

Chapter 9 The Judiciary

How the Supreme Court Works

Slide 1



Slide 2

Study Guide Questions

How many justices work on the Supreme Court, what other jobs support the justices, and how many people work at the Supreme Court? Page 255

How is a member of the Supreme Court selected? Where is a nominated judge reviewed before a vote by the Senate? Page 257

What is the process for a case to be heard by the Supreme Court?

- o What is the rule of 4?
- o What is a writ of certiorari?
- o What is an amicus curiae? Pages 264-271

Slide 3

TABLE 9.1 What kinds of cases does the U.S. Supreme Court hear?
TABLE 9.1 WHAT KINDS OF CASES DOES THE U.S. SUPREME COURT HEAR?
The following are the types of cases the Supreme Court was given the jurisdiction to hear as initially specified in Article III, section 2, of the Constitution:
All cases arising under the Constitution and laws or treaties of the United States
All cases of admiralty or maritime jurisdiction
Cases in which the United States is a party
Controversies between a state and citizens of another state (later modified by the Eleventh Amendment)
Controversies between two or more states
Controversies between citizens of different states
Controversies between citizens of the same state claiming lands under grants in different states
Controversies between a state, or the citizens thereof, and foreign states or citizens thereof
All cases affecting ambassadors or other public ministers

This table shows the different types of cases over which the Supreme Court has jurisdiction as initially specified in the Constitution. Jurisdiction means where a court has the authority to hear a trial. Original jurisdiction is where a court has the authority to hear a case for the first time it is brought to trial.

Chapter 9 The Judiciary

How the Supreme Court Works

Slide 4

The Supreme Court

- Jurisdiction
 - Reviews cases from U.S. Courts of Appeal and state supreme courts
- Members
 - Eight associate justices and one chief justice
- Precedent
 - Rules are binding throughout the nation.
 - Stare decisis



ALWAYS LEARNING | American Government: Rights and Liberties, 2014 Edition Update, 12th | Copyright © 2014, 2014, 2014 Pearson Education, Inc. All Rights Reserved. PEARSON

Sometimes cases reviewed by the Supreme Court involve highly controversial issues. The Court hears only cases from U.S. Courts of Appeal and those from state supreme courts and other courts of last resort. Since 1869, there have been eight associate justices and one chief justice who serve on the court. Each has four clerks, and the entire court employs just 400 staff members.

The current Supreme Court is led by Chief Justice John Roberts. The other justices are Ruth Bader Ginsberg, Elena Kagan, Samuel A. Alito, M. Gorsuch, Anthony Kennedy, Sonia Sotomayor, Clarence Thomas, & Stephen Breyer.

<https://www.supremecourt.gov/about/biographies.aspx>

Slide 5

How Federal Court Judges Are Selected

- Who Are Federal Judges?
- Nomination Criteria
- The Confirmation Process
- Appointments to the U.S. Supreme Court



ALWAYS LEARNING | American Government: Rights and Liberties, 2014 Edition Update, 12th | Copyright © 2014, 2014, 2014 Pearson Education, Inc. All Rights Reserved. PEARSON

The selection of federal judges is often a highly political process with important political ramifications because the president must nominate judges and the U.S. Senate must confirm them. Presidents, in general, try to select well-qualified men and women for the bench. But, these appointments also provide a president with the opportunity to put his philosophical stamp on the federal courts.

In this section we will discuss who are the judges, what are the nomination criteria, and what the appointment and confirmation process looks like.

Chapter 9 The Judiciary

How the Supreme Court Works

Slide 6

TABLE 9.3 Who are the Justices of the Supreme Court in 2014?

TABLE 9.3 WHO ARE THE JUSTICES OF THE SUPREME COURT IN 2014?

Justice	Year of Birth	Year Appointed	Political Party	Law School	Appointing President	Religion	First Judicial Experience	First Government Experience
John Roberts	1955	2005	R	Harvard	G. W. Bush	Protestant	Chief Justice of the Supreme Court	Chief of the Federal Reserve Bank of San Francisco
Antonin Scalia	1936	1982	R	Harvard	Reagan	Catholic	U.S. Court of Appeals	Assistant Attorney General, Office of Legal Counsel
Anthony Kennedy	1932	1982	R	Harvard	Reagan	Catholic	U.S. Court of Appeals	None
Clement Thomas	1942	2005	R	Yale	Bush	Protestant	U.S. Court of Appeals	Chief Legal Officer, Federal Reserve Bank of Kansas City
Ruth Bader Ginsburg	1923	1993	D	Columbia	Clinton	Jewish	U.S. Court of Appeals	None
Stephen Breyer	1938	1994	D	Harvard	Clinton	Jewish	U.S. Court of Appeals	Chief Counsel, National Labor Relations Board
Samuel Alito	1952	2006	R	Yale	G. W. Bush	Catholic	U.S. Court of Appeals	Chief of the U.S. Sentences Administration
Sonia Sotomayor	1954	2009	D	Yale	Obama	Catholic	U.S. Court of Appeals	Assistant Attorney General, U.S. Sentences Administration
Elena Kagan	1960	2010	D	Harvard	Obama	Jewish	None	Chief of the U.S. Sentences Administration

PEARSON

This table gives us some background on each of the Supreme Court justices serving in 2012.

Slide 7

The Confirmation Process and Appointments to the U.S. Supreme Court

- Investigation
 - Personal and professional background
- Lobbying by Interest Groups
 - They do not stay silent
- Senate Committee Hearings and Senate Vote



PEARSON

Before a president announces a nomination, especially to the Supreme Court, the White House staff begin an investigation into the personal and professional backgrounds of potential nominees. Names are given to the FBI and the American Bar Association (ABA) for vetting, review, and, in the case of the ABA, a rating. Once the nominee has been announced, the Senate Judiciary Committee starts its own investigation, which includes asking nominees to fill out a lengthy questionnaire. The committee holds its own hearings before the matter comes to the Senate for a vote.

During this process, interest groups may become very active, especially for Supreme Court nominations. In 1987, liberal groups launched a campaign against Supreme Court nominee Robert Bork. They objected to his firing of the Watergate special prosecutor when he was solicitor general under President Richard Nixon, and to his extreme conservative views. The Senate rejected his nomination by a 42–58 vote.

Chapter 9 The Judiciary

How the Supreme Court Works

Slide 8

TABLE 9.4 How Many Interest Groups Submit Testimony to the Senate Judiciary Committee?

TABLE 9.4 HOW MANY INTEREST GROUPS SUBMIT TESTIMONY TO THE SENATE JUDICIARY COMMITTEE?

Nominee	Year	Support	Oppose	ABA Rating	Senate Vote
Clinton	1991	9	4	Well-Q	89-10
Scalia	1986	10	14	Well-Q	96-0
Bork	1987	21	17	Well-Q*	42-58
Kennedy	1987	10	14	Well-Q	96-0
Souter	1990	20	17	Well-Q	90-9
Thomas	1991	21	32	Q*	52-48
Ginsburg	1993	4	8	Well-Q	90-9
Breyer	1994	3	3	Well-Q	87-8
Roberts	2005	19	50	Well-Q	78-22
Alito	2006	6	94	Well-Q	59-40
Sotomayor	2009	210	8	Well-Q	68-31
Kagan	2010	48	8	Well-Q	83-17

*From ABA committee members evaluated him as Not Qualified.
 SOURCE: Amy Harder and Charlie Szymanski, "Sotomayor in Context: Unprecedented Input from Interest Groups," *National Journal* (August 5, 2009), ninthjustice.nationaljournal.com/2009/08/sotomayor-in-context-recordbre.php. Updated by the authors.

PEARSON

This table shows how many interest groups submitted testimony concerning Supreme Court nominees before the Senate Judiciary Committee.

Source: Amy Harder and Charlie Szymanski, *Sotomayor in Context: Unprecedented Input from Interest Groups*, *National Journal* (August 5, 2009), ninthjustice.nationaljournal.com/2009/08/sotomayor-in-context-recordbre.php. Updated by the authors.

Slide 9



The Senate Judiciary Committee plays an important role in the process of advice and consent on presidential nominees to the judiciary. As part of this process, they hold confirmation hearings where potential justices appear before the committee. Here, Clarence Thomas testifies before the committee following his nomination in 1991. He was confirmed to serve on the Supreme Court, but not without controversy as a former co-worker, Anita Hill, alleged that Thomas made repeated and unwanted inappropriate comments towards her.


Chapter 9 The Judiciary

How the Supreme Court Works

Slide 10

The Supreme Court Today

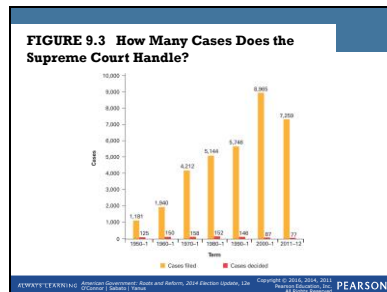
- Deciding to Hear a Case
- How Does a Case Survive the Process?
- Hearing and Deciding the Case



ALWAYS LEARNING | Administrative Processes, Rights and Liberties, 2014 Edition Update, Life | Copyright © 2015, 2014, 2013 | Pearson Education, Inc. | All Rights Reserved | PEARSON

Despite the tremendous power and influence the Supreme Court has over the policy and laws that affect Americans' lives, very few Americans have any real depth of knowledge about the Court. This may be due in large part to lack of interest, but the Court itself has taken great pains to maintain privacy and decorum. It does not televise hearings, for example, and utmost secrecy surrounds the deliberation process.

Slide 11




The modern Supreme Court is asked to hear over 7,500 cases per year (represented by orange bars); of these cases, it reaches a final decision in about one percent, or 80 cases (represented by red bars). This is about half of the total number of decisions the Court handed down 20 years ago.

Source: *Administrative Office of the Courts; Supreme Court Public Information Office.*

Slide 12

Deciding to Hear a Case

- Writs of Certiorari and the Rule of Four
 - Cases must come from U.S. Courts of appeals or other courts of last resort.
 - Cases must involve a federal question.
- Role of Clerks



ALWAYS LEARNING | Administrative Processes, Rights and Liberties, 2014 Edition Update, Life | Copyright © 2015, 2014, 2013 | Pearson Education, Inc. | All Rights Reserved | PEARSON

More than 7,500 cases are filed at the Supreme Court each term; approximately 80 cases are orally argued and decided. As you can see, only a fraction of cases requesting Supreme Court review are ever considered. [PREVIOUS NOTE STATED 7,000 / 75 CASES ?]

The Supreme Court controls its own caseload, deciding which cases it wants to hear and rejecting the rest. Litigants wanting their case to be heard send a petition for a writ of *certiorari* (Latin for "to be informed") to the Supreme Court, requesting a review of a lower court's ruling. Those

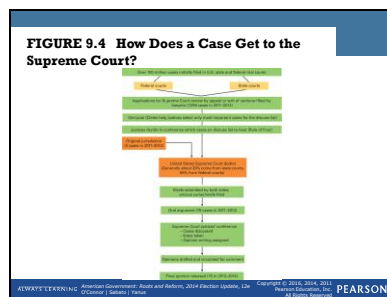
Chapter 9 The Judiciary

How the Supreme Court Works

petitions are sent first to the chief justice, and then to the other justices. Under the "**Rule of Four**," a case will get a hearing if at least four justices agree.

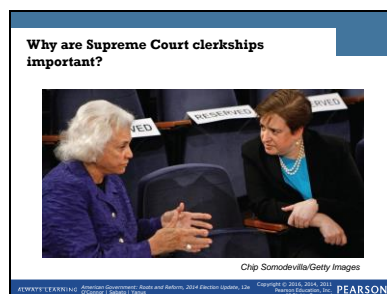
The Clerks of the Supreme Court are very important in this process. They generally graduate at the top of their class from top law schools. They review cases and make recommendations to their bosses. Since the Court started hiring more clerks for each justice, the length of opinions has increased as well.

Slide 13



This figure illustrates both how cases get on the Court's docket and what happens after a case is accepted for review. A case may take several years to wind its way through the federal judiciary and another year or two to be heard and decided by the Supreme Court, if the justices decide to grant *certiorari*, to be informed.

Slide 14

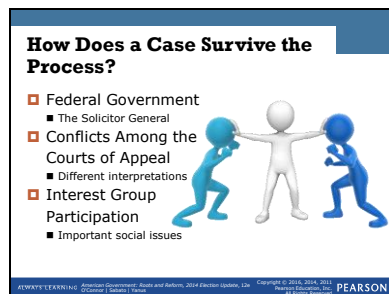


Supreme Court clerkships are awarded to a small number of elite law school graduates each year. In addition to providing valuable experience at the Court, clerkships can open doors to opportunities in government and private practice. Justice Elena Kagan (right, seated with former Justice Sandra Day O'Connor) served as a law clerk to Justice Thurgood Marshall. She later went on to serve as White House counsel, Harvard Law School dean, solicitor general, and, ultimately, Supreme Court justice.

Chapter 9 The Judiciary

How the Supreme Court Works

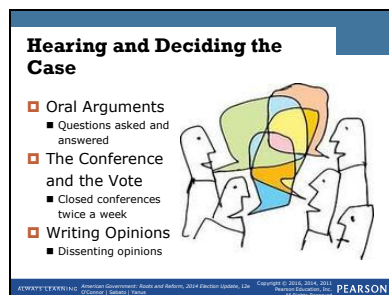
Slide 15



So which cases tend to get a hearing?
Among the cues are the following:

- The federal government is the party asking for review.
- The case involves conflict among the courts of appeals.
- The case presents a civil rights or civil liberties question.
- The case involves the ideological or policy preferences of the justices.
- The case has significant social or political interest, as evidenced by the presence of interest group *amicus curiae* briefs.

Slide 16



After the Court accepts a case and each side has submitted briefs and *amicus* briefs, the oral arguments begin. Generally, attorneys are given half an hour to argue their case, including time required to answer questions from the bench. Court observers have tried to predict the ruling of a case based on justices' questions, but that is an imperfect art.

After arguments, the justices meet behind closed doors twice a week. They start each conference with a handshake. The chief justice begins the

Chapter 9 The Judiciary

How the Supreme Court Works

discussion of the case, and each justice speaks in order of seniority. Discussions are followed by a vote on the case.

Once a decision has been made, the opinion must be written. If the chief justice is in the majority, he will assign a justice to write the majority opinion. The opinion is important because it sets out the legal reasoning justifying the decision, and this legal reasoning becomes a precedent for deciding future cases. Justices who disagree with the majority may write a dissenting opinion. Justices who agree with the vote but not the reasoning may submit a concurring opinion.

Slide 17

Implementing Court Decisions

- ▣ Judicial implementation
 - How judicial decisions are translated into public policies
- ▣ Implementing population
 - Those responsible for carrying out the decision
- ▣ Consumer population
 - Those directly affected by the decision



ALWAYS LEARNING | OpenStax Government: Roots and Reform, 2014 Edition Update, 1/e | Copyright 2014 OpenStax, under the CC BY license | PEARSON

Once the court has ruled—especially if it has reversed an earlier court decision or an action by a branch of government—policy must follow in order to implement the decision. This is called judicial implementation. In considering judicial implementation, policy makers must be aware of the implementing population—those responsible for carrying out the decision, such as lawyers, judges, public officials, government agencies—and the consumer population. Those are people who might be directly affected by a decision.

In the photo Kim Davis of Kentucky Rowan spent five days in jail in September 2015 after refusing to issue marriage licenses after the Supreme Court's decision legalizing same-sex marriage. Davis claimed same-sex marriage went against her Apostolic Christian beliefs.

