



# **THE JUDICIARY**

# The Constitution and the National Judiciary

- Article III of the Constitution establishes:
  - a Supreme Court in which the judicial power of the United States is vested
  - life tenure or ‘good behavior’ for judges
  - judges receive compensation that cannot be diminished during their service
  - such inferior courts as Congress may choose to establish
  - the original jurisdiction of the Supreme Court
- The intent of Article III was to remedy the failings of the Articles of Confederation which left judicial matters to the states.



# Article III - Supreme Court

President appoints

Senate confirms

Generally speaking, the Court  
will hear cases

- involves a basic constitutional principle
- an important question of federal law
- conflict between state and federal laws

# Who's Who

- **Elena Kagan (58)– Obama**
- **Neil Gorsuch (51)- Trump**
- **Brett Kavanaugh (53)- Trump**
- **Clarence Thomas (70)- Bush**
- **Ruth Bader Ginsburg (85) - Clinton**
- **Stephen Breyer (80)– Clinton**
- **\*John Roberts (63)- Bush II (chief justice)**
- **Samuel Alito (68)-Bush II**
- **Sonia Sotomayor (64)- Obama**

- The president usually tries to nominate a justice whose political philosophy is similar to his/her own
- The nominee must win approval of the Senate
- We refer to periods by the Chief Justice (Berger Court, Warren Court, Rehnquist Court)

# Political Philosophy

Court - an ever changing political institution that fluctuates between liberalism and conservatism as well as activism and restraint.

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- Liberal/Moderate -Stevens, Sotomayor, Ginsburg, Breyer
  - Swing Votes -, Kennedy
  - Conservative - Roberts, Scalia, Thomas, Alito



# Judicial Review

- Judicial review is the power of a court to decide if a law or other legal issue contravenes the Constitution, and overturn it.
- This power is not mentioned in the Constitution.
- Judicial review was established by the Marshall Court for itself and posterity in *Marbury v. Madison* (1803).
- *Marbury's* long-term effect has been to allow the Court to have the final say in what the Constitution means.

# Judicial Review

- Judges have used this power sparingly.
- The power has only been used about 140 times to strike down acts of Congress.
- Although more frequently (over 1200 times) to invalidate acts of state legislatures.

# Judicial Activism

The Court should take an active role in using its powers to check the actions of Congress, legislatures, the executive branch and agencies.

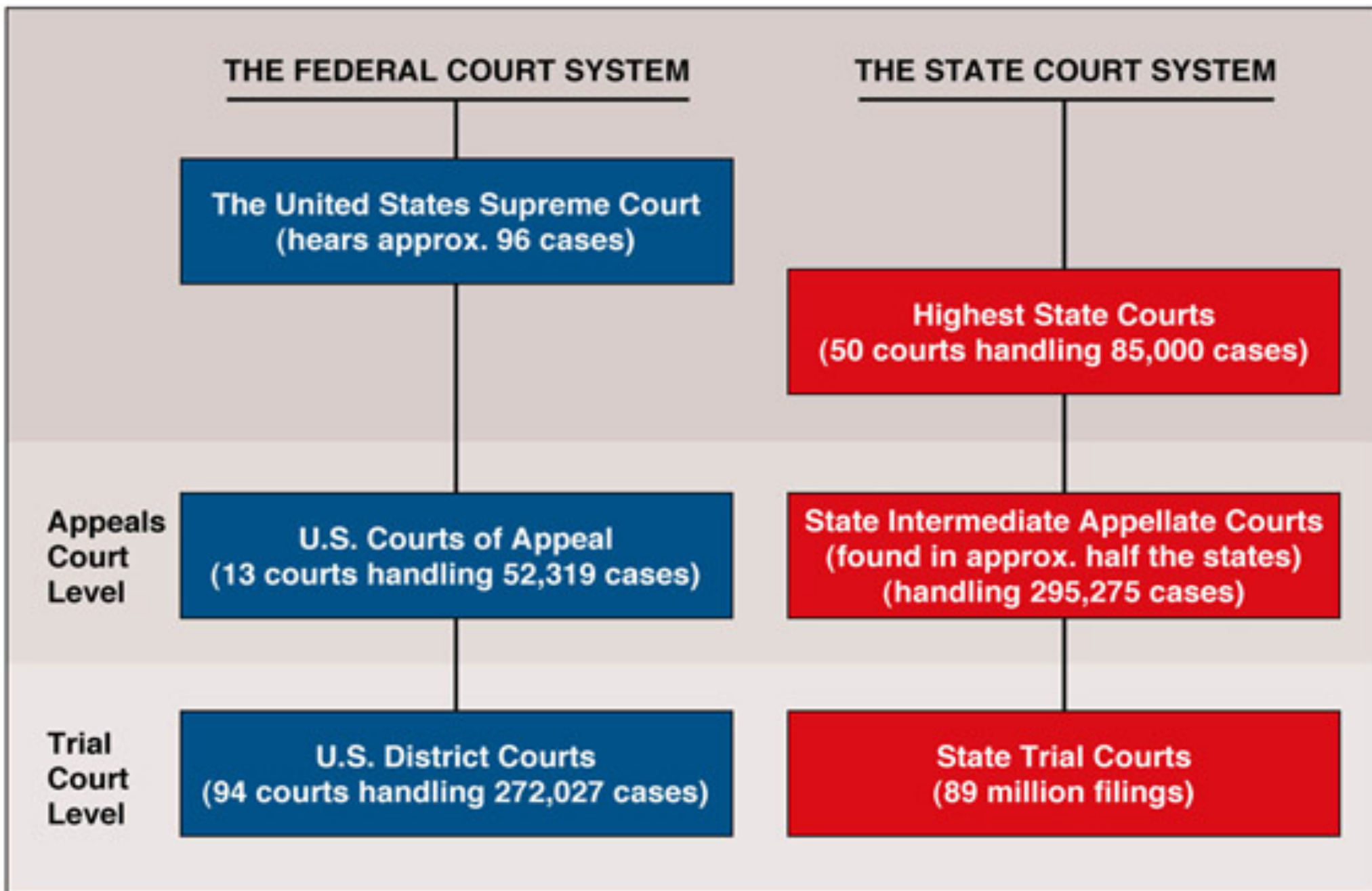
# Judicial Restraint

The Supreme Court should defer to the decisions made by elected representatives of the people in the legislative and executive branches.

# The American Legal System

- The American legal system is a dual system:
  - state courts--actually 50 different 'systems'
  - federal courts
- Both systems have three tiers:
  - trial courts--litigation begins and courts hear the facts of the case at hand (original jurisdiction)
  - appellate courts--decide questions of law, not fact (appellate jurisdiction)
  - high or supreme courts

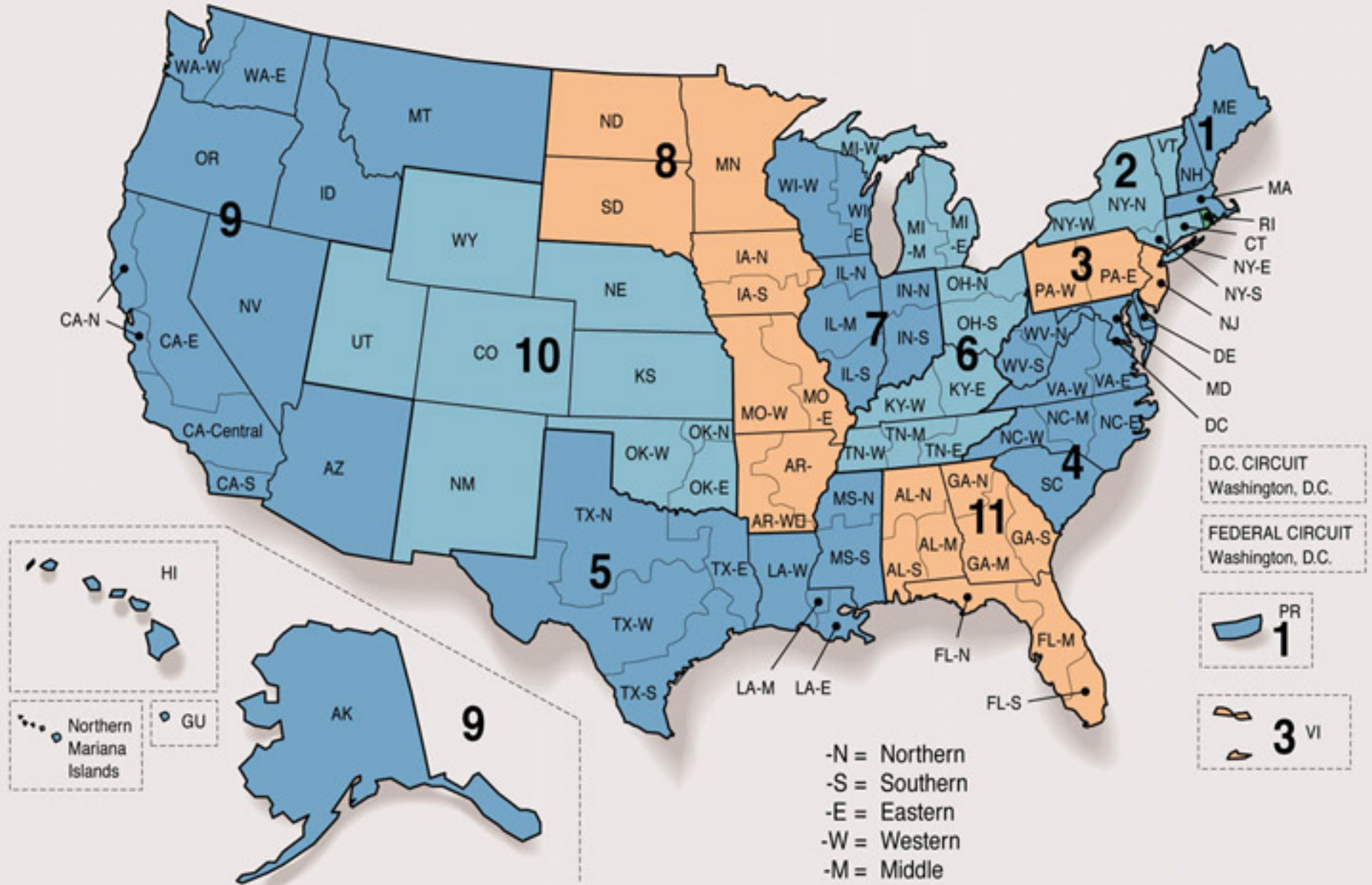
Figure 10.1 The Dual Structure of the American Court System



This figure illustrates the dual nature of the national court system.

Figure 10.2 The Federal Court System

This map shows the locations of the U.S. Circuit Courts of Appeal and the boundaries of the federal district courts in states with more than one district.

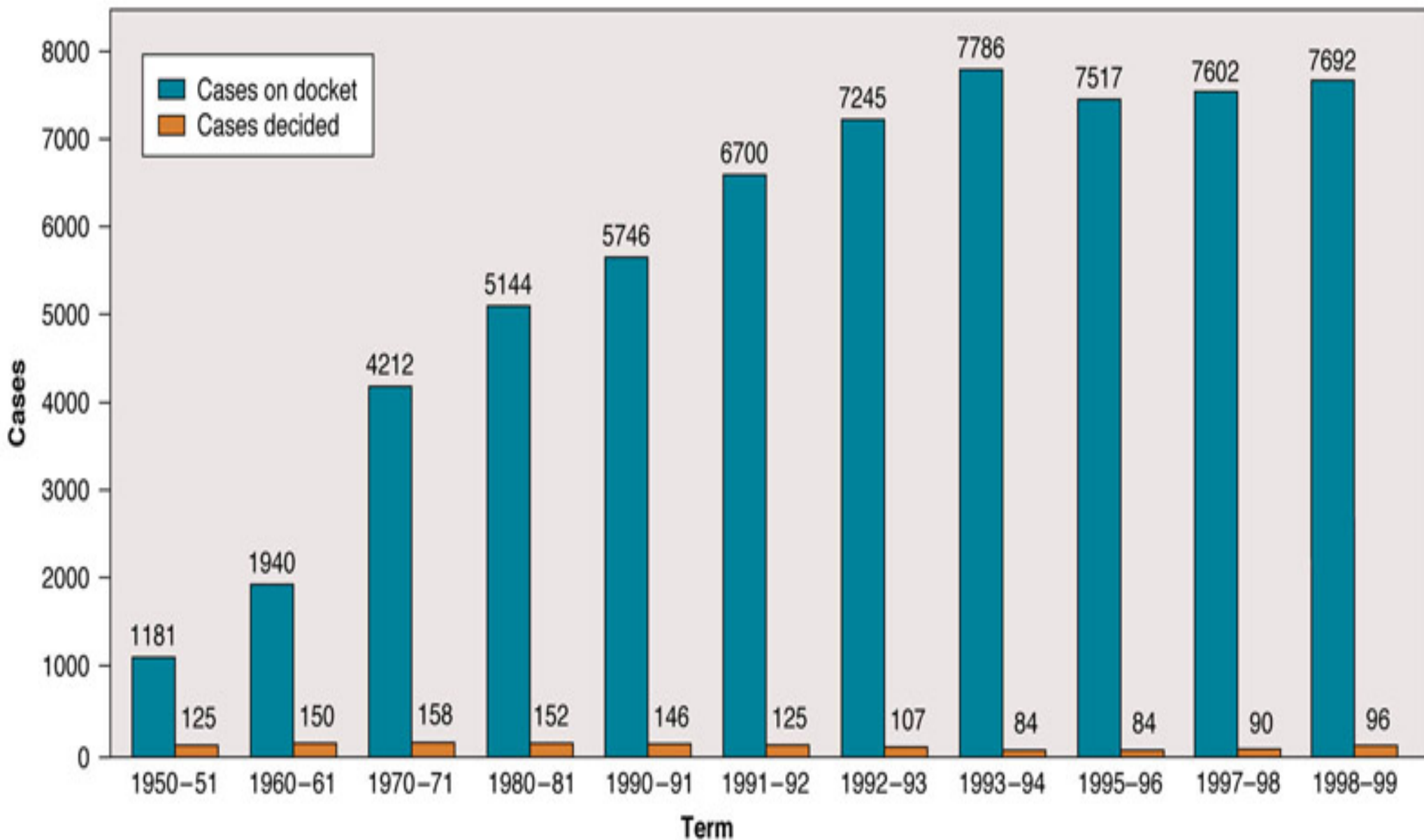


# Federal Selection Process

- The selection of judges is a very political process.
- Judges are nominated by the president and confirmed by the Senate.
  - Often presidents solicit suggestions from members of the House of Representatives, Senators, their political party, and others.
- Provides president opportunity to put philosophical stamp on federal courts



Figure 10.4 Supreme Court Caseload, 1950-1999 Terms



The caseload of the Supreme Court has remained fairly consistent since its 1992-93 term although the Court accepts far fewer cases for its review than it did in earlier decades.

SOURCE: Administrative Office of the Courts; Supreme Court Public Information Office.

# How the Justices Vote

## Legal Factors

- **Judicial Philosophy**

- Judicial Restraint - advocates minimalist roles for judges, and the latter
- Judicial Activism - feels that judges should use the law to promote justice, equality, and personal liberty.

- **Precedent**

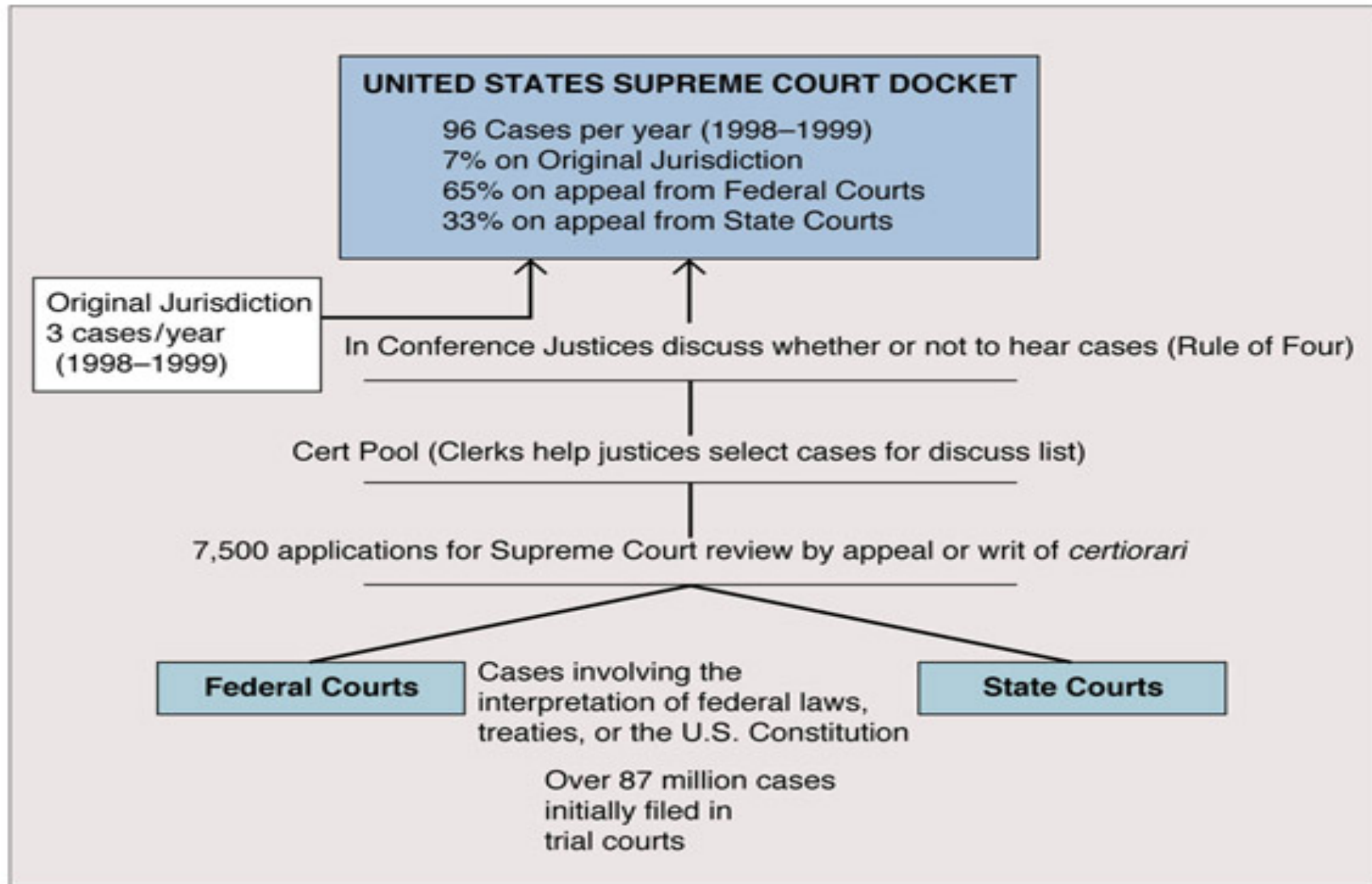
- Prior judicial decisions serve as a rule for settling subsequent cases of a similar nature.

# How the Justices Vote

## Extra-Legal Factors

- **Behavioral Characteristics**
  - The personal experiences of the justices affect how they vote. Early poverty, job experience, friends and relatives all affect how decisions are made.
- **Ideology**
  - Ideological beliefs influence justices' voting patterns.
- **The Attitudinal Model**
  - A justice's attitudes affect voting behavior.
- **Public Opinion**
  - Justices watch TV, read newspapers, and go to the store like everyone else. They are not insulated from public opinion and are probably swayed by it some of the time.

Figure 10.6 How a Case Goes to the United States Supreme Court



This figure illustrates how cases get on the Court's docket; what happens after a case is accepted for review is detailed in Figure 10.7.

# How Supreme Court Decisions are Made

Case on the Docket  
Approx 95

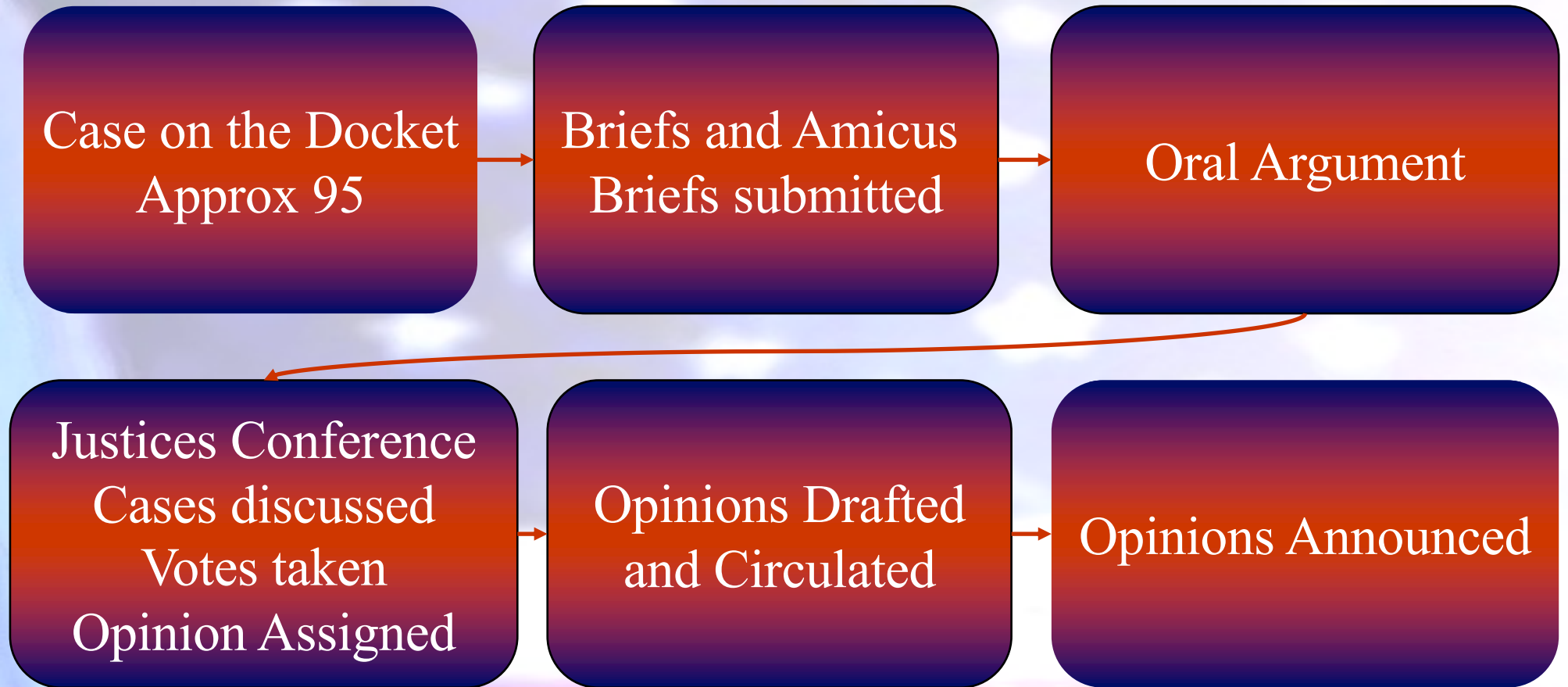
Briefs and Amicus  
Briefs submitted

Oral Argument

Justices Conference  
Cases discussed  
Votes taken  
Opinion Assigned

Opinions Drafted  
and Circulated

Opinions Announced



# Landmark Cases

- Marbury vs. Madison (1803) *judicial review*
- McCulloch vs. Maryland (1819) *upheld implied powers clause*
- Gibbons vs. Ogden (1824) *power to regulate interstate commerce, federal law prevails over state law*
- Dred Scott vs. Sandford (1857) *contributed to the Civil War*

# Landmark Cases cont.

- Plessy vs. Ferguson (1896) “*separate but equal*”
- Brown vs. Board of Education (1954) “*separate is inherently unequal*”
- Baker vs. Carr (1962) *reapportionment, one person one vote*
- Roe vs. Wade (1973) *right to privacy*

# The Supreme Court Today

- According to a 1990 poll, only 23% of Americans knew how many justices sit on the Supreme Court, and two-thirds could not name a single member.
- In 1998, a poll of teenagers showed that only 2% could name the Chief Justice.
- Yet, Supreme Court decisions have been credited with strengthening the Constitution, increasing the power of the federal gov't., starting the Civil War, reshaping race relations, restoring fairness to our electoral system, redefining the rights of women, and most recently deciding a presidential election!