

# The Judicial Branch



# Two Views of the Court

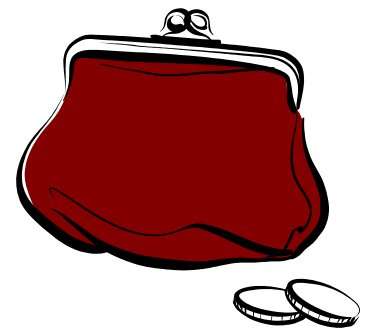
How much power does the Supreme Court have?

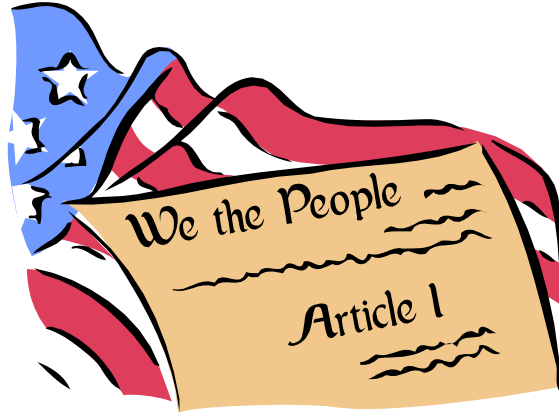
# The judiciary...



- “It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments....the judiciary is beyond comparison the weakest of the three departments of power...all possible care is requisite to enable it to defend itself against their attacks [of the other two branches].”

- Alexander Hamilton in *Federalist 78*





“The Constitution... is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.”

-Thomas Jefferson

# The Constitution and the Supreme Court

# U.S. Government Shaped by:

- U.S. Constitution as written in 1787
- Amendments to the Constitution
- Precedent and Practice
  - Laws passed
  - Actions by officials and citizens
  - Interpretation by the judicial branch



# The Judicial Branch in Article III

- The Supreme Court
  - Establishes a national court
  - jurisdiction
    - original in cases involving diplomats and states
    - appellate jurisdiction; left up to Congress to decide
- Other Federal Courts
  - left up to Congress to decide
- Terms and qualifications:
  - Life tenure: “during good behavior”
  - Appointed by president, confirmed by Senate

# Note on Jurisdiction

- Is the power of the court to hear a case in question
- Original Jurisdiction
  - trial jurisdiction
- Appellate Jurisdiction
  - appeal
  - not a trial deciding guilt or innocence
- Geographic
  - Which court is the appropriate venue for an area (such as a county or state)





# Marbury v. Madison (1803)

- First time a congressional law ruled unconstitutional
  - Established precedent of judicial review:
    - the power of the court to determine that laws or actions are unconstitutional
    - Not explicitly written into the Constitution
- Chief Justice John Marshall
  - Was influential in establishing the role and power of the Supreme Court
  - This was a particularly tricky case



What are the qualifications for being a Supreme Court justice?



# The US Court System

The People, Structure, and Procedures of the Courts

# The Supreme Court (Sept 2020)



<https://www.supremecourt.gov/about/justices.aspx>



# Federalism and the Courts

## **National (Federal) Court System**

- Only Supreme Court is explicitly established in Constitution in Article III
- Congress created rest of system and determines size of court
- Judges appointed by President and confirmed by Senate (majority vote)
- Judges serve lifetime appointments

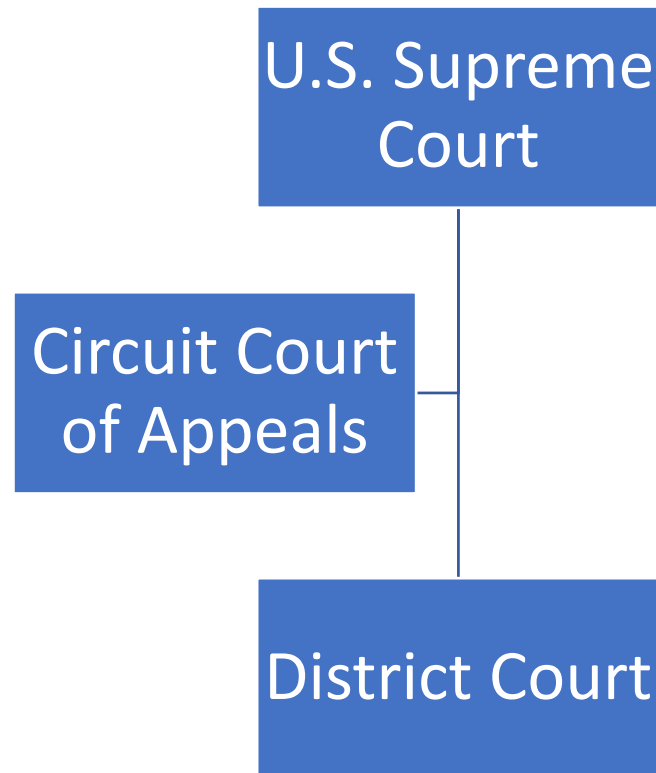
## **State Courts**

- Each state creates own court system
- Judges might or might not serve lifetime appointments
- Judges might be nonpartisan or partisan
- Judges might be elected or appointed

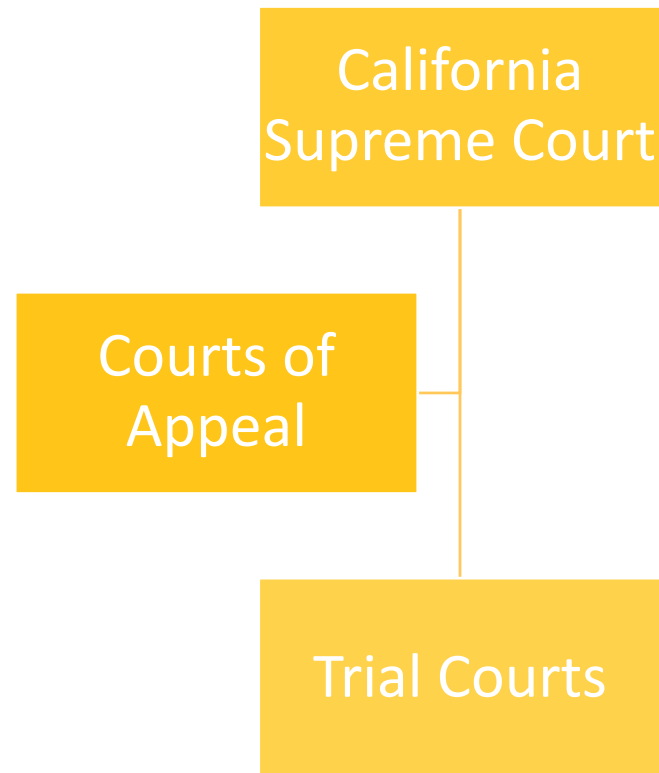


# US Court System: National and State

## National (Federal) Courts



## California Court System



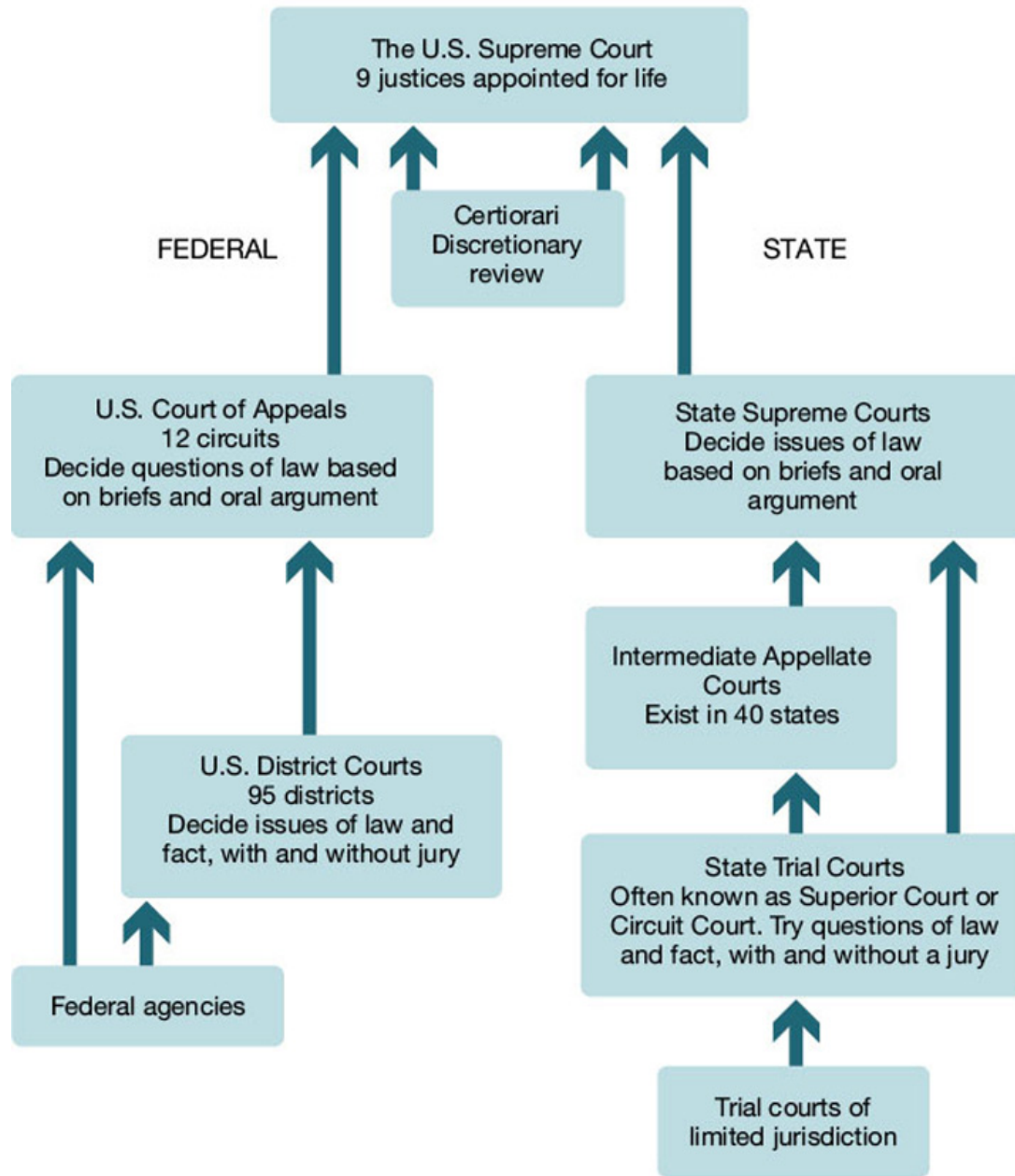


# Structure of the U.S. Court System

- Supreme Court
  - appellate and original jurisdiction
  - 9 justices
- Circuit Courts of Appeals (12 regional, 1 Federal Circuit)
  - appellate
- U.S. District Courts (94)
  - original jurisdiction
  - at least one district in each state
- Plus a few specialized courts

**FIGURE 12.1**

## The U.S. Court System





# How do cases get to the Supreme Court?

- Original jurisdiction
- Appeal
  - from federal courts
  - from highest state court



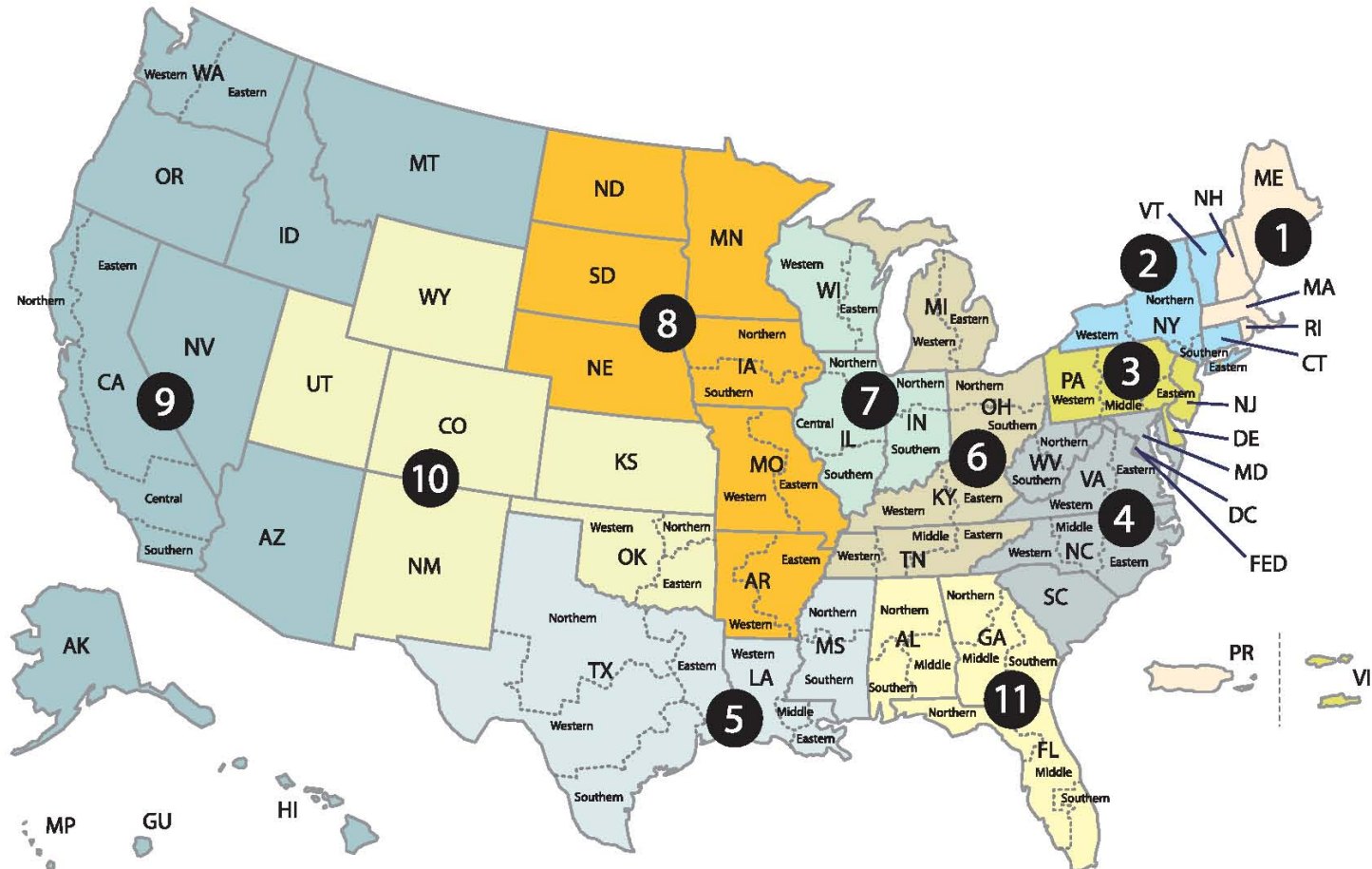
# Example: Election Cases

- Federal Courts: President Trump's case regarding alleged fraud in Pennsylvania
  - Dismissed by U.S. District Court Judge (Nov. 21)
  - The next step is for President Trump's lawyers to appeal the decision to 3<sup>rd</sup> U.S. Circuit Court of Appeals



# Geographic Boundaries

of United States Courts of Appeals and United States District Courts



# Writ of certiorari

- Also known as the “rule of four”
  - While 5 out of 9 justices are necessary to “win” a case, at least 4 justices need to agree to hear a case
- A case is expected to raise an important federal or constitutional issue + the court is ready to consider this issue



# Requirement for cases to get to the Supreme Court

## (Cases & Controversy Requirement)

- real
- adverse
- standing
- “ripeness”

# Supreme Court Decisions

- Majority
  - Majority Opinion
    - “agree totally”
  - Concurring Opinion
    - agree in part with majority but for different reasons
- Minority
  - Dissent/Dissenting Opinion
    - disagree with majority

Some Examples

# Back to line-item veto & standing

## Clinton v. City of New York

### MEDIA

🔊 ORAL ARGUMENT - APRIL 27, 1998

### OPINIONS

📄 SYLLABUS

📄 VIEW CASE

### Facts of the case

This case consolidates two separate challenges to the constitutionality of two cancellations, made by President William J. Clinton, under the Line Item Veto Act ("Act"). In the first, the City of New York, two hospital associations, a hospital, and two health care unions, challenged the President's cancellation of a provision in the Balanced Budget Act of 1997 which relinquished the Federal Government's ability to recoup nearly \$2.6 billion in taxes levied against Medicaid providers by the State of New York. In the second, the Snake River farmer's cooperative and one of its individual members challenged the President's cancellation of a provision of the Taxpayer Relief Act of 1997. The provision permitted some food refiners and processors to defer recognition of their capital gains in exchange for selling their stock to eligible farmers' cooperatives. After a district court held the Act unconstitutional, the Supreme Court granted certiorari on expedited appeal.

### Question

Did the President's ability to selectively cancel individual portions of bills, under the Line Item Veto Act, violate the Presentment Clause of Article I?

### Ruling on Line Item Veto Act of 1996

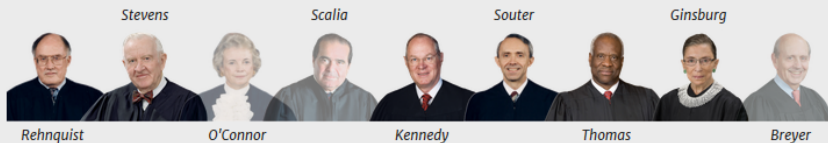
<https://www.oyez.org/cases/1997/97-1374>

## Conclusion

Sort: [by seniority](#) [by ideology](#)

<< decision 1 of 3 >>

6-3 DECISION



Yes. In a 6-to-3 decision the Court first established that both the City of New York, and its affiliates, and the farmers' cooperative suffered sufficiently immediate and concrete injuries to sustain their standing to challenge the

Sort: [by seniority](#) [by ideology](#)

<< decision 1 of 3 >>

6-3 DECISION







# Example: Majority & Minority Opinions in the Landmark Affirmative Action Case of Regents v. Bakke

- Regents v. Bakke, 1978
  - Bakke (white) was denied admission to medical school at UC Davis (twice)
    - Of 100 openings, 16 reserved for minorities
    - Bakke convinced the court that he was in the top 100 students; therefore he was denied admission because of the reserved slots
    - Questions the court considered: Was UC Davis's admission plan constitutional? Is it o.k. to use race as a basis for college admission?



# Basics of Bakke decision:

- Bakke should be accepted to UCD
- No quotas are allowed based on race
- However, can consider race as *part* of admissions decision, to provide diversity



# Powell (wrote majority opinion)

- Stevens
  - Burger
  - Stewart
  - Rehnquist
  - Davis plan was unlawful
  - No consideration of race should be allowed
- Brennan
  - White
  - Marshall
  - Blackmun
  - Davis plan is o.k.
  - Consideration of race should be allowed

# Powell (wrote majority opinion)

- Stevens
- Burger
- Stewart
- Rehnquist

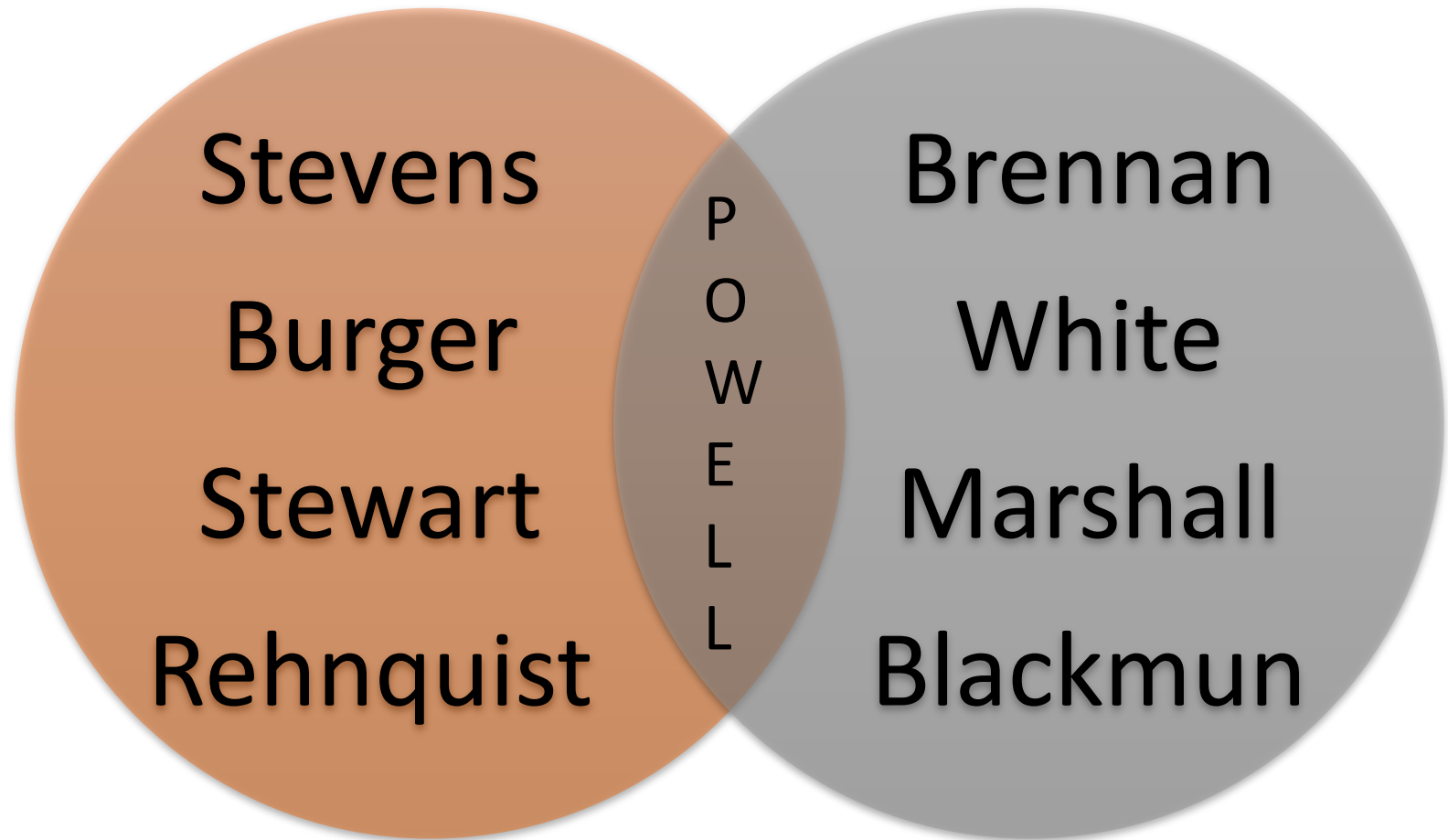
- Davis plan was unlawful
- No consideration of race should be allowed

- Brennan
- White
- Marshall
- Blackmun

- Davis plan is o.k.
- Consideration of race should be allowed



Another way to view this:



# Example of strict constructivism?

- Part of an opinion by Antonin Scalia:

"It is a bad enough idea, even in the head of someone like me, who believes that the text of the Constitution, and our traditions, say what they say and there is no fiddling with them..."

# Judicial Activism and Restraint

# Judicial Restraint & Activism

*The Extent of Deference for:*

1. “Plain words” (strict constructionism v. loose constructionist)
2. Legislative branch
3. Precedent (*Stare decisis*)
4. Staying out of politics (Political thicket)
5. States’ authority



# THE ORIGINALIST JUSTICE AT HOME...

...IT'S 1789 AGAIN!

## AT WORK...

THERE'S NO COMPUTER AND  
NO TELEPHONE. THE  
CARRIER PIGEON IS  
FLYING,  
HOWEVER...



## BREAKFAST...

THERE'S NO ELECTRICITY,  
NO REFRIGERATION.  
NO MICROWAVE OVEN.



## COMMUTING...

STUPID  
TRAFFIC  
ACCIDENT...



## RELAXING...

THERE'S NO TV, WATCH  
YOUR CANDLE AND DRINK  
YOUR GROG  
TANKARD...



## BEDTIME...

I THINK I'M HAVING  
A HEART ATTACK!

NO HOSPITAL,  
GOODNIGHT.



# Traditional Limits of the Court

1. Judicial rules of standing
2. Limited in relief
3. Limited in enforcement
4. Selection: Appointed by president and confirmed by Senate
5. Congress's power to change the size and jurisdiction of federal courts