

## CONSTITUTION 101

### Module 9: The Judicial System and Current Cases

#### 9.5 Info Brief

## HOW DOES A CASE GET TO THE SUPREME COURT?

Let's turn now to a basic question: *How does a case get to the Supreme Court?*

The Court's term typically lasts from the first Monday of October to the end of June.

The Court sets oral arguments for cases, which usually run through April and occur the first two weeks of each month.

Opinions are released throughout the term, with the final opinions (often on the most important and controversial cases) coming at the end of June—although there's no formal deadline because the justices set their own docket (and schedule).

Remember, all of this is not in the Constitution itself, but the result of over two centuries of Supreme Court practice.

So, how *does* a case get to the Supreme Court?

Most constitutional cases start with a simple argument: *The government has violated the Constitution.* It may be a law passed by Congress, by a state legislature, or by a town council. Or it may be an action taken by the president or the governor or some other government official—whether it's an arrest, a new government regulation, you name it. But someone—often a single person—comes to court and argues that a law or arrest or regulation violates the Constitution. Constitutional cases often begin with “We the People” or even “Me the Individual.”

The Supreme Court receives about 10,000 petitions a year.

The justices use the “Rule of Four” to decide if they will take the case. If four of the nine justices determine that a case has merit, they will issue a writ of certiorari. This is a legal order from the high court for the lower court to send the records of the case to them for review.

When all is said and done, the Supreme Court will hear about 65–70 cases a year.

This tells us that most petitions are denied. Why? It's not the Supreme Court's job to hear every case.

Since 1925 (and thanks to Chief Justice William Howard Taft's advocacy before Congress), the justices themselves have had almost total control over which cases they decide to hear each year.

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But how *does* a case end up before the Supreme Court?

Here's how nearly every case works its way up the national court system. In nearly every case, someone brings a new case in (what's called) a district court. This is the lowest level of court in the national courts system.

There are *94* district courts in the United States. It's where nearly every case starts—and where most of them end.

A single judge presides over (or manages) the case. And the case is decided by either a judge or a jury.

Someone wins, and someone loses.

The loser might decide to appeal the district court's ruling by having the next level of court (the court of appeals) take a look at the case.

There are *13* Circuit Courts of Appeals. Twelve geographic circuits, and the Federal Circuit. Unlike the Supreme Court, the court of appeals doesn't control which cases it hears. If someone appeals their case to this court, the judges have to decide it.

Generally speaking, they have two options: (1) say that the district court got it right; or (2) say that the district court got it wrong—and then explain why and reach a new decision.

Again, someone wins, and someone loses. And it doesn't have to be the same people as the first time.

Finally, the loser in the court of appeals might try to get the Supreme Court to decide her case. The fancy (lawyerly) words for this is that they can "petition for a writ of certiorari." Or if you want to sound like a real insider: "file for cert."

This simply means that the loser (in the court of appeals) wants the Supreme Court to take their case and decide it. But that isn't very likely.

Again, the Supreme Court has nearly total control over which cases it takes and it says no to nearly every petition.

*How many justices does it take to get your case heard?*

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Today, there are nine justices on the Supreme Court. The justices read the challenger’s “cert. petition” asking the Court to take the case and again, *four* of the justices must vote to take a case before they decide to hear it.

Again, this is the “The Rule of Four.” So, that’s four out of nine justices—so, just short of a majority.

Or, if you want to sound like a real insider: When the Court takes a case, we generally call that “granting cert.” But again, the Supreme Court rejects nearly every petition out of the nearly 10,000 filed annually.

Generally speaking, the Court will sometimes take cases that involve questions of national significance. But the main reason it takes a case is usually a “circuit split.” This is when the lower courts can’t agree on how to interpret the law involved and/or when different lower courts have interpreted the law differently.

Why does the Supreme Court care about circuit splits?

When the lower courts decide cases differently, it can lead to confusion. By taking a case that involves an issue that has led to differing opinions in the lower courts, the Supreme Court creates a precedent that every court in the country has to follow.

This ensures that the laws are applied equally to all people, no matter where they live.

In other words, by settling circuit splits, the Supreme Court looks to promote the value of legal uniformity throughout the nation.

#### WHAT HAPPENS AFTER THE SUPREME COURT TAKES A CASE?

Finally, what happens after the Court agrees to hear a case?

The winner and loser from the court of appeals file briefs before the Supreme Court. These are little books that lawyers write—presenting the constitutional arguments on their side of the case.

Others affected by the case can also write briefs—known as “Friend of the Court” or “amicus curiae” briefs—explaining why the Court should choose one side as the winner over the other. These briefs can come from all sorts of people—ordinary Americans, government officials (at the national, state, and local levels), scholars, businesses, various organizations/groups, etc.

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The justices then read the briefs in the case, and the Supreme Court holds oral argument. This is when the lawyers on each side get to state their case and the justices get to ask questions. These arguments usually last under two hours—so, the lawyers don't get a lot of time.

The justices then get together once or twice a week to vote on the cases. This is known as the Justices' "Conference"—and these conferences are held in secret. No one but the justices are allowed in the room.

At conference, the justices discuss the cases heard at oral argument, decide by vote which cases to take, and each justice is allowed to speak to their views on the cases before her fellow justices.

The justices give their votes at conference by seniority, starting with the chief justice. If the chief justice is in the majority, the chief assigns who writes the majority opinion. This is where a lot of the chief justice's formal authority lies.

And if the chief justice is in the minority (the dissent), then the most senior justice (the justice serving the longest) in the majority assigns which justice writes the majority opinion.

The justices then spend months writing their opinions in the case.

In nearly every case, one justice writes a majority opinion—which has the support of a majority of the justices.

In some cases—often the most closely watched cases—one or more justices might write a dissenting opinion, explaining why they disagree with the majority and why they would decide the case differently.

And finally, one or more justices might write a concurring opinion—often agreeing with the majority on who should win the case, but offering some additional thoughts on how to think about the constitutional issue in the case.

After the justices finalize their opinions and finalize their votes in the case, the Court's decision is then released to the public.