

**Edwards, Wattenberg, and Lineberry**  
**Government in America: People, Politics, and Policy**  
**Fourteenth Edition**

---

**Chapter 16**  
**The Federal Courts**

# EQ #30- What is the Judicial Branch?

---

- **What is the nature of the US legal system?**
- **What are the key powers of the judicial branch?**
- **How is the federal court system organized?**

# Read Article III of Constitution

- **Article III- The Judicial Branch**
- **It's short!**
- **What observations do you have about what the Constitution says about the Judicial Branch**

# What is the Judicial Branch?

- The Judicial branch consists of the federal courts.
- There are THREE main levels of courts in the US federal system—
  1. Trial court = **District Court**
  2. Appeals Court = **Circuit Court of Appeals**
  3. Court of final decisions = **US Supreme Court**

# What do the courts do?

- **The courts exercise Judicial Review as their main power.**
- **What is judicial review? Can the courts enforce it?**
- **Watch film clip-**
  - <https://www.youtube.com/watch?v=qx1h0VenFZ4>

# What is Judicial Review?

- It is the right of the federal courts to rule on the constitutionality of laws, legislative actions and executive actions.
- Was NOT listed as a power in the Constitution
- Was established in the *Marbury v. Madison*, 1803 decision.
- It is the CHIEF judicial weapon in the checks and balances system

# The Nature of the Judicial System- What is Criminal Law?

## ■ Introduction:

– Two types of cases:

1. **Criminal Law:** The government charges an individual with violating one or more specific laws.

- Means jail time if guilty.
- Must prove guilt “beyond a reasonable doubt.”
- Theft, assault, murder...



# What is Civil Law?

- 2. Civil Law:** Involves disputes between two parties; courts decide which party was at fault
- **Law suits** are civil actions. Violations of rights or negligence cases. Plaintiff wins \$ to compensate.
  - Need only “preponderance of evidence” (more likely than not) to find for the plaintiff.
  - The US government can be sued.



# Types of Cases

- Read the two articles / descriptions of cases.
- With a partner, complete the grid comparing the two types of cases
- Debrief by looking at my key and making changes.
- What's the difference between **civil** and **criminal** cases?

# State v. Federal Courts

- **The U.S. has a TWO court system**
- Federal courts handle federal questions.
  - Federal laws (federal income tax, federal lands)
- State courts handle cases involving state laws.
  - These are more common for most citizens
  - Can be civil and criminal

# State and Federal Courts

Most cases are tried and resolved in **STATE**, **NOT federal** courts.

- This was intentional. Founders wanted to check the federal judiciary from too much power.
- Federal courts can review state laws IF they violate the US Constitution.

**\*Common Federal Cases-** Drug laws, taxes, civil cases.

**\*Common State Cases-** criminal acts, divorce, custody actions.

# Is it a STATE or FEDERAL Case?

---

- **Read the handout**, describing the difference between State and Federal courts and they types of cases they hear.

## **Debrief Questions- Answer in INB**

1. Which court system has limited jurisdiction? Which has general? Why?
  2. Create THREE examples of federal cases.
  3. Create THREE examples of State cases.
- Now organize examples and check.

# Is it State or Federal Law?

- **Using your handout about State and Federal Courts, organize the cases by category.**
- **State Criminal**
- **State Civil**
- **Federal Criminal**
- **Federal Civil**



# Wednesday

---

**Warm-UP- Read the Handout. Answer in  
INB**

1. Which court system has limited jurisdiction? Which has general? Why?
2. Create THREE examples of federal cases.
3. Create THREE examples of State cases.

# What is the Nature of the Judicial System?

## ■ Who are the Participants in the Judicial System?

### – Are called Litigants

- **Plaintiff**—the party bringing the charge
- **Defendant**—the party being charged
- **Jury**—the people (normally 12) who often decide the outcome of a case
- **Standing to sue**: plaintiffs who have a serious interest in the case; have sustained or likely to sustain a direct injury from the government (Can a parent sue for a child?)
- **Justiciable disputes**: a case must be capable of being settled as a matter of law.



# Activity- Standing to Sue

---

## ■ Pledge Case example



# The Nature of the Judicial System

---

## ■ Participants in the Judicial System

### – Interest Groups

- Use the courts to try to change policies
- Seek out litigants whose case is strong
- ***Amicus Curiae* briefs** are used to influence the courts' decisions (lobby the courts).
  - “friend of the court” briefs used to raise additional points of view and information not contained in briefs of formal parties

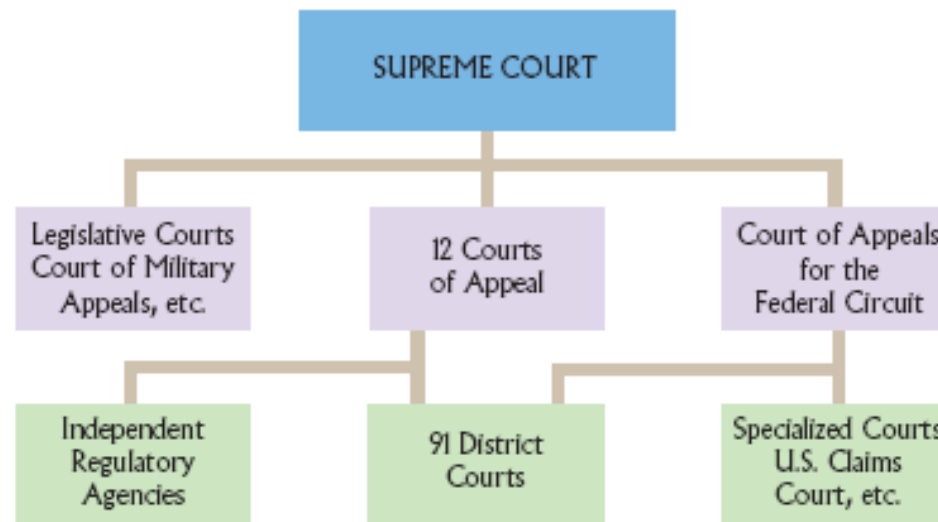
### – Attorneys

- Represent clients (and the government)
- 800,000 lawyers in United States today
- Legal Services Corporation: lawyers to assist the poor
- Access to quality lawyers is not equal.

# The Structure of the Federal Judicial System

**FIGURE 16.1**

Organization of the Federal Court System





# Overview of the US Court System

---

 **Video**

# What is the Structure of the Federal Judicial System?

## ■ District Courts (94 federal courts)

- Original Jurisdiction: courts that hear the case first and determine the facts - the TRIAL court
- Deals with the following types of cases:
  - Federal crimes
  - Civil suits under federal law and across state lines
  - Supervise bankruptcy and naturalization
  - Review some federal agencies
  - Admiralty and maritime law cases
  - Supervision of naturalization of immigrants

# What is the Structure of the Federal Judicial System?

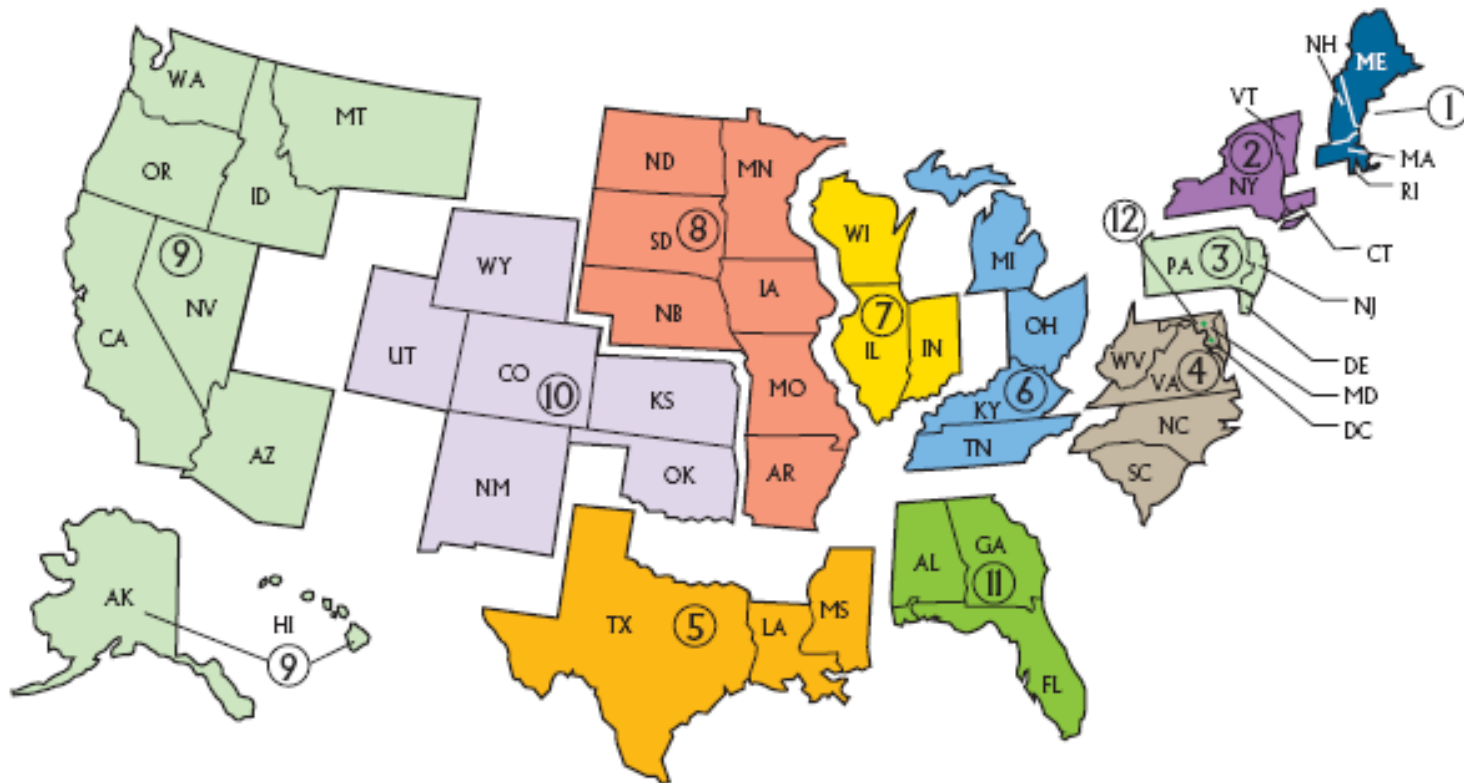
## ■ Courts of Appeal-Circuit Courts

- **Have Appellate Jurisdiction:** reviews the legal issues in cases brought from lower courts
- **Hold no trials and hear no testimony**
- **12 regional circuit courts**
- A 13<sup>th</sup> is a special regional U.S. Court of Appeals for the Federal Circuit
- **Focus on errors of procedure and law**
- **Can choose which cases to hear; NOT**

automatic

# The Structure of the Federal Judicial System

## The Federal Judicial Circuits



Note: Not shown are Puerto Rico (First Circuit), Virgin Islands (Third Circuit), and Guam and the Northern Mariana Islands (Ninth Circuit).

# What is the Structure of the Federal Judicial System?

## ■ The Supreme Court (SCOTUS)-

- Court of LAST resort in US
- Ensures uniformity in interpreting national laws, resolves conflicts among states and maintains national supremacy in law
- **9 justices – 1 Chief Justice, 8 Associate Justices**
- Supreme Court decides which cases it will hear—controls its own agenda
- Has some original jurisdiction, but mostly appellate jurisdiction
- Most cases come from the federal courts
- Most are civil cases

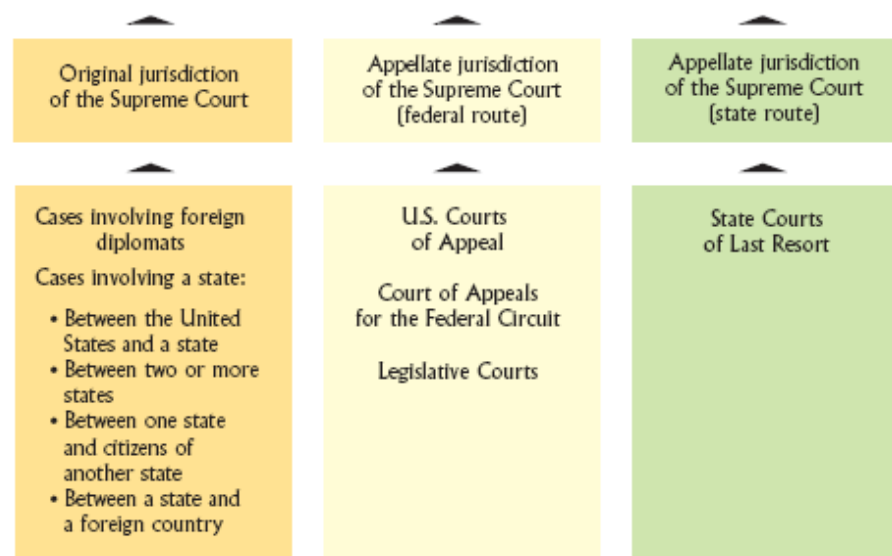
# The Structure of the Federal Judicial System

**FIGURE 16.2**

The Organization and Jurisdiction of the Courts



UNITED STATES SUPREME COURT





# Graphic Organizer-US Federal Court Structure

---

- **Now complete your graphic organizer for INB LEFT side**
- **Green=District Courts**
- **Yellow= Circuit Ct of Appeals**
- **Red= SCOTUS**
- **Record KEY info in boxes-  
#, jurisdiction (trial or appeals),  
description, fun facts**

# Court Structure Scavenger Hunt

- **Using the handouts, answer the questions about the US Federal Court structure.**
- **94 Federal District Courts**
- **12 Circuits; 13 Circuit Courts of appeal. The 13<sup>th</sup> is administrative.**

# The Structure of the Federal Judicial System

**TABLE 16.1**

Sources of Full Opinions in the Supreme Court, 2007

TYPE OF CASE	NUMBER OF CASES
Original jurisdiction	0
Civil actions from lower federal courts	47
Federal criminal and <i>habeas corpus</i> cases	17
Civil actions from state courts	4
State criminal cases	3
<b>Total</b>	<b>71</b>

Source: "The Supreme Court, 2006 Term: The Statistics," *Harvard Law Review* 121 (November 2007): 447-449.



Thursday

# The Politics of Judicial Selection

- Presidents appoint ALL judges & justices of the federal courts (District, Circuit, SC) with majority vote approval of Senate.
- Judges & Justices are appointed for a life term of office
- **NOT elected!**
- Can only be removed through impeachment which is difficult and rare.
- This is to ensure that the courts are removed from politics.

# What is Senatorial Courtesy?

## ■ The Lower Courts- Federal District and Circuit Courts use Senatorial Courtesy

- Custom/tradition; NOT formal
- P's judicial appointments are confirmed ONLY if there is NO objection to them by the senators from the appointee's state,
- More powerful if the Senator(s) are from the P's party.
- Has the effect of the president approving the Senate's choice
- President has more influence on appellate level
- Doesn't apply to SCOTUS nominations

# The Politics of Judicial Selection- SCOTUS

## ■ How are Supreme Court Justices Chosen?

- Fewer constraints on P to nominate justices to Supreme Court
- President relies on attorney general and DOJ to screen candidates
- 1 out of 5 nominees will not make it
- Presidents with minority party status in the Senate will have more difficulty.
- Chief Justice can be chosen from a sitting justice, or as a new member to the Court.

# Nominating a Supreme Court justice

The U.S. Constitution gives the president the power to appoint members of the Supreme Court “with the advice and consent of the Senate.” Here is how the process traditionally works once a vacancy occurs on the nine-member bench:



## 1. NOMINATION

After consulting with administration insiders and outsiders with expertise in law and politics, the president puts forth a nominee to the Senate.



## 2. REVIEW

The Senate Judiciary Committee begins a vetting process that includes a review of the nominee’s record and personal background. By tradition, the nominee meets with individual senators to try to build support.



## 3. HEARING

The Senate Judiciary Committee holds public hearings, which usually last for several days and are televised.



## 4. ENDORSEMENT

The committee votes on whether to recommend the nominee to the full Senate. If the committee is deadlocked, a nomination may proceed without an endorsement.



## 5. APPROVAL

The Senate holds floor debate and then votes. A simple majority of the 100 senators is required for approval.\*

\*If senators try to filibuster, however, a three-fifths vote (60 senators) is needed to end debate and move to the merits of the nominee.

Source: Reuters

C. Chan, J. Biskupic 25/02/2016

Copyright © 2009 Pearson Education, Inc. Publishing as Longman.



# The Politics of Judicial Selection

**TABLE 16.2**

## Unsuccessful Supreme Court Nominees since 1900

NOMINEE	YEAR	PRESIDENT
John J. Parker	1930	Hoover
Abe Fortas <sup>a</sup>	1968	Johnson
Homer Thornberry <sup>b</sup>	1968	Johnson
Clement F. Haynesworth Jr.	1969	Nixon
G. Harrold Carswell	1970	Nixon
Robert H. Bork	1987	Reagan
Douglas H. Ginsburg <sup>a</sup>	1987	Reagan
Harriet Miers <sup>a</sup>	2005	G. W. Bush

<sup>a</sup>Nomination withdrawn. Fortas was serving on the Court as an associate justice and was nominated to be chief justice.

<sup>b</sup>The Senate took no action on Thornberry's nomination.

# The Backgrounds of Judges and Justices

## ■ Characteristics:

- Lawyers with judicial and often political experience
- Elite, highly educated, wealthy,
- Disproportionately male, white

## ■ Other Factors:

- Generally of the same party and ideology as the appointing president
- Judges and justices may not rule the way presidents had hoped they would have.

# The Backgrounds of Judges and Justices

**TABLE 16.3**

Backgrounds of Recent Federal District and Appeals Court Judges

CHARACTERISTIC	Appeals Court					District Court				
	G. W. BUSH <sup>a</sup>	CLINTON	BUSH	REAGAN	CARTER	G. W. BUSH <sup>a</sup>	CLINTON	BUSH	REAGAN	CARTER
<b>Total number of nominees</b>	49	61	37	78	56	203	305	148	290	202
<b>Occupation (%)</b>										
Politics/government	22	11	6	5	8	12	11	13	4	
Judiciary	47	53	60	55	47	47	48	42	37	45
Large law firm	12	18	16	14	11	21	15	26	18	14
Moderate-size firm	6	13	11	9	16	10	13	15	19	19
Solo or small firm	4	2	—	1	5	6	8	5	10	14
Professor of law	4	8	3	13	14	2	2	1	2	3
Other	4	—	—	1	2	2	1	1	1	1
<b>Ethnicity or race (%)</b>										
White	82	74	89	82	79	83	75	89	92	79
African American	12	13	5	7	16	6	17	7	2	14
Hispanic	6	12	5	11	4	11	6	4	5	7
Asian	—	2	—	1	2	1	1	—	1	1
<b>Gender (%)</b>										
Male	78	67	81	74	80	80	72	80	92	86
Female	22	33	19	21	20	20	28	20	8	14
<b>Average age</b>	50	51	49	49	52	50	50	48	49	50
<b>Party (%)</b>										
Democrat	6	85	5	7	82	7	88	6	5	91
Republican	92	7	89	85	7	85	6	89	92	5
Independent	2	8	8	8	11	8	6	5	3	5
<b>Past party activism (%)</b>	65	54	70	49	73	51	50	64	60	61

# The Backgrounds of Judges and Justices

**TABLE 16.4**

Supreme Court Justices, 2009

NAME	YEAR OF BIRTH	PREVIOUS POSITION	NOMINATING PRESIDENT	YEAR OF CONFIRMATION
John G. Roberts Jr.	1955	U.S. Court of Appeals	G. W. Bush	2005
John Paul Stevens	1920	U.S. Court of Appeals	Ford	1975
Antonin Scalia	1936	U.S. Court of Appeals	Reagan	1986
Anthony M. Kennedy	1936	U.S. Court of Appeals	Reagan	1988
David H. Souter	1939	U.S. Court of Appeals	Bush	1990
Clarence Thomas	1948	U.S. Court of Appeals	Bush	1991
Ruth Bader Ginsburg	1933	U.S. Court of Appeals	Clinton	1993
Stephen G. Breyer	1938	U.S. Court of Appeals	Clinton	1994
Samuel A. Alito Jr.	1950	U.S. Court of Appeals	G. W. Bush	2006

# The Supreme Court is made up of eight associate justices and one chief justice, and all are not term limited

## SCOTUS membership, by age



Age: 84  
President: Clinton  
Ideology: liberal

Ruth Bader Ginsberg



Age: 69  
President:  
G.H.W. Bush  
Ideology: conservative

Clarence Thomas



Age: 62  
President: G.W. Bush  
Ideology:  
conservative

Chief John Roberts



Age: 81  
President: Reagan  
Ideology: swing  
Retiring: July 31, 2018

Anthony Kennedy



Age: 67  
President: G.W. Bush  
Ideology:  
conservative

Samuel Alito



Age: 57  
President: Obama  
Ideology: liberal

Elena Kagan



Age: 79  
President: Clinton  
Ideology: liberal

Stephen Breyer



Age: 63  
President: Obama  
Ideology: liberal

Sonia Sotomayor



Age: 50  
President: Trump  
Ideology:  
conservative

Neil Gorsuch

# Where the political balance hangs in the Supreme Court

With Justice Kennedy, a crucial swing vote in many cases, out at the end of July, the next appointee could shift the balance to a more conservative-leaning bench.

First year on court

1988



Kennedy  
Age 82



Thomas  
Age 70

1994



Ginsburg  
Age 85



Breyer  
Age 80

2000

2006



Roberts  
Age 63



Alito  
Age 68

2012



Sotomayor  
Age 64



Kagan  
Age 58

2018



Gorsuch  
Age 51

← MORE LIBERAL

MORE CONSERVATIVE →

Source: Martin-Quinn (MQ) Scores, end of 2016 term





# About the Supreme Court

- Overview of the US Supreme Court
- How do cases reach the Supreme Court?
- <https://www.youtube.com/watch?v=KEjgAXxrkXY>

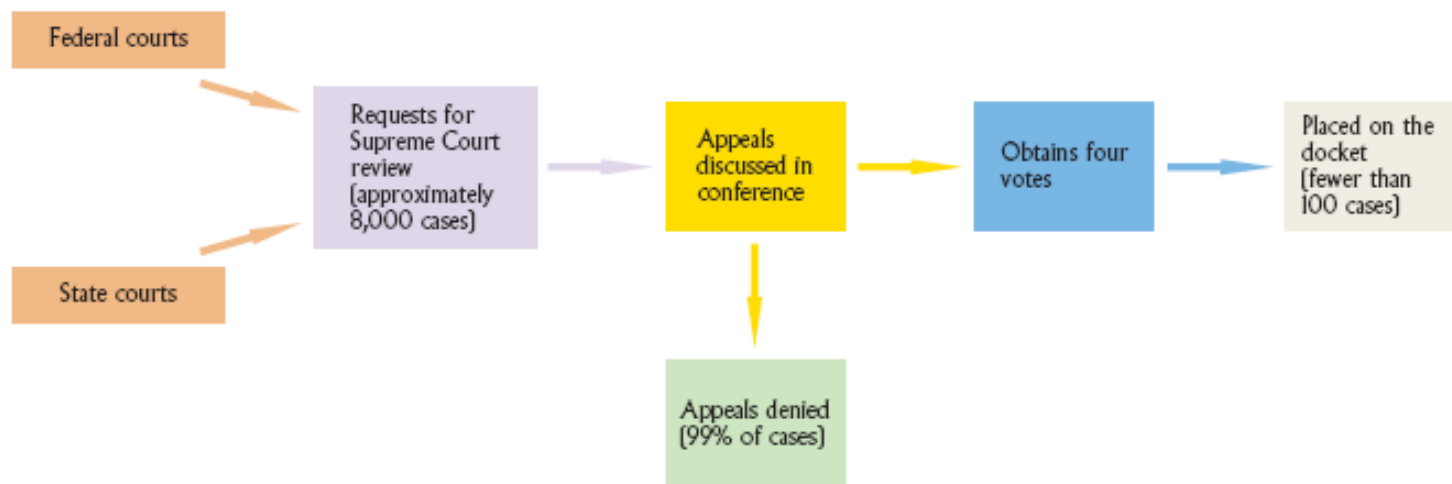
# How does a case reach SCOTUS?

SCOTUS uses the **“Rule of Four”** to choose cases-  
FOUR justices must agree to take the case,

- SCOTUS then issues a writ of certiorari to call up the case
- SCOTUS accepts very few cases each year (less than 100)

**FIGURE 16.3**

Obtaining Space on the Supreme Court’s Docket





# How does a case reach SCOTUS?

## ■ Accepting Cases (continued)

### – The Solicitor General:

- Is a presidential appointee and third-ranking office in the Department of Justice
- Is in charge of appellate court litigation (cases) for the federal government
- Four key functions:
  - Decide whether to appeal cases the government lost
  - Reviews and modifies briefs presented in appeals
  - Represents the government before the Supreme Court.
  - Submits a brief on behalf of a litigant in a case in which the government is not directly involved

# Deciding to Decide Activity

- **After the activity, answer the prompt below in 2-3 sentences.**

**What types of cases are MOST likely to make it to the SCOTUS for review?  
What makes a case UNLIKELY to be granted Cert?**

The background of the slide is a faded American flag. The word "Friday" is written in a red, serif font, centered in the upper half of the slide. It is surrounded by a circular arrangement of small, grey stars.

**Friday**

- 
- **Warm-Up- SCOTUS**
  - **Activity- Deciding to Decide**
  - **EQ #31- The courts and policy**
  
  - **MONDAY= HW due & Quiz Ch 16**

# Warm-Up- SCOTUS

- 1. How many justices?**
- 2. How do they get their job?**
- 3. Term length?**
- 4. What is the Rule of 4?**
- 5. What is a Writ of Certiorari?**
- 6. About how many cases each year?**

# Activity- Deciding to Decide

- **How do cases reach the SCOTUS? What factors do Justices consider?**
- **Form a team of THREE**
- **Read the overview “Granting Cert”**
- **With your group, read and discuss the FOUR cases.**
- **Use the grid to reach consensus. Did SCOTUS take the case? Why/not?**