

The seal of the Brownsville Independent School District is a circular emblem with a scalloped border. It features a central palm tree, a large letter 'B', a globe, and two figures holding a shield. The text 'BROWNSVILLE INDEPENDENT SCHOOL DISTRICT' is written around the top half, and 'BROWNSVILLE, TEXAS' is at the bottom, separated by two stars.

High School Social Studies Government

Grade 12

2019 – 2020

Instructional Packet

Set II

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 1 Selecting Cases at the Supreme Court

ESSENTIAL QUESTION

What influences how the Supreme Court selects cases, decides cases, and interprets the Constitution?

Reading HELPDESK

Academic Vocabulary

primary first in order of time or development

uniform consistent in conduct or opinion

Content Vocabulary

advisory opinion a ruling on a law that has not yet been challenged in court

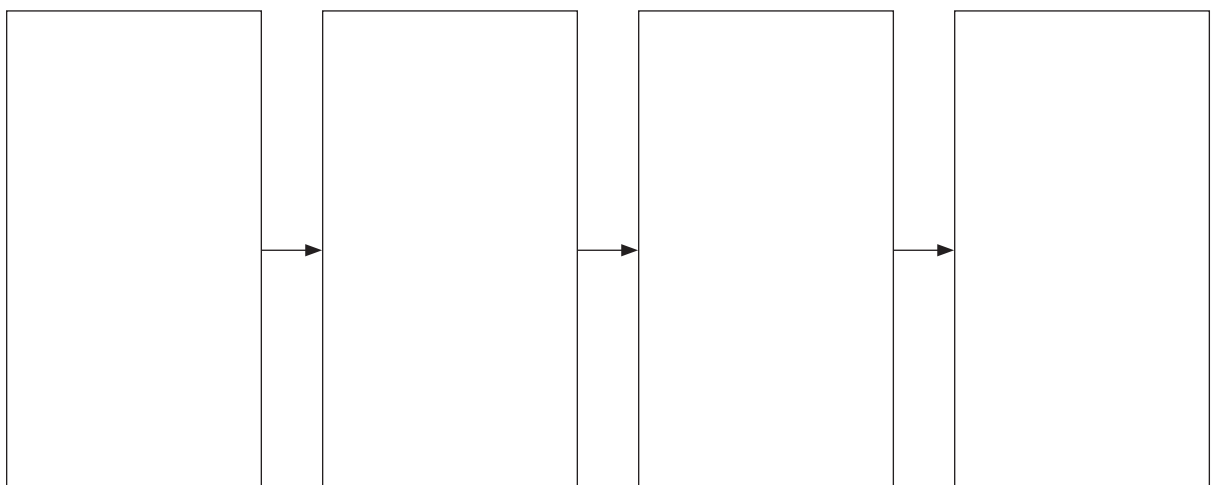
writ of certiorari an order from the Supreme Court to a lower court to send up the records on a case for review

law clerk an attorney who assists a justice in reviewing cases

rule of four an unwritten rule declaring that if four of the nine justices agree to hear a case, it will be scheduled for argument

TAKING NOTES: *Key Ideas and Details*

SEQUENCING Use the flowchart to show the process whereby Supreme Court cases get selected.



Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 1 Selecting Cases at the Supreme Court, *continued*

ESSENTIAL QUESTION

What influences how the Supreme Court selects cases, decides cases, and interprets the Constitution?

Imagine a state has a law that requires all children to attend school until age 16. In that state there is also a religious group that believes children between the ages of 14 and 16 should stay at home, studying the Bible and learning farm work. State officials prosecuted several sets of parents for not sending their children to school. The parents were convicted and fined.

The parents believed that the state was violating their rights. The state believed it had the authority to compel attendance at school (or an equivalent educational activity) until age 16.

Should the Supreme Court hear this case and resolve this conflict or should it allow the state to determine the final outcome? Give your reasons.

The Function of the Supreme Court

Guiding Question *What is the role of the Supreme Court in our democracy?*

The Supreme Court is the highest court in the United States. It is at the top of the judicial branch in our democracy. The Court's **primary** (first in order of time or development) function is to resolve disputes that arise over the meaning of federal law and the U.S. Constitution. The Court tries to make sure that federal law is **uniform** (consistent in conduct or opinion) and means the same thing everywhere in the country.

Judicial review is one of the Supreme Court's most important powers. Judicial review is the Court's power to examine the laws and actions of local, state, and national governments. The court can then overturn those actions if they violate the Constitution. The power of judicial review is not mentioned in the Constitution. The Supreme Court first used this power in 1803 in the case of *Marbury v. Madison*. The justices in that case unanimously ruled that a federal law was unconstitutional.

The Supreme Court can decide what a federal law means or whether it is unconstitutional. The Court can also decide whether a local or state law, a judicial opinion, or an agency decision is unconstitutional. However, the nine justices on the Court cannot simply see a law that is confusing or perhaps unconstitutional and issue an opinion about what the law means. Instead, the justices must usually wait for a trial to be held. The losing party at the trial must appeal the case to at least one higher court. Then the losing party from the appeal may be able to ask the Supreme Court to review the case. This process is different in some other countries where their highest courts can issue **advisory opinions**. An advisory opinion is a ruling on a law or action that has not yet been challenged in court.

Almost 9,000 cases are appealed to the Supreme Court every year, but the justices only decide about 80 cases each term. This is less than 1 percent of the cases that are appealed to them. The Court is not required to hear most of the cases appealed to it, but the Court is required to hear federal voting rights cases. For most of the cases appealed to the Court, how does it decide which cases to take?

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 1 Selecting Cases at the Supreme Court, *continued*



Reading Progress Check

Summarizing Under what conditions can the Supreme Court hear a case?

Choosing Cases

Guiding Question *How does the Court decide which cases to hear?*

You may have heard of people who lost a trial claiming, “I am going to take my case all the way to the Supreme Court!” They might try to get the Supreme Court to hear their case, but it is not guaranteed that the Court will ever decide their case. The Supreme Court decides which cases it will hear and rule on.

Jurisdiction

The Supreme Court has both original and appellate jurisdiction. Article III, Section 2, of the Constitution establishes the Court’s original jurisdiction, which involves two types of cases. The first type is any case that involves representatives of foreign governments, and the second type is any in which a state is a party. The Court’s original jurisdiction may only be changed by constitutional amendment.

Many original jurisdiction cases have involved two states or a state and the federal government. The Supreme Court had original jurisdiction when Maryland and Virginia argued over oyster fishing rights. It also had original jurisdiction when a dispute started between California and Arizona over the control of water from the Colorado River.

The Supreme Court’s original jurisdiction cases form a very small part of its yearly workload. Original jurisdiction cases average fewer than one case per year. Most of the cases the Court decides fall under the Court’s appellate jurisdiction. Appellate comes from the word *appeal*. The Court hears two kinds of cases under its appellate jurisdiction. The Court hears cases appealed from lower courts of appeal, and it hears cases from federal district courts where an act of Congress was determined to be unconstitutional.

The Supreme Court can also hear cases appealed from the highest court of a state. This can only happen if the case involves claims under federal law or the Constitution. However, the Supreme Court has the authority to rule only on the federal issue involved in these cases. It cannot rule on issues of state law.

Conflicts and Importance

The justices are looking for several things when they choose which cases to hear each year. First, they may choose cases where lower courts have decided the same issue in different ways.

Generally the Court does not view its job as correcting errors from lower courts. Instead, the Supreme Court is concerned about ensuring uniformity in decisions about the meaning of the Constitution and the interpretation of federal laws.

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 1 Selecting Cases at the Supreme Court, *continued*

The Supreme Court also chooses cases that raise major questions about the law that will have a national impact. The justices believe that these questions must be answered for the good of the country. These cases involve controversial social issues like abortion, privacy, or the death penalty. The cases may also involve issues that have political importance, such as campaign finance. In addition, the Court hears a large number of business cases. These business cases often do not get as much media attention as cases involving social issues. However, these cases can involve billions of dollars and directly affect many people's lives.

More than half of the cases appealed to the Supreme Court each year come from people in prison who are appealing their criminal convictions. These people must meet two conditions in order to have their cases accepted. First, these people must usually show that their case raises a question about a federal law or the U.S. Constitution. Second, they must show that the question has been answered differently by lower courts. The Supreme Court hears a handful of such cases in a typical year. For example, in 1963, Clarence Gideon appealed his conviction while he was in a Florida state prison. Gideon argued that the Sixth Amendment to the U.S. Constitution guaranteed him a right to a lawyer at his trial. He claimed that he had been denied this right. The Court accepted his case and ruled in his favor.

Petitions for Certiorari

The party that appeals to the Supreme Court is generally the party who lost in a lower court. They lost in either in a federal circuit court of appeals or in a state supreme court.

The losing party sends the Court a petition for a **writ of certiorari** in order to appeal. The petition asks the Supreme Court to hear the case and gives reasons they should do so. The petition does not suggest *how* the Court should decide the case. It only suggests *that* they should decide the case. For example, the petitioner might argue that two or more federal courts of appeal have ruled that the federal law means two different things. Therefore the Court should hear the case to ensure national uniformity. The petitioner can also take action to emphasize the importance of the case. The petitioner can do this by encouraging others to file an amicus, meaning "friend of the court," brief that would urge the Court to accept the case.

Solicitor General

The U.S. government is often involved in cases that the Supreme Court hears. This can happen if the government is being sued. It can also happen because a federal law is an issue in the case. The solicitor general is the government official who is usually responsible for representing the federal government in court.

The solicitor general decides which cases to appeal to the Supreme Court. He or she also decides how to respond when others appeal a case involving the federal government. The justices will sometimes ask for the solicitor general's opinion when they are considering whether or not to accept a case. The justices will ask the solicitor general to explain the government's views about whether or not the Supreme Court should accept the case. The Supreme Court often accepts a case when the solicitor general recommends that they do so.

Selecting Cases to Hear

The process of dealing with thousands of petitions for certiorari takes an extremely large amount of the Court's time. It would be impossible for the justices to carefully review all these petitions and do all their other work. The justices' law clerks take a major role in reviewing the petitions. The **law clerks**

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 1 Selecting Cases at the Supreme Court, *continued*

are typically recent law school graduates who have done exceptional work as law students. They have already clerked for one year at a federal court of appeals. Each justice usually has four law clerks.

The law clerks read every petition. They look for cases that clearly present a federal legal issue that is important and that has divided the lower courts. They do not simply look for a decision that should be reversed or overturned. The law clerks from most of the justices' chambers work together in a "cert pool." The cert pool divides up the work of reviewing the petitions and writing summaries of them. Some justices do not participate in the pool. These justices and their law clerks review all the petitions.

The law clerks' summaries of the cases give the justices a recommendation of whether or not each petition should be granted. The justices meet to decide which cases they will hear. Four of the nine justices must agree to hear a case. The petition for a writ of certiorari is granted when at least four justices agree. This unwritten rule is called the **rule of four**. The next step is for the case to be scheduled for argument.

For most cases, certiorari is denied. In fact, more than 99 percent of the petitions are denied. The decision of the lower court stands when the Supreme Court refuses to hear a case. This does not necessarily mean that the Supreme Court agrees with the lower court. This just means that the Supreme Court did not choose to hear the case.



Reading Progress Check

Describing What are the different ways that a case can reach the Supreme Court? Which is least common? Why?

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 2 Deciding Cases

ESSENTIAL QUESTION

What influences how the Supreme Court selects cases, decides cases, and interprets the Constitution?

Reading HELPDESK

Academic Vocabulary

preliminary something that precedes or is introductory or preparatory

revise to alter something already written or printed, in order to make corrections, improve, or update

Content Vocabulary

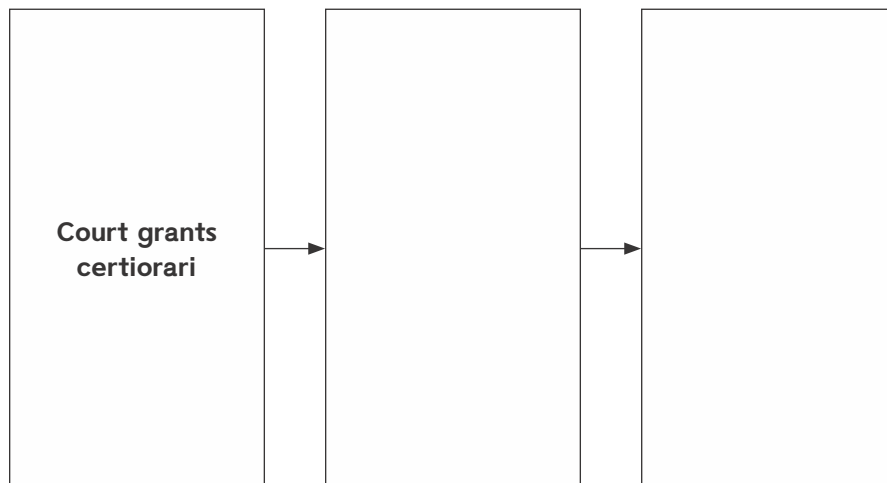
brief a written statement setting forth the legal arguments, relevant facts, and precedents supporting one side of a case

amicus curiae Latin for “friend of the court”; a written brief from an individual or group claiming to have information useful to a court’s consideration of a case

unanimous ruling issued when the justices all agree on the outcome and the reasons for a decision in a case

TAKING NOTES: *Key Ideas and Details*

LISTING Use the flowchart to describe the process whereby the Supreme Court decides cases.



Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 2 Deciding Cases, *continued*

ESSENTIAL QUESTION

What influences how the Supreme Court selects cases, decides cases, and interprets the Constitution?

Find a news article about a recent Supreme Court case. Read the article and highlight portions of the article that describe the following components of the case:

- The name of the case
- The issue in the case: What is the Supreme Court being asked to decide?
- The date the case was argued in the Supreme Court, if arguments have taken place
- The date the case was decided, if it has been decided

Arguing and Deciding Cases

Guiding Question *How are cases argued and decided by the Supreme Court?*

Supreme Court hearings are typically quite short compared to most trials. The Supreme Court is not like a trial court. The Supreme Court does not hear witness testimony, accept evidence, or have a jury. The nine justices read written arguments from the parties and notes from their clerks. The justices also participate in one hour of oral argument for each case.

Briefing

The process begins when the Court decides to hear a case. This means the Court has granted certiorari. Then each side submits a written **brief**. Their brief explains how they want the Court to decide their case. It includes the best arguments in support of that decision. The lawyers who write the brief provide arguments they hope will convince the justices. An important part of their legal brief involves pointing out similar cases the Court has already decided. The brief explains how the decisions in those cases support the lawyer's argument. The previous decisions are called precedents.

Interest groups may also submit **amicus curiae** briefs. They explain in their amicus curiae briefs why the case is important to their members and how they want it decided. Amicus curiae means "friend of the court." The justices find these amicus briefs helpful in understanding how their decision will affect all sorts of people. For example, one case might be about the death penalty for juvenile offenders. A group of juvenile justice professionals may submit an amicus brief explaining how the decision would affect thousands of young criminals on death row. Sometimes individuals or groups of people with special expertise file amicus briefs. For example, experts on the brain development of young people might file a brief on the juvenile death penalty. Controversial cases can generate dozens of amicus briefs on each side.

The solicitor general can also submit a brief on behalf of the federal government. This brief would explain the United States' perspective on the issues in the case. The justices and their clerks read the briefs and then have meetings to discuss them. The justices usually do not discuss the case with one another until after oral arguments.

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 2 Deciding Cases, *continued*

Oral Argument

The next step is a public, hour-long argument called the oral argument. Each side's lawyer has 30 minutes to present its case to the justices. The justices have already read the briefs and studied the case. They ask the lawyers many tough questions that take up most of the allotted time.

Sometimes the federal government is a party to the case. A lawyer from the solicitor general's office will usually present the oral argument for the United States. Sometimes the United States is not a party but still has an interest in the case. The solicitor general's office might also participate in the oral argument in these cases. This would involve presenting the federal government's views during 10 of the 30 minutes allotted to the party whose side the government supports.

Deciding the Case

The justices meet to discuss their ideas about the case after the oral argument has been completed. The justices take a **preliminary**, or an introductory, vote at their meeting to either uphold or reverse the lower court decision. This is also an opportunity for them to discuss their reasoning. The justices issue a **unanimous ruling** if they all agree on the outcome and the reasons. The justices issue a majority opinion and a dissenting opinion when they disagree about the case. Either the majority opinion or the unanimous opinion is the ruling of the Court and becomes law. Justices may sometimes agree with the outcome, but not with all the reasoning. When that happens those justices might issue a separate, concurring opinion.

One justice is assigned to draft each opinion, or ruling, in the case. The most senior justice in the majority decides who will write the Court's opinion. The most senior justice is either the chief justice or the person who has been serving on the Court the longest. The chief justice is considered the most senior justice by custom. If there are dissenters, the most senior justice among them assigns someone to write a dissenting opinion.

The opinions are drafted, circulated, **revised** and put in final form. When something already written or printed is revised, it is altered in order to make corrections, improve, or update it. Then the opinions are announced in Court. They are released to the public on the Court's website and in printed copies at the very same time. The Court's written opinions are its way to communicate with Congress, the president, interest groups, and the public.

Enforcing Decisions

Decisions of the Supreme Court become the law. Lower courts are expected to follow their rulings. The executive branch must stop implementing a law if the Supreme Court overturns it as unconstitutional. However, the Court does not have the power to enforce its decisions. There is no army waiting to carry out Supreme Court decisions. Sometimes lower court judges or the executive branch refuses to enforce a decision. President Andrew Jackson once refused to carry out a Court ruling barring the removal of the Cherokee Indians from Georgia. In the 1960s, many state court judges and state officials looked for ways to avoid enforcing the Court's rulings on integrating schools.

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 2 Deciding Cases, *continued*



Reading Progress Check

Describing What are written briefs and oral arguments and how are they used in deciding Supreme Court cases?

Exploring the Essential Question

Researching The Supreme Court reports all of its decisions on its website—www.supremecourt.gov. But there are many other websites that offer information and commentary about the Court's work. A particularly comprehensive website about all aspects of the Court is found at www.scotusblog.com.

Research the Supreme Court's current term using these websites.

a. How many cases have been granted review?

b. How many cases have been argued so far this term?

c. How many cases have been decided?

d. Select one case that has been decided and write an analysis explaining what you think about the decision. Is this case relevant to you directly? Be prepared to share your analysis with the class.

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 2 Deciding Cases, *continued*

Influences on the Court

Guiding Question *What influences the Supreme Court justices' opinions on cases?*

The Supreme Court justices decide cases based on the law the case deals with and the arguments from the parties. However, the justices are also influenced in some ways by the world around them.

Public Opinion

The Supreme Court justices are appointed for life, not elected. For this reason, they are fairly well insulated from public opinion and daily political pressures. However, the justices are concerned about maintaining public support for the Court. Sometimes the Court issues decisions that may be unpopular with the public. The justices are aware that they rely on the cooperation and goodwill of others to enforce their decisions. They know that the Court risks losing support and reducing its authority when it moves too far ahead or falls too far behind public opinion.

For example, the Supreme Court once made a ruling against voter discrimination in the South. Justice Felix Frankfurter was assigned to write the Court's opinion. He was a northerner. The Court considered this and reassigned the opinion to Justice Stanley Reed. Justice Reed was a southerner. The Court hoped that having a southerner write the opinion would make the opinion more acceptable throughout the country.

Values of Society

The values and beliefs of society influence Supreme Court justices. Attitudes and practices that were acceptable in one era may become unacceptable as society changes. In time, the Court's decisions will usually reflect changes in American society. Some of the Court's decisions on racial segregation provide an example of how the Court changes with the times. In 1896 the Court heard the case of *Plessy v. Ferguson*. The Court ruled that it was legal for Louisiana to require "equal but separate" treatment in a public railroad car.

However, society's attitudes toward race relations were beginning to change by the late 1950s. African Americans had fought courageously in World War II. Civil rights groups were demanding an end to racial discrimination. Researchers began to document the damaging effects segregation had on African American children. These social forces helped persuade the Supreme Court to overturn the precedent established in the *Plessy* case. The Court ruled unanimously in *Brown v. Board of Education of Topeka* (1954) that "separate but equal" educational facilities were unconstitutional.



Reading Progress Check

Analyzing To what extent do you think the Court is affected by the public's opinion and societal values? Explain.

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 3 Selecting Supreme Court Justices

ESSENTIAL QUESTION

What affects the selection process for Supreme Court justices?

Reading HELPDESK

Academic Vocabulary

professional relating to job experience that requires special education, training, or skill

ideological of or pertaining to the body of beliefs that guide an individual, political system, or nation

Content Vocabulary

Supreme Court justice a member of the Supreme Court of the United States, the highest court in the nation

contentious likely to cause disagreement or argument

appellate litigation a lawsuit occurring at the appeals level of the court system

TAKING NOTES: *Integration of Knowledge and Ideas*

DESCRIBING Use the graphic organizer to describe the formal requirements and informal qualifications for a Supreme Court justice.

Formal Requirements	Informal Qualifications

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 3 Selecting Supreme Court Justices, *continued*

ESSENTIAL QUESTION

What affects the selection process for Supreme Court justices?

Think about the role of a federal judge. What qualities might help make someone a good judge? Rank the following factors in order of their importance. Explain your ranking and reasons.

- Understanding of the law
- Good education
- Ability to listen carefully
- Problem solving skills
- Ability to write and speak clearly
- Understanding of U.S. history
- Success in overcoming personal challenges
- A sense of fairness
- Ability to compromise
- Honesty

The Nomination and Confirmation Process

Guiding Question *How are Supreme Court justices nominated and confirmed?*

There is little question that U.S. Supreme Court decisions have wide-ranging impact on people throughout the country. The justices are not elected. They are not accountable to anyone. Supreme Court justices are only accountable to the law. Supreme Court justices may keep their jobs for life, unless they are impeached, which is very, very rare. Lifetime appointments to the Court are designed to ensure a fair and impartial judiciary. There is a lot of debate and discussion about who should be appointed to the Court as a result of these factors.

The processes for nominating and confirming **Supreme Court justices** are the same as those for other federal judges. There are few constitutional requirements and many political considerations involved.

Constitutional Requirements

The Constitution does not say much about who should serve as a federal judge. The Constitution does not have an age, citizenship, or education requirement for Supreme Court justices. There are only two requirements. First, the person must be nominated by the president. Second, the person must have the consent of the Senate.

Article II, Section 2 of the Constitution lists the powers of the presidency. It explains the process of choosing federal judges, including Supreme Court justices. That section states that the president nominates judges of the Supreme Court and that the Senate approves or rejects the nominations.

Confirmation by the Senate

The Senate has confirmed about 80 percent of presidential Supreme Court nominations since the Constitution was adopted. The Senate usually held hearings to learn about a nominee. Then the Senate voted on the nominee within a week of receiving the nomination from the president. This practice started to change in the 1980s. Today, we expect a Supreme Court nomination to be a

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 3 Selecting Supreme Court Justices, *continued*

major political and media event. Confirmations today are neither fast nor easy, and they are usually **contentious**.

The Process and Politics

Both the White House and the Senate Judiciary Committee are very involved in the nomination process. They begin working on a nomination as soon as a justice announces his or her retirement, or if a justice dies. White House and Senate Judiciary Committee staff members perform extensive research about the personal and judicial backgrounds of several candidates. Presidents get a tremendous amount of advice from staff and interest groups. Presidents often interview a short list of candidates before announcing the nominee.

Interest groups also advocate for candidates of their choice. Interest groups will try to persuade the White House and members of the Senate Judiciary Committee to get appointees that might agree with their positions.

The choice made by the president is a political decision. The president tries to select a nominee who is likely to be confirmed by the Senate rather than rejected. Some candidates the president might like to choose may have strong opinions or characteristics that would lead the Senate to reject them. This is an example of a check on the power of the executive by the legislative branch that is built into the Constitution.

After the president chooses a candidate, he or she is introduced to the public as the nominee. The nominee begins working to get confirmed by the Senate. The nominee starts by meeting with many senators. This typically includes meeting with all of the Senators on the Senate Judiciary Committee. Staff from the White House begins to prepare the nominee for the confirmation hearing. The next step is the hearing. Senators ask the nominee questions about his or her qualifications and experiences for the job. The senators want to ensure that the nominee is qualified in a personal and **professional** sense.

Senators are also interested in the approach the nominee will take to deciding controversial issues when on the Court. The senators ask the nominee questions over several days. Then the committee votes on whether or not to send the nomination forward to the entire Senate. The nomination will “die” there if the nominee is not voted out of committee. The entire Senate will vote if the nominee is voted out of committee. A nominee who gets a majority of the votes cast in the Senate has received consent. He or she will be sworn in as a new justice.

There is a careful review of the nominee’s record. However, some observers believe that the president’s political popularity and strength is the most important factor in whether the nominee gets confirmed.



Reading Progress Check

Specifying What are the constitutional requirements to be a federal judge?

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 3 Selecting Supreme Court Justices, *continued*

The Selection of Supreme Court Justices

Guiding Question *What characteristics make someone an ideal nominee for the Supreme Court?*

Presidents consider several factors when nominating a justice. Senators also consider these factors when they are deciding whether to vote to confirm a nominee.

Merit and Ideology

Supreme Court justices will hear the most difficult and controversial legal issues in the country. Presidents typically want to nominate someone with great personal integrity and professional expertise. All Supreme Court justices have been trained as lawyers and demonstrate a thorough understanding of the law. Some presidents want justices with extensive experience as a judge. Other presidents might want justices who have more experience prosecuting criminals or dealing with Americans' everyday concerns. Presidents want nominees who are intelligent, have an excellent education and training, and have excellent oral and written communication skills.

A nominee's judicial temperament is also important. The judicial temperament means being open minded, courteous, patient, and committed to equal justice under the law. A demonstration of his or her understanding of the judicial role in our constitutional order is also important. One way the president can have an impact well beyond the term of the presidency is by placing someone on the Court who shares the president's **ideological** perspective. The word *ideological* means pertaining to the body of beliefs that guide an individual, political system, or nation. It can be hard to determine how a person will vote on controversial issues once he or she becomes a justice. Some presidents nominate judges with long public records of deciding cases that can be examined. Other presidents nominate candidates with little or no judicial record to investigate.

Representativeness

Presidents often want a group of justices who are somewhat representative of the country. Historically, presidents were concerned with geographic representation and sometimes with religious representation. This was true even while all of the justices were white men. However, gender and racial representation appear to be important to presidents today. As of 2014, there were six men and three women on the Court. This included one African American justice and one Latina justice.

The justices on the Supreme Court as of 2014 had remarkably similar law backgrounds. All attended either Harvard or Yale law schools. All spent most of their professional lives either as law school professors or involved in **appellate litigation** (as lawyers or judges). These justices spent less time as lawyers in private practice, trial judges, or elected politicians than any previous Court.



Reading Progress Check

Explaining What characteristics do presidents look for in a Supreme Court nominee?

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 4 Constitutional Interpretation

ESSENTIAL QUESTION

What influences how the Supreme Court selects cases, decides cases, and interprets the Constitution?

Reading HELPDESK

Academic Vocabulary

amend to change

reject to refuse to grant

Content Vocabulary

judicial restraint the philosophy that courts should generally avoid overturning laws passed or actions taken by democratically elected bodies

judicial activism the philosophy that courts must sometimes step into political and social controversies in order to protect Constitutional rights

originalism a judicial philosophy that interprets the Constitution by exploring understanding of the text that people had when they adopted the Constitution

"living" constitution a concept that claims that the Constitution is dynamic and that modern society should be considered when interpreting key constitutional text

TAKING NOTES: *Key Ideas and Details*

DEFINING Use the table to explain different terms in the lesson.

Term	Definition
Judicial activism	
Judicial restraint	
Originalism	
"Living" constitution	

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 4 Constitutional Interpretation, *continued*

ESSENTIAL QUESTION

What influences how the Supreme Court selects cases, decides cases, and interprets the Constitution?

The Eighth Amendment to the Constitution says that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” For each case described below, decide whether you think the sentence imposed constitutes “cruel and unusual punishment.” Explain your reasoning.

- A person who is convicted of shoplifting \$50 worth of goods from a store and has no criminal history is sentenced to 10 years in prison.
- A person who is convicted of arson for the third time in three years is sentenced to life in prison. No people died as a result of the arson, but millions of dollars’ worth of property was destroyed.
- A fifteen-year-old who committed murder was sentenced to death.
- A person who drove a vehicle while intoxicated and hit a stop sign is sentenced to stand on the corner for two days holding a sign that says “I was stupid. I drove drunk.”

Interpreting the Constitution

Guiding Question *How do judges decide what the Constitution means?*

Citizens, interest groups, businesses, and many others have different opinions about the role of the Supreme Court when it uses the power of judicial review. Should judges try to change society, or should our elected representatives in the legislative and executive branches take that role? Some people support judicial restraint, but other people argue for judicial activism. What do those phrases mean?

Judicial Restraint and Judicial Activism

Some people support **judicial restraint**. They believe that the Court should not overturn laws passed by Congress or the state legislatures. They think that the Court could become too involved in social and political issues. They argue that the Court should uphold acts of Congress unless the acts clearly violate the Constitution. They think that the Court should leave policy making to elected officials.

People who support **judicial activism** believe the opposite. They believe that the Court must take action when Americans’ rights are violated. This means the Court would actively help resolve difficult social and political issues. Earl Warren was the chief justice of the Supreme Court from 1953 to 1969. During that time, the Court overturned many laws limiting the civil rights of minorities.

People may think judicial activism means that the court is active on civil rights or social issues, because the Warren Court decided those kinds of cases. However, judicial activism can also serve conservative goals. For example, conservative justices often took activist positions against New Deal programs in the 1930s. Those programs were meant to regulate the economy. Historically, liberals have been more likely to support judicial activism, and conservatives have been more likely to support judicial restraint. However, this has not always been true in recent years. In addition, the justices do not typically like the labels of *activism* or *restraint*.

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 4 Constitutional Interpretation, *continued*

Influences on Decision Making

The justices must decide how to determine what the text of the Constitution means when the words are unclear. Many parts of the Constitution use very general language. How do justices today decide what “cruel and unusual punishment” means? That is a phrase from the Eighth Amendment. How do justices today decide what “unreasonable search and seizure” means? That is a phrase from the Fourth Amendment. Precedents and judicial philosophy are two major influences on the decisions justices make.

Precedent and Stare Decisis

One of the basic principles of law is stare decisis, a Latin phrase for “let the decision stand.” This principle says that when the Court rules on a case, its decision serves as a precedent for how future cases should be decided. This precedent applies to other decisions in cases that raise the same legal issue. This principle is important because it makes the law predictable. If judges’ decisions were unpredictable from one case to another, what is legal one day could be illegal the next. Respect for the law would weaken.

Supreme Court justices emphasize precedent when deciding most cases. However, sometimes society changes so dramatically over time that a precedent becomes unworkable. Sometimes following precedent would reduce respect for the law. For example, the Court said the “separate but equal” doctrine was constitutional in *Plessy v. Ferguson* in 1896. This issue came back to the Court in 1954 in *Brown v. Board of Education*. The Court reversed their ruling in *Plessy* and ordered the desegregation of public schools.

Sometimes a justice believes a precedent was wrongly decided. In that case, the justice may advocate for not following precedent. The justice then argues that there is no reason to continue doing the wrong thing.

Judicial Philosophy

Supreme Court justices explain their decisions in terms of law and precedents. However, it is the justices themselves who determine what laws mean and what precedents are important based upon their judicial philosophy. This is their idea about what guidelines to use when interpreting the Constitution. Judicial philosophies have evolved throughout our history.

Every Supreme Court decision is explained in a written opinion. This allows people who study the Court to understand the different philosophies of today’s justices. Some of the justices have written books or articles about their approach to interpreting the Constitution. These books contain helpful information about judicial philosophy.

Originalists believe that looking at the original understanding of the people who ratified the Constitution or its amendments is the best way to decide what the Constitution means today. They argue that this approach leads to a fixed meaning. For example, originalists would claim that “cruel and unusual punishment” means the same thing today as it did when the Eighth Amendment was adopted in 1791. There is stability and predictability in the legal system when using a fixed meaning. Originalists think that the people’s understanding of the text of the Constitution at the time of ratification should continue to govern.

Originalists also say that having a fixed meaning is an important part of a strong democracy. Unelected judges would choose their own meaning if there was not a fixed meaning for the Constitution’s provisions, and that is undemocratic. Originalists think that change should come through the democratic process of **amending**, or changing, the Constitution.

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 4 Constitutional Interpretation, *continued*

Critics of this approach say that we cannot always determine what people understood the Constitution to mean when it was ratified. Critics also say it is not practical to have the views of people from 200 years ago govern us today. It is also difficult to decide how the Founders' understandings apply to new technologies such as the Internet or drone aircraft.

A different approach is what might be called the **"living" constitution**. One justice has also called this the "active liberty" philosophy. This view is that historical analyses cannot provide all the answers for modern situations. This view argues that judges must apply the values of the Constitution in relation to modern situations when history does not provide answers. Justices who follow this approach look to many sources in order to apply constitutional values to modern problems. They begin their analysis of a constitutional provision with a careful reading of the text, followed by consideration of the historical record. Originalists also do this. However, justices following the living constitution theory take additional steps. They consider the Constitution's underlying values and the likely consequences of various interpretations.

Supporters of this philosophy believe that the meaning of the Constitution must evolve because it is a living document. This flexibility has allowed the Constitution to be used as our basis of government for more than 200 years. Supporters think this approach may also result in greater public support for decisions, because interpretation of the Constitution can match up with today's values and standards. They point out that it is very difficult to amend the Constitution. The Constitution cannot be amended every time a new technology is invented or a new situation arises. The Constitution must apply to conditions that the people of the 1780s never imagined.

Critics of the living constitution say that this judicial philosophy makes it easy for judges to make up the law. If the Constitution's meaning changes over time, then it is not fixed and is not really law. Critics say it is dangerous and undemocratic for unelected judges to create meaning in the Constitution.



Reading Progress Check

Analyzing Which approach do you think is a better one to use when interpreting the Constitution—originalism or the "living" constitution viewpoint? Explain.

Reading Essentials and Study Guide **networks**

Chapter 14 The Supreme Court of the United States

Lesson 4 Constitutional Interpretation, *continued*

Exploring the Essential Question

Deciding Read the short summaries of the Supreme Court decisions in these actual cases. For each case, decide whether you think the opinion uses originalism or the “living” constitution approach. List the parts of the decision that led you to that conclusion.

- a. *Roper v. Simmons* (2005) Simmons was sentenced to death for a murder committed when he was 17 years old. He argued that the death penalty was a cruel and unusual punishment for a crime committed by an immature and irresponsible juvenile. The Supreme Court agreed, saying that a national consensus had developed among the states that this was cruel and unusual punishment.

- b. *U.S. v. Jones* (2011) Federal agents placed a GPS device on Jones’s car in order to track his activities as a drug dealer. Jones argued that this was a search the Fourth Amendment forbids. The Supreme Court agreed, comparing the GPS use to a policeman hiding in a carriage in the 1700s, an activity which Americans who ratified the Constitution would have thought required a warrant.

Checks and Balances on the Supreme Court

Guiding Question *How is the Supreme Court’s power limited and balanced by the other branches of government?*

Supreme Court opinions affect millions of Americans lives. The Court interprets laws and sometimes changes national policies. However, the Court is not all-powerful. The executive and legislative branches have important checks on the Supreme Court’s power.

The president has the power to appoint justices to the Court. The Senate has the power to approve or **reject** (refuse to grant), those appointments. Congress has the power to impeach and remove justices. Congress also decides how many justices will be on the Supreme Court and sets their salaries.

The American people have the power to change things if they do not like a Supreme Court ruling. They can (through their elected representatives) change the law or the part of the Constitution that the Supreme Court interpreted. For example, think about a federal law that bans discrimination against people with disabilities. The Supreme Court might decide that the law means that private clubs must install wheelchair ramps. However, Americans might disagree with that decision. Then Congress could amend the discrimination law to exclude private clubs.

Reading Essentials and Study Guide

networks

Chapter 14 The Supreme Court of the United States

Lesson 4 Constitutional Interpretation, *continued*

At times, the people do not like a Supreme Court ruling about the Constitution. If they wish to change a ruling, the people must go through the more difficult process of amending the Constitution. This has happened in the past. In 1895, the Court ruled that a tax on incomes was unconstitutional. In 1913, the Sixteenth Amendment was ratified, allowing Congress to levy an income tax.

There is one additional check on the Supreme Court. The justices can only decide issues that come to them through the court system in the form of legal cases. Those issues are limited to deciding what a federal law means or deciding whether a law or government action is constitutional.



Reading Progress Check

Discussing What are ways that the legislative branch can check the power of the Supreme Court?
