**The Judicial Branch**

**[Adapted and expanded from**

**“The Judicial Branch” at Whitehouse.gov][[1]](#footnote-1)**

Where the executive and legislative branches are elected by the people, members of the judicial branch are appointed by the President and confirmed by the Senate.

Article III of the Constitution establishes the judicial branch and gives Congress significant discretion to determine the shape and structure of the federal judiciary. Even the number of Supreme Court Justices is left to Congress — at times there have been as few as six, while the current number (nine, with one Chief Justice and eight Associate Justices) has been in place since 1869. The Constitution also grants

Congress the power to establish courts inferior to the Supreme Court of the United States (SCOTUS), and to that end Congress has established the United States district courts, which try most federal cases, and 13 United States courts of appeals, which review appealed district court cases.

Federal judges can only be removed through impeachment by the House of

Representatives and conviction in the Senate. Judges and justices serve no fixed term and serve until their death, retirement, or conviction by the Senate.

Congress determines the jurisdiction of the federal courts. In some cases, however — such as a dispute between two or more U.S. states — the Constitution grants the Supreme Court original jurisdiction, which means that it can hear the case for the first time rather than wait for it go through the lower courts.

Federal courts are responsible for interpreting federal law, determining the constitutionality of laws, and applying it to individual cases. The courts, like Congress, can compel the production of evidence and testimony through the use of a subpoena. The inferior courts are constrained by the decisions of the Supreme Court — once the Supreme Court interprets a law, including the Constitution, inferior courts must apply the Supreme Court’s interpretation to the facts of a particular case.

**The Supreme Court of the United States**

The Supreme Court of the United States is the highest court in the land and the only part of the federal judiciary specifically required by the Constitution.

The Court’s caseload is almost entirely appellate in nature, and the Court’s decisions cannot be appealed to any authority, as it is the final judicial arbiter in the United States on matters of federal law. However, the Court may consider appeals from the highest state courts or from federal appellate courts. The Court also has original jurisdiction in cases involving ambassadors and other diplomats, and in cases between states.

Although the Supreme Court may hear an appeal on any question of law provided it has jurisdiction, it usually does not hold trials. Instead, the Court’s task is to interpret the meaning of a law, to decide whether a law is relevant to a particular set of facts, or to rule on how a law should be applied. Lower courts are obligated to follow the precedent set by the Supreme Court when rendering decisions.

In almost all instances, the Supreme Court does not hear appeals as a matter of right; instead, parties must petition the Court for a writ of certiorari. It is the Court’s custom and practice to “grant cert” if four of the nine Justices decide that they should hear the case. Of the approximately 7,500 requests for certiorari filed each year, the Court usually grants cert to fewer than 150. These are typically cases that the Court considers sufficiently important to require their review; a common example is the occasion when two or more of the federal courts of appeals have ruled differently on the same question of federal law.

If the Court grants certiorari, Justices accept legal briefs from the parties to the case, as well as from amicus curiae, or “friends of the court.” These can include industry trade groups, academics, or even the U.S. government itself. Before issuing a ruling, the Supreme Court usually hears oral arguments, where the various parties to the suit present their arguments and the Justices ask them questions. If the case involves the federal government, the Solicitor General of the United States presents arguments on behalf of the United States. The Justices then hold private conferences, make their decision, and (often after a period of several months) issue the Court’s opinion, along with any dissenting arguments that may have been written.

**The Judicial Process**

Article III, the Bill of Rights, and the Fourteenth Amendment establish the core protocols for fair trials and due process, ensuring that every person accused of wrongdoing has, for example, the right to a trial before a judge, a jury of one’s peers, and the right to legal counsel.

Criminal proceedings can be conducted under either state or federal law, depending on the nature and extent of the crime. (As the states are responsible for day-to-day affairs under our Constitution, the vast majority of trials are in state courts for state crimes, prosecuted by state law enforcement). A criminal legal procedure typically begins with an arrest by a law enforcement officer. If a grand jury chooses to deliver an indictment, the accused will appear before a judge and be formally charged with a crime, at which time he or she may enter a plea.

Next, the case is brought to trial and decided by a jury. If the defendant is determined to be not guilty of the crime, the charges are dismissed. Otherwise, the judge determines the sentence, which can include prison time, a fine, or even execution. (In some cases, largely death penalty cases, the jury also plays a role in sentencing.)

Civil cases are similar to criminal ones, but instead of arbitrating between the state and a person or organization, they deal with disputes between individuals or organizations.

After a criminal or civil case is tried, it may be appealed to a higher court — a federal court of appeals or state appellate court as the case may be. An appellate court makes its decision based on the record of the case established by the trial court or agency.

Federal appeals are decided by panels of three judges. The appellant presents legal arguments to the panel, in a written document called a “brief.” In the brief, the appellant tries to persuade the judges that the trial court made an error, and that the lower decision should be reversed.

The court of appeals usually has the final word in the case, unless it sends the case back to the trial court for additional proceedings. In some cases, the decision may be reviewed en banc — that is, by a larger group of judges of the court of appeals for the circuit.

A litigant who loses in a federal court of appeals, or in the highest court of a state, may file a petition for a “writ of certiorari,” which is a document asking the Supreme Court to review the case. The Supreme Court, however, is not obligated to grant review. The Court typically will agree to hear a case only when it involves a new and important legal principle, or when two or more federal appellate courts have interpreted a law differently. When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument.

1. https://www.whitehouse.gov/about-the-white-house/the-judicial-branch/ [↑](#footnote-ref-1)