

SECTION 3



SS.7.C.3.8; SS.7.C.3.12; LA.7.1.6.1; LA.7.1.7.1

The Supreme Court

BEFORE YOU READ

The Main Idea

The Supreme Court hears appeals, reviews laws, and strongly influences American society.

Reading Focus

1. What is the power of judicial review?
2. What are the constitutional checks on the Supreme Court's powers?
3. How has the Supreme Court strengthened constitutional rights?

Key Terms

judicial review, p. 189
remand, p. 190
opinion, p. 190
concurring opinion, p. 190
dissenting opinion, p. 191

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TAKING NOTES

Use the graphic organizer online to take notes on the Supreme Court.



The first eight chief justices of the Supreme Court were John Jay, John Rutledge, Oliver Ellsworth, John Marshall, Roger B. Taney, Salmon P. Chase, Morrison R. Waite, and Melville W. Fuller.



What kinds of activities are protected by your right to free speech? What is cruel and unusual punishment? These are all constitutional questions, and many of them have been addressed by the courts. In fact, lower state and federal courts frequently deal with constitutional issues; but their rulings are not the final word. In our system of government, the Supreme Court has the final say about what is constitutional and what is not.

The Power of Judicial Review

Over the years, laws have been passed that have later been considered unconstitutional. Laws about segregation and discrimination are good examples. How can such laws be changed? The answers lie with a unique feature of the U.S. court system called the power of **judicial review**. This power allows courts to decide whether a law or a presidential action is in agreement with the Constitution. The Supreme Court holds the ultimate authority to make this decision. If a court decides that a law conflicts with the Constitution, that law is declared unconstitutional.

ACADEMIC VOCABULARY

explicitly:

fully revealed

without vagueness

The Constitution does not **explicitly** give the judicial branch the power of judicial review. John Marshall established the power when he served as chief justice of the Supreme Court from 1801 to 1835. Marshall promoted the idea of judicial review for the first time in 1803 in the case of *Marbury v. Madison*.

The case involved William Marbury. He had been promised an appointment as a justice of the peace by outgoing president John Adams. President Thomas Jefferson ordered the new secretary of state, James Madison, to deny Marbury's appointment. Marbury claimed that the Judiciary Act of 1789 gave the Supreme Court the power to order Madison to give him the promised appointment. However, Chief Justice Marshall ruled that the act gave the Supreme Court powers that it had not been granted by the Constitution. Because the Constitution is the supreme law of the land, the Judiciary Act passed by Congress was declared unconstitutional. This was the first time the Supreme Court had declared an act of Congress unconstitutional. It thus established the concept of judicial review.

Choosing Cases

More than 8,000 cases are filed with the Supreme Court each year. The Court may

decide, with or without a formal written opinion, only about 130 to 150 of those cases. It accepts only those cases that generally deal with important constitutional or national questions. At least four of the nine justices must vote to hear a case. If the Supreme Court refuses to review a case, the decision of the lower court remains in effect. The Court may also **remand**, or return, a case to a lower court for a new trial.

Hearing and Deciding Cases

The Supreme Court hears cases by oral argument. Lawyers for the parties in a case each have 30 minutes to present their arguments. Then the justices spend their time reading written arguments and considering what was said in court. When they are ready to decide a case, they hold a private meeting to vote. Each justice has one vote. Decisions are reached by a simple majority.

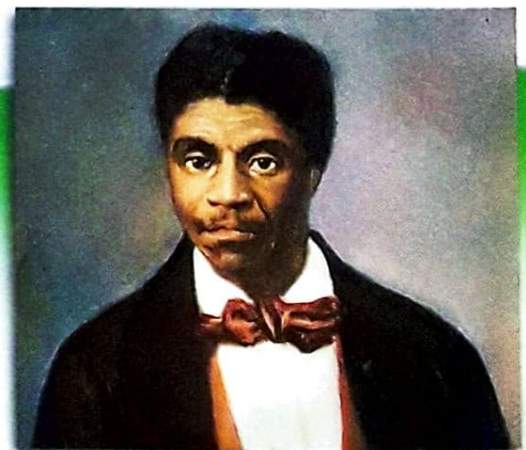
After deliberation and voting, the Court delivers its opinion. An **opinion** explains the reasoning that led to the decision. The Court's opinion is binding on all lower courts. Sometimes a justice agrees with the decision of the majority, but for different reasons. In that case, the justice may decide to write a **concurring opinion**.

Changing Court Opinions: Segregation

QUICK
FACTS

The Supreme Court has interpreted the Constitution differently at different times. For example, the Court ruled in *Scott v. Sandford* that African Americans were not considered U.S. citizens. Later, in *Plessy v. Ferguson*, the Court legalized "separate but equal" facilities for African Americans and whites. The Court put an end to legal segregation in 1954 in *Brown v. Board of Education*.

How were the rulings in *Plessy v. Ferguson* and *Brown v. Board of Education* different?



1857 *Scott v. Sandford*

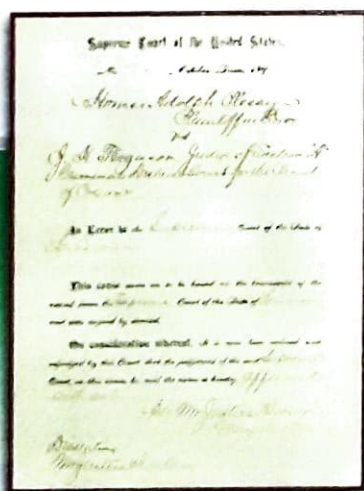
Dred Scott's attempt to win his freedom was defeated when the Supreme Court ruled that slaves had no right to sue in federal courts because they were considered property, not citizens.

In many cases, one or more justices disagree with the majority opinion. These justices may file a dissenting opinion. The **dissenting opinion** explains why the justice believes the majority opinion is wrong. Although dissenting opinions have no effect on the law, they are still important. Many dissenting opinions have later become the law of the land when the beliefs of society and the opinions of the justices change. For example, in *Plessy v. Ferguson*, Justice John M. Harlan dissented, saying that the Constitution should not be interpreted in ways that recognize class or racial distinctions.

Supreme Court Justices

The size of the Supreme Court is determined by Congress. Since 1869, the number of justices has been set at nine. The Court has a chief justice, who is the principal judge, and eight associate justices. Supreme Court justices, like other federal judges, are appointed for life by the president and approved by the Senate. Justices can be removed only by impeachment. There are no special requirements to be a Supreme Court justice.

READING CHECK Summarizing How can the power of judicial review have an effect on the laws that are passed by Congress?



1896 *Plessy v. Ferguson*

African American Homer Plessy was arrested for riding in a "whites-only" railcar in Louisiana. The Court justified segregation by ruling that separate facilities for different races were legal as long as those facilities were equal to one another.

Checking the Court's Power

How do the other branches of government check the powers of the judicial branch? The executive branch—the president—has the power to appoint all federal judges, including Supreme Court justices. Of course, the Senate must confirm all nominees for federal judgeships, including Supreme Court justices. If a nominee cannot win the support of a majority of the senators, the nomination may be rejected. Then the president would have to appoint someone else.

If the Court rules that a law is unconstitutional, Congress can try to write a better law. Congress may change the law enough so that the Supreme Court can uphold the new law. Another way for Congress to check the Court's power is to amend the Constitution. For example, in 1895 the Supreme Court declared that an income tax law passed by Congress was unconstitutional. So in 1913 the states ratified the Sixteenth Amendment. It gave Congress the power to tax a person's income. The income tax then became legal and constitutional.

READING CHECK Finding the Main Idea What are two ways the legislative branch can check the power of the Supreme Court?

SS.7.C.3.12 Analyze the significance and outcomes of landmark Supreme Court cases including, but not limited to, *Marbury v. Madison*, *Plessy v. Ferguson*, *Brown v. Board of Education*, *Gideon v. Wainwright*, *Miranda v. Arizona*, *In re Gault*, *Tinker v. Des Moines*, *Hazelwood v. Kuhlmeier*, *United States v. Nixon*, and *Bush v. Gore*.



1954 *Brown v. Board of Education*

In a unanimous decision, the Supreme Court ruled that segregated schools were not equal and therefore violated the Fourteenth Amendment's guarantee of equal protection under the law.



FOCUS ON Thurgood Marshall

(1908–1993)

Thurgood Marshall was born in Baltimore, Maryland. He graduated first in his class from Howard Law School in 1933. He soon became a key legal counsel for the National Association for the Advancement of Colored People (NAACP). He helped the NAACP win several important civil rights cases. Perhaps his most famous victory was *Brown v. Board of Education*, which outlawed segregation in public schools.

Marshall was appointed to a federal court of appeals in 1961. He became the first African American justice on the Supreme Court in 1967. He served for more than 20 years. Marshall retired from the court in 1991. He left behind a legacy of defending individual rights and demanding equal justice for all Americans.

Explain How did Marshall contribute to the U.S. legal system?

Strengthening Rights

Supreme Court decisions have allowed the Constitution to meet the demands of changing times. For example, in 1954 the Court decided in the case of *Brown v. Board of Education* that the segregation of public schools was unconstitutional. By doing this the Court reversed an earlier opinion. That one had said segregation was constitutional

as long as there were separate-but-equal facilities for whites and African Americans. In *Brown*, the Court ruled that segregated schools were inherently unequal and therefore violated the Fourteenth Amendment. The Court ruled that public schools be desegregated “with all deliberate speed.”

The 1954 *Brown* decision did not completely eliminate segregation. It took other cases and decisions to strike down other discriminatory laws.

Like the *Brown* decision, other Supreme Court opinions have made far-reaching changes in American life. For example, the Court has made several rulings on the rights of the accused and voting rights.

In the 1966 case of *Miranda v. Arizona*, the Court declared that the police must inform arrested suspects of their rights before questioning them.

The Court also made several decisions in the 1960s affecting voting rights and representation in Congress. These decisions were aimed at ensuring that each person’s vote counts the same as any other person’s vote.

READING CHECK

Analyzing Information How has the Supreme Court made sure that the Constitution applies to all Americans?

SECTION 3 ASSESSMENT



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ONLINE QUIZ

Reviewing Ideas and Terms

- a. Define** Write a brief definition for each of the following terms: **judicial review**, **remand**, **opinion**, **concurring opinion**, and **dissenting opinion**.

b. Compare and Contrast What are the differences between a concurring opinion and a dissenting opinion?
- a. Recall** What can Congress do to check the power of the Supreme Court?

b. Support a Point of View Does the Supreme Court have too much power? Why?
- a. Summarize** What are some issues Supreme Court cases have addressed?

- b. Elaborate** What might happen if people did not have the rights established in *Miranda v. Arizona*? Explain your answer.

Critical Thinking

- 4. Sequencing** Copy the graphic organizer. Use it to identify the steps a case goes through in the Supreme Court.



FOCUS ON WRITING

- 5. Identifying Points of View** You are a senator considering a presidential nominee for Supreme Court justice. Write a letter to your colleagues explaining how you intend to vote for the nominee.