**HOW THE SUPREME COURT WORKS**

The Supreme Court of the United States in Washington, D.C. is the highest court in the nation. It is also the only federal court named specifically in the Constitution Beyond that, however, the Constitution tells us little about the make-up or organization of the court; it gives no qualifications for holding seats on the court, and doesn’t establish how many justices will be on the court.

The Judiciary Act of 1789 set the size of the court at six; one Chief Justice and five Associate Justices. Over time, the court grew to as large as ten Justices. With the Judiciary Act of 1869, Congress decreased the number to nine, a number which has remained constant to this day

**Granting Certiorari**

The Supreme Court receives about 10,000 petitions a year. The Justices use the "[Rule of Four](http://judiciallearningcenter.org/glossary/#R)” to decide if they will take the case. If four of the nine Justices feel the case has value, they will issue a [writ of certiorari](http://judiciallearningcenter.org/glossary/#W). This is a legal order from the high court for the lower court to send the records of the case to them for review. When all is said and done the Supreme Court will hear about 75-85 cases a year. This tells us that most petitions are denied.

The majority of the Supreme Court’s cases today are heard on appeal from the lower courts. These cases usually come from the federal courts of appeal, but the Court does sometimes hear appeals from the state Supreme Courts as well.

The Justices of the Supreme Court are most likely to take cases that will affect the entire country, not just the individuals involved. They want to clarify legal issues that are important to as many people as possible, so they take cases that will have a large constitutional impact, or that answer important legal questions that affect the whole nation.

Examples include questions like;

*"Can kids pray in school?"*

*"Can you burn a flag at an anti-government rally?"*

As the “court of last resort,” the Supreme Court can and does make decisions that all the courts must follow. This is called establishing a precedent; a legal example which will be followed in all similar cases in the future. By taking a case that involves an issue that has led to differing opinions in the lower courts, the Supreme Court creates a [precedent](http://judiciallearningcenter.org/glossary/#P) that every court in the country has to follow. This guarantees that the laws are applied equally to all people, no matter where they live.

The Supreme Court only takes cases from state courts when the appeal involves the U.S. Constitution. Thus, the person making the appeal must show that his or her rights, under the Bill of Rights, were denied by the state, or that some error was made in the court that affected their due process rights. Because of these restrictions, most of the Supreme Court’s cases come from the lower federal courts and not from state courts.

**Law Clerks**

Each Justice is permitted to have between three and four law clerks per Court term. These are individuals who, fairly recently, graduated from law school, typically, at the top of their class from the best schools. Often, they have served a year or more as a law clerk for a federal judge. Among other things, they do legal research that assists Justices in deciding what cases to accept; help to prepare questions that the Justice may ask during oral arguments; and assist with the drafting of opinions.

While it is the prerogative of every Justice to read each petition for certiorari himself/herself, many participate in what is informally known as the "cert pool." As petitions for certiorari come in on a weekly basis, they are divided among the participating Justices. The participating Justices divide their petitions among their law clerks. The law clerks, in turn, read the petitions assigned to them, write a brief memo about the case, and make a recommendation as to whether the case should be accepted or not. The Justice provides these memos and recommendations to the other Justices at a Justices' Conference

**Briefs**

If the Justices decide to accept a case (grant a petition for certiorari), the case is placed on the docket. According to the Supreme Court's rules, the petitioner has a certain amount of time to write a brief, not to exceed 50 pages, putting forth his/her legal case concerning the issue on which the Court granted review. After the petitioner's brief has been filed, the other party, known as the respondent, is given a certain amount of time to file a respondent's brief. This brief is also not to exceed 50 pages.

With the permission of the Court, groups that do not have a direct stake in the outcome of the case, but are nevertheless interested in it, may file what is known as an amicus curiae (Latin for "friend of the court") brief providing their own arguments and recommendations for how the case should be decided.

**The Appeal Process**

Have you ever heard anyone say they’re going to take their disagreement all the way to the Supreme Court?

Who are the parties?

The losing party in a decision by a trial court in the federal system normally has a right to appeal the decision to the next highest court, the [U.S. Circuit Court of Appeals](http://judiciallearningcenter.org/glossary/#C).

* In a civil case, either side may appeal the verdict.
* In a criminal case, the government cannot appeal a “not guilty” verdict.
* In a criminal case, the defendant may appeal their conviction.

*Appellant*

The party who files an appeal, known as the [appellant](http://judiciallearningcenter.org/glossary/#A), must show that the trial court made a legal error that affected the decision in the case.  The appellant prepares a written document, or [brief](http://judiciallearningcenter.org/glossary/#B), discussing the legal arguments.  In the brief, the appellant tries to explain that the trial court made errors, and that its decision should be reversed.  In this process, appellants cite previous court cases that support their point of view

*Appellee*

The party defending against the appeal, known as the appellee, also submits a brief arguing why the trial court was correct in its decision, or why any error was not significant enough to affect the outcome of the case. Briefs of appellees discuss similar courts cases that support their point of view.

**The Court and Its Procedures**

A Term of the Supreme Court begins on the first Monday in October. Usually Court sessions continue until late June or early July. The Term is divided between "sittings," when the Justices hear cases and deliver opinions, and intervening "recesses," when they consider the business before the Court and write opinions. Sittings and recesses alternate at approximately two-week intervals.

With rare exceptions, each side is allowed 30 minutes argument and up to 24 cases may be argued at one sitting. Since the majority of cases involve the review of a decision of some other court, there is no jury and no witnesses are heard. For each case, the Court has before it a record of prior proceedings and printed briefs containing the arguments of each side.

During the intervening recess period, the Justices study the argued and forthcoming cases and work on their opinions. Each week the Justices must also evaluate more than 130 petitions seeking review of judgments of state and federal courts to determine which cases are to be granted full review with oral arguments by attorneys.

When the Court is sitting, public sessions begin promptly at 10 a.m. and continue until 3 p.m., with a one-hour lunch recess starting at noon. No public sessions are held on Thursdays or Fridays. On Fridays during and preceding argument weeks, the Justices meet to discuss the argued cases and to discuss and vote on petitions for review.

When the Court is in session, the 10 a.m. entrance of the Justices into the Courtroom is announced by the Marshal. Those present, at the sound of the gavel, arise and remain standing until the robed Justices are seated following the traditional chant: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

Prior to hearing oral argument, other business of the Court is transacted. On Monday mornings this includes the release of an Order List, a public report of Court actions including the acceptance and rejection of cases, and the admission of new members to the Court Bar. Opinions are typically released on Tuesday and Wednesday mornings and on the third Monday of each sitting, when the Court takes the Bench but no arguments are heard.

The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In May and June the Court sits only to announce orders and opinions. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

**Oral Argument**

A case selected for argument usually involves interpretations of the U. S. Constitution or federal law. At least four Justices have selected the case as being of such importance that the Supreme Court must resolve the legal issues.

An attorney for each side of a case will have an opportunity to make a presentation to the Court and answer questions posed by the Justices. Prior to the argument each side has submitted a legal brief—a written legal argument outlining each party’s points of law. The Justices have read these briefs prior to argument and are thoroughly familiar with the case, its facts, and the legal positions that each party is advocating.

Beginning the first Monday in October, the Court generally hears two one-hour arguments a day, at 10 a.m. and 11 a.m., with occasional afternoon sessions scheduled as necessary. Arguments are held on Mondays, Tuesdays, and Wednesdays in two-week intervals through late April (with longer breaks during December and February). The argument calendars are posted on the Court’s Website under the "Oral Arguments" link. In the recesses between argument sessions, the Justices are busy writing opinions, deciding which cases to hear in the future, and reading the briefs for the next argument session. They grant review in approximately 100 of the more than 10,000 petitions filed with the Court each term. No one knows exactly when a decision will be handed down by the Court in an argued case, nor is there a set time period in which the Justices must reach a decision. However, all cases argued during a term of Court are decided before the summer recess begins, usually by the end of June.

During an argument week, the Justices meet in a private conference, closed even to staff, to discuss the cases and to take a preliminary vote on each case. If the Chief Justice is in the majority on a case decision, he decides who will write the opinion. He may decide to write it himself or he may assign that duty to any other Justice in the majority. If the Chief Justice is in the minority, the Justice in the majority who has the most seniority assumes the assignment duty.

**The Opinion of the Court**

The decision is not announced at the time of oral argument. Rather, the three judges meet and vote on the outcome. One of the three judges will then write the formal opinion of the court, which may be published in law books. If the vote is 2-1, the 1 judge in the minority may choose to write a dissenting opinion explaining his or her reasons for disagreeing. Writing the opinion can take a few weeks or several months.

The court of appeals, in its opinion, may:

* uphold, or affirm, the lower court decision, so the lower court decision would stand and nothing would change.
* reverse, or overturn the lower court decision, in effect granting the appellant’s wishes.
* remand, or send the case back to the trial courts for some further action or a new trial.