3 The Supreme Court

Section Preview

OBJECTIVES

1. **Define** the concept of judicial review.
2. **Outline** the scope of the Supreme Court's jurisdiction.
3. **Examine** how cases reach the Supreme Court.
4. **Summarize** the way the Court operates.

WHY IT MATTERS

The Supreme Court, the only court created by the Constitution, is the final authority on questions of federal law. It enjoys broad jurisdiction but usually limits its caseload to appeals involving constitutional questions and interpretations of federal law.

POLITICAL DICTIONARY

- ★ **writ of certiorari**
- ★ **certificate**
- ★ **majority opinion**
- ★ **precedent**
- ★ **concurring opinion**
- ★ **dissenting opinion**

The eagle, the flag, Uncle Sam—you almost certainly recognize these symbols. They are used widely to represent the United States. You probably also know the symbol for justice: the blindfolded woman holding a balanced scale. She represents what is perhaps this nation's loftiest goal: equal justice for all. Indeed, those words are chiseled in marble above the entrance to the Supreme Court building in Washington, D.C.

The Supreme Court of the United States is the only court specifically created by the Constitution, in Article III, Section 1. The Court is made up of the Chief Justice of the United States, whose office is also established by the Constitution,[9] and eight associate justices.[10] The Framers quite purposely placed the Court on an equal plane with the President and Congress. As the highest court in the land, the Supreme Court stands as the court of last resort in all questions of federal law. That is, it is the final authority in any case involving any question arising under the Constitution, an act of Congress, or a treaty of the United States.

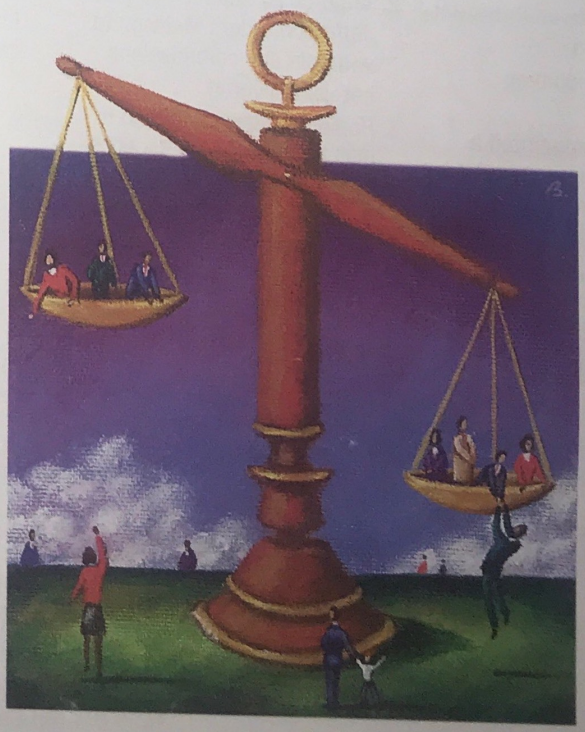
Judicial Review

Remember, most courts in this country, both federal and State, may exercise the critically important power of judicial review. They have the extraordinary power to decide the constitutionality of an act of government, whether executive, legislative, or judicial. The ultimate exercise of that power rests with the Supreme Court of the United States. That single fact makes the Supreme Court the final authority on the meaning of the Constitution.

The Constitution does not in so many words provide for the power of judicial review. Still, there is little doubt that the Framers intended

[9] Article I, Section 3, Clause 6.

[10] Congress sets the number of associate justices and thus the size of the Supreme Court. The Judiciary Act of 1789 created a Court of six justices, including the Chief Justice. Its size was reduced to five members in 1801 but increased to seven in 1807, to nine in 1837, and to 10 in 1863. It was reduced to seven in 1866 and raised to its present size of nine in 1869.



▲ A scale is often used to represent justice.

that the federal courts—and, in particular, the Supreme Court—should have this power.[11]

Marbury v. Madison

The Court first asserted its power of judicial review in the classic case of *Marbury* v. *Madison* in 1803.[12] The case arose in the aftermath of the stormy elections of 1800. Thomas Jefferson and his Democratic-Republicans had won the presidency and control of both houses of Congress. The outgoing Federalists, stung by their defeat, then tried to pack the judiciary with loyal party members. Congress created several new federal judgeships in the early weeks of 1801; President John Adams quickly filled those posts with Federalists.

William Marbury had been appointed a justice of the peace for the District of Columbia. The Senate had confirmed his appointment and late on the night of March 3, 1801, President Adams signed the commissions of office for Marbury and for a number of other new judges. The next day Jefferson became the President and discovered that Marbury's commission and several others had not yet been delivered.

Angered by the Federalists' attempted court-packing, Jefferson at once told James Madison, the new secretary of state, not to deliver those commissions to the "midnight justices." William Marbury then went to the Supreme Court, seeking a writ of mandamus[13] to force delivery.

Marbury based his suit on a provision of the Judiciary Act of 1789, in which Congress had created the federal court system. That law gave the Supreme Court the right to hear such suits in its original jurisdiction (not on appeal from a lower court).

[11] See Article III, Section 2, setting out the Court's jurisdiction, and Article VI, Section 2, the Supremacy Clause.

[12] It is often mistakenly said that the Court first exercised the power in this case, but in fact the Court did so at least as early as *Hylton* v. *United States* in 1796. In that case it upheld the constitutionality of a tax Congress had laid on carriages.

[13] A writ of mandamus is a court order compelling a government officer to perform an act which that officer has a clear legal duty to perform.

An Early Supreme Court Decision: *Marbury* v. *Madison*

The Players

John Adams, outgoing Federalist President of the United States

Thomas Jefferson, incoming Democratic-Republican President of the United States

James Madison, incoming secretary of state

William Marbury, appointed a justice of the peace for the District of Columbia

John Marshall, Chief Justice of the United States Supreme Court

The Case

1. The night before leaving office, Adams signs several judicial commissions.
2. Angered by Adams' actions, Jefferson orders Madison to withhold any commissions not yet delivered.
3. Hoping to force Jefferson to give him the judgeship, Marbury files suit in the Supreme Court. He argues that the Judiciary Act of 1789 allows him to take his case directly to the high court.

The Decision

Marshall, writing for a unanimous court, declares that the Judiciary Act violates Article III, Section 2 and is therefore unconstitutional. Marbury loses, having based his case on an unconstitutional law.

The Impact

The case established the Supreme Court's power of judicial review—its power to determine the constitutionality of a governmental action. The power extends to the actions of all governments in the United States—national, State and local. The Court's decision in *Marbury* assured the place of the judicial branch in the system of separation of powers.

Interpreting Charts In the landmark case *Marbury* v. *Madison*, the Supreme Court ruled against William Marbury because he had based his case on a part of the Judiciary Act of 1789, which was found to be in conflict with the Constitution. ***How did the Court's decision affect the role of the judicial branch in our system of government?***

In a unanimous opinion written by Chief Justice John Marshall, the Court refused Marbury's request.[14] It did so because it found the section of the judiciary act on which Marbury had based his case to be in conflict with the Constitution and, therefore, void. Specifically, it found the statute in conflict with the section of the Constitution that reads:

FROM THE Constitution

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction. . . ."

—Article III, Section 2, Clause 2

Marshall's powerful opinion was based on three propositions. First, the Constitution is, by its own terms, the supreme law of the land. Second, all legislative acts and other actions of government are subordinate (inferior) to the supreme law and cannot be allowed to conflict with it. Third, judges are sworn to enforce the provisions of the Constitution, and therefore must refuse to enforce any government action they find to be in conflict with it.

The Effects of *Marbury*

The impact of the Court's decision goes far beyond the fate of an obscure individual named William Marbury. In this decision, Chief Justice Marshall claimed for the Supreme Court the right to declare acts of Congress unconstitutional, and so laid the foundation for the judicial branch's key role in the development of the American system of government.

The Court has used its power of judicial review in thousands of cases since 1803. Usually it has upheld the constitutionality of federal and State actions.

The dramatic and often far-reaching effects of the Supreme Court's exercise of the power of judicial review tends to overshadow much of its other work. Each year it hears dozens of cases in which questions of constitutionality are not raised, but in which federal law is interpreted and applied. Thus, many of the more important statutes that Congress has passed have been brought to the Supreme Court time and again for decision. So, too, have many of the lesser ones. In interpreting those laws and applying them to specific situations, the Court has had a real impact on both their meaning and their effect.

Voices on Government

David Souter was named a Supreme Court justice by President George Bush in 1990. From his experience as New Hampshire attorney general and a State court judge, Souter knew that judges' decisions are more than abstract legal ideas. Here are his thoughtful insights on justice:

"Whether we are on a trial court or an appellate court, at the end of our task some human being is going to be affected. . . . If indeed we are going to be trial judges, whose rulings will affect the lives of other people and who are going to change their lives by what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right."

Evaluating the Quotation

Think of an issue that reflects the "human" effects of court decisions that Souter refers to. In what ways did a court decision affect the daily lives of Americans?

Supreme Court Jurisdiction

The Supreme Court has both original and appellate jurisdiction. Most of its cases, however, come on appeal—from the lower federal courts and from the highest State courts.

Article III, Section 2 of the Constitution spells out two classes of cases that may be heard by the High Court in its original jurisdiction: (1) those to which a State is a party and (2) those affecting ambassadors, other public ministers, and consuls.

Congress cannot enlarge on this constitutional grant of original jurisdiction. Recall, that

[14] Marshall was appointed Chief Justice by President John Adams, and he took office on January 31, 1801. He served in the post for 34 years, until his death on July 6, 1835. He also served as Adams's secretary of state from May 13, 1800, to March 4, 1801. Thus, he served simultaneously as secretary of state and Chief Justice for more than a month at the end of the Adams administration. What is more, he was the secretary of state who had failed to deliver Marbury's commission in a timely fashion.

No Anonymous Tips In *Florida* v. *J.L.*, 2000, the Supreme Court ruled that under ordinary circumstances, an anonymous tip to police about a concealed firearm was not sufficient to prompt a legal "stop and frisk" search.

is what the Court held in *Marbury*. If Congress could do so, it would in effect be amending the Constitution. Congress can implement the constitutional provision, however, and it has done so. It has provided that the Court shall have original and exclusive jurisdiction over (1) all controversies involving two or more States, and (2) all cases brought against ambassadors or other public ministers, but not consuls.

The Court may choose to take original jurisdiction over any other case covered by the broad wording in Article III, Section 2 of the Constitution. Almost without exception, however, those cases are tried in the lower courts. The Supreme Court hears only a very small number of cases in its original jurisdiction—in fact, only a case or two each term.

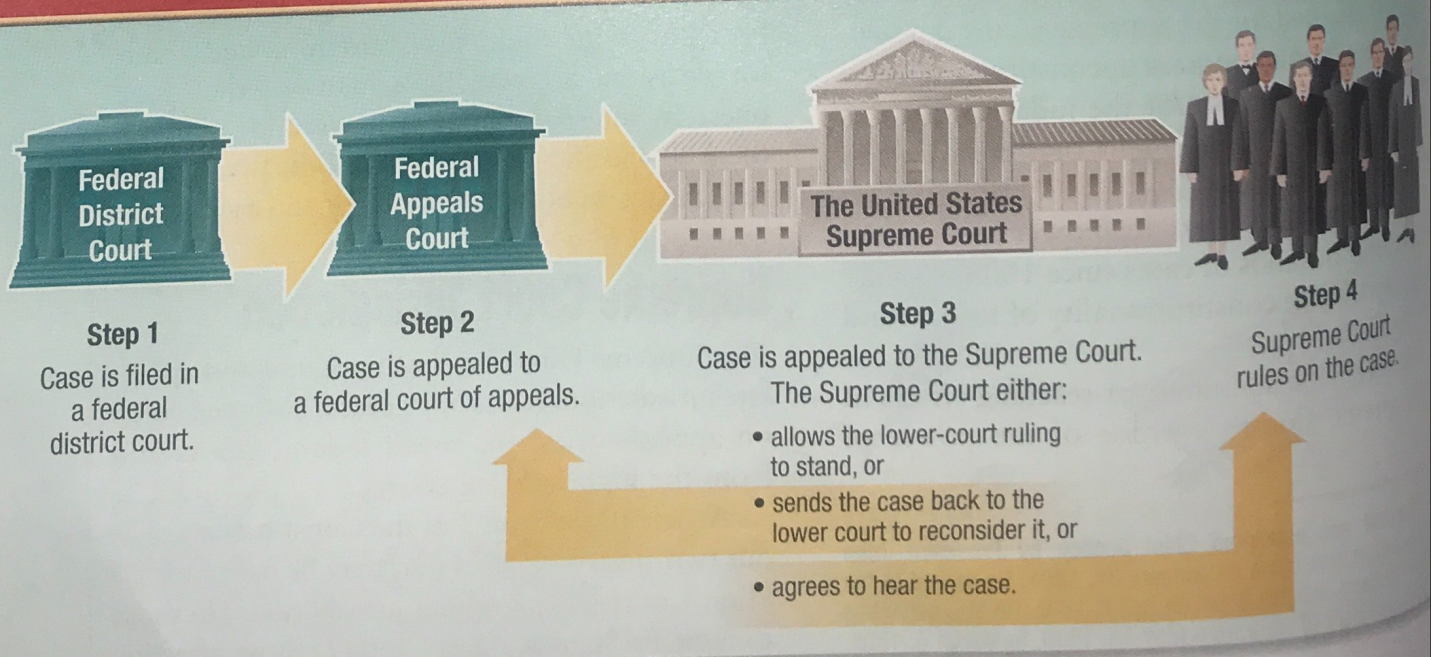
How Cases Reach the Court

Some 8,000 cases are now appealed to the Supreme Court each year. Of these, the Court accepts only a few hundred for decision. In most cases, petitions for review are denied, usually because most of the justices agree with the decision of the lower court or believe that the case involves no significant point of law. The Court selects those cases that it does hear according to "the rule of four": At least four of its nine justices must agree that a case should be put on the Court's docket.

More than half the cases decided by the Court are disposed of in brief orders. For example, an order may remand (return) a case to a lower court for reconsideration in the light of some other recent and related case decided by the High Court. All told, the Court decides, after hearing arguments and with full opinions, fewer than 100 cases a year.

Most cases reach the Supreme Court by writ **of certiorari** (from the Latin, meaning "to be made more certain"). This writ is an order by the Court directing a lower court to send up the record in a given case for its review. Either party

Appealing a Case to the Supreme Court



Interpreting Diagrams The diagram above shows the typical route (though not the only one) a case might take to the Supreme Court. ***Why do you think this process requires so many steps to reach the Supreme Court—often at great expense and time to the parties involved?***

to a case can petition the Court to issue a writ. But, again, "cert" is granted in a limited number of instances—typically, only when a petition raises some important constitutional question or a serious problem in the interpretation of a statute.

When certiorari is denied, the decision of the lower court stands in that particular case. Note, however, that the denial of cert is not a decision on the merits of a case. All that a denial means is that, for whatever reason, four or more justices could not agree that the Supreme Court should accept that case for review.

A few cases do reach the Court in yet another way, by **certificate.** This process is used when a lower court is not clear about the procedure or the rule of law that should apply in a case. The lower court asks the Supreme Court to certify the answer to a specific question in the matter.

Most cases that reach the Court do so from the highest State courts and the federal courts of appeals. A few do come, however, from the federal district courts and a very few from the Court of Appeals for the Armed Forces.

How the Court Operates

The Court sits from the first Monday in October to sometime the following June or July. Each term is identified by the year in which it began. Thus, the 2002 term ran from October 1, 2002, into the early summer of 2003.

Oral Arguments

Once the Supreme Court accepts a case, it sets a date on which that case will be heard. As a rule, the justices consider cases in two-week cycles from October to early May. They hear oral arguments in several cases for two weeks; then the justices recess for two weeks to consider those cases and handle other Court business.

While the Supreme Court is hearing oral arguments, it convenes at 10:00 A.M. on Mondays, Tuesdays, Wednesdays, and sometimes Thursdays. At those public sessions, the lawyers make their oral arguments. Their presentations are almost always limited to 30 minutes.[15]

Briefs

Briefs are written documents filed with the Court before oral arguments begin. These detailed statements support one side of a case, presenting arguments built largely on relevant facts and the citation of previous cases. Many briefs run to hundreds of pages.

The Court may also receive *amicus curiae* (friend of the court) briefs. These are briefs filed by persons or groups who are not actual parties to a case but who nonetheless have a substantial interest in its outcome. Thus, for example, cases involving such highly charged matters as abortion or affirmative action regularly attract a large number of amicus briefs. Notice, however, that these briefs can be filed only with the Court's permission or at its request.

The solicitor general, a principal officer in the Department of Justice, is often called the Federal Government's chief lawyer. He—and, certainly, one day she—represents the United States in all cases to which it is party in the Supreme Court and may appear for the government for any federal State court.[16]

The solicitor general also has another extraordinary responsibility. He or she decides which cases the government should ask the Supreme Court to review and what position the United States should take in those cases it brings before the High Court.

The Court in Conference

On most Wednesdays and Fridays through a term, the justices meet in conference. There, in closest secrecy, they consider the cases in which they have heard oral arguments.[17]

The Chief Justice presides over the conference. He speaks first on each case to be considered and usually indicates how he intends to vote. Then each associate justice summarizes his or her views. Those presentations are made in order of seniority, with the justice most recently named to the Court speaking last. After the justices are "polled," they usually debate the case.

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[15]The justices usually listen closely to a lawyer's oral arguments and sometimes interrupt them with questions or requests for information. After 25 minutes, a white light comes on at the lectern from which the lawyer addresses the Court; five minutes later a red light signals the end of the presentation, even if the lawyer is in mid-sentence.

[16]The attorney general may argue the government's position before the Supreme Court but rarely does.

[17]At conference, the justices also decide which new cases they will accept for decision.

INTERNET UPDATE

▲ The current members of the Supreme Court pose for their official photograph. Front row: Antonin Scalia, John Paul Stevens, Chief Justice William H. Rehnquist, Sandra Day O'Connor, Anthony Kennedy. Back Row: Ruth Bader Ginsburg, David Souter, Clarence Thomas, Stephen Breyer.

About a third of all the Court's decisions are unanimous, but most find the Court divided. The High Court is sometimes criticized for its split decisions. But, notice, its cases pose very difficult questions, and many also present questions on which lower courts have disagreed. In short, most of the Court's cases are controversial ones; the easy cases seldom get that far.

Opinions

If the Chief Justice is in the majority on a case, he assigns the writing of the Court's opinion. When the Chief Justice is in the minority, the assignment is handled by the senior associate justice on the majority side.

The Court's opinion is often called the **majority opinion.** Officially called the Opinion of the Court, it announces the Court's decision in a case and sets out the reasoning on which it is based.[18]

The Court's written opinions are exceedingly valuable. The majority opinions stand as **precedents,** or examples to be followed in similar cases as they arise in the lower courts or reach the Supreme Court.

Often, one or more of the justices who agree with the Court's decision may write a **concurring opinion**—to add or emphasize a point that was not made in the majority opinion. The concurring opinions may bring the Supreme Court to modify its present stand in future cases.

One or more **dissenting opinions** are often written by those justices who do not agree with the Court's majority decision. Chief Justice Charles Evans Hughes once described dissenting opinions as "an appeal to the brooding spirit of the law, to the intelligence of a future day." On rare occasions, the Supreme Court does reverse itself. The minority opinion of today could become the Court's majority position in the future.

[18]Most majority opinions, and many concurring and dissenting opinions, run to dozens of pages. Some decisions are accompanied by very brief and unsigned opinions. These *per curiam* (for the court) opinions seldom run more than a paragraph or two and usually dispose of relatively uncomplicated cases.

Section 3 Assessment

Key Terms and Main Ideas

1. **(a)** What does a **writ of certiorari** have in common with a **certificate? (b)** How do the two differ?
2. Explain how a **majority opinion,** a **concurring opinion,** and a **dissenting opinion** differ.
3. **(a)** Why are **precedents** important? **(b)** Write a sentence using the word *precedent* in a judicial context.
4. Explain why "easy" cases generally do not reach the Supreme Court.

Critical Thinking

5. **Drawing Conclusions** Why do you think the Supreme Court justices often write concurring and/or dissenting opinions in a case?
6. **Determining Cause and Effect** How does the Court's power of judicial review affect the balance of power in the Federal Government?

Take It to the Net

7. Visit the Exploring Constitutional Conflicts site on the Internet and use the information provided to write a brief essay that answers either question # 1 or # 5 on that page. Use the links provided in the Social Studies area at the following Web site for help in completing this activity.
www.phschool.com