

## **Lesson Plan – The Political Question Doctrine and Rule of 4 Decision-making**

US Supreme Court – Judiciary Branch Unit

Prep. Time: 1 -1/2 hours

Simulation Time: 1 hour

### **Introduction**

“With roots tracing to Marbury v. Madison, the *‘political question doctrine’* – that courts should abstain from resolving constitutional issues that are better left to other departments of government, mainly the national political branches – has rarely served as a meaningful restraint on the Supreme Court’s authority”

– Jesse H. Choper, Introduction to “The Political Question Doctrine and the Supreme Court of the United States,” Mourtada-Sabbah and Cain, 2007.

### **Essential Questions or Learning Objectives**

What authority or powers, found in the Constitution (or elsewhere), can the US Supreme Court use to assert its authority to hear a case? (Questions regarding Article III will be on test)

Explain how the political question doctrine functions as it relates to the role of the Judicial Branch. (An FRQ will be given on the Judiciary assessment)

Define the powers given to the Supreme Court in Article III of the Constitution. (Textbook can illustrate these powers)

Describe how the US Supreme Court determines whether to hear a case. (Simulation will model or showcase this procedure)

Explain how the minority members of the Supreme Court are helped by the ‘Rule of 4’? (Questions on judiciary assessment on Rule of 4)

### **Standards**

- I. How Does the Government Established by the Constitution Embody the Purposes, Values, and Principles of American Democracy?
  - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
  - B. How is the national government organized and what does it do?
  - C. How are state and local governments organized and what do they do?
  - D. What is the place of law in the American constitutional system?
  - E. How does the American political system provide for choice and opportunities for participation?

<http://www.civiced.org/index.php?page=912toc> – Center for Civic Education

## **Media Components**

[www.oyez.org](http://www.oyez.org) – the Oyez project at ITT Chicago-Kent College of Law, OYEZ US Supreme Court Media

[www.supremecourt.gov](http://www.supremecourt.gov) – The US Supreme Court website

[http://www.pbs.org/newshour/indepth\\_coverage/law/supreme\\_court/](http://www.pbs.org/newshour/indepth_coverage/law/supreme_court/) - PBS Newshour - Supreme Court Watch – See Archived cases, videos, summaries, etc.

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## **Materials**

2 HANDOUTS OR USE AN OVERHEAD PROJECTION UNIT / SCREEN

9 CHAIRS

DIRECTIONS FOR THE ACTIVITY

INTERNET ACCESS TO RESEARCH VARIOUS SUPREME COURT CASES

MAGRUDER'S - AMERICAN GOVERNMENT , William A. McClenaghan, 2010

Wilson and Dilulio, Jr. – American Government, 9<sup>th</sup> edition, 2004

A FLOWCHART THAT ILLUSTRATES HOW A COURT CASE ARRIVES AT THE SUPREME COURT.

## **Prep Steps for Teachers**

1. Students should read the PBS handout on the Supreme Court. (5 minutes)
2. Watch a PBS Newshour Supreme Court Watch video (A case of your choice) on a case that has reached the US Supreme Court. (10 Minutes)
3. Discuss the merits, cons and decisions of the court. (5 minutes)
4. Students are then broken into groups.
5. Nine students will be the Supreme Court Justices. The 9 students are to research an assigned Supreme Court Justice. (Have a 10<sup>th</sup> student serve as a clerk of the court who will fill in if someone is absent) A law clerk is to be assigned to each of the judges. These individuals are to sit behind the judges and assist the judges in their bio research and questioning the lawyers. Biographies of each Supreme Court Justice are found on the US Supreme Court website and elsewhere. Try to blend liberal and conservative personnel so the court is somewhat balanced politically. (30 minutes)
6. The rest of the class are to pair up as 'lawyers' and choose a case that they feel should be considered or reconsidered by our Mock Supreme Court. If you have a class of 26 students this

activity allows for 8 cases to be reviewed and discussed by the class. (10 on the court, and 8 pairings of students to argue a case) (30 minutes also in class) Additional time needed to research the case can be done at home or together as a partnership. Obviously, you may want to spread out each case over a period of 2 weeks or more. **(Simulations work best in my class on Fridays. We do debates and congressional committee role playing but I had not role playing or simulation activity for the Judiciary unit)**

7. After a period of preparation and research by both parties, the simulation can begin.
8. Ideally, a case is chosen that will be a role model for all others to follow. The 2 'lawyer' participants who have researched the case should be opposed in their stances on the merits of this case. Personally, they may not be opposed but for the sake of the classroom discussion, they should be opposed. The 'oyez, oyez' chant and the entrance of the justices should precipitate all discussion. The justices sit across the front of the classroom w/robes if possible.
9. The background of the case can be shown on the projection screen and discussed before debate can begin. I find that [www.oyez.org](http://www.oyez.org) is very succinct in explaining court cases. This also could be the role of the clerk or lawyers. (5 minutes)
10. THE RULE OF 4 comes into play here. At least 4 justices must affirm that they would like to hear this case. (Ultimately, it will be heard but the formality of 4 justices agreeing to hear the case is vital to understanding the dynamics of the Rule of 4).
11. The 2 lawyers on either side of the case have 5 minutes to argue for or against overturning this court case. (It is best to have the lawyers submit a brief or outline of their arguments prior to this presentation) During this period the justices are to be listening and take notes.(10 minutes)
  - A. The brief itself shall include the following: (written rough draft should be submitted 2 days prior to their presentation.
    - a. Facts of the case
    - b. Constitutional Issue(s) at the core of the case
    - c. Precedents and 'stari decisis' that may guide the court to change their rulings.
    - d. Explanation of why the previous ruling on the case is wrong.
  - B. Students should dress the part and be prepared on the day of their presentation.
12. The justices then have a rebuttal period to ask either lawyer a few questions about their arguments.(10 minutes)
13. Either lawyer has a 2 minute closing period to persuade the justices toward a desirable outcome. (5 minutes)

14. Now, judges recess to a corner of the room for a caucus meeting. The justices will then take a paper vote or verbal vote to decide the verdict of the case. (5 minutes)
15. The verdict is read aloud by the clerk of the court or chief justice. Classroom discussion of the verdict follows. A graphic organizer can be used or T-Bar chart to discuss the merits of each side of the case. The graphic organizer is a reflection tool and evaluative tool for the classroom and teacher.

**Evaluation** – This can tie into the overall Judiciary Assessment. But, I prefer using a rubric from Rubistar (<http://rubistar.4teachers.org/>) to assess and grade the contributions of participants. The judges can be assessed on their knowledge of procedure and their verbal contributions to the case discussion. The lawyers can be assessed by rubric on their arguments. (It is best to have them submit a brief or outline of their arguments prior to their presentation)

### **Extension Activities**

**2-3 page research paper** that critiques the Political Question Doctrine, Judicial Activism, Judicial Restraint, The Rule of Four, or any other Judicial Branch concept

\*\*\* Throughout the whole process the teacher acts as the manager to keep debate flowing, employ fairness and exploit any learning opportunity, aha moments etc.

**FRQ** – Create an essay that prepares students for AP exam and/or prompts them to write a persuasive essay that asks the student to summarize their understanding of the Judicial Process.

Students can keep a **reflection journal** that each student is to update after each court case presentation.

## **Supreme Court Justice Worksheet**

Your Justice: \_\_\_\_\_ Your Initials: \_\_\_\_\_ Partner's Initials: \_\_\_\_\_

10 Facts about your Justice's background or biography:

1

2

3

4

5

6

7

8

9

10

More...

5 Major Court Cases Opinions (Did they write a majority, minority, dissenting or concurring opinion on any major cases) Please list the cases and the perspective of the justice on each case.

1. \_\_\_\_\_ -

2. \_\_\_\_\_ -

3. \_\_\_\_\_ -

4. \_\_\_\_\_ -

5. \_\_\_\_\_ -

More case information....

**What makes your justice unique? List 5 characteristics about your justice that may be unique.**

- 1.
- 2.
- 3.
- 4.
- 5.

**More relevant information...** Know how he or she may vote on the legal issue before the court.

**How this Works:**

1. Nine students will be the Supreme Court Justices. The 9 students are to research an assigned Supreme Court Justice. A law clerk is to be assigned to each of the judges. These individuals are to sit behind the judges and assist the judges in their bio research and questioning the lawyers. Biographies of each Supreme Court Justice are found on the US Supreme Court website and elsewhere. Try to blend liberal and conservative personnel so the court is somewhat balanced politically.
2. The rest of the class are to team up as 'lawyers' and choose a case that they feel should be considered or reconsidered by our Mock Supreme Court. Additional time needed to research the case can be done at home or together as a partnership. Ask for help.
3. After a period of preparation and research by both parties, the simulation can begin.
4. Ideally, a case is chosen that will be interesting. The 6 'lawyer' participants who have researched the case should be opposed in their stances on the merits of this case. (3 v 3) Personally, they may not be opposed but for the sake of the classroom discussion, they should be opposed.

1 lawyer will be responsible for the opening statement. **Your team:** \_\_\_\_\_

1 lawyer will be responsible for the argument of the case. **Your team:** \_\_\_\_\_

1 lawyer will be responsible for the closing statement. **Your team:** \_\_\_\_\_

All lawyers should assist with the persuasive arguments of the case...

### **Court Room Procedure:**

5. The 'oyez, oyez' chant and the entrance of the justices should precipitate all discussion. The justices sit across the front of the classroom w/robes if possible.
6. The background of the case can be shown on the projection screen and discussed before debate can begin. I find that [www.oyez.org](http://www.oyez.org) is very succinct in explaining court cases. This responsibility will fall upon the lawyers doing the opening statements.
7. THE RULE OF 4 comes into play here. At least 4 justices must affirm that they would like to hear this case.
8. The 2 lawyers on either side of the case give an opening statement (1-2 minutes in length).
9. The 2 lawyers on either side of the case then have 5 minutes to argue for or against overturning this court case. (It is best to have the lawyers submit a brief or outline of their arguments prior to this presentation) During this period the justices are to be listening and take notes.(10 minutes)
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***In Review – FOR THE LAWYER's preparation and to help the court: LAWYERS MUST PREPARE THE FOLLOWING: A BRIEF...***

***Part 1: The brief itself shall include the following: (written rough draft should be submitted 2 days prior to their presentation.***

- a. Facts of the case***
- b. Constitutional Issue(s) at the core of the case***
- c. Precedents and 'stari decisis' that may guide the court to change their rulings.***
- d. Explanation of why the previous ruling on the case is wrong.***

***Part II: Students should dress the part and be prepared on the day of their presentation.***

12. Now, judges recess to a corner of the room for a caucus meeting. The justices will then take a paper vote or verbal vote to decide the verdict of the case. (5 minutes)
13. The verdict is read aloud by the clerk of the court or chief justice. Classroom discussion of the verdict follows. A graphic organizer can be used or T-Bar chart to discuss the merits of each side of the case. The graphic organizer is a reflection tool and evaluative tool for the classroom and teacher.

**Evaluation** – This can tie into the overall Judiciary Assessment. But, I prefer using a rubric from Rubistar (<http://rubistar.4teachers.org/>) to assess and grade the contributions of participants. The judges can be assessed on their knowledge of procedure and their verbal contributions to the case discussion. The lawyers can be assessed by rubric on their arguments. (It is best to have them submit a brief or outline of their arguments prior to their presentation)

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**FRQ** – Create an essay that asks students to write a persuasive essay. This essay would ask the student to summarize their understanding of the Judicial Process.

Students can keep a **reflection journal** and update the journal with a reflection after each court case presentation.

**Points: 50 points for your participation as a lawyer, clerk or justice. (see rubric)**

**Lawyer Worksheet – Rule of 4 Supreme Court w/s**

Your name: \_\_\_\_\_

Team of Lawyers: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Issue Before the Court:

Constitutional Issue Before The Court:

Is there a current or past case that is a basis for this argument? If so, name the case and its background:

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