

EQ #31- What are the effects of the courts on US Policy?



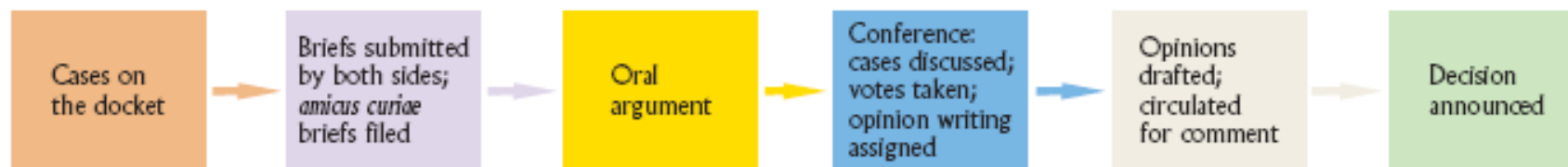
The Courts as Policymakers

■ How does SCOTUS Make Decisions?

- SCOTUS makes a **DOCKET**- schedule of cases for the year; each side submits **BRIEFS**.
- At court, Lawyers from each side make oral arguments heard by the justices. Limited to 30 minutes.
- Justices discuss the case and ultimately vote; months later decision is read.

FIGURE 16.4

The Supreme Court's Decision-Making Process





Film Clip

- **Crash course-** <https://www.youtube.com/watch?v=7sualy8OiKk>
- **How does a case reach SCOTUS?**
- **What is the Discussion List**
- **What are Briefs (and Amicus Curiae)?**
- **What is needed to reach a decision?**

Opinions of the Court

1. Majority Opinion- Requires 5 or more justices; is the *holding* of the case and sets *precedent* (other courts must follow its logic)

- One justice will write the **majority opinion—a statement of legal reasoning (RATIONALE) behind the judicial decision—on the case.**

Other Opinions from SCOTUS

2. Dissenting opinions are written by justices who OPPOSE the majority.

– Are not binding but provide insight into legal reasoning that could be used on future case.

3. Concurring opinions are written in support of the majority but stress a different legal reason.

Other Outcomes from SCOTUS

****Per Curium***- A brief decision of the Court where NO explanation is given so no precedent is set.

****Stare decisis***: Means “to let previous decision stand” unchanged; Court issues no new ruling.

***Precedent**: The idea that new opinions of the Court will affect all subsequent federal judicial rulings in lower courts as a matter of law

The Courts as Policymakers

Making Decisions (continued)

- **Original Intent:** The idea that the Constitution should be viewed according to the original intent of the framers.
 - Some justices believe this- Justice Gorsuch is one
 - It is somewhat controversial
 - It is a conservative political ideology

The Courts as Policymakers

■ Judicial implementation

- Is how and whether court decisions are translated into actual policy, thereby changing the behavior of others.
- Courts must rely on others to carry out their decisions / NO enforcement power.
 - **Interpreting population:** Those who understand the decision
 - **Implementing population:** the people who need to carry out the decision—may be disagreement
 - **Consumer population:** the people who are affected (or could be) by the decision

The Courts and the Policy Agenda

■ A Historical Review

- **The Marshall Court-** Asserted strength of the National Government. *Marbury v. Madison, Gibbons v. Ogden, McCulloch v. Maryland.*
- **The Warren Court (1953-1969)** – Greatly expanded rights of the accused. Limited police. Established Miranda rights.
- **The Burger Court (1969-86)** – Roe v. Wade most controversial decision (abortions are legal). Established the right to privacy.

SCOTUS Historical Review

■ **The Rehnquist Court (1986-2005) –**

- More conservative era.
- Rolled back some of the Warren Court decisions that favored rights of the accused.
- Rendered the *Bush v. Gore*, 2000 decision.

■ **The Roberts Court (2005-present) – SCOTUS maintains its conservative majority.**

- *Citizens United* case removes spending limits from corporations.

Understanding the Courts

■ The Courts and Democracy

- Courts are not very democratic.
 - Not elected
 - Difficult to remove judges and justices
- The courts often reflect popular majorities.
- Groups are likely to use the courts when other methods fail, which **promotes pluralism.**

Understanding the Courts

■ What Courts Should Do: The Scope of Judicial Power

- **Judicial restraint:** judges should play a minimal policymaking role
- **Judicial activism:** judges should make bold policy decisions and even chart new constitutional ground
- **Political questions:** the idea that not all questions are justiciable; the federal courts should avoid deciding some cases
- **Statutory construction:** the judicial interpretation of an act of Congress

Understanding the Courts

TABLE 16.5

Supreme Court Rulings in Which Federal Statutes Have Been Found Unconstitutional^a

Period	Statutes Voided
1798-1864	2
1864-1910	33 (34) ^b
1910-1930	24
1930-1936	14
1936-1953	3
1953-1969	25
1969-1986	35
1986-present	38
Total	174

^aIn whole or in part.

^bAn 1883 decision in the *Civil Rights Cases* consolidated five different cases into one opinion declaring one act of Congress void. In 1895, *Pollock v. Farmers Loan and Trust Co.* was heard twice, with the same result both times.

Source: Henry J. Abraham, *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France*, 7th ed. (Oxford: Oxford University Press, 1998), 309. Used by permission of Oxford University Press, Inc.

Updated by the authors.

Checks & Balances

- **How can Congress check the Judicial Branch? List THREE ways.**
- **How can the President check the Judicial branch? List THREE ways.**

Summary

- **Judicial policymaking and implementation occur in lower federal and state courts.**
- **Many important questions are heard by the courts.**
 - Much decision making is limited by precedent.
- **Even the unelected courts promote democratic values.**