
The Judicial Branch 司法部门

I. 我。 IMPORTANT DOCUMENTS 重要文件

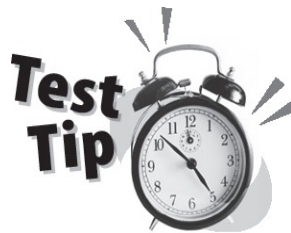
A. ARTICLE III OF THE CONSTITUTION

A. 宪法第三条

1. Article III states that “[t]he judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”
 1. 第三条规定：“合众国的司法权属于最高法院，以及国会随时颁布和设立的下级法院。”
 2. The Supreme Court is the only court formally created by the Constitution.
 2. 最高法院是唯一由宪法正式设立的法院。
 3. Congress is granted the power to create other lower federal courts as it sees fit.
 3. 国会有权根据自身需要设立其他下级联邦法院。
 4. Federal judges are appointed by the president and confirmed by a majority vote in the Senate. (Appointments Clause in Article II, Section 2)
 4. 联邦法官由总统任命，并经参议院多数票确认。（宪法第二条第二款任命条款）
 5. Federal judges hold their positions “during good Behaviour.” This means that federal judges serve for life, unless they voluntarily retire, and can only be removed through impeachment and conviction. Also, their salaries may not be reduced while serving.
 5. 联邦法官的任期“以良好行为为准”。这意味着联邦法官终身任职，除非他们自愿退休，且只能通过弹劾和定罪才能被免职。此外，他们在任职期间的薪水不得减少。
 6. The Supreme Court hears cases under two types of jurisdiction (authority to hear a case).
 6. 最高法院根据两种管辖权（审理案件的权限）审理案件。
 - a. The Court has original jurisdiction (i.e., it hears a case for the first time or conducts a trial) in cases involving federal officials, international issues, and cases in which a

state is named as a party.

- a. 法院对涉及联邦官员、国际问题以及以州为一方当事人的案件具有初审管辖权（即，法院首次审理案件或进行审判）。
 - b. The Court has appellate jurisdiction (the authority to decide cases on appeal) in all other cases involving federal law or the Constitution.
 - b. 法院对所有其他涉及联邦法律或宪法的案件具有上诉管辖权（即对上诉案件作出裁决的权力）。
7. Article III, Section 2 also guarantees the right to a jury trial for all crimes. Additionally, it requires that trials take place in the state in which the crime was committed. Jury trial jurisprudence is covered more extensively in [Chapter 9](#), Civil Liberties.
7. 第三条第二款也保障所有犯罪行为均享有陪审团审判的权利。此外，它还规定审判必须在犯罪发生地所在州进行。关于陪审团审判的判例法，[第九章](#) “公民自由” 将有更详细的阐述。
8. Article III, Section 3 defines treason (“levying war against [the United States] or in adhering to their Enemies, giving them Aid and Comfort”) and requires the testimony of two witnesses for conviction. The Framers took care to define treason narrowly, so as to not inhibit political speech.
8. 第三条第三款对叛国罪进行了定义（“对[美国]发动战争或与敌人勾结，给予敌人援助和支持”），并规定定罪需要两名证人的证词。制宪者们谨慎地将叛国罪的定义限定在狭窄的范围内，以免限制政治言论。



The term “Court” with a capital “C” is always shorthand for the Supreme Court. The Court is also frequently referred to as SCOTUS (the Supreme Court of the United States).

“Court” 一词，首字母大写，始终是最高法院的简称。最高法院也经常被称为 SCOTUS（美国最高法院）。

B. “FEDERALIST NO. 78”

B. 《联邦党人文集》第 78 篇

1. “Federalist Paper No. 78” was written by Alexander Hamilton to describe and defend the proposed structure of the federal judiciary.
1. 《联邦党人文集》第 78 篇由亚历山大·汉密尔顿撰写，旨在描述和捍卫联邦司法机构的拟议结构。
2. Hamilton argued that, of the three branches, the courts would be the weakest because they would have no way to enforce their judgments, lacking both military

and financial authority. The courts would be

2. 汉密尔顿认为，在三大分支中，法院最为薄弱，因为它们既缺乏军事权力，也缺乏财政权力，因此无法强制执行判决。法院将会.....

the least dangerous to the political rights of the Constitution . . . The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, does not influence either the sword or the purse. . . . 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.

对宪法规定的政治权利威胁最小的.....行政部门不仅授予荣誉，而且掌握着社会的权力。立法部门不仅掌控财政，而且制定规则，规范每个公民的权利和义务。相反，司法部门既不影响权力，也不影响财政.....可以说，它既没有武力，也没有意志，只有判断力；甚至连其判决的效力，最终也必须依赖行政部门的协助。

3. Hamilton argued persuasively for life tenure of federal judges, pointing out that

3. 汉密尔顿有力地论证了联邦法官终身任期的合理性，他指出：

“[i]ndependence and permanency in office” would be necessary to compensate for the inherent weakness of the courts generally. Concerning their role as guardians of the Constitution, he pointed out that the security of life tenure would ensure their freedom and independence to defend the Constitution, which embodies the will of the people, against political forces and the power of the other branches. If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

“独立性和终身任期”对于弥补法院普遍存在的固有弱点至关重要。关于法院作为宪法守护者的角色，他指出，终身任期保障能够确保法官拥有捍卫宪法的自由和独立性，宪法体现了人民的意志，使其免受政治势力和其他部门的侵害。因此，如果将法院视为有限宪法抵御立法机构侵蚀的堡垒，那么这一考量便为司法职位的终身任期提供了强有力的论据，因为没有什么比终身任期更能培养法官的独立精神，而这种独立精神对于忠实履行如此艰巨的职责至关重要。

4. A critical power of the courts not explicitly addressed in the Constitution is that of judicial review, the power of the courts to determine the constitutionality of acts of the federal government or any state government. The objection to the courts having the power of judicial review was that it would give them too much power over the other branches by allowing them to invalidate the actions of the other branches. Hamilton made several counterarguments:

4. 宪法中未明确提及的法院一项关键权力是司法审查权，即法院有权裁定联邦政府或任何州政府的行为是否符合宪法。反对法院拥有司法审查权的理由是，这将赋予法院过大的权力，使其能够宣布其他部门的行为无效。汉密尔顿提出了以下几点反驳论点：

- a. The Constitution, which would be adopted through an exceptionally deliberative process, represents the will of the people more profoundly than do laws.

- a. 宪法是通过极其审慎的程序制定的，它比法律更能深刻地代表人民的意志。

- b. It is the domain of the courts to determine the meaning of laws and whether a law conflicts with the Constitution.
- b. 确定法律的含义以及法律是否与宪法相抵触，是法院的职权范围。
- c. Courts must necessarily have the power in order to enforce constitutional limits on the power of the legislative and executive branches.
- c. 法院必须拥有权力才能强制执行对立法和行政部门权力的宪法限制。
- d. Courts are necessary to safeguard individual liberties against the power of the legislature.
- d. 法院对于保护个人自由免受立法机关权力的侵害是必要的。

C. MARBURY v. MADISON (1803)

C. 马伯里诉麦迪逊案 (1803 年)

1. **Facts of the Case:** President John Adams, a Federalist, lost the election of 1800 to Thomas Jefferson, a Democratic-Republican. Two days before departing office, Adams appointed several dozen Federalists to newly created judicial positions in an attempt to extend the party's power. Due to the rushed nature of the appointments, several of the commissions were not delivered to the newly appointed judges before Adams left office and Jefferson took over. Jefferson saw no need to deliver the appointments, and instructed his Secretary of State, James Madison, not to do so. Marbury, one of the appointees who did not receive his appointment, sued, asking the Court to issue a *writ of mandamus* (an order from a court requiring a government official to perform a duty) instructing Madison to deliver his commission.

1. **案情：** 联邦党人约翰·亚当斯总统在 1800 年的总统选举中败给了托马斯·杰斐逊。Democratic-Republican. 在卸任前两天，亚当斯任命了数十名联邦党人担任新设立的司法职位，试图扩大该党的权力。由于任命仓促，一些新任命的法官在亚当斯卸任、杰斐逊接任之前未能收到任命书。杰斐逊认为没有必要送达这些任命书，并指示国务卿詹姆斯·麦迪逊不要这样做。马伯里是未收到任命书的被任命者之一，他提起诉讼，请求法院发出强制令（法院要求政府官员履行职责的命令），指示麦迪逊送达任命书。

2. **Constitutional Issue(s):**

2. **宪法问题：**

- a. Is Marbury entitled to his commission?
- a. 马布里是否有权获得佣金？
- b. Is Marbury entitled to a remedy in the courts?
- b. 马伯里是否有权向法院寻求救济？
- c. Should the Court grant a writ of mandamus, the remedy sought by the plaintiffs?
- c. 法院是否应准予原告所寻求的强制令？

3. **Holding(s):**

3. **持股：**

a. Yes, Marbury is entitled to his commission.

a. 是的，马布里有权获得他的佣金。

b. Yes, Marbury is entitled to a judicial remedy.

b. 是的，马布里有权获得司法救济。

c. No, Section 13 of the Judiciary Act of 1789, giving the Supreme Court original jurisdiction to issue writs of mandamus, was unconstitutional.

c. 不，1789 年《司法法》第 13 条赋予最高法院签发强制令的原始管辖权，该条款违宪。

4. **Reasoning:** The significance of the case is found in the third ruling, in which Chief Justice John Marshall, writing for the Court, held that Section 13 of the Judiciary Act conflicted with the Constitution, and was, therefore, void. The Constitution defines and limits the Court's original jurisdiction to those involving certain federal officials and those in which a state is a party. According to the Supremacy Clause, constitutional provisions cannot be altered by acts of Congress. The Constitution is superior to federal law, so Section 13 was unconstitutional. Marshall cleverly avoided conflict with the Jefferson administration while at the same time claiming for the Court, unquestionably, the power of judicial review.

4. **理由：**本案的意义在于第三项裁决，首席大法官约翰·马歇尔代表最高法院撰写判决意见，认为《司法法》第 13 条与宪法相抵触，因此无效。宪法界定并限制了法院的原始管辖权，使其仅限于涉及特定联邦官员的案件以及州作为一方当事人的案件。根据宪法最高条款，国会不得通过法案修改宪法条文。宪法高于联邦法律，因此第 13 条违宪。马歇尔巧妙地避免了与杰斐逊政府的冲突，同时又毫无疑问地确立了法院的司法审查权。

D. JUDICIAL REVIEW

D. 司法审查

1. Judicial review is the power of the courts to determine the constitutionality of any act of government. It may be applied to any act of the legislative or executive branches.

1. 司法审查是法院判定任何政府行为是否符合宪法的权力。它可以适用于立法或行政部门的任何行为。

2. Although Hamilton does not use the term *judicial review* in "Federalist No. 78," it is clearly his understanding that courts must hold this power.

2. 虽然汉密尔顿在《联邦党人文集》第 78 篇中没有使用“司法审查”一词，但显然他认为法院必须拥有这种权力。

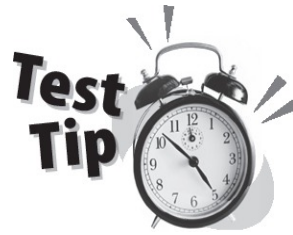
3. The Constitution does not explicitly grant this power to the courts, but Chief Justice Marshall made clear in *Marbury* that the Court does hold the power of judicial review.

3. 宪法没有明确赋予法院这项权力，但首席大法官马歇尔在《马伯里案》中明确表示，法院确实拥有司法审查权。

4. While it is broadly accepted that the Court holds this power, the decision has not gone unchallenged. The question of enforcement has been left to the executive

branch.

4. 虽然人们普遍接受法院拥有这项权力，但这一决定并非没有受到挑战。执行问题则留给了行政部门。



Judicial review is based on the understanding that the Supreme Court is the highest authority on the Constitution. This is coupled with the Supremacy Clause (Article VI, Clause 2), stating that federal laws and treaties are superior to state and local laws. When a state or local law conflicts with a federal law, treaty, or the Constitution, it is void. The Supreme Court, using the power of judicial review, may invalidate acts of the other branches of the federal government, as well as actions of state governments.

司法审查基于这样的理解：最高法院是宪法的最高权威。这与宪法第六条第二款规定的最高条款相辅相成，该条款规定联邦法律和条约优先于州和地方法律。当州或地方法律与联邦法律、条约或宪法相冲突时，该法律无效。最高法院可以运用司法审查权，宣布联邦政府其他部门以及州政府的行为无效。

II. 二、 THE JUDICIAL SYSTEM 司法系统

A. WHAT THE COURTS DO

A. 法院的职能

1. Court systems exist to resolve disputes between parties, which may be individuals, businesses, or government entities.
1. 法院系统存在的目的是解决当事人之间的纠纷，当事人可以是个人、企业或政府实体。
2. Cases begin in trial courts, where the facts of the case are presented.
2. 案件从审判法庭开始，在审判法庭上陈述案件的事实。
 - a. Cases are filed, and disputes are resolved.
a. 案件立案，纠纷解决。
 - b. Evidence is presented, and witnesses testify.
b. 出示证据，证人作证。
 - c. Juries or judges determine the outcome of cases.
c. 陪审团或法官决定案件结果。
3. Criminal law consists of the statutes (legislation) defining crimes as actions against the community.
3. 刑法由将犯罪定义为危害社会行为的法规（立法）组成。

- a. The parties to a criminal case are the state (or government) and the defendant. (The government is a party to every criminal case.)
 - a. 刑事案件的当事人是国家（或政府）和被告。（政府是所有刑事案件的当事人。）
 - b. Crimes are punishable by serious penalties, including incarceration and, possibly, capital punishment (death penalty).
 - b. 犯罪行为将受到严厉的处罚，包括监禁，甚至可能处以死刑。
 - c. Most criminal cases are resolved without going to trial through an agreement called a plea bargain, in which the defendant agrees to plead guilty to a crime, often a lesser charge, in exchange for a reduced sentence.
 - c. 大多数刑事案件无需审判即可通过认罪协议解决，被告同意对犯罪行为（通常是较轻的指控）认罪，以换取减刑。
4. Civil law is the broad area of law encompassing non-criminal cases. It is commonly understood as the body of law relating to private rights. Examples include torts (personal injury or property damages) and contract violations.
4. 民法是涵盖非刑事案件的广泛法律领域。它通常被理解为与私人权利相关的法律体系。例如，侵权行为（人身伤害或财产损失）和违约行为都属于民法范畴。
- a. The parties to a civil case are the plaintiff, or the person bringing the action (lawsuit), and the defendant. The government may be a party to a civil case.
 - a. 民事案件的当事人包括原告（提起诉讼的人）和被告。政府也可以是民事案件的当事人。
 - b. The consequences for a defendant are limited to monetary payments or requirements for action.
 - b. 对被告的处罚仅限于金钱赔偿或要求其采取行动。
 - c. Most civil cases are settled by agreement between the parties without going to trial.
 - c. 大多数民事案件都是通过当事人之间的协议解决，而无需进行审判。

B. THE COURT SYSTEM

B. 法院系统

- 1. The United States has a dual court system consisting of the federal court system and 50 state court systems.
- 1. 美国实行双重法院系统，由联邦法院系统和 50 个州法院系统组成。
- 2. The federal and state court systems share similar characteristics, including a pyramidal structure, with the largest number of trial courts at the base of the pyramid, a middle tier consisting of a smaller number of appellate-level courts, and a single supreme court at the top.
- 2. 联邦和州法院系统具有相似的特征，包括金字塔结构，金字塔底部是数量最多的审判法院，中间层是数量较少的上诉法院，顶部是单一的最高法院。

3. The Federal Courts

3. 联邦法院

a. The Supreme Court is the only court established by the Constitution. Congress is given the power to establish lower federal courts by legislation, and has, over the course of our history, created an extensive system of federal courts.

a. 最高法院是唯一由宪法设立的法院。国会通过立法设立下级联邦法院，并在美国历史进程中建立了一个庞大的联邦法院体系。

b. The federal trial courts are the district courts.

b. 联邦审判法院即地区法院。

➤ There are 94 federal districts, or geographic areas, from which the district courts hear cases.

➤ 联邦共有 94 个地区，即地理区域，地区法院在这些区域审理案件。

➤ Each state has at least one, and district court boundaries do not cross state lines.

➤ 每个州至少有一个地区法院，地区法院的边界不会跨越州界。

c. The federal courts of appeals are called the circuit courts.

c. 联邦上诉法院被称为巡回法院。

➤ There are 13 federal circuits, including 12 based on geographic regions and one handling certain matters of international law.

➤ 共有 13 个联邦巡回法院，其中 12 个按地理区域划分，1 个处理某些国际法事项。

➤ Each circuit court hears cases from the trial courts within its geographic boundaries.

➤ 每个巡回法院审理其地理范围内各审判法院的案件。

4. The Attorney General is the head of the U.S. Department of Justice and the chief legal officer of the nation, charged with enforcement of federal law.

4. 司法部长是美国司法部的负责人，也是国家首席法律官员，负责执行联邦法律。

5. The Solicitor General is the official in the Department of Justice who represents the federal government before the Supreme Court in all cases in which the United States is a party. He or she is also charged with filing *amicus curiae* briefs on behalf of the government when appropriate.

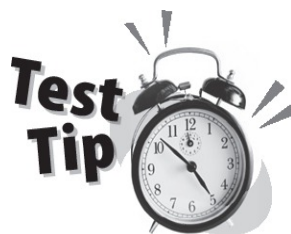
5. 司法部副部长是司法部代表联邦政府在所有以美国为一方当事人的案件中向最高法院出庭的官员。副部长还负责在适当情况下代表政府提交法庭之友意见陈述。

C. APPEALS

C. 上诉

1. A party that has lost at trial may apply for review by a higher court. This procedure is called an appeal.

1. 一审败诉的一方可以向上级法院申请复审。这一程序称为上诉。
 - a. Appeals must be based on a perceived error of law made by the judge at trial. This is often referred to as having grounds for appeal. Simply disagreeing with a verdict is not sufficient to request an appeal.
 - a. 上诉必须基于对审判法官在法律适用上所作错误的认定。这通常被称为具有上诉理由。仅仅对判决结果不服并不足以提出上诉。
 - b. Appellate cases only involve arguments about the legality of rulings made at trial. No new evidence or witnesses are introduced.
 - b. 上诉案件仅涉及对审判裁决合法性的辩论，不引入新的证据或证人。
 - c. A party that loses at trial has a right to appeal the decision to a higher court, with one important exception. The government may not appeal a loss in a criminal trial because the Fifth Amendment prohibits double jeopardy, or trying a defendant more than once for a crime.
 - c. 败诉方有权向更高一级法院提起上诉，但有一个重要的例外。政府不得就刑事审判中的败诉提起上诉，因为第五修正案禁止双重危险，即禁止对同一犯罪行为对被告人进行两次以上的审判。
 - d. An appellate court may affirm or overturn a trial court's verdict, and remand (send back) the case to the trial court. (If a criminal conviction is overturned on appeal, the remedy is generally a new trial for the defendant. This is not considered a double jeopardy violation, since the defendant is the one requesting the second trial.)
 - d. 上诉法院可以维持或推翻初审法院的判决，并将案件发回初审法院重审。（如果刑事定罪在上诉中被推翻，通常的补救措施是为被告人进行新的审判。这不被视为违反双重危险原则，因为是被告人请求进行第二次审判。）
2. When an appellate court makes a decision, it is creating public policy by making a rule that impacts the application of the law to citizens, which lower courts must follow in future cases.
2. 当上诉法院作出裁决时，它通过制定一项影响法律对公民适用的规则来制定公共政策，下级法院在以后的案件中必须遵守该规则。



The term jurisdiction refers to the authority of a court to hear a particular case. Trial courts have original jurisdiction; they hear cases for the first time. Appellate courts have appellate jurisdiction; they hear appeals from lower courts. Jurisdiction may also be based on geography and subject matter. Most courts hear cases that arise in particular geographic areas, and some courts hear cases that deal with a particular subject,

regardless of geography, such as the United States Tax Court.

管辖权是指法院审理特定案件的权限。初审法院拥有初审管辖权，即首次审理案件。上诉法院拥有上诉管辖权，即审理下级法院的上诉案件。管辖权也可能基于地理位置和案件主题。大多数法院审理特定地理区域内发生的案件，而有些法院则审理涉及特定主题的案件，不受地理位置的限制，例如美国税务法院。

III. 三、THE SUPREME COURT 最高法院

A. OVERVIEW

A. 概述

1. The Supreme Court is the country' s highest court.
1. 最高法院是该国的最高法院。
2. The number of judges, called "justices," on the Court is currently nine. This number is set by Congress according to the Constitution and may be changed. It has been set at nine since 1869.
2. 最高法院目前有九名法官，称为“大法官”。这一数字由国会根据宪法规定设定，可以更改。自 1869 年以来，大法官人数一直维持在九人。
3. The Supreme Court has original jurisdiction in two specific situations (although it rarely conducts trials):
3. 最高法院在两种特定情况下拥有初审管辖权（尽管它很少进行审判）：
 - a. cases involving ambassadors or federal officials
a. 涉及大使或联邦官员的案件
 - b. certain cases to which a state is a party
b. 某些国家作为一方当事人的案件
4. Most cases reach the Supreme Court through its appellate jurisdiction. The Court hears cases from the federal appellate courts and state supreme courts in cases involving federal law or the Constitution (a federal question). A case that does not involve federal law or the Constitution may not be appealed to the Supreme Court.
4. 大多数案件都是通过上诉管辖权最终到达最高法院的。最高法院审理来自联邦上诉法院和州最高法院的案件，这些案件涉及联邦法律或宪法（即联邦问题）。不涉及联邦法律或宪法的案件不得上诉至最高法院。

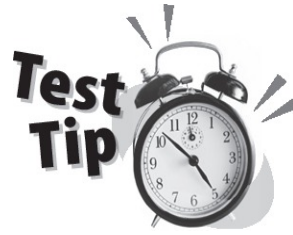
B. PROCEDURES

B. 程序

1. The Supreme Court is not required to hear all of the cases that are appealed to it.
1. 最高法院没有义务审理所有上诉到它的案件。

- a. More than 7,000 cases are appealed to the Court each year; it issues full opinions in fewer than 100.
 - a. 每年有超过 7,000 起案件上诉至法院；但法院仅对不到 100 起案件作出完整判决。
 - b. The justices decide which cases to accept according to the rule of four. That is, four of the nine justices must vote to take the case.
 - b. 大法官们根据“四人规则”决定受理哪些案件。也就是说，九名大法官中必须有四人投票赞成受理该案件。
 - c. In theory, the Court accepts only the most important cases, those involving pressing questions of national importance. These may involve any area of law. Cases frequently involve civil liberties, but most decisions involve other issues, such as business or regulatory questions.
 - c. 理论上，法院只受理最重要的案件，即涉及国家重大问题的案件。这些案件可能涉及任何法律领域。案件通常涉及公民自由，但大多数判决涉及其他问题，例如商业或监管问题。
 - d. The Court will often accept cases involving an issue that has been considered by different federal courts of appeals and in which those circuit courts have reached different conclusions.
 - d. 法院经常会受理涉及同一问题的案件，即使该问题已被不同的联邦上诉法院审理过，而这些巡回法院也得出了不同的结论。
2. In order to bring suit (file a case) in a court, a party must have standing. *Standing* is a legal doctrine requiring that a party to a case must have a significant personal stake in its outcome, not a mere interest as a member of the public.
 2. 提起诉讼（立案）的当事人必须具备诉讼资格。诉讼资格是一项法律原则，要求案件当事人必须在案件结果中具有重大的个人利害关系，而不仅仅是作为公众成员的关注。
3. When the Court decides to take a case, it issues a *writ of certiorari* (Latin for “to be informed of”), a legal order to the lower court to provide the case records for review. This is commonly referred to as “granting cert.” (much easier to pronounce!)
 3. 当最高法院决定受理案件时，它会签发调卷令（拉丁语意为“被告知”），这是一份法律命令，要求下级法院提供案件记录以供审查。这通常被称为“准予调卷令”（发音简单多了！）。
4. The case is then added to the Court’s docket, a calendar of upcoming cases to be heard.
 4. 然后，该案件将被添加到法院的案件清单中，该清单列出了即将审理的案件。
5. Parties submit briefs (summaries of facts and legal arguments) to the Court and are typically allowed thirty minutes of oral argument on the day their case is heard. During oral argument, attorneys make statements and answer questions from the nine assembled justices. Justices can sometimes be aggressive in asking questions, and often signal their opinion of a case by the questions they ask.
 5. 各方当事人向法院提交诉讼摘要（事实和法律论据概要），通常可在开庭当日进行三十分钟的口头辩论。在口头辩论中，律师陈述案情并回答九位大法官的提问。大法官有时会咄咄逼人地提问，并常常通过提问来表明他们对案件的看法。

6. *Amicus curiae* (Latin for “friend of the court”) briefs are advisory briefs submitted to the Court by individuals or groups that are not parties to the case, but who can provide expertise or insight on key issues to assist the Court in reaching a decision.
6. 法庭之友（拉丁语为“法庭之友”）简报是由并非案件当事人的个人或团体向法院提交的咨询简报，这些个人或团体可以就关键问题提供专业知识或见解，以帮助法院作出决定。



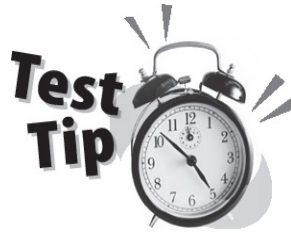
***Amicus curiae* briefs (often shortened to “amicus briefs”) are frequently filed by interest groups and are one of the ways that these groups attempt to influence public policy. For example, in a Second Amendment case involving restrictions on gun purchases, amicus briefs might be filed by the National Rifle Association (NRA) and Everytown for Gun Safety. Numerous amicus briefs may be filed in important cases.**

法庭之友意见陈述书（通常简称“法庭之友意见陈述书”）通常由利益集团提交，是这些集团试图影响公共政策的一种方式。例如，在涉及枪支购买限制的第二修正案案件中，全国步枪协会（NRA）和“每个城镇都安全”（Everytown for Gun Safety）组织都可能提交法庭之友意见陈述书。在重要案件中，可能会提交大量的法庭之友意见陈述书。

7. Following oral arguments, the justices meet, discuss, and vote on the case. The chief justice, or the senior justice in the majority, assigns one of the justices to write the majority opinion, the document announcing the Court’s decision and detailing the legal reasoning behind its conclusions.
7. 口头辩论结束后，大法官们会面、讨论并对案件进行投票表决。首席大法官，即多数派中的资深大法官，会指派一位大法官撰写多数意见，这份文件宣布法院的裁决并详细阐述其结论背后的法律推理。
8. A justice who disagrees with the majority may write a dissenting opinion, in which he or she argues that the reasoning of the majority is in error and sets out an alternative argument.
8. 不同意多数意见的法官可以撰写反对意见，在反对意见中，他或她认为多数意见的理由是错误的，并提出替代论点。
9. A justice who agrees with the outcome of the majority opinion, but who arrives at this conclusion by following a different line of legal reasoning, may write a concurring opinion to clarify what he or she believes the correct analysis to be.
9. 同意多数意见结果，但通过不同的法律推理得出此结论的法官，可以撰写一份赞同意见，以阐明他或她认为正确的分析是什么。
10. Given the ideological variation of the Court, one might expect most decisions to produce split opinions. In fact, the opposite is true. Although it varies by term, it is typical for a majority of decisions to be unanimous. Reasons for this may be that many cases do not center on politically divisive issues, but on technical legal problems, and the fact that the law is generally stable and precedent is often fairly

clear.

10. 鉴于最高法院的意识形态分歧，人们或许会预期大多数判决会出现意见分歧。但事实上，情况恰恰相反。尽管每届最高法院的判决情况有所不同，但大多数判决都是一致的。其原因可能是，许多案件并非围绕政治争议问题展开，而是围绕技术性的法律问题展开，而且法律本身通常较为稳定，判例也往往相当明确。



Although Supreme Court decisions may include multiple opinions, only the majority opinion is considered precedent and must be followed in subsequent cases. Concurring and dissenting opinions may be helpful in understanding the complex issues involved in a case and the arguments for the losing side, but they are not considered precedent. Dissents may also be useful in overturning precedent if it is revisited in a future case.

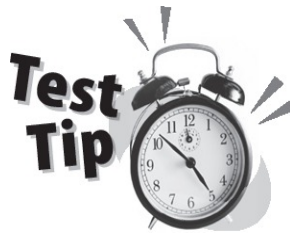
尽管最高法院的判决可能包含多份意见书，但只有多数意见才被视为先例，并在后续案件中必须遵循。赞同意见和反对意见有助于理解案件中涉及的复杂问题以及败诉方的论点，但它们不被视为先例。如果未来案件再次涉及同一先例，反对意见也可能有助于推翻该先例。

IV. 四、 JUDICIAL DECISION-MAKING 司法决策

A. HOW COURTS MAKE LAW

A. 法院如何制定法律

1. Appellate decisions, including Supreme Court decisions, are important because they carry the weight of law. Lower courts must follow all appellate court decisions within their jurisdiction in future cases. Because the Supreme Court is the highest court, all court decisions, state and federal, must conform to Supreme Court precedent.
1. 上诉法院的判决，包括最高法院的判决，至关重要，因为它们具有法律效力。下级法院在审理其管辖范围内的案件时，必须遵循所有上诉法院的判决。由于最高法院是最高级别的法院，所有法院的判决，无论是州级还是联邦级，都必须符合最高法院的判例。
 - a. Decisions made by appellate courts are called *precedents*. A precedent is a legal decision that must be applied in future cases involving substantially similar facts and law.
 - a. 上诉法院作出的判决被称为先例。先例是指在未来涉及实质上相似事实和法律的案件中必须适用的法律判决。
 - b. *Stare decisis* (Latin for “let the decision stand”) is the legal doctrine requiring courts to follow precedents in subsequent cases.
 - b. 遵循先例（拉丁语为“让判决维持原判”）是一项法律原则，要求法院在后续案件中遵循先例。
 - c. Lower (inferior) courts must follow the precedent from higher courts.
 - c. 下级法院必须遵循上级法院的判例。



Be sure you know the difference between common law and statutory law. Common law, also called case law, refers to a law that is created by judicial decision, called precedent. For example, in the case of Baker v. Carr (1962) the Supreme Court's ruling led to the common law requirement that legislative districts must contain roughly equal populations. Statutory law refers to laws that are passed by legislatures, such as Congress. Statutes are laws enacted by legislatures. For example, the Voting Rights Act of 1965 outlawed literacy tests for voting.

务必了解普通法和成文法的区别。普通法，也称判例法，是指由司法判决（即先例）确立的法律。例如，在贝克诉卡尔案（1962年）中，最高法院的裁决确立了普通法中关于立法选区人口必须大致相等的规定。成文法是指由立法机构（例如国会）通过的法律。成文法是由立法机构颁布的法律。例如，1965年的《投票权法案》禁止以文化水平测试作为投票的必要条件。

B. FACTORS IN JUDICIAL DECISION-MAKING

B. 司法决策中的因素

1. The Justices

1. 大法官们

- a. There are no constitutional requirements for qualifications of Supreme Court justices, although all have had legal training.
- a. 虽然最高法院法官都接受过法律培训，但宪法对最高法院法官的资格没有规定。
- b. Federal justices hold life tenure and may only be removed by impeachment proceedings.
- b. 联邦法官终身任职，只能通过弹劾程序被免职。

2. Judicial Appointments

2. 司法任命

- a. Supreme Court justices are appointed by the president and confirmed by the Senate (by majority vote).
- a. 最高法院大法官由总统任命，并由参议院（以多数票）确认。
- b. Supreme Court vacancies give presidents opportunities to install powerful policymakers who will serve life terms. Presidents, therefore, appoint justices who share their political ideologies. Whether an appointee is more moderate or extreme in his or her views is related to the composition of the Senate. If the president's party holds a majority in the Senate, he or she has more latitude in selecting an appointee who is more ideologically pronounced. If the opposing party controls the Senate, appointees are likely to be more moderate in order to be acceptable to

the opposition.

- b. 最高法院的空缺使总统有机会任命终身任职的强力政策制定者。因此，总统通常会任命与自己政治理念相符的大法官。被任命者的观点是温和还是极端，与参议院的组成密切相关。如果总统所在的政党在参议院占据多数席位，那么总统在选择意识形态更为鲜明的被任命者时就拥有更大的自由度。如果参议院由反对党控制，那么为了获得反对党的认可，被任命者则更有可能采取更为温和的立场。

3. How Judges Decide Cases

3. 法官如何判决案件

- a. The interpretation of federal law and the Constitution is complex. The language of statutes (laws passed by Congress) is often unclear when applied to situations that arise in the real world. The Constitution is even more vague, frequently by design. It was written in a different era, and the Framers left many aspects of government to be defined by future leaders. Today, much of what we understand the Constitution to mean is the product of judicial decisions, and not the language of the document itself.
- a. 联邦法律和宪法的解释十分复杂。成文法（国会通过的法律）的语言在应用于现实世界的情况时往往含糊不清。宪法则更为模糊，而且通常是有意为之。它写于不同的时代，制宪者将政府的许多方面留给了后世的领导人来定义。如今，我们对宪法含义的理解很大程度上源于司法判决，而非宪法文本本身的措辞。
- b. Justices, with the assistance of their law clerks, analyze the facts and arguments contained in the parties' briefs, their oral arguments, and amicus curiae briefs.
- b. 法官们在法律助理的协助下，分析双方当事人提交的诉讼摘要、口头辩论和法庭之友意见书中所载的事实和论点。
- c. Justices rely on precedent.
- c. 法官们依据先例。
- d. As noted, justices come to the bench with political philosophies that are reflected in their decisions. Justices may be more liberal or conservative, and this is frequently evident in their opinions.
- d. 如前所述，法官们带着各自的政治理念走上法庭，这些理念会体现在他们的判决中。法官们可能更倾向于自由主义或保守主义，这一点通常会在他们的判决意见中有所体现。

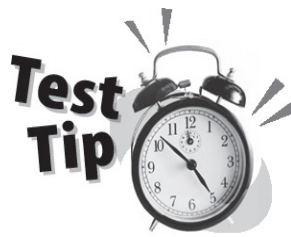
4. Judicial Activism and Judicial Restraint

4. 司法能动主义与司法克制

- a. Some justices may adhere to the philosophy of judicial restraint. This is the idea that the judicial branch should defer to the judgment of the elected branches of government when possible, and should use the power of judicial review to invalidate laws or executive actions only when absolutely necessary.
- a. 一些法官可能秉持司法克制的理念。这种理念认为，司法部门应尽可能尊重民选政府部门的判断，只有在绝对必要时才应行使司法审查权来宣布法律或行政行为无效。
- b. Alternatively, a justice may practice judicial activism, a philosophy that recognizes that the legislative and executive branches may not always act fairly precisely because they are elected. This philosophy holds that the judiciary should freely use the power of judicial review to protect the rights and liberties of individuals and

minorities.

- b. 另一种选择是，法官可以奉行司法能动主义。这种理念认为，立法和行政部门并非总能公正行事，仅仅因为他们是民选官员。该理念主张，司法机关应自由运用司法审查权，以保护个人和少数群体的权利和自由。
- c. To some extent, the terms *judicial activism* and *judicial restraint* may be overly simplistic. The practice of interpreting and applying the Constitution and federal laws is complicated, and decisions will always involve some degree of innovation, or they would not be necessary. Furthermore, a judge's view of an issue may determine whether he or she takes a more restrained or more activist view of a case.
- c. 在某种程度上，“司法能动主义”和“司法克制”这两个术语可能过于简单化。解释和适用宪法及联邦法律的实践十分复杂，任何判决都必然包含一定程度的创新，否则判决也就没有必要存在。此外，法官对某一问题的看法可能决定其在案件中采取更为克制还是更为积极的立场。



Don't confuse judicial restraint and judicial activism with political conservatism and liberalism. The AP® exam will require you to understand the terms liberal and conservative, as well as judicial restraint and judicial activism. Students often mistakenly believe that these terms are correlated, with liberal judges being more "activist," and conservative judges being more "restrained." This is not the case. Judges may be politically liberal but practice judicial restraint, believing that judicial review should be sparingly used and that courts should defer to the legislature and the executive. Judges may, likewise, be politically conservative but activist, believing in the broad use of judicial power to advance their political beliefs.

不要将司法克制和司法能动主义与政治上的保守主义和自由主义混淆。AP®考试要求你理解自由主义和保守主义，以及司法克制和司法能动主义的概念。学生常常误以为这些概念之间存在关联，认为自由派法官更“积极”，而保守派法官更“克制”。事实并非如此。法官可能政治立场自由，但奉行司法克制，认为司法审查应谨慎使用，法院应尊重立法机关和行政机关的权力。同样，法官也可能政治立场保守，但积极行使司法权力，以推进其政治理念。

5. Strict vs. Loose Construction

5. 严格结构与宽松结构

- a. A strict constructionist believes that the federal government may only act in ways that the Constitution specifically says it can. This involves taking a close or narrow interpretation of the Constitution and is related to the idea of judicial restraint.
- a. 严格解释主义者认为，联邦政府只能按照宪法明确规定的方式行事。这涉及到对宪法进行严格或狭义的解释，并且与司法克制的理念密切相关。
- b. A loose constructionist believes the federal government may take actions not specified in the Constitution as long as they are not directly forbidden. This involves taking a broad interpretation of the Constitution to adapt to a modern world and is

related to the idea of judicial activism.

- b. 宽松解释主义者认为，只要宪法没有直接禁止，联邦政府就可以采取宪法中未明确规定的行动。这涉及对宪法进行宽泛解释以适应现代社会，并且与司法能动主义的理念相关。

6. The Court and Public Opinion

6. 法院与公众舆论

- a. Justices of the Supreme Court are appointed for life and therefore lack the accountability to the public faced by legislators and officials in the executive branch.
 - a. 最高法院法官终身任职，因此不像立法者和行政部门官员那样需要对公众负责。
- b. The justices meet and make their decisions in secret, not in public like Congress, whose proceedings are open to public observation.
 - b. 大法官们秘密开会并做出决定，不像国会那样公开进行，国会的程序是向公众开放的。
- c. For these reasons, the Court has often been criticized for overreaching—using its power in ways that the Framers did not intend by contradicting the will of the people’s elected representatives.
 - c. 由于这些原因，最高法院经常因滥用权力而受到批评——它以制宪者未曾设想的方式行使权力，违背了人民选举代表的意愿。
- d. Although the Court is insulated from public opinion in that justices are not elected, public opinion is a factor in how the Court decides high-profile cases. If the Court made decisions that were exceedingly counter-majoritarian, its prestige would be harmed. Its decisions would be viewed as lacking legitimacy, possibly resulting in executive or congressional action to limit the Court’s power. The Court, therefore, tends to limit the scope of important decisions and avoid extreme holdings.
 - d. 虽然最高法院法官并非民选产生，因此不受公众舆论的影响，但公众舆论仍是影响最高法院裁决重大案件的重要因素。如果最高法院的裁决与多数派意见严重相悖，其声誉将受到损害，其裁决将被视为缺乏合法性，并可能导致行政部门或国会采取行动限制最高法院的权力。因此，最高法院倾向于限制重要裁决的范围，并避免做出极端判决。

7. Overturning Precedent

7. 推翻先例

- a. The Supreme Court may reverse itself, or overturn its own precedent. This is rare, but the Court has overturned precedent when it felt a previous decision was wrongly decided or circumstances have changed to make a previous result unsound under modern conditions. The best example of this is *Brown v. Board of Education of Topeka* (1954). In *Plessy v. Ferguson* (1896), the Court ruled that separate facilities for whites and African Americans were constitutional, but later reversed itself in *Brown*, ruling that segregation violated the Equal Protection Clause of the Fourteenth Amendment.
 - a. 最高法院可以推翻自己的判决，即推翻其先前的先例。这种情况虽然罕见，但当最高法院认为先前的判决有误，或者情况发生变化导致先前的判决在现代条件下不再合理时，它确实会推翻先例。布朗诉托皮卡教育委员会案（1954年）就是最好的例证。在普莱西诉弗格森案（1896年）中，最高法院裁定为白人和非裔美国人提供隔离设施符合宪法，但后来在布朗案中推翻了这一裁决，认定种族隔离违反了第十四修正案的平等保护条款。

- b. The Court may overturn precedent. It most often does so under one of two circumstances (or a combination of the two): either the ideological composition of the Court has changed, or the culture of the nation has changed. An example of the latter would be the Supreme Court decision granting same-sex marriage.
- b. 法院可以推翻先例。这种情况通常在以下两种情况下发生（或两者兼而有之）：要么是法院的意识形态构成发生了变化，要么是国家文化发生了变化。最高法院批准同性婚姻的裁决就是后一种情况的例证。

V. 五、 THE COURT: CHECKS AND BALANCES

法院：权力制衡

A. JUDICIAL REVIEW

A. 司法审查

1. The Court's primary check over the other two branches is judicial review.
1. 法院对其他两个部门的主要制衡是司法审查。
2. The Court also exerts some control over the other branches through the interpretation of statutes and regulations.
2. 法院还可以通过解释法规和规章来对其他部门施加一些控制。

B. CHECKS ON THE COURT

B. 对法院的检查

1. The executive branch has several important checks over the judicial branch, but the president's most significant check over the courts is the appointment of federal judges (subject to Senate confirmation). He or she may also grant pardons, commutations, and reprieves, and may choose to enforce case law rulings less aggressively.
1. 行政部门对司法部门有若干重要的制衡机制，但总统对法院最重要的制衡手段是任命联邦法官（需经参议院确认）。总统还可以赦免、减刑和暂缓执行，并可选择以较为温和的方式执行判例法。
2. Congress holds several important checks over the courts, including approval of judicial appointments, impeachment of judges, and passage of basic legislation.
2. 国会对法院拥有几项重要的制衡权力，包括批准司法任命、弹劾法官和通过基本立法。
3. Judicial implementation is the process by which judicial decisions are put into practice.
3. 司法执行是指将司法判决付诸实践的过程。
 - a. The Court relies on the legislature for funding of its directives and on the executive for enforcement.
 - a. 法院依靠立法机关提供资金来执行其指令，依靠行政机关来执行。

b. Although it is generally accepted that the Court' s decisions require compliance by the parties involved, several presidents have declined to enforce the Court' s decisions.

b. 虽然人们普遍认为法院的裁决要求相关各方遵守，但一些总统拒绝执行法院的裁决。

c. President Andrew Jackson, for example, refused to enforce the Court' s decision in *Worcester v. Georgia* (1832), upholding certain rights of Native American tribes to sovereignty over their own lands. Lincoln also ignored a Supreme Court decision invalidating his suspension of habeas corpus rights.

例如，安德鲁·杰克逊总统拒绝执行最高法院在伍斯特诉佐治亚州案（1832 年）中的判决，该判决维护了美洲原住民部落对其土地的某些主权权利。林肯也无视了最高法院一项裁定其暂停人身保护令无效的判决。

d. Overall, however, presidents have tended to use their power to enforce decisions, as when President Dwight Eisenhower used the military in 1957 to implement racial integration of schools in Little Rock, Arkansas.

d. 但总的来说，总统们倾向于利用他们的权力来强制执行决定，例如 1957 年，德怀特·艾森豪威尔总统动用军队在阿肯色州小石城实施学校种族融合。

Checks on the Courts 对法院的监督

Congressional Checks on the Court 国会对法院的制衡	Executive Checks on the Courts 行政部门对法院的制衡
<ul style="list-style-type: none"> – approval of judicial appointments by Senate majority vote 参议院多数票批准司法任命 – refusing or limiting funding for implementation of judicial decisions 拒绝或限制为执行司法判决提供资金 – rewrite or revise legislation found unconstitutional ——重写或修订被认定违宪的法律 – pass new laws to limit impact of judicial decisions ——通过新法律限制司法判决的影响 – change the (appellate) jurisdiction of the Supreme Court (<i>jurisdiction stripping</i>) – 改变最高法院的（上诉）管辖权（剥夺管辖权） – change number of justices on Supreme Court 改变最高法院大法官人数 – create and define jurisdiction of lower federal courts – 建立并界定下级联邦法院的管辖权 – impeachment (House of Representatives majority vote) and conviction and removal from office (Senate two-thirds vote) of federal judges – 弹劾（众议院多数票通过）以及对联邦法官的定罪和免职（参议院三分之二多数票通过） – introduce constitutional amendments to change or clarify the Constitution concerning Court decisions with a two-thirds vote of each chamber ——以宪法修正案的形式提出，旨在修改或澄清宪法中有关法院判决的规定，须经参众两院各三分之二多数票通过。 	<ul style="list-style-type: none"> – nominates Supreme Court justices and appoints all lower federal judges – 提名最高法院大法官并任命所有下级联邦法官 – refusing to enforce or limiting enforcement of judicial decisions 拒绝执行或限制执行司法判决 – rewrite or revise executive orders found unconstitutional ——重写或修改被认定违宪的行政命令 – grants pardons, commutations, and reprieves – 授予赦免、减刑和缓刑