

# SCOTUS

## KEY QUESTIONS

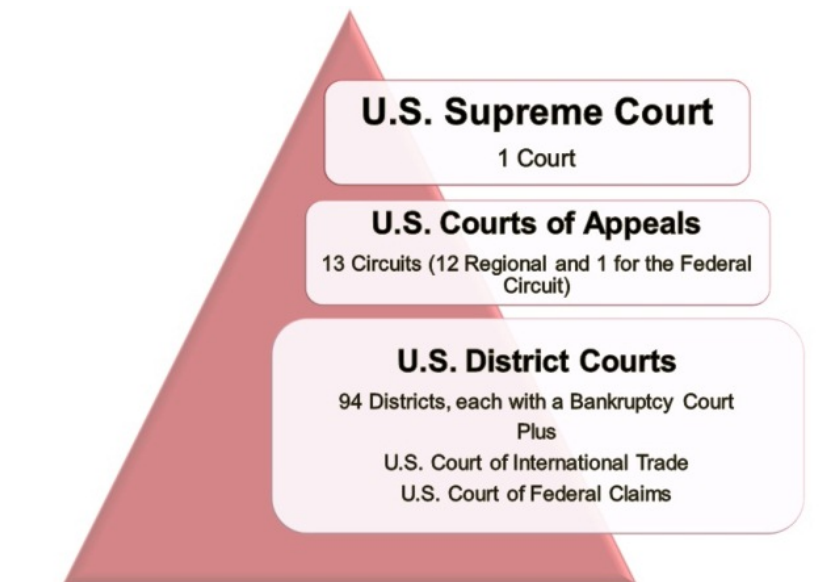
### 1. What is the Supreme Court?

To truly understand the Supreme Court we need to look to the US Constitution. It's role is set out in 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".*

Although the Constitution establishes the Supreme Court, it permits Congress to decide how to organize it.

The Federal Court Structure today is very specific and comes from the Judiciary Act 1789. It looks like:



#### Composition :

- There are 9 Justices (one Chief Justice and 8 Associate Justices)
- Theoretically the President can select anyone to be a Supreme Court Justice; however they are likely to look to conventional sources to find a Justice (the US Court of Appeal, State Courts, the Executive Branch, State Governors, Academics...)
- They are appointed for life (though they are allowed to retire or can be impeached)

#### Nomination process:

There are 4 key stages to appointing a Supreme Court Justice:

1. A Vacancy arises through retirement, death or impeachment
2. The President begins the search for a replacement and interviews a short-list.

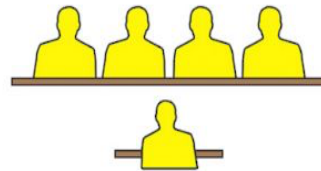
3. The President picks a nominee and announces them. Yet, prior to the President declaring their nomination after careful research, they will share the details of their choice with the FBI and CIA so that the candidate can undergo thorough background checks.
4. The Constitution requires the president to submit nominations to the Senate for its advice and consent. The Senate Judiciary Committee begins the confirmation process (pre-hearing investigation / public hearings / debates that give rise to a committee recommendation to the Senate) which ends with a vote in the Senate. Supreme Court nominations are first referred to the Senate Judiciary Committee before being considered by the full Senate. A simple majority vote is necessary for confirmation.

## HOW THE SUPREME COURT NOMINATION PROCESS WORKS

THE **PRESIDENT NOMINATES** A CANDIDATE



THE **SENATE JUDICIARY COMMITTEE** **REVIEWS** THE NOMINEE



THE **FULL SENATE** VOTES



THEY NOW REQUIRE **JUST 51 VOTES** TO CONFIRM A NOMINEE

THEY SEND **THEIR RECOMMENDATION** TO THE FULL SENATE



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<b>Strengths of the Appointment Process</b>	<b>Weaknesses of the Appointment Process</b>
<p>1. Scrutiny- Candidates who are selected to join the most powerful court in America are put under considerable scrutiny; they are reviewed by their own professionals (ABA), the US Security Services (the FBI and CIA), the President and the Senate. This ensures that only the best candidates are selected.</p> <p>2. Openness- The whole event is broadcast on National Television, so that ordinary Americans feel a part of the Government, it also means that Judges are shown as real people with flaws themselves (Clarence Thomas, Douglas Ginsburg).</p> <p>3. Control- By placing the nomination and confirmation of a Justice in the hands of the Executive and Legislative, this is ensuring that the Judiciary do not become over powerful and are still in some way accountable to the other branches.</p> <p>4. Diversity of views- Whilst having a choice between Liberal and Conservative judges may seem a headache, it can be beneficial in that it opens the Supreme Court up to new Judicial philosophy.</p>	<p>1. Echo Chamber- The Supreme Court is a job for life. It means that a President can leave their mark long after they have left office by selecting a Judge who reflects their views (consider Rehnquist after 34 years).</p> <p>2. Politicisation- Some politicians on both sides of the spectrum have accused the process of becoming too political. This has been evident in recent nominations with the Interviews conducted by the Senate Judiciary Committee and the recent voting record of the Judges appointed.</p> <p>3. Failure- The road to becoming a Supreme Court Justice is a difficult one and is littered with failed nominations for various reasons, this process has a high failure rate which puts candidates into the public forum for severe scrutiny with very little chance to redeem themselves.</p>

## 2. What is the role of the Supreme Court?

### Powers of the Supreme Court:

- The Court has original jurisdiction (a case is tried before the Court) over certain cases, e.g., suits between two or more states and/or cases involving ambassadors and other public ministers.
- The Court has appellate jurisdiction (the Court can hear the case on appeal) on almost any other case that involves a point of constitutional and/or federal law.

### Judicial Review:

The best-known power of the Supreme Court is judicial review, or the ability of the Court to declare a Legislative or Executive act in violation of the Constitution. Judicial review is the idea, fundamental to the US system of government, that the actions of the executive and legislative branches of government are subject to review and possible invalidation by the judiciary. It is a revision of the lawfulness of a decision or action made by a public body. In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

## 3. How does it rule?

Most cases deal with the Bill of Rights and later amendments to the Constitution. It is with these issues that the Supreme Court primarily deals. This is why we use the term Civil Rights and Liberties to deal with any challenges to Federal Government authority on any of these issues.

The Supreme Court decides whether Government Legislation is unconstitutional based on the concept of Due Process which is set out in the 14<sup>th</sup> Amendment Section which says:

*“All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.*

So the Supreme Court either deals with the content of the law and ensures that it must not be Arbitrary, Unreasonable and Unconstitutional. Or it deals with the process that the law goes through and ensures that the procedure of the law must be fair and equal for everyone.

# HOW THE SUPREME COURT WORKS



## The U.S. Supreme Court is:

- The highest court in the country
- Located in Washington, DC
- The head of the judicial branch of the federal government
- Responsible for deciding whether laws violate the Constitution
- In session from early October until late June or early July

## How a Case Gets to the Supreme Court

Most cases reach the Court on appeal. An appeal is a request for a higher court to reverse the decision of a lower court.

Most appeals come from federal courts. They can come from state courts if a case deals with federal law.

Rarely, the Court hears a new case, such as one between states.



State Trial Court



State Court of Appeals



State Supreme Court



Federal Trial Court



U.S. Court of Appeals



### 1. Dissatisfied parties petition the Court for review



Parties may appeal their case to the Supreme Court, petitioning the Court to review the decision of the lower court.



### 2. Justices study documents

The Justices examine the petition and supporting materials.



### 3. Justices vote

Four Justices must vote in favor for a case to be granted review.

## What Happens Once a Case is Selected for Review?

### 1. Parties make arguments

The Justices review the briefs (written arguments) and hear oral arguments.

In oral arguments, each side usually has 30 minutes to present its case. The Justices typically ask many questions during this time.



### 2. Justices write opinions

The Justices vote on the case and write their opinions.

- The majority opinion shared by more than half of the Justices becomes the Court's decision.
- Justices who disagree with the majority opinion write dissenting or minority opinions.



### 3. The Court issues its decision

Justices may change their vote after reading first drafts of the opinions. Once the opinions are completed and all of the Justices have cast a final vote, the Court "hands down" its decision.

All cases are heard and decided before summer recess. It can take up to nine months to announce a decision.



### Every year:



The Court receives 7,000-8,000 requests for review and grants 70-80 for oral argument. Other requests are granted and decided without argument.

### About the Justices

#### There are nine Justices:

- A Chief Justice, who sits in the middle and is the head of the judicial branch.
- Eight Associate Justices

#### When a new Justice is needed:

- The President nominates a candidate, usually a federal judge.
- The Senate votes to confirm the nominee.
- The Court can continue deciding cases with less than nine Justices, but if there is a tie, the lower court's decision stands.

#### Justices are appointed for life, though they may resign or retire.

- They serve an average of 16 years.





#### **4. Why is the Supreme Court so important?**

- ➔ The Supreme Court plays a very important role in our constitutional system of government.
  - First, as the highest court in the land, it is the court of last resort for those looking for justice.
  - Second, due to its power of judicial review, it plays an essential role in ensuring that each branch of government recognizes the limits of its own power.
  - Third, it protects civil rights and liberties by striking down laws that violate the Constitution.
  - Finally, it sets appropriate limits on democratic government by ensuring that popular majorities cannot pass laws that harm and/or take undue advantage of unpopular minorities.
- ➔ In essence, it serves to ensure that the changing views of a majority do not undermine the fundamental values common to all Americans, i.e., freedom of speech, freedom of religion, and due process of law.

#### **5. What challenges is it facing today?**

#### **6. What is the future of the Supreme Court?**

# KEY LEGAL CONCEPTS

- **Separation of powers:** Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.
- **Checks and Balances:** Checks and balances operate throughout the U.S. government, as each branch exercises certain powers that can be checked by the powers given to the other two branches.
- **Judicial Review:** Review by the Supreme Court of the constitutional validity of a legislative act.
- **Precedent:** The principle that judges and justices follow past judicial decisions for guidance when possible. Courts adhere to precedent so that decisions don't appear based on the whims or biases of a single court.
- **Stare decisis:** Latin for "to stand by the thing" — the practice of honoring or following past reasoning of Supreme Court decisions. Justices applying stare decisis may rule in line with past court decisions even if they don't fully agree with those decisions to help maintain consistency and impartiality in the court.
- **Strict constructionism:** Strict Constructionists tend to be Conservative Justices (although not exclusively) who believe that the Constitution should be interpreted literally and no additional meanings should be construed from its wording. Strict Constructionists tend to favour the retention of power by the states as set out in the Constitution rather than giving new powers to the Federal Government. Their position is best summed up Antonin Scalia who remarked: *"The constitution that I interpret and apply is not living but dead. Our first responsibility is not to make sense of the law- our first responsibility is to follow the text of the law"*.
- **Loose constructionism:** Loose Constructionists tend to be Liberal Justices (although not exclusively) who believe that the Constitution should be interpreted broadly and that the Court should look at what rights the founding fathers intended to give in deciding on cases.

## Some discussion topics

- What difference do you think it makes whether a Supreme Court Justice has experience as a judge?
- What kinds of things do you think should disqualify someone from being considered as a nominee for the Supreme Court?
- With only nine justices on the Court, what would diversity ideally look like?
- If you could make one change to the nomination process, what would it be?
- How does the nomination and confirmation process let the executive and legislative branches “check” the judicial branch?
- Do you believe that the way the Supreme Court today is organized can prevent its politicization? Why?
- What are the pros and cons of the nomination process?
- What are some benefits and risks of each judicial philosophy as a method of interpreting the Constitution?
- Considering *stare decisis*, why do you think adhering to precedent is important? (ex: It promotes predictable and consistent development of legal principles. / It promotes reliance on judicial decisions. / It limits the power of the judiciary. / It helps people know what to expect in certain legal situations, etc.)
- What do you think would be acceptable grounds for reversing an existing precedent? (It has become indefensible over time. / It is clearly wrong. / It should not remain the law of the land. / It is causing significant harm. / The precedent is not workable. / The precedent has been eroded by subsequent decisions, etc.)