

You Be the Judge

Name: _____

Imagine you have just been offered a prestigious job that you are guaranteed to keep for the rest of your life. There are perks: You have a nice office and a fancy robe. But you're also tasked with making complex and often emotional decisions with eight other people, and those decisions affect millions. You can disagree with your coworkers, but you must remain cordial and cooperative. Will you accept the job? Today, you'll take on the role of a Supreme Court Justice and discuss and decide a case! Here are the questions you'll need to know that guide the Supreme Court in hearing cases and rendering their decisions.



Should We Take This Case?

The Supreme Court only hears cases in which it has **jurisdiction**, or authority. **Original jurisdiction** cases are those in which the parties are treated like V.I.P.s. These cases actually do involve V.I.P.s. Think states, ambassadors, consuls, and public ministers. Cases like these go directly to the Supreme Court. But most cases are heard because the Court has **appellate jurisdiction**—the ability to review a decision that a lower court has made. The Supreme Court can review cases involving the Constitution, federal laws, or treaties, or cases involving a dispute between parties from different states. The justices can only decide *real* issues between *actual* parties; they can't propose a hypothetical case just to make a stand about a legal issue.

The Supreme Court is not required to review every case brought to its attention. In fact, it can't! Each year, more than 7,000 cases are brought to the Supreme Court, but it only grants a full review (called a **plenary review**) for about 80 of those. Parties who lose in lower courts and want the Supreme Court to hear their case must ask the Supreme Court for acceptance in a written request called a **petition for a writ of certiorari** (pronounced: ser-shee-or-RARE-ee). In the petition, the parties argue why their case is important enough to command the Court's time. The Supreme Court will typically agree to review it if it settles a conflict between lower courts which have reached different decisions on the same issue or if it addresses important legal questions with national significance. Some examples of those legal questions are whether students can engage in political protests at school, whether the federal government can ask about a person's citizenship on a census form, and whether the Constitution guarantees the right to marry to same-sex couples. To grant a writ of certiorari, four of the nine justices on the Supreme Court must agree to accept the appeal.

What Guides Should We Consult for This Case?

Once the Supreme Court has accepted a case for review, work begins. Often, there has been a trial with a verdict and then an appeal before a case reaches the Supreme Court. The justices will review those records, as well as any relevant sections of the Constitution or federal laws. The Court will also look to **precedent**, principles and guidelines from its own past decisions relating to the legal issue in the case. While lower courts must follow precedents established by the Supreme Court, the Supreme Court can overrule its own past decisions. The Court generally hesitates to do this, though, in order to maintain stability and consistency in the law. The Supreme Court will also heavily consider the parties' **legal briefs**, written arguments that both parties file explaining their position.



Source: US Supreme Court
Supreme Court of the United States in Washington, D.C.



Source: Library of Congress
Brown v. Board of Education was a Supreme Court case that overruled a past decision and ended racial segregation in America's schools.

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What Questions Do We Have About This Case?

Source: Smithsonian



People aren't allowed to take photos of a trial in the Supreme Court, but a courtroom sketch artist can draw the scene.

After the Supreme Court reviews the case records, the applicable laws, the Constitution, its precedents, and the parties' briefs, the Court is ready for **oral arguments**. This is when the attorneys for the parties come before the justices to highlight their most persuasive arguments and answer the Court's questions. Each case is scheduled for one hour, which means that each side has only thirty minutes to convince the Court that they are correct. Attorneys for the **petitioner** (the party who brought the case to the Supreme Court) present their arguments first, followed by attorneys for the **respondent** (the party who won in the lower court). The justices almost always interrupt the attorneys with questions about the facts or laws in the case. In fact, attorneys spend most of their scheduled oral argument time answering the justices' questions.

What Decision Will We Make?

After hearing oral arguments, the justices discuss each case in a **conference**. Discussing a legal issue in a group of nine might be difficult, right? But justices follow traditions to help them get through the conference without much conflict. First, the justices begin each conference as they do each courtroom session—with a traditional handshake. Each justice shakes the hand of every other justice to remind each other that their differences of opinion should never overshadow their common purpose. After this, the justices, without any other staff members present, sit down to frankly discuss each case. The Chief Justice goes first, then each justice gives his or her views and concerns in order of seniority—when they were appointed to the Court—and without interruption from the others. After each justice has spoken, they vote on the case, starting with the Chief Justice and again proceeding in order of seniority. The majority of the justices (five or more) determine the decision in a case. Having an odd number helps the Court avoid a tie decision.



Who Will Write the Opinion?

If the majority of justices agree on a decision and the reasoning behind it, they issue a **majority opinion**. The most senior justice in the majority decides who gets to write it. If those in the majority agree on the result in the case, but for different reasons, the Court issues a **plurality decision**, and the justices in the majority may write a **concurring opinion** explaining their reasoning. What about the justices who disagree with the result? Any justice in the minority may write a **dissenting opinion** explaining why he or she disagrees with the decision of the Court. The Supreme Court announces its opinions in open court and releases its written opinion to the public on the same day as the announcement.

