

The Federal Judiciary



Federal judges are not elected yet they serve for life. However, the process of being nominated is political and, once in office, judges can pass judgement on issues that have political implications.

The role of the federal judiciary is to interpret and apply the laws of the nation. Article III of the Constitution created the Supreme Court, **the supreme law of the land** and the highest court in the nation. The delegates at the Constitutional Convention agreed that the judiciary should have a degree of independence from the other two branches. Under the Constitution, the president nominates federal judges and the Senate confirms their nominations.

Federal Courts Authority – The Constitution created the Supreme Court. The establishment of the lower federal courts are the responsibility of Congress.

The infographic is a vertical stack of three colored boxes, each with a small image on the left and text on the right. The top box is red and titled 'Supreme Court', the middle is blue and titled 'Courts of Appeal', and the bottom is green and titled 'District Courts'. Each box lists key characteristics of that court level.

Court Level	Characteristics
Supreme Court	- Highest court in the federal system - Nine Justices, meeting in Washington, D.C. - Appeals jurisdiction through <i>certiorari</i> process - Limited original jurisdiction over some cases
Courts of Appeal	- Intermediate level in the federal system - 12 regional "circuit" courts, including D.C. Circuit - No original jurisdiction; strictly appellate
District Courts	- Lowest level in the federal system - 94 judicial districts in 50 states & territories - No appellate jurisdiction - Original jurisdiction over most cases

Original Jurisdiction: the authority of a court to hear a case first, which includes the finding of facts in the case.

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

Courts operating under appellate jurisdiction generally focus on the lower courts' actions and procedures, without finding facts on their own.

The first Congress passed the **Judiciary Act of 1789** to complete the nature and organization of the court system. Only the Chief Justice of the United States is mentioned in the Constitution. The document does not specify the number of justices in the court, that decision is left up to Congress. The Chief Justice presides over the private conferences between the justices where they discuss which cases to take and where they vote on the cases already heard. In cases where the Chief Justice has voted with the majority, the Chief Justice will decide who will write the majority decision.

The Judiciary Act added five associate judges to the Supreme Court. Although the number of justices has varied throughout the nation's history, it has been set at nine since 1869.

Appointment to the Federal Judiciary

Because federal judges are appointed for life, on the condition of "good behavior," successful placing of individuals on the federal bench is a way for a president to have influence on both the government and public policy long after the president's term ends.

Most district court nominees are approved but since the 1960's, confirmations of both appellate and Supreme Court judges have been more combative and have been affected by partisan battles. District Court nominations run more smoothly as the president will consult with senators from the state where the vacancy exists, especially if the senators are in the same political party.

Since the late twentieth century, confirmation hearings often involve intense scrutiny. Some federal judicial nominations have been blocked by a **filibuster: a tactic through which an individual senator may use the right of unlimited debate to delay a motion or postpone action on a piece of legislation.**

In November 2013, a majority of senators, led by Democrats, voted to change the filibuster rules to allow the closure of debate over executive nominees to the lower courts by a simple majority vote instead of the previous sixty votes.

In April 2017, Senate Republicans lowered the threshold for advancing Supreme Court nominees so they could move ahead to a confirmation vote from sixty to a simple majority for the confirmation of Neil Gorsuch.

The 2018 nomination of Brett Kavanaugh generated controversy after three women accused him of sexual misconduct, charges he denied. Justice Kavanaugh was confirmed by a vote of 50 to 48.

After Justice Ruth Bader Ginsburg’s death in 2020, President Trump nominated Amy Coney Barrett and she was confirmed by a 52 to 48 vote. In 2022, Ketanji Brown Jackson was nominated by President Biden and confirmed in 2022 by a vote of 53 to 47.

2025 Supreme Court Justices

Current justices on the US Supreme Court

Nominated by **Republican** president



Clarence Thomas John Roberts Samuel Alito Neil Gorsuch



Brett Kavanaugh Amy Coney Barrett

Nominated by **Democratic** president



Sonia Sotomayor Elena Kagan Ketanji Brown Jackson

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The Constitution imposes no qualifications to become a federal judge. Judges do not even have to be lawyers! As they are such high-profile positions, presidents have to balance both legal and political considerations in their appointments. However, modern nominees to the Supreme Court will have typically served in the federal judiciary or another high-level position. Experience, ethical integrity, and legal accomplishment are key qualities to a smooth confirmation process.

Presidents may make a nomination to fulfill a campaign promise. An example was when Amy Coney Barrett was nominated by President Trump after he promised to nominate judges who oppose abortion. President Biden nominated Ketanji Brown Jackson after a promise to fill a vacancy with a woman of color.

However, once justices are confirmed and take their place in the Supreme Court, presidents have no control over their behavior. More than one president has nominated an individual only to be surprised by some of the justice’s later decisions.

Judicial Review and *Marbury v. Madison*

In this monumental case, Chief Justice John Marshall and the Supreme Court established the principle of **Judicial Review: the authority of the Supreme Court to strike down a law or an executive action if it conflicts with the Constitution.**

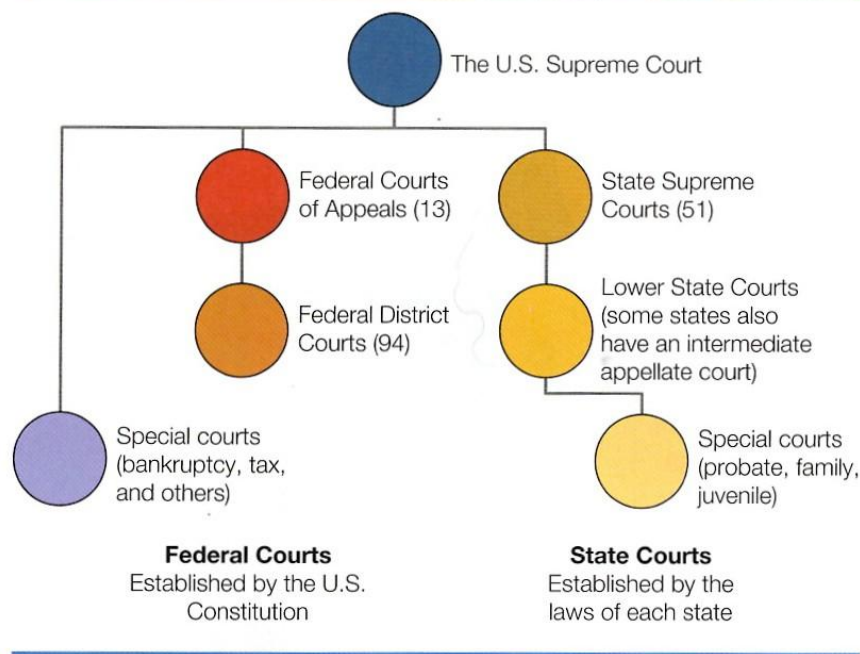
A summary of the case, including the three important questions raised by Justice Marshall can be found at the following link: <https://www.oyez.org/cases/1789-1850/5us137>

The idea of judicial review was first mentioned in ***Federalist No. 78*** by Alexander Hamilton.

In establishing judicial review, Justice Marshall expanded the Court's power to interpret the Constitution. His logic was that the Supreme Court does not place itself above the other two branches; it is coequal to them and the Constitution is supreme to all three.

The Organization of the Federal Judiciary.

The Modern Court System



Each of the two levels in the federal system – the national level and the state level – operates its own system of courts. There is a single federal judiciary for the nation and there are separate state judiciaries in each of the fifty states.

Criminal and Civil Cases



Both state and federal courts have jurisdiction over both criminal and civil law.

Criminal law covers actions that harm the community, such as committing an act of violence against another person. In a criminal case, the state or federal government acts as the prosecutor and tries to prove the guilt of the defendant, the party accused of the crime.

Although many acts, such as murder or assault, are criminal offenses in all states, some acts, such as gambling and recreational use of marijuana, are legal in some states and not in others. Federalism also impacts sentencing; because states have their own criminal codes, the punishment for committing a crime, such as burglary, varies between states.

Defendants in criminal cases, whether federal or state, are guaranteed a set of constitutional protections, including the right not to be forced to testify (Fifth Amendment), the right to a speedy and public trial by an impartial jury, the right to confront witnesses, and the right to an attorney (Sixth Amendment). If criminal defendants are found “not guilty,” they are protected by the double jeopardy clause of the Fifth Amendment. However, a defendant may be tried more than once for the same actions if more than one law has been broken. For example, the same offense might result in both state and federal charges if the offense breaks both state and federal laws.

Being convicted under a criminal statute leads to some form of punishment, such as a fine, imprisonment or even the death penalty in certain cases.

Civil law covers cases involving private rights and relationships between individuals and groups. In a civil case, a plaintiff is the party who brings the case and argues that they have been wronged. The defendant is the party accused of violating a person’s rights or breaking an agreement. In civil cases a party may be an individual, a corporation, or the government. A Judge or a jury might decide civil cases.

The State Courts

The majority of the court cases in America are handled in state courts. States vary in how their judicial systems are structured and organized: including how judges are selected (some appointed others elected), the state court systems share a few common traits. State judicial systems handle both criminal and civil cases. Each state has a system of trial courts that does most of the work, handles cases arising under the state's laws, and possesses original jurisdiction. States also operate a system of special courts that handle issues such as traffic violations, family disputes, and small claims.

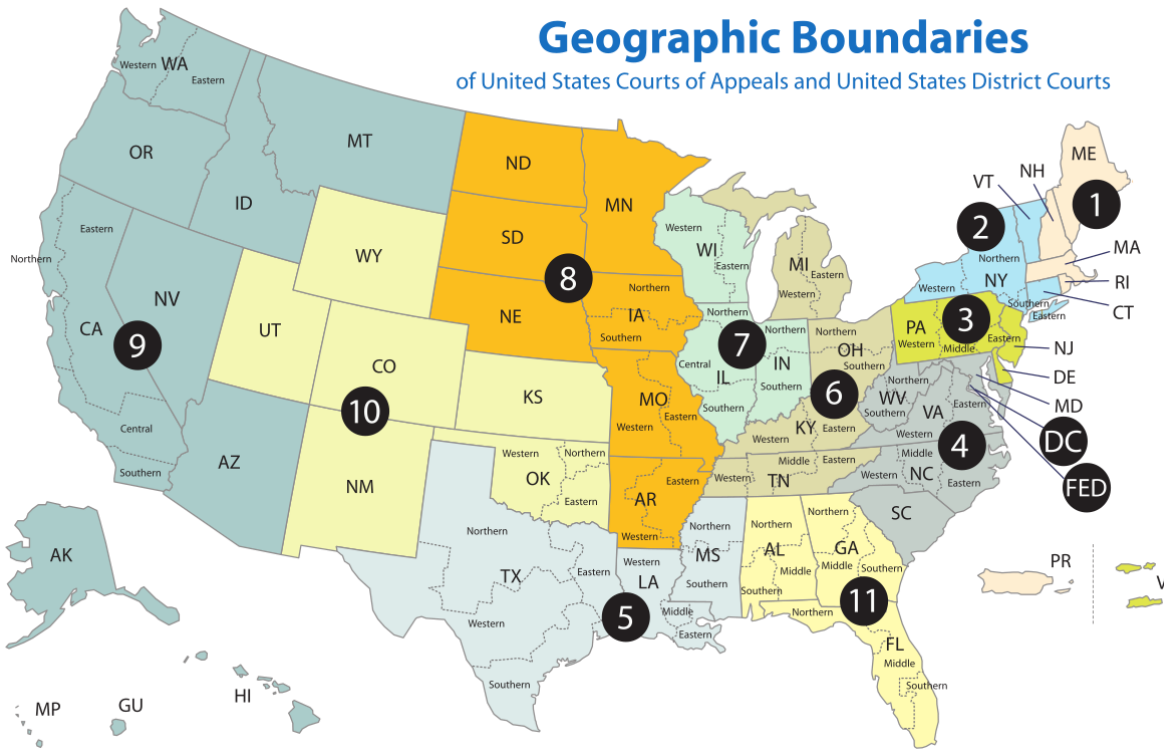
More than half of the states have a system of appeals courts, which have appellate jurisdiction. Each state has at least one Supreme Court, which acts as the highest court in that state's system and as the final level of appeal in the state. A few cases that arise in a state may proceed from the highest state court of appeals to the federal judiciary. Generally, these cases involve questions arising in the Constitution, such as a claim that a person's rights have been violated.

The Federal District Courts

Congress created the district courts in the Judiciary Act of 1789. It is a system structured as a three-layered pyramid. At the bottom are the **federal district courts** – *as the lowest level these courts usually have original jurisdiction in cases that start at the federal level*. In most cases, district courts act as trial courts as they have original jurisdiction. As of 2023, there were ninety-four district courts in the United States, with each state having at least one court. District court boundaries do not cross state lines. The district courts handle most of the work of federal courts, and a judge hears every case. The Constitution guarantees the right to a jury trial in all federal criminal cases (Sixth Amendment) and in some civil cases (Seventh Amendment).

The Appellate Courts

The **federal courts of appeals are the idle level of the federal judiciary; these courts review and hear appeals from the federal district courts**. There are thirteen courts of appeals, eleven have jurisdiction over regionally based "circuits," one has jurisdiction over the District of Columbia (which handles appeals involving federal agencies), and the thirteenth handles cases arising in international trade and patent law. The courts of appeals exercise appellate jurisdiction only, reviewing decisions made by the federal district courts and certain specialized federal courts.



AK = Alaska, MP = Mariana Islands, Gu = Guam, HI = Hawaii, PR = Puerto Rico, VI = U.S. Virgin Islands

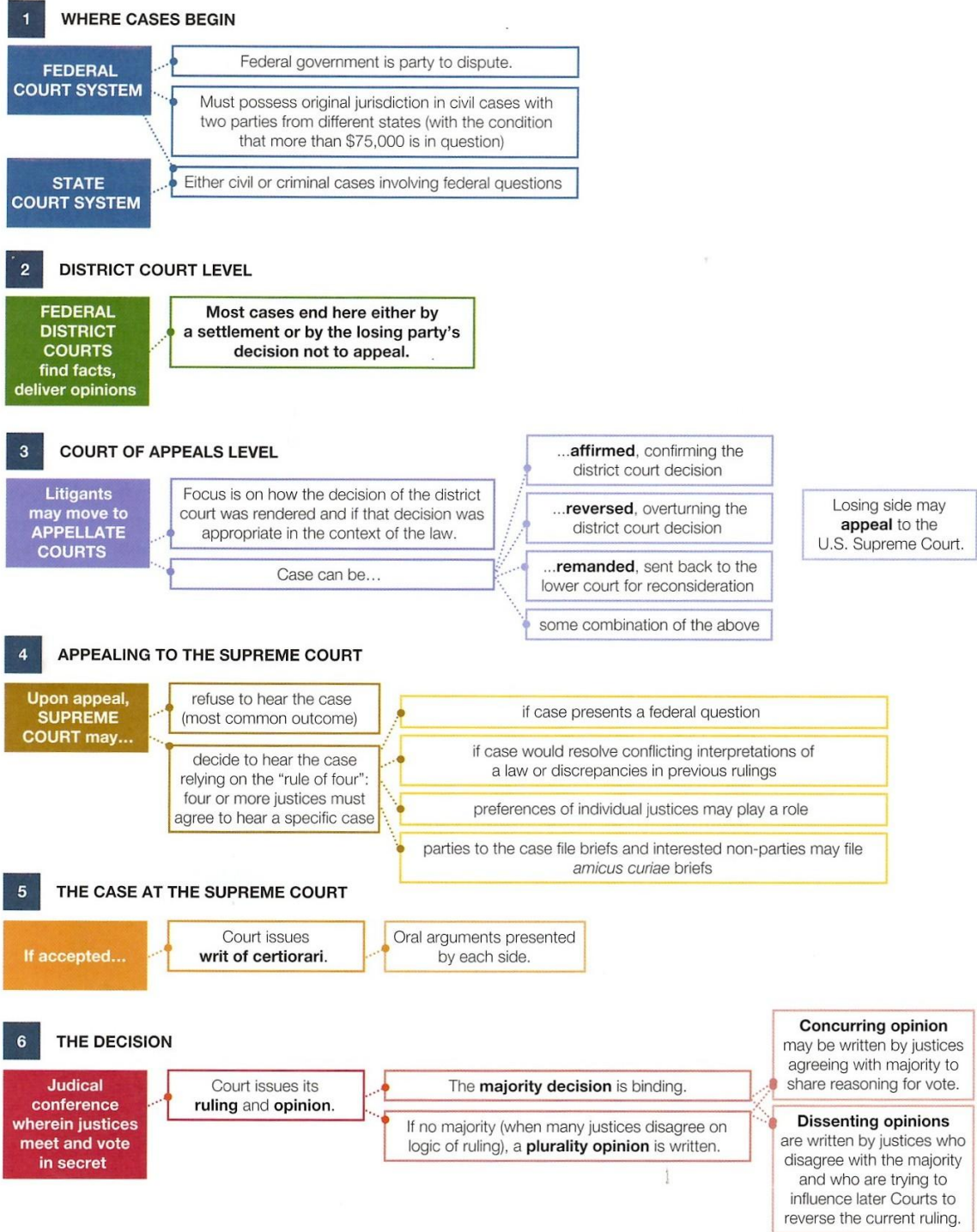
The Supreme Court



The Supreme Court, the highest court in the land, can resolve differences between the states, and resolve different interpretations of the law in the lower courts. Since 1869 there are nine justices, one chief justice and eight associate justices. Each justice has a small number of clerks to assist in selecting cases, researching, and writing decisions.

The court meets in session roughly nine months out of the year, beginning in the first Monday in October. Any cases that are still on the docket (schedule to be heard) when a term ends, will continue to the next term's docket. Cases in which the Supreme Court exercises original jurisdiction are few. The Court has appellate jurisdiction over certain states cases, especially those involving federal issues.

How Cases Move through the Court System



The Decision to Take Cases on Appeal

In exercising its appellate jurisdiction, the Supreme is faced with two questions:

First, the Court decides whether or not to hear a case.

Second, if it does decide to hear a case, it issues its decision based on the merits of the case and applicable law. Almost all of the cases on appeal in the Supreme Court originate when a litigant (plaintiff) has lost a case in the lower court and files a petition to have their case heard.

The Supreme Court received, on average, between eight and nine thousand petitions a year but hears less than 1% (about eighty or ninety) of these cases.

The Constitution offers little guidance about what cases to hear so the Court usually adopts the rule of four: if four or more justices vote to do so then the case is heard. If the Court approves then it issues a **writ of certiorari** (Latin to be more informed) to the lower court, requesting the records of the case, a process that is commonly referred to as “granting cert.” A petition of a writ of certiorari will be granted only for compelling reasons.

Cases that are not heard by the Supreme Court are then ruled under the decision of the last court that heard the case.

The Court will often grant cert in cases where lower-level federal or state supreme courts issued holdings based on different interpretations of the law or previous court decisions. Cases presenting a question involving the Constitution, federal law, or a treaty are more likely to be heard.

Supreme Court decisions set a **precedent: a judicial decision that guides future courts in handling similar cases**. An individual justice may be more inclined to vote to grant cert if the outcome of the case is more likely to create a precedent that the justice supports. Under the principle of **stare decisis: the practice of letting a previous legal decision stand**, the doctrine that judges should follow precedent when considering cases that have similar facts to cases previously decided facilitates both consistency and predictability within the legal system.



The Supreme Court hearing oral arguments

Considering and Deciding Cases

If the Court decides to grant cert in a case, it requests briefs from both the plaintiffs and the defendants, Interested nonparties can file **amicus curiae** (friend of the court) briefs that also try to influence the Court's ruling. The case is then scheduled for an oral argument before the assembled judges. In this hearing, each side receives a fixed amount of time to present their case, usually it is only half an hour.

Supreme Court justices often interrupt and question the lawyers, some more than others. Cameras are not allowed but sketch artists can draw the situation and audio recordings are allowed.

After the oral argument, the case then goes to a judicial conference where the justices meet and vote in secret. This process can take months and the justices can change their votes during this phase of the case.

Finally, the Court comes to a decision. In addition to the decision, justices write opinions that explain their reasoning. The **majority opinion**: *a binding Supreme Court opinion which serves as a precedent for future cases* lays out the legal reasoning behind the decision. Under its appellate jurisdiction, the Court may affirm, reverse, or remand the case back to a lower court. The decision and the majority opinion are binding and serve as precedent to guide lower courts in handling similar cases in the future. The chief justice, when in the majority opinion, selects the author of the majority opinion or writes it themselves. If the chief justice is not in the majority then the most senior member of the majority writes the opinion. If there is no majority, which typically occurs when many justices disagree on the logic behind the ruling, then a plurality opinion will be written that expresses the views of the largest number of justices who voted together.

A justice voting with the majority may also write a **concurring opinion**: *an opinion that agrees with the majority decision but offers different or additional reasoning that does not serve as precedent*. Concurrences are common when a justice has a different logic or reasoning but it is not enough to cause that justice to support the other side.

A justice who voted with the minority may write a **dissenting opinion**: *an opinion that disagrees with the majority opinion and does not serve as precedent*.

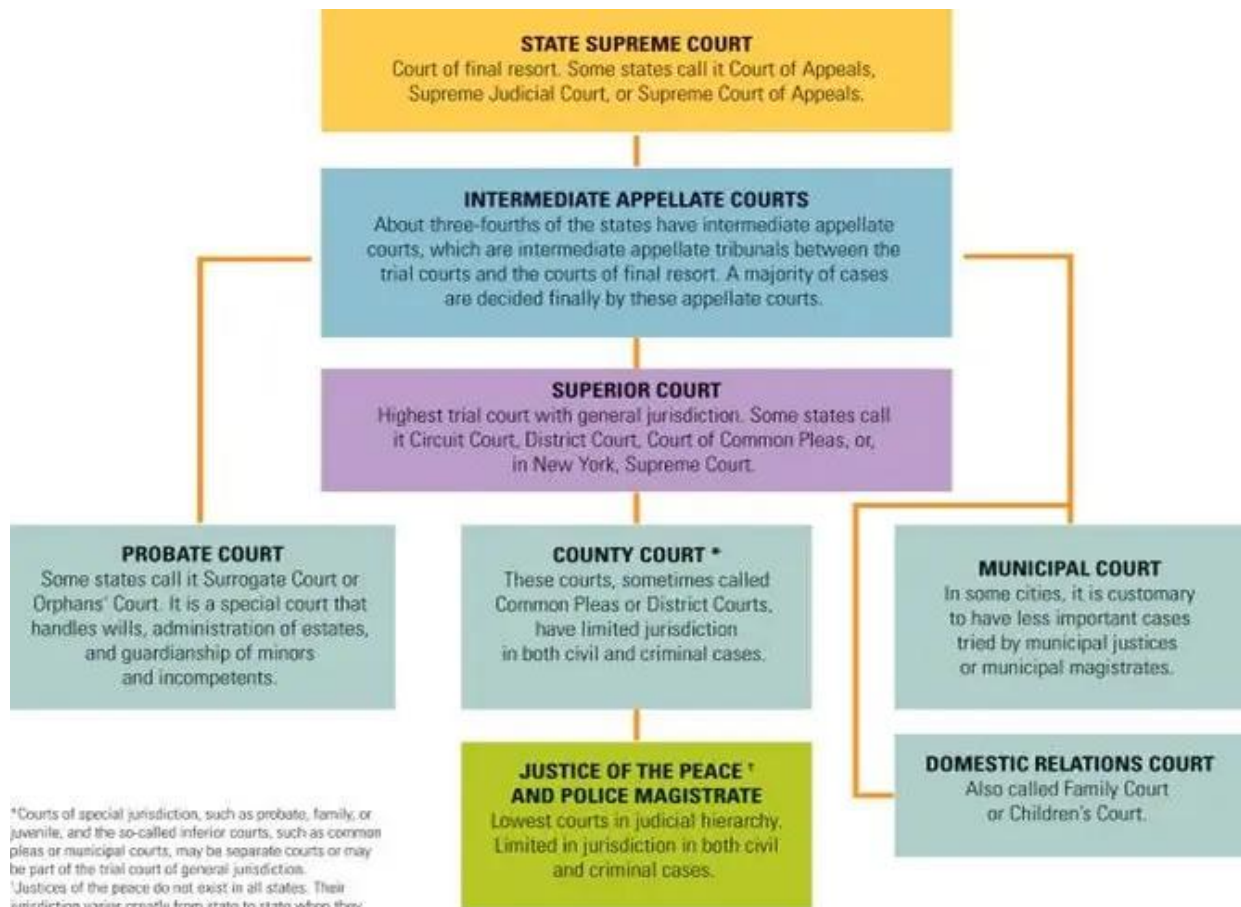
Concurring and dissenting opinions do not serve as precedent and do not carry the weight of the court behind them. However, if a future Court should revisit precedent due to an ideological shift in the composition of the Court, a dissent may provide a useful record and analysis of why at least one justice thought the Court was wrong at the first decision.

Judicial Decision-Making and Checks on the Judicial Branch

It is important to remember that Supreme Court justices are not elected but they can strike down state or federal laws through judicial review that were passed by representatives who were elected. The worry is that in striking down legislation, the Court “exercises control, not in behalf of prevailing majority, but against it.” This is what President Thomas Jefferson warned about when he feared the judiciary was becoming a “despotic branch.”

In ruling the constitutionality of laws, the Supreme Court exercises power over the legislation process by adding legitimacy in the kinds of the American people to the laws passed by Congress. However, in upholding the will of the majority, the Court risks infringing on the rights of minorities, which can be seen as giving its approval to the tyranny of the majority.

It is difficult to interpret and apply the Constitution. People have different ideas about what the founders meant and wrote. Because of these differences, Justices use different philosophies in interpreting the Constitution.



Theories of Constitutional Interpretation: Judicial Restraint and Judicial Activism



Trying to figure out how Justices make their decisions is difficult. There are, however, two different theories about how justices should interpret the Constitution.

1. **Judicial Restraint** – a philosophy of constitutional interpretations that justices should be **cautious in overturning laws** and should **adhere to the Constitution and previous precedent**.

Proponents of judicial restraint argue that the court should seldom use the power of judicial review. Instead, they should defer to the judgement of the legislative and executive branches whenever possible. Supporters of judicial restraint identify the dangers of going against majority rule and undermining the elected representatives. Judges should adhere to the Constitution and case precedent. Supreme Court justices are constitutional specialists; they are not policy specialists and do not have to implement their decisions. Advocates of judicial restraint believe that justices should just focus on the constitutionality of the case and not propose solutions to the problems. Justices should defer to the legislative and executive branches in designing policies.

2. **Judicial Activism**: a philosophy of constitutional interpretation that **justices should wield the power of judicial review**, sometimes creating bold new policies.

Advocates argue that the justices should be willing to overturn laws when necessary, sometimes creating bold new policy. Supporters claim the other two branches of government may make mistakes or even destroy individual rights and liberties. The power to strike down the will of the people by the Court allows for protection of the minority's interests. Sometimes, the elected branches do not act at all. Supporters believe that in this case, Supreme Court justices can decide issues that Congress and the president are unwilling to tackle. The logic behind this is that justices are unelected and serve for life and therefore do not have to be as concerned about their popularity with the general public.

Judicial Restraint and Judicial Activism are not always linked to political conservatism or political liberalism. During the 1960s, the activist and liberal Court used their power of judicial review to strike down state laws restricting the civil rights of Americans in the areas of education and voting. Conservative courts have used activism to protect the rights of states and private businesses.

Sometimes people cannot decide whether or not a decision represents judicial activism or judicial restraint. An example was the case of the ***National Federation of Independent Business v. Sebelius*** where the Supreme Court upheld the provision of the Patent Protection and Affordable Care Act (ACA) requiring individuals to purchase health insurance or pay a fine.

Some critics viewed this action as judicial activism because the Court broadened the definition on Congresses' power to tax to include the power to impose fines under the ACA. Other people saw this as an example of judicial restraint because the Supreme Court deferred to Congress in upholding the ACA.

The Supreme Court and Policymaking

The Supreme Court has the unique power to use precedent (a judicial decision that guides future courts in handling similar cases) to shape policymaking, yet there are constraints in the Supreme Court's authority.

Limitations on the Power of the Supreme Court

The legislative and executive branches have several powers that can check the powers of the federal judiciary. As the president nominates justices, and the Senate confirms their appointments, this process is a check on the federal courts as it potentially shifts the ideological balance of the judiciary.

Congress sets the size of the Supreme Court and establishes other federal courts. Congress can enact legislation to modify or remove the Court's jurisdiction which limits the kinds of cases it may hear on appeal. Even though it is a difficult process, Congress and the states may act together to amend the Constitution which could overcome a previous judicial decision.

Another example was when Congress wrote new legislation that modified the impact of a Supreme Court decision, In 2009, President Obama signed the **Lilly Ledbetter Fair Pay Act** which restored the protection against pay discrimination. This new act was in response to a Court decision in **Ledbetter v. Goodyear Tire and Rubber Co**, in which they had disallowed a claim for wage discrimination based on gender.

One of the biggest restraints on the power of the Court is when the Court goes against the will of the president or Congress. The executive or congressional divisions may delay the implementation of the decision or even ignore or defy the Court's ruling entirely.

American history during the presidency of Andrew Jackson saw an example of this issue when Jackson's decision to remove the Cherokee nation was overruled in the case of **Worcester v. Georgia**. Chief Justice John Marshall sought to protect the rights of the Native Americans but the state of Georgia continued to enforce its laws and President Jackson pursued his destructive policies towards the Cherokee Nation. The president defiantly refused to enforce the decision of the Supreme Court!

Even when the other two branches do not openly defy the Supreme Court, their lack of support to the Court's rulings can limit the Court's power in setting national policy. This was seen with the case in **Brown v. Board of Education** in 1954. The Court declared that segregated educational facilities was unconstitutional but the decision was not fully implemented for more than a decade.

Even though justices are appointed for life and do not have to worry about being reelected, they still have to operate within the American political system where public opinion plays an important role. In the past, public opinion of the Supreme Court was seen as less political and respected for upholding the law. However, in recent years this opinion rating has declined. In September 2022, a Pew Research poll taken after the case of **Dobbs v. Jackson Women's Health Clinic***, only 48% of the public held a favorable view of the Court, and 49% had an unfavorable view. In addition, 45% said the Court had too much power, a figure that was up by 15 percentage points from January that year. In summary, about half of the public believed that the Supreme Court had the right amount of power and only 5% said the Court had too little power.

(*The 2022 US Supreme Court decision in **Dobbs v. Jackson Women's Health Organization** eliminated the constitutional right to abortion and activated trigger laws in 21 states, either banning or significantly restricting abortion access).

Ethics and the Supreme Court

Ethics enquiries have threatened to diminish the Court's legitimacy. Debate over the need for closer ethical scrutiny reached a high point in 2023 when details about the behavior of several justices emerged. **Justice Clarence Thomas** accepted millions of dollars in gifts from wealthy donors, without disclosing these relationships. **Justice Sonya Sotomayor's** staff were accused of pressuring colleges and universities who hired her for speaking engagements to buy books that the justice had authored. Apparently, Justice Sotomayor had made an estimated \$3.7 million in book royalties since joining the Court. **Justice Samuel Alito** took an unreported fishing trip to Alaska with a wealthy Republican Party donor.

In November 2023, the Supreme Court adopted a formal ethics code limiting the gifts that federal judges and their families can accept and additionally formalized rules where justices should recuse themselves from cases where they cannot be impartial.

No matter what, all justices, regardless of their own political beliefs, know and should understand that they play a key role in preserving the judiciary as a check on the powers of Congress, the president, the states, and the will of the majority.

The Supreme Court and Controversial Issues

Some Supreme Court rulings can bring stability to controversial national issues. An example being in 2015 with the legalization of same-sex marriage. However, not all Court decisions result in stability. For example, rather than definitively resolving the question of abortion rights, both ***Roe v. Wade***, which legalized abortion in 1973, and ***Dobbs v. Jackson Women's Health Organization***, which effectively overturned ***Roe v. Wade*** in 2022, and returned abortion policy to the states, led to prolonged and heated debate both within the states and nationally. Supreme Court justices must keep in mind the role their institution plays in the system of separation of powers and in the peoples' views of the legitimacy of the institution.

Finally, remember the ideas Alexander Hamilton in ***Federalist No. 78***, who wanted a strong national government, and stated that the Supreme Court cannot write laws, and has no army. It must rely on the willingness of the people and the members of the other two branches of government to respect its role in our system of democracy in government.