**Unit 2 Chpt. 6 Topic 2.8-2.11 The Judiciary**

***Required Foundational Doc:*** *Federalist #78, Art III of the Constitution,* ***Required Supreme Court Case:*** *Marbury v. Madison (1803)*

**Topic 2.8 INTRODUCTION TO THE FEDERAL COURTS**

***JUDICIAL POWER***

* **Is passive**
	+ Courts c\_\_\_\_\_\_\_\_\_\_\_\_\_ reach out and “take” cases >> Cases must c\_\_\_\_\_\_\_\_\_\_\_\_\_ to them
	+ There must be an actual c\_\_\_\_\_\_\_\_\_\_\_ (“controversy”) for a court to make a ruling >> Courts c\_\_\_\_\_\_\_\_\_\_\_ “create” cases
		- Can’t settle political issues/political questions between the president and Congress (must be a c\_\_\_\_\_\_\_\_\_\_\_\_\_ issue)
* **Only those with S\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may challenge a law or government action**
	+ One who has sustained or is near sustaining an “i\_\_\_\_\_\_\_\_\_\_\_\_\_\_” may bring a case to court
	+ One cannot challenge a law simply because one does not happen to like it

***JUDICIAL LAW-MAKING***

* **Judges, contrary to what some may think, are not simply impartial referees who only carry out the law. Judges i\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the law, and in so doing in fact m\_\_\_\_\_\_\_\_\_\_\_ law. It is necessary that they make law because:**
	+ S\_\_\_\_\_\_\_\_\_\_\_\_ are often b\_\_\_\_\_\_\_\_\_\_-worded, u\_\_\_\_\_\_\_\_\_\_\_\_\_, or c\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ The Constitution is certainly broadly-worded, and requires i\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* **Thus, interpretation of statutes and the Constitution is, in eﬀect, making law. Evidence of judicial law making:**
	+ Courts have ruled >1,000 state laws as being unconstitutional
	+ Courts have ruled >120 federal laws as being unconstitutional
	+ The Supreme Court has reversed itself >140 times since 1810

***AMERICA’S DUAL COURT SYSTEM***

* The U.S. has two separate court systems (STATE AND FEDERAL) because it is a federal system
* Each state has its own court system (97% of all criminal cases are heard in state courts)
* AP test will be only about the f\_\_\_\_\_\_\_\_\_\_\_ court system

**Federal Court System**

the authority of a court to hear and review decisions made by lower courts in that system.

**Appellate Jurisdiction**

**Limited Original Jurisdiction**

**Appellate Jurisdiction**

**Original Jurisdiction**

the authority of a court to act as the first court to hear a case, which includes the finding of facts in the case.

**ARTICLE III (3) – JUDICIAL BRANCH**

JURISDICTION — the a\_\_\_\_\_\_\_\_\_\_\_ to h\_\_\_\_\_ and d\_\_\_\_\_\_ cases

The Supreme Court’s original jurisdiction is limited to: over all disputes between s\_\_\_\_\_\_\_ and the n\_\_\_\_\_\_\_\_\_ government, between two or more s\_\_\_\_\_\_\_\_, and between c\_\_\_\_\_\_\_\_\_ of d\_\_\_\_\_\_\_\_\_\_\_ s\_\_\_\_\_\_\_\_\_.

Combined with the s\_\_\_\_\_\_\_\_\_\_ clause in Article \_\_\_\_, Clause 2 of the Constitution, which declares that national t\_\_\_\_\_\_\_\_ and l\_\_\_\_\_\_\_ “shall be the s\_\_\_\_\_\_\_\_\_\_ law of the Land,” the f\_\_\_\_\_\_\_\_ courts emerged as s\_\_\_\_\_\_\_\_\_ to s\_\_\_\_\_\_ courts and laws.

**Section 1**

* The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Oﬃces during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Oﬃce.

**In the above excerpt, underline the power that Congress has over the Supreme Court (checks and balances)**

**What is the only crime mentioned, defined and described in the Constitution? Why is that?**

**STRUCTURE OF THE FEDERAL COURT SYSTEM**

**ARTICLE III – THE FEDERAL (CONSTITUTIONAL) COURTS**

* The S\_\_\_\_\_\_\_\_\_\_\_\_\_\_Court is the only court speciﬁcally m\_\_\_\_\_\_\_\_\_\_\_\_\_ in the C\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* The P\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has the power to a\_\_\_\_\_\_\_\_\_\_\_\_\_ all f\_\_\_\_\_\_\_\_\_\_\_\_\_ j\_\_\_\_\_\_\_\_\_\_\_\_\_
* *Executive branch c\_\_\_\_\_\_\_\_\_ on the judicial branch*
* **The S\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has the power to c\_\_\_\_\_\_\_\_\_\_\_\_\_ all f\_\_\_\_\_\_\_\_\_\_\_\_ judges**

 *Legislative branch c\_\_\_\_\_\_\_\_\_\_\_ on the e\_\_\_\_\_\_\_\_\_\_\_\_\_ branch and j\_\_\_\_\_\_\_\_\_\_\_\_ branch*

* **Congress has the power to create all “inferior” (lower) federal courts**

 Legislative branch check on the judicial branch

* **Congress has the power to change *a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* j\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of f\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ courts**

*Legislative branch c\_\_\_\_\_\_\_\_\_\_\_ on the j\_\_\_\_\_\_\_\_\_\_\_ branch*

* **Judges in these courts hold L\_\_\_\_\_\_\_\_\_TERMS so that they are f\_\_\_\_\_\_\_\_ from p\_\_\_\_\_\_\_\_\_\_\_ p\_\_\_\_\_\_\_\_\_\_\_**

Judicial branch check on the legislative branch and executive branch: J\_\_\_\_\_\_\_\_\_\_\_\_\_ Review

**JUDICIARY ACT OF 1789- an ACT is a federal law**

Established the basic three-tiered structure of federal courts that still exists

C\_\_\_\_\_\_\_\_\_\_\_\_ set the size of the Supreme Court at s\_\_\_\_\_ justices – later expanded to n\_\_\_\_\_ in 1869



**Jurisdiction of the Federal Courts**

Jurisdiction = a\_\_\_\_\_\_\_\_\_\_. There are three types of jurisdiction or authority to hear a case. Three types of jurisdiction:

(Exclusive-Those cases can be heard only in the federal courts )

Original- court in which a case is f\_\_\_\_\_\_\_ heard

Concurrent- cases that may be tried in either a f\_\_\_\_\_\_\_\_ court or a state c\_\_\_\_\_\_\_\_\_.

Appellate- A court that hears a case on a\_\_\_\_\_\_\_\_\_\_ from a lower court.

**Federal courts may try a case if it involves:**

* Disputes between two or more states

**Jurisdiction**

* The Constitution, a federal law, or a treaty
* The U.S. government as a party
* Citizens of diﬀerent states Ambassadors or diplomats

**STRUCTURE OF THE FEDERAL COURT SYSTEM** *The Three Levels Of Constitutional (Federal) Courts*

|  |  |  |
| --- | --- | --- |
| **DISTRICT COURTS*** 94 courts w/ ~700 judges
* Handle over 300,000 cases
* Cases are tried by a judge and petit (trial) jury – jury decides outcome of case

 -Use grand juries to issue indictments -Orders that charge an individual with a crime - Does not mean that one is guilty; it means that one will be tried* **Jurisdiction**: o\_\_\_\_\_\_\_\_\_\_\_\_
* Most cases end in a plea bargain
* Decisions may be appealed to Courts of Appeals
 | **COURTS OF APPEALS*** 13 “circuit” courts w/ ~160 judges
* 156 judges try >18,000 cases a year
* Cases tried by a panel of three judges

–Do not hold trials or hear testimony – judges review district court decisions* Jurisdiction: a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hears appeals from District Courts and regulatory agencies)
* Decisions may be appealed to the Supreme Court

**Appeals court do not concern themselves with guilt or innocence but rather “were the rights of the defendant/plaintiff violated.** | **SUPREME COURT**Highest court in the land* ~10,000 cases are petitioned for a writ of *c\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* – only hear about 80 cases a year
* Cases tried by entire court (currently n\_\_\_\_\_\_\_ judges - # of justices is established by C\_\_\_\_\_\_\_\_\_\_\_\_)
* **Jurisdiction**: o\_\_\_\_\_\_\_\_\_\_\_\_and appellate

– Almost all cases are heard on appeal* Court of last resort
* Supreme Court is the ﬁnal arbiter of the Constitution
* Supreme Court decisions establish precedents that are binding on the entire nation
 |

**WHAT IS JUDICIAL REVIEW AND HOW DOES IT CHECK THE POWER OF OTHER INSTITUTIONS AND STATE GOVERNMENTS?**

* The foundation for powers of the judicial branch and how its independence checks the power of other institutions and state governments are set forth in:

– *Federalist No. 78*

***FEDERALIST* #78 – THE JUDICIARY DEPARTMENT *REQUIRED DOCUMENT* -Alexander Hamilton, 1788 *AMSCO pg. 179-180***

1. **On what grounds does Hamilton argue that the judicial department of government is the least powerful branch of government?**

It has the l\_\_\_\_\_\_\_\_\_\_\_\_ capacity to annoy or injure the political rights of the Constitution. The executive makes a\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and holds the s\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the l\_\_\_\_\_\_\_\_\_\_\_\_ commands the p\_\_\_\_\_\_\_\_\_\_\_\_\_ and passes the l\_\_\_\_\_\_\_\_\_. The judiciary has n\_\_\_\_\_\_\_\_\_ force, nor will. All it can do is exercise j\_\_\_\_\_\_\_\_\_ and depend upon the e\_\_\_\_\_\_\_\_\_\_ to carry out its j\_\_\_\_\_\_\_\_\_\_\_.

1. **Why do you suppose that Hamilton was so careful to point out the relative impotence of the judiciary?**

To alleviate fears that this new department of government (there was n\_\_ national j\_\_\_\_\_\_\_\_\_\_ under the Articles of Confederation) would be used to d\_\_\_\_\_\_\_rights of the people.

**3. Why does Hamilton consider the independence of the judiciary to be a vital component of constitutional government?**

* + Because the courts are the bulwarks of a limited Constitution against the encroachments of the legislature. Without judicial independence, judges would be unable to eﬀectively check the legislature.

**4. What arguments does Hamilton use to support life tenure for judges?**

* + L\_\_\_\_\_\_ tenure f\_\_\_\_\_\_\_\_ judges from p\_\_\_\_\_\_\_\_\_\_\_ pressure that might come from the l\_\_\_\_\_\_\_\_\_\_\_\_ or e\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ if periodic appointments were made. Being freed from such pressure enables judges to g\_\_\_\_\_\_\_\_ against laws that are contrary to the Constitution.
	+ Being a judge places great demands upon a person. Few men have the necessary abilities to be a judge, and few have the necessary ethical qualities, as well. Periodic appointments would discourage those few who are qualiﬁed and would lead to less competent and less principled judges.

**FEDERAL JUDGES:**

* Are appointed by P\_\_\_\_\_\_\_\_\_\_\_\_ with “advice and consent” of S\_\_\_\_\_\_\_\_\_\_ (majority vote needed for conﬁrmation)
* Are given l\_\_\_\_\_\_\_\_\_ tenure subject to good b\_\_\_\_\_\_\_\_\_\_\_\_
* May be i\_\_\_\_\_\_\_\_\_\_\_ and removed by C\_\_\_\_\_\_\_\_\_\_ (very rare)

***Advantages of life terms***

* Experience
* Stability
* Re-election not necessary
* No fear of removal based on decision
* Interest groups have little inﬂuence

***Disadvantages of life terms***

* Judicial activism
* Precedent
* Old court
* Ideology; slow to change- think Plessy v. Ferguson 1896. It took Brown v. Board of Ed 1954 to change separate but equal; 58 years later. A life time.

***MARBURY v. MADISON (1803) – REQUIRED CASE AMSCO pg. 199-200 Wapples pg. 197-198***

***Facts***

* William Marbury, who had been appointed a justice of the peace of the District of Columbia, was one of the appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court to issue a writ of *mandamus* requiring Madison to deliver the commission.

***Issues***

* Does Marbury have a right to his commission, and can he sue the federal government for it? Does the Supreme Court have the authority to order the delivery of the commission?

***Decision***

* The decision in *Marbury v. Madison* ended up being much more signiﬁcant than the resolution of the dispute between Marbury and the new administration. The Supreme Court, in this decision, established a key power of the Supreme Court that continues to shape the institution today.
* The Court unanimously decided not to require Madison to deliver the commission to Marbury. In the opinion, written by Chief Justice Marshall, the Court ruled that Marbury was entitled to his commission, but that according to the Constitution, the Court did not have the authority to require Madison to deliver the commission to Marbury in this case. They said that the Judiciary Act of 1789 conﬂicted with the Constitution because it gave the Supreme Court more authority than it was given in Article III. Thus, the Judiciary Act of 1789 and the Constitution were in conﬂict with each other.

**JUDICIAL REVIEW - *MARBURY V. MADISON* (1803)**

* Framers did not speciﬁcally provide for judicial review
* Court could not enforce an unconstitutional law (Section 13 of Judiciary Act)
* Chief Justice John Marshall reasoned that judges should i\_\_\_\_\_\_\_\_\_\_\_\_\_ the Constitution, not the President or Congress
* Judicial review became e\_\_\_\_\_\_\_\_\_\_\_\_\_ due to this case
* A single person may challenge an existing law through judicial hearings
* Eﬀects
	+ L\_\_\_\_\_\_\_\_\_\_\_\_ sometimes trumps l\_\_\_\_\_\_\_\_\_\_\_\_\_ as a way to make public policy
	+ Examples – Modern-day gun issues
		- *District of Columbia v. Heller* (2008) - Supreme Court held that a constitutional right to gun ownership - irrespective of service in a state militia - did exist.
		- *McDonald v. Chicago* (2010) - The Second Amendment right to keep and bear arms for self-defense in one's home is fully applicable to the states through the Fourteenth Amendment.

 **Checks Over Other Branches and States Judicial Review and Marbury v. Madison**

The judicial branch has the power of judicial review to e\_\_\_\_\_\_\_\_ acts of l\_\_\_\_\_\_\_\_ and the e\_\_\_\_\_\_\_\_\_ branch to see if they abide by the c\_\_\_\_\_\_\_\_\_\_. This was established in the 1803 Supreme Court case of Marbury v. Madison

The US district courts trying f\_\_\_\_\_\_\_ crimes, such as counterfeiting, mail fraud, and evading federal income taxes crimes defined under the enumerated powers in the constitution. Most violent crimes, and indeed m\_\_\_\_\_\_ crimes overall are tried in s\_\_\_\_\_\_ courts. Congress has outlawed some violent crimes Interstate actions, such as drug trafficking, bank robbery, terrorism, and acts of violence on federal property.

**THE SUPREME COURT**

***KEY POWERS***

* Power of j\_\_\_\_\_\_\_\_\_\_\_ review (established by *M\_\_\_\_\_\_\_\_\_\_ v. Madison*, 1803)
	+ Declare state laws, federal laws, and presidential actions u\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Power to i\_\_\_\_\_\_\_\_\_\_\_\_ broadly worded l\_\_\_\_\_\_\_\_\_ of C\_\_\_\_\_\_\_\_\_\_\_\_\_
* Power to determine the m\_\_\_\_\_\_\_\_\_\_\_ and a\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Constitution
* Power to o\_\_\_\_\_\_\_\_\_\_\_\_\_\_ earlier Supreme Court decisions (e.g., *Brown* overturning *Plessy*)

***ORIGINAL JURISDICTION***

* The Court’s original jurisdiction only generates two to three cases a year
* The Supreme Court exercises original jurisdiction in cases involving the following:
	+ Two or more s\_\_\_\_\_\_\_\_\_
	+ The United States government and a state g\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ The United States and f\_\_\_\_\_\_\_\_\_\_\_\_ ambassadors/diplomats

***APPELLATE JURISDICTION***

* **M\_\_\_\_\_\_\_\_cases come under the Court’s a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ jurisdiction**
	+ Cases appealed from both state supreme courts and federal courts of appeals
* **Nearly all appellate cases now reach the SC by a writ of *c\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

**2.9 LEGITIMACY OF THE JUDICIAL BRANCH *AMSCO pg. 188-192***

**Explain how the exercise of judicial review in conjunction with life tenure can lead to debate about the legitimacy of the Supreme Court’s power**

* P\_\_\_\_\_\_\_\_\_\_\_\_\_ and *s\_\_\_\_\_\_\_\_ d\_\_\_\_\_\_\_\_\_\_\_* play and important role in judicial decision making
* Ideological changes in the composition of the Supreme Court due to presidential appointments have led to the Court’s establishing new or rejecting existing precedents
* Controversial or unpopular Supreme Court decisions can lead to challenges of the Court’s legitimacy and power which Congress and the president can address only through future a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, l\_\_\_\_\_\_\_\_\_\_\_\_\_ changing the Court’s j\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or r\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to implement decisions
* Political discussion about the Supreme Court’s power is illustrated by the ongoing debate over judicial a\_\_\_\_\_\_\_\_\_\_\_\_ versus judicial r\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**FACTORS THAT INFLUENCE SUPREME COURT DECISIONS -- PRECEDENT --**

***Stare Decisis***

* *Stare decisis* is a Latin phrase meaning “let the d\_\_\_\_\_\_\_\_\_\_\_\_ s\_\_\_\_\_\_\_\_\_\_\_\_\_\_”
* The vast majority of SC decisions are based on p\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ established in e\_\_\_\_\_\_\_\_\_\_\_\_\_ cases
* Precedents help make SC decisions more u\_\_\_\_\_\_\_\_\_\_, p\_\_\_\_\_\_\_\_\_\_\_\_, and e\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Examples**

* In *Marbury v. Madison*, the Court established the principle of j\_\_\_\_\_\_\_\_\_\_\_ r\_\_\_\_\_\_\_\_\_\_\_ as applied to Congress and the president
	+ In another case, the Court extended the power of j\_\_\_\_\_\_\_\_\_\_\_\_\_\_ r\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to overrule state courts
* In *Baker v. Carr*, the SC established the principle of one person, one vote in state congressional districts
	+ In *Wesberry v. Sanders*, the Court applied this principle to U.S. congressional districts

**Exceptions**

* **Although precedent is very important, the Court can overturn previous decisions**
	+ *Plessy v. Ferguson* permitted segregation if the facilities were “separate but equal”
	+ The Court reversed this ruling in *Brown v. Board of Education of Topeka*, declaring that “segregation is a denial of a the e\_\_\_\_\_\_\_\_\_\_\_ p\_\_\_\_\_\_\_\_\_\_\_\_\_ of the l\_\_\_\_\_\_\_\_\_\_\_”- \_\_\_\_\_\_th amendment

**The Supreme Court’s Decisions**

**How has the Supreme Court use of judicial review in conjunction with life tenure lead to debates about the legitimacy of the court?**

|  |  |
| --- | --- |
| **Continuity or change in the Supreme Court** | **Effect on the legitimacy of the court** |
| Lifetime tenure  | As with the Anti-Federalist many Americans believe that with no power to hold the court accountable, the justices on the Supreme Court are two separated from the real sources of power- the p\_\_\_\_\_\_ and the l\_\_\_\_\_\_\_- to be legitimate arbiters of democratic law. B\_\_\_\_\_\_\_\_ believed the Supreme Court justices would be placed in a situation altogether unprecedented in a free country t\_\_\_\_\_\_\_\_\_ independent  |
| Shifting ideological makeup of the court  | The composition of the court changes as seats become v\_\_\_\_\_\_, and the presidential a\_\_\_\_\_\_\_\_\_\_\_ to fill them can lead to shifts in **i\_\_\_\_\_\_\_\_** of the court. These changes can result in **overturning** of some **p\_\_\_\_\_\_\_\_\_\_\_**, calling into **question** the **r\_\_\_\_\_\_\_\_\_\_** and therefore **l\_\_\_\_\_\_\_\_\_\_\_\_** of the **Supreme Court**  |

**2.10 THE COURT IN ACTION**

**Explain how judicial review in conjunction with life tenure lead to debate about the legitimacy of the supreme court’s power?**

**Views on the Interpretation of the Constitution**

**Strict constructionist** interprets the Constitution in its o\_\_\_\_\_\_\_\_\_\_\_\_\_ context. Judicial r\_\_\_\_\_\_\_\_\_\_ court.

**Liberal constructionist** interprets the Constitution as a l\_\_\_\_\_\_\_\_\_\_\_ document and considers social c\_\_\_\_\_\_\_\_\_\_\_\_ in social conditions since ratification. Judicial a**\_\_\_\_\_\_\_ Court**

**The Warren Court (1953-1969)- Activist Court**

***Brown v. Board of Education*** (1954)

Overturned the 1896 *P\_\_\_\_\_\_\_\_ v. Ferguson* decision, stating the “s\_\_\_\_\_\_\_\_\_\_\_ but equal” standard violated the 14th Amendment’s equal protection clause. (See Topic 3.11.)

*Mapp v. Ohio* (1961) Ruled that evidence illegally obtained would be inadmissible in court. (See Topic 3.8.)

***Engle v. Vitale*** (1962) Upheld the e\_\_\_\_\_\_\_\_\_\_\_\_\_ clause of the First Amendment. Public school-sponsored prayer was unconstitutional. (See Topic 3.2.)

***Gideon v. Wainwright*** (1963)

The court stated that all citizens must be provided a l\_\_\_\_\_\_\_\_\_\_\_, even if they can’t a\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_) one. (See Topic 3.8.)

*Miranda v. Arizona* (1966) An arrest suspect had to be formally i\_\_\_\_\_\_\_\_\_\_\_\_\_ of his or her rights—sometimes called Miranda rights. (See Topic 3.8.)

***Tinker v. Des Moines Independent Community School District*** (1969) Allowed for students to participate in non-disruptive s\_\_\_\_\_\_\_\_\_\_\_\_\_ speech in schools. (See Topic 3.3.)

**HOW CASES REACHES THE SUPREME COURT**

***WRITS OF CERTIORARI-*** from the Latin “**to be more i\_\_\_\_\_\_\_\_\_\_\_\_**”

 • A writ of *cert* is an o\_\_\_\_\_\_\_\_\_\_ by the Court directing a lower court to send up the record in a given case for its review

 • The *c\_\_\_\_\_\_\_\_\_\_\_* process enables the SC to c\_\_\_\_\_\_\_\_\_\_ its own c\_\_\_\_\_\_\_\_\_\_\_\_.

 • Cases must involve a serious c\_\_\_\_\_\_\_\_\_\_\_\_ issue or the i\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of a f\_\_\_\_\_\_\_\_ s\_\_\_\_\_\_\_\_, action, or treaty

 • Denying a decision may mean any number of things:

– Case lacks a substantial federal issue

– Party lacks standing

– Court agrees with a lower court

***THE RULE OF FOUR***

 • SC clerks screen the approximately 9,000 petition that come to the SC each term

 • The justices conduct weekly conference meetings where they discuss petitions prepared by their clerks

 • For a case to be heard on appeal, at least f\_\_\_\_\_\_\_ of the nine justices must agree to hear the case (the R\_\_\_\_\_ of Four)

***FILING BRIEFS***

 • Each party is required to file a b\_\_\_\_\_\_\_\_\_, or detailed w\_\_\_\_\_\_\_\_\_\_\_ statement, arguing one side of the case

 • Briefs cite relevant facts, legal principles, and precedents that support their arguments

 • Interested persons and groups that are not actual parties to the case may file *a\_\_\_\_\_\_\_\_\_ c\_\_\_\_\_\_\_* (“friend of the court”) briefs

 – Cases involving controversial issues such as affirmative action and abortion attract many *a\_\_\_\_\_\_ c\_\_\_\_\_\_* briefs

 – Interest groups use *a\_\_\_\_\_\_\_\_ c\_\_\_\_\_\_\_* briefs to lobby the Court. These briefs contain information to try to influence the court’s decision.

***LISTENING TO ORAL ARGUMENTS***

 • Oral arguments are open to the public

 • Attorneys are allowed exactly 30 minutes to present their case

***DISCUSSION AND VOTING***

 • The justices discuss each case in a c\_\_\_\_\_\_\_\_\_\_ meeting held on Friday. Closed meetings is a check on Congress and President.

 • The Chief Justice (John Roberts) presides over the meeting

<https://www.uscourts.gov/about-federal-courts/educational-resources>

***OPINIONS and CASELOADS***

***WRITING OPINIONS***

* After reaching a decision, the justices must write a formal opinion. Opinions present the issues, establish precedents, and set guidelines for lower courts.
* Types of opinions
	+ M\_\_\_\_\_\_\_\_\_\_ opinion – oﬃcially known as “the opinion of the Court,” the majority opinion is the law of the land
	+ C\_\_\_\_\_\_\_\_\_\_\_ opinion – supports the majority opinion but stresses diﬀerent constitutional or legal reasons for reaching the judgment
	+ M\_\_\_\_\_\_\_\_\_\_ or d\_\_\_\_\_\_\_\_\_\_\_ opinion – expresses a point of view that disagrees with the majority opinion. Dissenting opinions have no legal standing

***EVADING COURT DECISIONS***

The Supreme Court is the highest court in the land, but it is possible to evade Court decisions:

* + A\_\_\_\_\_\_\_\_\_\_\_ the Constitution; Court cannot strike down something as unconstitutional if it is written in the Constitution.
	+ When a decision is made, it is “remanded” to a lower court to carry out the SC’s decision
		- The lower court will have a certain amount of leeway in doing this
	+ The executive branch may simply not c\_\_\_\_\_\_\_\_\_ o\_\_\_\_\_\_ the decision
	+ State and local governments may simply n\_\_\_\_ c\_\_\_\_\_\_\_\_\_ it out, either (e.g., desegregation, school prayer)

**2.11 EXPLAIN HOW OTHER BRANCHES IN THE GOVERNMENT LIMIT THE SUPREME COURT’S POWER?**

* Restrictions on the Supreme Court are represented by:
	+ L\_\_\_\_\_\_\_\_\_\_ (Congress) impacting court j\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	+ Congressional legislation to m\_\_\_\_\_\_\_\_\_\_ the impact of prior Supreme Court decisions
	+ Constitutional a\_\_\_\_\_\_\_\_\_\_\_\_\_. Example: 16th amendment- i\_\_\_\_\_\_\_\_\_ t\_\_\_
	+ Judicial conﬁrmations (by the S\_\_\_\_\_\_\_\_\_)
	+ The president and states e\_\_\_\_\_\_\_\_\_\_ or i\_\_\_\_\_\_\_\_\_\_\_ Supreme Court decisions
	+ Legislation impacting court j\_\_\_\_\_\_\_\_\_\_\_\_\_. Congress created the t\_\_\_\_\_ courts.

**FACTORS THAT INFLUENCE SUPREME COURT DECISIONS -- JUDICIAL PHILOSOPHY --**

**Judicial Restraint**

* Philosophy that the courts should allow the s\_\_\_\_\_\_\_\_\_\_\_ and the other \_\_\_\_\_\_\_ branches (Leg and Exec) of the federal government to solve social, economic, and political p\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Courts should merely i\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the law rather than m\_\_\_\_\_\_\_\_\_\_\_\_\_ law. That’s Congress’ job.
* Original intent suggests that courts should follow the intentions of the Founding Fathers

**Judicial Activism**

* Philosophy of judicial making whereby judges allow their p\_\_\_\_\_\_\_\_ views regarding a public policy instead of constitutionalism[.](https://www.ejusticeindia.com/concept-of-judicial-activism/)
* Idea that judges ought to freely s\_\_\_\_\_\_\_\_\_ down laws that are i\_\_\_\_\_\_\_\_\_ with their understanding of the Constitution
* Courts should uphold the “g\_\_\_\_\_\_\_\_\_\_\_\_ ethic” (guardian of people)
* Examples of judicial activism:
	+ Striking down Topeka School Board’s policy of segregation in *Brown v. Board* (1954)
	+ Striking down a Texas law that banned ﬂag burning in *Texas v. Johnson* (1989)
	+ Striking down the Gun Free School Zones Act in *US v. Lopez* (1995)
	+ Striking down line-item veto in *Clinton v. NY* (1998)
	+ Striking down a DC city ordinance banning handguns in *DC v. Heller (2008)*

**Is Interpreting Law Making Law?**

In the Supreme Court’s ability to interpret law, many would argue that they create law regardless because sometimes the law was not clearly written by the legislature. Let’s take the **Plessy v Ferguson case 1896**. It established the “**s\_\_\_\_\_\_\_ but e\_\_\_\_\_ doctrine**” and l\_\_\_\_\_\_\_\_\_ segregation throughout the nation. The Court went against the **e\_\_\_\_\_ p\_\_\_\_\_\_\_\_ clause** of the 14th amendment. They did what they “felt” was the need of the time. This is judicial a\_\_\_\_\_\_\_ because the 14th amendment clearly says that no state can, “…***deny to any person within its jurisdiction the equal protection of the laws”.***  The writers of the 14th amendment never intended for separate equality. That is an **oxymoron**- like saying “**pretty ugly**”. If the authors of the 14th amendment intended separate equality, they would have stated it.

In 1954, Brown v. Board of Education, the SC reversed itself and ended segregation, declaring the separate facilities were not truly equal. This is **judicial activism** in the sense that it reversed a previous p\_\_\_\_\_\_\_\_\_. This separate but equal issue was sent before SC on several occasions prior to 1954 and the SC **let the decision stand-s\_\_\_\_\_\_\_ d\_\_\_\_\_\_\_\_-judicial r\_\_\_\_\_\_\_\_**. At that time, the SC figured that either Congress or the states would handle this issue. Neither did and segregation continued for nearly 60 years. In early 1950s, the Chief Justice of Supreme Court died and was replaced by a new Chief Justice, Earl Warren. ***The changing c\_\_\_\_\_\_\_\_\_\_\_\_\_ of the SC caused by v\_\_\_\_\_\_\_\_\_\_ and presidential a\_\_\_\_\_\_\_\_\_\_\_ to the Court can alter the SC‘s judicial p\_\_\_\_\_\_\_\_\_\_ for decades to come*** The Warren Court, as it became known, was the most liberal court of its time and very active.

**FACTORS THAT INFLUENCE SUPREME COURT DECISIONS—Public**

**Public Opinion**

* **The Constitution insulated SC justices from direct political pressures**
	+ Justices are a\_\_\_\_\_\_\_\_\_\_\_\_ to serve l\_\_\_\_\_\_\_\_\_ terms subject only to g\_\_\_\_\_\_\_\_\_ behavior
	+ The *c\_\_\_\_\_\_\_\_\_\_\_\_\_\_* process enables the SC to set its own a\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ The public has l\_\_\_\_\_\_ access to Court proceedings. They meet behind c\_\_\_\_\_\_\_ doors to deliberate their decisions.
* **The Supreme Court is nonetheless aware of and sensitive to public opinion**
	+ The appointment and conﬁrmation processes keep the SC from deviating too far from public opinion
	+ Congress and the state legislatures can amend the Constitution
	+ Congress can change the SC’s appellate jurisdiction
	+ Congress has the power to change the number of justices on the Court. SC depends on executive to e\_\_\_\_\_\_\_\_ its decisions.

**LIMITING THE SUPREME COURT’S POWER - CONGRESS**

* **Legislation impacting court jurisdiction**
	+ Article \_\_\_\_\_\_\_ of the Constitution left for the Congress to determine the distribution of federal jurisdiction within a system of federal c\_\_\_\_\_\_\_\_\_ and between the federal and state courts. Over the past two centuries, Congress has passed numerous statutes redeﬁning the jurisdiction of the federal courts within the limits set by the Constitution. Congress has gone so far as to e\_\_\_\_\_\_\_\_\_\_\_ a court’s j\_\_\_\_\_\_\_\_\_\_\_ to review a particular case during litigation.
* **Congressional legislation to modify the impact of prior Supreme Court decisions**
	+ Congress can show their dissatisfaction with Supreme Court interpretations of laws it passes by re-enacting the l\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to c\_\_\_\_\_\_\_\_\_\_\_\_ its original i\_\_\_\_\_\_\_\_\_\_\_ and o\_\_\_\_\_\_\_\_\_\_\_ a contrary Court decision.
* **Constitutional amendments**
	+ Congress can show their dissatisfaction with Supreme Court interpretations of laws it passes by proposing a constitutional amendment. Passing a constitutional amendment makes an issue “constitutional” and therefore overrule a contrary Court decision. **Congress will re-write the law to meet the SC criteria of legality.**
* **Judicial conﬁrmations**
	+ While the president nominates federal oﬃcials, the Senate has the ﬁnal say with conﬁrmation of those nominations. If the Senate is controlled by Republicans with a Democratic president, they would want the president to appoint judges who are closer to the middle.

**FACTORS AFFECTING SELECTION OF FEDERAL JUDGES – CONGRESS POWER**

***Senatorial courtesy***

* President will c\_\_\_\_\_\_\_\_\_\_\_ with the t\_\_\_\_ S\_\_\_\_\_\_\_\_\_\_\_ from the s\_\_\_\_\_\_\_\_\_ in which they are to be a\_\_\_\_\_\_\_\_\_\_\_\_\_. The Senate will then show “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” to those two senators by not conﬁrming judges to whom the two senators object (does not apply in the appointment of Supreme Court justices).

***Senate Judiciary Committee- very important committee***

* Hold p\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hearings on each Supreme Court nominee, and sends a recommendation to Senate ﬂoor for approval or rejection

***Senate***

* Simple m\_\_\_\_\_\_\_\_\_\_\_\_ vote needed for conﬁrmation

**LIMITING THE SUPREME COURT’S POWER – PRESIDENT**

* **The president and states evading or ignoring Supreme Court decisions**

The Supreme Court’s majority opinion is oﬃcially known as “the opinion of the Court”. This means the majority opinion is the l\_\_\_\_\_\_\_ of the land, but the Supreme Court has no ability to e\_\_\_\_\_\_\_\_\_\_ this opinion. That responsibility falls on the p\_\_\_\_\_\_\_\_\_\_\_\_ and the bureaucracy. If the president doesn’t take any action to enforce a law, then the opinion of the court is w\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

In the Cherokee Indians case (1832), Andrew Jackson was infuriated by John Marshall and the Court’s ruling by insisting that Georgia laws that purported to seize Cherokee lands on which gold had been found violated federal treaties. Jackson is famous for having responded: "John Marshall has made his decision, now let him enforce it." Both Georgia and Jackson simply ignored the decision.

President Jackson was in clear violation of the SC decision of protecting the Cherokee Indians. Why didn’t the Congress impeach Jackson for disobeying the rule of law? Clue: Impeachment is politics/political

**LIMITING THE SUPREME COURT’S POWER - PRESIDENT**

* **Judicial appointments**
	+ The Constitution provides broad parameters for the judicial nomination process. It gives the responsibility for **n\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **f\_\_\_\_\_\_\_\_\_** judges and **j\_\_\_\_\_\_\_\_\_** to the **p\_\_\_\_\_\_\_\_\_\_\_**. (It also requires nominations to be **c\_\_\_\_\_\_\_\_\_\_** by the **S\_\_\_\_\_\_\_\_\_\_\_\_.**)
	+ More than 600 judges sit on district courts, almost 200 judges sit on courts of appeals, and \_\_\_ justices make up the Supreme Court. (Because all federal judges have l\_\_\_\_\_\_\_ terms, no single president will make all of these appointments.)
	+ Many vacancies do occur during a president's term of oﬃce.
	+ The **president** is likely only to **n\_\_\_\_\_\_\_\_\_\_\_** justices who share his **political i\_\_\_\_\_\_\_\_\_\_\_**.

**FACTORS AFFECTING SELECTION OF FEDERAL JUDGES**

***Political parties***

* Judges are generally from the s\_\_\_\_\_\_\_\_\_\_ p\_\_\_\_\_\_\_\_\_\_\_ party as the P\_\_\_\_\_\_\_\_\_\_\_\_\_

***Age***

* Since judges have l\_\_\_\_\_\_\_\_\_\_\_\_\_\_ appointments, judges live on l\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ after the Presidents who appoint them die (presidential i\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ continues after they leave oﬃce)

***Ideology of prospective judges***

* Presidents generally try to appoint people of s\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ philosophy (and judges may try to retire when there is a president with a similar ideology)

***American Bar Association- professional organization of lawyers; also lobby group***

* Evaluates nominees (Senate J\_\_\_\_\_\_\_\_\_\_\_\_\_ Committee considers ABA ratings)

***Existence of a “paper trail”***

* If a prospective judge has written extensively, his writings may be used against him during conﬁrmation hearings

***Diversity***

* Race (mostly white) and gender (mostly male)

***Number of judges***

* C\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ can increase or decrease the number of courts and judges

***Interest Groups***

* Tactics include p\_\_\_\_\_\_\_\_\_\_\_\_\_ demonstrations, appearances on TV and radio talk shows, media advertisements, editorials, and e-mails to senators

**FEDERAL ATTORNEYS**

**ATTORNEY GENERAL**

* Appointed by President with Senate consent
* Head of Department of Justice

**SOLICITOR GENERAL**

* Appointed by President with Senate consent
* R\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ U.S. government in S\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Court
* Decides which cases the federal government will a\_\_\_\_\_\_\_\_\_\_\_\_ to the Supreme Court
* Decides the federal government’s p\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in these cases
* Sometimes called the “10th Justice” of the Supreme Court because of his/her inﬂuence there

**U.S. ATTORNEYS**

* At least one for each District Court, 94 in all
* Prosecutes federal cases, though most cases are settled by plea-bargaining
* Appointed by the President for 4-year terms (key patronage positions)
* Senatorial courtesy applies in their appointments

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| --- | --- |
| **Executive checks on the Judicial Branch** | **Legislative Checks on the Judicial Branch** |
| * Presidential appointments for federal judgeships
* The manner in which a president or executive agency carries out judicial orders
 | * The S\_\_\_\_\_\_\_\_ Judiciary Committee reviews the president's judicial appointments. Sometimes nominees appear before the c\_\_\_\_\_\_\_\_\_\_\_ to answer senators’ questions about their experience or their views on the law.
* The practice of s\_\_\_\_\_\_\_\_\_\_ courtesy is often used with district Judge appointments, as districts are entirely within a given state. When vacancies occur, s\_\_\_\_\_\_\_\_ typically r\_\_\_\_\_\_\_\_\_\_ judges to the White House.
* Federal judges who act criminally or perhaps unethically, can be i\_\_\_\_\_\_\_\_\_ and removed. Impeachment has served as Congress c\_\_\_\_\_ on judges life terms.
* Congress can write and pass new l\_\_\_\_\_\_\_ to clear up disputes or to better guide executive action.
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