

Subject: Civics and Government

Grade Level: 9–12

Standards:

Indiana DOE

Academic (2)

USG.3.19 Purposes, Principles and Institutions of Government in the United States

Identify the historical significance of and analyze decisions by the United States Supreme Court about the constitutional principles of separation of powers and checks and balances in such landmark cases as *Marbury v. Madison* (1803), *Baker v. Carr* (1962), *United States v. Nixon* (1974), *Clinton v. City of New York* (1998) and *Bush v. Gore* (2000).

USG.5.4 Roles of Citizens in the United States

Identify and describe the civil and constitutional rights found in the United States Constitution and Bill of Rights and expanded by decisions of the United States Supreme Court; analyze and evaluate landmark cases of the United States Supreme Court concerning civil rights and liberties of individuals.

Nationwide

National Standards for Civics and Government (1)

III.B.1.1.c How is the national government organized and what does it do?

To achieve this standard, students should be able to describe the purposes, organization, and functions of the three branches of the national government: judicial, including the Supreme Court of the United States and the federal court system.

Materials Needed:

Students will need access to:

A computer or laptop or a way to show video in class

Students may need headphones

Access to PBS Learning Media

Access to the internet

Learning Objectives:

- Understand how the President appoints and the Senate confirms the appointment of justices (judges) for the Supreme Court.
- Consider the widely held belief that Supreme Court justices' political views affect their decisions on cases that come before them.
- Discuss proposed term limits for Supreme Court justices to lessen the impact of their political views.

Introduction/Anticipatory Set:

As the third branch of American government, the 9-member Supreme Court wields considerable power for its size. Its justices (judges) rule whether certain laws are constitutional and apply Federal law to specific cases that have been contested in lower courts. Because a Supreme Court justice serves for life, the President weighs each appointment very carefully. So does Congress when it confirms that choice.

Body of Lesson:

1. The selection of Supreme Court justices can be the longest lasting legacy of any President. For that reason, the process has become a focus of political maneuvering by Presidents and the Senators who must confirm their appointments.
 - a. Learning Activity:
 - i. View the video, "How Are Supreme Court Justices Chosen?"
 - ii. Ask students to recall a recent Supreme Court appointee.
 - iii. Discuss the process of appointing this Supreme Court justice (judge):
 1. Who appointed this person to the court?
 2. What congressional panel interviewed the appointee?
 3. What issues did this panel raise in the confirmation interview?
 4. How did the political views of panel members affect their questions and their vote?
 5. How did the political views of Senators affect their vote on the nominee?
2. Judicial observers believe that the political views of court justices often affect how they vote on the decisions that come before them. This is why the Senate Judiciary Committee often asks appointees about their political stance—and why appointees avoid discussing it.

LESSON PLAN – HOW ARE SUPREME COURT JUSTICES APPOINTED?

- a. When the Constitution was being ratified, the Federalist Papers argued that a life term for Court justices would shield them from the political influences that affect the Executive and Legislative branches of government. Ironically, that has not happened.
- b. Some Presidents have proposed changes in the selection process to dilute or shorten the impact of individual justices' political views.
 - i. President Franklin Delano Roosevelt asked Congress in 1937 to empower him to appoint a new justice to the Supreme Court for each one who did not retire at age 70, up to an additional six justices. Congress refused.
 - ii. In April 2021, President Joseph Biden formed a bi-partisan President's Commission on the Supreme Court of the United States, to assess the advisability of setting term limits for the Court's justices. The Commission submitted its report to the President in December 2021.
- c. Learning Activity:
 - i. Have students read the *Washington Post* report summarizing the work of the President's Commission on the Supreme Court (https://www.washingtonpost.com/politics/courts_law/supreme-court-commission-term-limits/2021/12/07/eb0ef982-5767-11ec-9a18-a506cf3aa31d_story.html).
 - ii. Ask students, What options were considered by this Commission? What might be the pro's and con's of each option?

Summary/Closure

The Supreme Court's review of lower court decisions is designed to assure that current laws conform to the U.S. Constitution. When they find a discrepancy, they can send the case back to the lower court for review or allow the legislative branch (Congress or state legislatures) to modify the law in question. This gate-keeping role gives the Supreme Court a vital part in America's legal process, so the appointment of new justices is an enduring legacy of the President and Senate.

Extension Activities

One concern addressed by the President's Commission on the Supreme Court was the growing number of emergency requests for Court opinions on matters of national significance. One example was the request to stop a recount of Florida's ballots in the 2000 Presidential election, in which George W. Bush had a margin of 327 votes out of six million cast. The Court granted this request, which gave Bush the state's 25 electoral votes and decided the election in his favor. Refer students to *Encyclopedia Britannica's* "Bush v. Gore Law Case" (<https://www.britannica.com/event/Bush-v-Gore>). Have them discuss the following questions: This decision was rendered a month before the

LESSON PLAN – HOW ARE SUPREME COURT JUSTICES APPOINTED?

Electoral College was due to certify its ballots, so do you think it was premature? What provision does the Constitution make to resolve a Presidential election when the Electoral College cannot? Can you think of better ways for the Court to handle such emergency appeals?

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