The Supreme Court
Overview of the Entire Process

Appellate Jurisdiction
In nearly all of the cases heard by the Supreme Court, the Court exercises the jurisdiction granted it by Constitution's Article III.
- This authority permits the Court to review – and affirm or overturn – decisions made by lower courts and tribunals.

Within Appellate Jurisdiction, cases are brought before the Supreme Court by one of several methods:
1. By petition for a writ of certiorari, filed by a party to a case that has been decided by one of the US courts of appeals or by the US Court of Appeals for the Armed Forces
   - By petition for "certiorari before judgment," which permits the Court to expedite a case pending before a lower appellate court by accepting the case for review before the appellate court has decided it.
   - Supreme Court Rule 11 provides that a case may be taken by the Court before judgment in a lower court "only upon a showing that the case is of such imperative importance as to justify deviation from normal appellate practice and to require immediate determination in this Court."
2. By appeal from certain decisions of US district courts in certain cases involving redistricting of congressional or state legislative districts, or when specifically authorized in a particular statute.
3. By petition for writ of certiorari with respect to a decision of a state courts (including courts of Puerto Rico and DC), after all state appeals have been exhausted, where an issue of federal constitutional or statutory law is in question.
   - The writ is usually issued for cases where the state supreme court refused to hear the appeal.
4. By a certified question or proposition of law from one of the US courts of appeals, meaning that the court of appeals requests the Supreme Court to offer guidance on the case
   - This procedure was once common but is now rarely invoked; the last accepted for review was in 1981.
5. By petition for an "extraordinary writ", such as in matters concerning habeas corpus.
   - These writs are rarely granted by the Supreme Court though they are more frequently granted by lower courts.

Original jurisdiction
Certain cases that have not been considered by a lower court may be heard directly by the Supreme Court. The Supreme Court's authority in this respect is derived from Constitution Article III, which states that the Supreme Court shall have original jurisdiction "in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party."
- The original jurisdiction of the Court is set forth in 28 USC§1251.
  - This statute provides that, in the case of disputes between states, the Supreme Court holds both original and exclusive jurisdiction and no lower court may hear such cases.
    - The number of original jurisdiction cases heard by the court is small; generally only 1-2 per term.
    - Because the nine-member Supreme Court is not well-suited to conducting pretrial proceedings or trials, original jurisdiction cases accepted by the Court are typically referred to a well-qualified lawyer or lower-court judge to conduct the proceedings, and report recommendations to the Court. The Court then considers whether to accept the report or whether to sustain any exceptions filed to the report.
      - Although jury trials are possible in the Court's original jurisdiction cases, there has not been one since 1794, in Georgia v. Brailsford

Selection of cases
Since the Judiciary Act of 1925 ("The Certiorari Act"), the majority of the Supreme Court's jurisdiction has been discretionary.
Each year, the court receives approximately 10,000 petitions for certiorari, of which approximately 100 are granted review with oral arguments, and an additional 50-60 are disposed of without review.
- Most of the Justice's clerks write a brief for the Justice outlining the questions presented, and offering a recommendation as to whether certiorari should be granted.
  - During the Justices' regular conference, the Justices discuss the petitions, and grant certiorari in less than 5% of the cases filed.
    - During the 1980s and 1990s, the number of cases accepted and decided each term approached 150 annually; more recently, the number of cases granted has averaged well under 100 annually.
  - Before each conference, the Chief Justice prepares a list of those petitions he believes have sufficient merit to warrant discussion.
  - Any other Justice may also add a case to the "discuss list"; cases not designated for discussion by any Justice are automatically denied review.
    - The Court or a Justice may also decide that a case be "re-listed" for discussion at a later conference;
      - This occurs, for example, where the Court decides to request input from the Solicitor General of the United States on whether a petition should be granted.
- "Rule of Four" – The votes of four Justices at Conference will suffice to grant certiorari and place the case on the court's calendar.
  - If the Supreme Court grants certiorari, then a briefing schedule is arranged for the parties to submit their briefs in favor of or against a particular form of relief.
  - During this time, an individual or group having an interest in a case but is not a party to the case may submit a motion to appear before the court as amicus curiae ("friend of the court").
    - Except for certain specific categories (such as lawyers for state and local governments) or where all parties to the case consent, it is in the Court's discretion whether such motions are granted.
  - The grant or denial of certiorari petitions by the Court are usually issued as one-sentence orders without explanation.
- Cases that fall within the Court's original jurisdiction are initiated by filing a complaint directly with the Supreme Court, and normally are assigned to a special master appointed by the Court for the taking of evidence and making recommendations, after which the Court may accept briefs and hear oral arguments as in an appellate case.

Filing briefs
- Before oral arguments, the parties to a case file legal briefs outlining their arguments.
- An amicus curiae may also submit a brief in support of a particular outcome in the case if the Court grants it permission.

Oral arguments

- If the Court chooses to hold a hearing, each side has thirty minutes to present its case verbally.
  - In exceptional and controversial cases, however, the time limit may be extended.
    - In the Court's early years, attorneys might argue a single case for hours or days; but as the workload increased, the time available for argument has been restricted.
- Justices are allowed to interrupt the attorney speaking in order to ask him or her questions.

After the case is heard, the Justices forming their opinions

The conference: assignment of opinions

At the end of a week in which the Court has heard verbal arguments, the Justices hold a conference to discuss the cases and vote on any new petitions of certiorari.

- The Justices discuss the points of law at issue in the cases.
- No clerks are permitted to be present, which would make it exceedingly difficult for a justice without a firm grasp of the matters at hand to participate.
- At this conference, each Justice – in order from most to least senior – states the basis on which he/she would decide the case, and a preliminary vote is taken.
- The votes are tallied, and the responsibility for writing the opinion in the case is assigned to one of the justices
  - The most senior Justice voting in the majority (which is the Chief Justice if he is in the majority) assigns the responsibility of who will be writing the opinion.

Circulating draft opinions and changing of views

The justice writing the opinion for the court will produce and circulate a draft opinion to the other justices. Each justice's law clerks may be involved in this phase.

- Once the draft opinion has been reviewed, the remaining Justices may recommend changes to the opinion.
  - Whether these changes are accommodated depends on the legal philosophy of the drafters as well as on how strong a majority the opinion garnered at conference. A justice may instead simply join the opinion without comment.
- Votes at conference are preliminary; while opinions are being circulated, it is not unheard of for a justice to change sides.
  - A justice may be swayed by the persuasiveness (or lack thereof) of the opinion or dissent, or as a result of reflection and discussion on the points of law at issue.
- The evolution of the justices' views during the circulation of draft opinions can change the outcome of the case; an opinion that begins as a majority opinion can become a dissenting opinion, and vice versa.
  - At the conference for 'Planned Parenthood v. Casey', Justice Kennedy is said to have initially voted with Chief Justice Rehnquist, but then changed his mind, feeling unable to join Rehnquist's draft opinion.
- Justices may change sides at any time prior to the handing down of the Court's opinion.
- Generally, the Court's decision is the opinion which a majority (five) of Justices have joined.
  - In rare instances, the Court will issue a plurality opinion in which four or fewer Justices agree on one opinion, but the others are so fractured that they cannot agree on a position.
    - In this circumstance, in order to determine what the decision is lawyers and judges will analyze the opinions to determine on which points a majority agrees.
      - An example of a case decided by a plurality opinion is Hamdi v. Rumsfeld.
- A justice voting with the majority may write a concurring opinion.
  - This is an opinion where the justice agrees with the majority holding itself, but where he or she wishes to express views on the legal elements of the case that are not encompassed in the majority opinion.
- Justices who do not agree with the decision made by the majority may also submit dissenting opinions, which may give alternative legal viewpoints. Dissenting opinions carry no legal weight or precedent, but they can set the argument for future cases.
  - John Marshall Harlan's dissent in Plessy v Ferguson set down for the majority opinion later in Brown v. Board of Education.
- After granting a writ of certiorari and accepting a case for review, the justices may decide against further review of the case.
  - For example, the Court may feel the case presented during oral arguments did not present the constitutional issues in a clear-cut way, and that adjudication of these issues is better deferred until a more suitable case comes before the court.
    - In this event the writ of certiorari is "dismissed as improvidently granted" – saying, in effect that the Court should not have accepted the case. This dismissal is customarily made without explanation.

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Customarily, justices who were not seated at the time oral arguments were heard by the Supreme Court do not participate in the formulation of an opinion.

- Likewise, a justice leaving the Court prior to the handing down of an opinion does not take part in the Court's opinion.
- Should the composition of the Court materially affect the outcome of a pending case, the justices will likely elect to reschedule the case for rehearing.

Tied votes and lack of quorum

If not all of the nine justices vote on a case, or the Court has a vacancy, then there is the possibility of a tied vote.

- If this occurs, then the decision of the court below is affirmed, but the case is not considered to be binding precedent.
  - The effect is a return to the status quo.
  - No opinions are issued in such a case, only the one-sentence announcement that "[t]he judgment is affirmed by an equally divided Court."
- A quorum of justices to hear and decide a case is six.
  - If, through recusals or vacancies, fewer than six justices can participate in a case, and a majority of qualified justices determines that the case cannot be heard in the next term, then the decision of the court below is affirmed as if the Court had been equally divided on the case.
    - An exception exists for cases brought directly to the Supreme Court on appeal from a US District Court.
      - In this situation, the case is referred to the US Court of Appeals for the corresponding circuit for a final decision there by either the Court of Appeals, or a panel consisting of the three most senior active circuit judges.

Announcement of opinions

Throughout the term, but mostly during the last months of the term, the Court announces its opinions.