

## AP US Government: The Judiciary Test(including the Supreme Court) Study Guide

- There was no judicial system under the Articles of Confederation
- Article III of the Constitution created a federal judiciary system.
  - The court is independent because they are not voted by the people. Therefore, they can interpret law objectively.
  - No structure spelled out for fed. court system, just establishes it
  - No requirements including term limits (lifetime tenure), age, and legal experience.
  - Congress fulfilled Article III with the **Judiciary Act of 1789** which
    - Establishes a Supreme Court with 6-9 justices including a chief justice
    - Creates 16 lower courts.
    - Allows for issuance of **writs of mandamus** – a legal writ authorizing federal government officials to do their job
  - Judiciary Act of 1801 establishes more judgeships including justice of the peace
- The Supreme Court is simply an appeals court, not a trial court.
  - It has **jurisdiction** – the ability to hear cases in any matter whatsoever. Cases only go to the **Supreme Court** if there is an **issue of constitutional law or national law**.
    - There are two kinds of jurisdiction
      1. Original – The right of a court to be the first to hear a case. The Supreme Court has this right if the cases involve ambassadors or states.
      2. Appellate – the right of the court to rehear(not retry) cases brought by losing parties in lower courts. The Courts of

Appeals and the Supreme Court have this jurisdiction.

- Ex. *O'Brien v. US* – if you are drafted, your freedom of expression is denied.
- Also acts as court in admiralty and marital law (any disputes on seas)

- **Judicial Selection**

- Lower level courts such as District Courts are appointed by the president and approved by the Senate
  - **Senatorial courtesy** – an unwritten rule that allows individual senators who represent the state where the district is located to approve or disprove potential nominees.
- **Selecting Justices to the Supreme Court**
  - 9 current justices
  - Some presidents' legacies are defined by who they appoint to the Supreme Court
    - **The only impact the president can have on the Court is when there is a vacancy especially Chief Justice.** – There is on average one vacancy every two years
      - In 2006 the Chief Justice died and Bush had the option to
        1. Elevate from within Court
        2. Outside – is chosen more often because it can have a greater impact
    - There is a recruiting process in which the president is involved. The president relies on the solicitor general (top attorney in nation) and the Department of Justice to help him. The president comes up with his choice.
    - The nominees have to go through **confirmation hearings** with the Senate Judiciary Committee and are confirmed or rejected. Individual senators play little to no role in the selection process.

- If the president's party is in the minority in the senate, the confirmation is in trouble.
  - Senators that oppose confirmation must be able to prove that:
    1. Nominee is not competent/capable of performing job
    2. There is an ethical issue
- **Selecting Cases**
  - The job of the judicial branch is to interpret older legislation and make it applicable to today. The court is very selective in what cases they will hear.
  - **Writ of certiorari** – order granting the Court permission to review cases from a lower level. This and *per curiam* decisions are the only way cases get to the Supreme Court.
    - 4 out of 9 justices have to vote for the writ to pass. They average 7000 requests at the beginning of each term and they grant only 100 of them full treatment (hearing, decision, opinion, signatures)
  - The court also releases 100-200 **per curiam decisions** each year which is a statement of the facts and the Court's decision.
- **Hearings**
  - After hearing the justices retire to a **judicial conference** for two weeks to discuss the case in private and make a decision.
  - After the Court has decided it has to:
    1. Write the **decision** – which party it supports and by how much
    2. Come up with their **opinion** – legal reasoning and legal justification behind the decision
      - 4 types of opinions:
        1. **Majority** – majority of justices on bench agree with the legal reasoning
        2. **Plurality** – there is no majority decision reached, however **most** justices agree with the legal reasoning.

3. **Concurring** – written by the justice who agrees with the decision for a different legal reason.
  4. **Dissenting** – written by justices who disagree with decision and the legal reasoning behind it. – **can eventually become the majority opinion.**
    - Ex. Hugo Black(1942) – In dissenting opinion said that defendants should be entitled to a lawyer and this became the majority in **Gideon v. Wainwright** which stated that regardless of financial situation, everyone is entitled to a lawyer.
- **Stare decisis** –all decisions by the court are based on this principle which means “let the decision stand” = based on precedent
  - The Court’s biggest problem is implementation of decisions. They have to rely on the other branches to enforce and implement their decisions.
    - Judicial implementation – how and whether court decisions are translated into actual policy.
    - There are 3 dif. populations that each decision has to get through to become public policy
      1. Interpreting population – lawyers and judges that must understand and reflect the “original intent” of the decision
      2. Implementing population – law enforcement officials, school administrators. The obvious problem is that there are such a large number of implementers that the original intent will get lost. If this power were in the president and Congress’s hands then they would be fine.
        - Ex. Take law and apply to school building.
      3. Consumer population – segment of population most directly affected by decision handed down by court.
  - **Eras of the Supreme Court**

- **1<sup>st</sup> Era – John Marshall - Judicial Review**
  - The Court played a large role in public policy
  - *Marbury v. Madison* – established **judicial review** – the court can strike down any act of Congress and the executive as unconstitutional. This has been used seldom such as in the Dred Scott case and the Gilded Age.
- **2<sup>nd</sup> Era – “Nine old men” – New Deal**
  - The Court was never in the spotlight as much as it was during this time. FDR attempted to “court pack” because of things being declared unconstitutional with conservatives on the court, but two justices strangely switched sides to give him a majority.
- **3<sup>rd</sup> Era – The Warren Court (Civil Rights Era)(1953-1969)**
  - Time period where the Court takes the most active role in shaping American society.
  - Warren was for the rights of the accused. Was
  - Tackled school segregation/desegregation (*Brown v. Board of Ed.*), helped extend the right to counsel(*Gideon v. Wainwright*), and extends right to privacy (*Griswold v. Connecticut*)
- **4<sup>th</sup> Era – The Burger Court**
  - Burger ultra conservative
  - Legalized abortion (*Roe v. Wade*) using *stare decisis* which is precedent
  - Made Nixon hand over tapes (*US v. Nixon*) which led to the end of Nixon
- **5<sup>th</sup> Era – Rehnquist Court** – one of most conservative in US history
  - Decided 2000 election in *Bush v. Gore* since said Bush’s 14<sup>th</sup> Amendment rights were violated (equal protection clause)

- Put results of an election in an unelected body – to prevent a dangerous precedent from being set they wrote that the decision was for these circumstances only
  - **6<sup>th</sup> Era – Roberts Court** – even more conservative
    - Ruled on Homeland Security, gun control, campaign finance, capital punishment and criminal procedure – no landmark cases yet.
- **Supreme (upper) court myth** – smaller courts have to follow precedents followed by Supreme Courts – do not have to
- There are times that there is no precedent which is difficult for the justices and another problem is how to apply very vague statements in the Constitution.
  - This allows for **interpretation and wide latitude**
- The SC has overturned decisions over 200 times
- **The Scope of Judicial Power**
  - Court is involved in large and small policy making – they are involved in a plethora of issues
  - **Disagreements about Courts role in policy making**
    - Judicial restraint – justices should be referees and play little to no role in policy making process since they are not elected
    - Judicial activism – judges play more active role in policy making decisions since they are objective. It is against democratic ideals.
      - Today is between these 2
  - Can prevent overly active court by
    1. Not allowing it to take sides (president versus Congress) – they rarely are involved in issues between those branches.
    2. Court will never solely base its decision on the Constitution
    3. Mootness-whether a case is even controversial enough to warrant a decision
    4. Ripeness – whether issues of case are clear enough to warrant a decision

5. Adding amendments to Constitution to overturn other rulings (exs. 11<sup>th</sup> Amendment – overturns citizen can sue another state, 14<sup>th</sup> Amendment overturns blacks not citizens)
  6. Congress can alter Court's jurisdiction - last time was Reconstruction
- **Other Federal Courts** - SC is not only national court of confidence
    - **District Courts** – lowest court at federal level and the only trial court
      - 95 in US, 800 judges – all presidential appointees with senatorial courtesy
    - **Circuit Court of Appeals** – must accept info from district courts as the truth and makes they interpreted correctly.
      - 12 in US, 1 for each circuit
      - Is last hope for most as very few go to SC.
  - **State Courts** – each state has reserved powers(10<sup>th</sup> Amendment) including a court system. Each state can determine the structure of their courts and the judicial selection process (appointment or election). They have:
    - **Trials Courts** – lowest level
    - **Appeals Court** – next level
    - **Superior/Supreme Court** - Highest in a state
      - Electing and appointing - Missouri Plan is both
      - Vote of confidence each year or removed
  - **Federal Court Myth** – only important decision are made by federal bench, which is difficult to believe since **95% of all cases begin and end in the states**
  - **How case gets from state to federal level**
    - Apply for **writ of habeas corpus**
    - There are some issues that were state issues and now are federal issues such as abortion