



Social Studies Virtual Learning

AP Government:

U2 Judicial Branch Review (Pt 2)

April 23, 2020



AP Government
Lesson: April 23, 2020

Objective: CON 5.B

Explain how the exercise of judicial review in conjunction with life tenure can lead to debate about the legitimacy of the Supreme Court's power.

Warm Up



One of the major words to know for the Judicial Branch is *STARE DECISIS*. This means “let the decision stand.” What English word (starts with a P) do we use to help us remember what *stare decisis* is?

Warm Up

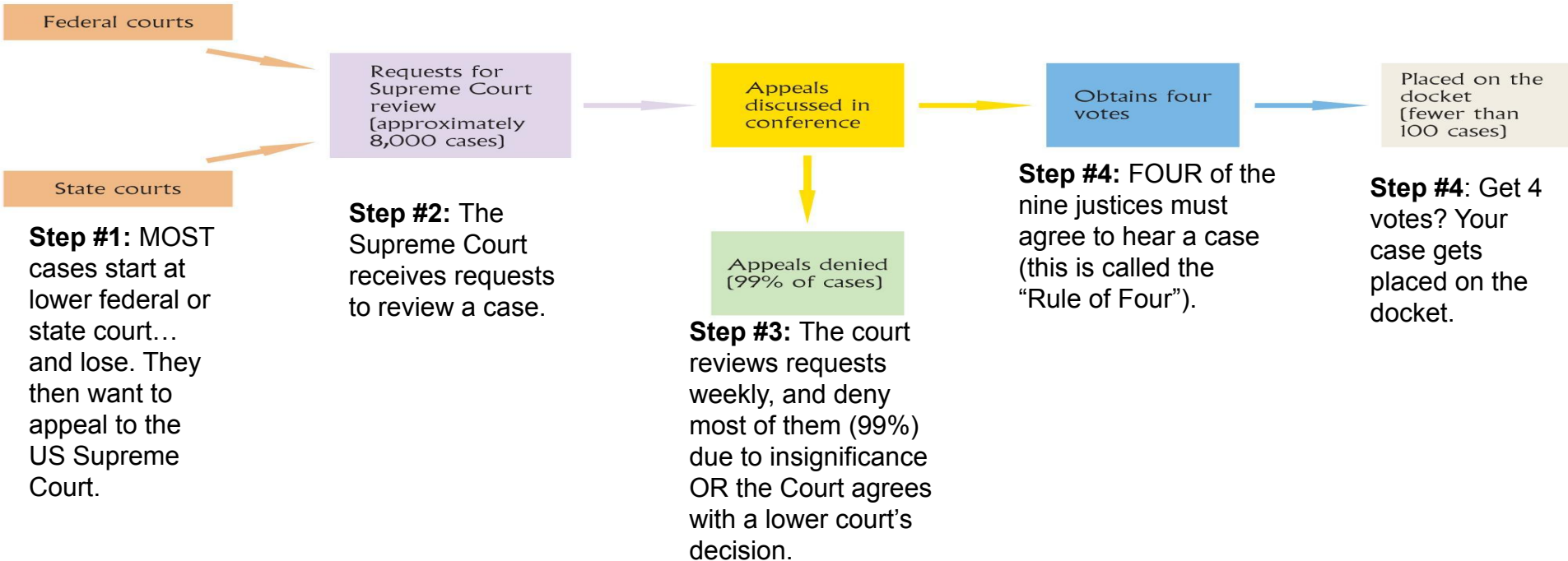


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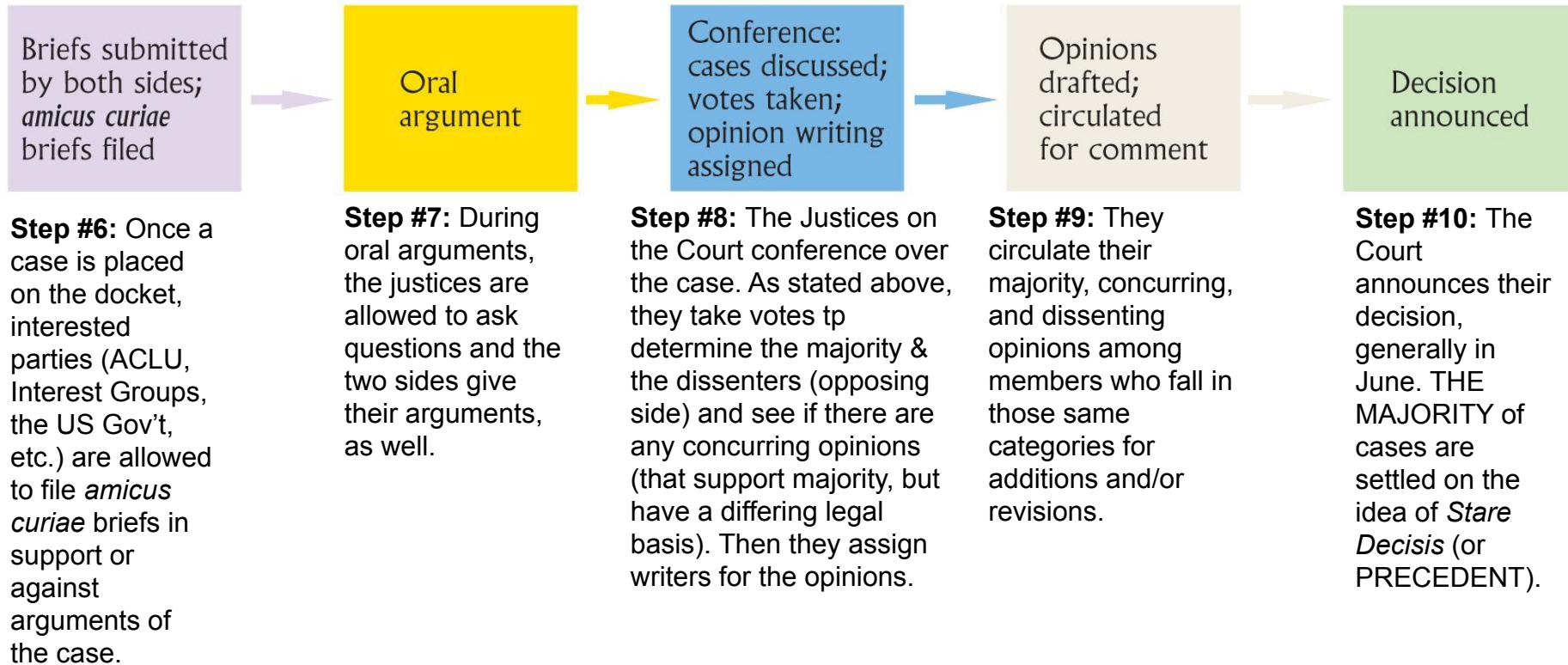
The word is ***PRECEDENT***!!

Lesson: Let's Review

Let's take a look at how the court chooses the cases they want to decide on and how they make their decisions:



Lesson: Let's Review



Lesson: Let's Review

While the majority of the time the Court settles cases based on Stare Decisis, *they have overruled their own precedents OVER 200 TIMES!*

So... why is this a big deal? Well... ideological changes in the composition of the Court due to presidential appointments have led to the Court either establishing new precedents OR rejecting existing precedents.

Practice: MCQ

During his confirmation hearing, Chief Justice John Roberts stated that *Roe v. Wade* (1973) “is the settled law of the land.” This statement suggests that in a case that challenges the constitutionality of legislation restricting privacy and reproductive rights, which of the following should be a key factor in the court’s ruling?

- a) Briefs submitted by interested parties
- b) Contemporary societal norms
- c) The consensus of the other justices
- d) Reliance on legal precedent

Practice: MCQ → Answer

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Practice: MCQ

Which of the following scenarios best illustrates the concept of a case being decided based on precedent?

- a) The Supreme Court bases its decisions in a case involving the commerce clause on one of its earlier decisions involving the commerce clause.
- b) The Supreme Court overturns a lower court decision in a case dealing with voter identification laws.
- c) A state passes a law which contradicts federal law, causing the Supreme Court to rule in favor of the federal government.
- d) The chief justice of the Supreme Court disagrees with the majority of the other justices and decides to declare a law passed by Congress as unconstitutional.

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Practice: MCQ

In the case *Twining v. New Jersey* (1908), the Supreme Court held that the 5th Amendment's protection against self-incrimination is not applicable to the states. In 1964, the Supreme Court overruled the decision in *Malloy v. Hogan* (1964) and held that the right was incorporated to the states. This scenario illustrates which of the following?

- a) The Supreme Court oftentimes overrules lower court decisions.
- b) Constitutional amendments can be used to overturn previous Supreme Court decisions.
- c) The executive branch can sometimes evade Supreme Court decisions.
- d) Ideological changes to the Supreme Court can lead to the overturning of precedent.

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Reflection

How does the idea of *precedent* play an important role in the judicial branch's decision making?



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Objective: CON 5.B

Explain how the exercise of judicial review in conjunction with life tenure can lead to debate about the legitimacy of the Supreme Court's power.

Warm Up → Answer the questions below in your notes.

1. Using the chart below, describe a similarity or difference between Republican and Democrat nominees to federal DISTRICT courts with regard to the political party of the people they nominate.
2. What is one way that similarity or difference might affect the judicial decisions of the federal district courts?

	Johnson (D)	Nixon (R)	Ford (R)	Carter (D)	Reagan (R)	G. Bush (R)	Clinton (D)	G. W. Bush (R)
Gender								
Male	98.4%	99.4%	98.1%	85.6%	91.7%	80.4%	71.5%	80.3%
Female	1.6%	0.6%	1.9%	14.4%	8.3%	19.6%	28.5%	19.7%
Party								
Democratic	94.3%	7.3%	21.2%	91.1%	4.8%	6.1%	87.5%	6.9%
Republican	5.7%	92.7%	78.8%	4.5%	91.7%	88.5%	6.2%	84.7%
Independent	0%	0%	0%	4.5%	3.4%	5.4%	6.3%	8.4%
Number of Federal District Court Appointees	125	182	50	203	290	148	305	261

Source: UScourts.gov

Lesson: Let's Review

If the Supreme Court hands down a controversial or unpopular court decision, the court's legitimacy and power can ultimately be challenged. Why?

Well... because of checks and balances. We aren't quite there yet in our review, *but* Congress and the President have a few specific things they can do to challenge the Court.

Lesson: Let's Review

Three ways Congress and the President can challenge the Court:

- in making future appointments to the Court (or even federal courts in general)
- making legislation to change the Court's jurisdiction
- refusing to implement decisions

Brainstorm some examples of what SPECIFICALLY this may look like in your notes.

Practice: MCQ

In the case *Wickard v. Filburn* (1942), Roscoe Filburn was penalized for producing 12 acres of wheat above his allotment under the Agricultural Adjustment Act of 1938. The law, justified under Congress' power to regulate interstate commerce, limited the amount of wheat an individual could grow. This regulation would keep prices from dropping and prevent farmers from going bankrupt. Filburn claimed the excess wheat was for his own use, and challenged that no interstate commerce was involved. The Supreme Court rules that the commerce clause allowed the government to regulate Filburn's personal wheat production, even though it was only indirectly related to interstate commerce.

Which of the following was a likely result of the decision in *Wickard v. Filburn* that contributed to the Court's later decision in *United States v. Lopez* (1995)?

- a) The Supreme Court is not elected, so unpopular decisions such as in the *Wickard* case cannot be overturned unless Congress acts upon it.
- b) Laws passed by Congress have since undergone judicial review by the Supreme Court to ensure that the commerce clause and other parts of the Constitution are interpreted correctly.
- c) The expansive interpretation of the commerce clause by the Supreme Court which greatly extended the power of Congress drew criticism that eventually led to a more narrow interpretation.
- d) Rather than be regulated by Congress, many citizens and corporations opt instead to find loopholes so that the law does not apply to them

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Practice: MCQ

In *Worcester v. Georgia* (1832), the Supreme Court used the power of judicial review established in *Marbury v. Madison* to strike down a Georgia state law that regulated the relationship between citizens of Georgia and members of the Cherokee Nation. President Andrew Jackson opposed the decision and famously challenged the Supreme Court to enforce it. As the Supreme Court was not able to enforce the decision, the other branches of government ignored it. This example illustrates which of the following?

- a) The president can approve or veto decisions made by the Supreme Court.
- b) States have the power to nullify federal laws.
- c) Congress can prevent Supreme Court decisions from being enforced by appropriating money to the Department of Justice.
- d) Unpopular Supreme Court decisions can be avoided or ignored if other branches refuse to cooperate with the outcomes of those decisions.

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Practice: MCQ

In *Baker v. Carr* (1962), the Supreme Court ruled that a state legislature would have to redraw their representative districts in order to comply with the Constitution. Which of the following potential difficulties could have resulted from this decision?

- a) The state legislature could have refused to implement the decision, leading to a crisis in the legitimacy of the Supreme Court's authority.
- b) The US Congress could have requested that funding be cut off from the redistricting program.
- c) The president could have created an executive agreement with the state that overrode the Supreme Court's decision.
- d) A state appellate court could have issued a ruling that overturned the ruling of the US Supreme Court.

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In *Baker v. Carr* (1962), the Supreme Court ruled that a state legislature would have to redraw their representative districts in order to comply with the Constitution. Which of the following potential difficulties could have resulted from this decision?

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Practice: MCQ

Which of the following best describes the relationship between the Supreme Court and public opinion?

- a) The Court assesses public opinion on a controversial issue and then tries to follow it.
- b) Court prestige is so high that its decisions become public consensus.
- c) The existence of a public consensus on an issue limits the extent to which the Court will render decisions contrary to that consensus.
- d) Public opinion has no bearing on the effective implementation of the Court's decision.

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Reflection

Does the loss of legitimacy in the Court make this the weakest branch? Why or why not?