

## Civics 101 – How Government Works Part III: The Judicial Branch

The Judicial Branch of the U.S. government is the system of courts that interprets and applies the law, ensuring fairness and upholding the Constitution.

### **The Primary Role of the Judicial Branch includes:**

- Interpreting the Law – Courts decide what laws mean in specific situations and apply them to resolve disputes;
- Ensuring Constitutionality – The Judicial Branch reviews laws and government actions to ensure they align with the Constitution;
- Settling Disputes – Courts provide a forum for resolving conflicts between individuals, organizations or the government;
- Upholding Individual Rights – The Judicial Branch protects citizens' rights and liberties through the legal process; and,
- Safeguarding the Rule of Law – Ensuring that laws are applied fairly and that the government operates within the bounds of the Constitution.

### **The Judicial Process**

Article III of the Constitution of the United States guarantees that every person accused of wrongdoing has the right to a fair trial before a competent judge and a jury of one's peers.

Several Amendments to the Constitution provide additional protections for those accused of a crime. These include:

- 4th Amendment protects individuals from unreasonable searches and seizures by the government. It requires law enforcement to have probable cause and a warrant, issued by a judge, before conducting a search or seizure.
- 5th Amendment is the right to be silent and not be compelled to give evidence. It also addresses grand jury indictments, double jeopardy, and the taking of private property for public use.
- 6th Amendment is the right to legal counsel, to be informed of the charges and the right to a speedy and public trial.
- 7th Amendment is the right to a jury trial in Federal cases.
- 8th Amendment prohibits excessive bail, excessive fines, and cruel and unusual punishment.

### **Responsibility of the Judiciary**

- The courts only try actual cases and controversies — a party must show that it has been harmed in order to bring suit in court. This means that the courts do not issue advisory opinions on the constitutionality of laws or the legality of actions if the ruling would have no practical effect.
- Cases brought before the judiciary typically proceed from district court to appellate court and may even end at the Supreme Court, although the Supreme Court hears comparatively few cases each year.
- Federal courts enjoy the sole power to interpret the law, determine the constitutionality of the law, and apply it to individual cases.
- Federal courts are the final arbiter of the U.S. Constitution – States can have constitutions that provide more rights than the U.S. Constitution, and the state court is the final decider on whether a law is okay with the state constitution.
- The courts, like Congress, can compel the production of evidence and testimony through the use of a subpoena.
- The inferior courts are constrained by the decisions of the Supreme Court — once the Supreme Court interprets a law, inferior courts must apply the Supreme Court's interpretation to the facts of a particular case.

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## The U.S. Supreme Court

The Supreme Court of the United States is the highest court in the land and the only part of the federal judiciary specifically required by the Constitution.

- The Constitution does not stipulate the number of Supreme Court Justices; the number is set instead by Congress. There have been as few as six, but since 1869 there have been nine Justices, including one Chief Justice.
- All Justices are nominated by the President, confirmed by the Senate, and hold their offices under life tenure. Since Justices do not have to run or campaign for re-election, they are thought to be insulated from political pressure when deciding cases.
- Justices may remain in office until they resign, pass away, or are impeached and convicted by Congress.
- The Court's caseload is almost entirely appellate in nature. An appellant is the party who appeals a lower court's judgment or order to a higher court usually because they are dissatisfied with the outcome of the proceeding and seeks review by a higher court to overturn or modify the decision.
- The Supreme Court's decisions cannot be appealed to any authority, as it is the final judicial arbiter in the United States on matters of federal law. However, the Court may consider appeals from the highest state courts or from federal appellate courts.
- The Court also has original jurisdiction in cases involving ambassadors and other diplomats, and in cases between states.
- Although the Supreme Court may hear an appeal on any question of law provided it has jurisdiction, it usually does not hold trials. Instead, the Court's task is to interpret the meaning of a law, to decide whether a law is relevant to a particular set of facts, or to rule on how a law should be applied.
- **Lower courts are obligated to follow the precedent set by the Supreme Court when rendering decisions.**
- In almost all instances, the Supreme Court does not hear appeals as a matter of right; instead, parties must petition the Court for a writ of certiorari. It is the Court's custom and practice to "grant cert" if four of the nine Justices decide that they should hear the case. Of the approximately 7,500 requests for certiorari filed each year, the Court usually grants cert to fewer than 150. These are typically cases that the Court considers sufficiently important to require their review; a common example is the occasion when two or more of the federal courts of appeals have ruled differently on the same question of federal law.
- Before issuing a ruling, the Supreme Court usually hears oral arguments, where the various parties to the suit present their arguments and the Justices ask them questions. If the case involves the federal government, the Solicitor General of the United States presents arguments on behalf of the United States. The Justices then hold private conferences, make their decision, and (often after a period of several months) issue the Court's opinion, along with any dissenting arguments that may have been written.

## Nationwide Injunctions

Nationwide injunctions are court orders that prevent a law or policy from being enforced nationwide, not just against the specific parties in a case.

The U.S. Supreme Court has ruled against the use of nationwide injunctions, limiting the ability of lower federal courts to block government policies from taking effect across the entire country. The court determined that federal district courts likely lack the authority to issue such broad injunctions.

What does this mean for future cases? This ruling will likely lead to more varied enforcement of government policies across different regions, as injunctions will be more limited in scope.

This decision by the Supreme Court strengthens the Executive Branch's ability to implement policies, even as legal challenges continue.

The Court's decision has, however, sparked debate about the balance of power between the Judiciary and the Executive branch, and the role of nationwide injunctions in shaping national policy. And, as noted above, lower

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courts are obligated to follow the precedent set by the Supreme Court when rendering decisions, although several recent decisions made by lower courts disregard that decision.

## When Jurists Become Activists

Judicial advocacy from the bench has been a concern since the founding. Article III can have a corrosive impact on certain jurists who come to view themselves as anointed rather than appointed. Most judges and justices are acutely aware of that danger and struggle to confine their rulings to the merits of disputes, avoiding political questions or commentary.

Recently, the U.S. Supreme Court, in a 6-3 decision, found that federal courts cannot issue universal or nationwide injunctions. The Court reasoned that the Judiciary Act of 1789, which outlines the powers of federal courts, does not authorize such broad relief.

However, Supreme Court Justice Ketanji Brown Jackson, a former district court judge, wrote in her dissent that the majority's decision "to permit the executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law."

Justice Jackson's remarks prompted an unusually sharp reply from Justice Amy Coney Barrett, which the five other conservatives joined. Barrett said Jackson's dissent "chooses a startling line of attack" that is "at odds with more than two centuries' worth of precedent, not to mention the Constitution itself."

The controversial position of Justice Ketanji Brown Jackson on the U.S. Supreme Court may not be due to her liberal views. There have been many liberal jurists. The difference is how Jackson views her role as a Justice.<sup>1</sup>

During remarks at the Essence Festival of Culture in New Orleans, Jackson said, "I just feel that I have a wonderful opportunity to tell people in my opinions how I feel about the issues, and that's what I try to do."<sup>2</sup> Jackson provided an almost unintended peek behind the curtain of her thinking. What the majority did was take away one of the most powerful weapons possessed by a district court judge to shape how a case goes forward from the outset. The progressive activist district court judge in her – who seeks only to "do right" – is protesting that loss.<sup>3</sup>

## What You Can Do

- Does your state ask the voters to elect judges? To learn about judicial elections in your state, visit this link: <https://www.brennancenter.org/judicial-selection-map>
- If you have an opportunity to elect judges, do your research to learn as much as you can about the candidates. Use the candidate websites and Facebook pages, but also check out your state's Bar Association for candidate questionnaires and the Bar Association's ratings of each candidate. Elect candidates who will interpret the law, not try to make it.
- Once elected, hold the judges accountable. You can do that by voting in retention elections that allow you to consider a judge's performance and potentially unseat them without a competing candidate; initiating a recall process and gathering signatures to put a judge's removal on the ballot for a public vote; and, filing judicial conduct complaints.

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<sup>1</sup> Jonathan Turley: Justice Jackson plays pundit to dismay of SCOTUS colleagues, <https://www.foxnews.com/opinion/jonathan-turley-justice-jackson-plays-pundit-dismay-scotus-colleagues>

<sup>2</sup> Supreme Court Justice Ketanji Brown Jackson says she worries about state of democracy, <https://www.cbsnews.com/news/supreme-court-justice-ketanji-brown-jackson-state-of-democracy/>

<sup>3</sup> Why Justice Jackson is a fish out of water on the Supreme Court, <https://www.foxnews.com/opinion/why-justice-jackson-fish-out-water-supreme-court>