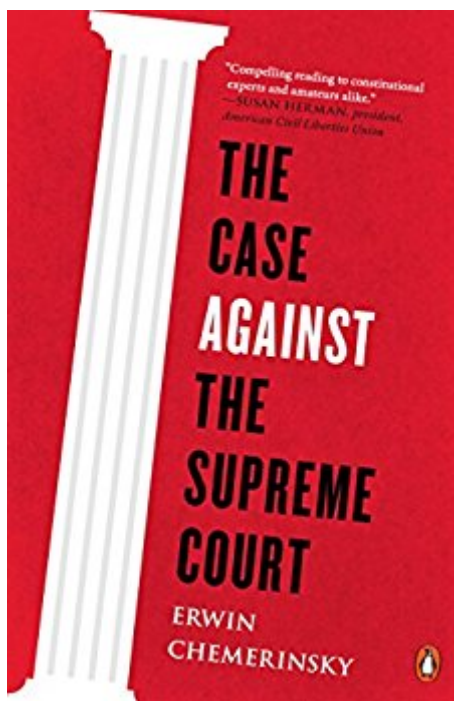


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# The Case Against The Supreme Court



## Synopsis

A preeminent constitutional scholar offers a hard-hitting analysis of the Supreme Court over the last two hundred years. Most Americans share the perception that the Supreme Court is objective, but Erwin Chemerinsky, one of the country's leading constitutional lawyers, shows that this is nonsense and always has been. The Court is made up of fallible individuals who base decisions on their own biases. Today, the Roberts Court is promoting a conservative agenda under the guise of following a neutral methodology, but notorious decisions, such as *Bush vs. Gore* and *Citizens United*, are hardly recent exceptions. This devastating book details, case by case, how the Court has largely failed throughout American history at its most important tasks and at the most important times. Only someone of Chemerinsky's stature and breadth of knowledge could take on this controversial topic. Powerfully arguing for term limits for justices and a reassessment of the institution as a whole, *The Case Against the Supreme Court* is a timely and important book that will be widely read and cited for decades to come. From the Hardcover edition.

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## Customer Reviews

Erwin Chemerinsky says that his goal in writing *The Case Against the Supreme Court* was to determine whether the Supreme Court has made society better or worse. I would argue that legislatures have the primary job of making society better or worse since "better" and "worse" usually involve policy judgments that elected officials should make. The Supreme Court's job is not to make policy but to enforce the values that underlie the Constitution by assuring that the other branches of government do not exceed their constitutional authority or violate rights that the Constitution protects. I understand Chemerinsky's point -- when the Court does those things, it makes society better; when it fails, it makes society worse -- but I'm not sure I agree with his larger point that the institution should be faulted because the Justices who serve on it have so often been gutless and short-sighted. I can't fault Chemerinsky's observation that the Supreme Court has often failed in its critical tasks. The Court too often sides with the government in conflicts with individuals, even when the government abuses its power, and with corporations in conflicts with consumers. The Justices often give too little weight to the Constitution's core values and too much to popular political opinion. But a different outcome in a couple of close presidential elections (including the election that the Court decided in *Bush v. Gore*) would have resulted in majorities on the Court that would probably have produced fewer disappointing decisions. Chemerinsky recognizes that, of course, but I think his disappointment with the Court as an institution is really a disappointment with the majorities that have often controlled it.

For most Americans and for most observers worldwide, the US Supreme Court is a sacred, shining, untouchable, pure, dependable defender of the law, and by extension, of the people. According to Erwin Chemerinsky, nothing could be farther from the truth. Through a shameful history of case law, *The Case Against The Supreme Court* shows justices determining the functioning of society through their own lenses, religion, and political bents. When the law is inconvenient, they simply ignore it, or worse, declare it unconstitutional and dispense with it altogether. They have often made it literally impossible for people to sue at all, despite Congress passing laws specifically concerning their rights. The Court isolates those laws and makes them unattainable, either through prerequisite conditions that can never be fulfilled, or by granting immunity to the perpetrators, or by declaring the law's intent as something diametrically opposed to what Congress clearly intended. Sometimes the Court has simply interpreted that very law as if it were written to favor business instead of the citizen, often a stretch. Unfortunately, their word is final, and again, Congress be damned. It is a juicy, meaty read, as well as shameful, embarrassing and depressing. Chemerinsky cites an early

justice (Marshall) to the effect that the primary reason for having a Supreme Court is to enforce the constitution against the will of the majority. It is to protect minorities who don't have political clout, and protect against the majority imposing repressive actions. Unfortunately, justices are human, with prejudices and baggage, and once in power, they often seek to please themselves rather than interpret the case and the relevant laws.

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