

## JUDICIAL DECISION-MAKING

**SS.912.CG.3.14** Explain the judicial decision-making process in interpreting law at the state and national levels.

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### 2023 BENCHMARK UPDATES

- Updated from SS.912.C.3.12
  - Changed from “~~Simulate~~ the judicial decision-making process in interpreting law at the state and ~~federal~~ level.” to “Explain the judicial decision-making process in interpreting law at the state and national levels.”
- Depth of Knowledge Changes within Benchmark
  - Changed from “Simulate” to “Explain”
- Addition of Benchmark Clarifications
  - Benchmark clarifications are an addition to the 2023-2024 high school civics and government benchmarks. Benchmark clarifications are listed in the lesson summary below.

## Essential Teacher Content Background Information

*[Teacher Content Notes Not Appropriate For Student Use]*

**This section addresses the following topics:**

1. Comparing Decision-Making: Judges versus Political Figures
2. Judicial Decision-Making and Opinion Writing
3. The U.S. Supreme Court: The Conference and Writing Draft Opinions

### 1. Comparing Decision-Making: Judges versus Political Figures

To discuss how judges make decisions, we must first examine what judges decide. A judge's job is to apply the law to the facts. They do this in multiple ways.

- A. Preside over trials
- B. Maintain order in the courtroom
- C. Review the legality of issues and evidence
- D. Provide instruction to juries for their deliberation
- E. Issue sentencing
- F. Develop case law through precedent
- G. In bench trials (without a jury) they decide the facts of the case and make a ruling
- H. The constitutionality of laws and actions

Judges are to be impartial. This is represented by a symbol often associated with the judicial branch, Lady Justice and her blindfold. This does not apply to other political figures as they may be influenced by their constituents, interest groups, media, and others. Other political figures may also allow their opinions or views to be considered when making their decisions. Whether appointed or elected, judges remain non-partisan, and may not be politically motivated or consider their re-election when making decisions. Overall, judges and justices may only be guided by laws and constitutions while other political figures may of course be guided by many factors.

### 2. Judicial Decision-Making and Opinion Writing

When making a decision, judges will consult numerous research sources. They will analyze the facts and arguments presented, examine relevant laws, and assess prior case decisions to help them decide. While making a decision is an important part of the job, it is more important that the decision be accurately informed by the law.

Especially at the trial court level, the decisions that judges make have enormous potential impact on individuals and society. Judges may decide if someone is sentenced to prison or placed on probation. Their decisions shape our rights, privileges, and responsibilities. At all levels of the judicial system, judges help mold the law, deciding issues never before addressed, or interpret and apply past decisions when the law is clear, but how it should be applied is in dispute.

An independent and impartial judiciary relies heavily on judges explaining their decisions in writing. Without written opinions and rulings, it would be difficult to ensure an individual's constitutional rights remain protected with the judge's decision. Explanations allow all parties to see that decisions are fairly reached.

Written opinions also help maintain the public's trust with the judicial system. Even if a party disagrees with a judge's ruling, a written opinion gives them confidence that their argument was carefully considered.

One of the most difficult things about opinion writing for a judge, is the multiple audiences they must consider. In defending their decision, they will cite language from briefs, prior cases, laws, and the U.S. and state Constitutions. While this vernacular will be understood by lawyers and other judges, the parties in the case and other citizens may not comprehend the message. This is why some judges believe that decisions should be articulated in more informal vernacular. Another audience the judge must consider is the Court of Appeals. If a judge's ruling is appealed, the appellate court needs to be able to see the thinking of the lower court judge to help in affirming or reversing the decision. A well-written opinion will allow the reader to follow the logic of the decision and know what arguments were accepted or rejected.

The act of making a decision in a judicial case and writing the opinion go hand in hand. Sometimes, actually engaging in the process of writing helps a judge formally think through the complex issues of the case. However, this can be a cumbersome and tedious task which is why many judges rely heavily on judicial clerks in both the decision-making and opinion writing process. Generally, judicial clerks conduct legal research, review the record before the court, verify citations in the litigants' briefs, administer the docket, act as a sounding board for the judge's ideas, maintain the chamber and library, and compose initial drafts of the opinion.

### **3. The U.S. Supreme Court: The Conference and Writing Draft Opinions**

There is a long-standing tradition of confidentiality around the deliberation process of the Court. Known as the conference, after a case is argued before the Court, the justices hold a preliminary vote to determine where each justice falls in deciding the case. In descending order, the junior associate justice begins the conference by explaining their reasoning behind their view of the case. Once every justice has shared their reasoning, a vote is taken. Based on that vote, a justice will be assigned to write a draft majority opinion. The chief justice typically chooses which justice will write the draft, however, the chief justice must be in the majority. If the chief justice sides with the minority, then the senior associate justice assigns the majority opinion.

The justice assigned to write the draft majority opinion often consults with the other justices and amends their opinion based on suggestions. This fluidity highlights the importance of the opinion drafting process. Often, justices who fall in the minority write dissenting opinions, which outline their reasoning justifying why they disagree with the majority.

Based on the evolution of the draft majority opinion, justices may change their vote and reasoning, potentially changing the outcome of the case. This means that a draft majority opinion could become a draft dissenting opinion. Or, a draft dissenting opinion could become a draft majority opinion. Historically, it is not until the decision is announced to the public that the case outcome becomes known.

## Lesson Summary

BENCHMARK		
<b>SS.912.CG.3.14</b> Explain the judicial decision-making process in interpreting law at the state and national levels.		
BENCHMARK CLARIFICATIONS		
<ul style="list-style-type: none"><li>Students will explain the role of the U.S. Constitution in interpreting law at the state and national levels.</li><li>Students will explain the process used by judges at the state and national levels when making a decision or writing summary opinions.</li><li>Students will incorporate language from the U.S. Constitution or court briefs to justify a legal decision when interpreting state or national law.</li></ul>		
FLORIDA CIVIC LITERACY EXAM COMPETENCY CONNECTION		
<b>Competency 4:</b> Understanding of landmark Supreme Court cases, landmark legislation, and landmark executive actions and their impact on law and society		
OVERVIEW		
In this lesson students will examine the process used by judges at the state and national levels when making decisions as well as analyze the considerations judges take into account when interpreting law.		
ESSENTIAL QUESTION		
How do judges make decisions?		
GOVERNMENT CONTENT VOCABULARY		
<ul style="list-style-type: none"><li>appellate court, brief, case, case law, concurring opinion, conference, decision, dissenting opinion, impartial, judge, judgment, judicial branch, judicial clerk, justice, majority opinion, opinion, precedent, ruling, summary judgment, trial court</li></ul>		
INSTRUCTIONAL STRATEGIES		
Targeted review	First-person narratives	Simulation
MATERIALS		
<ul style="list-style-type: none"><li>Judicial Branch Review activity sheet</li><li>A Judge's Perspective reading</li><li>U.S. Supreme Court Decision-Making infographic</li><li>U.S. Supreme Court Video Viewing Guide</li><li>Opinion Writing and Announcement video (external link)</li><li>Supreme Court Simulation (external link)</li><li>Student digital device (optional)</li></ul>		

B.E.S.T. STANDARDS
<p>The grade in which this lesson is taught will determine the specific B.E.S.T. standards correlation. Thematically, this lesson aligns to:</p> <ul style="list-style-type: none"><li>• ELA.R.2.1 Structure</li><li>• ELA.R.3.2 Paraphrase and Summarize</li><li>• ELA.V.1.3 Context and Connotation</li></ul>

## Suggested Student Activity Sequence & Pace

DAY	ACTIVITY SEQUENCE
DAY 1	<p><b>Planning Note:</b> Elements of the judicial branch are taught in benchmarks SS.912.CG.3.7, SS.912.CG.3.8, SS.912.CG.3.9, and SS.912.CG.3.10. These benchmarks should be taught together.</p> <ol style="list-style-type: none"> <li>1. Begin today with a review of some of the major elements of the judicial branch taught in prior benchmarks.</li> <li>2. Pass out a “Judicial Branch Review” activity sheet to each student.</li> <li>3. Review the directions for the activity together. They will be given a set amount of time to move around the room and talk to their peers about what they know. Their task is to ‘Find Someone Who...’ knows the answer to each question. Once they find someone, they should have that person fill in the answer and put their initials next to it. Each student can only answer one question on another student’s page.</li> <li>4. Review the questions on the activity sheet.  <b>Teacher Note:</b> While reviewing, make sure to emphasize the role of the U.S. Constitution (Supremacy Clause) in interpreting law in addition to what students already know about judicial decision-making.</li> <li>5. Explain to students that after learning a lot over the past lessons about the structure, function, and process of the judicial branch, they will be finishing the unit by taking a closer look at how judges make their final decisions and write their summary opinions.</li> <li>6. Pass out “A Judge’s Perspective” reading to each student.</li> <li>7. Instruct students to read through the first-hand account from Minnesota District Court Judge Mel Dickstein about how judges make decisions and why judges write opinions. Encourage them to mark the text as they read and answer the two questions at the end.</li> <li>8. Provide students time to complete the reading, monitoring the room for engagement and understanding.</li> <li>9. When students finish, discuss the reading and the questions. Additional discussion questions may include: <ul style="list-style-type: none"> <li>■ What style do you think judges should write their opinions in: formal and legal or in a style more appropriate for the general public to understand?</li> <li>■ What do you think about the fact that law clerks do most of the research and writing and often not the judge themselves?</li> <li>■ Do think technology (i.e. ChatGPT) will and/or should play a role in writing judicial opinions in the future?</li> </ul> </li> <li>10. Explain to students that this process of judicial decision-making and opinion writing just discussed, applies to almost all judges at the state and federal level in the various courts. The process changes slightly when there is a panel, like the 9 justices on the U.S. Supreme Court.</li> <li>11. Project the “U.S. Supreme Court Decision-Making” infographic.</li> <li>12. Review with students what happens after a case has been argued before the Supreme Court but before an official opinion is rendered.  <b>Teacher Note:</b> Use the Essential Teacher Background Knowledge above to help elaborate.</li> <li>13. Pass out a “U.S. Supreme Court Video Viewing Guide” to each student.</li> <li>14. Finish today’s lesson by having students watch the <a href="#">“Opinion Writing and Announcement”</a> video clip from C-SPAN in which current and former U.S. Supreme Court justices explain their judicial decision-making process and why it is so important.</li> </ol>

DAY 2	<p><b>Planning Note:</b> Benchmark clarification #3 requires students engage in a simulation of the judicial decision-making process, specifically incorporating language from the U.S. Constitution or court briefs to justify a legal decision. Select one of the following in order to fulfill the demands of this benchmark clarification:</p> <ul style="list-style-type: none"> <li>■ <a href="#">Supreme Court Simulation</a> from U.S. Courts</li> <li>■ <a href="#">Oyez! Oyez! Oyez!: Simulating the Supreme Court</a> from National Endowment for the Humanities</li> <li>■ <a href="#">You Be The Judge</a> from iCivics</li> </ul>
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## Government Content Vocabulary

Word/Term	Definition
<b>appellate court</b>	any court that has the power to hear appeals from lower courts
<b>brief</b>	a written argument submitted to the court
<b>case</b>	a matter that goes before a judge or court of law
<b>case law</b>	law that is based on judicial decisions rather than constitutions, statues, or regulations
<b>concurring opinion</b>	an appellate opinion of judges (justices) that supports the result reached for reasons not stated in the majority opinion
<b>conference</b>	set meeting of several individuals for deliberations, disputes, or differences
<b>decision</b>	set of opinions that accompany an order
<b>dissenting opinion</b>	an appellate opinion of judges (justices) that disagrees with the result reached for reasons not stated in the majority opinion
<b>impartial</b>	to remain neutral in an argument or case
<b>judge</b>	the person who presides over court proceedings
<b>judgment</b>	a formal decision given by a court
<b>judicial branch</b>	the branch of government that interprets the laws made by the legislative branch
<b>judicial clerk</b>	individuals hired to conduct legal research, review the record before the court, verify citations in the litigants' briefs, administer the docket, act as a sounding board for the judge's ideas, maintain the chamber and library, and compose initial drafts of the opinion.
<b>justice</b>	the title given to judges of the U.S. Supreme Court and Florida Supreme Court
<b>majority opinion</b>	an appellate opinion supporting the court's judgment which received a majority vote of the judges (justices) hearing the case
<b>opinion</b>	the written views of the judge(s) on a specific order
<b>precedent</b>	a court ruling/decision that is considered as authority for subsequent cases/legal matters
<b>ruling</b>	a court's decision on a matter
<b>summary judgment</b>	a judgment decided by a trial court without that case going to trial; a summary judgment is an attempt to stop a case from going to trial



<b>trial court</b>	the local, state, or federal court that is the first to hear a civil or criminal case; involves a hearing and decision with a single judge, with or without a jury
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## ADDITIONAL RESOURCES

[Florida Department of Education: Florida Civic Literacy Exam Homepage](#)

Florida Department of Education's Civic Literacy Reading List

- *Out of Order: Stories from the History of the Supreme Court* by Sandra Day O'Connor

## ANSWER KEYS

Sample Answers: Judicial Branch Review activity sheet

Sample Answers: A Judge's Perspective reading

Sample Answers: U.S. Supreme Court Video Viewing Guide

## SOURCES

Courts Overview:

[https://www.law.cornell.edu/wiki/lexcraft/layer\\_two\\_overview\\_cases\\_orders\\_opinions\\_decisions\\_and\\_writings#:~:text=The%20words%20%22decision%22%2C%20%22text%20of%20the%20ruling%20itself.](https://www.law.cornell.edu/wiki/lexcraft/layer_two_overview_cases_orders_opinions_decisions_and_writings#:~:text=The%20words%20%22decision%22%2C%20%22text%20of%20the%20ruling%20itself.)

How Judges Make Decisions:

<https://www.minnpost.com/community-voices/2014/09/how-judges-make-decisions/>

How Judges Write Opinions:

<https://www.minnpost.com/community-voices/2014/10/why-judges-write-opinions/>

Opinion Writing and Announcement from CSPAN:

<https://www.c-span.org/video/?c4552963/user-clip-opinion-writing-announcement>

Supreme Court Procedures:

<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1>

Supreme Court Simulation from U.S. Courts:

<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-0>

Oyez! Oyez! Oyez!: Simulating the Supreme Court:

<https://edsitement.neh.gov/lesson-plans/oyez-oyez-oyez-simulating-supreme-court>

You Be The Judge Simulation from iCivics:

<https://www.icivics.org/teachers/lesson-plans/you-be-judge-simulation>