

CHAPTER 13

The Federal Courts

Chapter Goals

- Identify the general types of cases and types of courts in America's legal system.
- Describe the different levels of federal courts, the expansion of federal court power, and the process of appointing federal judges.
- Explain the Supreme Court's judicial review of national law.
- Describe the process by which cases are considered and decided by the Supreme Court.
- Describe the factors that influence court decisions.

The Supreme Court



The Supreme Court



The Federal Courts



The Old Supreme Court Chamber used between 1810 to 1860. The main landmark decisions handed down from the bench were *Gibbons v. Ogden*, and *Dred Scott v. Sandford*.

The Legal System: Criminal Law

Criminal law is the branch of law that regulates the conduct of individuals, defines crimes, and specifies punishments for criminal acts.

- Government is always the **plaintiff**, or the party that brings charges to court.
- It involves matters ranging from traffic offenses to murder.
- **Defendants** who are found guilty of charges brought against them may be fined or sent to jail.

The Courts

The Judicial branch of the federal government was designed to be the weakest of the three branches by the Framers of the Constitution. But today, it is arguably the most powerful when afforded the opportunity to act.

The Courts

The judiciary is the arbiter of conflicts; *between levels of governments, branches of government, the people and their government, and people of the same and different states.*

With no specific instructions by the Framers as to the makeup of this branch, it was left to the other two branches, legislative and executive, to determine.

The Courts

Article III, Section 1 U.S. Constitution

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.

The Courts

Article III, Section 1 U.S. Constitution

- The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party Politics plays a role in the courts.
- 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, both as to Law and Fact, with such Exceptions, and under such **Regulations as the Congress shall make.**
- Chief Justice presides over impeachment trials in the Senate- **Art 1, Sec 3**

The Courts

Beginning with the decision of Chief Justice John Marshall in the case *Marbury v. Madison* in 1801, to the court's *Bush v. Gore* decision in 2000, the court has continued to defined itself as an equal branch with the authority of judicial review.

The political ideology and judicial practice, activist or restraint, of the majority on the court greatly impacts the lives of citizens when they decide civil liberties, civil rights and federalism cases.

The Courts

Today there are three levels of courts in both the federal and state systems.

- At the lowest level are District courts, also known as trial courts, and has original jurisdiction.
- At the second level are Appeals courts with appellate jurisdiction.
- The final level is the Supreme Court that has both original and appellate jurisdiction.

The Courts

- “A government of laws and not of men.”-
John Adams, describing the new Massachusetts state constitution
- Rule of law: all are equal before the law, and none are immune from it.
- Fundamental fairness expectation Americans have of the judicial system
 - “That’s not fair” is a tacit reference to rule of law
- The two categories of law are Criminal Law and Civil Law

The Legal System: Criminal Law

Criminal law: the branch of law that regulates the conduct of individuals, defines crimes, and specifies punishments for criminal acts.

- It involves matters ranging from traffic offenses to murder.
- Government is always the plaintiff
- Defendant cannot be forced to testify
- Standard of guilty must be beyond a reasonable doubt
- Penalties: fines, public service, imprisonment, death

Criminal Cases



The Legal System: Civil Law

Civil law: the branch of law that deals with disputes that do not involve criminal penalties.

- These disputes may be among individuals, groups, corporations, and other private entities, or between such litigants and the government.
- Plaintiff is the party that has been legally wronged
- Defendant can be forced to testify
- Standard of guilt is the preponderance of evidence
- Losers in civil cases cannot be fined or sent to jail, but they may be required to pay monetary damages.
- Contracts, torts, and administrative law are important in civil law.

The Legal System: Sources of American Law

- **Constitutions**
 - Supreme law of the land.
 - Established the basis of all law
- **Statutes and Administrative Regulations**
 - Laws passed by congress, state legislature.
 - Local government ordinance.
 - Rules and regulations issued by administrative agencies.
- **Case Law**
 - Decisions rendered by the courts.
 - Judicial interpretations of common law principles and doctrines, as well as interpretations of constitutional law, statutory law, and administrative law.

The Legal System: Sources of American Law

Judge-made law

- Common law
 - Common-law tradition, which is part of our heritage from England.
 - Judge-made law from decisions shaped according to prevailing custom. Decisions were applied to similar situations and gradually became common to the nation.
- Precedent
 - A court rule bearing on subsequent legal decisions in similar cases. Judges rely on precedents in deciding cases.
- Stare decisis – “let the decision stand”
 - To stand on decided cases; the judicial policy of following precedents established by past decisions.

The Legal System: Sources of American Law

Judicial Review

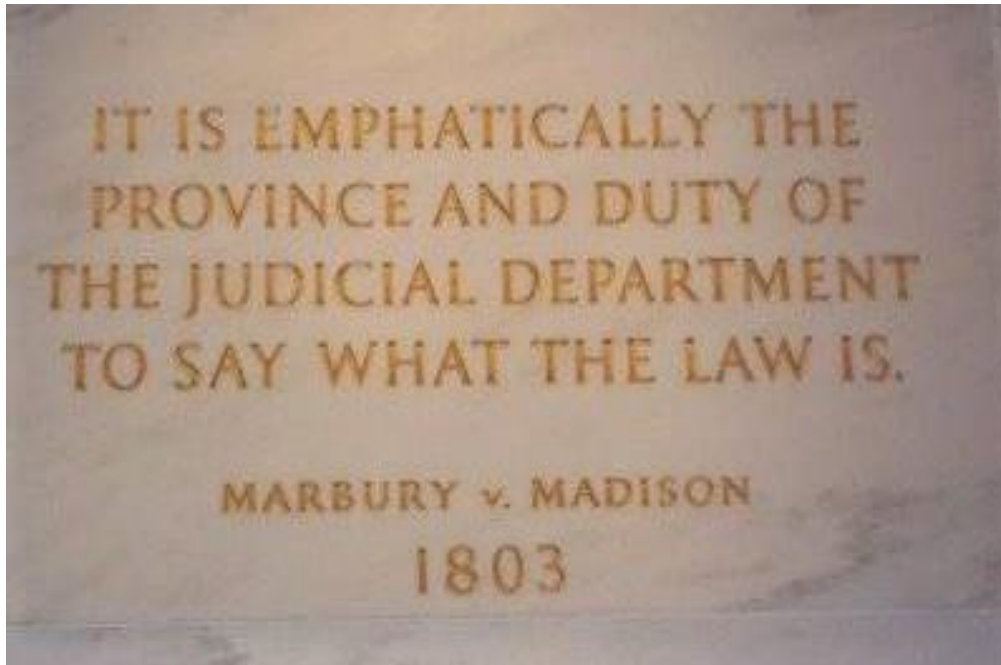
The power of the courts to review and, if necessary, declare actions of the legislative and executive branches invalid or unconstitutional.

The U.S. Constitution does not mention judicial review.

- *Marbury v. Madison* (1803)

Ref: Marbury Vs. Madison-How the Constitution was changed in faculty website.

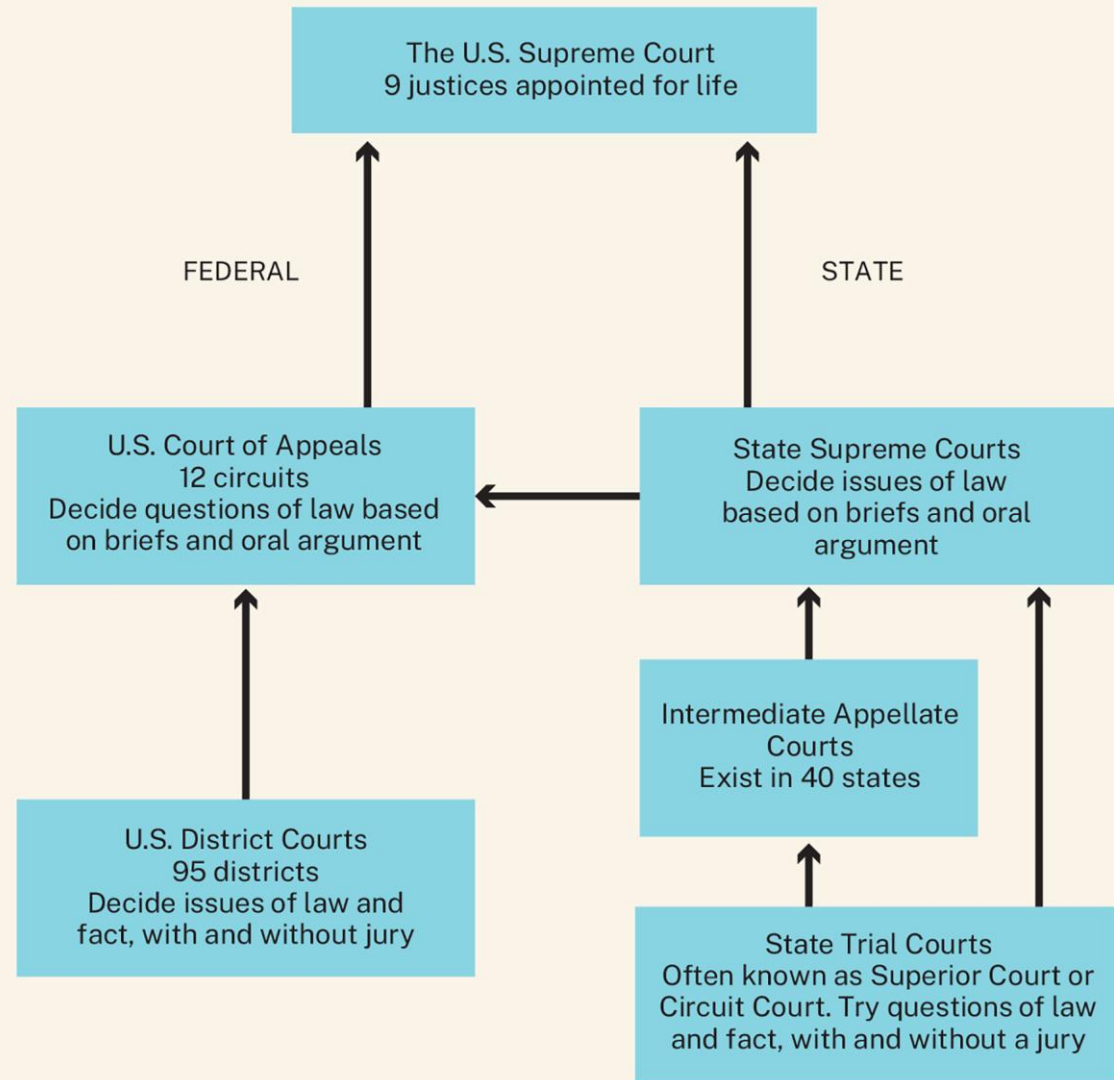
The Legal System: Sources of American Law



In Marbury v. Madison (1803), Chief Justice John Marshall established the Supreme Court's power to rule on the constitutionality of federal and state laws. This power makes the Court a lawmaking body.

The U.S. Court System

FIGURE 13.1 | The U.S. Court System



Types of Courts: Judicial Requirements

- Basic Judicial Requirements:

Jurisdiction-where court has authority to decide Federal court domain includes:

- Cases between entities who have been harmed
 - Cases between states
 - Ambassadors
 - Federal law
 - U.S. Constitution
- Standing to Sue - Party bringing suite must have been impacted or suffer harm because of a particular action. Standing gives the legal right to initiate a case.

Types of Courts

Courts have been established by federal government and state governments. More than 97 percent of all cases go to state court.

- If a state case is brought to trial, it is heard in a state **trial court**: the first court to hear a case.
- If there is a guilty verdict, the defendant may appeal to a higher court, usually the state **court of appeals**.
- From there, appeals can go to the state **supreme court**: the highest court in the state. Supreme courts primarily serve an appellate function.
- The government cannot appeal a “not guilty” verdict.

The Federal Courts: Trial Courts

U.S. District Courts:

- Most cases of original federal jurisdiction are handled by federal district courts.
 - Trial courts apply law to the facts of a given case.
 - Facts of the case are introduced
 - Judges and juries make sense of how facts relate to law.
 - Trial cases take both law and precedent into account.
- Congress has authorized the appointment of 678 federal district judges across 94 federal district courts.
- The busiest of these courts may have as many as 28 judges.
- Only one judge is assigned to each case, with an exception for cases where a statute calls for a three-judge panel.

The Federal Courts: Appellate Courts

U.S. Court of Appeals

- Appellate courts examine whether the law has been applied correctly in a trial court case.
- New facts *cannot* be introduced.
- Appellant must show that the trial court made a legal error in its decision
- Appeals courts do not hear witnesses.
- If new facts are available, the case goes back to a trial court.

The Federal Courts: Appellate Courts

U.S. Courts of Appeals

- Appeals courts hear far fewer cases than trial courts - Roughly 20 percent of all lower-court cases are reviewed by federal appeals courts.
- Reviews cases from the lower federal courts. Sole concern: whether laws applied correctly
- There are 11 regional circuit courts, plus the D.C. circuit and the U.S. Court of Appeals for the Federal Circuit, including 179 court-of-appeals judges.
- The 13th circuit in D.C. has national appellate jurisdiction when the U.S. Government is the defendant.

The Federal Courts: Appellate Courts

U.S. Courts of Appeals

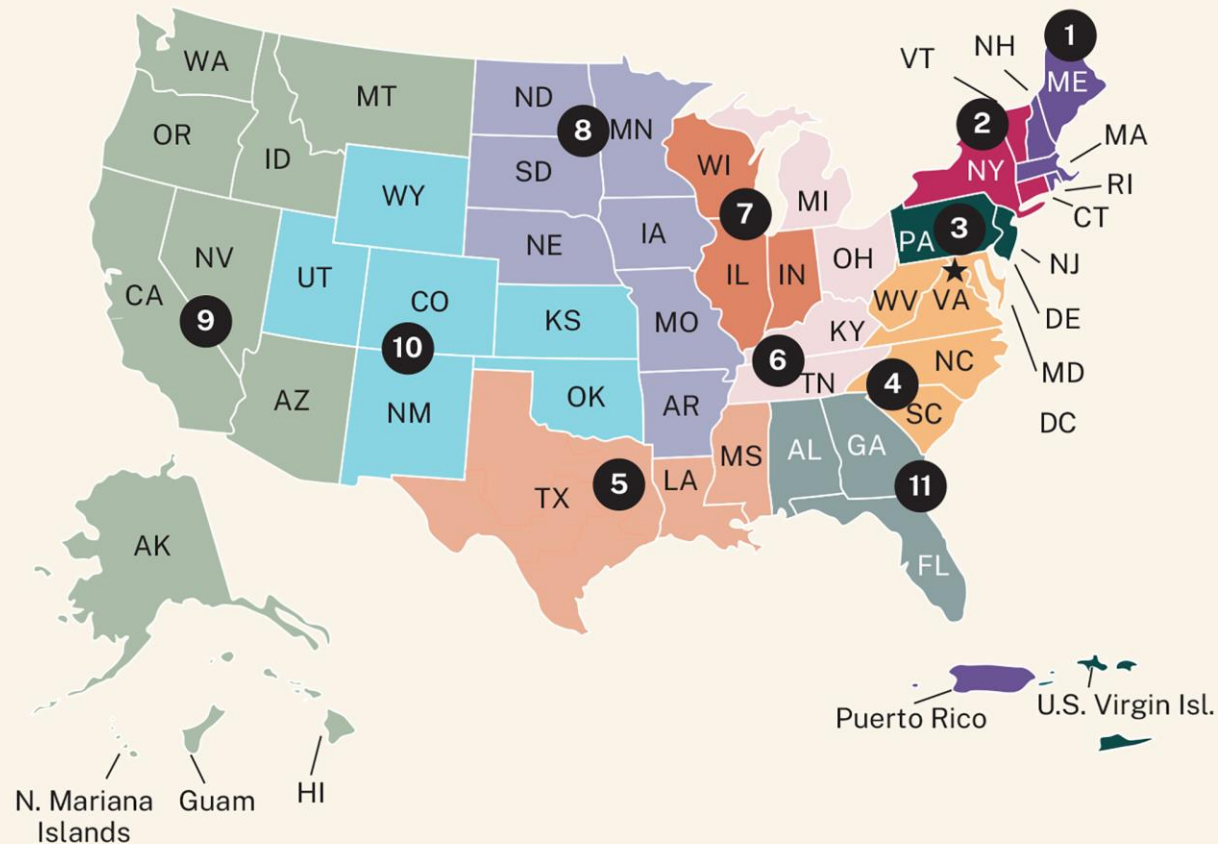
- Unless reviewed by the U.S. Supreme Court, all decisions from an appeals court are final.
- Built-in safeguards include the provision of more than one judge for every appeals case and the assignment of a Supreme Court justice to every circuit.
- Each circuit has 6 to 28 permanent justices, and normally three of these judges hear each case.
- Almost always one judge per case

Types of Courts: Appellate Jurisdiction

- State court decisions can be appealed to a federal court by raising a federal issue.
- The defendant has options that might include:
 - claiming denial of **due process of law**: the right of every individual against arbitrary action by national or state governments
 - requesting a **writ of habeas corpus**: a court order that the individual in custody be brought into court and shown the cause for detention
 - The court will then evaluate whether the cause is sufficient and may order the release of a prisoner if it is found not to be.
- The U.S. Supreme Court is not obligated to hear these appeals.

The Federal Appellate Courts: Circuits

FIGURE 13.2 | Federal Appellate Court Circuits



SOURCE: “Federal Court Finder,” www.uscourts.gov/court_locator.aspx (accessed 7/27/10).

The Federal Courts: Supreme Court

The United States Supreme Court

- The U.S. Supreme Court is the highest court in the nation.
- Article III of the Constitution vests “the judicial power of the United States” in the Supreme Court.
- The court of last resort.
- Has final interpretation over the Constitution and statutory law, be it state or federal.
- No state constitution can run contrary to the federal constitution.

Types of Courts: Jurisdiction—The Supreme Court

Article III of the Constitution gives the Supreme Court original jurisdiction in limited variety of cases, including those:

- Between the United States and one of the 50 states
- Between two or more states
- Involving foreign ambassadors or other ministers
- Brought by one state against citizens of another state or against a foreign nation

The Federal Courts: Supreme Court Composition

The United States Supreme Court

- Composed of Nine justices
- Chief justice and eight associate justices
- System of equals, which functions on seniority basis
- All judges have equal say, and each has one vote.
- If chief justice sides with the majority opinion, he assigns the writing of the majority opinion.
- If chief sides with the minority opinion, the most senior justice in the majority does.

The Federal Courts: Supreme Court Composition

The United States Supreme Court

- When there are Eight Justices
 - If there are only 8 justices when its time to decide on cases and if there is no clear majority resulting in a 4-4 tie on the decision, then the lower court decision will apply.
 - Justice Antonin Scalia dies in February of 2016 and Justice Ruth Bader Ginsberg in September of 2020.
 - Appointing replacement highly politicized

U.S. Supreme Court: Judicial Review

The most significant power of the Court is **Judicial Review**.

- This is the power of courts to review and, if necessary, declare laws or executive actions invalid or unconstitutional.

The U.S. Constitution does not mention judicial review.

- The power comes from *Marbury v. Madison* (1803).
- In more than two centuries, the Court has declared fewer than 160 acts of Congress to be unconstitutional.

Judicial Review: States

The U.S. Supreme Court can review the constitutionality of state laws, based on the **supremacy clause** of the U.S. Constitution. *Art 6 of Constitution.*

- The supremacy clause states that laws passed by the national government and all treaties are the supreme law of land and superior to all laws adopted by any state or any subdivision.
- The Court has used judicial review to strike down state laws that violated rights or privileges guaranteed by the Constitution or federal statutes.

Accessing the Supreme Court: Criteria

Which Cases Reach the Supreme Court?

- Factors that bear on the Decision
 - The case must involve an actual dispute, not a hypothetical one.
 - Parties to a case must have **standing** they must have a substantial stake in the outcome of the case.
 - An important civil right or civil liberty is at stake.
 - Appellate courts have ruled differently on the same law, and it needs to be applied universally.
 - The court will not hear where the issue has already been resolved, and there is nothing to address.
 - The federal government is filing the appeal.
 - It takes five justices to reach a majority opinion.

Accessing the Supreme Court: Writs

Which Cases Reach the Supreme Court?

- Granting Petitions for Review
 - Rule of four - The rule of four requires that only four justices are needed to grant a *writ of certiorari* for a case.
 - Writ of certiorari - An order issued by a higher court to a lower court to send up the record of a case for review.
 - 90% of appeal request are denied by the court.
 - If appeal is denied, the ruling of the lower court stands.

Accessing the Supreme Court: Writs

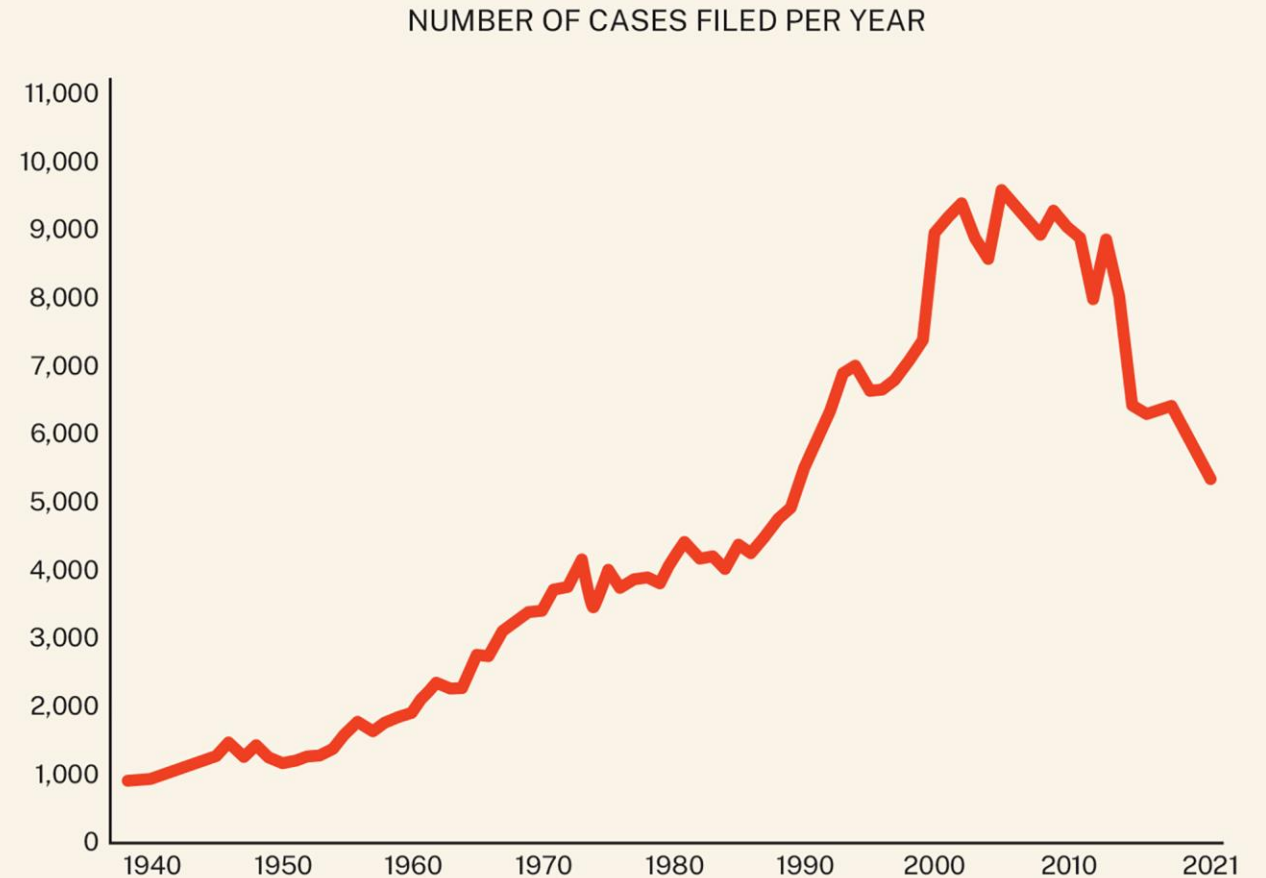
Most cases reach the Court through a *writ of certiorari*: a decision of at least four of the nine Supreme Court justices to review a lower-court decision.

“Cert worthy” cases include those that involve:

- Conflicting decisions by two or more state courts of last resort
- Conflicting decisions by two or more circuit courts
- Conflicting decisions by circuit courts and state courts of last resort
- Decisions by the circuit court on matters of federal law that should be settled by the Supreme Court
- Circuit court decisions that are at odds with a Supreme Court decision

Cases Filed in the U.S. Supreme Court

FIGURE 13.3 | Cases Filed in the U.S. Supreme Court, 1938–2021 Terms*



* Number of cases filed in term starting in year indicated.

SOURCES: *The United States Law Week* (Washington, DC: Bureau of National Affairs); U.S. Bureau of the Census, *Statistical Abstract of the United States*; Office of the Clerk, Supreme Court of the United States; Supreme Court of the United States, Cases on Docket, www.uscourts.gov; Supreme Court, “Chief Justice’s Year-End Reports on the Federal Judiciary,” www.supremecourt.gov/publicinfo/year-end/year-endreports.aspx (accessed 5/2/22).

The Supreme Court's Procedures: Preparation

- The Supreme Court's decision to accept a case is the start of a lengthy and complex process.
- Both sides submit briefs, as do other interested parties.
- **Briefs:** written documents in which attorneys explain, using case precedents, why a court should find in favor of their client
- Attorneys often ask sympathetic interest groups for support (via *amicus curiae* briefs aka friend of the court).

The Supreme Court's Procedures: Oral Argument

- The next stage of a case is **oral argument**: attorneys for both sides appear before the Court to present their positions and answer the justices' questions.
- Each attorney has a half hour to present a case, which includes interruptions for questions from the justices.
- Oral arguments can be important to the outcome of the case.
- Once the case is heard, the judges will discuss the constitutionality of the issue and decide on an opinion.

The Supreme Court's Procedures: Conference

The conference follows the oral argument.

The Court meets three times per week when in session.

The justices meet in private and hold an initial vote.

- The chief justice speaks first, and other justices follow in order of seniority.
- A decision is reached on the basis of a majority vote.
- If the Court is divided, a number of votes may be taken before a final decision is reached.
- The justices may try to influence or change one another's opinions.
- Chief justice or most senior justice will assign a justice to write the majority opinion.
- Usually, the dissenting opinion is assigned as well.
- Most opinions are written by the clerks under the supervision of the justice.
- Court opinions are handed down in June.

The Supreme Court's Procedures: Decisions

Decision

- Affirmed-the decision from a lower court will stand and be enforced.
- Reversed- court believes that an error was committed by the trial court or the jury and orders the decision to be reversed.
- Remanded- If the court believes that errors were made that need correction, the case will be sent back to the trial court.

The Supreme Court's Procedures: Opinions

Opinion

- Unanimous – when an opinion is agreed to by all Justices.
- Majority – Outlines the view of the majority of justices.
- Concurring - A separate opinion prepared by a justice who supports the decision of the majority of the court but who wants to make or clarify a particular point not previously addressed.
- Dissenting – Disagreement with the conclusions of the majority.

The Supreme Court's Procedures: Dissent

Justices who disagree with majority may choose to publicize their disagreement in a **dissenting opinion**.

- may be used to express irritation with the outcome
- may be done to signal to the defeated side that their position did have some support
- may be done to persuade a swing justice to join their side on the next round of cases on a similar topic
- Dissents act like an appeal to keep bringing cases through the Court; they influence future arguments.

The Supreme Court's Procedures: TimeLine of a Supreme Court Case

FIGURE 13.4 | Timeline of a Supreme Court Case

This calendar of events in the case of *Matal v. Tam* (2016) illustrates the steps of the process a case goes through as it moves through the Supreme Court. The total time from petition to the Supreme Court to the decision is just over one year, although the initial case was filed years earlier in a lower court.



SOURCE: "Matal v. Tam," SCOTUSblog, www.scotusblog.com/case-files/cases/lee-v-tam/ (accessed 12/9/21).

Explaining Supreme Court Decisions

- Judicial Review- overturning acts of congress.
- Judicial Activism and Judicial Restraint –
 - Judges who take an active role in checking the activities of the other branches of government sometimes are characterized as “activist” judges.
 - While judges who defer to the other branches’ decisions sometimes are regarded as “restraintist” judges.
- Strict versus Broad Construction
 - Interpreting the constitution by looking to the letter of the law, versus looking to context and purpose when interpreting the law.
- The court as a political actor
 - One of the criticisms of the Court is that it should not “make law” but should defer to the legislative branch in deciding policy issues.

The Federal Courts: Appointments

Judicial Appointments

- President nominates candidate.
- Senators from the president's party suggest nominees for district courts in their state when an opening appears.
- The nominee is considered by the Senate Judiciary Committee and then confirmed by the full Senate.
- Judges are appointed with the advice and consent of senate.
- Federal District Court Judgeship Nominations – President gets input from senators.
- Candidates to the Federal courts are generally selected from state court judges or state or local prosecutors.
- Federal Courts of Appeals Appointments-stepping stone for the supreme court.

Supreme Court Appointments

In recent years, Supreme Court nominations have involved intense partisan struggles.

- Ideology plays large role.
- Presidents try to appoint justices who share their political philosophy.
- Federal judges are nominated by the president and confirmed by the Senate.
- Once appointed, they hold office for life, barring gross misconduct.
- The nomination and confirmation process, particularly for Supreme Court justices, is often extremely politicized.
- Washington politicians realize that justices may occupy seats on the Court for decades and naturally want to have persons appointed who share their basic views.
- Nearly 20 percent of all Supreme Court appointments have been either rejected or not acted on by the Senate.

Supreme Court Nominations



Chip Somodevilla/Getty Images



REUTERS/Alamy Stock Photo



Anna Moneymaker/Getty Images

The Federal Courts: Traditional Limitations

One of the most important transformations in American politics in the last century has been the growth in the role and power of the federal courts, and especially the Supreme Court. This growth is despite five traditional limitations on the power of the courts:

1. Courts must wait until a case is brought to them; they are “passive” players in the system.
2. Courts were traditionally limited in the kind of remedies they could provide those who won cases.

The Federal Courts: Traditional Limitations

3. Courts lacked enforcement powers and had to rely on the executive branch or state agencies for enforcement.

“The judiciary has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever.”

3. Judges are appointed by the president and the Senate and thus somewhat reflect their agendas and goals.
4. Congress can change both the size and jurisdiction of the Supreme Court and other federal courts.

Checks on the Courts

Executive Checks

- Judicial implementation- Since the courts have no enforcement power, how the court's judicial decisions are implemented depends on the other two branches of government.

Legislative Checks

- Constitutional Amendments- can overturn a court's decision by changing the constitution.
- Rewriting Laws – congress can amend or rewrite laws to overturn court decisions.

Public Opinion – Court is a political actor.

The Federal Courts: Expansion

Since World War II, the role of the federal judiciary has strengthened and expanded as a result of two “judicial revolutions.”

The first and most visible were substantive innovations in judicial policy.

Second, less visible is changes in judicial procedures that expanded the power of the courts.

- Liberalized concept of standing
- Broadened the scope of remedies by permitting **class-action suits**, or legal action by a group or class of individuals with common interests
- Use of structural remedies

Controlling the Flow of Cases: Solicitor General

The **solicitor general**—the top government lawyer in all cases before the U.S. Supreme Court in which the government is a party—has great influence over the federal courts.

- Serves as the third-ranking official in the Justice Department
- Screens cases before any agency of the federal government can appeal them to the Supreme Court
- Requests that lack solicitor general's support are seldom selected for review by the Supreme Court

Accessing the Supreme Court: Criteria

The Supreme Court has developed specific rules that govern which cases within its jurisdiction it will and will not hear:

- The case must involve an actual dispute, not a hypothetical one.
- Parties to a case must have **standing**, they must have a substantial stake in the outcome of the case.
- The Court will not hear cases on issues that it considers to be moot.
 - **Mootness**: a criterion used to dismiss cases that no longer require a resolution.
 - If the issue has already been resolved, then there will be nothing to address.

Supreme Court Justices, 2020 (in Order of Seniority)

TABLE 13.1 | Supreme Court Justices

NAME	YEAR OF BIRTH	LAW SCHOOL ATTENDED	PRIOR EXPERIENCE	APPOINTED BY	YEAR OF APPOINTMENT
Clarence Thomas	1948	Yale	Federal judge	G. H. W. Bush	1991
John Roberts, Jr. (<i>Chief Justice</i>)	1955	Harvard	Federal judge	G. W. Bush	2005
Samuel Alito	1950	Yale	Federal judge	G. W. Bush	2006
Sonia Sotomayor	1954	Yale	Federal judge	Obama	2009
Elena Kagan	1960	Harvard	Solicitor general	Obama	2010
Neil Gorsuch	1967	Harvard	Federal judge	Trump	2017
Brett Kavanaugh	1965	Yale	Federal judge	Trump	2018
Amy Coney Barrett	1972	Notre Dame	Federal judge	Trump	2020
Ketanji Brown Jackson	1970	Harvard	Federal judge	Biden	2022

Democracy and the Supreme Court Appointments

Presidents attempt to entrench their political ideology on the court through appointments.

However, disgruntled citizens charge that the Court is undemocratic, particularly in the way judges are nominated and appointed.

- People do not get to vote on Supreme Court nominations or on the confirmation of the justices.
- Supreme Court and federal judges have lifetime appointments.

Additional Information

- *The Constitution of the United States*
- *Federalist No, 78 The Judiciary*
- *Marbury v. Madison – Case Brief*
- *Marbury v. Madison - How the constitution was changed*

America Side by Side: Courts in Comparison

NAME	TERM LIMITS (YEARS)	MANDATORY RETIREMENT AGE	SIZE	HOW SELECTED?
Chilean Constitutional Court	9	—	9	Each branch appoints some
French Constitutional Council	9	—	9	Each branch appoints some
German Constitutional Court	12	68	18	Legislature
High Court of Australia	Life	70	7	Executive
Indian Supreme Court	Life	65	28	Executive
South African Constitutional Court	12	70	11	Executive
South Korean Constitutional Court	6	65	9	Each branch appoints some
Supreme Court of Canada	Life	75	9	Executive
Supreme Federal Court of Brazil	Life	75	11	Executive with Legislative confirmation
United States Supreme Court	Life	—	9	Executive with Legislative confirmation

Who Are Americans: Who Are Federal Judges? Part 1

Federal Judges in 2020,* by Race and Gender

 = 10 federal judges



White men 825



Black men 90



Latino
men 61



Asian American
men 23



White women 288



Black women 46

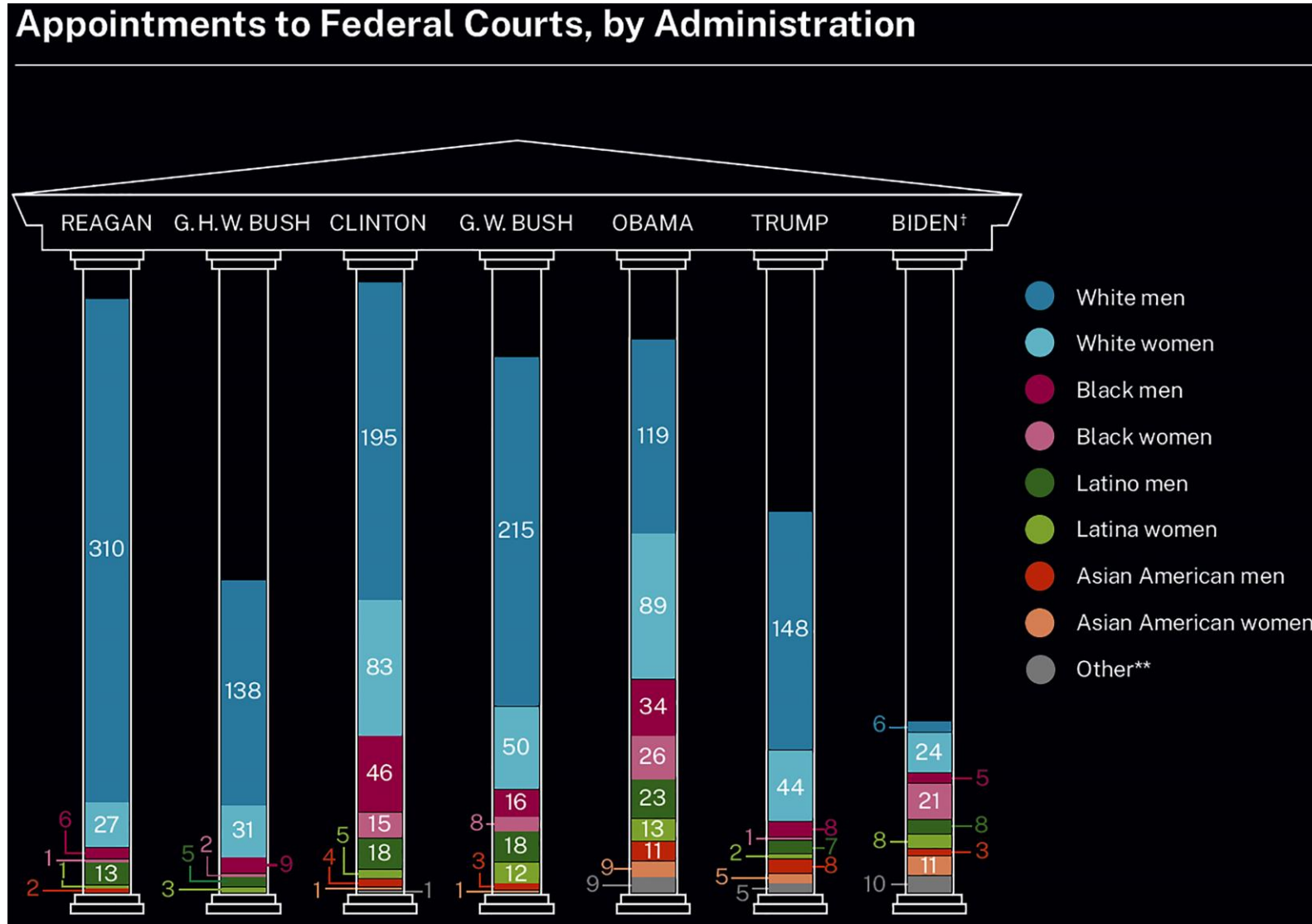


Latina
women 29



Asian American
women 14

Who Are Americans: Who Are Federal Judges? Part 2



Justice

