

THE COURTS

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JUDICIAL PROCESS

TYPES OF DISPUTES

Criminal law Government charges an individual with a violation of a statute that has been enacted to protect the public health, safety, morals, or welfare

- Defendants found guilty fined and/or sent to prison

Civil law Disputes between two parties (gvt can be one) where no crime is alleged

- Contracts and torts most common
- Defendants who lose can't be fined or sent to jail but can be forced to pay damages

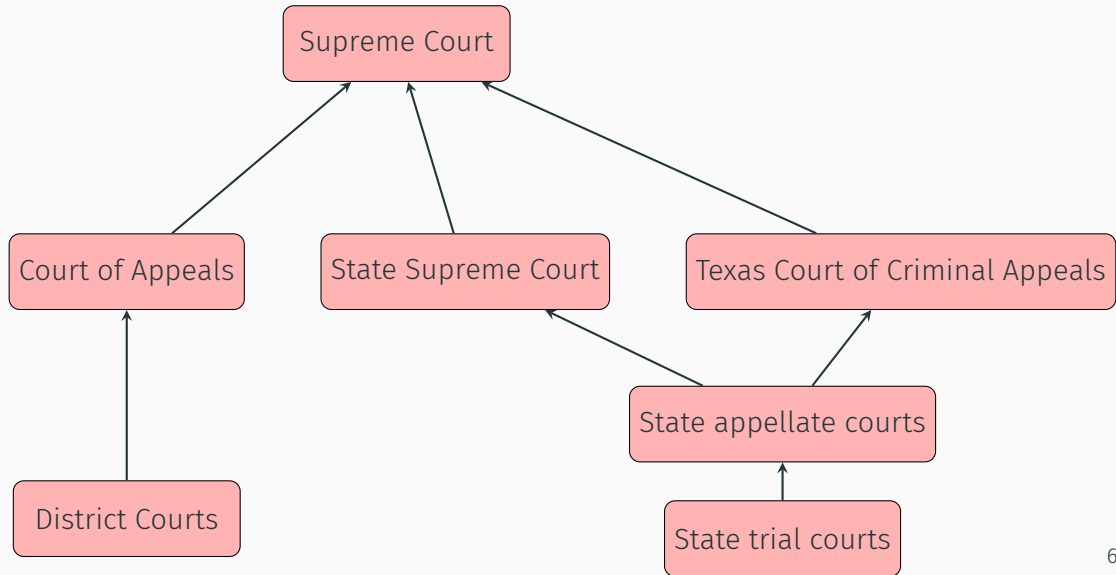
Public law cases that involve the rights of the citizens or powers of government

- Constitutional law

ORGANIZATION OF THE COURTS

- Two court systems: federal and state
- Most cases at state level
- Federal: 94 district courts, 13 Court of Appeals, Supreme Court
- State: district courts, state appellate courts, state supreme court (or court of criminal appeals), US Supreme Court

THE COURT SYSTEM

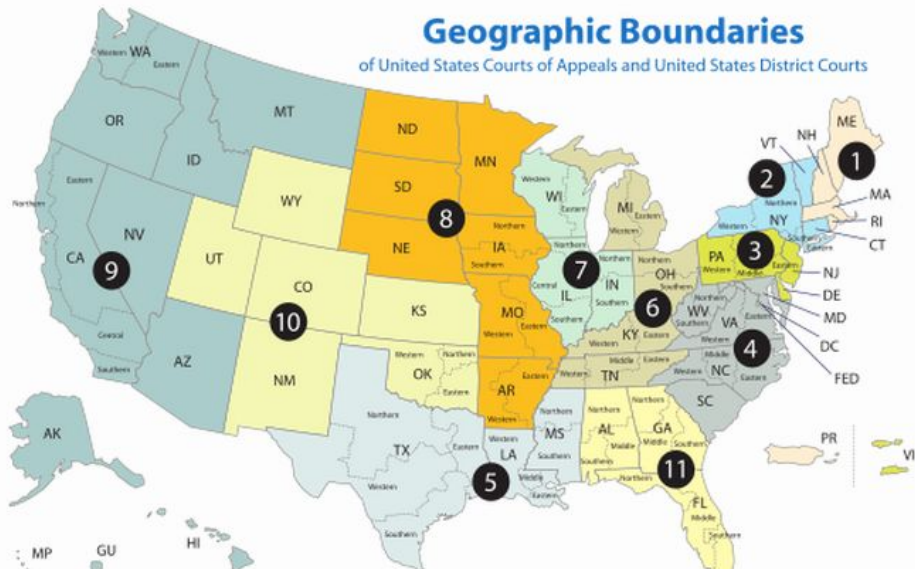


FEDERAL JURISDICTION

- Federal laws
- Treaties with other nations
- US Constitution
- If the US government is a party
- Civil cases involving people in more than one state and money greater than \$75,000
- Appeals from state supreme courts
 - Due process
 - Federal law

- (Usually) one judge per case
- Grand jury
- 12 person jury
- Unanimous verdict

- Hears appeals from the lower courts
- (Usually) 3 judge panel
- 13 Courts of Appeal, 12 of which are geographic in nature
 - Texas is in the 5th circuit, based in New Orleans
 - 9th circuit covers about 20% of Americans



- One chief justice + eight associate justices
 - Congress can change this
 - Has been 9 since 1869

APPOINTING A SUPREME COURT JUDGE

- Lifetime appointments
- Huge political battles
- Nominated by the President
 - Usually prominent legal scholars, federal judges, or prosecutors
 - Usually like-minded
- Considered by Senate Judiciary Committee
 - Currently chaired by Chuck Grassley (R-IA)
 - Grills nominees on wide range of issues
- Vote by full Senate
 - Filibuster and cloture

CURRENT JUSTICES

Name	Birth year	Prior experience	Appointed by	Year of appt
John Roberts	1955	Federal judge	Bush (2)	2005
Anthony Kennedy	1936	Federal judge	Reagan	1988
Clarence Thomas	1948	Federal judge	Bush (1)	1991
Ruth Bader Ginsburg	1933	Federal judge	Clinton	1993
Stephen Breyer	1938	Federal judge	Clinton	1994
Samuel Alito	1950	Federal judge	Bush (2)	2006
Sonia Sotomayor	1954	Federal judge	Obama	2009
Elena Kagan	1960	Solicitor general	Obama	2010

THE SUPREME COURT'S CASELOAD

- Cases between the US and a one or several states
- Cases between two or more states
- Cases involving foreign ambassadors or other ministers
- Cases brought by one state against citizens of another or against a foreign country
- ALL ELSE is appeals-only

RULES OF ACCESS

- Cases and controversies
 - No hypotheticals
 - **ripeness** - two truly adversarial parties
- **Standing** - parties must have a substantial stake in the outcome of the case (injury)
- **Mootness** - avoid hearing cases that no longer require resolution
- Court more likely to hear cases:
 - with conflicting decisions by lower courts
 - important civil rights/liberties
 - federal government is appellant

- Write of *certiorari* is a formal request by an appellant to have the Supreme Court review the decision of a lower court, must be filed within 90 days
- Clerks pool together all the petitions, write memos summarizing facts and giving opinions
- Discuss list, 4 votes needed to grant cert
- This is usually about 90 per year, about 1% of the petitions received

- Government's top lawyer
- Screens cases involving the government, usually his/her decision is final
- Can write *amicus curiae* briefs indicating the government's position

- Preparation - briefs and *amicus curiae* briefs
- Oral arguments - 30 minutes each
- Conference
- Opinion writing
 - Majority opinion
 - Concurrence
 - Dissent

COURTS AS POLITICAL ACTORS

LANDMARK CASES

Marbury v. Madison (1803) Establishes judicial review

McCulloch v. Maryland (1819) Justifies “implied powers”

Gibbons v. Ogden (1824) Supremacy of federal government over states

Dred Scott v. Sandford (1857) Slaves weren't citizens & had no Constitutional rights

Plessy v. Ferguson (1896) Separate but equal

Brown v. Board of Education (1954) Ends segregation

Baker v. Carr (1962) Courts get involved in districting

Griswold v. Connecticut (1965) right to privacy

Roe v. Wade (1973) Legalizes abortion

WHAT FUNCTIONS DO COURTS SERVE?

- Dispute resolution
- Coordination
- Rule interpretation

- Acts of Congress
- State actions
- Federal agency actions
- Presidential power

- Strikes down administrative action based on statutory authority (statutory rationale)
- Strikes down statutes based on Constitution (constitutional rationale)

- President nominates judges
 - Close to their policy preferences
 - Increasingly with an eye to diversity

- How to implement decisions?
- Obstruction by lower courts
 - Apply the case narrowly
 - “dicta”
- Obstruction by state legislatures and governors
- Obstruction by the President
 - “John Marshall has made his decision. Now let him enforce it.” -Jackson

- Liberalizing policies
- Expanding rules of standing
- Structural remedies