

The U.S. Supreme Court

Stepchild of the Federal Government



The Supreme Court's popularity has recently plummeted.

WHY?



Confidence in the U.S. Supreme Court Sinks to New Low

Share of U.S. adults that have a great deal/quite a lot of confidence in the U.S. Supreme Court, as of June 2022



Representative surveys among U.S. adults
Source: Gallup



Four Reasons



- 1. Constitutional Flaws**
- 2. An Uneven History**
- 3. Head Scratching Decisions**
- 4. The Court's Current Composition**

1. Constitutional Flaws:

How much does the U.S. Constitution say about the judicial branch of government?



- **Article One – The Legislative Branch – 2268 words (over half of the document)**
- **Article Two – The Executive Branch – 1025 words**
- **Article Three – The Judicial Branch – only 330 words**

1. Constitutional Flaws:

What does Article Three say about the framework of the federal courts?



- “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.”
- Congress established 94 district courts with original jurisdiction, ensuring at least one court per state. It also authorized 677 district judgeships.
- Congress has also created 13 Circuit Courts of Appeal with 179 judgeships.

1. Constitutional Flaws:

What does Article Three say about the federal judges?

- “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior...”
- Currently, the life tenure of federal judges is one of the most controversial aspects of the judicial branch.



Justice	Joined Court	Nominated By	Previous Position
<u>John Roberts</u> (Chief Justice)	September 29, 2005	George W. Bush (R)	D.C. Circuit Judge
<u>Clarence Thomas</u>	October 23, 1991	George H.W. Bush (R)	D.C. Circuit Judge
<u>Samuel Alito</u>	January 31, 2006	George W. Bush (R)	Third Circuit Judge
<u>Sonia Sotomayor</u>	August 8, 2009	Barack Obama (D)	Second Circuit Judge
<u>Elena Kagan</u>	August 7, 2010	Barack Obama (D)	U.S. Solicitor General
<u>Neil Gorsuch</u>	April 10, 2017	Donald Trump (R)	Tenth Circuit Judge
<u>Brett Kavanaugh</u>	October 6, 2018	Donald Trump (R)	D.C. Circuit Judge
<u>Amy Coney Barrett</u>	October 27, 2020	Donald Trump (R)	Seventh Circuit Judge
<u>Ketanji Brown Jackson</u>	June 30, 2022	Joseph Biden (D)	D.C. Circuit Judge

How long are the current justices likely to remain on the Supreme Court?

- **Clarence Thomas, born on June 23, 1948, is currently 75 years old.**
- **Samuel Alito, born on April 1, 1950, is 73 years old.**
- **Sonia Sotomayor, born on June 25, 1954, is 69 years old.**
- **John G. Roberts, Jr. (Chief Justice), born on January 27, 1955, is also 69 years old.**
- **Elena Kagan, born on April 28, 1960, is 63 years old.**
- **Neil Gorsuch, born on August 29, 1970, is 53 years old.**
- **Brett Kavanaugh, born on February 12, 1965, is 59 years old.**
- **Amy Coney Barrett, born on January 28, 1972, is 52 years old.**
- **Ketanji Brown Jackson, born on September 14, 1970, is 53 years old.**

Article Three provides explicit details about the types of cases that should be brought before the Supreme Court.

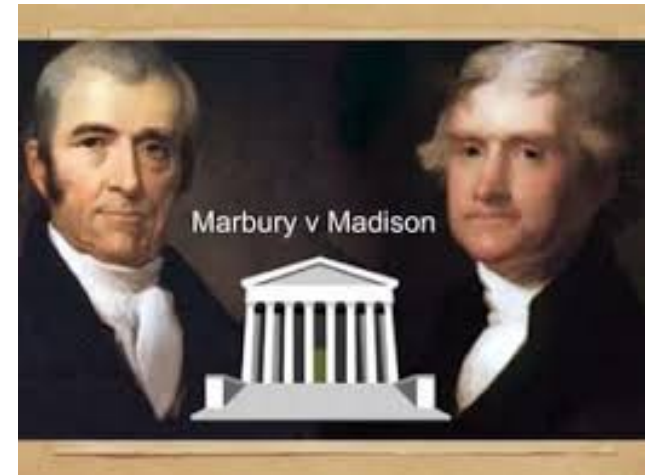
“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”

“In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be 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.”

2. An Uneven History:

The Constitution did not say anything about the court's ability to check the powers of the other two branches. So, from where does this power come?

- The power to declare a law unconstitutional, known as "judicial review," was initially implied rather than explicitly stated.
- In 1803, this power was established by precedent in the case of *Marbury v. Madison*.
- The case revolved around judicial appointments made by John Adams at the last minute under the recently passed Judiciary Act.
- Chief Justice John Marshall and the court ruled that the new president, Thomas Jefferson, was not obligated to honor Adams's appointments because the court declared the Judiciary Act unconstitutional.
- Although Jefferson did not support the Supreme Court having this power, he could not challenge the ruling since he had technically won the case.



2. An Uneven History:

After the *Marbury v. Madison* ruling, did everyone accept the Supreme Court's power of judicial review?



- In the early 1830s, John Marshall and the Supreme Court ruled in favor of the Cherokees in their battle to remain in Georgia.
- President Andrew Jackson vehemently disagreed with the decision, allegedly saying, “John Marshall has made his decision; now let him enforce it.”
- Historical records show that during the late 1830s, the Indian Removal Act, championed by Andrew Jackson, led to the forced relocation of Native Americans along the Trail of Tears, resulting in the deaths of approximately 3,000 to 4,000 individuals, primarily from the Cherokee Nation.

2. An Uneven History:

What determines the number of justices on the Supreme Court?

- The Constitution left this up to Congress.
- The Judiciary Act of 1789 set the number at six.
- In 1807, Congress increased the number of justices to seven.
- In 1837, the number was bumped up to nine.
- In 1863, it rose to 10.
- In 1866, Congress passed the Judicial Circuits Act, which reduced the number of justices to seven and prevented President Andrew Johnson from appointing anyone new to the court.
- In 1869, Congress increased the number of justices to nine, a number that has remained unchanged since then.



2. An Uneven History:

What actions did FDR take regarding the size of the Supreme Court?



- In 1937, in an effort to create a court more friendly to his New Deal programs, President Franklin Roosevelt attempted to convince Congress to pass legislation allowing a new justice to be added to the court—for a total of up to 15 members—for every justice over 70 who opted not to retire.
- Congress didn't go for FDR's court-packing scheme, which turned into an embarrassing fiasco.

2. An Uneven History: Beginning in 1789, where was the Supreme Court housed?

For most of its history,
the Supreme Court
met in the Capitol's
basement.

In 1935, it moved into
its current home.



3. Head Scratching Decisions

What are the two primary options for the Supreme Court to best interpret the Constitution?

- Originalism
 - Strengths?
 - Weaknesses?
- Living Constitution
 - Strengths?
 - Weaknesses?



3. Head Scratching Decisions

How effective has the Supreme Court been in fulfilling its Constitutional role?



3. Early Head Scratching Decisions

- **Dred Scott v. Sanford (1857)**

- Ruled that African Americans were not citizens and could not be citizens. The court also ruled that laws like the Missouri Compromise, which restricted slavery in new states, were unconstitutional.

- **The Civil Rights Cases (1883)**

- Challenged the Civil Rights Act of 1875, which prohibited racial discrimination in public accommodations like hotels, restaurants, and transportation. Interpreted the Fourteenth Amendment so narrowly that it struck down the Act, arguing it could not regulate private businesses. This decision ushered in the Jim Crow era of legalized racial segregation.

- **Plessy v. Ferguson (1898)**

- Upheld racial segregation under the "separate but equal" doctrine. Implied Black inferiority and violated the 14th Amendment's Equal Protection Clause, perpetuating the Jim Crow laws.

- **What do these three cases share in common?**

- **They were ranked as the three worst Supreme Court decisions of all time.**

3. Head Scratching Decisions

How should these more recent cases be assessed?

- *Bowers v. Hardwick* (1986): Upheld a discriminatory Georgia sodomy statute that criminalized sexually active gay and lesbian relationships.
- *District of Columbia v. Heller* (2008): The court ruled that the Second Amendment protects individuals' right to keep and bear arms for lawful purposes. It also pronounced that the District of Columbia's ban on handguns and requirement to keep firearms inoperable violated this right.
- *Citizens United v. FEC* (2010): Held that political donations are speech protected by the First Amendment, opening the floodgates to unlimited personal and corporate donations to "super PACs."
- *Dobbs v. Jackson Women's Health Organization* (2022): Revoked the constitutional right to abortion nationwide, allowing states to determine its legality independently.
- *City of Grants Pass v. Johnson* (2024): Held that local government ordinances with civil and criminal penalties for camping on public land do not constitute cruel and unusual punishment of the unhoused.
- *Trump v. United States* (2024): Determined that presidential immunity from criminal prosecution presumptively extends to all of the president's "official acts."

3. Head Scratching Decisions

On the other hand, have any decisions pleased those on the liberal side of the spectrum?

- ***Brown v. Board of Education* (1954):** Declared racial segregation in public schools unconstitutional, overturning the "separate but equal" doctrine established in *Plessy v. Ferguson* (1896).
- ***Griswold v. Connecticut* (1965):** The Court ruled that a state's contraceptive ban violated the right to marital privacy.
- ***Loving v. Virginia* (1967):** This decision struck down laws banning interracial marriage, affirming that such laws violated the Equal Protection and Due Process Clauses of the 14th Amendment.
- ***Roe v. Wade* (1973):** The Court established a woman's legal right to have an abortion, ruling that the right to privacy under the Due Process Clause of the 14th Amendment extended to a woman's decision to terminate her pregnancy.
- ***United States v. Nixon* (1974):** The Court ruled that President Nixon had to turn over tapes related to the Watergate scandal, emphasizing that no one, including the President, is above the law.
- ***Lawrence v. Texas* (2003):** The Court invalidated sodomy laws in Texas, ruling that they violated the right to privacy and equality, thus decriminalizing same-sex sexual activity across the United States and advancing LGBTQ+ rights.
- ***Obergefell v. Hodges* (2015):** Legalized same-sex marriage nationwide, ruling that same-sex couples have the constitutional right to marry under the Equal Protection and Due Process Clauses of the 14th Amendment.

4. The Court's Current Composition



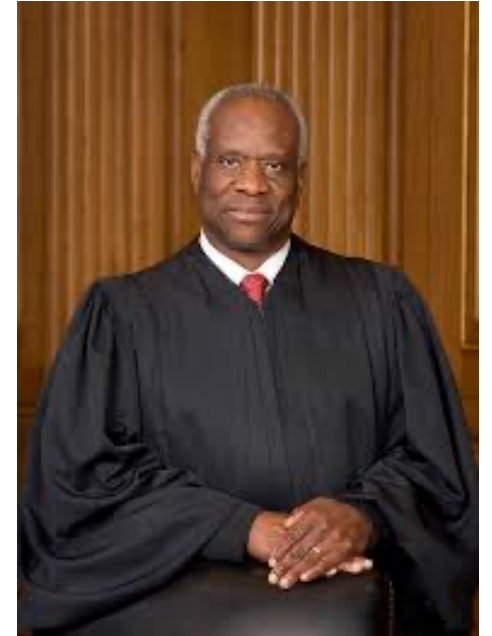
4. The Court's Current Composition

Clarence Thomas

Allegations of Sexual Harassment: Thomas's confirmation to the Supreme Court in 1991 was marred by accusations of sexual harassment from Anita Hill, a former employee.

Ethical Concerns: Thomas has been scrutinized for potential conflicts of interest, especially regarding his wife's political activities, which lean heavily toward conservative causes. Critics argue that these relationships may affect his impartiality on the bench.

Potential Scandal: There are allegations that Thomas accepted lavish gifts and benefits from Harlon Crow, a billionaire GOP donor, without disclosing them, which raises ethical concerns. Reports indicate that Thomas received luxury vacations, private jet travel, and other expensive gifts over several years. Critics argue that these undisclosed gifts could compromise his impartiality and objectivity as a Supreme Court Justice.



4. The Court's Current Composition

Samuel Alito

Potential Scandal: Alito has gone on undisclosed luxury vacations with conservative donors who have business before the court.

Extreme Partisanship: Alito has been criticized for flying an upside-down American flag outside his Virginia home and an “Appeal to Heaven” flag outside his vacation home in New Jersey. Both types of flags were carried by rioters who breached the U.S. Capitol building on January 6, 2021.



The Court's Current Composition

Trump's Three Appointees



- **Neil Gorsuch – 2017**



- **Brett Kavanaugh – 2018**



- **Amy Coney Barrett - 2020**

Conclusion

What, if anything, can be done to improve the U.S. Supreme Court?

