

Courts Module

1. Introduction to the Courts

Please read Chapter 13 of our online textbook (<http://openstax.org/details/books/american-government-2e/>).

Make sure you are familiar with the following key terms and concepts:

The Constitution and the Courts

Marbury v. Madison and judicial review

Courts role in public policy

Courts and federalism

Structure of federal courts (district, appeals, Supreme)

Stare decisis/precedent

How are judges selected

Case selection and writs of certiorari (Rule of Four)

Oral arguments

Opinions (majority, dissenting, concurring)

How are court decisions enforced (role of the public and other branches of government)?

2. How should justices interpret the Constitution?

While the vast majority of cases considered by United States courts have little to do with politics (drug cases, lawsuits, etc.), the courts do consider cases where the outcomes have important political consequences. The Supreme Court considers cases that have important political implications. Cases like *Brown v. Topeka Board of Education* or *Roe v. Wade* have the potential to change the nation's political landscape.

How should justices decide these cases? Judges tend to claim that they are guided by precedent. Political scientists tend to be dubious of this claim. Political scientists tend to think that judges are politicians, just like presidents and members of Congress, and that judges make their decisions based on personal political ideologies (here is a website that estimates the relative ideologies of Supreme Court justices – mqscores.lsa.umich.edu). Opinions written by justices use precedent, but as a way to justify their ideologically-based decisions rather than because precedent guides their decision-making.

To think more about how justices make decisions in important political cases, please read the attached chapter. It includes a short essay by former-Justice Antonin Scalia on his “originalist” view on how justices should decide cases. It also includes a short essay by Justice Stephen Breyer on what he calls our “democratic Constitution”. After reading the chapter, please be able to explain the following:

What is Scalia's originalist view of the Constitution?

What is Breyer's view “living document” view of the Constitution?

What do these two views imply for how cases should be decided?

What role does personal ideology play in both of these schools of thought?

Short Assignment

For this assignment, I would like you to look at a case that is currently before the Supreme Court. Oral arguments have already occurred for each of these cases, but the Supreme Court has yet to issue its opinion.

Altitude Express v. Zarda

Case about LGBTQ employment discrimination

(<https://www.oyez.org/cases/2019/17-1623>)

Department of Homeland Security v. Regents of the University of California

Case about whether Trump administration can end Obama's DACA program

(<https://www.oyez.org/cases/2019/18-587>)

June Medical Services LLC v. Russo

Case about Louisiana restrictions of abortion providers

(<https://www.oyez.org/cases/2019/18-1323>)

Chiafalo v. Washington

Case about faithless electors in the Electoral College

(<https://www.oyez.org/cases/2019/19-465>)

New York State Rifle & Pistol Association v. City of New York

Case about New York City Gun Laws

(<https://www.oyez.org/cases/2019/18-280>)

Pick one of the cases below and do the following.

1. Briefly summarize the case.
2. How would you vote in this case and why?
3. Consider the reading on originalism versus a living Constitution. Do either of these philosophies point to which side should win this case?

Later this year the Court will release their opinion on each of these cases and you can see whether you picked the winning side or not.

Please write this up in a half to a full page and email it to me. The due date for this assignment is April 20. You may turn it in earlier if you would like.

Let me know if you have any questions about the assignment. I really like this stuff and will be happy to help.