

Unit 4

The Judiciary & The Bureaucracy



DO YOU KNOW WHO THEY ARE?

LIBERAL BLOC



Sotomayor



Ginsburg



Kagan



Breyer

CONSERVATIVE BLOC



Roberts



Kavanaugh



Alito



Gorsuch



Thomas

INTRODUCTION TO THE FEDERAL COURTS

JUDICIAL LAW-MAKING

- Judges, contrary to what some may think, are not simply impartial referees who only carry out the law. Judges interpret the law, and in so doing in fact make law. It is necessary that they make law because:
 - Statutes are often broadly-worded, unclear, or contradictory
 - The Constitution is certainly broadly-worded, and requires interpretation
- Thus, interpretation of statutes and the Constitution is, in effect, making law. Evidence of judicial law making:
 - Courts have ruled >1,000 state laws as being unconstitutional
 - Courts have ruled >120 federal laws as being unconstitutional
 - The Supreme Court has reversed itself >140 times since 1810

INTRODUCTION TO THE FEDERAL COURTS

TYPES OF LAW

Criminal Law

Concerns violations of the criminal code

- felonies or misdemeanors

Civil Law

Concerns disputes between two parties rather than violations against society

- **Examples: Breach of contract, slander, medical malpractice, divorce**
- **Class-action lawsuit - suit brought by a group of people who share a common grievance**

The Judiciary Act of 1789

Officially titled "An Act to Establish the Judicial Courts of the United States," was signed into law by President George Washington on September 24, 1789. Article III of the Constitution established a Supreme Court, but left to Congress the authority to create lower federal courts as needed.

- ✓ Established the basic three-tiered structure of federal courts that still exists
- ✓ Congress set the size of the Supreme Court at six justices – later expanded to nine in 1869

JUDICIAL REVIEW

Judiciary Act of 1789

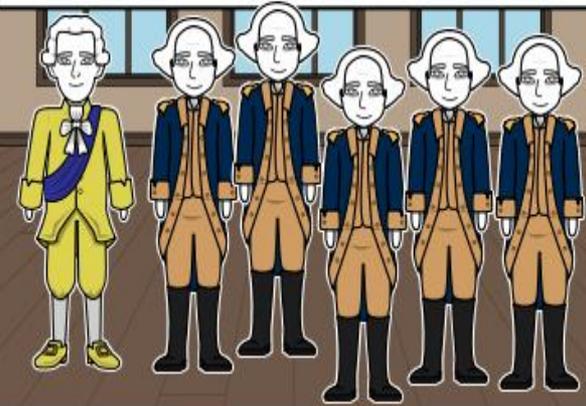


Some problems they faced were what type of additional courts should there be and how many? and what would happen if federal court decisions conflicted with state laws?



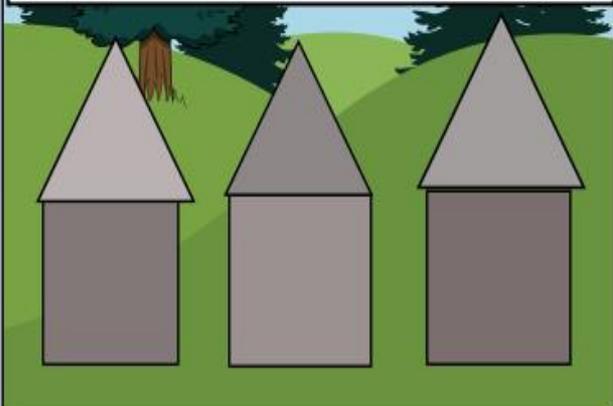
The Judiciary Act answered these question with the set up with the Judiciary structure.

Supreme Court Justices



The Supreme Court consists of a chief justice and five associate justices.

Federal Circuit Courts



Three Federal Circuit Courts were set up in the Judiciary Act.

Federal District Courts



The Judiciary Act also set up thirteen Federal District Courts.

Section 25 of the Judiciary Act



Section 25 of the Judiciary Act, one of the most important provisions of the law, allowed state court decisions to be appealed to a federal court when constitutional issues were raised.

INTRODUCTION TO THE FEDERAL COURTS

TYPES OF JURISDICTION

Jurisdiction is a court's authority to hear a case

Exclusive

- Cases that can be heard only in certain courts

Concurrent

- Cases that can be heard in either a federal or a state court

Original

- Courts in which a case is first heard

Appellate

- Courts that hear cases brought to them on appeal from a lower court

FEDERAL COURT JURISDICTION

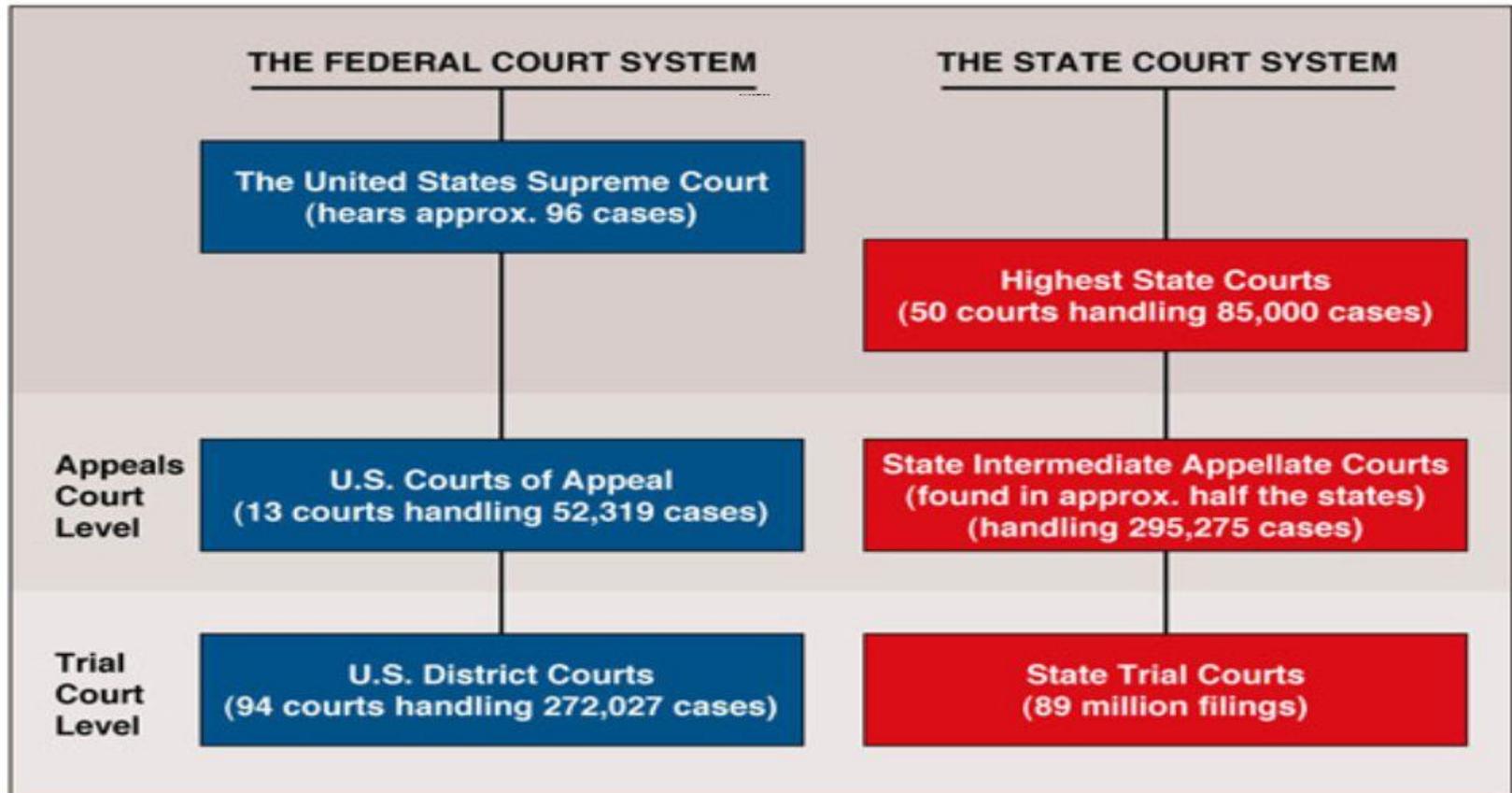
Federal courts may try a case if it involves:

- Disputes between two or more states or citizens of different states
- The Constitution, a federal law, or a treaty
- The U.S. government as a party
- Ambassadors or diplomats

AMERICA'S DUAL COURT SYSTEM

The U.S. has two separate court systems because it is a **federal system**. Each state has its own court system (97% of all criminal cases are heard in state courts)

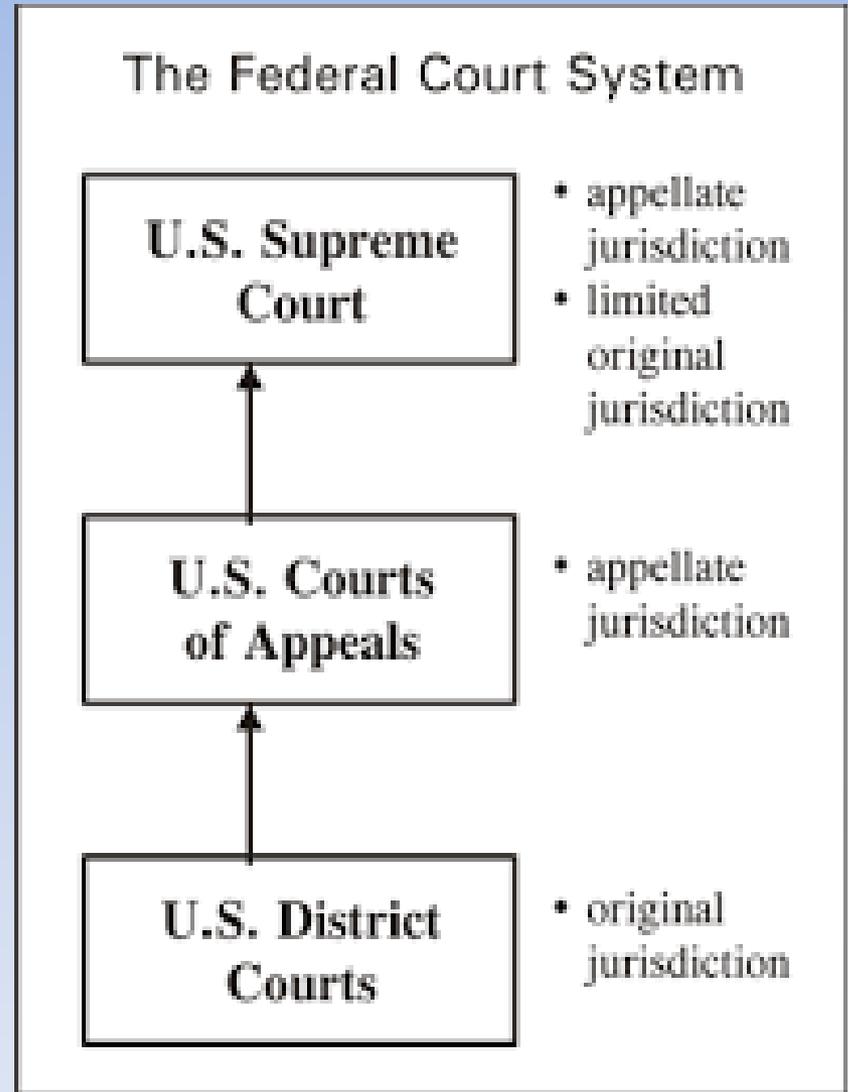
Figure 10.1 The Dual Structure of the American Court System



This figure illustrates the dual nature of the national court system.

DUAL SYSTEM OF COURTS

In our federal system, we have both federal and state courts **BUT the AP EXAM will be about the federal courts.**



STRUCTURE OF THE FEDERAL COURT SYSTEM

U.S. Constitution: ARTICLE III (Courts)

- The Supreme Court is the only court specifically mentioned in the Constitution : JUDICIAL REVIEW
- Congress has the power to create all “inferior” (lower) federal courts
 - Legislative branch check on the judicial branch
- Congress has the power to change appellate jurisdiction of federal courts
 - Legislative branch check on the judicial branch
- Judges in these courts hold life terms so that they are free from political pressure
 - Judicial branch check on the legislative branch and executive branch

The federal court system

U.S. Supreme Court

appeals on cases of constitutional law

U.S. Courts of Appeals

appeals, challenges to orders from fed agencies

Special Courts - tax, trade, etc.

specific types of cases heard

U.S. District Courts

hear cases related to violations of federal law

STRUCTURE OF THE FEDERAL COURT SYSTEM

THE THREE LEVELS

LEVEL 1: DISTRICT COURTS

- 94 courts w/ ~700 judges
- Handle over 300,000 cases
- Cases are tried by a judge and petit (trial) jury – jury decides outcome of case
- Use grand juries to issue indictments
 - Orders that charge an individual with a crime
 - Does not mean that one is guilty; it means that one will be tried
- Jurisdiction: original
- Most cases end in a plea bargain
- Decisions may be appealed to Courts of Appeals

STRUCTURE OF THE FEDERAL COURT SYSTEM

THE THREE LEVELS

LEVEL 2: COURTS OF APPEALS

- 13 “circuit” courts w/ ~160 judges
- 156 judges try >18,000 cases a year
- **Cases tried by a panel of three judges**
 - **Do not hold trials or hear testimony – judges review district court decisions**
- **Jurisdiction: appellate (hears appeals from District Courts and regulatory agencies)**



STRUCTURE OF THE FEDERAL COURT SYSTEM

THE THREE LEVELS

LEVEL 3: SUPREME COURT

- **Highest court in the land**
- **~10,000 cases are petitioned for a writ of *certiorari* – only hear about 80 cases a year**
- **Cases tried by entire court (currently nine judges)**
- **Jurisdiction: original and appellate**
 - **Almost all cases are heard on appeal**
- **Court of last resort**
 - **Supreme Court is the final arbiter of the Constitution**
 - **Supreme Court decisions establish precedents that are binding on the entire nation**

Geographic Boundaries of Federal District Courts and Circuit Courts of Appeals



**FEDERAL ATTORNEYS
AND
FEDERAL JUDGES**

FEDERAL ATTORNEYS

ATTORNEY GENERAL

- Appointed by President with Senate consent
- Head of Department of Justice

SOLICITOR GENERAL

- Appointed by President with Senate consent
- Represents U.S. government in Supreme Court
- Decides which cases the federal government will appeal to the Supreme Court
- Sometimes called the “10th Justice” of the Supreme Court because of his/her influence there

U.S. ATTORNEYS

- At least one for each District Court, 94 in all
- Prosecutes federal cases, though most cases are settled by plea-bargaining
- Appointed by the President for 4-year terms (key patronage positions)
- **Senatorial courtesy** applies in their appointments

FEDERAL JUDGES

FEDERAL JUDGES:

- Are appointed by President with “advice and consent” of Senate (majority vote needed for confirmation)
- Are given life tenure subject to good behavior – not true in most Western Democracies
- May be impeached and removed by Congress (very rare)

Advantages of life terms

- Experience
- Stability
- Re-election not necessary
- No fear of removal based on decision
- Interest groups have little influence

Disadvantages of life terms

- Judicial activism
- Precedent
- Old court
- Ideology; slow to change

FACTORS AFFECTING SELECTION OF FEDERAL JUDGES

Senatorial courtesy

- President will consult with the two Senators from the state in which they are to be appointed. The Senate will then show “courtesy” to those two senators by not confirming judges to whom the two senators object (does not apply in the appointment of Supreme Court justices).

Senate Judiciary Committee

- Hold public hearings on each Supreme Court nominee, and sends a recommendation to Senate floor for approval or rejection

Senate

- **Simple majority vote needed for confirmation**

FACTORS AFFECTING SELECTION OF FEDERAL JUDGES

Political parties

- Judges are generally from the same political party as the President

Age

- Since judges have lifetime appointments, judges live on long after the Presidents who appoint them die (presidential influence continues after they leave office)

Ideology of prospective judges

- Presidents generally try to appoint people of similar philosophy

American Bar Association

- Evaluates nominees (Senate Judiciary Committee considers ABA ratings)

FACTORS AFFECTING SELECTION OF FEDERAL JUDGES

Existence of a “paper trail”

- If a prospective judge has written extensively, his writings may be used against him during confirmation hearings

Diversity

- Race (mostly white) and gender (mostly male)

Number of judges

- Congress can increase or decrease the number of courts and judges

Interest Groups

- Tactics include protest demonstrations, appearances on TV and radio talk shows, media advertisements, editorials, and e-mails to senators

THE SUPREME COURT AND LIMITS ON ITS INFLUENCE

THE SUPREME COURT

KEY POWERS

- Power of judicial review (established by *Marbury v. Madison*, 1803)
- Power to declare state laws, federal laws, and presidential actions unconstitutional
- Power to interpret broadly worded laws of Congress
- Power to determine the meaning and application of the Constitution
- Power to overrule earlier Supreme Court decisions (e.g., *Brown* overturning *Plessy*)

ORIGINAL JURISDICTION

- The Court's original jurisdiction only generates two to three cases a year
- The Supreme Court exercises original jurisdiction in cases involving the following:
 - Two or more states
 - The United States and a state government
 - The United States and foreign ambassadors/diplomats

THE SUPREME COURT

APPELLATE JURISDICTION

- Most cases come under the Court's appellate jurisdiction
- Nearly all appellate cases now reach the SC by a **writ of certiorari**

WRITS OF CERTIORARI

- A writ of *certiorari* is an order by the Court directing a lower court to send up the record in a given case for its review
- The *certiorari* process enables the SC to control its own caseload
- **Cases must involve a serious constitutional issue or the interpretation of a federal statute, action, or treaty**
- Denying a decision may mean any number of things:
 - Case lacks a substantial federal issue
 - Party lacks standing
 - Court agrees with a lower court

THE SUPREME COURT

FILING BRIEFS

- Each party is required to file a brief, or detailed written statement, arguing one side of the case: briefs cite relevant facts, legal principles, and precedents that support their arguments
- Interested persons and groups that are not actual parties to the case may file *amicus curiae* (“friend of the court”) briefs
 - Cases involving controversial issues such as affirmative action and abortion attract a large number of *amicus curiae* briefs
 - Interest groups use *amicus curiae* briefs to lobby the Court

LISTENING TO ORAL ARGUMENTS

- Oral arguments are open to the public
- Attorneys are allowed exactly 30 minutes to present their case
- Justices may interrupt to ask questions at any time

DISCUSSION AND VOTING

- The justices discuss each case in closed meetings held on Fridays
- The Chief Justice (John Roberts) presides over the meeting

TAKING ON A CASE

THE RULE OF FOUR

- SC clerks screen the approximately 9,000 petitions that come to the SC each term
- The justices conduct weekly conference meetings where they discuss petitions prepared by their clerks
- For a case to be heard on appeal, at least four of the nine justices must agree to hear the case (the Rule of Four)

FACTORS DETERMINING WHETHER OR NOT SCOTUS TAKES A CASE

- Has it been decided differently by lower courts and needs resolution by highest court?
- Does lower decision conflict with previous decisions of court?
- Does the issue have significance beyond the parties involved?
- Is the Solicitor General pressuring the Court?

THE SUPREME COURT

WRITING OPINIONS

After reaching a decision, the justices must write a formal opinion. Opinions present the issues, establish precedents, and set guidelines for lower courts.

• **Types of opinions**

- **Majority opinion** – officially known as “the opinion of the Court,” the majority opinion is the law of the land
- **Concurring opinion** – supports the majority opinion but stresses different constitutional or legal reasons for reaching the judgment
- **Minority or dissenting opinion** – expresses a point of view that disagrees with the majority opinion. Dissenting opinions have no legal standing

EVADING COURT DECISIONS

The Supreme Court is the highest court in the land, but it is possible to evade Court decisions:

1. Amending the Constitution; Court cannot strike down something as unconstitutional if it is written in the Constitution
2. When a decision is made, it is “remanded” to a lower court to carry out the SC’s decision
 - The lower court will have a certain amount of leeway in doing this
3. The executive branch may simply not carry out the decision
4. State and local governments may simply not carry it out, either (e.g., desegregation, school prayer)

FACTORS THAT INFLUENCE SUPREME COURT DECISIONS

-- PRECEDENT --

Stare Decisis: “*Let the decision stand.*”

- The vast majority of SC decisions are based on precedents established in earlier cases
- Precedents help make SC decisions more uniform, predictable, and efficient

Examples

- **Marbury v. Madison**
- In *Baker v. Carr*, the SC established the principle of one person, one vote in state congressional districts

Exceptions

- Although precedent is very important, the Court can overturn previous decisions
- *Plessy v. Ferguson* permitted segregation if the facilities were “separate but equal”
- The Court reversed this ruling in *Brown v. Board of Education of Topeka*, declaring that “segregation is a denial of a the equal protection of the laws”

FACTORS THAT INFLUENCE SUPREME COURT DECISIONS

-- JUDICIAL PHILOSOPHY --

Judicial Restraint

- Philosophy that the courts should allow the states and the other two branches (Leg and Exec) of the federal government to solve social, economic, and political problems
- Courts should merely interpret the law rather than make law. That's Congress' job.
- Original intent suggests that courts should follow the intentions of the Founding Fathers

Judicial Activism

- Philosophy of judges to interpret the Constitution according to their own views and take an active role in solving society's problems
- Idea that judges ought to freely strike down laws that are inconsistent with their understanding of the Constitution
- **Examples of judicial activism:**
 - Striking down Topeka School Board's policy of segregation in *Brown v. Board* (1954)
 - Striking down a Texas law that banned flag burning in *Texas v. Johnson* (1989)
 - Striking down the Gun Free School Zones Act in *US v. Lopez* (1995)
 - Striking down line item veto in *Clinton v. NY* (1998)
 - Striking down a DC city ordinance banning handguns in *DC v. Heller* (2008)

FACTORS THAT INFLUENCE SUPREME COURT DECISIONS

-- JUDICIAL PHILOSOPHY --

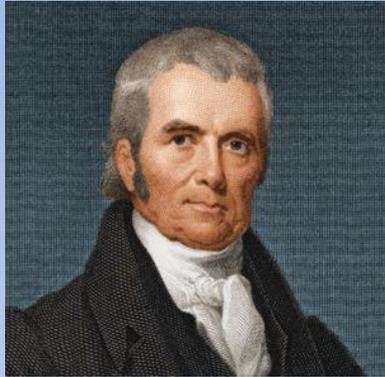
Public Opinion

- The Constitution insulated SC justices from direct political pressures
 - Justices are appointed to serve life terms subject only to good behavior
 - The *certiorari* process enables the SC to set its own agenda
 - The public has limited access to Court proceedings
- **The Supreme Court is nonetheless aware of and sensitive to public opinion**
 - The appointment and confirmation processes keep the SC from deviating too far from public opinion
 - Congress and the state legislatures can amend the Constitution
 - Congress can change the SC's appellate jurisdiction
 - Congress has the power to change the number of justices on the Court
 - Justices can be impeached

Supreme Court History

- **Marshall Court (early 19th century)**
 - *Marbury v. Madison* (1803) – judicial review; constitutionality of laws and policies
 - Pro-Federalist decisions – expansion of national government power and influence
- **Taney Court (mid 19th century)**
 - *Scott v. Sanford* (Dred Scott decision) (1857)
 - Pro-Democratic decisions – states' rights and limited government
- **Late 19th Century-Early 20th Century (“Lochner Era”)**
 - Wake of 14th Amendment – incorporation
 - *Plessy v. Ferguson* (1896) – “separate but equal”
 - Pro-business, pro-laissez-faire decisions during Gilded Age/Progressive Era/1920s
- **New Deal (1930s)**
 - FDR's court-packing to save New Deal policies from conservative rulings
 - “the switch in time to save nine”
- **Warren Court (1950s-1960s)**
 - Active in civil rights and civil liberties decisions; “most liberal court ever”
 - *Brown v. Board of Education*, *Miranda v. Arizona*
- **Burger Court (late 1960s- early 1980s)**
 - More conservative regarding rights of defendants
 - *Roe v. Wade*, *Regents of UC v. Bakke*
- **Rehnquist and Roberts Courts (late 1980s-2010s)**
 - Continues the conservative ideology
 - *Planned Parenthood v. Casey*, *McDonald v. Chicago*, *Citizens United v. FEC*

Historic Supreme Court Justices



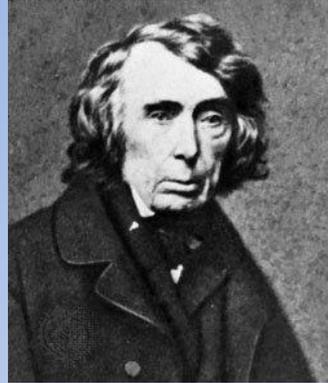
Chief Justice John Marshall

(1803-1835)
Marbury v. Madison
McCulloch v. Maryland
Gibbons v. Ogden
Worcester v. Georgia
Barron v. Baltimore



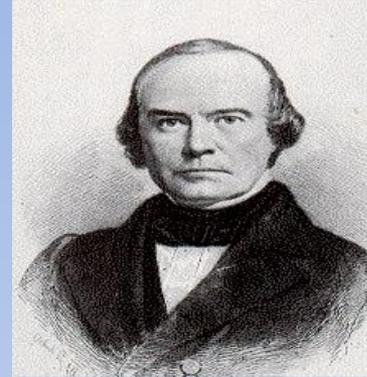
Joseph Story

(1812-1845)
Martin v. Hunter's Lessee



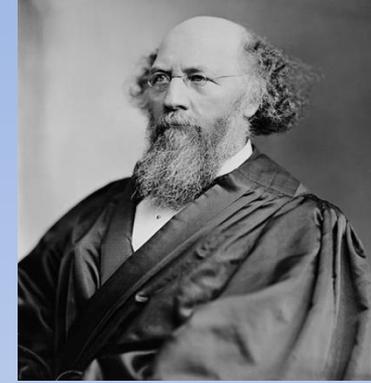
Chief Justice Roger Taney

(1836-1864)
Charles River Bridge v. Warren Bridge
Scott v. Sandford
Ex parte Merryman



Benjamin Curtis

(1851-1857)
Cooley v. Board of Wardens
Scott v. Sandford (dissent)



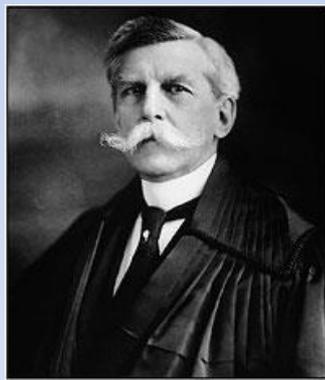
Stephen J. Field

(1863-1897)
Pioneer in substantive due process
Slaughter-House Cases (dissent)
Munn v. Illinois (dissent)



John Marshall Harlan

(1877-1911)
"The Great Dissenter"
Plessy v. Ferguson (dissent)
Insular Cases (dissent)
Lochner v. New York (dissent)



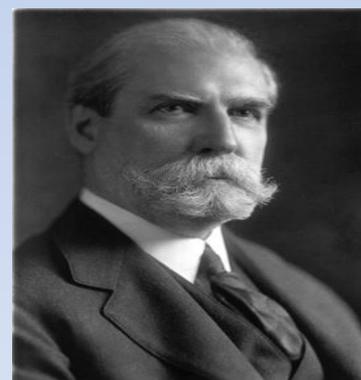
Oliver Wendell Holmes

(1902-1932)
Schenck v. United States (dissent)
Abrams v. United States (dissent)



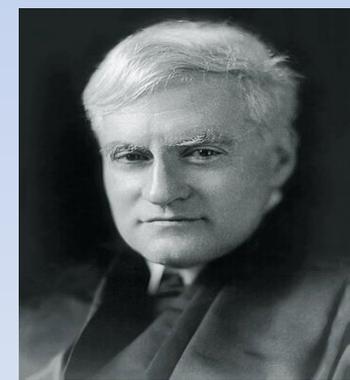
Louis Brandeis

(1916-1939)
Olmstead v. United States (dissent)



Charles Evans Hughes

(1910-1916, 1930-1941)
Near v. Minnesota
Schechter Poultry Corp. v. United States
West Coast Hotel Co. v. Parrish



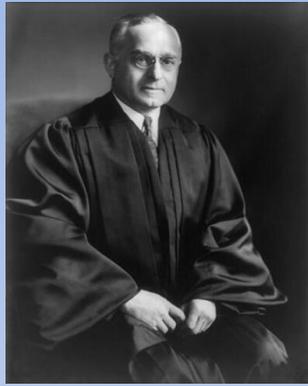
Benjamin Cardozo

(1932-1938)
Schechter Poultry Corp. v. United States (dissent)
Steward Machine Co. v. Davis

Historic Supreme Court Justices



Hugo Black
(1937-1971)
Korematsu v. United States
Engel v. Vitale
Gideon v. Wainwright



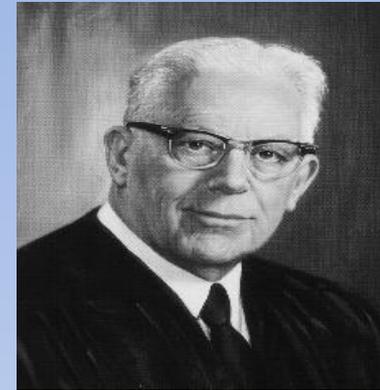
Felix Frankfurter
(1939-1962)
Baker v. Carr (dissent)



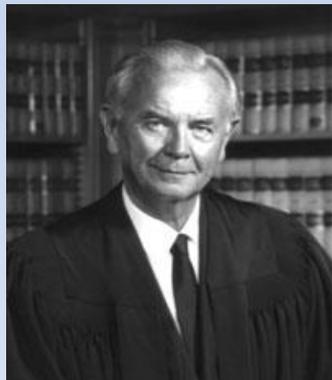
William O. Douglas
(1939-1975)
United States v. Paramount Pictures
Griswold v. Connecticut
Sierra Club v. Morton (dissent)



Robert Jackson
(1941-1954)
West Virginia State Board of Education v. Barnette
Youngstown Sheet & Tube Co. v. Sawyer (concurrency)
Korematsu v. United States (dissent)



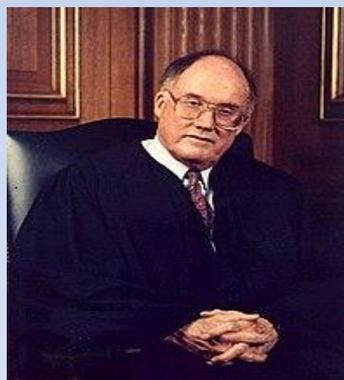
Chief Justice Earl Warren
(1953-1969)
Brown v. Board
Miranda v. Arizona



William Brennan
(1956-1990)
Baker v. Carr
NY Times v. Sullivan
Texas v. Johnson



Harry Blackmun
(1970-1994)
Roe v. Wade
Furman v. Georgia (dissent)
Bowers v. Hardwick (dissent)



Chief Justice William Rehnquist
(1972-2005)
"The Lone Ranger"
Roe v. Wade (dissent)
United States v. Lopez



Anthony Kennedy
(1988-Current)
Lawrence v. Texas
Citizens United v. FEC
Obergefell v. Hodges



Suggestions?