

JUDICIAL REVIEW
SS.912.CG.3.8 Describe the purpose and function of judicial review in the American constitutional government.

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2023 BENCHMARK UPDATES
<ul style="list-style-type: none"> ● Updated from SS.912.C.3.7 <ul style="list-style-type: none"> ○ Changed from “Describe the role of judicial review in American constitutional government.” to “Describe <u>the purpose and function</u> of judicial review in <u>the</u> American constitutional government.” ● Depth of Knowledge Changes within Benchmark <ul style="list-style-type: none"> ○ No changes ● Addition of Benchmark Clarifications <ul style="list-style-type: none"> ○ 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. The Federal Court System
2. The Power of Judicial Review and Interpreting the U.S. Constitution
3. The Supremacy Clause

1. The Federal Court System

The U.S. court system is composed of several parts. Article III of the U.S. Constitution creates the U.S. Supreme Court; all other courts, which are inferior to the U.S. Supreme Court, are created, supported and mandated by Congress.

The vague nature of the judiciary branch is that there is no set number of judges in the U.S. Supreme Court (tradition keeps the number at nine; this number is not a constitutional requirement) or on any other court, and there is no set number of courts. It is up to Congress to choose the number of U.S. Supreme Court members and of other courts. The U.S. Constitution requires that U.S. Supreme Court justices ‘hold their offices during good behavior’ which translates to lifetime appointments unless removed by Congress.

Cases that are first heard by the U.S. Supreme Court (‘original jurisdiction’) tend to involve disputes, which may include conflicts between two states, between the president and Congress, or cases where a state is a party. All other cases come before the U.S. Supreme Court in its role as the highest court of appeal. The U.S. Constitution is very specific as to which types of cases may come before it as cases of original jurisdiction, which cannot be rejected. The Constitution is otherwise vague as to which types of cases are to be heard on appeal. All cases are decided with a majority vote.

The bulk of the Court’s work is appellate cases. Any case submitted on appeal may be rejected; in a typical year, the U.S. Supreme Court is asked to grant a hearing (‘writ of certiorari’) to approximately 10,000 appeals cases; it accepts about 1%, or 75-80 cases, which require four votes in order to be ‘granted cert’. For cases not granted a writ of certiorari, the decision made at the most recent court is deemed the final decision in that case. Cases decided by the U.S. Supreme Court may not be appealed.

2. The Power of Judicial Review and Interpreting the U.S. Constitution

The design of the court system, where there is no set number of judges or courts, and that judges remain in office for life, retirement, or unlikely removal, indicates that, except in limited cases of original jurisdiction, the courts were not expected to be very powerful. Had the Founders believed that the courts might abuse their power, they may have been more specific in their design of the courts, set terms of office for judges, or otherwise provided for judicial accountability.

The power of the courts changed considerably in the early 19th century when the U.S. Supreme Court took on the role of interpreter of the U.S. Constitution. In *Marbury v. Madison* (1803) ([Summary](#) available) the U.S. Supreme Court decided that it had the sole right to decide whether an act of Congress or the president violated the U.S. Constitution. In essence, the Court decided that it had the power to make law through a process called ‘case law’ where the Court interprets what the U.S. Constitution means and whether, based on that meaning, a law is nullified because it is incongruent with the U.S. Constitution. Later, following ratification of the 14th

Amendment in 1868, the U.S. Supreme Court's power of judicial review grew to include states such that the U.S. Supreme Court may now declare state laws unconstitutional. These case law processes have broadened the role of the U.S. Supreme Court because it gives the Court powers beyond those stated in the U.S. Constitution.

3. The Supremacy Clause

The Supremacy Clause is found in Article VI, clause 2 of the U.S. Constitution. This clause establishes that the U.S. Constitution, and laws made at a national level, take precedence over state laws. States cannot interfere with the national government's exercise of its constitutional powers, and the states cannot assume any powers that are exclusively entrusted to the national government. The Supremacy Clause contains references to what lawyers call judicial review. Some scholars say that the Supremacy Clause's reference to "the Laws of the United States which shall be made in Pursuance [of the Constitution]" itself incorporates this idea. The Supremacy Clause unquestionably describes the Constitution as the law by which courts must abide. That point is the main argument for judicial review. In addition, the Supremacy Clause explicitly specifies that the Constitution binds the judges to the laws.

Lesson Summary

BENCHMARK		
SS.912.CG.3.8 Describe the purpose and function of judicial review in the American constitutional government.		
BENCHMARK CLARIFICATIONS		
<ul style="list-style-type: none"> Students will examine the role of district courts, the courts of appeals, and the Supreme Court in the judicial review process. Students will explain the relationship between the concept of judicial review and the language of the Supremacy Clause in Article VI of the U.S. Constitution. 		
FLORIDA CIVIC LITERACY EXAM COMPETENCY CONNECTION		
Competency 1: Understanding of the basic principles and practices of American democracy and how they are applied in our republican form of government		
OVERVIEW		
In this lesson, students will learn about the purpose and function of judicial review.		
ESSENTIAL QUESTION		
What role does judicial review play in the functions and processes of the judicial branch?		
GOVERNMENT CONTENT VOCABULARY		
<ul style="list-style-type: none"> appeal, appellate court, case, judgment, judicial branch, judicial review, jurisdiction, justice, <i>Marbury v. Madison</i>, Supremacy Clause, U.S. Circuit Court of Appeals, U.S. District Courts, U.S. Supreme Court, writ of certiorari 		
INSTRUCTIONAL STRATEGIES		
Think-Pair-Share	Graphic organizer	Case analysis
MATERIALS		
<ul style="list-style-type: none"> Judicial Branch Job Description activity (2 per page) Judicial Review and Supremacy Clause slides Groff v. DeJoy Case Analysis activity sheet The Docket: Groff v. DeJoy reading 		
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"> ELA.R.2.2 Central Idea ELA.R.2.3 Author's Purpose and Perspective 		

Suggested Student Activity Sequence & Pace

DAY	ACTIVITY SEQUENCE
DAY 1	<p>Planning Note: This lesson should be taught after teaching the judicial branch introduction in SS.912.CG.3.7. Additional elements of the judicial branch will also be taught in subsequent benchmarks SS.912.CG.3.9, SS.912.CG.3.10, and SS.912.CG.3.14.</p> <ol style="list-style-type: none"> 1. Provide each student with a “Judicial Branch Job Description” activity. 2. Explain to students that they are going to use their background knowledge from previous lessons (either in this course or the past) to complete a fictitious job description. The information they place into the description should help someone learn more about the ‘job’ of U.S. Supreme Court case that established judicial review the judicial branch. Teacher Note: If students struggle with any categories, use the sample answers provided to scaffold. 3. Once complete, have students share some of their responses. 4. Lead students to the understanding that the job of the judicial branch is to facilitate trials and hearings, apply laws, and interpret laws. 5. Ask students: Where in the U.S. Constitution are the structures and functions of the judicial branch established and outlined? (Article III) 6. Lead students to the understanding that one of the main responsibilities of the federal courts in the judicial branch is actually not articulated in Article III, but came from the court case <i>Marbury v. Madison</i> in 1803. 7. Project slide 1 of the “Judicial Review and Supremacy Clause” slides. This slide includes an excerpt from <i>Marbury v. Madison</i> (1803). 8. Ask students: What do you think this quote means? Have students write their responses down in their notebooks or on a loose leaf sheet of paper. 9. Ask for responses. Responses may vary, but lead students to the understanding that <i>Marbury v. Madison</i> gave judges the power to declare laws and actions unconstitutional, which is called judicial review. 10. Display slide 2 to show a definition of judicial review and have students record in their notes. 11. Have students complete a think-pair-share about the purpose of judicial review. In other words: Why is it important? What would happen if judges did not have the ability to declare laws or actions unconstitutional? 12. Ask students: When federal courts engage in judicial review, what are they using to determine if a law or action is unconstitutional? (The U.S. Constitution) What if it is a state law or action? (still the U.S. Constitution) 13. Project slides 3 and 4 and review with students the relationship between judicial review and the Supremacy Clause of the U.S. Constitution. 14. Ask students: So even without the decision in <i>Marbury v. Madison</i>, what line/quote from the Supremacy Clause implies the responsibility of the judicial branch to engage in judicial review? (<i>and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding</i>) 15. Explain to students that you are going to finish today’s lesson by examining the role of the different courts in the federal judicial branch when they engage in the judicial review process. 16. Project slide 5 and review with students the three main levels of courts in the federal judicial branch. Remind students that the U.S. Supreme Court has the final say over the interpretation of the law as well as whether or not a law or action violates the U.S. Constitution.

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| | <ol style="list-style-type: none">17. Tell students that they are going to look at a recent example of judicial review that made its way through all the levels of the federal court system.18. Assign students to pairs.19. Pass out the “Groff v. DeJoy Case Analysis” activity sheet to each student.20. Distribute the Civics in Real Life reading, “The Docket: Groff v. DeJoy.”21. In their pairs, students should read the text of this case and fill in the corresponding parts of the organizer (background information of the case and its progression through the court system).
Teacher Note: This reading does not reveal the U.S. Supreme Court’s decision. In this initial activity, have students fill in their prediction based on what they have read.22. While the pairs work, circulate the classroom to monitor for engagement, meeting briefly with each group to check their understanding.23. Once the groups have finished filling in their graphic organizer, review student responses, specifically spending time on discussing their predictions for how the Supreme Court will rule.
Teacher Note: Use the answer key below to help guide the discussion.24. Finish the activity by projecting slide 6 of the “Judicial Review and Supremacy Clause” slides to reveal the Supreme Court’s decision and discuss. |
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Government Content Vocabulary

Word/Term	Definition
appeal	a request, made after a trial, asking a higher court to reverse a lower court decision
appellate court	any court that has the power to hear appeals from lower courts
case	a matter that goes before a judge or court of law
judgment	a formal decision given by a court
judicial branch	the branch of government that interprets the laws made by the legislative branch
judicial review	the power of the judicial branch to review the actions of the executive and legislative branches and determine whether or not they are unconstitutional (this includes laws passed by Congress and state laws); the U.S. Supreme Court case <i>Marbury v. Madison</i> established this power such actions are consistent with the U.S. Constitution
jurisdiction	the right and power for courts to hear a case, interpret and apply the law
justice	the title given to judges of the U.S. Supreme Court
<i>Marbury v. Madison</i>	U.S. Supreme Court case that established judicial review
Supremacy Clause	clause from Article VI of the U.S. Constitution that establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions
U.S. Courts of Appeal	the courts where parties who are dissatisfied with the judgment of a U.S. District Court may take their case
U.S. District Courts	the courts where most federal cases begin, the U.S. District Courts are courts of original jurisdiction and hear civil and criminal cases
U.S. Supreme Court	the highest court of the United States; it sits at the top of the federal court system
writ of certiorari	the procedure to see if the U.S. Supreme Court will hear a case; a writ of certiorari is issued when a higher level court agrees to hear an appeal of an inferior court's decision

ADDITIONAL RESOURCES

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

Florida Department of Education's Civic Literacy Reading List

- *Marbury v. Madison* (1803)
- *Out of Order: Stories from the History of the Supreme Court* by Sandra Day O'Connor

ANSWER KEYS

Sample Answers: Judicial Branch Job Description activity

Sample Answers: Groff v. DeJoy Case Analysis

SOURCES

A Civics in Real Life Series The Docket: *Groff v. DeJoy* from the Florida Center for Joint Citizenship:

<https://floridacitizen.org/civics-in-real-life/>

U.S. Constitution: <https://www.archives.gov/founding-docs/constitution-transcript>

Marbury v. Madison: <https://www.oyez.org/cases/1789-1850/5us137>

Groff v. DeJoy: <https://www.oyez.org/cases/2022/22-174>