting printed briefs."); Aaron Greenspan, *Petitioning Rube Goldberg's Supreme Court*, AARON GREENSPAN: WRITING (Feb. 17, 2013), <http://www.aarongreenspan.com/writing/20130217/petitioning-rube-goldbergs-supreme-court> [<https://perma.cc/C5KN-WUVK>] ("Simply put, the Supreme Court uses its desktop publishing and printing guidelines as a weapon against the American public.").

13. CLERK OF THE SUPREME COURT, *supra* note 1, at II.

14. U.S. Supreme Court Statement of the Court Regarding the Code of Conduct 11 (2023) [hereinafter 2023 Code of Conduct Commentary] ("Roughly 97 percent of . . . [certiorari petitions] may be and are denied at a preliminary stage, without joint discussion among the Justices, as lacking any reasonable prospect of certiorari review."). For a discussion of the Court's practice for discussing certiorari petitions, see H.W. PERRY, JR., *DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT* (1991); Gregory A. Caldeira & John R. Wright, *The Discuss List: Agenda Building in the Supreme Court*, 24 L. & SOC'Y REV. 807 (1990).

environment. Accordingly, this Article recommends that the Court revise its rules to eliminate the requirement of paper submissions.<sup>15</sup> If implemented at the certiorari stage, this alone would reduce the annual number of paper submissions the Court receives by approximately two hundred thousand documents. This would save over five million separate pieces of paper each year. These revisions would mitigate the consequences of the Court's Rules, which force litigants into a costly, lengthy, and unnecessary paper chase.<sup>16</sup> Environmental harm—from the destruction of trees to the disposal of waste material in landfills—should not be added to the costs of seeking judicial review.<sup>17</sup> Sustainability is both a reasonable concern and an attainable goal.<sup>18</sup>

Access to justice problems have long plagued the U.S. legal system.<sup>19</sup> Reflecting this problem, the Court's Rules reinforce the inaccessibility of justice to economically marginalized groups

---

15. The Supreme Court routinely revises its rules in light of changing practice requirements or technological developments. *See, e.g.*, CLERK OF THE SUPREME COURT, REVISIONS TO RULES OF THE SUPREME COURT OF THE UNITED STATES (adopted Dec. 5, 2022, effective Jan. 1, 2023), <https://www.supremecourt.gov/filingandrules/SummaryOfRuleChanges2023.pdf> [<https://perma.cc/JX7A-2J6D>].

16. The term “paper chase” alludes to the seminal book and movie about the law school experience. JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971); *THE PAPER CHASE* (Twentieth Century Fox Film Corp. 1973). *See generally* Jan Vetter, *Zen in the Art of Law Study*, 61 CALIF. L. REV. 249 (1973).

17. Ruth Anne Robbins, *Conserving the Canvas: Reducing the Environmental Footprint of Legal Briefs by Reimagining Court Rules and Document Design Strategies*, 7 J. ASS'N LEGAL WRITING DIRS. 193, 196 (2010) (addressing the environmental consequences of requiring paper submissions in federal courts); Timothy M. Mulvaney, *Pining for Sustainability*, 44 U. RICH. L. REV. 1115, 1117 (2010) (addressing the environmental consequences of the law review submission and publication process); *see also* *Identifying Greener Paper*, U.S. EPA (May 28, 2024), <https://www.epa.gov/greenerproducts/identifying-greener-paper> [<https://perma.cc/5K6V-8UR5>] (describing the environmental consequences of paper use in the United States, including energy consumption and creation of solid waste); Niti Parthasarathy, *Sustainability-Driven Innovation in the Pulp and Paper Industry*, 21 WAKE FOREST J. BUS. & INTELL. PROP. L. 213 (2022) (discussing the impact of paper production on the environment).

18. Lindsay Griffiths, *Sustainability in Professional Legal Organizations*, JDSUPRA (July 17, 2024), <https://www.jdsupra.com/legalnews/sustainability-in-professional-legal-4003341> [<https://perma.cc/98PH-T2YN>]; M'Lynn Phillips, *Sustainable Practices: How Law Firms Can Reduce Their Carbon Footprint*, NAT'L L. REV. (Apr. 23, 2024), <https://natlawreview.com/article/sustainable-practices-how-law-firms-can-reduce-their-carbon-footprint> [<https://perma.cc/3ZV8-J3YP>].

19. *See generally* Martha Minow, *Access to Justice*, 2 AM. J. L. & EQUALITY 293 (2022); Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785 (2001). *See also* Brooke D. Coleman, *One Percent Procedure*, 91 WASH. L. REV. 1005 (2016); Michele Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 UTAH L. REV. 389 (2014).

by forcing them to spend hundreds, if not thousands, of dollars on processing, printing, filing, and serving unneeded documents. Even litigants who claim indigency and receive in forma pauperis status are still required to file multiple copies of their filings with the Court in most cases.<sup>20</sup> The costs of generating these documents may seem insignificant and readily covered by most litigants. However, they can impose a real burden to litigants with limited resources.<sup>21</sup> The lack of meaningful research on this subject reveals how Justices, lawyers, and clerks have become inured to these requirements and their attendant costs.<sup>22</sup> The reason for this ignorance is both structural and systemic. The legal system is simply not configured to consider the costs of litigation, particularly for low-income litigants, in the administration of justice. There is also an “instinct in the academy and the judiciary to equate federal courts with the big case and parties with deep pockets.”<sup>23</sup> As a result, the challenges faced by litigants with limited resources are often ignored by courts and commentators.

On December 31, 2023, Chief Justice Roberts issued his 2023 year-end report on the federal judiciary.<sup>24</sup> The report described how technology has changed the work of the federal courts, including the Supreme Court.<sup>25</sup> From the first typewriter to desktop computers, the arrival of new technology transformed

---

20. Only litigants who are incarcerated and unrepresented are not required to file multiple copies of their documents with the Court. SCOTT S. HARRIS, MEMORANDUM TO THOSE INTENDING TO PREPARE A PETITION FOR A WRIT OF CERTIORARI IN BOOKLET FORMAT AND PAY THE \$300 DOCKET FEE (2023), <https://www.supremecourt.gov/casehand/guidetofilingpaidcases2023.pdf> [<https://perma.cc/3LZT-CN2R>].

21. Cf. Victor Marrero, *The Cost of Rules, the Rule of Costs*, 37 CARDOZO L. REV. 1599 (2016) (describing how the Federal Rules of Civil Procedure impose unnecessary costs on litigants).

22. Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L. J. 1478, 1530 (2019) (“[I]nsufficient attention to the experiences and interests of poor litigants has led to an underspecified accounting of access to justice in the federal system.”); Wendy L. Watson, *The U.S. Supreme Court’s In Forma Pauperis Docket: A Descriptive Analysis*, 27 JUST. SYS. J. 47, 47 (2006) (“[In forma pauperis] petitions require further consideration in the literature on the Supreme Court’s agenda setting.”); see also Bertrall L. Ross II & Su Li, *Measuring Political Power: Suspect Class Determinations and the Poor*, 104 CALIF. L. REV. 323 (2016); Thomas O. Main, *Procedural Constants: How Delay Aversion Shapes Reform*, 15 NEV. L.J. 1597 (2015).

23. Hammond, *supra* note 22, at 1527.

24. Chief Justice John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary* (2023), <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf> [<https://perma.cc/PKE2-X5QU>].

25. *Id.* at 1.

the administration of justice. And “[b]y the turn of the [twenty-first] century,” wrote Chief Justice Roberts, “the paper world familiar to lawyers for centuries had largely given way to today’s electronic regime.”<sup>26</sup> Because electronic filings have simplified the practice of litigation, Chief Justice Roberts stated that the use of paper in federal filings has been rendered “largely optional.”<sup>27</sup> Ironically, this statement does not apply at the Supreme Court. The Court’s Rules do not render paper optional to litigants. At the Court, it remains a needless and burdensome requirement.<sup>28</sup>

## I. THE PETITION PROCESS AT THE U.S. SUPREME COURT

The Rules of the Supreme Court outline the procedures for submitting a petition for certiorari.<sup>29</sup> The process begins with the filing of a petition for a writ of certiorari.<sup>30</sup> Pursuant to Rule 12, the petitioner must file forty copies of their petition.<sup>31</sup> The Court’s Rules impose a word count limit on petitions, thereby limiting their overall length.<sup>32</sup> These requirements apply to all paid cases, which is how the Supreme Court

---

26. *Id.* at 4.

27. *Id.* at 5.

28. If the recommendations made by this Article are adopted, they will affect the publishers that produce the hard copy briefs as well as their employees. This is a regrettable yet unavoidable consequence. Throughout history, the use of new technology has promoted economic efficiency, cost savings, and environmental well-being. However, it has also resulted in business closures and job loss. *See generally* JESSIE HF HAMMERLING, UC BERKELEY LAB. CTR., TECHNOLOGICAL CHANGE IN FIVE INDUSTRIES: THREATS TO JOBS, WAGES, AND WORKING CONDITIONS (2022), <https://laborcenter.berkeley.edu/wp-content/uploads/2022/09/Technological-change-in-five-industries-Threats-to-jobs-wages-and-working-conditions.pdf> [<https://perma.cc/UN8J-GNFQ>]; Cynthia Estlund, *Three Big Ideas for a Future of Less Work and a Three-Dimensional Alternative*, 82 L. & CONTEMP. PROBS. 1 (2019); David Rotman, *How Technology Is Destroying Jobs*, MIT TECH. REV. (June 12, 2013), <https://www.technologyreview.com/2013/06/12/178008/how-technology-is-destroying-jobs> [<https://perma.cc/X9E8-4P4G>]. Perhaps recognizing this inevitable future, several publishers specializing in Supreme Court printing have ceased operations and merged. *See* Press Release, Counsel Press Acquires Cockle Legal Briefs (Aug. 7, 2024), [https://www.counselpress.com/page\\_news\\_single.cfm?nid=331](https://www.counselpress.com/page_news_single.cfm?nid=331) [<https://perma.cc/LZH3-BRRU>]; Press Release, Counsel Press Acquires Lantagne Legal Printing (Sept. 19, 2024), [https://www.counselpress.com/page\\_news\\_single.cfm?nid=333](https://www.counselpress.com/page_news_single.cfm?nid=333) [<https://perma.cc/W6ZK-LERS>].

29. SUP. CT. R. 12.

30. HARRIS, *supra* note 20.

31. SUP. CT. R. 12(1).

32. *Id.* at R. 33(1)(g). Absent leave of the Court, petitions for certiorari are limited to nine thousand words.

designates the filings of petitioners who are required to pay filing fees.<sup>33</sup>

Individuals who claim indigency and receive in forma pauperis status are subject to different filing requirements.<sup>34</sup> If a petitioner is proceeding in forma pauperis, they are only required to file an original and ten copies of the petition for certiorari.<sup>35</sup> However, they are also required to file an original and ten copies of a motion for leave to proceed in forma pauperis as well as the supporting affidavit.<sup>36</sup> A less onerous requirement applies to inmates who are confined in an institution. They are only required to file an original petition and motion if they are not represented by counsel and are proceeding in forma pauperis.<sup>37</sup> Pursuant to Rule 39 in forma pauperis submissions are also subject to different formatting requirements.<sup>38</sup>

The Court's Rules require the petitioner to submit an appendix along with the petition for certiorari.<sup>39</sup> The appendix must include any relevant "opinions, orders, findings of fact, and conclusions of law . . . entered in conjunction with the judgment sought to be reviewed."<sup>40</sup> The appendix should also include "any other material the petitioner believes [is] essential to understand the petition."<sup>41</sup> Because the appendix is often lengthy, the Court's Rules allow it to be submitted as a separate document.<sup>42</sup>

Once a petition for certiorari is filed, two other documents may be submitted to the Court. The respondent may file an opposition brief, although they are not required to do so.<sup>43</sup> If the respondent chooses to file an opposition brief, they must submit forty copies.<sup>44</sup> Finally, a petitioner may file a reply brief if the respondent files an opposition brief, and this would also require

---

33. See LEE EPSTEIN ET AL., THE SUPREME COURT COMPENDIUM 73 (7th ed. 2021).

34. See GUIDE FOR PROSPECTIVE INDIGENT PETITIONERS FOR WRITS OF CERTIORARI 2 (2023), <https://www.supremecourt.gov/casehand/guideforIFPcases2023.pdf> [<https://perma.cc/JTX5-4LJT>].

35. SUP. CT. R. 12(2).

36. *Id.*

37. *Id.*

38. *Id.* at R. 39(3).

39. *Id.* at R. 14(1)(i).

40. *Id.* at R. 14(1)(i)(i).

41. *Id.* at R. 14(1)(i)(vi).

42. *Id.* at R. 14(1)(i).

43. *Id.* at R. 15(1).

44. *Id.* at R. 15(3).



forty copies.<sup>45</sup> In most paid cases, respondents file opposition briefs, and petitioners file reply briefs.

Pursuant to Rule 33(1), the Supreme Court requires documents to be submitted in a specific format. With few exceptions, every document filed with the Court must be presented in a 6½ by 9 ¼ -inch booklet format using a standard typesetting process.<sup>46</sup> The document must be printed “on paper that is opaque, unglazed, and not less than 60 pounds in weight.”<sup>47</sup> Text must appear on both sides of each page.<sup>48</sup> The front and back covers must be printed on sixty-five-pound paper.<sup>49</sup> Pursuant to Rule 33(g), every document filed with the Court is uniquely color coded.<sup>50</sup> Litigants proceeding in forma pauperis may submit their documents on standard 8½ by 11-inch paper and are not required to submit them in booklet format.<sup>51</sup>

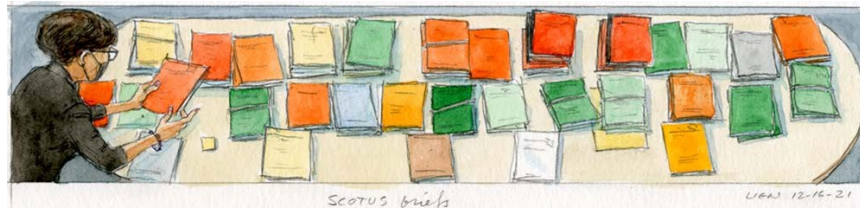


Figure 1. Sketch of U.S. Supreme Court Briefs<sup>52</sup>

In addition to the number of copies and their required format, the Court’s Rules regulate the length of documents through word count restrictions.<sup>53</sup> Absent leave of the Court, petitions for writ of certiorari and opposition briefs are limited

45. *Id.* at R. 15(6).

46. *Id.* at R. 33(1)(a).

47. *Id.* at R. 33(1)(c). Sixty-pound paper is slightly heavier and thicker than standard copy paper. *See infra* notes 119–120.

48. SUP. CT. R. 33(1)(b) (“The text of the document must appear on both sides of the page.”).

49. *Id.* at R. 33(1)(e).

50. *Id.* at R. 33(1)(g).

51. *Id.* at R. 33(1)(a), 39(3).

52. Art Lien, *SCOTUS Briefs*, in *December SCOTUS Sketches*, COURTARTIST.COM (Dec. 16, 2021), <https://courtartist.com/2021/12> [https://perma.cc/D5YC-ZU39] (with permission).

53. U.S. SUPREME COURT—BOOKLET-FORMAT SPECIFICATION CHART (2023), [https://www.supremecourt.gov/casehand/USSC-Booklet-Format-Specification\\_Chart\\_2023.pdf](https://www.supremecourt.gov/casehand/USSC-Booklet-Format-Specification_Chart_2023.pdf) [https://perma.cc/ZUL2-XKVH].

to nine thousand words.<sup>54</sup> A reply brief is limited to three thousand words.<sup>55</sup> However, the word count limits only apply to the substantive sections of the briefs, such as the argument and corresponding footnotes.<sup>56</sup> The word count limits do not apply to the cover page, table of contents, table of authorities, and the other non-substantive sections of the briefs.<sup>57</sup> The appendix that accompanies the petition for certiorari is not subject to word count limits.<sup>58</sup>

Finally, there are associated costs with Supreme Court submissions. The Court charges \$300 for docketing a case on a petition for writ of certiorari.<sup>59</sup> Individuals who apply for and receive in forma pauperis status are excused from paying the filing fee.<sup>60</sup> It costs several hundred dollars to produce the booklet-format documents required by the Supreme Court, although the total cost depends on the length of the document and the number of copies.<sup>61</sup> When completed, the documents must then be delivered to the Court.<sup>62</sup> In total, filing a petition for writ of certiorari, including all related documents, can cost over \$1,000.<sup>63</sup>

---

54. SUP. CT. R. 33(1)(g)(i), (ii). A typical petition for certiorari or a brief in opposition can reach forty pages. *See, e.g.*, *Petition for Writ of Certiorari*, N.Y. Rifle & Pistol Ass'n, Inc., v. Bruen, 597 U.S. 1 (2022) (No. 20-843); *Brief in Opposition*, N.Y. Rifle & Pistol Ass'n, Inc., v. Bruen, 597 U.S. 1 (2022) (No. 20-843).

55. SUP. CT. R. 33(1)(g)(iii).

56. *Id.* at R. 33(1)(d).

57. *Id.*

58. *Id.*

59. *Id.* at R. 38(a).

60. In addition, there are three categories of litigants who are not required to pay docketing fees, even in paid cases. *Id.* at R. 40(1) ("A veteran suing under any provision of law exempting veterans from the payment of fees or court costs, may proceed without prepayment of fees or costs or furnishing security therefor."); *Id.* at R. 40(2) ("A seaman suing under 28 U.S.C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor."); *Id.* at R. 40(3) ("An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U.S.C. § 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency.").

61. The cost of printing and binding forty copies of a standard document in booklet format depends on its length and can be approximately \$400 to \$1,500. *FAQs General Questions and Important Information About CP*, COUNSEL PRESS, [https://www.counselpress.com/page\\_faqs.cfm?category=2](https://www.counselpress.com/page_faqs.cfm?category=2) [https://perma.cc/7A6C-MLBL]. The cost of petitions vary dramatically and depend primarily upon the length of the appendix.

62. HARRIS, *supra* note 20, at 6–7.

63. *See, e.g.*, *Order on Recovery of Costs*, Students for Fair Admissions, Inc., v. Univ. of N. Carolina, No. 21-707 (June 29, 2023), [https://www.supremecourt.gov/DocketPDF/21/21-707/274256/20230731100920249\\_EFiling%2021-](https://www.supremecourt.gov/DocketPDF/21/21-707/274256/20230731100920249_EFiling%2021-)

If the Court grants the petition for certiorari, the parties must submit additional documents. Both the petitioner and the respondent must file a brief on the merits.<sup>64</sup> If the respondent files an opposition brief, the petitioner may file a reply brief. In addition, the parties must file a joint appendix.<sup>65</sup> Forty copies of each of these documents must be filed with the Court.<sup>66</sup> Once the Court grants certiorari, the word count limits are increased.<sup>67</sup>

Upon receipt at the Supreme Court, the Clerk's Office processes and files the case documents.<sup>68</sup> Pursuant to Rule 12(3), a case is placed on the Court's docket when the petition for certiorari is properly submitted.<sup>69</sup> A docketed case is then subject to initial consideration by the Justices. Relevant documents will be forwarded to each Justice's chambers.<sup>70</sup> Cases will be placed on a conference list, although most cases will not be discussed by the full Court.<sup>71</sup> Following the conference meeting, the Court will announce whether it has decided to grant or reject certiorari.

---

707%20Rev%20COSTS%20CA4%207.31.pdf [https://perma.cc/6FPF-25U3] (identifying the printing costs for the Joint Appendix were \$42,326.70); Statement of Costs: Joint Appendix, *W. Virginia v. E.P.A.*, Nos. 20-1530, 20-1531, 20-1778, 20-1790 (Dec. 13, 2021), [https://www.supremecourt.gov/DocketPDF/20/20-1530/204909/20211213163923431\\_20-1530%20-%20Statement%20of%20Costs.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1530/204909/20211213163923431_20-1530%20-%20Statement%20of%20Costs.pdf) [https://perma.cc/LC7V-WK2Y] (calculating the printing costs for the Joint Appendix at \$19,835.45).

64. SUP. CT. R. 24(1), (2).

65. *Id.* at R. 26.

66. *Id.* at R. 25(1), (2).

67. Compare *id.* at R. 33(1)(g)(i), which provides a nine thousand word count limit for petitions for certiorari, with *id.* at R. 33(1)(g)(v) which provides a thirteen thousand word count limit for merits briefs.

68. E-mail from U.S. Sup. Ct., Pub. Info. Off., to author (Apr. 5, 2023) (on file with author); see also SUPREME COURT PRACTICE, *supra* note 4, at 1–57.

69. SUP. CT. R. 12(3).

70. *Id.* at R. 15(5). “The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the Court for its consideration no less than 14 days after the brief in opposition is filed, unless the petitioner expressly waives the 14-day waiting period.” *Id.*

71. SCOTT S. HARRIS, Memorandum Concerning the Deadlines for Cert Stage Pleadings and the Scheduling of Cases for Conference 3 (Feb. 2022), <https://www.supremecourt.gov/casehand/guidance-on-scheduling-feb-2020.pdf> [https://perma.cc/M6MJ-CNTU]. See generally Ryan C. Black & Timothy R. Johnson, *Behind the Velvet Curtain: Understanding Supreme Court Conference Discussions Through Justices' Personal Conference Notes*, 19 J. APP. PRAC. & PROCESS 223 (2018); Caldeira & Wright, *supra* note 14.

When a case has been completed (either because the petition for certiorari was denied or the Court's review has concluded), the Court processes the case documents. Some documents will be placed in the Court's library.<sup>72</sup> In addition, one copy of every filing is forwarded to the National Archives.<sup>73</sup> The Clerk's Office also forwards some case documents to repository libraries.<sup>74</sup> However, these libraries do not receive a copy of every document submitted to the Supreme Court.<sup>75</sup> In fact, their holdings are often incomplete.<sup>76</sup>

## II. PETITION STATISTICS

To manage submissions, the Supreme Court uses a case numbering system that identifies a case based on the term when it is docketed. The Clerk's Office switches its case numbering system to a new year prefix on the day the final order list is released following the issuance of the last opinion of the term.<sup>77</sup> In most years, this occurs at the end of June.<sup>78</sup>

The following three tables summarize the number of merits cases considered by the Supreme Court in three recent terms: 2019–2020, 2020–2021, and 2021–2022.<sup>79</sup> Petitions are divided

---

72. E-mail from Sup. Ct., Pub. Info. Off., *supra* note 68.

73. *Id.*

74. There are nine recognized depository libraries for U.S. Supreme Court briefs: Connecticut State Library, Cornell Law Library, Indiana University Law Library, Library of Congress, University of Chicago Law Library, University of Louisville Law Library, University of Minnesota Law Library, University of Washington Law Library, and the Yale Law School Law Library. *See Where to Find Briefs*, SUPREME COURT OF THE U.S., <https://www.supremecourt.gov/meritsbriefs/briefsource.aspx> [<https://perma.cc/9J85-B894>].

75. E-mail from Alena Wolotira, Head of Pub. Servs., Marian Gould Gallagher L. Libr., Univ. of Wash. School of Law, to author (July 3, 2023) (on file with author).

76. Even the Library of Congress maintains incomplete records of Supreme Court filings. E-mail from Public Services Division, Libr. of Cong., to author (June 27, 2023) (on file with author). It receives only some documents from the paid docket. Its records from the miscellaneous docket are even more limited. From the Court's most recent term, for example, the Library of Congress received less than 1 percent of in forma pauperis case filings. *Id.*

77. E-mail from U.S. Supreme Court, Public Information Office, to author (May 12, 2023) (on file with author).

78. *Id.* The case numbering system does not track the official designation of the Court's term, which is codified by statute. Terms of Court, 28 U.S.C. § 2 ("The Supreme Court shall hold at the seat of government a term of court commencing on the first Monday in October of each year.").

79. These statistics are based upon the official records prepared by the Office of the Supreme Court Clerk. The Harvard Law Review prepares a similar set of statistics every year, although the terminology and numbers vary slightly from the

between paid cases and in forma pauperis cases.<sup>80</sup> These tables do not include cases filed within the Court's original jurisdiction.<sup>81</sup> They do not include special filings outside the merits docket, such as applications for a stay pending appeal or emergency applications for writ of injunction—filings now referred to as part of the shadow docket.<sup>82</sup> Finally, these tables do not include cases where the Court issued a summary disposition by granting the petition for certiorari, vacating the lower court judgment, and remanding the case back to the lower court for further consideration in light of a recently released ruling.

---

official records prepared by the Supreme Court Clerk. *See, e.g., The Statistics*, 135 HARV. L. REV. 491, 498 (2021); *The Statistics*, 134 HARV. L. REV. 610, 618 (2020).

80. Since 1947, the Supreme Court docket has distinguished between paid filings and filings submitted in forma pauperis. EPSTEIN ET AL., *supra* note 33, at 73. A paid filing (or case) simply refers to any case where the petitioner is required to pay the Court's \$300 filing fee. SUPREME COURT PRACTICE, *supra* note 4, at 1–60; *Case Distribution Schedule*, SUP. CT. OF THE U.S. (2024), <https://www.supremecourt.gov/casedistribution/casedistributionschedule.aspx> [https://perma.cc/8MY5-5WJ7].

81. Before 1970, the Supreme Court placed paid cases into its Appellate Docket and in forma pauperis cases into its Miscellaneous Docket. In 1970, the Court changed its labeling to distinguish between paid cases and in forma pauperis cases. EPSTEIN ET AL., *supra* note 33, at 74. However, the Harvard Law Review continues to use the Court's original labeling system. *The Supreme Court, 2004 Term—The Statistics*, 119 HARV. L. REV. 415, 418 (2005).

82. *See* STEVEN VLADECK, THE SHADOW DOCKET: HOW THE SUPREME COURT USES STEALTH RULINGS TO AMASS POWER AND UNDERMINE THE REPUBLIC 172–73 (2023). As described by Professor Vladeck, the number of cases filed in the shadow docket has grown significantly in recent years. *Id.* at 11–12; *see also Texas's Unconstitutional Abortion Ban and the Role of the Shadow Docket: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. 13 (2021) (testimony of Stephen I. Vladeck, Charles Alan Wright Chair in Fed. Cts., Univ. Tex. Sch. of L.).

*Table 1. 2019–2020 Term: Cases Considered and Granted Review by the U.S. Supreme Court<sup>83</sup>*

	<b>Petitions Docketed</b>	<b>Petitions Granted</b>	<b>Percent Granted</b>
<b>Paid Cases</b>	1,478	56	3.7%
<b>In Forma Pauperis Cases</b>	3,930	4	0.1%
<b>Total</b>	<b>5,408</b>	<b>60</b>	<b>1%</b>

*Table 2. 2020–2021 Term: Cases Considered and Granted Review by the U.S. Supreme Court<sup>84</sup>*

	<b>Petitions Docketed</b>	<b>Petitions Granted</b>	<b>Percent Granted</b>
<b>Paid Cases</b>	1,828	69	3.7%
<b>In Forma Pauperis Cases</b>	3,477	3	0.1%
<b>Total</b>	<b>5,305</b>	<b>72</b>	<b>1.4%</b>

*Table 3. 2021–2022 Term: Cases Considered and Granted Review by the U.S. Supreme Court<sup>85</sup>*

	<b>Petitions Docketed</b>	<b>Petitions Granted</b>	<b>Percent Granted</b>
<b>Paid Cases</b>	1,611	70	4.0%
<b>In Forma Pauperis Cases</b>	3,288	4	0.1%
<b>Total</b>	<b>4,899</b>	<b>74</b>	<b>1.5%</b>

83. CLERK OF THE SUPREME COURT, JOURNAL OF THE SUPREME COURT OF THE UNITED STATES: OCTOBER TERM 2019, at II (2020).

84. CLERK OF THE SUPREME COURT, JOURNAL OF THE SUPREME COURT OF THE UNITED STATES: OCTOBER TERM 2020, at II (2021).

85. CLERK OF THE SUPREME COURT STATISTICS, *supra* note 1, at II.

These statistics indicate that the Supreme Court receives and considers approximately five thousand petitions for certiorari every year.<sup>86</sup> When the number of petitions is considered in light of the Court's filing requirements, the sheer volume of paper submitted becomes clear. Yet, the Court only discusses 3 percent of the petitions in conference and only grants review in less than 2 percent of these cases.<sup>87</sup>

### III. MEASURING THE CONSEQUENCES OF THE SUPREME COURT'S SUBMISSION REQUIREMENTS

Filing statistics reveal the many costs generated by the Court's Rules. The following analysis uses random sampling based on case filings from the Court's 2021–22 term to calculate the total number of documents submitted to the Court as well as the total number of pages generated by these documents.<sup>88</sup>

#### *A. Calculating the Costs of the Paper Chase*

An analysis of the Supreme Court's submission requirements must distinguish between paid cases and in forma

---

86. These statistics represent a decrease from earlier years in the number of petitions received and docketed. In fact, the number of petitions docketed by the Court has steadily decreased over the past ten years. This trend is reflected in the Court's 2023–24 term, which included 1,252 paid cases and 2,907 in forma pauperis cases. JOURNAL OF THE SUPREME COURT OF THE UNITED STATES: OCTOBER 2023 TERM II (2024). The Court granted certiorari in less than 2 percent of these cases. *Id.* See generally VLADECK, *supra* note 82, at 18; EPSTEIN ET AL., *supra* note 33, at 64–81.

87. CLERK OF THE SUPREME COURT STATISTICS, *supra* note 1, at II; U.S. Supreme Court, *supra* note 14, at 11. In most cases, all nine Justices do not review every petition for certiorari. Instead, most of the Justices participate in a “pool” system where a single law clerk reviews a petition and generates a memorandum that is distributed to the Justices. VLADECK, *supra* note 82, at 82–83; RYAN C. BLACK ET AL., THE CONSCIENTIOUS JUSTICE: HOW SUPREME COURT JUSTICES' PERSONALITIES INFLUENCE THE LAW, THE HIGH COURT, AND THE CONSTITUTION 83 (2019). The memorandum analyzes the issues presented by the parties and includes a recommendation on whether the Court should grant the petition. Based on this memorandum, the Justices will then decide whether to elevate the petition for possible discussion by the full Court. If no Justice supports discussion, the petition is considered denied. See generally Barbara Palmer, *The “Bermuda Triangle?” The Cert Pool and Its Influence Over the Supreme Court's Agenda*, 18 CONST. COMMENT. 105 (2001); BOB WOODWARD & SCOTT ARMSTRONG, THE BRETHREN: INSIDE THE SUPREME COURT 323–24 (1979).

88. According to the Supreme Court Public Information Office, the Court issued its last opinion and final order list for the October 2021 term on June 30, 2022. E-mail from U.S. Supreme Court, Public Information Office, *supra* note 77.

pauperis cases.<sup>89</sup> This distinction is necessary because in forma pauperis cases are subject to different filing rules and require fewer paper submissions than paid cases.<sup>90</sup>

A review of paid cases filed during the Court's 2021–22 term generates the following statistics. (See Table A-1 in Appendix.) There were 1,611 petitions for certiorari in paid cases.<sup>91</sup> These petitions were accompanied by an appendix that included the relevant lower court opinions and orders. The appendix was occasionally attached to the petition for certiorari, although most were submitted as separate documents.<sup>92</sup> While respondents are not required to submit an opposition brief, many were filed in paid cases.<sup>93</sup> Reply briefs are also not required, which explains why relatively few were filed by petitioners.<sup>94</sup> In total, the Court received approximately 4,031 separate submissions in paid cases.<sup>95</sup>

---

89. The Clerk's docket system uses a numbering system that distinguishes between paid cases and in forma pauperis cases. Paid cases have a docket number from 1 to 5,000 whereas in forma pauperis cases have a docket number above 5,000. *See Case Distribution Schedule*, *supra* note 80; *see also* SUPREME COURT PRACTICE, *supra* note 4, at 1–60.

90. Distinguishing between paid cases and in forma pauperis cases allowed for stratified random sampling. Random sampling allows a researcher to “draw valid statistical inferences about properties or parameters of the population from which the sample is drawn.” MICHAEL O. FINKELSTEIN & BRUCE LEVIN, STATISTICS FOR LAWYERS 271 (3d ed. 2015). When subgroups exist within a studied population, a stratified random sampling uses random selection within each subgroup to generate statistical inferences about each subgroup. FRANCIS C. DANE, EVALUATING RESEARCH: METHODOLOGY FOR PEOPLE WHO NEED TO READ RESEARCH 118 (2011).

91. CLERK OF THE SUPREME COURT STATISTICS, *supra* note 1, at II.

92. Petitioners filed separate appendices in approximately 76 percent of paid cases. *See infra* Table A-1.

93. Respondents filed opposition briefs in approximately 41 percent of paid cases. *See infra* Table A-1. Approximately 45 percent of respondents submitted a waiver of their right to file an opposition brief. *See infra* Table A-1. A waiver is typically a one-page document where the respondent explicitly acknowledges that they are waiving their right to file a response. *See, e.g.,* Waiver, Gaspar-Felipe v. United States, 142 S. Ct. 903 (2022) (No. 21-882). On occasion, the United States will file a Memorandum, which typically requests that the Court stay a decision on the petition for certiorari until the Court rules on another pending case. *See, e.g.,* Memorandum for the United States, Mencia v. United States, 142 S. Ct. 2897 (2022) (No. 21-1008). In the remaining cases, the respondent did not file any responsive document with the Court. *See infra* Table A-1.

94. Petitioners filed reply briefs in approximately 33 percent of paid cases. *See infra* Table A-1.

95. *See infra* Table A-1.



Pursuant to the Court's Rules, litigants must submit forty copies of each document in booklet format.<sup>96</sup> Accordingly, the Court received approximately 161,240 booklet-format documents at the certiorari stage in paid cases during its 2021–22 term.<sup>97</sup> These documents totaled approximately 4,575,240 separate pieces of paper.<sup>98</sup> Yet, the Court only granted review to approximately 4 percent of petitions filed in paid cases.<sup>99</sup>

In addition to paid cases, the Supreme Court also considers cases filed in forma pauperis. (See Table 2 in Appendix.) During the Court's 2021–22 term, there were 3,288 petitions for certiorari filed in forma pauperis.<sup>100</sup> These petitions were accompanied by an appendix that included the relevant lower court opinions and orders. In most cases, the appendix was submitted as a separate document.<sup>101</sup> In addition, each of these cases included a motion for leave to proceed in forma pauperis and a supporting affidavit or declaration. Most respondents waived their right to file an opposition brief.<sup>102</sup> Accordingly, reply briefs were seldom filed in these cases.<sup>103</sup> In total, the Court received approximately 10,126 separate submissions in cases filed in forma pauperis.<sup>104</sup>

---

96. SUP. CT. R. 12(1), 15(3), (6), (8), 33(f).

97. See *infra* Table A-1.

98. Page counts were calculated through a random sample of case documents. (Results on file with author.) On average, each case generated approximately 142 separate pages. Because the Court's Rules require text to appear on both sides of each page, this results in approximately seventy-one separate pieces of paper. The Court requires forty copies of each document in booklet format, which generates approximately 2,840 separate pieces of paper for each case. Since there were 1,611 paid cases filed in the 2021–22 term, this means that approximately 4,575,240 separate pieces of paper were submitted to the Court in one year.

99. CLERK OF THE SUPREME COURT STATISTICS, *supra* note 1, at II.

100. *Id.*

101. *Id.* Petitioners filed separate appendices in approximately 95 percent of in forma pauperis cases. *Id.*

102. *Id.* In cases involving incarcerated and unrepresented petitioners, approximately 2.5 percent of respondents submitted an opposition brief, and 61 percent submitted a waiver of their right to file an opposition brief. *Id.* In the remaining cases, there was neither an opposition brief nor a waiver filed by the respondent. *Id.* In all other in forma pauperis cases, approximately 14 percent of respondents submitted an opposition brief, and 79 percent submitted a waiver of their right to file an opposition brief. *Id.* In the remaining cases, there was neither an opposition brief nor a waiver filed by the respondent. *Id.*

103. *Id.* Petitioners filed reply briefs in approximately 38 percent of in forma pauperis cases. *Id.*

104. See *infra* Table A-2.

To generate accurate document and page counts, cases involving incarcerated and unrepresented petitioners must be distinguished from other in forma pauperis cases because the filing requirements are different.<sup>105</sup> Pursuant to the Court's Rules, incarcerated and unrepresented petitioners are only required to file a single, original copy of any required document.<sup>106</sup> All other in forma pauperis petitioners need to submit an original and ten copies of the petition for certiorari, the appendix, the motion for leave to proceed in forma pauperis, and the supporting affidavit or declaration.<sup>107</sup> When combined, the Court received approximately 53,516 separate documents at the certiorari stage in cases filed in forma pauperis during its 2021–22 term.<sup>108</sup> These documents totaled approximately 754,089 separate pieces of paper. Yet, the Court only granted review to less than 1 percent of the petitions filed in these cases.<sup>109</sup>

When paid cases and in forma pauperis cases are combined, the Supreme Court's 2021–22 term included 4,899 petitions for certiorari.<sup>110</sup> When the filings for each case are calculated and combined, they reveal staggering numbers. In one year, the

---

105. Page counts were calculated through a random sample of case documents. (Results on file with author.) Cases involving incarcerated and unrepresented petitioners account for approximately 58 percent of in forma pauperis filings. *See infra* Table A-2.

106. Cases involving in forma pauperis petitioners who are incarcerated and unrepresented generate approximately fifty-seven separate pages. *See infra* Appendix. Because every document requires text to appear on both sides of a page, this results in approximately twenty-nine separate pieces of paper. *See* sources cited *supra* note 48. The Court requires only one copy of each document, which generates approximately twenty-nine separate pieces of paper for each case. SUP. CT. R. 12(2); *see supra* text accompanying note 37; *see also infra* Appendix. Since there were approximately 1,907 unrepresented cases in the 2021–22 term, this means that approximately 55,303 separate pieces of paper were submitted to the Court in these cases. *See infra* Table A-2.

107. Cases involving in forma pauperis petitioners who are not incarcerated and unrepresented by counsel generate approximately ninety-one separate pages. *See infra* Appendix. Because every document requires text to appear on both sides of a page, this results in approximately forty-six separate pieces of paper. *See* sources cited *supra* note 48. The Court requires ten copies and one original of each document, which generates approximately 506 separate pieces of paper for each case. *See supra* notes 34–36 and accompanying text. Since there were approximately 1,381 represented cases in the 2021–22 term, this means that approximately 698,786 separate pieces of paper were submitted to the Court. *See infra* Table A-2.

108. This number is calculated by combining the number of documents submitted by all litigants filing in forma pauperis. *See infra* Table A-2.

109. CLERK OF THE SUPREME COURT STATISTICS, *supra* note 1, at II.

110. *Id.*

Court received approximately 214,756 documents, which included approximately 5,329,329 separate pieces of paper.

As remarkable as these numbers are, they still represent a significant undercount in total filings with the Court. Other filings may be submitted by the parties at the certiorari stage, including cross-petitions and supplemental briefs.<sup>111</sup> In paid cases, forty copies of these documents are required. In addition, these numbers do not include amicus briefs that may be filed with the Court in support of either party.<sup>112</sup> Many paid cases include multiple amicus submissions, even at the certiorari stage.<sup>113</sup> The Court's Rules also require litigants to serve multiple copies on opposing parties.<sup>114</sup>

Finally, these numbers only represent the filings before the Court decides whether to grant or reject the petition for certiorari. If the petition for certiorari is granted, the parties are again required to file multiple paper copies of their merits submissions, which include an opening brief, an opposition brief, and a reply brief.<sup>115</sup> These documents are typically longer because the Court's Rules provide larger word count limits for merits submissions.<sup>116</sup> Amicus briefs are also more common once the Court has granted the petition for certiorari.<sup>117</sup>

### *B. Ending the Paper Chase*

Of the five thousand petitions the Supreme Court receives every year, it only grants certiorari in less than 2 percent of these cases. Yet, the requirement to submit paper copies of all Court filings at the certiorari stage results in the yearly receipt of approximately 5,329,329 separate pieces of paper. To provide context, it takes over 530 trees to generate this amount of

---

111. SUP. CT. R. 12(5), 15(8).

112. *Id.* at R. 37.

113. See generally Allison Orr Larsen & Neal Devins, *The Amicus Machine*, 102 VA. L. REV. 1901 (2016); Paul M. Collins, Jr. et al., *The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content*, 49 L. & SOC'Y REV. 917 (2015).

114. SUP. CT. R. 29(3) (requiring three copies of documents prepared under Rule 33(1) must be served on each party separately represented in the proceeding).

115. *Id.* at R. 25 (requiring petitioners and respondents to file and submit forty copies of their merits briefs).

116. *Id.* at R. 33(1)(g).

117. See Sheldon Whitehouse, *A Flood of Judicial Lobbying: Amicus Influence and Funding Transparency*, 131 YALE L.J. FORUM 141, 144 (2021) (describing the increase of amicus curiae briefs at the Supreme Court).

paper.<sup>118</sup> If stacked together, these filings would reach beyond two thousand feet, which exceeds the height of the tallest building in the United States.<sup>119</sup> If weighed, these filings would take over thirty-three tons of paper to produce.<sup>120</sup> Every year,

---

118. An average tree produces approximately 10,000 pieces of standard paper. Georgette Kilgore, *How Many Pieces of Paper in a Tree (The Real Scientific Answer)*, 8 BILLION TREES (Apr. 4, 2023), <https://8billiontrees.com/trees/how-many-pieces-of-paper-in-a-tree> [<https://perma.cc/5Y27-FG7Q>]. This means that approximately 533 trees are needed to produce 5,329,329 pieces of paper. See BENOIT CUSHMAN-ROISIN & BRUNA TANAKA CREMONINI, DATA, STATISTICS, AND USEFUL NUMBERS FOR ENVIRONMENTAL SUSTAINABILITY: BRINGING THE NUMBERS TO LIFE 7–8 (2021). As a point of comparison, the Mariposa Grove in California's Yosemite Park holds approximately 500 mature sequoia trees. Thomas Fuller, *A Renewed View of Some of the World's Oldest Trees*, N.Y. TIMES (June 18, 2018), <https://www.nytimes.com/2018/06/18/us/yosemite-sequoia-mariposa-grove.html> [<https://perma.cc/QMX7-PYTK>]. Of course, sequoia trees are the largest trees in the world, but the comparison remains appropriate.

119. Calculating the height of these documents requires distinguishing between the different types of cases. Petitioners who file in forma pauperis may use standard twenty-pound paper and are not required to use special paper. SUP. CT. R. 12(2), 33(2). Paper weight designations refer to different manufacturing techniques and not their actual weight. *Understanding and Specifying Paper Thickness*, HOLLAND LITHO, [https://www.hollandlitho.com/paper\\_thickness.html](https://www.hollandlitho.com/paper_thickness.html) [<https://perma.cc/D9U5-G9NZ>]. A single sheet of twenty-pound paper is 0.004 inches in thickness. *Id.* Accordingly, a stack of 754,089 pieces of twenty-pound paper reaches 251 feet in height. In contrast, petitioners in all paid cases are required to use paper that is not less than sixty pounds in weight. SUP. CT. R. 33(1)(c). A single sheet of sixty-pound paper is 0.0045 inches in thickness. Accordingly, a stack of 4,575,240 pieces of sixty-pound paper reaches 1,716 feet in height. However, the total height would be taller because these calculations do not consider the greater thickness of the cover pages used in booklet-format documents. While the pages of a booklet-format document must be printed on paper that is not less than sixty pounds in weight, the Supreme Court Rules require the front and back covers to consist of sixty-five-pound paper. *Id.* at R. 33(1)(e). A single sheet of sixty-five-pound paper is 0.0065 inches in thickness. *Paper Thickness*, MENNONITE PRESS, INC. (2020), [https://mennonitepress.com/paper\\_thickness\\_chart.shtml](https://mennonitepress.com/paper_thickness_chart.shtml) [<https://perma.cc/52R2-ESP3>]. Thus, the front and back covers would add an additional fifty-four feet. When combined, these documents would reach 2,021 feet in height. By comparison, the tallest building in the United States, One World Trade Center in New York, measures 1,776 feet in height. Alisa Mala, *The 10 Tallest Buildings in the United States*, WORLDATLAS (May 3, 2022), <https://www.worldatlas.com/places/the-10-tallest-buildings-in-the-united-states.html> [<https://perma.cc/F2DB-PUN4>].

120. Calculating the weight of these documents involves several variables, including the type of paper, size, and thickness. It also requires distinguishing between the different types of cases. Petitioners who file in forma pauperis may use standard-weight paper and are not required to use heavier-weight paper in their filings. SUP. CT. R. 33(1)(a). A single sheet of standard twenty-pound paper (8½ by 11-inch in size) weighs approximately 0.16 ounces. Steven Melendez, *How to Estimate the Weight of Letter Size Paper for Mailing*, NEST (Feb. 19, 2019), <https://budgeting.thenest.com/estimate-weight-letter-size-paper-mailing-24900.html> [<https://perma.cc/VC3L-9W4T>]. Accordingly, a stack of 754,089 sheets

the Court's Rules require litigants to use this volume of paper even though almost every document is already available in the Court's online filing system. And, of course, these documents cost millions of dollars to produce.<sup>121</sup> Even litigants proceeding in forma pauperis who are not incarcerated are required to pay for the production and mailing of multiple copies of their documents.<sup>122</sup> Once the Court has made a decision in a case, either by rejecting the petition for certiorari or granting the petition and ruling on the merits, the Court must then process, manage, distribute, or destroy all the documents it has received.

To be clear, the Supreme Court Rules require all these printed documents even though litigants already file electronic copies of their submissions. And the Court requires these submissions even though it only discusses approximately 3 percent of petitions and grants review to only 2 percent of petitions.<sup>123</sup> Given these numbers, the Supreme Court should

---

of paper weighs 7,541 pounds (3.77 tons). In contrast, petitioners in all paid cases must use at least sixty-pound paper in booklet-format documents. SUP. CT. R. 33(1)(c). Calculating the weight of booklet-format documents must also incorporate the production process, which typically requires the use of larger-sized paper that is cut into the appropriate size. A single sheet of sixty-pound paper (8½ by 11 inches in size), which is often used in the production of the booklet-format document, weighs approximately 0.192 ounces. Accordingly, a stack of 4,575,240 pieces of paper weighs 54,903 pounds (27.45 tons). When all the merits docket submissions are combined, 5,329,329 sheets of paper would weigh 62,444 pounds (31.22 tons). However, the total weight would be even heavier because these calculations do not take into account the greater weight of the cover pages used in booklet-format documents. While the pages of a booklet-format documents must be printed on sixty-pound paper, the Supreme Court Rules require the front and back covers to be printed on sixty-five-pound paper. *Id.* at R. 33(1)(e). A single sheet of sixty-five-pound paper (8½ by 11 inches in size) weighs approximately 0.374 ounces. Thus, the weight of the front and back covers would add an additional 3,668 pounds (1.83 tons). When combined, these documents would weigh 66,112 pounds, bringing the total weight to over 33 tons. For a helpful tool in calculating the weight of paper, see *Paper Sheets to Pounds Calculator*, HORIZON PAPER, <https://www.horizonpaper.com/paper-industry-tools/sheet-to-pounds-paper-and-printing-calculator> [<https://perma.cc/ECF6-VBQR>].

121. See *supra* notes 59–63 and accompanying text. Formatting documents is a time-consuming and expensive endeavor. This dynamic is found in multiple disciplines and professions. See, e.g., Max Kozlov, *Revealed: The Millions of Dollars in Time Wasted Making Papers Fit Journal Guidelines*, NATURE BRIEF (June 8, 2023), <https://www.nature.com/articles/d41586-023-01846-9> [<https://perma.cc/EL5W-2UPC>]; Amy Clotworthy et al., *Saving Time and Money in Biomedical Publishing: The Case for Free-Format Submissions with Minimal Requirements*, 21 BMC MED. 172 (2023).

122. SUP. CT. R. 12(2).

123. CLERK OF THE SUPREME COURT STATISTICS, *supra* note 1, at II; 2023 Code of Conduct Commentary, *supra* note 14, at 11.

not require paper submissions, particularly at the certiorari stage. Electronic submissions should become the official filings.<sup>124</sup>

There may be some instances when paper submissions should be allowed. For example, individuals who are unable to use the Court's online filing system should be allowed to file paper submissions.<sup>125</sup> However, only one copy should be necessary. These submissions can be readily scanned and converted to an electronic document. In fact, the Court already "scan[s] and make[s] available on its website most filings submitted by litigants representing themselves."<sup>126</sup> Because these submissions would represent a small percentage of the Court's overall merits docket, they would have a minor impact on the Court's operations.<sup>127</sup>

Significantly, the Supreme Court has previously reduced its submission requirements, albeit temporarily. On April 15, 2020, at the height of the COVID pandemic, the Supreme Court issued an order simplifying the filing process.<sup>128</sup> According to the Clerk's Office, the order was issued in response to "potential impacts of the [COVID] virus on operations."<sup>129</sup> Any document

---

124. Currently, the Court's Rules indicate that the paper versions constitute the official filings. SUP. CT. R. 29(1); HARRIS, *supra* note 20, at 1; See SUPREME COURT PRACTICE, *supra* note 4, at 1–76.

125. The Court's Rules distinguish between litigants who file in forma pauperis and litigants who are incarcerated and not represented by counsel. However, accommodations should be provided to any litigant who has difficulty accessing the Court's online filing system. Cf. Jona Goldschmidt, *Who Sues the Supreme Court, and Why? Pro Se Litigants and the Court of Last Resort*, 8 IND. J.L. & SOC. EQUAL. 181 (2020).

126. GUIDE FOR PROSPECTIVE INDIGENT PETITIONERS FOR WRITS OF CERTIORARI, *supra* note 34.

127. In the Court's 2021–22 merits docket, for example, cases filed by incarcerated and unrepresented petitioners represent approximately 1 percent of the total page count submitted that year. This number is calculated by comparing the total page count for documents filed by incarcerated and unrepresented petitioners who filed in forma pauperis (55,303 separate pages) with the total page count for documents filed in paid cases (4,575,240 separate pages) as well as with those filed by petitioners who are incarcerated but represented (698,786 separate pages).

128. U.S. SUP. CT., *Order*, (Apr. 15, 2020), [https://www.supremecourt.gov/orders/courtorders/041520zr\\_g204.pdf](https://www.supremecourt.gov/orders/courtorders/041520zr_g204.pdf) [<https://perma.cc/FQU9-6G48>].

129. SCOTT S. HARRIS, GUIDANCE CONCERNING CLERK'S OFFICE OPERATIONS (Apr. 17, 2020), [https://www.supremecourt.gov/announcements/COVID-19\\_Guidance\\_April\\_17.pdf](https://www.supremecourt.gov/announcements/COVID-19_Guidance_April_17.pdf) [<https://perma.cc/GC23-KDW3>]; see also SCOTT S. HARRIS, GUIDANCE CONCERNING CLERK'S OFFICE OPERATIONS (Nov. 13, 2020), [https://www.supremecourt.gov/announcements/COVID-19\\_Guidance\\_November\\_2020.pdf](https://www.supremecourt.gov/announcements/COVID-19_Guidance_November_2020.pdf) [<https://perma.cc/9ZHZ-6VFX>].

filed in a case prior to a ruling on a petition for certiorari could be formatted on 8½ by 11-inch paper and required only a single paper copy.<sup>130</sup> In addition, the Court ordered that the following types of documents should not be filed in paper form if they are submitted through the Court's electronic filing system: "(1) motions for an extension of time under Rule 30.4; (2) waivers of the right to respond to a petition under Rule 15.5; (3) blanket consents to the filing of amicus briefs under the Court's Rules 37.2(a) and 37.3(a); and (4) motions to delay distribution of a cert petition under the Court's Order of March 19, 2020."<sup>131</sup> Finally, the Court indicated that parties need not serve paper versions of their filings upon other parties who had previously agreed to electronic service.<sup>132</sup> On July 19, 2021, the Court rescinded the order.<sup>133</sup> While the Court did not explain its reason for rescinding the order, the decision was presumably made in light of the reduced threat posed by the COVID pandemic on Court operations.<sup>134</sup>

#### IV. WHY THE SUPREME COURT REQUIRES PAPER SUBMISSIONS, WHY IT MATTERS, AND WHY IT SHOULD END

Both tradition and inertia play an important role in explaining the Supreme Court's internal procedures, including its filing requirements. As Chief Justice Roberts noted in his 2023 year-end report on the federal judiciary, the Supreme Court is an institution that rarely deviates from its established practices.<sup>135</sup> While the Court periodically revises its procedures, it is generally reluctant to make changes. Of course, tradition alone does not explain the Court's requirement that litigants file

---

130. U.S. SUP. CT., *supra* note 128, at 1.

131. *Id.*

132. *Id.*

133. U.S. SUP. CT., *Order*, (July 19, 2021), [https://www.supremecourt.gov/orders/courtorders/071921zr\\_4g15.pdf](https://www.supremecourt.gov/orders/courtorders/071921zr_4g15.pdf) [<https://perma.cc/W4Z6-PDEY>]. However, the Court indicated that the four types of documents that it had previously identified could continue to be filed electronically and without a paper copy. *Id.*

134. SCOTT S. HARRIS, GUIDANCE CONCERNING CLERK'S OFFICE OPERATIONS 1 (July 19, 2021), [https://www.supremecourt.gov/announcements/COVID-19\\_Guidance\\_July\\_2021.pdf](https://www.supremecourt.gov/announcements/COVID-19_Guidance_July_2021.pdf) [<https://perma.cc/H6P6-C75X>].

135. Chief Justice John G. Roberts, Jr., *supra* note 24, at 1; *see also The Court and Its Traditions*, SUP. CT. OF THE U.S., <https://www.supremecourt.gov/about/traditions.aspx> [<https://perma.cc/7ZCK-E6RY>] ("For all of the changes in its history, the Supreme Court has retained so many traditions that it is in many respects the same institution that first met in 1790, prompting one legal historian to call it, 'the first Court still sitting.'").

multiple copies of their submissions in booklet format. There are, presumably, several reasons for this requirement.

First, there may be some Justices, clerks, and Court staff who simply prefer reading paper submissions rather than electronic submissions. There is a tangible and tactile difference between reading on a computer screen and reading a paper document. They may also appreciate how each brief is color-coded and uniform in appearance.<sup>136</sup> Such consistency facilitates organization. Accordingly, it is not uncommon for both Justices and litigants to reference the color-coded, booklet-format briefs during oral argument.<sup>137</sup>

Second, the current system places the cost and burden of printing these documents on litigants.<sup>138</sup> If a Justice or clerk prefers to review paper submissions, they do not need to create these documents. They already have access to the booklet-format briefs submitted by the litigants. Indeed, the Court's filing requirements ensure that documents are prepared in the Court's preferred format. If the Court believes it would be valuable to distribute case materials to the National Archives or depository libraries, it does not need to create these documents. Rather, the Court can distribute the booklet-format briefs that have already been prepared by litigants.

Third, paper submissions may facilitate the preservation of records.<sup>139</sup> Electronic documents may become corrupted, or the

---

136. SUP. CT. R. 33(1)(g).

137. See, e.g., Transcript of Oral Argument at 40, *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178 (2022) (No. 20-915) ("You see that in our red brief."); Transcript of Oral Argument at 6, *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022) (No. 20-1573) ("The provision—and it's reproduced at page 13 of the blue brief—but it has essentially two subsections."); Transcript of Oral Argument at 124, *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023) (No. 21-454) ("And we cite studies from the amicus briefs at pages 20 and 21 of the yellow brief where the annual cost of compensatory mitigation under the Corp's program is in the billions of dollars."); Transcript of Oral Argument at 72, *Moac Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288 (2023) (No. 21-1270) ("On page 10a of the red brief, we reproduce Bankruptcy Rule 805, and it does, in fact, also have a good faith element to it."); Transcript of Oral Argument at 33, *Pom Wonderful LLC v. Coca-Cola*, 573 U.S. 102 (2014) (No. 12-761) ("It's set forth, Mr. Chief Justice, in the red brief addendum at page 5A."); Transcript of Oral Argument at 12, *Grutter v. Bollinger*, 539 U.S. 305 (2003) (No. 02-241) ("The military brief tells us—the green brief—that there are preparatory schools that the academies have and 40 percent of the registration in those preparatory schools are racial minorities.").

138. SUP. CT. R. 33(1)(a).

139. Richard S. Whitt, *Through a Glass, Darkly: Technical, Policy, and Financial Actions to Avert the Coming Digital Dark Ages*, 33 SANTA CLARA HIGH



software programs used to generate and read them may become obsolete. In contrast, paper submissions can generate a permanent record, particularly when they are distributed to multiple locations. When a case is completed, some case documents are placed in the Court's library, and a copy of every filing is forwarded to the National Archives.<sup>140</sup> In addition, some case documents are distributed to the nine recognized depository libraries.<sup>141</sup>

However, none of these purported benefits justify the Court's onerous submission requirements. Because the Court requires litigants to submit their filings electronically, paper submissions are required by the Supreme Court out of convenience and not necessity.<sup>142</sup> These filings can easily be read on computers and tablets. This is an increasingly common practice in the legal profession.<sup>143</sup> Many law students routinely use electronic textbooks throughout their legal education.<sup>144</sup>

---

TECH. L.J. 117, 125–27 (2016); *see also* Nanna Bonde Thylstrup, *The World's Digital Memory Is at Risk*, N.Y. TIMES (June 21, 2023), <https://www.nytimes.com/2023/06/21/opinion/digital-archives-memory.html> [<https://perma.cc/GV7F-HLBF>]; Jonathan Shaw, *Digital Preservation: An Unsolved Problem*, HARV. MAG., May–June 2010, <https://www.harvardmagazine.com/2010/05/digital-preservation-an-unsolved-problem> [<https://perma.cc/2H7J-UDLM>].

140. E-mail from Sup. Ct., Pub. Info. Off., *supra* note 68.

141. *Id.*

142. Boskey & Gressman, *supra* note 11, at 488.

143. R. Lainie Wilson Harris, *Ready or Not Here We E-Come: Remaining Persuasive Amidst the Shift Towards Electronic Filing*, 12 LEGAL COMM'C'N & RHETORIC: JALWD 83 (2015).

144. Cost plays an increasing role in the selection of course materials in law school. *See generally* Connie Lenz, *Affordable Content in Legal Education*, 112 L. LIBR. J. 301 (2020). Studies have been conducted to assess the advantages and disadvantages of using online resources in lieu of paper copies. *See, e.g.*, Catherine Brobston, *H2O Usability Study: Do Students Want Physical Casebooks?*, HARV. L. SCH.: LIBR. INNOVATION LAB (Sept. 23, 2022), <https://lil.law.harvard.edu/blog/2022/09/23/h2o-usability-study-do-students-want-physical-casebooks> [<https://perma.cc/D8S5-J9A3>]. *But see* Naomi S. Baron, *When Reading to Learn, What Works Best for Students—Printed Books or Digital Texts?*, L.A. TIMES (May 10, 2021), <https://www.latimes.com/opinion/story/2021-05-10/digital-books-reading-learning-pandemic> [<https://perma.cc/2Y2P-RVMG>] (noting that readers often put more effort into reading print than reading digitally); Rory Cosgrove, *Effect of Digital Technology on Reading and Writing Appellate Briefs*, CARNEY BADLEY SPELLMAN, (Feb. 16, 2018), <https://www.carneybadleyspellman.com/effect-of-digital-technology-on-reading-and-writing-appellate-briefs> [<https://perma.cc/8LGH-GDX4>] (describing the advantages and disadvantages of digital reading); Patricia A. Alexander & Lauren M. Singer, *A New Study Shows that Students Learn Way More Effectively from Print Textbooks than Screens*, BUS. INSIDER (Oct. 15, 2017), <https://www.businessinsider.com/students-learning-education-print-textbooks-screens-study-2017-10?amp;r=US&IR=T> [<https://perma.cc/W6DM-JCX5>] (describing the advantages and disadvantages of digital reading).

Law review editors manage submissions through online portals and only accept paper copies in extenuating circumstances.<sup>145</sup> In fact, law students are now considered “digital natives.”<sup>146</sup> As recent law school graduates, Supreme Court clerks would certainly be adept at analyzing legal documents on their computers and tablets.<sup>147</sup> Judges and lawyers have also developed these skills.<sup>148</sup> Indeed, Chief Justice Roberts highlighted this point in his 2023 year-end report on the work of the federal judiciary, when he described the regular use of computers by the Court.<sup>149</sup> When needed, documents can be printed. And given the availability of court documents online, there is little value in requiring litigants to subsidize the Court’s distribution of case documents to the National Archives or depository libraries.

The Supreme Court would benefit from changing its filing requirements.<sup>150</sup> Managing such a large number of documents

---

145. See Allen Rostron & Nancy Levit, *Information for Submitting Articles to Law Reviews & Journals*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1019029](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1019029) [<https://perma.cc/4SAH-7M8F>] (last updated Jan. 9, 2025).

146. Kristen E. Murray, *Take Note: Teaching Law Students to Be Responsible Stewards of Technology*, 70 CATH. UNIV. L. REV. 201 (2021); see also Marc Prensky, *Digital Natives, Digital Immigrants*, 9 ON THE HORIZON 1 (2001).

147. Adam Liptak, *The Road to a Supreme Court Clerkship Starts at Three Ivy League Colleges*, N.Y. TIMES (Feb. 6, 2023), <https://www.nytimes.com/2023/02/06/us/supreme-court-ivy-league-harvard-yale.html> [<https://perma.cc/HAN7-5UHV>]; Tony Mauro, *A Look Inside the Elite World of Supreme Court Law Clerks*, NAT’L L.J. (Dec. 11, 2017).

148. Alexander Paykin, *2021 Practice Management*, AM. BAR ASS’N (Nov. 24, 2021), [https://www.americanbar.org/groups/law\\_practice/resources/tech-report/archive/practice-management](https://www.americanbar.org/groups/law_practice/resources/tech-report/archive/practice-management) [<https://perma.cc/7M8L-HDJC>] (“For the first time, the majority of attorneys are reporting using a laptop computer as their primary device to conduct work.”); Salvatore Jackson, *The Use of Computers in Law*, LEGAL BEAGLE (Dec. 27, 2018), <https://legalbeagle.com/7778097-use-computers-law.html> [<https://perma.cc/GPV4-QRRF>] (“While paperwork is still a reality, law practice has changed drastically in the past 20 years, mainly because of computer technology. In firms large and small, the extensive use of computers is the norm.”); see also John G. Browning, *Should Judges Have a Duty of Tech Competence?*, 10 ST. MARY’S J. ON LEGAL MALPRACTICE & ETHICS 176 (2020); Richard L. Marcus, *The Impact of Computers on the Legal Profession: Evolution or Revolution?*, 102 NW. U. L. REV. 1827 (2008).

149. Chief Justice John G. Roberts, Jr., *supra* note 24, at 4–5. In fact, the report includes a picture of Justice Sandra Day O’Connor working on a desktop computer in 1991. *Id.* at 4.

150. Many organizations face similar challenges. See generally LAWRENCE, BOWDISH, U.S. CHAMBER OF COM. FOUND., TRASH TO TREASURE: CHANGING WASTE STREAMS TO PROFIT STREAMS, [https://www.comunicarseweb.com/sites/default/files/trash\\_to\\_treasure\\_final.pdf](https://www.comunicarseweb.com/sites/default/files/trash_to_treasure_final.pdf) [<https://perma.cc/9X9A-NRXH>]; HEATHER SARANTIS, BUSINESS GUIDE TO PAPER REDUCTION (2002). As a result, it is now standard practice for organizations to implement document retention policies that limit the

creates administrative challenges.<sup>151</sup> These documents must be processed, distributed, and stored, which generate internal costs.<sup>152</sup> At some point, they will be subject to disposal, which generates additional costs. Once the Court grants certiorari, it is confronted with even more documents, most submitted in booklet format. Of course, this issue is not unique to the Supreme Court.<sup>153</sup> In fact, some federal courts have responded to these administrative challenges by requiring all filings to be submitted electronically and rejecting paper documents in almost all cases.<sup>154</sup>

There may be a fourth reason why paper submissions are preferred by the Supreme Court. As evidenced by the Court's Rules establishing in forma pauperis status, the Court is aware that its filing requirements are onerous and impose costs on

---

creation, receipt, and maintenance of paper documents. *See, e.g.*, Mike Kappel, *6 Reasons Why Going Paperless Benefits Your Business*, FORBES, <https://www.forbes.com/sites/mikekappel/2018/07/11/6-reasons-why-going-paperless-benefits-your-business> [<https://perma.cc/A757-YECA>] (last updated Aug. 23, 2021, 10:55 AM); Christopher Mims, *Why the Paperless Office Is Finally on Its Way*, WALL ST. J. (Sept. 18, 2016), <https://www.wsj.com/articles/why-the-paperless-office-is-finally-on-its-way-1474221512> [<https://perma.cc/R2DB-55P8>]; Jennifer M. Mott, *Making the Case for a Greener Law Office*, 48 ARIZ. ATT'Y 28 (2012).

151. Document production and management generates significant administrative costs. *See* Richard H. Thaler, *Nudge, Not Sludge*, 361 SCIENCE 431 (2018); Elizabeth F. Emens, *Admin*, 103 GEO. L.J. 1409 (2015).

152. SUPREME COURT PRACTICE, *supra* note 4, at 1–57 (describing the limited storage space at the Supreme Court).

153. Matthew Kay & Natasha Adom, *Taming the Paper Monster*, NEW. L.J., Nov. 2, 2018, at 20. “It is no surprise, in the current economic climate, that there are increasing efforts from law firms and businesses alike to cut down on the paper they retain and use by using cloud-based IT and archiving systems. The driver for this is typically to reduce costs (of printing and of storing such documents), increase efficiency, or to decrease the environmental damage paper use is causing.” *Id.*

154. Since 2008, the Sixth Circuit Court of Appeals has precluded litigants from filing paper copies. SIXTH CIR. R. 3.1. This paperless policy has been in place since the Sixth Circuit adopted the federal Case Management/Electronic Case Files (“CM/ECF”) system. E-mail from Clerk of Court, U.S. Court of Appeals for the Sixth Circuit, to author (Mar. 23, 2023) (on file with author). For judges and court staff, filings are available through the CM/ECF system as well as an internal Microsoft SharePoint site. *Id.* Because some judges and court staff prefer to work from paper copies, each chambers is provided equipment to facilitate printing, including a binding machine, cover paper in the colors designated for the various briefs, and binding strips. *Id.* In practice, “some chambers routinely print and bind briefs, others are strictly electronic, and still others print and bind some but not all materials.” *Id.* According to the Clerk of Court, “[t]he policy was adopted by the judges to provide them with immediate, lightweight, and streamlined access to briefs and other critical documents in multiple cases. We have also recognized considerable financial savings of both staff time and carrier charges associated with shipping paper copies to and from Cincinnati.” *Id.*

litigants.<sup>155</sup> On several occasions, the Court has even indicated that litigation, including appellate review, should impose costs on litigants; otherwise, some litigants may abuse the legal process.<sup>156</sup> In *Neitzke v. Williams*, for example, the Court analyzed the federal statute authorizing in forma pauperis status for federal litigants.<sup>157</sup> According to the Court, “Congress recognized . . . that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.”<sup>158</sup> In *Zatko v. California*, the Court offered a similar understanding of its own internal rules.<sup>159</sup> It reiterated its belief that financial costs, such as “filing fees and attorney’s fees,” can serve to deter litigants from filing frivolous petitions.<sup>160</sup>

These statements are deeply troubling. The manipulation of litigation costs should never be used to dissuade Court filings. Onerous filing requirements, court costs, and attorney’s fees affect all litigants, not just individuals who might be inclined to file frivolous petitions. Building a system that deters litigants from filing appeals with the highest court in the land strikes at the core principle of equality under law. It creates a unique barrier to litigation that only affects cost-sensitive litigants.<sup>161</sup> “And with each barrier that it places in the way of indigent litigants,” wrote Justice Thurgood Marshall, “the Court can only reinforce in the hearts and minds of our society’s less fortunate members the unsettling message that their pleas are not welcome here.”<sup>162</sup> Forcing litigants to spend hundreds, if not

---

155. SUP. CT. R. 12.

156. In *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 338 (1948), the Supreme Court noted that perjury charges are an appropriate sanction for individuals who improperly seek the benefits of in forma pauperis status.

157. 490 U.S. 319 (1989).

158. *Id.* at 324.

159. 502 U.S. 16 (1991).

160. *Id.* at 16.

161. The Court’s treatment of in forma pauperis litigants has been criticized. See Jared S. Sunshine, *The Putative Problem of Pestersome Paupers: A Critique of the Supreme Court’s Increasing Exercise of Its Power to Bar the Courthouse Doors Against In Forma Pauperis Petitioners*, 46 HASTINGS CONST. L.Q. 57 (2018); Cristina Lane, *Pay Up or Shut Up: The Supreme Court’s Prospective Denial of In Forma Pauperis Petitions*, 98 NW. U. L. REV. 335 (2003).

162. *In re Demos*, 500 U.S. 16, 19 (1991) (Marshall, J., dissenting); see also *In re Amendment to Rule 39*, 500 U.S. 13, 15 (1991) (Marshall, J., dissenting) (“This Court once had a great tradition: ‘All men and women are entitled to their day in Court.’ That guarantee has now been conditioned on monetary worth. It now will

thousands, of dollars on processing, printing, filing, and serving unneeded documents does not facilitate an open and accessible justice system.<sup>163</sup>

The importance of promoting access to justice in federal procedure is reflected in the work of the Judicial Conference of the United States (“Judicial Conference”). The Judicial Conference is authorized to study the operation and effect of the various rules of practice and procedure used by the federal courts.<sup>164</sup> This includes reviewing and proposing amendments to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Federal Rules of Criminal Procedure. While the Judicial Conference does not have the authority to regulate the internal rules of the Supreme Court, its guiding principles for assessing and amending the rules of practice and procedure in the federal courts are instructive.<sup>165</sup> By statute, these rules should “promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay.”<sup>166</sup> In an age when computers and tablets are essential features in the practice of law and are available to every Justice, judge, clerk, and lawyer, forcing litigants to prepare and submit multiple booklet-format documents does not promote simplicity in

---

read: ‘All men and women are entitled to their day in Court only if they have the *means* and the *money*.’”) (emphasis in original).

163. Hammond, *supra* note 22, at 1534; Danya Shocair Reda, *The Cost-and-Delay Narrative in Civil Justice Reform: Its Fallacies and Functions*, 90 OR. L. REV. 1085, 1090 (2012); *see also* Frank I. Michelman, *The Supreme Court and Litigation Access Fees: The Right to Protect One’s Rights—Part I*, 1973 DUKE L. J. 1153 (1974) (describing the challenges posed by the imposition of filing fees on litigants).

164. 28 U.S.C. § 2072. *See generally* Patrick J. Schiltz, *Much Ado About Little: Explaining the Sturm und Drang Over the Citation of Unpublished Opinions*, 62 WASH. & LEE L. REV. 1429 (2005) (providing an in-depth analysis on the inner workings of the Advisory Committee on the Federal Rules of Appellate Procedure regarding amending the rules surrounding unpublished opinions); Catherine T. Struve, *The Paradox of Delegation: Interpreting the Federal Rules of Civil Procedure*, 150 U. PA. L. REV. 1099, 1106–07 (2002) (discussing the ongoing obligation of the Judicial Committee to study and recommend changes and additions to rules). For a critical review on the work of the Judicial Committee, *see* Brett Murphy & Kirsten Berg, *The Judiciary Has Policed Itself for Decades. It Doesn’t Work.*, PROPUBLICA (Dec. 13, 2023), <https://www.propublica.org/article/judicial-conference-scotus-federal-judges-ethics-rules> [https://perma.cc/EDC8-86HG].

165. 28 U.S.C. §§ 331, 2071.

166. 28 U.S.C. § 331.

litigation.<sup>167</sup> In an era when almost every document must be submitted through the Court's online filing system, forcing litigants to pay for multiple paper copies is not a justifiable expense. And in a time when low-income litigants already face multiple obstacles accessing justice, the Court's Rules fail to promote fairness in administration and the just determination of litigation.

Finally, the Supreme Court's own experience has shown that these onerous filing requirements are simply not necessary.<sup>168</sup> At the height of the COVID pandemic, the Court adopted a temporary modification to its filing requirements. For fifteen months, litigants were not required to submit multiple copies of their filings. There is no evidence that the Court was adversely affected by this change in the filing requirements. Yet, the Court rescinded these "formatting flexibilities" when it concluded they were no longer necessary.<sup>169</sup> On other occasions, the Court has eliminated the submission of paper copies when "experience ha[d] shown that . . . additional paper [copies were] not needed."<sup>170</sup> These changes illustrate that a permanent solution is possible.

To end the paper chase, the Supreme Court should make permanent most of the 2020 modifications to its filing requirements.<sup>171</sup> Electronic submissions should become the official filings. In most cases, paper submissions should not be required. Accordingly, any document required to be filed in a case prior to a ruling on a petition for certiorari should only be submitted through the Court's electronic filing system. In addition, litigants should no longer be required to serve paper versions of their filings on other parties. This proposal should be subject to two exceptions. First, paper submissions should be

---

167. Congress adopted the Paperwork Reduction Act in 1980 to promote efficiency in the government's collection of documents and records. 44 U.S.C. §§ 3501–3521. While this statute does not apply to the federal courts, it highlights the importance of promoting efficiency in government operations.

168. In his December 2023 year-end report on the work of the federal judiciary, Justice Roberts noted how the COVID pandemic had resulted in key innovations, many of which "have now become permanent features of the legal landscape, allowing litigations, lawyers, and courts to lock in efficiency gains that do not undercut other important legal or constitutional rights." Chief Justice John G. Roberts, Jr., *supra* note 24, at 5.

169. HARRIS, *supra* note 134.

170. CLERK OF THE SUPREME COURT, *supra* note 15, at 4–5. Cf. Justin P. Murphy, *U.S. Supreme Court to Adopt Electronic Filing System*, 30 CRIM. JUST. 53 (2015) (describing the Supreme Court's adoption of electronic filing).

171. See U.S. SUP. CT., *supra* note 128.

allowed for individuals who are unable to use the Court's electronic filing system. These documents should be submitted on standard 8½ by 11-inch paper, and only one copy should be required. This will ensure that all individuals, regardless of financial resources, have access to the Court. Second, this proposal should first be applied to any document required to be filed in a case prior to a ruling on a petition for certiorari. This is where the burden and waste are most pronounced. If successful, this proposal could be extended to any document required by the Court.

#### CONCLUSION

In 1925, the *Harvard Law Review* began publishing an annual assessment of Supreme Court practice. The authors of this project, Felix Frankfurter and James M. Landis, sought to explain the “business of the Supreme Court.”<sup>172</sup> While critical analysis of the Court's jurisprudence was important, they acknowledged that a “more detailed analysis of the business of the Court is needed.”<sup>173</sup> Specifically, they suggested that a statistical study of the Court's docket—“the courts whence cases come, the dispositions made of them, the nature of the questions involved”—could generate meaningful insights.<sup>174</sup> Some of the earliest statistics included data on the number of cases pending or disposed of and even the number of miles traveled by the Justices when engaged in circuit duty.<sup>175</sup>

---

172. Felix Frankfurter & James M. Landis, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System*, 38 HARV. L. REV. 1005 (1925); see also Mark Tushnet & Timothy Lynch, *The Project on the Harvard Forewords: A Social and Intellectual Inquiry*, 11 CONST. COMMENT. 463, 463–64 (1995).

173. Frankfurter & Landis, *supra* note 172, at 1057 n.174.

174. *Id.*

175. *Id.* at 1053–54; see also Felix Frankfurter & James M. Landis, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System*, 40 HARV. L. REV. 834, 874 (1927); Felix Frankfurter & James M. Landis, *The Supreme Court Under the Judiciary Act of 1925*, 42 HARV. L. REV. 1, 8–9 (1928). By 1949, the annual review of Supreme Court practice in the *Harvard Law Review* included an extended section describing the Court's statistics from the preceding term. See Richard J. Lazarus, *Back to “Business” at the Supreme Court: The “Administrative Side” of Chief Justice Roberts*, 129 HARV. L. REV. F. 33, 35 (2015).

As Felix Frankfurter wrote in 1932, “judicial statistics tell a deal of the tale.”<sup>176</sup> Today, the Supreme Court releases a limited number of statistics, although these are supplemented by other data sets.<sup>177</sup> Yet, there are many other stories to tell. Statistics on the number of documents filed and the total number of pages submitted would reveal a tale of burdensome rules that generate extraordinary and needless waste. These costs are borne by litigants, the Court, and even the environment. By quantifying the consequences of the Court’s filing requirements, their impact can be measured, highlighted, and hopefully changed.

---

176. Felix Frankfurter, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System*, 39 HARV. L. REV. 35, 39 (1925).

177. See, e.g., *The Supreme Court, 2023 Term—The Statistics*, 138 HARV. L. REV. 446 (2024) (reviewing case statistics from the Supreme Court’s 2023–24 term).



## APPENDIX

Table A-1 lists the number of paid case submissions for each document required by the Court's Rules. Litigants filed 1,611 petitions for certiorari in the Supreme Court's October 2021 term. The submission numbers for the other documents (separate appendix, opposition brief, and reply brief) are estimates and were calculated through a random sample of paid cases filed that year.<sup>178</sup>

*Table A-1. 2021–2022 Term: Paid Cases*

<b>Document</b>	<b>Number of Submissions</b>
Petition for Certiorari	1,611
Separate Appendix	1,228
Opposition Brief <sup>179</sup>	656
Reply Brief	536
<b>Total</b>	<b>4,031</b>

Each submission requires forty copies. When combined, this resulted in the filing of approximately 161,240 separate booklet-format documents in paid cases.

178. Document counts were calculated through a random sample of paid cases filed in the Supreme Court's October 2021 term and which were located on the Supreme Court's docket page. *Docket Search*, SUP. CT. OF THE U.S., <https://www.supremecourt.gov/docket/docket.aspx> [<https://perma.cc/9SE3-YDZC>]. A random number generator was used to select the cases in order to compile a sample of 400 cases (out of 1,611 paid cases), which generates findings with a 95 percent confidence level and a 5 percent margin of error. (Results on file with author.) The 95 percent confidence level is commonly used to validate the statistical significance of a study. LEE EPSTEIN & ANDREW D. MARTIN, AN INTRODUCTION TO EMPIRICAL LEGAL RESEARCH 149–54 (2014). On the importance of sample size in statistical analysis, see Howard Wainer, *The Most Dangerous Equation*, AM. SCIENTIST, May–June 2007, at 249, <https://www.americanscientist.org/article/the-most-dangerous-equation> [<https://perma.cc/T3SF-L67V>].

179. This calculation only includes opposition briefs filed by respondents at the certiorari stage. It does not include other documents filed by respondents at this stage, such as waivers of the right to respond or related memoranda.

Table A-2 lists the number of in forma pauperis case submissions for each document required by the Court's Rules. There are two types of in forma pauperis submissions: those filed by incarcerated and unrepresented petitioners and those filed by all other in forma pauperis petitioners. In total, these litigants filed 3,288 petitions for certiorari in the Supreme Court's October 2021 term. The submission numbers for the other documents (separate appendix, motion for leave to proceed in forma pauperis and supporting affidavit or declaration, opposition brief, and reply brief) are estimates and were calculated through a random sample of in forma pauperis cases filed that year.<sup>180</sup>

*Table A-2. 2021–2022 Term: In Forma Pauperis Cases*

<b>Document</b>	<b>Number of Submissions</b> (incarcerated and unrepresented petitioners)	<b>Number of Submissions</b> (all other in forma pauperis petitioners)
Petition for Certiorari	1,907	1,381
Separate Appendix	1,907	1,218
Motion for Leave to Proceed In Forma Pauperis and Supporting Affidavit or Declaration	1,907	1,381
Opposition Brief <sup>181</sup>	50	196
Reply Brief	16	163
<b>Total</b>	<b>5,787</b>	<b>4,339</b>

180. Document counts were calculated through a random sample of in forma pauperis cases submitted in the Supreme Court's October 2021 term and which were located on the Supreme Court's docket page. U.S. SUP. CT., *supra* note 178. A random number generator was used to select the cases in order to compile a sample size with a 95 percent confidence level and a 5 percent margin of error. (Results on file with author.) See *supra* note 178 and accompanying text.

181. This calculation only includes opposition briefs filed by respondents at the certiorari stage. It does not include other documents filed by respondents at this stage, such as waivers of the right to respond or related memoranda.

Incarcerated and unrepresented petitioners must file a single, original copy of any required document. All other in forma pauperis petitioners must file an original and ten copies of required documents. When combined, this resulted in the filing of approximately 53,516 separate documents in cases involving in forma pauperis petitioners.