

## Module 5: The Judiciary

### Topic 3 Content: Selecting and Deciding Cases

#### Introduction



**Glover Mint:** How does the Supreme Court choose a case to hear? What happens after the choice has been made? To help answer these questions, we have our constitutional lawyer, Jeanne Marcel live in the studio, with *The Judgment Zone*.

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**The Judgment Zone**



**Jeanne Marcel:** By law, the United States Supreme Court begins its term on the first Monday in October. From that point until around the end of June, the Supreme Court will be in session. While the Court is in session, the justices alternate between hearing cases and working in their offices where they make their rulings, issue court orders, and decide which cases they should hear in the future. Before we examine how the Supreme Court decides a case, we will take a look at how cases are submitted to the Supreme Court.

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#### Case Submission

## Selecting and Deciding Cases

### Case Submission

- Around 10,000 cases are submitted to the Supreme Court every term.
- Most cases are appeals from the lower federal courts.
- If a party is dissatisfied with the court of appeals decision, it may request a writ of certiorari.
- A **writ of certiorari** is an order seeking review of a lower court case.
- A case may be submitted through the highest state courts.
- If a state court case has no more appeals and involves the Constitution, the Supreme Court may hear it.
- The Supreme Court may exercise its limited original jurisdiction to hear a case.
- The Court hears a few cases through original jurisdiction each term.

**Jeanne Marcel:** Every term, there are around 10,000 different cases submitted to the Supreme Court. The Court receives these cases in one of three ways. Most of the cases are appeals from the lower federal courts. When a case is tried in a district court, then appealed in a court of appeals, it may come to the Supreme Court. If one of the parties involved in the case is unhappy with the court of appeals decision, it may request a writ of certiorari. A writ of certiorari is the legal term for an order seeking review of a lower court case. If the Supreme Court denies certiorari, the lower court's ruling stands. If the Supreme Court grants certiorari, it agrees to hear the case.

The second way a case may be submitted to the Supreme Court is through the highest state courts. Since the Supreme Court has appellate jurisdiction over every court in America, it may hear a case that originated in a state court. This does not happen often, but if a state court case has exhausted its appeals and it involves the Constitution, the Supreme Court may decide to hear the case.

The final way a case comes to the Supreme Court is through its limited original jurisdiction. If a court case involves two states, or the U.S. government is a party, or if a foreign ambassador is a party, the federal court system has exclusive jurisdiction. There are usually a few times each term when the Supreme Court decides to exercise its limited original jurisdiction and hear such cases first.

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**Case Selection**

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**Case Selection**

- Out of approximately 10,000 cases sent to the Supreme Court each term, the justices agree to hear around 100.
- If four out of the nine justices agree to hear a case, it will be added to the docket.
- The Supreme Court tends to focus on cases involving major questions about the Constitution or federal law.

**Jeanne Marcel:** Out of approximately 10,000 cases sent to the Supreme Court each term, the justices agree to hear around 100. If four out of the nine justices agree to hear a case, it will be added to the list of cases to be heard, which is known as the docket. Because there are so many requests for a writ of certiorari submitted, the Supreme Court tends to focus on cases involving major questions about the Constitution or federal law.

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#### Briefs

## Selecting and Deciding Cases

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- A **brief** is a written argument that has been prepared by each of the sides in a dispute and submitted to the Court.
- Briefs are carefully prepared, with the entire legal argument laid out.
- Precedents set by previous court cases may be highlighted.
- Justices may take an *amicus curiae* brief into consideration.
- *Amicus curiae* means “a friend of the court” and refers to briefs written by an outside party who is not involved in the case, but who has an interest in its outcome.

**Jeanne Marcel:** A brief is a written argument that has been prepared by each of the sides in a dispute and submitted to the Court. These briefs are usually carefully prepared with the entire legal argument laid out. Precedents set by previous court cases may be highlighted. Justices may even take an *amicus curiae* brief into consideration. *Amicus curiae* means “a friend of the court.” These briefs are written by an outside party who is not involved in the case, but who has an interest in its outcome. The American Civil Liberties Union, for example, may submit a “friend of the court” brief for a case in which a party is arguing that its constitutional rights have been violated.

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#### Oral Arguments

## Selecting and Deciding Cases

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- The oral arguments are frequently depicted in movies and on television.
- All nine justices are seated on the bench, in their robes, listening to both sides of the case.
- The Chief Justice presides over the oral arguments.
- The lawyers on each side of the dispute have exactly thirty minutes each to present their case.
- Justices may ask intense questions in an attempt to discover a weakness in either side's argument.

**Jeanne Marcel:** This is the scene that you have watched in countless movies and television shows. All nine justices are seated on the bench, in their robes, listening to both sides of the case. The Chief Justice presides over the oral arguments. The lawyers on each side of the dispute have exactly thirty minutes each to present their case. During the oral arguments, justices may ask intense questions in an attempt to discover a weakness in either side's argument. It is easy to see why this scene is used so often on the screen; it is inherently a dramatic and tense situation.

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**Conference**

## Selecting and Deciding Cases

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graph TD; A[Case Submission] --> B[Case Selection]; B --> C[Briefs]; C --> D[Oral Arguments]; D --> E[Conference];
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- After the oral arguments, the justices meet privately.
- Behind closed doors, they discuss the case and their opinions on it.
- The Chief Justice leads this conference, but all justices have a chance to speak.
- Based on all of the information from the briefs, the oral arguments, the conference, and the justices' own study, the Court begins to draft its formal written opinion.

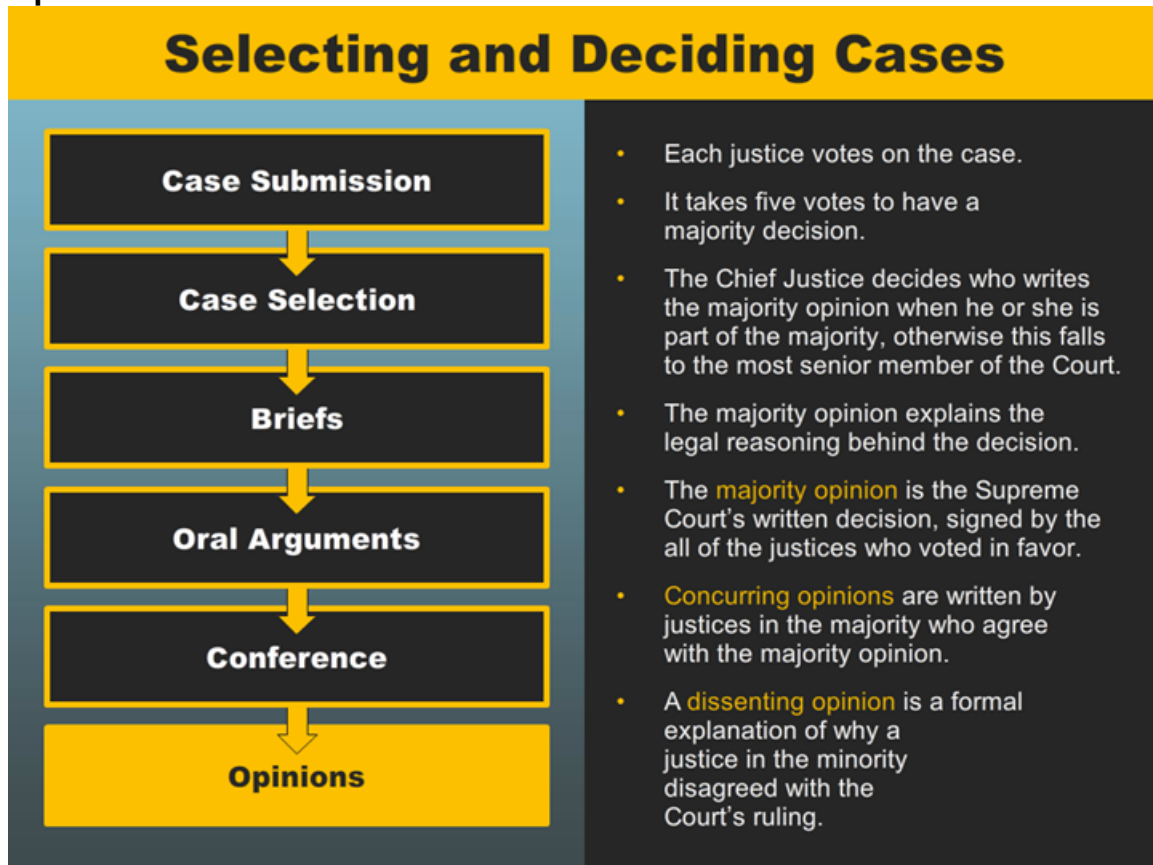
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**Jeanne Marcel:** After the dramatic scene of the oral argument plays out in the courtroom, the justices meet privately. Behind closed doors, they discuss the case and their opinions on it. The Chief Justice leads this conference, but all justices have a chance to speak. Based on all of the information from the briefs, the oral arguments, the conference, and the justices' own study, the Court begins to draft its formal written opinion.

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#### Opinions



**Jeanne Marcel:** After the discussions at the conference, each justice votes on the case. With nine justices, it takes five votes to have a majority decision. The Chief Justice gets to decide who writes the majority opinion when he or she is part of the majority. When the Chief Justice is not in the majority, this responsibility falls to the most senior member of the Court that is in the majority. The majority opinion explains the reasoning behind the decision. It is a formal written judgment of the case, which explores legal issues, examines precedents set in other cases, and states why the case was overturned or supported. Simply put, the majority opinion is the Supreme Court's written decision, signed by the all of the justices who voted in favor.

There are two other kinds of opinions that may accompany the majority opinion. Concurring opinions are written by justices in the majority who agree with the majority opinion. They may be written to offer more detail on a deciding factor that was not included in the majority opinion. Justices in the minority may also offer a dissenting opinion. This is a formal explanation of why the justice disagreed with the Court's ruling. It has no legal effect, but it is included in the official documentation of the case. This means it may be referenced in future Supreme Court hearings.



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#### Court Orders



**Jeanne Marcel:** As I stated earlier in the program, there are around 10,000 cases submitted to the Supreme Court each term. Approximately 100 of these are reviewed, from the briefs to the oral arguments, to the conference, down to the signed written decisions. These are known as plenary reviews. In addition to these, the Supreme Court will deal with approximately fifty more cases through court orders. These are short unsigned orders from the Supreme Court, denying a writ of certiorari or asking an inferior court to reconsider a case. That's all I have for you today. Back to you, guys!

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**Ending of Episode**



**Glover Mint:** The Supreme Court's ruling on a case is final and it may only be overturned by a future Supreme Court decision or a constitutional amendment. That's it for today's episode of WUSG News. Have a great day!