

# INTRODUCTION TO THE FEDERAL COURTS

## JUDICIAL POWER

- Is passive
  - Courts cannot reach out and "take" cases >> Cases must come to them
  - There must be an actual case ("controversy") for a court to make a ruling >> Courts cannot "create" cases
    - Can't settle political issues/political questions between the president and Congress (must be a constitutional issue)
- Only those with **STANDING** may challenge a law or government action
  - One who has sustained or is near sustaining an "injury" 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 interpret the law, and in so doing in fact make law. It is necessary that they make law because:
  - Statutes are often broadly-worded, unclear, or contradictory
  - The Constitution is certainly broadly-worded, and requires interpretation
- 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

TYPES OF LAW	
Criminal	Civil
<i>Concerns violations of the criminal code</i>	<i>Concerns disputes between two parties rather than violations against society</i>
Example: Violations against society	Examples Breach of contract, slander, medical malpractice  Class-action lawsuit - suit brought by a group of people who share a common grievance

TYPES OF JURISDICTION			
Jurisdiction is a court's authority to hear a case			
<b>Exclusive</b> Cases that can be heard only in certain courts	<b>Concurrent</b> Cases that can be heard in either a federal or a state court	<b>Original</b> Courts in which a case is first heard	<b>Appellate</b> Courts that hear cases brought to them on appeal from a lower court

<b>FEDERAL COURT JURISDICTION</b>	<b>Federal courts may try a case if it involves</b>	<b>➤ Disputes between two or more states</b> <b>➤ The Constitution, a federal law, or a treaty</b> <b>➤ The U.S. government as a party</b> <b>➤ Citizens of different states</b> <b>➤ Ambassadors or diplomats</b>
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AMERICA'S DUAL COURT SYSTEM	
THE SUPREME COURT OF THE UNITED STATES OF AMERICA	
<b>50 State Supreme Courts</b> ↑↑↑ <b>State Appeals Courts</b> ↑↑↑ <b>State Trial Courts</b>	<b>13 Federal Appeals Courts</b> ↑↑↑ <b>94 Federal District Courts</b>

# STRUCTURE OF THE FEDERAL COURT SYSTEM

**Article 3, 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.*

## ARTICLE III – THE FEDERAL (CONSTITUTIONAL) COURTS

- The Supreme Court is the only court specifically mentioned in the Constitution
  - The President has the power to appoint all federal judges = Executive branch check on the judicial branch
  - The Senate has the power to confirm all federal judges = Legislative branch check on the executive branch and judicial 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 *appellate* jurisdiction of federal courts = Legislative branch check on the judicial branch
  - Judges in these courts hold life terms so that they are free from political pressure = Judicial branch check on the legislative branch and executive branch

## JUDICIARY ACT OF 1789

- Established the basic three-tiered structure of federal courts that still exists
- Congress set the size of the Supreme Court at six justices – later expanded to nine in 1869

## THE THREE LEVELS OF CONSTITUTIONAL COURTS

<b>DISTRICT COURTS</b> <ul style="list-style-type: none"><li>• 94 courts w/ ~700 judges</li><li>• Handle over 300,000 cases</li><li>• Cases are tried by a judge and petit (trial) jury – jury decides outcome of case<ul style="list-style-type: none"><li>◦ Use grand juries to issue indictments<ul style="list-style-type: none"><li>▪ Orders that charge an individual with a crime</li><li>▪ Does not mean that one is guilty; it means that one will be tried</li></ul></li></ul></li><li>• Jurisdiction: original</li><li>• Most cases end in a plea bargain</li><li>• Decisions may be appealed to Courts of Appeals</li></ul>	↓ ↓ ↓ ↓
<b>COURTS OF APPEALS</b> <ul style="list-style-type: none"><li>• 13 “circuit” courts w/ ~160 judges</li><li>• 156 judges try &gt;18,000 cases a year</li><li>• Cases tried by a panel of three judges<ul style="list-style-type: none"><li>◦ Do not hold trials or hear testimony – judges review district court decisions</li></ul></li><li>• Jurisdiction: appellate (hears appeals from District Courts and regulatory agencies)</li><li>• Decisions may be appealed to the Supreme Court</li></ul>	↓ ↓ ↓ ↓
<b>SUPREME COURT</b> <ul style="list-style-type: none"><li>• Highest court in the land</li><li>• ~10,000 cases are petitioned for a writ of certiorari – only hear about 80 cases a year</li><li>• Cases tried by entire court (currently nine judges)</li><li>• Jurisdiction: original and appellate<ul style="list-style-type: none"><li>◦ Almost all cases are heard on appeal</li></ul></li><li>• Court of last resort<ul style="list-style-type: none"><li>◦ Supreme Court is the final arbiter of the Constitution</li><li>◦ Supreme Court decisions establish precedents that are binding on the entire nation</li></ul></li></ul>	

# FEDERAL ATTORNEYS AND JUDGES

FEDERAL ATTORNEYS		
ATTORNEY GENERAL	SOLICITOR GENERAL	U.S. ATTORNEYS
<ul style="list-style-type: none"> <li>Appointed by President with Senate consent</li> <li>Head of Department of Justice</li> </ul>	<ul style="list-style-type: none"> <li>Appointed by President with Senate consent</li> <li>Represents U.S. government in Supreme Court</li> <li>Decides which cases the federal government will appeal to the Supreme Court</li> <li>Decides the federal government's position in these cases</li> <li>Sometimes called the "10<sup>th</sup> Justice" of the Supreme Court because of his/her influence there</li> </ul>	<ul style="list-style-type: none"> <li>At least one for each District Court, 94 in all</li> <li>Prosecutes federal cases, though most cases are settled by plea-bargaining</li> <li>Appointed by the President for 4-year terms (key patronage positions)</li> <li>Senatorial courtesy applies in their appointments</li> </ul>

FEDERAL JUDGES		
<ul style="list-style-type: none"> <li>Appointed by President with "advice and consent" of Senate (majority vote needed for confirmation)</li> <li>Given life tenure subject to good behavior</li> <li>May be impeached and removed by Congress (very rare)</li> </ul>		
<p><b>Advantages of life terms</b></p> <ul style="list-style-type: none"> <li>Experience</li> <li>Stability</li> <li>Re-election not necessary</li> <li>No fear of removal based on decision</li> <li>Interest groups have little influence</li> </ul>		<p><b>Disadvantages of life terms</b></p> <ul style="list-style-type: none"> <li>Judicial activism</li> <li>Precedent</li> <li>Old court</li> <li>Ideology; slow to change</li> </ul>

## FACTORS AFFECTING SELECTION OF FEDERAL JUDGES

### **Senatorial courtesy**

- President will consult with the two Senators from the state in which they are to be appointed. The Senate will then show "courtesy" 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**

- Hold public hearings on each Supreme Court nominee, and sends a recommendation to Senate floor for approval or rejection

### **Senate**

- Simple majority vote needed for confirmation

### **Political parties**

- Judges are generally from the same political party as the President

### **Age**

- Since judges have lifetime appointments, judges live on long after the Presidents who appoint them die (presidential influence continues after they leave office)

### **Ideology of prospective judges**

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

### **American Bar Association**

- Evaluates nominees (Senate Judiciary 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**

- Congress can increase or decrease the number of courts and judges

### **Interest Groups**

- Tactics include protest demonstrations, appearances on TV and radio talk shows, media advertisements, editorials, and e-mails to senators

# THE SUPREME COURT

## **KEY POWERS**

- Power of judicial review (established by *Marbury v. Madison*, 1803)
  - Declare state laws, federal laws, and presidential actions unconstitutional
- Power to interpret broadly worded laws of Congress
- Power to determine the meaning and application of the Constitution
- Power to overrule 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 states; The United States and a state government; The United States and foreign ambassadors/diplomats

## **APPELLATE JURISDICTION**

- Most cases come under the Court's appellate 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 *certiorari*

## **WRITS OF CERTIORARI**

- A writ of *cert* is an order by the Court directing a lower court to send up the record in a given case for its review
- The *certiorari* process enables the SC to control its own caseload
- Cases must involve a serious constitutional issue or the interpretation of a federal statute, 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 petitions 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 four of the nine justices must agree to hear the case (the Rule of Four)

## **FILING BRIEFS**

- Each party is required to file a brief, or detailed written 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 *amicus curiae* ("friend of the court") briefs
  - Cases involving controversial issues such as affirmative action and abortion attract a large number of *amicus curiae* briefs
  - Interest groups use *amicus curiae* briefs to lobby the Court

## **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 closed meeting held on Friday
- The Chief Justice (John Roberts) presides over the meeting

## **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
  - Majority opinion – officially known as "the opinion of the Court," the majority opinion is the law of the land
  - Concurring opinion – supports the majority opinion but stresses different constitutional or legal reasons for reaching the judgment
  - Minority or dissenting 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:
  - Amending 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 carry out the decision
  - State and local governments may simply not carry it out, either (e.g., desegregation, school prayer)

# DECISIONS OF THE SUPREME COURT

## THE SUPREME COURT AT WORK

- Term begins on first Monday in October and continues until the end of June
- Hears cases from Monday-Thursday (Quorum of 6 needed to conduct business)
- Before oral arguments, the Justices read the attorneys' briefs
- Justices also read *amicus curiae* briefs
- Justices hear 30" oral arguments from each side
- At the Friday conference, Justices discuss the cases
- Simple majority needed for decisions. In case of ties, previous court decision stands.

## 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
  - Unanimous – expresses opinion of all nine Justices (~1/3 of the cases are decided by a 9-0 vote)
  - Majority opinion – officially known as "the opinion of the Court," the majority opinion is the law of the land
  - Concurring opinion – supports the majority opinion but stresses different constitutional or legal reasons for reaching the judgment
  - Minority or dissenting opinion – expresses a point of view that disagrees with the majority opinion. Dissenting opinions have no legal standing

## ASSIGNING OF OPINIONS

- If Chief Justice voted with the majority, he assigns someone in the majority to write the opinion
- If the C.J. is in the minority, the most senior Justice among the majority assigns the opinion

## THE POLITICS OF OPINION WRITING

- Assigning the opinion is a key power of the Chief Justice: it enables to CJ to get the right "slant" on the issue.
- Majority opinion writer must be careful not to alienate others in the majority, because they may change their minds and switch positions.
- The majority opinion writer must therefore structure the argument in such a way as to keep the support of at least four other intelligent, independent Justices, any of whom may threaten to "jump ship" and switch his/her vote.
- Threat of a dissenting opinion can sometimes convince the majority to bend a bit in certain parts of the decision.

## PURPOSES OF OPINIONS

- Communicate the Court's reasoning to the public
- Establish precedents for future cases – importance of *stare decisis*
- Drop "hints" that Congress, the states, or the President should take certain actions

## EVADING COURT DECISIONS

- The Supreme Court is the highest court in the land, but it is possible to evade Court decisions:
  - Congress can amend the Constitution (w/ State ratification); 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 carry out the decision (e.g., Jackson's famous line: "John Marshall has made his decision. Now let him enforce it.")
  - State and local governments may simply not carry it out, either (e.g., desegregation, school prayer)
  - "The Constitution may be what the Supreme Court says it is, but a Supreme Court opinion is what a trial judge or a policeman or a school board or a city council says it is."

## VOTING BLOCS ON THE CURRENT SUPREME COURT

- Liberals
  - Ruth Bader Ginsburg (Clinton, 1993, 82)
  - Stephen Breyer (Clinton, 1994, 76)
  - Sonia Sotomayor (Obama, 2009, 60)
  - Elena Kagan (Obama, 2010, 54)
- Conservatives
  - Antonin Scalia (Reagan, 1986, 79)
  - Clarence Thomas (H.W. Bush, 1991, 66)
  - John Roberts (W. Bush, 2005, 60) – Chief Justice
  - Samuel Alito (W. Bush, 2006, 65)
- Swing/Moderate Conservative
  - Anthony Kennedy (Reagan, 1987, 78)

# FACTORS THAT INFLUENCE SUPREME COURT DECISIONS

## PRECEDENT

### ***Stare Decisis***

- *Stare decisis* is a Latin phrase meaning "let the decision stand"
- The vast majority of SC decisions are based on precedents established in earlier cases
- Precedents help make SC decisions more uniform, predictable, and efficient

### **Examples**

- In *Marbury v. Madison*, the Court established the principle of judicial review as applied to Congress and the president
  - In another case, the Court extended the power of judicial review 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 equal protection of the laws"

## JUDICIAL PHILOSOPHY

### **Judicial Restraint**

- Philosophy that the courts should allow the states and the other two branches (Leg and Exec) of the federal government to solve social, economic, and political problems
- Courts should merely interpret the law rather than make law. That's Congress' job.
- Original intent suggests that courts should follow the intentions of the Founding Fathers

### **Judicial Activism**

- Philosophy of judges to interpret the Constitution according to their own views and take an active role in solving society's problems
- Idea that judges ought to freely strike down laws that are inconsistent with their understanding of the Constitution
- Courts should uphold the "guardian 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)

### **Public Opinion**

- The Constitution insulated SC justices from direct political pressures
  - Justices are appointed to serve life terms subject only to good behavior
  - The *certiorari* process enables the SC to set its own agenda
  - The public has limited access to Court proceedings
- 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
  - Justices can be impeached