Justices on the Supreme Court

Maxime Coles MD

The government of the United States comprises of a "Legislative Branch", an "Executive branch" and a "Judicial Branch". States vote and elect their government. All is in the respect of the Constitution of the United States of America.

The Executive and the Legislative branches are elected by the people while the members of the Judicial Branch are appointed by the President and confirmed by the senate (Article 3 of the Constitution). The Congress has the discretion to shape the structure of the Judicial Branch and even the number of the supreme court Justices. When the Judiciary act of 1789 created the US Supreme Court, it consisted in a Chief Justice and five (5) Associate-Justices.

There is only one chief-Justice. Over the years, 4 or six and now eight associate-Justice have been appointed since 1869. Congress routinely changed the number of Justices (not the constitution) to achieve its own partisan political goals. When George Washington signed the Act into law, he set up the number of Supreme court Justices to six (6). One time under Abraham Lincoln, they had ten (10) Supreme court Justices because of Dred Scott who wanted to cement an antislavery majority on the Court while under John Adams, they were only five (5). After the civil war and Lincoln assassination, Congress passed legislation to cut the number of Justices to seven (7) assuring that Johnson wouldn't have the opportunity to fill any vacant seat (1866).

This is also the same Congress which has the power to appoint judges in the lower courts to try most of federal cases as well as in 13 courts of appeal which review the district courts actions. The Constitution is silent on the number of justices to sit on the supreme court. Actually, the office of the Chief-Justice exists only under Senate rules for impeachment proceedings of the president when the Chief Justice needs to preside.

In fact, federal judges can only be removed through an impeachment process in the House of the Representatives followed by a conviction in the Senate. Judges and Justices have no fixed term and serve until their death, retirement or conviction by the Senate. This allow them to be insulated from public passions, enabling them to apply the Law with only justice in mind without electoral and political concerns.
If the Constitution grants jurisdiction of the federal court to Congress, there are some exceptions which do not answer to these rules especially when there is a dispute between two or more states, in which case the constitution grants the Supreme Court original jurisdiction.

Justices may hold tenure for life as long as they maintain "good behavior". They may be removed by impeachment by the house of representatives and by conviction by the Senate. Only one Justice, Samuel Chase, so far has been impeached in 1804 by the House (Congress) but was later acquitted by the Senate. No Justice has even been removed.

There are few cases brought before the judiciary typically because of controversies and they proceed from the district court to the appellate court and may even finish at the supreme court. It looks like the federal courts enjoy the power of interpreting the law and apply it to individual cases. The inferior court are then constrained by the decision of the supreme court's interpretation of the facts of the case.

The Supreme Court of the United States is the highest court in the land and the only part of the federal judiciary system required by the constitution. And the constitution does not stipulate how many we need but this is a number set by the Congress. As we have already stated, their number is at nine (9).

At first, membership of the court consisted entirely of white Protestant males but over the years, more diversity was introduced to the Court. Thurgood Marshall joined in 1967 as the first African-American Justice, Sandra Day O' Connor joined in 1981 as the first women Justice, Ketanji Brown Jackson in 2022, as the first Female African American Justice, Sonia Sotomayor in 2009 as the first Hispanic justice and the third woman Justice, Louis Brandeis in 1916 as the first Jewish Justice and Roger Brooke Taney in 1836 as the first catholic Justice.

The supreme court does not hear appeals as a matter of right but instead, parties must petition the Court for a "Writ of certiorari" and this is the court custom and practice to" grant cert" when four of the nine justices decide they should hear the case. The Supreme Court may receive more than 7500 requests a year for "certiorari" but they generally will accept around 150 which they judge necessary to have their review especially if two or more federal courts of appeals have ruled differently on the same question.

Before issuing a ruling, the Supreme Court usually hears oral arguments and the Justices question the facts. The case may involve the federal government and the Solicitor General presents arguments on behalf of the United States. Then, the Justices will hold private conferences, make their decision and issue their court opinion after a period of months.

Every person accused of a wrongdoing has a right to a fair trial before a competent judge and a jury of one's peers. This is mainly what the Judicial process assured by "article 3" of the Constitution. Other Amendments, the Fourth, the Fifth, the Sixth and the Eight Amendments bring additional protections to the accused of a crime like the right to have a legal representation, the right to cross-examined witnesses, the right to a speedy trial by an impartial jury, and to avoid self-discrimination, the guarantee that no person can be deprived of life or property without a due process.

One is also protected from excessive fines and cruel or unusual punishments. Under State or Federal Law, criminal proceedings can be conducted under state or federal laws depending of the nature and the extend of the crime. Charges can be dismissed or the judge determines the sentence with prison time. Or fine or even execution.

After a criminal or civil case is tried, it may be appealed to a higher court (Federal court or State appellate court). The litigant who files the appeal is called an "appellant" and is expected to have the court overturn a trial on erroneous grounds. If a defendant is found not guilty in a criminal proceeding, he or she cannot be retried on the same set of facts.

Federal appeals are decided by a panel of three judges. The appellant presents his legal arguments to the panel in a written document called "brief "and try to persuade the judge that an error was made by the trial court and would like the decision to be reversed. The other party defending the appeal is called the "appellee" or the "respondent. The court has the final word in the case unless it sends it back to the trial court for additional proceedings or the decision can be reviewed by a larger group of judges "en banc".

Aa we demonstrated above, a litigant who loses in a federal court or in a highest court, may file a "writ of certiorari" asking the supreme court to review the case, although, not obligated to grant review. The court will agree to hear a case only when it involves a new legal principle or when one and more appellate courts have already interpreted a law differently. In special circumstances, the Supreme court is required by law to hear an appeal.

Actually Chief Justice John Roberts was appointed in 2005 by George W Bush, Clarence Thomas, appointed also by George H Bush in 1991, Samuel Alito appointed by George W Bush in 2006, Sonya Sotomayor appointed by Barack Obama in 2009, Elana Kagan appointed by Barack Obama in 2010, Neil Gorsuch appointed by Donal Trump in 2017, Brett Kavanaugh appointed by Donald Trump in 2018, Amy Coney Barett appointed by Donald Trump, Ketanji Brown Jackson appointed by Joseph Biden in 2023.

Maxime Coles MD (8-4-24)

References:

1- Watson, Bradley C. S "Essays on Article III: Supreme Court" Heritage Guide to the Constitution. Washington DC The Heritage Foundation August 22, 2020.
2- "The Court as an Institution", Washington DC: Supreme Court of the United State. 3 September 2018.

3- The Eleven Amendment and the Reading of Precise Constitutional Texts. Yale Law Journal 113 (8): 1663-1750.
4- Siegan, Bernard H (1987): The Supreme Court's Constitution. Transaction Publishers p 146 (February 20, 2021)

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