



THE FORMATION AND FUNCTION OF THE SUPREME COURT

Background: The United States Supreme Court was officially established with the *ratification* of the Constitution in 1789 (see link below). The Constitution, however, does not go into great detail about the Court's function so much consideration has been necessary the past two centuries to determine its *purview*.

The Supreme Court is the highest court in the nation, and therefore is the primary overseer of the *judicial branch* of the government, which, alongside the *legislative branch* and *executive branch*, is a key component of a system of *checks and balances*.

Compared to the other two branches, though, the Supreme Court's responsibilities are relatively straightforward, with its most significant being *judicial review*. This process imbues the Court with the awesome power of determining whether existing laws are *unconstitutional*.

Yet the concept of judicial review is not directly expressed in the Constitution. It was envisioned and articulated by Chief Justice John Marshall in 1803 in the landmark case *Marbury v. Madison*.

Marshall saw it as critical to a working democracy that the Court possesses the ability to determine a law's constitutionality; otherwise, the legislative branch, which creates the laws, would hold too much power, or in the words of Marshall, have a "real and practical omnipotence."

Initially, the Court consisted of five *justices*, but since 1869 has maintained nine –one chief justice (currently William Rehnquist) and eight associate justices. When a vacancy appears, a new justice is appointed by the president and approved by a majority vote in the Senate.

Once appointed, the justices serve for life, unless illness, retirement or illegal or unethical conduct force them out (the latter of which has never been done in the Court's history).

Moreover, the Court's process of determining a law unconstitutional is remarkably thorough. First, the Court must select cases to consider that are submitted from the *lower courts*. In the eyes of the justices, these cases must present a vital constitutional issue.

Next, the Court closely reviews *briefs* submitted by the lawyers representing the individual cases. Then, the lawyers present *oral arguments* to the Court for further consideration of the case, during which the justices participate in intensive analysis and discussion.

Lastly, the Court writes an opinion, which is a detailed explanation of the decision they reached in the case. This process is long and painstaking and usually involves considerable examination and reconsideration of the case.

Once an opinion is completed, it then becomes binding, or law. The document that results is referred to as a *majority opinion*.

Overall, the Supreme Court has had an immeasurable impact on the American political system and way of life. Its existence has helped maintain fairness and balance in the United States government, and its decisions have in some way affected virtually every member of society.