

The Judicial Branch

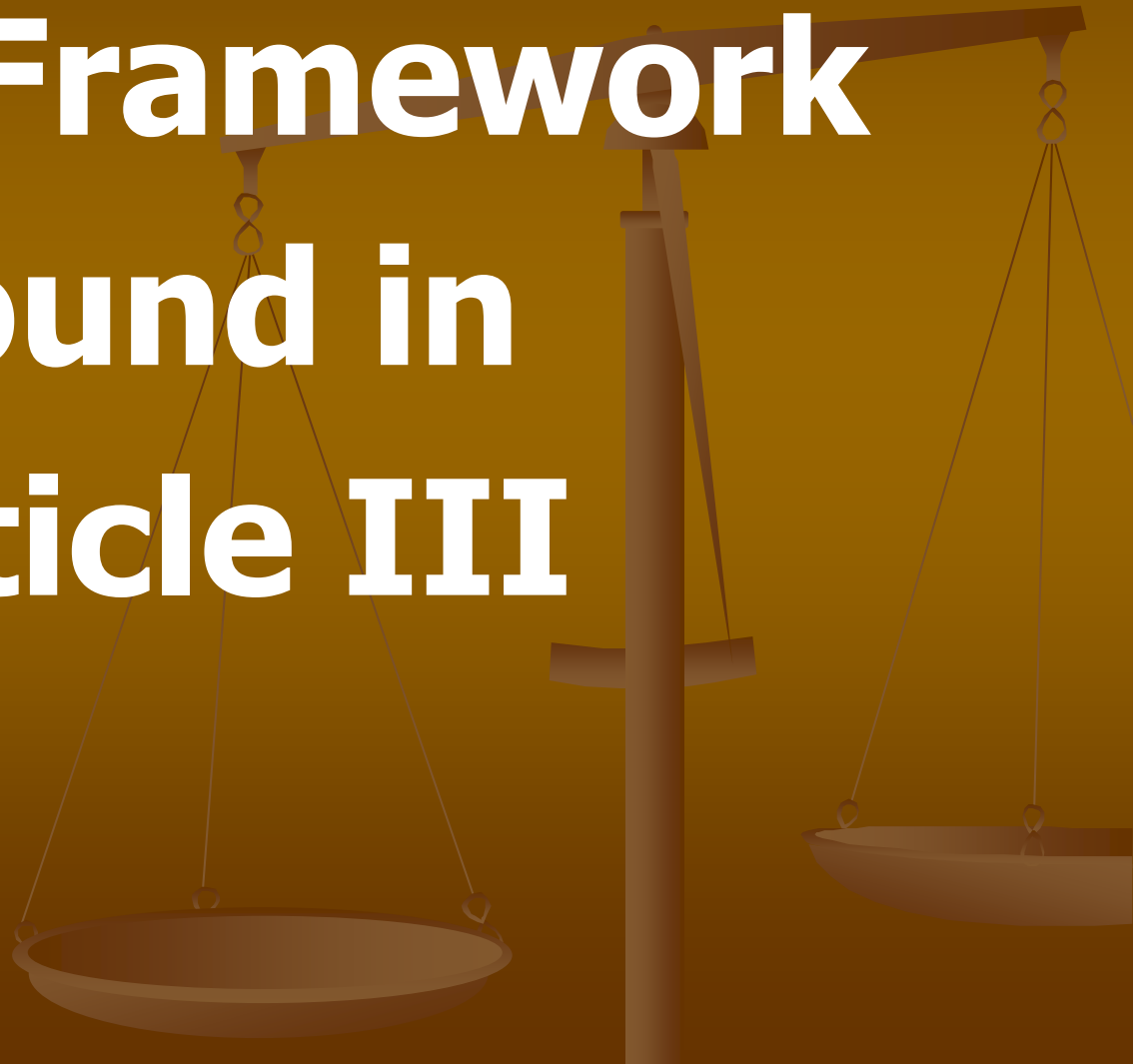


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Legal Framework

Found in

Article III



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1. Jurisdiction – the range of cases a court may hear.

a. Original

b. Appellate



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2. Standing – the criteria that a party to a suit must meet to be able to use a particular court.



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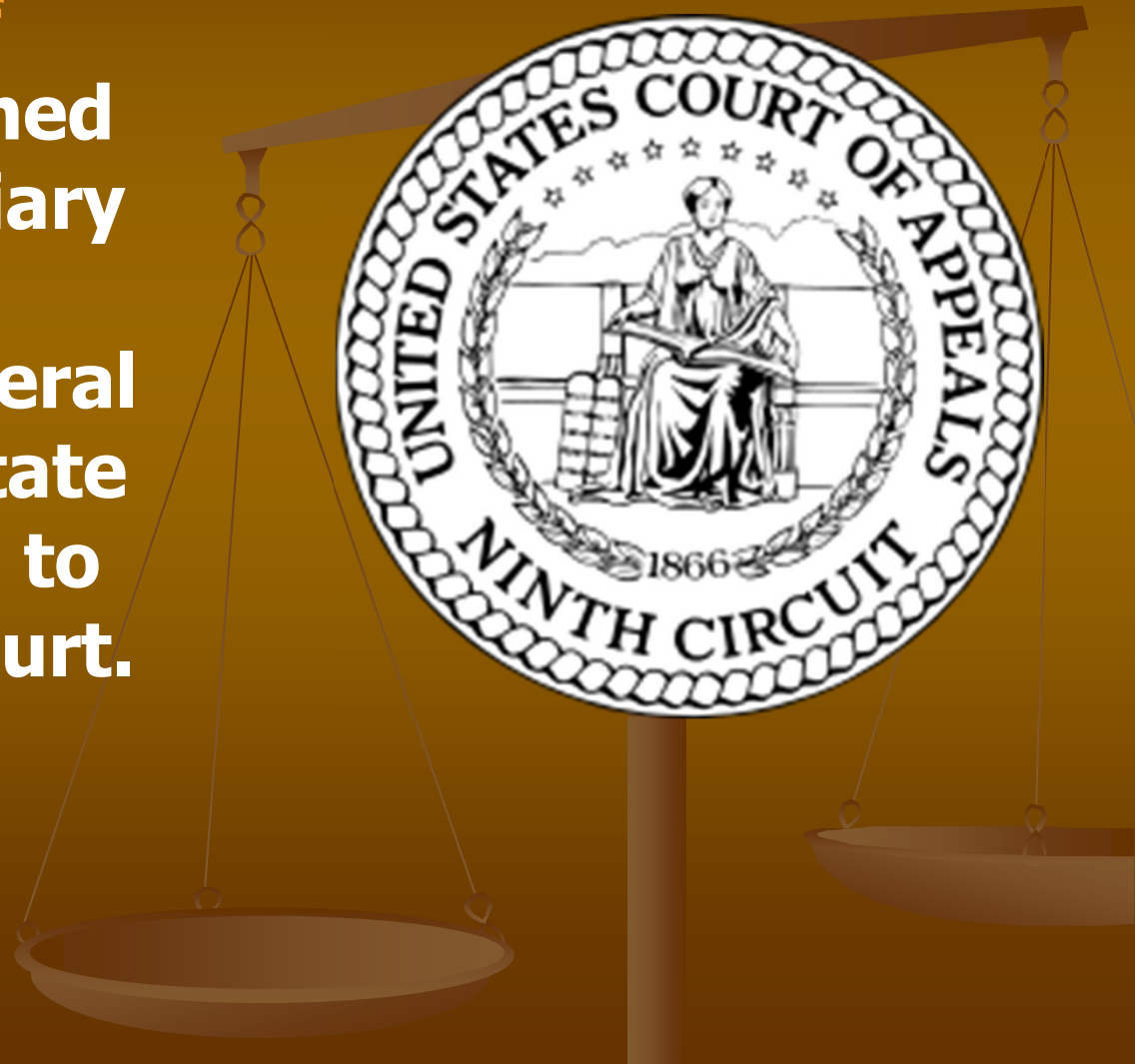
“Defense Secretary: Libya Did Not Pose Threat to U.S., Was Not ‘Vital National Interest’ to Intervene” – ABC News



3. Article VI (Supremacy Clause) – one of the most important parts of the Constitution. All laws “made in pursuance thereof” and all treaties “under the authority of the United States” are the “supreme law of the land.”

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4. Judiciary Act of 1789 – established a national judiciary (lower federal courts plus “federal questions” by state courts appealed to the Supreme Court.

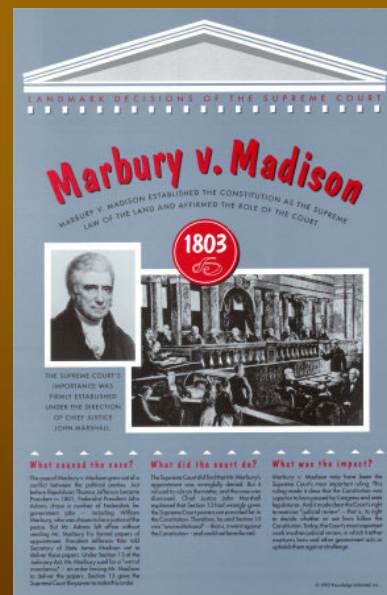


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5. Marbury v. Madison (1803)

...the case which created the concept of “judicial review,” or the ability to rule a statute or executive action unconstitutional



The American Legal System



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- 1. Statute Law** – enacted by the legislature.
 - 2. Common Law** – law created by judicial decisions.
 - 3. Equity Law** – focuses on prevented wrongs that cannot be adequately compensated once they have been committed.
 - 4. Criminal and Civil Law** – criminal involves prosecution by the state that could lead to jail or fine; civil involves litigation by private parties.
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The Supreme Court – 9 Members

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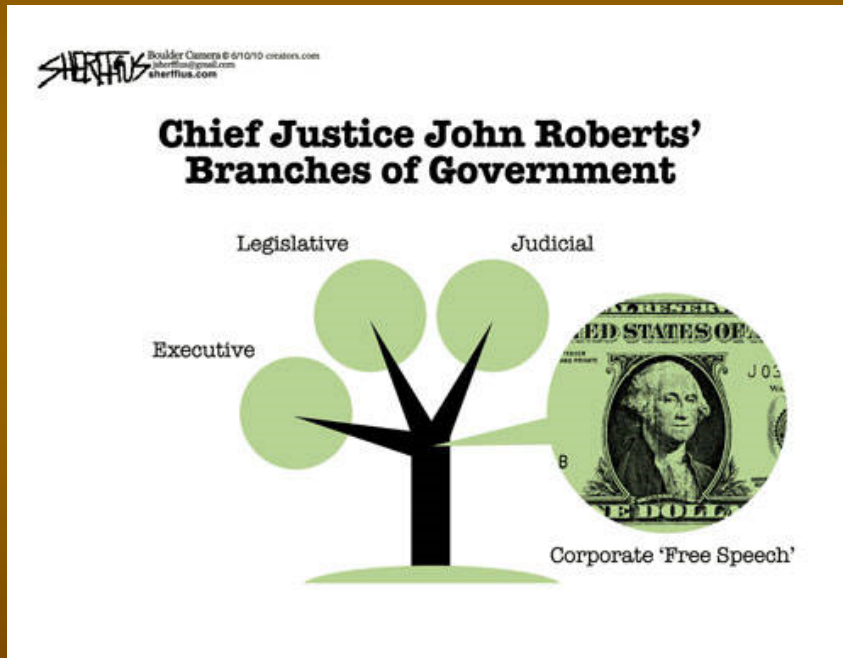
1. Routes to the Supreme Court

- a. *Writ of Certiorari*
- b. Right of Appeal
- c. *In Forma Pauperis* Petition



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2. Supreme Court Opinions



a. Majority

b. Concurring

c. Dissenting

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3. Selection and Removal

a. Nominated by the president, confirmed by Senate

b. Impeachment or retirement



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4. Nomination Considerations

- a. Ideological compatibility with President's views
- b. Geography
- c. Gender, race, religion, class (?)

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5. Senatorial Courtesy

A practice that requires that the president appoint someone acceptable to the senators from the same party as the president to any district court vacancies in their state.



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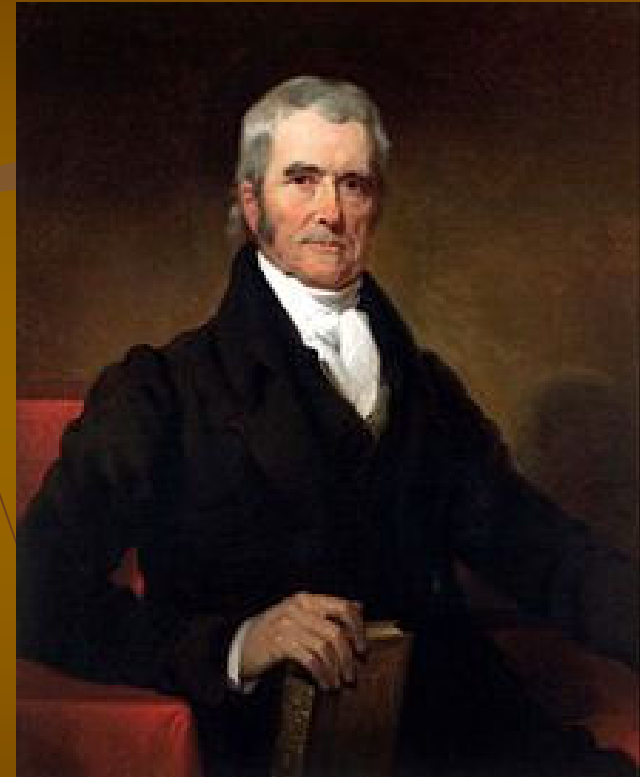
The Supreme Court In History



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1. The Marshall Court (1801-1835)

**The protection of
private property
through support
for strong national
government.**



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2. The Taney Court (1836-1864)

Focused on the
question of state
vs. national power
(*Dred Scott v.
Sanford*, 1857).



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3. Civil War and Reconstruction

The Supreme Court is overshadowed by the war and control of Congress by Radical Republicans.



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4. The Era of Corporate Power (1890-1937)

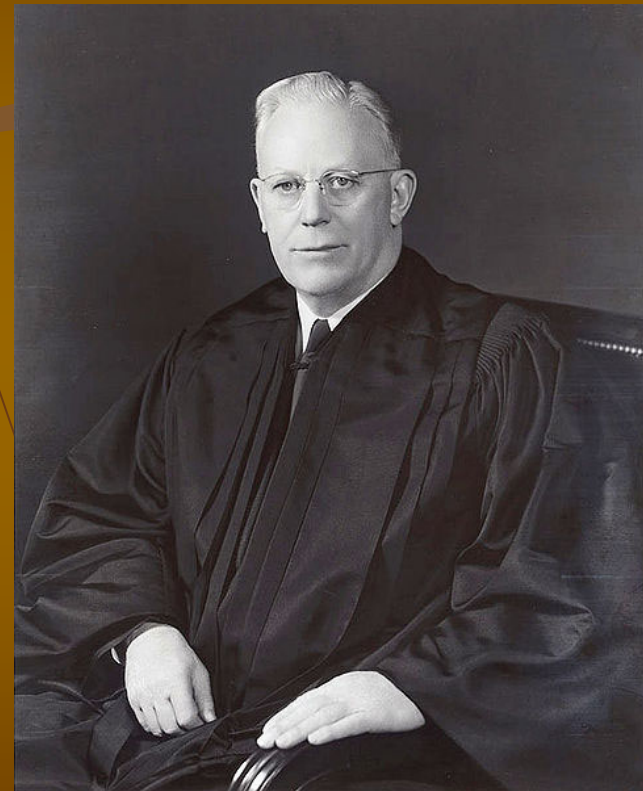
Supreme Court sympathetic to the growth of corporate power, which pits the Court against FDR during the New Deal.



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5. The Warren Court (1953-1969)

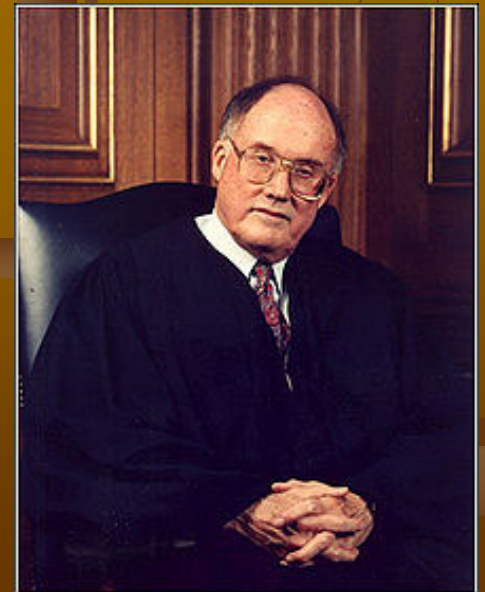
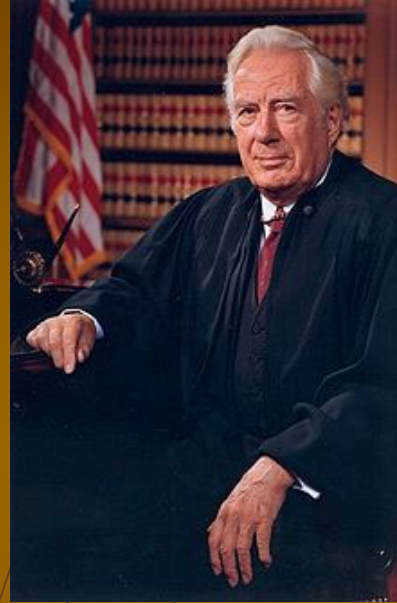
Dominated by a liberal majority who interpreted the Constitution in favor of the disadvantaged (i.e. *Brown v. Board of Education*).



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6. The Burger and Rehnquist Courts (1969-2005)

Worked to counterbalance the activist, nationalistic tendencies of the Warren Court. Also a refocus on use of state courts and other policy processes.



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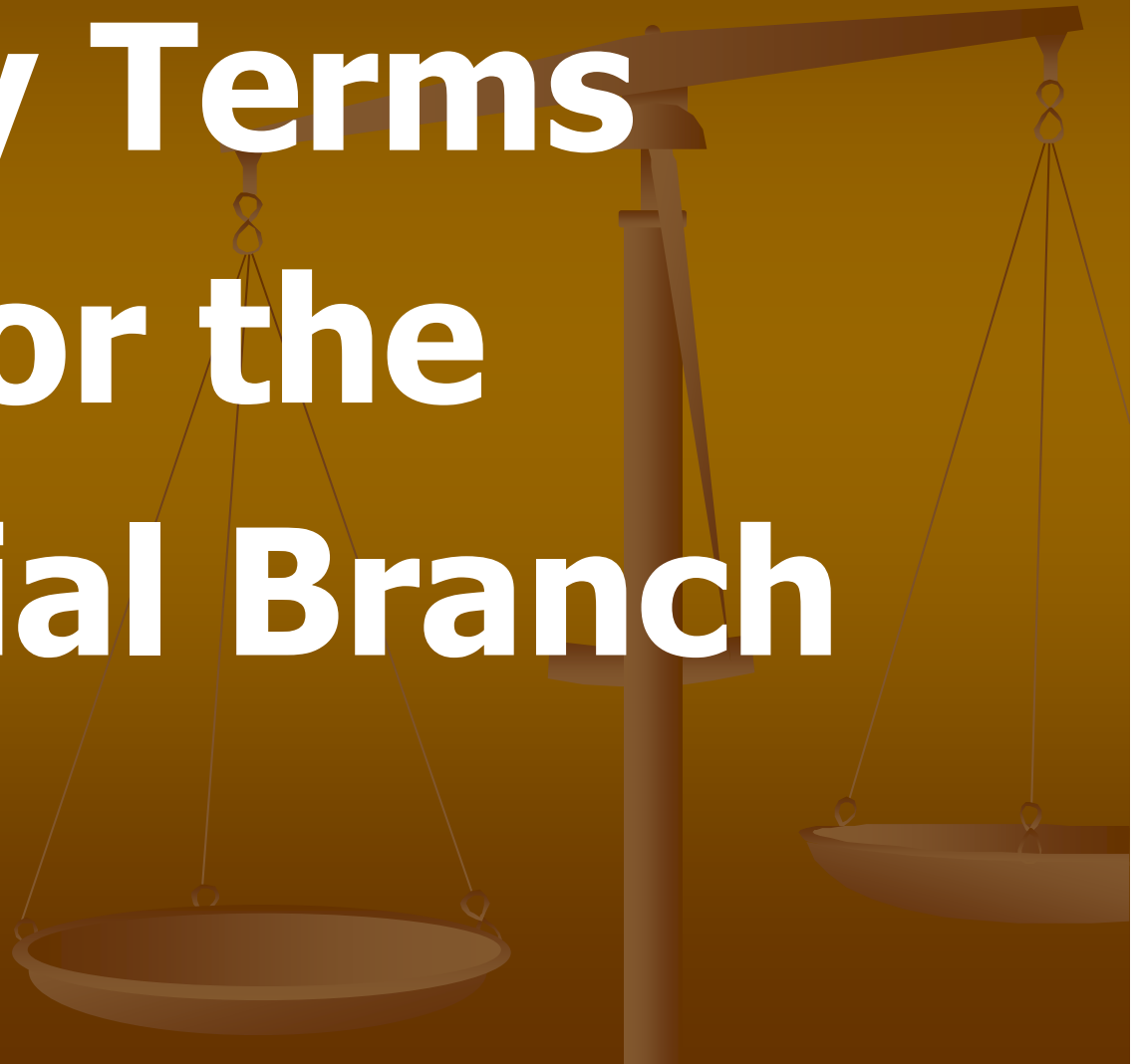
7. The Roberts Court

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Key Terms For the Judicial Branch



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1. Amicus Curiae Briefs

Legal briefs submitted by a “friend of the court” for the purpose of raising additional points of view and presenting information not contained in the briefs of the formal parties. They are used to influence a court’s decision.

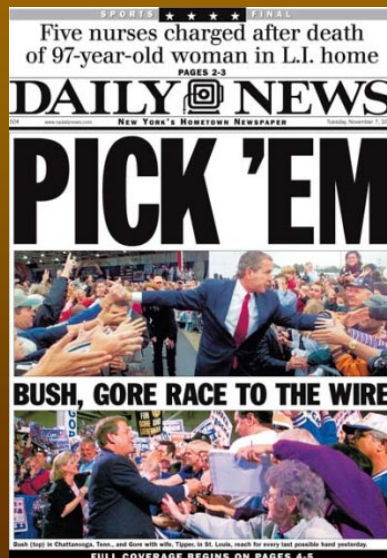
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2. Opinion

A statement of legal reasoning behind a judicial decision. The content of an opinion may be as important as the decision itself.

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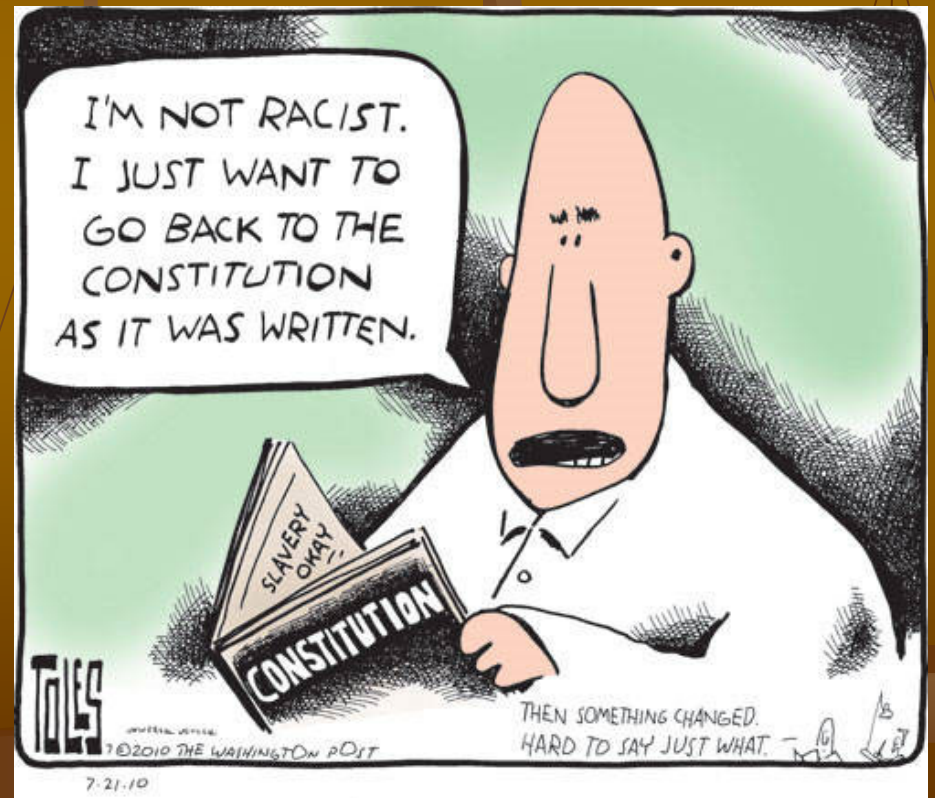
3. Stare Decisis

“Let the decision stand” meaning that an earlier decision should hold for the case being considered. Most cases are settled on this principle.

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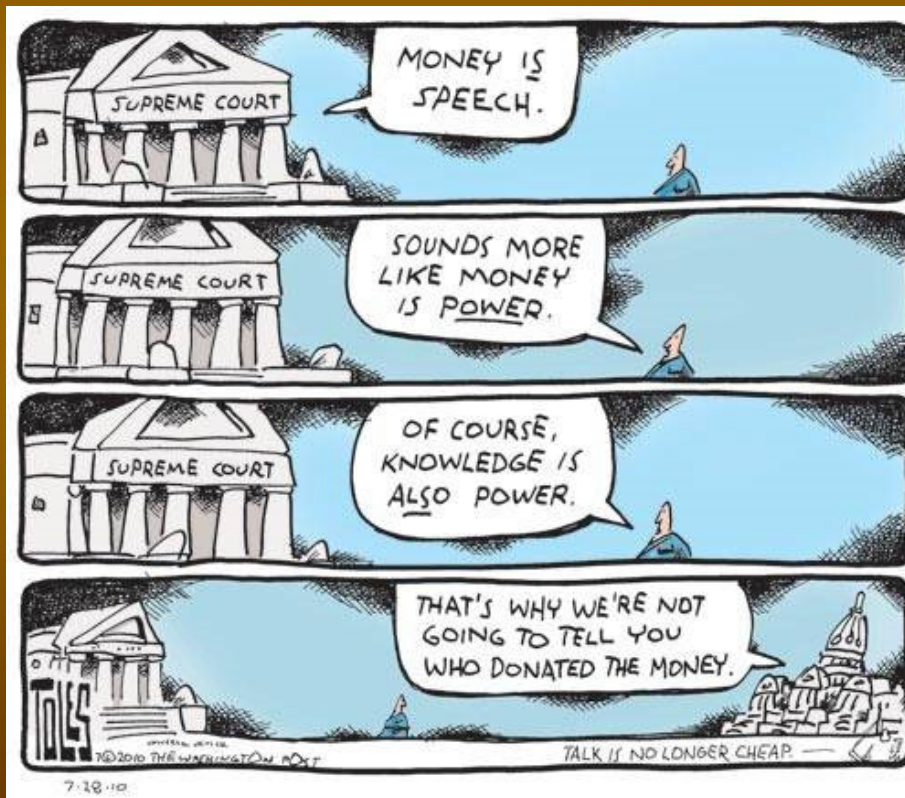
4. Original Intent

A view that the Constitution should be interpreted according to the original intent of the framers. Many conservatives (say) they support this view.



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5. Judicial Review

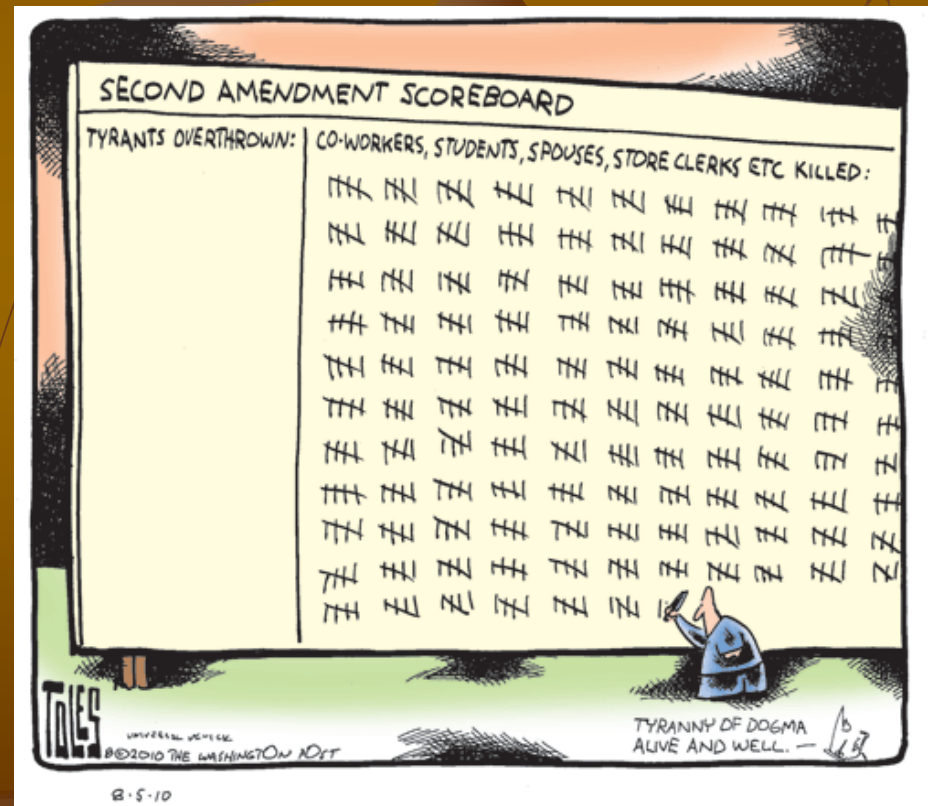


The power of the courts to hold acts of Congress, and by implication the executive, in violation of the Constitution (see *Marbury v. Madison*).

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6. Judicial Activism

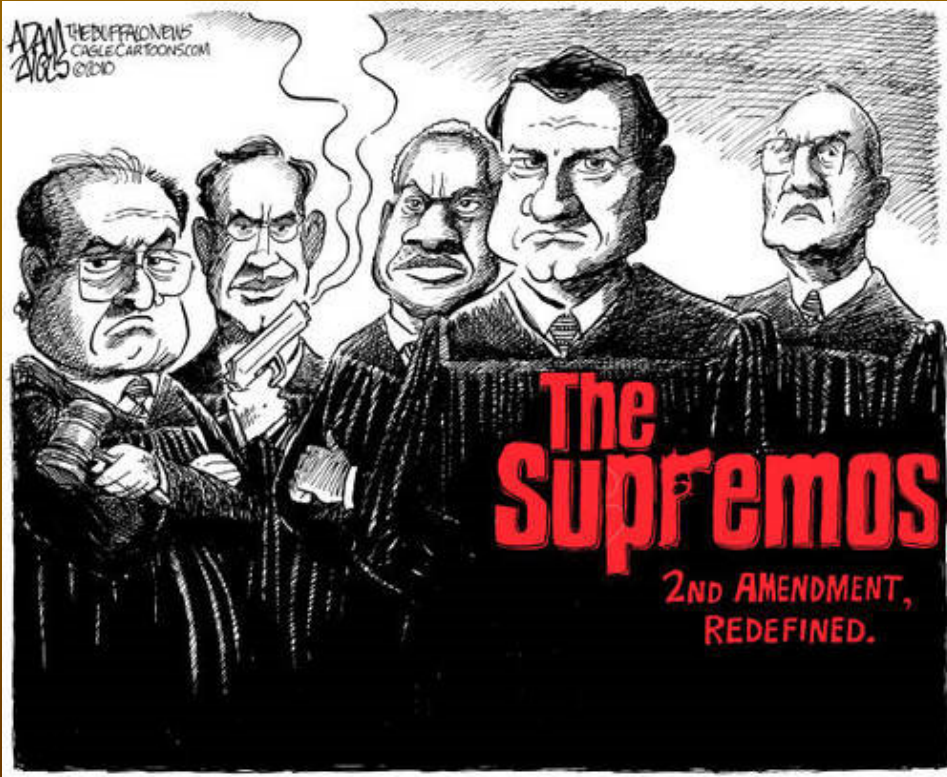
A judicial philosophy in which judges make bold policy decisions, even charting new constitutional ground. Advocates of this approach emphasize that the courts can correct pressing needs, especially those unmet by the majoritarian political process.



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7. Judicial Restraint

A judicial philosophy in which judges play a minimal policymaking roles, leaving that strictly to the legislatures.



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8. Political Questions – A doctrine developed by the federal courts and used as a means to avoid deciding some cases, principally those involving conflicts between the president and Congress.