

INFORM. INSPIRE. DEVELOP CIVIC LEADERS.

THE POLICY CIRCLE

JUDICIAL BRANCH





WHAT IS THE JUDICIAL BRANCH?



THE JUDICIAL BRANCH OF GOVERNMENT IS ONE OF THE THREE BRANCHES OF GOVERNMENT AT BOTH THE FEDERAL AND STATE LEVELS.

THE JUDICIAL BRANCH INCLUDES THE U.S. SUPREME COURT, TRIALS COURTS, AND APPELLATE COURTS AT THE FEDERAL LEVEL, AND SUPREME COURTS, TRIAL COURTS, AND APPELLATE COURTS AT THE STATE LEVEL.

IN THE U.S., THE RULE OF LAW IS THE BEDROCK OF OUR FREE SOCIETY. THE PROPER FUNCTIONING OF THE JUDICIARY IS ESSENTIAL TO BUILDING TRUST IN AMERICAN SOCIETY. THE JUDICIAL BRANCH IS EXPECTED TO APPLY THE LAW IMPARTIALLY AND WITHOUT REGARD FOR POLITICS, MAKING THE JUDICIAL BRANCH UNIQUE AND HELPING IT MAINTAIN THE BALANCE OF POWER WITH THE LEGISLATIVE AND EXECUTIVE BRANCHES.

➤ FACTS TO KNOW ◀

ARTICLE III OF THE CONSTITUTION ESTABLISHES THE JUDICIAL BRANCH. THE COURT SYSTEM AT BOTH THE FEDERAL AND STATE LEVEL CONSISTS OF TRIAL COURTS, IN WHICH DISPUTES ARE RESOLVED; APPELLATE COURTS, WHERE THE LOSING SIDE GOES IF THEY ARE UNHAPPY WITH THE RESULT OF A TRIAL CASE, AND COURTS OF LAST RESORT, ALSO CALLED SUPREME COURTS.

STATE LEVEL COURTS HANDLE ABOUT 95% OF CASES, WITH ALMOST EXCLUSIVE RESPONSIBILITY FOR POWERS INVOLVING BUSINESS DISPUTES, DIVORCE, WILLS AND ESTATES, BUYING AND SELLING OF PROPERTY, AND TRAFFIC OFFENSES. THE EXACT STRUCTURE OF STATE LEVEL COURTS AND THE PROCESS FOR APPOINTING JUDGES VARIES BY STATE STATE TO STATE.

THE ENTIRE FEDERAL COURT SYSTEM CONSISTS OF 94 DISTRICT LEVEL TRIAL COURTS ORGANIZED INTO 12 REGIONAL CIRCUITS. EACH CIRCUIT HAS ITS OWN COURT OF APPEALS, AND THE HIGHEST APPELLATE COURT IN THE NATION IS THE SUPREME COURT. THE FEDERAL SYSTEM HAS EXCLUSIVE JURISDICTION OVER ISSUES OF INTERNATIONAL TRADE, BANKRUPTCY, AND FEDERAL LAWS. SUPREME COURT JUSTICES AND FEDERAL JUDGES ARE NOMINATED BY THE PRESIDENT AND CONFIRMED BY THE SENATE.

THE SUPREME COURT IS THE FINAL JUDICIAL ARBITER ON MATTERS OF FEDERAL LAW. A LITIGANT WHO LOSES IN A FEDERAL COURT OF APPEALS OR THE HIGHEST COURT OF STATE MAY FILE A WRIT OF CERTIORARI, A DOCUMENT ASKING THE SUPRME COURT TO REVIEW THE CASE. THE SUPREME COURT GETS 7,000-8,000 REQUETS PER TERM, BUT USUALLY GRANTS FEWER THAN 100.



CHECKS AND BALANCES



CONGRESS AND THE SUPREME COURT

THE HOUSE AND SENATE JUDICIAL COMMITTEES ARE RESPONSIBLE FOR LEGISLATION RELATED TO THE SUPREME COURT. THE HOUSE JUDICIAL COMMITTEE OVERSEES ISSUES LIKE TERRORISM, CRIME, AND CIVIL LIBERTIES. THE SENATE JUDICIARY COMMITTEE IS RESPONSIBLE FOR OVERSIGHT OF EXECUTIVE BRANCH AGENCIES LIKE THE FEDERAL BUREAU OF INVESTIGATION AND DEPARTMENT OF HOMELAND SECURITY, AS WELL AS THE EARLY STAGES OF THE PROCESS FOR CONFIRMING FEDERAL JUDGES.

JUDICIAL REVIEW

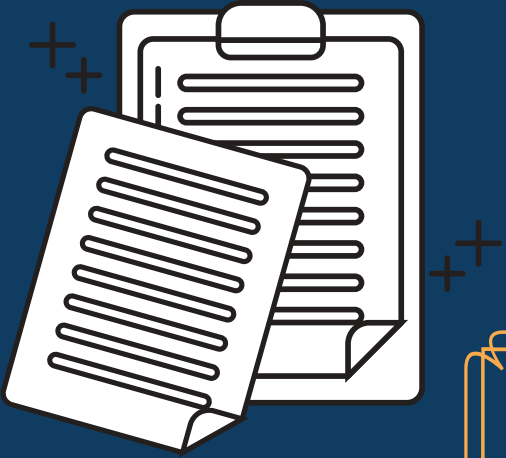
SOME FOUNDING FATHERS ARGUED THAT THE JUDICIAL BRANCH WAS THE WEAKEST BRANCH OF GOVERNMENT BECAUSE IT COULD NOT MAKE LAWS LIKE CONGRESS OR ENFORCE LAWS LIKE THE PRESIDENCY. HOWEVER, THE POWER OF JUDICIAL REVIEW MEANS THAT THE SUPREME COURT CAN STRIKE DOWN LAWS AND EXECUTIVES ORDERS FROM ELECTED OFFICIALS THAT ARE CHALLENGED IN COURT. ALTHOUGH THIS GIVES THE JUDICIAL BRANCH A LARGE AMOUNT OF POWER, THE SUPREME COURT RELIES ON THE OTHER BRANCHES OF GOVERNMENT TO ENFORCE ITS DECISIONS.

SELECTING STATE JUDGES

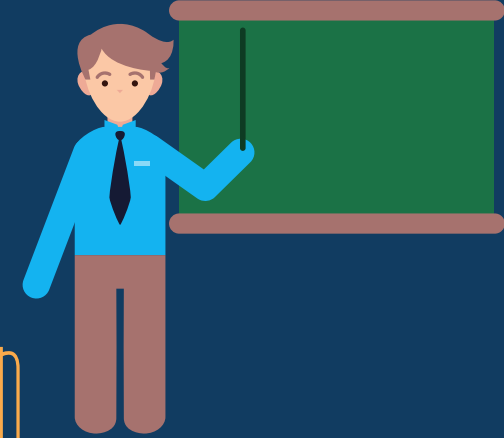
THERE ARE 30,000 STATE JUDGES ACROSS AMERICA. STATE JUDGES CAN BE SELECTED BY PARTISAN ELECTIONS, WHERE THEY RUN WITH A PARTY ON A CONVENTIONAL BALLET, NON-PARTISAN ELECTIONS, SELECTION BY STATE LEGISLATORS, APPOINTMENT BY GOVERNORS, OR AN ASSISTED APPOINTMENT PROCESS INVOLVING ELECTIONS, THE GOVERNOR, AND THE LEGISLATURE.

SELECTING FEDERAL JUDGES

CANDIDATE FOR FEDERAL COURTS MUST BE NOMINATED BY THE PRESIDENT AND CONFIRMED BY THE SENATE. NOMINEES SUBMITTED BY THE PRESIDENT TO THE SENATE ARE SUBJECT TO EVALUATIONS OF PROFESSIONAL CREDENTIALS, PUBLIC RECORDS, AND FINANCIAL AFFAIRS, AND MUST TESTIFY IN A HEARING BEFORE THE SENATE JUDICIARY COMMITTEE.



➤ FRAMING THE ISSUE ◀



POLITICIZATION OF THE SUPREME COURT

LEGISLATIVE GRIDLOCK AND GROWING PARTISANSHIP AMONG ELECTED OFFICIALS HAS MADE THE BALANCE OF SUPREME COURT JUSTICES MUCH MORE CONTROVERSIAL IN RECENT DECADES. WHEN CONGRESS AND THE PRESIDENCY ARE UNABLE TO OR UNWILLING TO COOPERATE AND PASS NEW LEGISLATION, SUPREME COURT CASES PLAY A PIVOTAL ROLE IN INFLUENCING CULTURAL ISSUES INCLUDING GUN RIGHTS, ABORTION, AND GAY MARRIAGE.

COURT PACKING

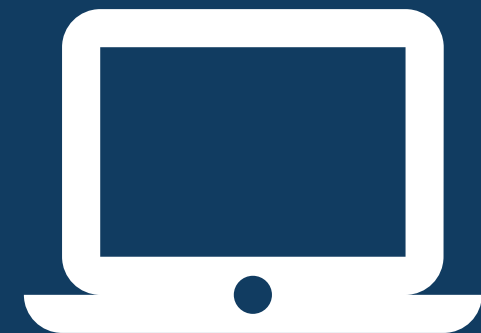
THE CONSTITUTION DOES NOT SET THE NUMBER OF SUPREME COURT JUSTICES, BUT RATHER GIVES CONGRESS THE POWER TO MAKE THIS DECISION. THE JUDICIARY ACT OF 1869 ESTABLISHED NINE SUPREME COURT JUSTICES AND HAS NOT BEEN CHANGED SINCE. SOME ARGUE THIS MEANS EXPANDING THE COURT IS CONSTITUTIONAL, AS CONGRESS HAS DONE SO IN THE PAST. OTHERS ARGUE EXPANDING THE COURT COULD EXACERBATE POLITICIZATION AND GIVE THE APPEARANCE OF THE COURT BEING A POLITICAL TOOL.

SELECTING JUDGES AT THE STATE LEVEL

HOW DOES YOUR STATE SELECT JUDGES, AND WHAT ARE THE STRENGTHS AND DRAWBACKS OF THIS APPROACH FOR MAINTAINING AN INDEPENDENT, NONPARTISAN JUDICIARY? PROPONENTS OF JUDICIAL ELECTIONS ARGUE THAT THIS GIVES THE PUBLIC A MORE DIRECT VOICE, AS OPPOSED TO GUBERNATORIAL APPOINTMENT. OPPONENTS OF ELECTIONS ARGUE ELECTIONS ALLOW SPECIAL INTERESTS AND PARTISAN DIVIDES TO HAVE TOO MUCH INFLUENCE OVER THE COURT SYSTEM.

TENURE AND JUDICIAL TERMS

STATE JUDGES CAN BE ELECTED OR APPOINTED TO SERVE FOR A SET NUMBER OF YEARS, OR BE APPOINTED FOR LIFE. SUPREME COURT JUSTICES AND FEDERAL JUDGES ARE APPOINTED FOR LIFE. THIS MEANS THAT NEW JUDGES ARE ONLY APPOINTED WHEN A CURRENT JUDGES DIES, RETIRES, OR (IN A RARE NUMBER OF CASES) IS IMPEACHED. THIS MEANS THERE IS NO WAY TO ENSURE EACH PARTY GETS TO APPOINT AN EQUAL NUMBER OF FEDERAL JUDGES WHEN THEY ARE IN POWER.



➤ SOLUTIONS ◀

BIPARTISANSHIP IN CONGRESS TO REDUCE THE PARTISAN IMPORTANCE OF JUDICIAL REVIEW

THE CONSTITUTION GIVES CONGRESS A MUCH MORE DOMINANT ROLE THAN IT CURRENTLY PLAYS. WHEN CONGRESSIONAL REPRESENTATIVES OF BOTH PARTIES CAN'T AGREE, OR A PRESIDENT AND CONGRESSIONAL MAJORITY FROM OPPOSITE PARTIES DON'T COOPERATE, FEDERAL DECISIONMAKING IS INCREASINGLY LEFT UP TO COURT CASES AND EXECUTIVES ORDERS RATHER THAN NEW LEGISLATION.

REFORM OF THE STATE JUDICIAL ELECTION PROCESS

ARE REGULAR VOTERS AND INFORMED CITIZENS IN YOUR COMMUNITY AWARE OF HOW YOUR STATE SELECTS JUDGES FOR ITS SUPREME COURT AND OTHER STATE LEVEL COURTS? CIVIC AWARENESS OF HOW YOUR STATE'S JUDGES ARE SELECTED, AND THE STRENGTHS AND DOWNSIDES OF VARIOUS SELECTION METHODS WILL ENSURE AN INDEPENDENT, NONPARTISAN JUDICIARY RESPONSIVE TO VOTERS.

SHOULD SUPREME COURT JUSTICES HAVE SET TERMS?

THE MASSIVE INCREASE IN AMERICANS' LIFE EXPECTANCIES AND IMPROVEMENTS IN MEDICINE SINCE THE LATE 1700S HAVE SLOWLY ALTERED A SYSTEM BASED ON LIFETIME APPOINTMENT. IN 2020, DISTRICT JUDGE JACK WEINSTEIN, WHO WAS APPOINTED BY PRESIDENT LYNDON JOHNSON IN 1967, STEPPED DOWN AFTER SERVING FOR 53 YEARS. THIS MEANS THAT ONE PRESIDENT' JUDICIAL APPOINTMENTS CAN SHAPE THE COURT FOR DECADES TO COME, RAISING THE TEMPTATION OF COURT PACKING FOR THE OPPOSITE PARTY. _

➤ WHAT YOU CAN DO ◀

MEASURE -

FIND OUT HOW YOUR STATE AND DISTRICT APPROACH JUDICIAL SELECTION.
DO YOU KNOW THE JUDICIAL VACANCIES IN YOUR STATE?
WHAT ARE YOUR STATE'S METHODS FOR FILLING JUDICIAL VACANCIES?
WHAT ARE YOUR STATE'S QUALIFICATIONS FOR BECOMING A JUDGE?
WHERE ARE YOUR STATE'S COURTS AND ADMINISTRATIVE OFFICES?



IDENTIFY -

WHO SERVES AS JUDGES IN YOUR STATE'S OR DISTRICT'S COURTS?
WHAT ROLE DOES THE GOVERNOR PLAY?
IS THERE A COMMISSION?
IF YOUR STATE ELECTS JUDGES, WHEN IS THE NEXT ELECTION CYCLE?



REACH OUT -

FIND PEOPLE IN YOUR COMMUNITY OR IN NEARBY TOWNS AND ELSEWHERE IN THE STATE WHO SHARE YOUR INTEREST IN THE JUDICIAL SELECTION PROCESS AND THE JUDICIAL BRANCH. IS THERE A FEDERALIST SOCIETY CHAPTER IN YOUR COMMUNITY?

PLAN -

SET MILESTONES BASED ON YOUR STATE'S LEGISLATIVE CALENDAR OR LOCAL COMMUNITY CALENDAR.



EXECUTE -

EXPLORE YOUR STATE'S COURT STRUCTURE AND WHO YOUR STATE JUDGES ARE WITH BALLOTPEDIA'S COURTS AND JUDGES BY STATE MAP. SEE WHAT, IF ANY, JUDICIAL ELECTIONS TAKE PLACE IN YOUR STATE WITH BALLOTPEDIA'S JUDICIAL ELECTION PORTAL. SEE IF THERE IS ROOM FOR YOUR STATE OR DISTRICT TO IMPLEMENT JUDICIAL EVALUATION PLANS, IF IT HAS NOT ALREADY.