

Forty years ago, before going on the Supreme Court, Lewis Powell wrote [a call to arms](#) for business interests, calling on them to counter “enemies of the free enterprise system” like Ralph Nader. Among other things, he recommended a concerted campaign to influence the courts. The campaign seems to have been a success. The [NY Times](#) reports today on a new study suggesting that the current Supreme Court is the most business friendly since the end of World War II. In particular, John Roberts and Samuel Alito are the two most business-friendly Justices of the past seventy years.

The new study is especially noteworthy because of its authorship. The authors are a leading expert in empirical legal research and two prominent scholars whose own work is highly business friendly (Richard Posner and William Landes). In short, this isn't just another attack on the Roberts Court by disgruntled liberals.

Here's the takeaway:

*But the business docket reflects something truly distinctive about the court led by Chief Justice John G. Roberts Jr. While the current court's decisions, over all, are only slightly more conservative than those from the courts led by Chief Justices Warren E. Burger and William H. Rehnquist, according to political scientists who study the court, its business rulings are another matter. They have been, a new study finds, far friendlier to business than those of any court since at least World War II.*

Indeed, the Roberts Court has been pro-business even at the expense of conservative principles like respect for federalism and adherence to statutory language. For example, it took a [1925 federal statute](#) designed to support arbitration agreements in interstate commercial transactions, made that law into a weapon for businesses to deprive customers and employees of their day in court, and then trampled over state efforts to protect their citizens from this federal juggernaut. These decisions offend conservative precepts but delighted the business community. After all, they write the form contracts creating arbitration and can guarantee themselves a friendly forum.

The result of any one study should always be viewed with caution. Correlation isn't necessarily proof of causation. In particular, while this study shows that businesses have a surprisingly strong track record in the Roberts Court, that doesn't necessarily show that the Court is motivated by favoritism toward business. For instance, cases dealing with arbitration or other procedural matters may instead

reflect the Justice's unhappiness with the operation of the judicial system as a whole. But whatever the reason, business interests have every reason to expect favorable outcomes.