

Blame the Machines

By Kirsten E. Small

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Civil Procedure was my favorite class of my first year in law school, primarily because my professor found the cases in the textbook far less interesting than the many stories he had accumulated over the years. (When it came time to study for the bar exam, I found myself less enamored of that particular teaching style.)

One thing that stuck with me from that class was my professor's theory that modern mass tort litigation was made possible by--and would not have occurred without--the invention of the photocopier. Unless you can make many, many copies of documents for many, many plaintiffs and their lawyers, litigating a mass disaster is effectively impossible.

I was reminded of this theory by the news on Friday that the Eleventh Circuit had issued a [304-page opinion](#) striking down the individual mandate portion of the health care law.

I have to wonder if the opinion would have been as long in the days when opinions were handwritten and laboriously typeset. Sure, long publications existed long before word processors, and there were plenty of long opinions. The Supreme Court's 1856 decision in *Dred Scott*, for example, clocks in at 240 pages of U.S. Reports.

But generally speaking, decisions were shorter before the days of click, cut, paste. The *New York Times* [reported](#) last November that the median length of Supreme Court decisions (the majority opinion and all concurring/dissenting opinions) has more than quadrupled since the 1950s--from a median of 2,000 words to a median of 8,265 words. And the decisions are being issued more quickly. Median time to decision is currently 75 days, compared with double that in the 1980s.

How does the Eleventh Circuit's decision in *Florida v. HHS* stack up? The decision contains about 75,000 words--rivaling *Buckley v. Valeo*, the longest-ever Supreme Court decision at 76,639 words. If the Eleventh Circuit panel had been writing longhand, would its decision on the health care law still have been 300+ pages long? Possibly, but I doubt it. Is the decision *better* because it is longer? Again, possibly, but I doubt it.

Just as photocopiers changed litigation, computerized word processing (which makes it easier to produce more words, faster) has changed judicial opinion writing, and it's not clear that the change is for the better. Like the inestimable Simon Lebon, I [blame the machines](#).