



OHIO CENTER  
FOR LAW-RELATED  
EDUCATION

*Partnering with Teachers to  
Bring Citizenship to Life*

# **Four Activities: Thurgood Marshall and the Nomination and Confirmation of Federal Judges**

Created for the Supreme Court of Ohio's Forum  
on the Law Lecture Series

*Thurgood Marshall and the Supreme Court  
Nomination That Changed America  
by Wil Haygood*

Thomas J. Moyer Ohio Judicial Center  
October 20, 2015

## **Introduction**

These activities are written to give teachers activities related to Thurgood Marshall, the federal appointment of judges, and the checks and balances of the branches of government. Some activities are general in design to allow for teacher adaptation; some are specific to Thurgood Marshall and his legacy.

## **Alignment to the Ohio Learning Standards for Social Studies**

### **High School Government 5**

As the supreme law of the land, the U.S. Constitution incorporates basic principles that help define the government of the United States as a federal republic including its structure, powers and relationship with the governed.

### **High School Government 15**

The political process creates a dynamic interaction among the three branches of government in addressing current issues.

### **High School American History 1**

Historical events provide opportunities to examine alternative courses of action.

### **High School American History 28**

Following World War II, the United States experienced a struggle for racial and gender equality and the extension of civil rights.

### **Grade 8 Social Studies 1**

Primary and secondary sources are used to examine events from multiple perspectives and to present and defend a position.

### **Grade 8 Social Studies 20**

The U.S. Constitution established a federal system of government, a representative democracy and a framework with separation of powers and checks and balances.

### **Grade 8 Social Studies 21**

The U.S. Constitution protects citizens' rights by limiting the powers of government.

## **Alignment to the Ohio Learning Standards for English Language Arts**

### **Reading Standard 6-12.1**

Read closely to determine what the text says explicitly and to make logical inferences from it; cite specific textual evidence when writing or speaking to support conclusions drawn from the text.

### **Reading Standard 6-12.3**

Analyze how and why individuals, events, and ideas develop and interact over the course of the text.

### **Reading Standard 6-12.4**

Interpret words and phrases as they are used in a text, including determining technical, connotative, and figurative meanings, and analyze how specific word choices shape meaning and tone.

### **Reading Standard 6-12.5**

Analyze the structure of texts, including how specific sentences, paragraphs, and larger portions of the text (e.g., a section, chapter, scene, or stanza) relate to each other and the whole

### **Reading Standard 6-12.6**

Assess how point of view or purpose shapes the content and style of a text.

### **Reading Standard 6-12.9**

Analyze how two or more texts address similar themes or topics in order to build knowledge or to compare the approaches the authors take.

### **Writing Standard 6-12.1**

Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.

### **Writing Standard 6-12.2**

Write informative/explanatory texts to examine and convey complex ideas and information clearly and accurately through the effective selection, organization, and analysis of content.

### **Writing Standard 6-12.7**

Conduct short as well as more sustained research projects based on focused questions, demonstrating understanding of the subject under investigation.

### **Writing Standard 6-12.9**

Draw evidence from literary or informational texts to support analysis, reflection, and research.

## Activity 1 – Get to Know Thurgood Marshall

1. The students will conduct research on Thurgood Marshall and the culture of the time period of his nomination/confirmation.
2. Have students research Thurgood Marshall’s background: his education, his experiences.
  - a. Possible sources:
    - i. Haygood, Wil. *Showdown: Thurgood Marshall and the Supreme Court Nomination that Changed America*. New York: Alfred A. Knopf, 2015. Print.
    - ii. Patrick, John J. "Marshall, Thurgood." *The Supreme Court of the United States: A Student Companion*. Oxford: Oxford UP, 2001. 209-10. Print.
      1. See enclosed copy
    - iii. "Profile and Timeline of Thurgood Marshall." *African American Heritage Sourcebook*. <[www.iasb.uscourts.gov/v2\\_community/section2.pdf](http://www.iasb.uscourts.gov/v2_community/section2.pdf)>
3. Students will use the template provided to create a resume for Thurgood Marshall that he could use if he was “applying” for the job of justice of the U.S. Supreme Court.
  - a. Refer to worksheet for template and sample answer sheet. Answers will vary.
  - b. Possible discussion questions:
    - i. Why did you include/exclude certain accomplishments?
    - ii. What does this resume say about Justice Marshall’s character?
    - iii. Does he seem qualified for the job? Why or why not?
4. Pick one or more topics for the students to research and write an essay:
  - a. Thurgood Marshall’s nomination to the U.S. Supreme Court was a product of the civil rights movement. Do you agree or disagree? Why?
  - b. What were the reactions, positively and negatively, to the nomination of an African American to the U.S. Supreme Court? What was the tone of the confirmation hearings?
  - c. Compare and contrast Thurgood Marshall’s appointment as the first African American justice to the U.S. Supreme Court to Sandra Day O’Connor’s appointment as the first female justice on the U.S. Supreme Court and/or Sonia Sotomayor’s appointment as the first Hispanic justice to the U.S. Supreme Court. Are there other “firsts” yet to be appointed to the Supreme Court and why would that be historic?
  - d. Thurgood Marshall argued the case *Brown v. Board of Education* before the Court on behalf of the petitioner. Explain how the result of the case shaped American culture in years since the ruling.

## Activity 2 – Understanding the Constitution & Primary Source Document Analysis

1. Distribute the hand out titled “Excerpts from Articles II and III of the U.S. Constitution.” Have students silently read the sections.
2. After the students read the above-referenced sections of the Constitution, have the students answer the following questions. At the preference of the teacher, this can be done individually, in groups, or as a class discussion.
  - a. What was the purpose of writing these sections of the Constitution? What was the author hoping to achieve?
  - b. What does the phrase “with the advice and consent of the Senate” mean?
  - c. What does the phrase “shall hold their offices during good behavior” mean?
  - d. According to the Constitution, are there any formal requirements to be appointed as a federal judge?
  - e. What was the purpose of requiring the president to get the support and consent of the Senate for federal judge appointments?
  - f. What is the impact of giving a federal judge a life term?
3. Have the students read President Lyndon Johnson’s letter to the Senate nominating Thurgood Marshall to the U.S. Supreme Court.
  - a. Letter can be found at [www.archives.gov/historical-docs/doc-content/images/thurgood-marshall-sc-nomination.pdf](http://www.archives.gov/historical-docs/doc-content/images/thurgood-marshall-sc-nomination.pdf)
  - b. Discussion questions:
    - i. To whom is the letter addressed?
    - ii. What was the purpose of this letter?
    - iii. Did President Johnson meet the constitutional requirement to nominate a person for the U.S. Supreme Court?
    - iv. What is your impression that such an important presidential action takes place with just one sentence?
    - v. The font for the beginning of the letter is different than the font for (most of) the body of the letter. Why do you think that is?
4. Assessment activities
  - a. Have the students write a paragraph answering:
    - i. Could the nomination letter be improved, knowing the confirmation process that will follow? If so, what?
    - ii. Explain the relationship between the nomination letter and the excerpts from the U.S. Constitution.

### Activity 3 – Checks and balances in the U.S. Government

1. On the board, write the term “Checks and Balances”. Ask students to use prior knowledge to define the term checks and balances in the context of American government and write that on a piece of paper. If students are unfamiliar with this term, have them make an educated guess to what this means as it relates to our system of government. Give students a few minutes to come up with this definition and write it down.
2. Working as a class, have the students brainstorm the definition of checks and balances. Write the different definitions and terms the class comes up with on the board. After about 5-10 minutes of class group brainstorming, help the class to get to a definition such as: “Checks and balances keep one branch of government from having more power than the others. It helps to separate and define the powers that each of the three branches of government have.”
3. Review the three branches of government using the graphic organizer to fill in the responsibilities of each branch of government and how they interact, check, and balance each other. Students can fill in their blank graphic organizer.
  - a. Draw special attention to the relationship between the executive branch and legislative branch when it comes to appointment/confirmation of federal judges.
4. Extension activity
  - a. Have students examine the role of the Courts when it comes to checks and balances. How does the judicial system check the legislative system?
  - b. Have students read the decision from *Grayned v. City of Rockford*, 408 U.S. 104 (1972), which Thurgood Marshall authored for the Supreme Court.
    - i. In this case, the appellant claimed he should not have been convicted for his participating in a demonstration that allegedly violated the city of Rockford’s anti-picketing and anti-noise ordinances because the ordinances were overbroad and should be struck down.
    - ii. How does this decision demonstrate one branch of government checking another branch? Draw attention to the fact it is a branch on the national level checking a different branch at the local level.

## Activity 4 – Confirmation Process for Federal Judges

1. While the Constitution doesn't describe a formal process to nominate and confirm a federal judge, in practice, there are many steps that are traditionally followed. The Senate has developed procedural rules to standardize the process. Although the U.S. Supreme Court nominees often receive more scrutiny than other judicial appointments, the process is largely the same.
2. Have students read the article "Appointment of Justices" from *The Supreme Court of the United States: A Student Companion* (see attached).
  - a. Patrick, John J. "Appointment of Justices." *The Supreme Court of the United States: A Student Companion*. Oxford: Oxford UP, 2001. 27-29. Print.
    - i. See enclosed copy.
3. Working on their own, students should take about five minutes to make a list of the way the nomination and confirmation process works in practice.
4. Then, working in pairs, students will compare their lists and combine them for a more comprehensive list. The teacher should lead discussion to ensure all the steps are listed.
  - a. The White House counsel (attorneys) will need to be involved
  - b. Meetings need to be held to interview possible candidates for nomination
  - c. The Senate works in committees before being brought before the whole chamber
  - d. The FBI needs to be involved for formal background checks.
5. After giving the students 5-10 minutes to combine their lists into one larger list, pass out a blank copy of the nomination process flow chart. As a class, have the students discuss their lists and create one master class list. Students should complete the chart as the class creates its master list.
6. Extension activity:
  - a. Read pages 365-379 of *My Beloved World* by Justice Sonia Sotomayor about her nomination and confirmation as a U.S. District Court judge. Have students compare and contrast her narrative with that described by John Patrick in "Appointment of Justices."

to meet changing times. And only through strict limits on excessive use of the government's powers could the Constitution endure as a guardian of individual rights. The special duty of the Supreme Court, according to Marshall, was to make the difficult judgments, based on the Constitution, about when to impose limits or to permit broad exercise of the federal government's powers.

In 1833, near the end of John Marshall's career, his associate on the Supreme Court, Justice Joseph Story, wrote a "Dedication to John Marshall" that included these words of high praise: "Your expositions of constitutional law . . . constitute a monument of fame far beyond the ordinary memorials of political or military glory. They are destined to enlighten, instruct and convince future generations; and can scarcely perish but with the memory of the Constitution itself." And so it has been, from Marshall's time until our own, that his judgments and commentaries on the Constitution have instructed and inspired Americans.

#### SEE ALSO

Cohens v. Virginia; Dartmouth College v. Woodward; Fletcher v. Peck; Judicial review; Marbury v. Madison; McCulloch v. Maryland

#### FURTHER READING

- Baker, Leonard. *John Marshall: A Life in Law*. New York: Macmillan, 1974.
- Hobson, Charles F. *The Great Chief Justice: John Marshall and the Rule of Law*. Lawrence: University Press of Kansas, 1996.
- Johnson, Herbert. *The Chief Justiceship of John Marshall, 1801-1835*. Columbia: University of South Carolina Press, 1998.
- Rudko, Frances H. *John Marshall, Statesman and Chief Justice*. Westport, Conn.: Greenwood Press, 1991.
- Smith, Jean E. *John Marshall: Definer of a Nation*. New York: Henry Holt, 1996.
- Stites, Francis N. *John Marshall: Defender of the Constitution*. Boston: Little, Brown, 1981.
- White, G. Edward. *The Marshall Court and Cultural Change*. New York: Oxford University Press, 1991.

## Marshall, Thurgood

ASSOCIATE JUSTICE,  
1967-91

- ☆ *Born: July 2, 1908, Baltimore, Md.*
- ☆ *Education: Lincoln University, B.A., 1930; Howard University Law School, LL.B., 1933*
- ☆ *Previous government service: judge, Second Circuit Court of Appeals, 1961-65; U.S. solicitor general, 1965-67*
- ☆ *Appointed by President Lyndon B. Johnson June 13, 1967; replaced Tom C. Clark, who retired*
- ☆ *Supreme Court term: confirmed by the Senate Aug. 30, 1967, by a 69-11 vote; retired Oct. 1, 1991*
- ☆ *Died: Jan. 24, 1993, Bethesda, Md.*



THURGOOD MARSHALL, the great-grandson of a slave, was the first African-American justice of the Supreme Court. He began his historic career in 1933, as a civil rights lawyer for the National Association for the Advancement of Colored People (NAACP). In 1940 Marshall became head of the NAACP Legal Defense Fund. In this position, he led the NAACP's legal fight against racial segregation and denial of individual rights of black people. Marshall successfully argued 29 out of 32 cases before the U.S. Supreme Court.

In 1954 Thurgood Marshall achieved his biggest victory for the NAACP in *Brown v. Board of Education*. In this landmark case, Marshall convinced the Supreme Court to decide that racial segregation in public schools was unconstitutional. This was the beginning of the eventual ending of state government laws that denied equal rights to black people.

In 1961 President John F. Kennedy appointed Marshall to the U.S. Court of Appeals for the Second Circuit. In 1965 President Lyndon B. Johnson selected Marshall to be solicitor general of the United States, the top lawyer for the U.S.



government in federal court cases. Marshall was the first African American to serve as the solicitor general and to argue cases for the government at the Supreme Court.

During his 24 years on the Court, Justice Marshall wrote many opinions on various issues pertaining to federal jurisdiction, antitrust laws, and civil rights. He wrote numerous dissenting opinions about equal protection of the laws, the rights of minorities, and capital punishment. He strongly opposed the death penalty, which in his opinion was a violation of the 8th Amendment prohibition of "cruel and unusual punishment." Throughout his long career in law, Thurgood Marshall was an outspoken advocate for the rights and opportunities of minorities, especially for African Americans and poor people.

During his final years on the Court, Justice Marshall often wrote strong dissents to call attention to his views about unmet needs for social justice. He opposed the conservative tendencies of the Court during the 1980s and was a staunch ally of Justice William Brennan in arguing for liberal positions. He remained on the Court only one term after Brennan retired, citing declining health as a major reason for his retirement. Marshall's death in 1993 brought an outpouring of praise for his remarkable career.

#### SEE ALSO

Brown v. Board of Education; Civil rights; National Association for the Advancement of Colored People (NAACP)

#### FURTHER READING

Aldred, Lisa. *Thurgood Marshall*. New York: Chelsea House, 1990.  
Rowan, Carl T. *Dream Makers, Dream Breakers: The World of Thurgood Marshall*. Boston: Little, Brown, 1993.  
Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936–1961*. New York: Oxford University Press, 1994.  
Tushnet, Mark V. *Making Constitutional Law: Thurgood Marshall and the*

*Supreme Court, 1961–1991*. New York: Oxford University Press, 1997.  
Williams, Juan. *Thurgood Marshall: American Revolutionary*. New York: Times Books, 2000.

## Martin v. Hunter's Lessee

☆ 1 Wheat. 304 (1816)

☆ Vote: 6–0

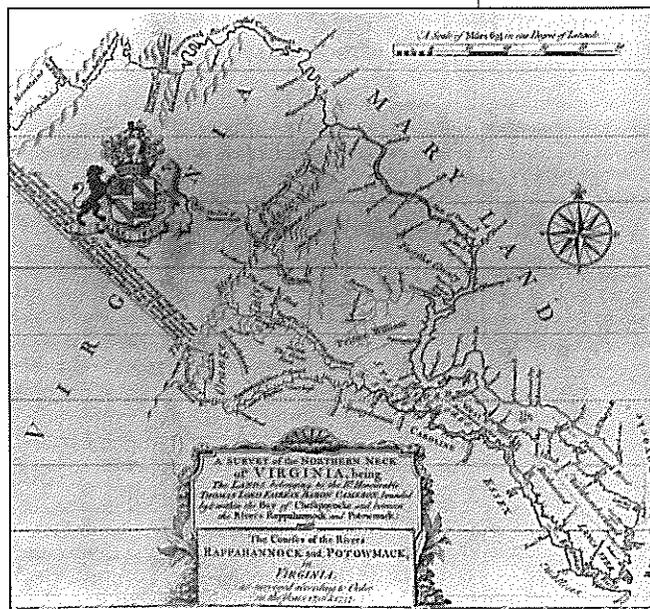
☆ For the Court: Story

☆ Not participating: Marshall



THOMAS, SIXTH LORD FAIRFAX, owned more than 5 million acres of valuable land in the northern area of western Virginia. In 1781 Lord Fairfax died and left his property to a nephew, Denny Martin, a British subject. However, during the War of Independence, Virginia had passed laws confiscating the property of Loyalists, such as Lord Fairfax, who supported Great Britain. The state sold the land to private owners, including David Hunter, who denied Denny Martin's claim to his uncle's property. Martin challenged Hunter's right to this property and filed a lawsuit against him.

*Lord Fairfax owned land in the northern neck of Virginia. When his nephew inherited the land, the state of Virginia tried to deny the claim but the Supreme Court decided that the inheritance was protected by a U.S. treaty with Great Britain.*



# Thurgood Marshall Resume

<b>Objective</b>	To become justice of the U.S. Supreme Court
<b>Education</b>	<i>Doctor of Jurisprudence</i> , Howard University, 1934 <i>Bachelor of Arts in Humanities</i> , Lincoln University, 1930
<b>Work History</b>	<i>Counsel for the NAACP</i> Baltimore & New York 1934-1959  <i>Judge, U.S. Court of Appeals for the Second Circuit</i> New York 1961-1965  <i>United States Solicitor General</i> Washington, DC 1965-1967
<b>Court Cases Argued</b>	Won 29 of 32 cases argued as a private attorney before the Supreme Court, including: <ul style="list-style-type: none"><li>• <i>Brown v Board of Education of Topeka</i> (1954)</li><li>• <i>Smith v Allwright</i> (1944)</li></ul> Won 14 of 19 cases argued before the Supreme Court as Solicitor General
<b>Accomplishments and Items of Merit</b>	Protected the rights of criminal suspects against the government Supporting abortion rights Staunch opposition of the death penalty
<b>References</b>	Langston Hughes, poet (college classmate) Cab Callaway, musician (college classmate)

# Thurgood Marshall Resume

<b>Objective</b>	To become justice of the U.S. Supreme Court
<b>Education</b>	
<b>Work History</b>	
<b>Court Cases Argued</b>	
<b>Accomplishments and Items of Merit</b>	
<b>References</b>	

# Excerpts from **Articles II & III of the U.S. Constitution**

## **Article II**

“[The President] shall have Power, by and with the Advice and Consent of the Senate, to...nominate, and by and with the Advice and Consent of the Senate, shall appoint...Judges of the supreme Court, and all other Officers of the United States...”

## **Article III**

“The 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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior.”

## Discussion Questions from the Excerpts from the U.S. Constitution

What was the purpose of writing these sections of the Constitution? What was the author hoping to achieve?

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What does the phrase “with the advice and consent of the Senate” mean?

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What does the phrase “shall hold their offices during good behavior” mean?

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According to the Constitution, are there formal requirements to be appointed as a federal judge?

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What was the purpose of requiring the president to get the support and consent of the Senate for federal judge appointments?

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What is the impact of giving federal judges a life term?

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*The White House,*

*June 13, 1967*

*To the*

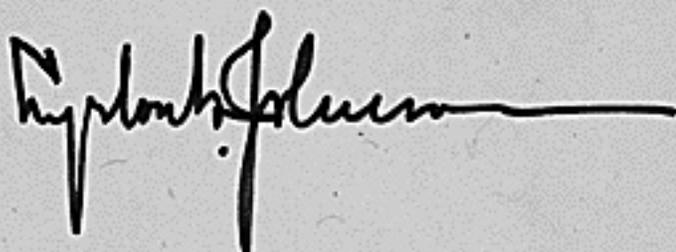
*Senate of the United States.*

*I nominate*

Thurgood Marshall, of New York,

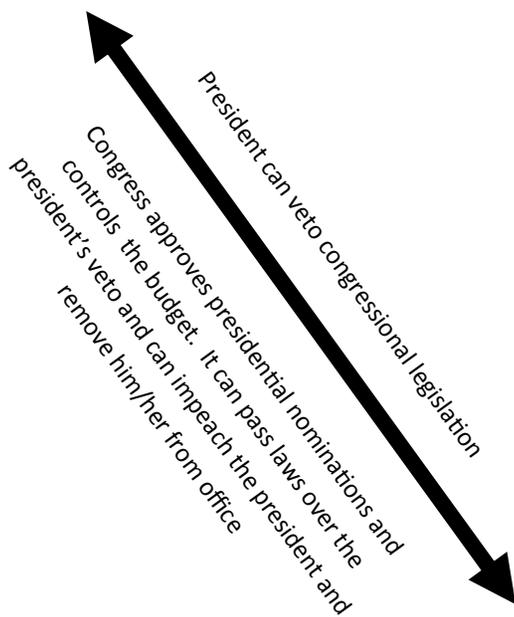
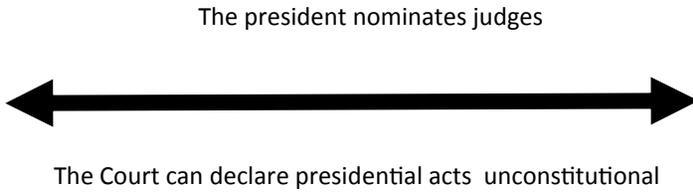
to be an Associate Justice of the Supreme Court of the

United States.

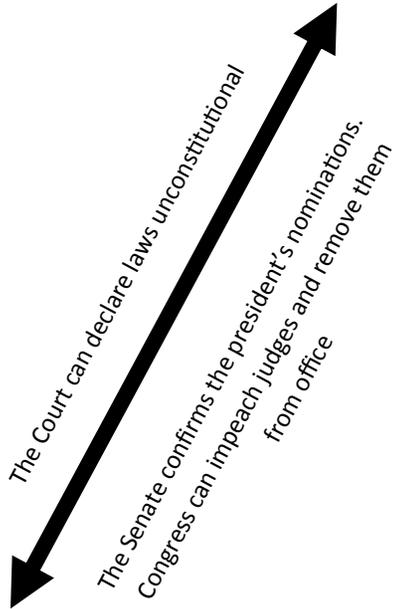
A handwritten signature in cursive script, reading "Lyndon B. Johnson", followed by a long horizontal flourish.

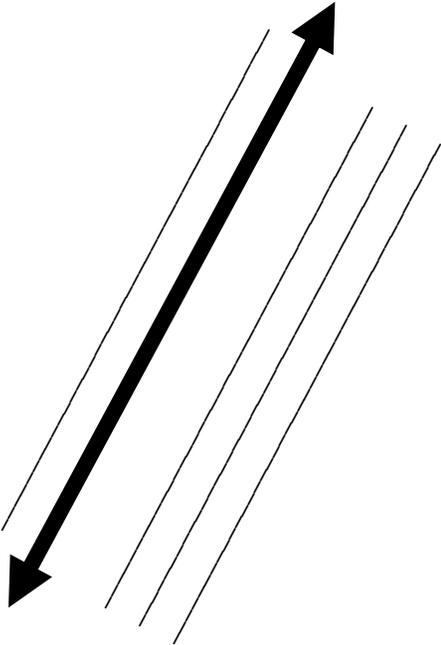
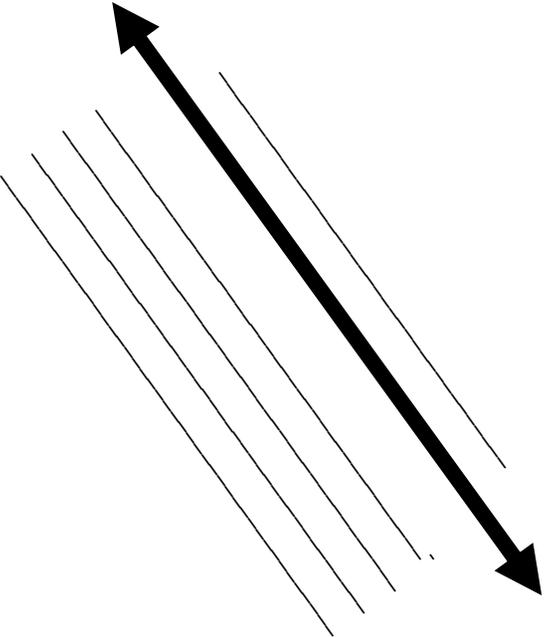
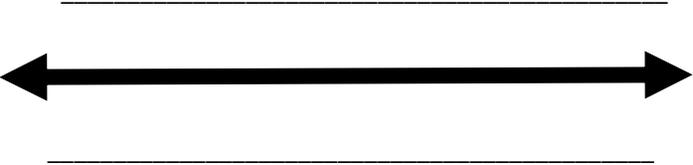
**Executive Branch**  
The President

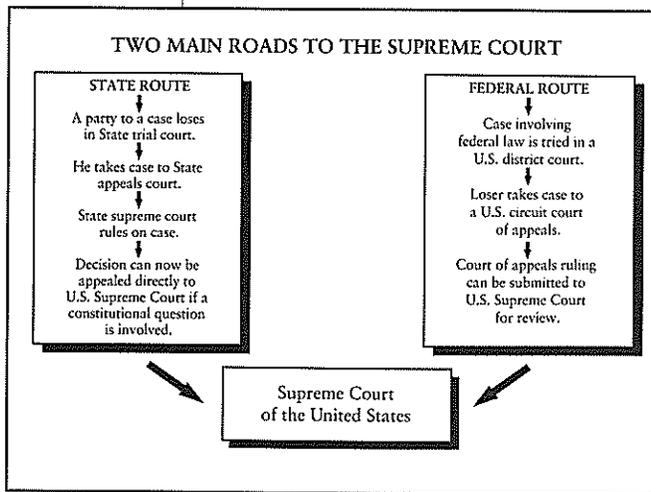
**Judicial Branch**  
The Courts



**Legislative Branch**  
The Congress







court's decision. The bases for an appeal are claims by the losing party that the lower court made an error or committed an injustice in reaching its decision. In most cases, the U.S. Supreme Court has discretion in deciding whether or not to accept the case for review. However, in some types of cases there is an automatic right of appeal to the U.S. Supreme Court. For example, decisions by the highest court of a state in cases involving federal constitutional issues are always open to appeal by the losing party to the U.S. Supreme Court. However, the Court may decide to let the decision of the lower court stand, without conducting a hearing into the case.

Cases reach the U.S. Supreme Court on appeal after either a lower federal court or a state court has made a decision on them. Decisions by the highest state court can be appealed directly to the U.S. Supreme Court if a constitutional question is involved. The losing party in a case generally has the right to appeal the case to a court of appellate jurisdiction. In the federal judicial system, the U.S. Supreme Court is the appellate court of last resort. It has the final decision, within the judicial system, on cases that come before it.

Courts of appellate jurisdiction give the losing party a new chance to win a

case. This extra chance will be granted if there were errors of legal procedures, interpretation, or evidence in the lower court. Further, cases of great constitutional or national significance are likely to be accepted for determination by the highest appellate court, the U.S. Supreme Court.

#### SEE ALSO

Circuit Courts of Appeals; Courts of Appeals

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## Appellant



A PARTY who appeals a lower court decision to a higher court, such as the U.S. Supreme Court, is an appellant.

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## Appellate jurisdiction

SEE Jurisdiction

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## Appellee



THE PARTY to an appeal whose position in the case has been upheld by a lower court decision is the appellee. The appellant requires the appellee to respond in the higher court that accepts the case on appeal.

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## Appointment of justices



SUPREME COURT justices are appointed by the President, with the advice and consent of the Senate, according to Article

2, Section 2, of the Constitution. Although the President alone has the constitutional power to appoint a justice, he seeks advice from various important people and groups. In this way, the President tries to nominate someone for the Court who will have broad support or acceptance. Presidents tend to rely upon advice from the attorney general and the Department of Justice and the White House staff.

The American Bar Association Standing Committee on Federal Judiciary, established in 1946, is generally influential in the selection of justices. This committee rates Supreme Court nominees as well qualified, not opposed, or not qualified.

Many interest groups also express views about the selection of justices. For example, the National Association for the Advancement of Colored People (NAACP) tries to influence selection of justices who will protect and support civil rights for African Americans and other minority groups. Likewise, the National Organization of Women (NOW) pushes for selection of justices who are sympathetic to women's rights.

The Senate Judiciary Committee conducts hearings to investigate the qualifications and merits of a proposed Supreme Court justice. Witnesses are called before the committee to provide information and opinions about the nominee. And the nominee also appears before the committee to answer questions about his or her qualifications to be a justice. Today, these hearings are often broadcast live to large audiences and reported daily in the mass media.

The Senate Judiciary Committee concludes its hearings with a vote to recom-

mend confirmation or rejection of the nomination by the full Senate. A nominee becomes a justice only after a favorable vote by

a majority of the U.S. Senate. Of the 148 nominations through 2000, 119 were approved, 13 rejected, and 16 withdrawn. When a President's party controls the Senate, more than 90 percent of the Supreme Court nominations are typically approved; when the opposition controls the Senate, the approval rate for justices drops to 50 percent.

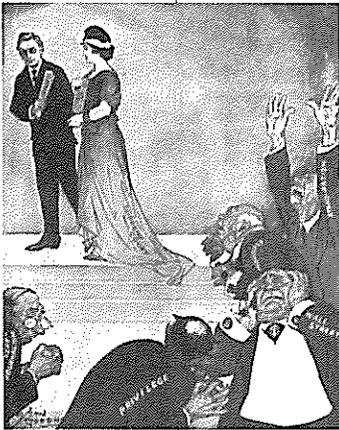
There are no legal requirements for appointment to the U.S. Supreme Court. However, only lawyers have been selected for the Court. And it is unlikely that a nonlawyer could win approval to become a justice. Most justices have been judges on lower courts before becoming members of the Supreme Court. Since 1937, for example, 20 of the 34 justices had prior experience as either a state court judge or as a federal judge. Some of the greatest justices, however, did not serve previously as judges. For example, John Marshall, Joseph Story, Louis Brandeis, Harlan Fiske Stone, and Earl Warren have been rated as great achievers on the Court, but none of them had prior experience as a judge.

Presidents make a strong effort to select justices who will reflect favorably upon them and their administration. Legal scholars have noted the following personal characteristics that are expected of a nominee to the Supreme Court: substantial legal training and knowledge of law, personal integrity and high ethical standards, a strong sense of fair play, high intelligence, capacity for clear and



*In June 1986 President Ronald Reagan announces his new Supreme Court appointments—Antonin Scalia (far left) as associate justice and William Rehnquist (third from left) as chief justice. The retiring chief justice, Warren Burger, stands next to Rehnquist.*

*This 1916 cartoon depicts "conservative" groups crying over the appointment of Louis Brandeis, who is shown walking away with a woman representing the Supreme Court.*



cogent written and oral expression, and sound physical and mental health.

Presidents tend to nominate justices whose political and legal views appear to be compatible with their own. They usually do not seek agreement on specific cases or examples. Rather, they tend to want a nominee who shares their general views about constitutional interpretation and the process of making legal judgments.

#### SEE ALSO

American Bar Association Standing Committee on Federal Judiciary; Rejection of Supreme Court nominees; Senate Judiciary Committee

#### FURTHER READING

Abraham, Henry J. *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Clinton*. Lanham, Md.: Rowman & Littlefield, 1999.

Maltese, John Anthony. *The Selling of Supreme Court Nominees*. Baltimore, Md.: Johns Hopkins University Press, 1998.

Watson, George, and John A. Stookey. *Shaping America: The Politics of Supreme Court Appointments*. New York: Harper-Collins, 1995.

Yalof, David Alistair. *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees*. Chicago: University of Chicago Press, 1999.

## Assembly, association, and petition, rights to



THE 1ST AMENDMENT to the U.S. Constitution guarantees “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The constitutional right of peaceful assembly means that people can gather in public to discuss their opinions about government or other concerns. This right to assemble also guarantees the right of association in groups, such as political parties, labor unions, and business organizations.

The right of petition means that individuals, acting alone or as part of a group, can freely send written criticisms or complaints to government officials. The right of petition also provides freedom to circulate documents for people to sign in order to demonstrate mass support for complaints against the government.

These fundamental freedoms of assembly and petition predate the U.S. Constitution, having their origins in the English legal heritage and the colonial governments of British North America. The English Bill of Rights of 1689 affirmed that “it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal.” Forty-eight years earlier, in 1641, Section 12 of the Massachusetts Body of Liberties guaranteed freedom of speech and petition at public meetings, so that “Every man . . . shall have liberty to . . . present any necessary motion, complaint, petition, Bill or information.”

From 1776 to 1783, the freedoms of assembly and petition were included in several of the original state constitutions, including the acclaimed Massachusetts Constitution of 1780, which greatly influenced the U.S. Constitution of 1787. By the 1780s, the twin freedoms of assembly and petition were recognized by Americans as rights of individuals that should be protected. Therefore, it would have been unusual if James Madison had not included them in his proposal to the first federal Congress, dated June 8, 1789, to add “the Great Rights of Mankind” to the Constitution.

In that address, Madison presciently said that “independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated

## Steps for Nominating Federal Judges

1	President selects potential candidates, usually with the advice from the White House Counsel.
2	President usually interviews or meets with the candidates for the Supreme Court in private. While the public is frequently aware of these meetings, the contents of the meetings are usually not disclosed. Occasionally, the name of a nominee is unofficially leaked to the press.
3	President submits the name of the nominee to the Senate .
4	In some cases, interest groups will run advertisements in favor or against a nominee. These public relations campaigns are aimed at convincing the public and the Senate to support or oppose the nominee.
5	FBI will complete extensive background check on the nominee. This will ensure that the nominee has paid taxes, not been convicted of a serious crime, is a person of good standing, etc. This report is available to the Senate and President.
6	Senate Judiciary Committee holds a committee hearing in which the committee members question the nominee and other witnesses (such as friends and previous co-workers) about the nominee's background and qualifications. These hearings are televised and segments are frequently shown on news programs. All Senators have access to transcripts and tapes of the hearings.
7	Senate Judiciary Committee, led by the chairperson, holds a vote on whether or not to recommend the nominee for confirmation.
8	Full Senate votes on whether or not to confirm the nominee. A simple majority is required. However, filibusters by the minority party can prevent a vote on a judicial nomination from coming to the floor. In recent years, with a closely divided Senate, this has become a more common tactic used by the minority. Since it takes 60 votes to cut off a filibuster and one party does not often have that many members, it can be a powerful tool used by the minority party to block a nomination. Such tactics are often criticized by the majority party.
9	If a majority of Senators vote to confirm the nominee, the nominee is confirmed and takes office.

This list is adapted from Supreme Court Summer Institute for Teachers, sponsored by the Supreme Court Historical Society and Street Law, Inc., accessed at [http://supremecourthistory.org/assets/schs\\_nominating-federal-judges.pdf](http://supremecourthistory.org/assets/schs_nominating-federal-judges.pdf)

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