

MI OPEN BOOK PROJECT

# CIVIC LIFE



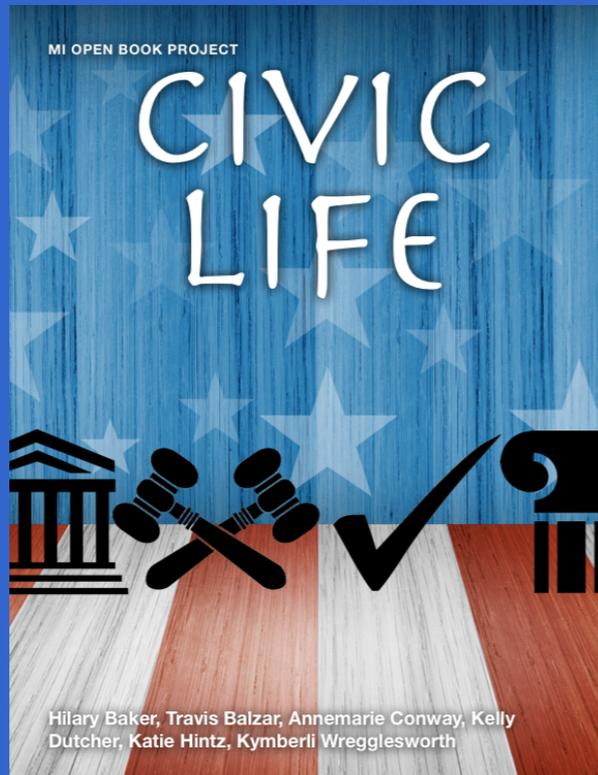
Hillary Baker, Travis Balzar, Annemarie Conway, Kelly  
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**About the  
Authors**



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Information on the latest version and updates are available on the project homepage: <http://textbooks.wmisd.org/dashboard.html>



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# The Michigan Open Book Project

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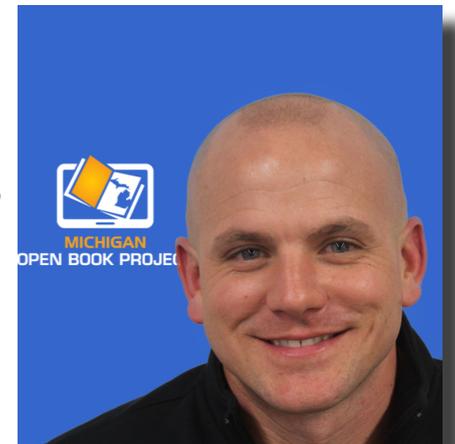
*"Hillary Baker has spent twenty-two years teaching social studies in the high school setting. She has taught Civics, Criminal Law, Advanced Placement U.S. Government and Politics, U.S. History, Sociology, and Humanities. In addition, she has coached and advised various social studies co-curricular programs such as the We the People...The Citizen and the Constitution Congressional Hearing Simulation as well as Model United Nations. Baker has been recognized as the 2014 American Lawyer Alliance's Law-Related Education Teacher of the Year as well as the Michigan Civic Educator of the Year in 2014. She also has served in a leadership capacity for the College Board A.P. Reading since 2008. Baker began her teaching career in Traverse City Area Public Schools where for seven years she taught in an integrated, interdisciplinary Humanities Program as well as other social science courses such as A.P. U.S. Government and Politics and Sociology. She has spent the last fifteen years teaching at East Kentwood High School and currently also serves as an Instructional Coach in the building. She is a graduate from the University of Michigan where she earned a B.A. in Politi-*

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Travis L. Balzer is a Shepherd High School social studies teacher concentrating in Economics, Civics and History. Mr. Balzer (Mr. B) resides in Shepherd with his bride Haley, and daughters Makayla and Mia Jean. A Gladwin High School graduate. Parents Vicki and Teddy reside in Gladwin. Travis' sister, Kristal and two sons, Isaac and Adam reside in the Lansing area. Mr. Balzer earned an Economics and Management degree from Albion College and proceeded to obtain teaching certification from Saginaw Valley State University in Social Studies. In addition, obtaining a masters in Educational leadership from Grand Valley State University. Hunting, exercising including P90X, biking, running and outdoor activities are great ways that time



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Annemarie Conway teaches AP US Government, psychology, sociology, American Government, and economics for Charlevoix Middle High School. She graduated from Kalamazoo College with her bachelors degree in political science. She earned her Masters of Education with an emphasis in History from Grand Valley State University. Throughout her teaching career she has worked with AP College Board as a reader, table leader and question leader for the US Government & Politics AP exam. She also sponsors Charlevoix's Model United Nations program.





**Kelly Dutcher**

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Kelly teaches Economics, Civics, U.S. History, and College Readiness at Harbor Springs High School. Aside from teaching, she is also a Michigan Youth in Government advisor, and class of 2017 sponsor. Mrs. Dutcher is a graduate of Lake Superior State University where she received her BS in Social Studies and Secondary Education. She is currently working towards receiving her MA in American History and Government at Ashland University, and was awarded the James Madison Memorial Fellowship in 2014. Kelly loves teaching at the high school level, and helping bring social studies to life for her students. She shares her life with her husband Jordan and three young daughters: Daphne, Au-

**Katie Hintz**

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Katie is completing her seventh year as a teacher at Gladwin High School, where she has taught every Social Studies course available, including: American Government, Sociology, Current Events, World History, Economics, Social Problems in the United States, and Law. A graduate of Saginaw Valley State University's Secondary Education Program, she majored in History, minored in Sociology and earned a Social Studies Endorsement. As Social Studies Department Chair, she was inspired to participate to the Open Book Project because of the disjointed resources that most economics teachers are forced to scrape together to create a captivating curriculum.

Currently, she is working on completing her Masters in Global History at with American Public University. Her final thesis on the Food Industry is due to be published September, 2015. Katie spends her time outside of the education world raising her two boys, Connor and



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Kymberli has a BA in history and political science from Alma College, a MA in education from Michigan State University, and will be completing her MA in American History and Government from Ashland University this spring upon completion of her thesis on suffragist and equal rights activist Alice Paul. She was named a James Madison Fellow in 2011 and was chosen as the Michigan Council for the Social Studies High School Educator of the Year in 2015. Kymberli returned to her high school alma mater where she teaches Civics, World History, Current Events, Women's Studies, and World Cultures, as well as serving as National Honor Society adviser and executive director of the Miss Onaway Scholarship Program. When not doing history geek stuff, she enjoys spending time in the



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The Michigan Open Book Project Team would like to thank the following individuals for their help in reviewing some content in the book and guiding the development process.

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Jim Cameron, Michigan Department of Education

Melissa Kieswetter, Michigan Department of



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### **Linda Start**

#### **Michigan Center for Civic Education**

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Linda Start has served as the Executive Director of the Michigan Center for Civic Education for more than twenty-five years. Start has presented at hundreds of school districts across Michigan and is sought out as a speaker for many national civic education conferences. As the Executive Director of the Michigan Civic Education Center, Start served on the Committee to draft the Michigan Civics Standards and presented the Civics Standards and Benchmarks to the Michigan State Board of Education. Start served on a Review Committee for the National Standards in Civics and Government. Start represents Michigan in several national networks of civic educators. In addition, Start was asked to join a group of civic education experts in the United States to work with emerging democracies in Eastern Europe. Start has worked closely with civic educators in Poland, Ukraine, the Czech Republic, and Slovakia. A

### **Rebecca Bush**

#### **Instructional Consultant**

*Ottawa Area Intermediate School District*

Rebecca Bush is currently the Social Studies Consultant at the Ottawa Area Intermediate School District (OAISD), where she assists K-12 social studies teachers in developing curriculum, modeling instructional strategies in social studies literacy, and designing district-level formative and summative assessments. Additionally, as Project Director, she has written and received multiple Teaching American History grants, working with teachers throughout an eight-county radius. She has presented at various national conferences on multiple topics surrounding social studies instruction as well as innovative techniques and topics in formative and summative assessment design. Currently she is Co-Project Director of The Performance Assessments of Social Studies Thinking (PASST) Project and assists with the professional development of teacher writers for the MI Open Book Project where she serves as an editor of several of the project's texts. Rebecca currently leads the Michigan Social Studies Supervisors Association and is a member of the National Social Studies Supervisors Association Executive Board of Directors. She is also an adjunct professor at Hope College in Holland, MI



### **David A. Johnson**

#### **Project Manager**

*Michigan Open Book Project*

Dave began his career teaching 8th grade United States History in Mesick, Michigan. After almost a decade in the classroom, he took a job at Wexford-Missaukee Intermediate School District (WMISD) as an Instructional Consultant for Social Studies. He is shared across 11 ISDs in Northern Michigan that form the Northern Michigan Learning Consortium. He completed his Masters in Educational Leadership through Central Michigan University in 2011 and is Co-Project Director of the Performance Assessments of Social Studies Thinking (PASST) Project in addition to his duties as the Project Manager for MI Open Book.



## Chapter 8

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**Does the judicial branch's primary role of Constitution-bound arbiter make it as powerful as the other two branches of government?**

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What are the purposes of the Judicial Branch as outlined in Article III?

Does the Supreme Court have too much power?

How is the Judicial Branch organized?

Should federal judges and Supreme Court justices have lifetime tenure?



# Purpose and Organization of the Judicial Branch

## QUESTIONS TO GUIDE INQUIRY

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1. What are the purposes of the Judicial Branch as outlined in Article III?
2. Does the Supreme Court have too much power?
3. How is the Judicial Branch organized?
4. Should federal judges and Supreme Court justices have lifetime tenure?

## TERMS, PLACES, PEOPLE

judicial review

In Federalist Paper No. 78, Alexander Hamilton argues that the judicial branch is the weakest of the three branches of government. However, Hamilton also acknowledges that should not diminish the importance of the branch's most important power--that of judicial review.

As you continue to learn about the powers of the judicial branch, be sure to contemplate the chapter's compelling question - Does the judicial branch's primary role of Constitution-bound arbiter make it as powerful as the other two branches of government?

## Article III of the U.S. Constitution

Section 1.

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, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— to all Cases affecting Ambassadors, other public ministers, and Consuls;— to all Cases of Admiralty and maritime Jurisdiction;— to Controversies to which the United States shall be a Party;— to Controversies between two or more States;— between Citizens of different States.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3. The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

### Section 3.

1. Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless

on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

In trying to balance power between the three branches, the Framers created a federal judiciary with limited powers, but very important responsibilities which included the power to define and interpret laws passed by the legislative branch and actions taken by the executive branch. Judicial power has expanded over the years to include a much larger role in the government of the United States.

There was no national judiciary under the Articles of Confederation; therefore, the states were free to interpret the national laws as they saw fit. Disputes between states were decided by the courts in one of the states involved, usually favoring the state on its “home turf.” This was one of the many problems under the Articles. This problem was remedied by the ratification of the Constitution in that Congress is granted the power to create lower federal courts as well as fix the size of the Supreme Court which was created by the Constitution. The generality of Article III was addressed by the first Congress with the passage of the Federal Judiciary Act of 1789. The Act established the number of justices to the Supreme Court (to see how the number has changed periodically over time, see the

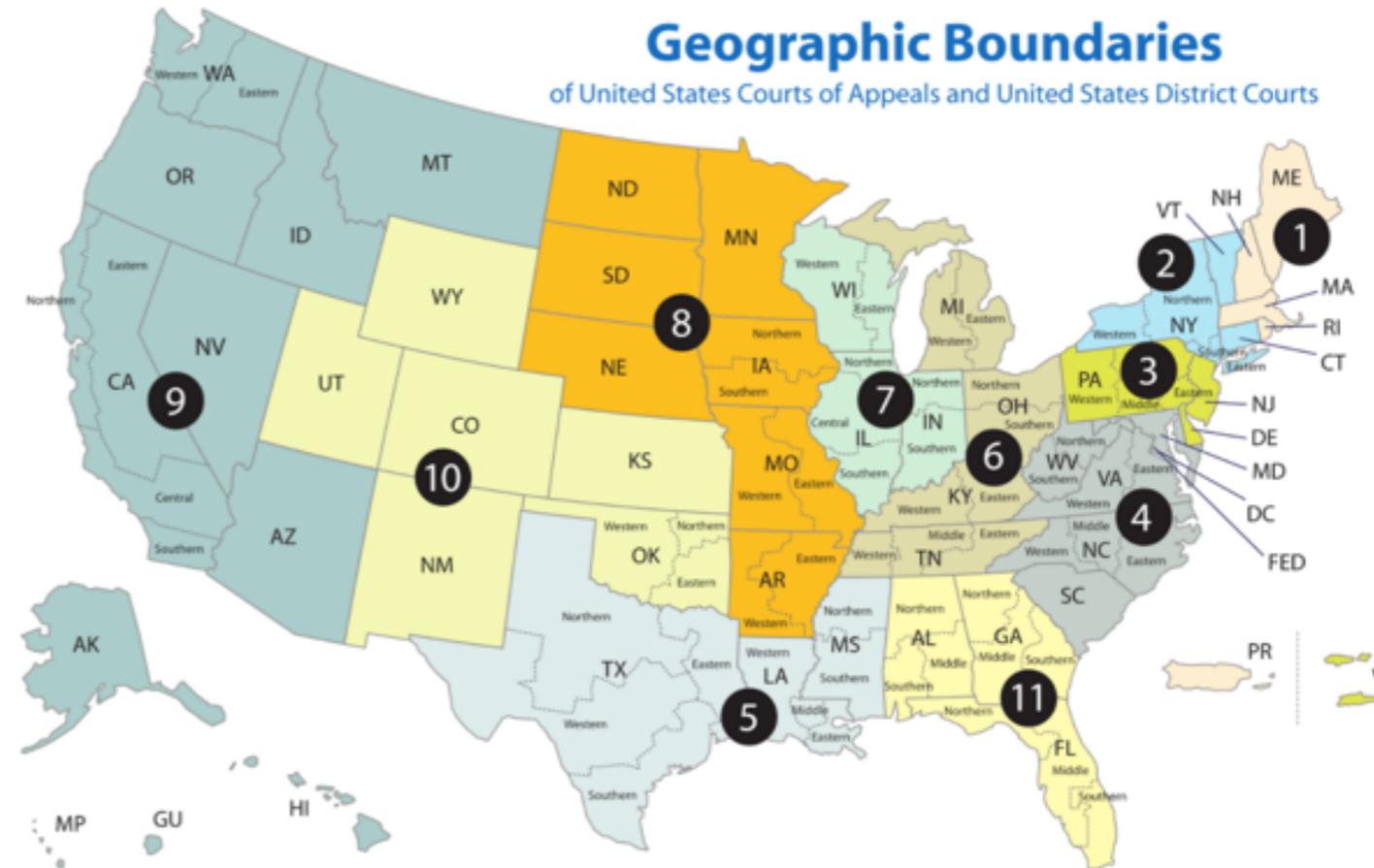
textbox), divided the country into judicial districts, and outlined some of the responsibilities of the justices, including the requirement that they “ride circuit” and hold court twice a year in each judicial district. six Justices (five associate and one chief) on the first court, and Congress has changed that number periodically. It was increased to seven in 1807, to nine in 1837, and to ten in 1863. In 1866, Congress wanted to prevent the soon-to-be impeached President Andrew Johnson from adding his nominees to the Court, so they passed the Judicial Circuits Act of 1866, reducing the number from ten to seven through attrition (as justices retired or died, their seats would not be filled until the Court numbered only seven). Only three years later, in 1869, Congress set the number at nine and it hasn’t changed since.

### What are the qualifications to be a federal judge or Supreme Court justice?

There are no constitutional requirements such as age or residency like there are for members of Congress or the President. In fact, one does not even have to have experience as a lawyer or a judge to serve as a federal judge or Supreme Court justice. However, all current federal judges have graduated from law school, many have worked as attorneys or state-level judges, and most Supreme Court justices have served as federal judges prior to being appointed to the Supreme Court. To read more about the current Justices, go to

<http://www.supremecourt.gov/about/biographies.aspx> for their biographies

Although the Supreme Court was the only court specifically created by the Constitution, Congress has created the federal court system that includes US District Courts, US Court of Appeals, Bankruptcy Courts and Article I Courts. There are currently 94 US District Courts, and each state and the District of Columbia has at least one District Court. The District Courts have a single judge and utilize a jury to make decisions. Michigan has two District Courts, the eastern district which includes the eastern

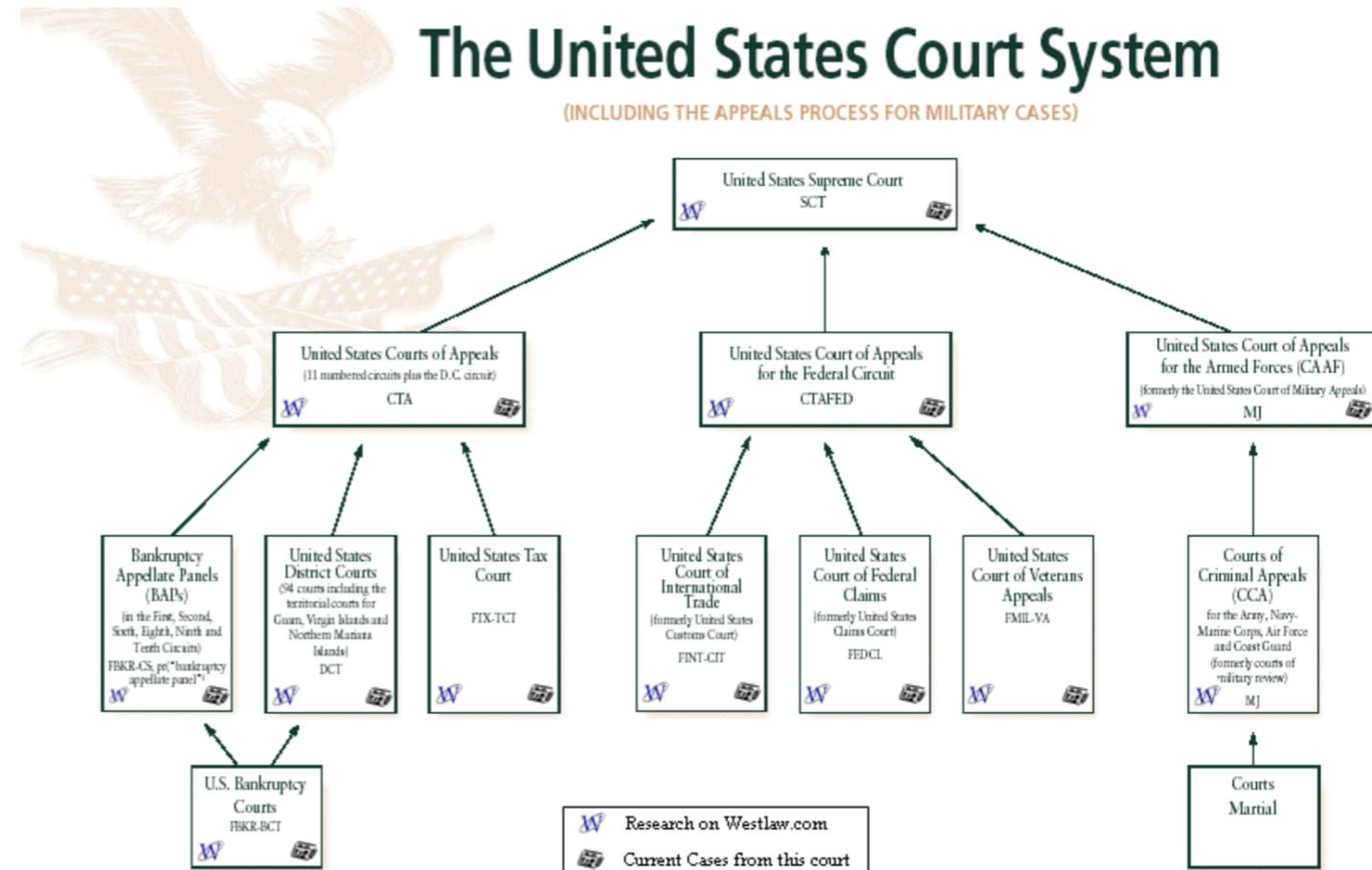


half of the lower peninsula and has courts in Detroit, Ann Arbor, Bay City, Flint, and Port Huron, and the western district which includes the western half of the lower peninsula and the upper peninsula and has courts in Grand Rapids, Lansing, Kalamazoo, and Marquette. US District Courts are organized into judicial circuits each with an appellate court.

There are currently 13 appellate courts that are organized into 12 regional circuits. The 13th Circuit, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals from special courts such as those from the Court of International Trade, the Court of Federal Claims, and patent rights cases. The appellate courts have three judges that hear cases without a jury. Michigan is located in the 6th circuit, which also includes the states of Ohio, Kentucky, and Tennessee. The 6th Circuit Court is located in Cincinnati, Ohio.

In addition to the US Supreme Court, US District Courts, and US Appellate Courts, there are also several special types of federal courts. The U.S. Court of International Trade and the U.S. Court of Federal Claims both have national jurisdiction. The Court of International Trade hears cases dealing with customs and international trade laws, and the Court of Federal Claims hears monetary claims based on the Constitution, federal laws, or executive regulations. Each District Court has a Bankruptcy Court to hear cases of personal, business, or farm bankruptcies. Congress also created several Article I, or legislative courts, that

do not have full judicial power. These are the Court of Appeals for Veterans Claims, the Court of Appeals for the Armed Forces, and the U.S. Tax Court.



All courts have jurisdiction to hear certain cases. The Supreme Court has two types of jurisdiction--original and appellate. When a court is the first to hear a case, it is said to have original jurisdiction. When a court hears a case on appeal from a lower court, it is said to have appellate jurisdiction. In the federal court system, the district courts have original jurisdiction, and the

appellate courts have appellate jurisdiction. Depending on the subject matter of the case, the Supreme Court can have either original or appellate jurisdiction. The Constitution specifies that the Supreme Court has original jurisdiction only in cases to which a state is a party and cases involving ambassadors, public ministers, and consuls. All other cases involving the Constitution, the Bill of Rights, federal law, as well as some state laws are heard by the Court on appeal. Cases which deal with federal law or international issues can only be heard in the federal courts which have exclusive jurisdiction. Those cases that can be heard in either the state or federal courts, such as cases involving diverse citizenship, are said to have concurrent jurisdiction.

### **How does one become a federal judge or Supreme Court Justice?**

According to Article II, Section 2, the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court . . .” This has been taken to mean all federal judges as well. When a vacancy arises on the Supreme Court or other federal court due to death, retirement, resignation, or impeachment, the President chooses a qualified appointee who is then voted on by the Senate in a simple majority vote. For high profile judgeships like those of Supreme Court justices, the Senate may choose to hold hearings to get a better understanding of what the nominee stands for or believes related to “hot button” issues facing society. Although it

seems like a simple process, several Supreme Court nominees were never approved for a multitude of reasons. For example, President Obama appointed Judge Merrick Garland to fill the vacancy left by the death of Justice Antonin Scalia in 2015, and the Senate refused to hold hearings to deny or approve Garland’s appointment.

The idea of an independent judiciary is established in the manner in which federal judges are chosen and the terms which they serve. Article III states that federal judges “shall hold their offices during good Behavior,” which has come to mean that those judges can serve for life. Although federal judges are selected by the President and confirmed by the Senate, their life tenure allows them to be free from undue political influence and pressure to decide a case according to the desires of the President or Congress.

**Judicial review** is the idea, fundamental to the U.S. system of government, that actions of the executive and legislative branches of government are subject to review and possible invalidation by the judicial branch.

The power of judicial review is not listed in the Constitution, but a case early in the nation’s history established it as an important role of the Court. Alexander Hamilton predicted this power in Federalist 78, stating “No legislative act therefore contrary to the constitution can be valid.” According to this power, the Court has the power to decide upon the constitutionality of an act of any

branch or level of government. *Marbury v. Madison* (1803) was the first to establish this power.

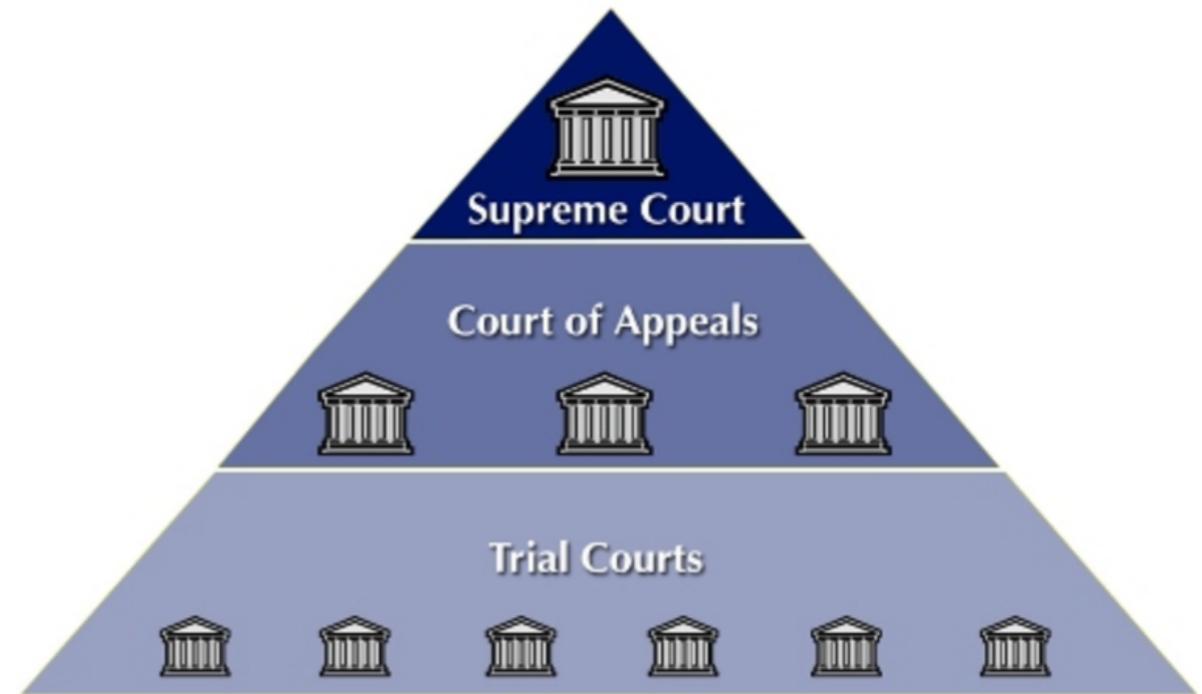
In the last weeks of his presidency, John Adams and the outgoing Federalist party created a number of federal judgeships and attempted to fill them with party loyalists. Several of the commissions that were confirmed the night before Thomas Jefferson's inauguration were never delivered. President Jefferson told his Secretary of State James Madison not to deliver those commissions, including one belonging to William Marbury. Marbury requested a writ of mandamus (an order from a court to an inferior government official ordering the government official to properly fulfill their official duties) from the Supreme Court to force Madison to deliver his commission. He based his request on the Judiciary Act of 1789 which gave the Supreme Court the right to hear mandamus cases in original jurisdiction. Chief Justice John Marshall, however, refused Marbury's request because the only cases which could be heard by the Supreme Court on original jurisdiction, according to Article III of the Constitution, were those to which a state was a party or those dealing with officials of foreign governments. Since Marbury was neither a state nor a foreign government official, his case should have begun at the federal district court level and then could have been appealed to the Supreme Court if necessary. The clause of the 1789 Judiciary Act giving the Court original jurisdiction over mandamus cases was struck down as an unconstitutional expansion of judicial power.



This section has focused on the federal court system. States have a similar structure which includes a state supreme court, appellate courts, and other courts. In Michigan, state judges at all levels are elected and serve fixed terms. Michigan's Supreme Court has seven justices who serve eight year terms. They are elected on the non-partisan section of the ballot (but nominated by the political parties), must have been licensed to practice law in Michigan for at least 5 years, and be under age 70 when elected. If a justice dies or retires during their term, the governor may name a replacement to serve until the next regularly scheduled election. The justices themselves choose the chief justice after each election. The Michigan court of appeals has nine judges who serve six year terms, and meet regularly in Detroit, Grand Rapids, and Lansing. They also hold hearings in northern Michigan when needed.

Michigan's local courts include the Circuit Court, Probate Court, District/Municipal Court, Small Claims Court, and Court of Claims. There are 57 Circuit Courts and the judges serve six year terms. They hear civil cases involving over \$25,000, felony and serious misdemeanor criminal cases, and all family cases. Probate Courts in each county hear cases regarding wills and estates, as well as cases regarding juveniles. Probate judges serve six year terms. District/Municipal Courts hear minor misdemeanor cases and traffic violations. They also serve six year terms. The Small Claims Court is a division of the District Court and hears civil cases valued at \$5,500 or less. The Court of

Claims is a part of the Court of Appeals and hears civil actions filed against the State of Michigan, such as tax lawsuits, highway defects, and malpractice in state medical facilities.



# Functions and Processes of the Judicial Branch

## QUESTIONS TO GUIDE INQUIRY

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## TERMS, PLACES, PEOPLE

writ of certiorari

amicus curiae

majority opinion

concurring opinion

dissenting opinion

Almost all cases come to the Supreme Court on appeal from another, lower court such as the US Court of Appeals or a state Supreme Court. Most cases are selected to be heard based on a **writ of certiorari**, which is a request for judicial review and an order directing the lower court to send its records to the Supreme Court for review. Either of the sides in the case can petition for the writ, but few will actually be granted - the Court only takes those cases in which there is a constitutional question or there have been differing interpretations of a law. The lower court's decision stands if certiorari is not granted - often this is because the justices believe the correct decision was made by the lower court or that there is no significant legal question to be addressed. Four of the nine justices must agree in order for certiorari to be granted.

Once the Court agrees to hear a case, the attorneys for the respondents and petitioners prepare and submit briefs that present the arguments and facts from relevant precedents. Most of the decisions that will eventually be made are based upon the justices' reading of these briefs and the records of the lower courts. Other groups with a substantial interest in the outcome of a case can, with permission of the Court, submit an **amicus curiae** brief. These briefs are intended to influence the Court's decision by showing how such a decision may impact the general public or a specific population.

Justices usually hear oral arguments Monday through Wednesday from October to April. Oral arguments are scheduled in two-week intervals, and in the intervening weeks the justices write opinions, read briefs for upcoming cases, and decide which cases they will hear in upcoming weeks. Attorneys are limited to thirty minutes to present the most important parts of their arguments, and are often interrupted with questions from the justices. In the weeks of arguments, the justices meet in secret, and take preliminary votes and discuss their ideas and opinions about the cases they've heard. The Chief Justice, if on the majority side of the decision, will write the opinion or assign it to another justice in the majority. If the Chief is in the minority, the most senior justice in the majority takes the role of assignor.

The **majority opinion** expresses the Court's reasoning for their decision, including links to precedent and related cases. A majority of the justices, currently five of nine, must agree on the decision. However, if a justice agrees with the majority opinion or even only with the result, he or she could write a separate **concurring opinion** that stresses a different point of law or different reason for reaching the same conclusion. The justices in the minority often write **dissenting opinions** expressing why they disagreed with the majority. These opinions are important because they are often used in later cases as reason to overturn precedent, and they also help to show the decision-making process within the Court.

## Interactive 8.1 SCOTUS Blog



*Read more here!*

# The Court System in Action

## QUESTIONS TO GUIDE INQUIRY

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## TERMS, PLACES, PEOPLE

Jordan Romero, a student at Safford Middle School in Safford, Arizona, brought a prescription-strength ibuprofen pill to the assistant principal, Mr. Kerry Wilson. Jordan said he had gotten the pill from another student, Marissa Glines, who was planning to hand out more pills during lunch. Wilson brought Marissa to his office, and searched her belongings. He found more pills, knives, a lighter, and a cigarette. Marissa said she had gotten the pills from Savanna Redding, a 13-year-old honors student. Savanna said she didn't know anything about the painkillers, and Mr. Wilson told her that he had heard that she was giving the painkillers to her classmates. Savanna again said she didn't know anything about it, and agreed to let the principal and his female assistant search her belongings. Principal Wilson and his assistant searched her backpack and found nothing.

Savanna was then taken to the school nurse's office so that her clothing could be searched. The nurse asked Savanna to remove her clothing, down to her bra and underwear, so the clothes could be searched. Then the nurse asked Savanna to shake out her bra and pull out the elastic on her underwear exposing Savanna's breasts and pelvic area to the nurse and principal's assistant. No pills were found. Savanna's mother sued the school, claiming that the search violated Savanna's Fourth Amendment rights. The school officials claimed qualified immunity-- governmental officials are shielded from liability for violating an individual's constitutional rights unless they have violated a clearly established law, and moved

for a summary judgment--a judgment entered by a court without a full trial when one party shows through its evidence that the other party could not possibly win at trial.

The District Court agreed with the school officials and found that there was no Fourth Amendment violation. The accusation from Marissa that Savanna had provided the pills, as well as the report from Jordan, that he had recently attended a party at Savanna's house where alcohol was served, was sufficient to justify the search of her belongings as well as the strip search. The court concluded that the search was justified because there was a reasonable suspicion that Savanna was carrying pills on her person and intended to give them out to other students.

The Circuit Court overturned the District Court ruling, stating that the strip search was "excessively intrusive" based solely on what another student had claimed. The suspected facts did not indicate that the drugs were potentially dangerous or that she had anything hidden in her undergarments. Savanna's expectation of privacy outweighed the school's need for a drug-free environment. The Circuit Court also rejected the claim of qualified immunity because the school officials should have known that a strip search of a child was excessive.

**Issue:** Can school officials conduct a strip search of a student suspected of possession and distribution of prescription drugs - a violation of school policy - or is such a search prohibited by the Fourth Amendment?

Arguments for Safford Unified School District:

- Principal Wilson had a reasonable suspicion that Savanna was in possession of prescription drugs from the statements of both Marissa and Jordan, so the search was initially justified.
- The search was not invasive because Wilson authorized two female staff members to conduct it in a closed room, and neither staff member touched Savanna.
- Distribution of prescription drugs was an ongoing problem at Safford Middle School, and the precedent in *New Jersey v. T.L.O.* (1985) allowed school officials to judge if a search was necessary to maintain safety and order in a school. Wilson determined that the search of Savanna was necessary.
- Marissa was not forced to give up Savanna's name, nor was she offered a lesser punishment for doing so.

**Arguments for Savanna Redding:**

- A search of Savanna's belongings was justified under *T.L.O.*, but extending the search beneath her clothes was not justified because nothing was found in her belongings.
- The scope of the search was unreasonable because there had been no accusations that Savanna was hiding pills beneath her clothing or in her undergarments.

- A strip search was excessively invasive and could have been substituted by keeping Savanna in the principal's office during the alleged lunchtime distribution.
- Marissa was not a reliable accuser, as she herself was under suspicion, and accusing Savanna drew the attention away from her.

Decision: In an 8-1 decision, the Supreme Court recognized that the "strip search" was excessively invasive, and Savanna said that it was an "embarrassing, frightening, and humiliating" experience for her. Based on the facts presented to the principal, the Court concluded that a search of Savanna's belongings and pockets was justified, but such an intrusive search was not warranted. The prescription drugs found were no different from common, over-the-counter painkillers, that in small quantities were not a serious threat to the wellbeing of the students. There was not a reasonable suspicion that Savanna was hiding contraband in her undergarments, so that level of search was determined to be unnecessary.