

Today's Agenda

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- Purpose of the Judiciary
- The Founders on the Judiciary
- U.S. Federal Court System
- The Supreme Court: SCOTUS
- Judicial Review
- *Obergefell v. Hodges*

The Judiciary

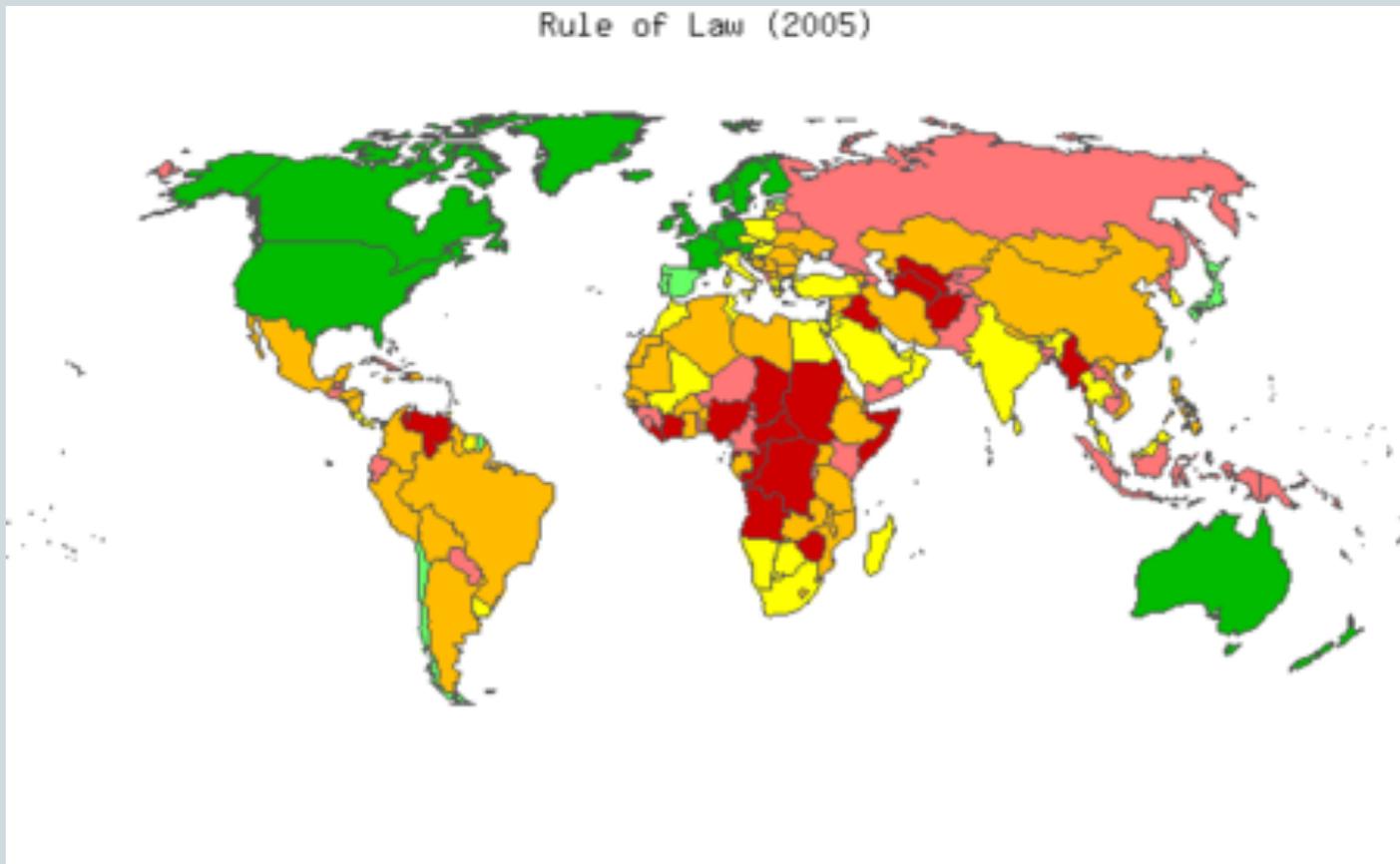
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- **The rule of law** is a legal principle whereby governmental decisions are made by applying known legal principles.
- As opposed to the whims or arbitrary decisions of individual government officials.
 - A King

Rule of Law Worldwide

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- World Governance Indicators – rule of law



Judicial Independence

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- Courts serve the essential functions of settling disputes and interpreting the law
- The most distinctive feature of the federal judiciary is its independence – it is separate from the other branches and state and federal judges have life terms
- Because judges have preferences about what government should do, courts are fundamentally political institutions

Founders on the Judiciary

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“The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution ... The judiciary ... has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment.”

—Alexander Hamilton, *Federalist* #78

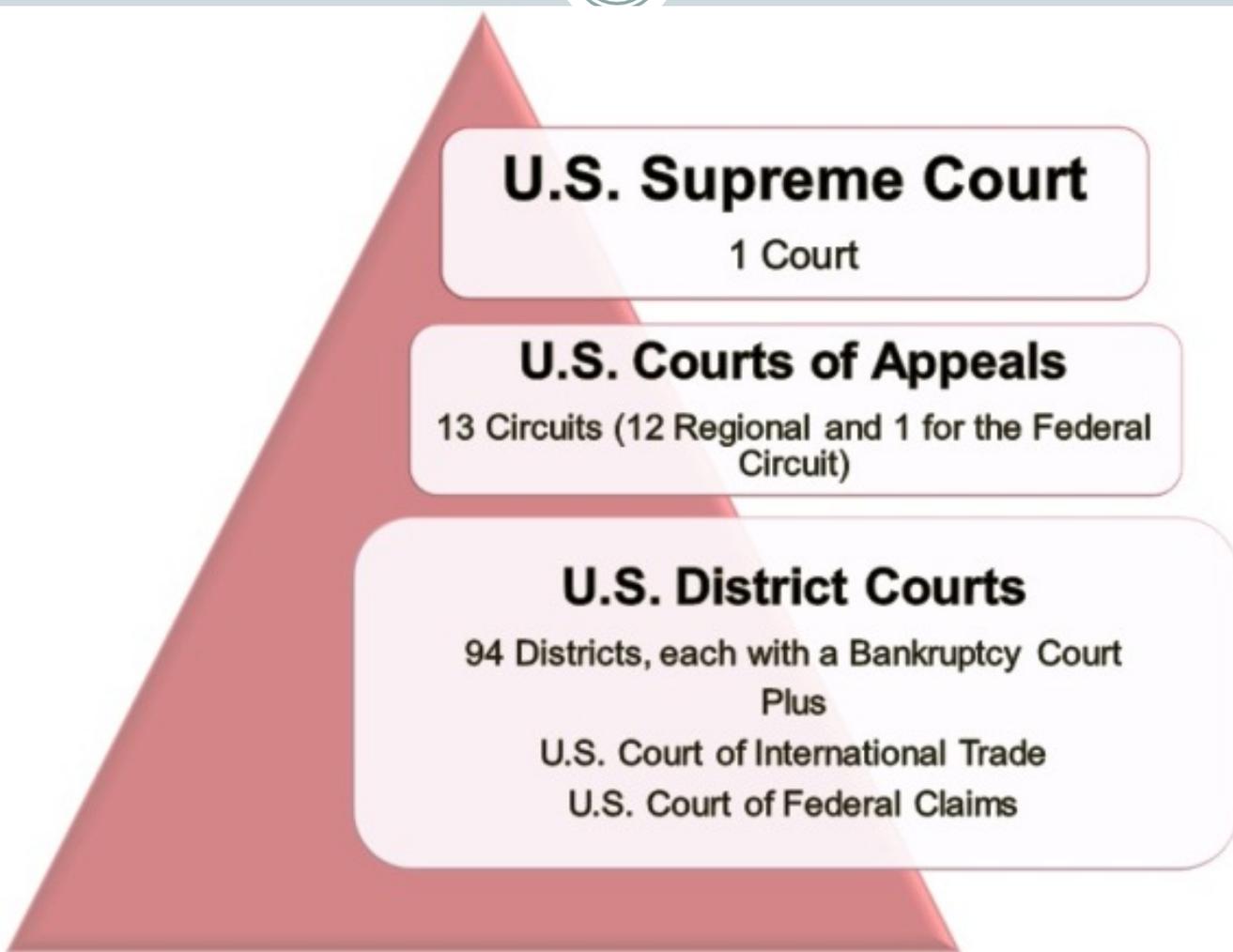
Founders on the Judiciary

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- ” [The courts] could declare an unconstitutional law void. But with regard to every law, however unjust, oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as judges to give it a free course.”
- George Mason at the Constitutional Convention

Federal Court System

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U.S. Supreme Court

1 Court

U.S. Courts of Appeals

13 Circuits (12 Regional and 1 for the Federal Circuit)

U.S. District Courts

94 Districts, each with a Bankruptcy Court
Plus

U.S. Court of International Trade

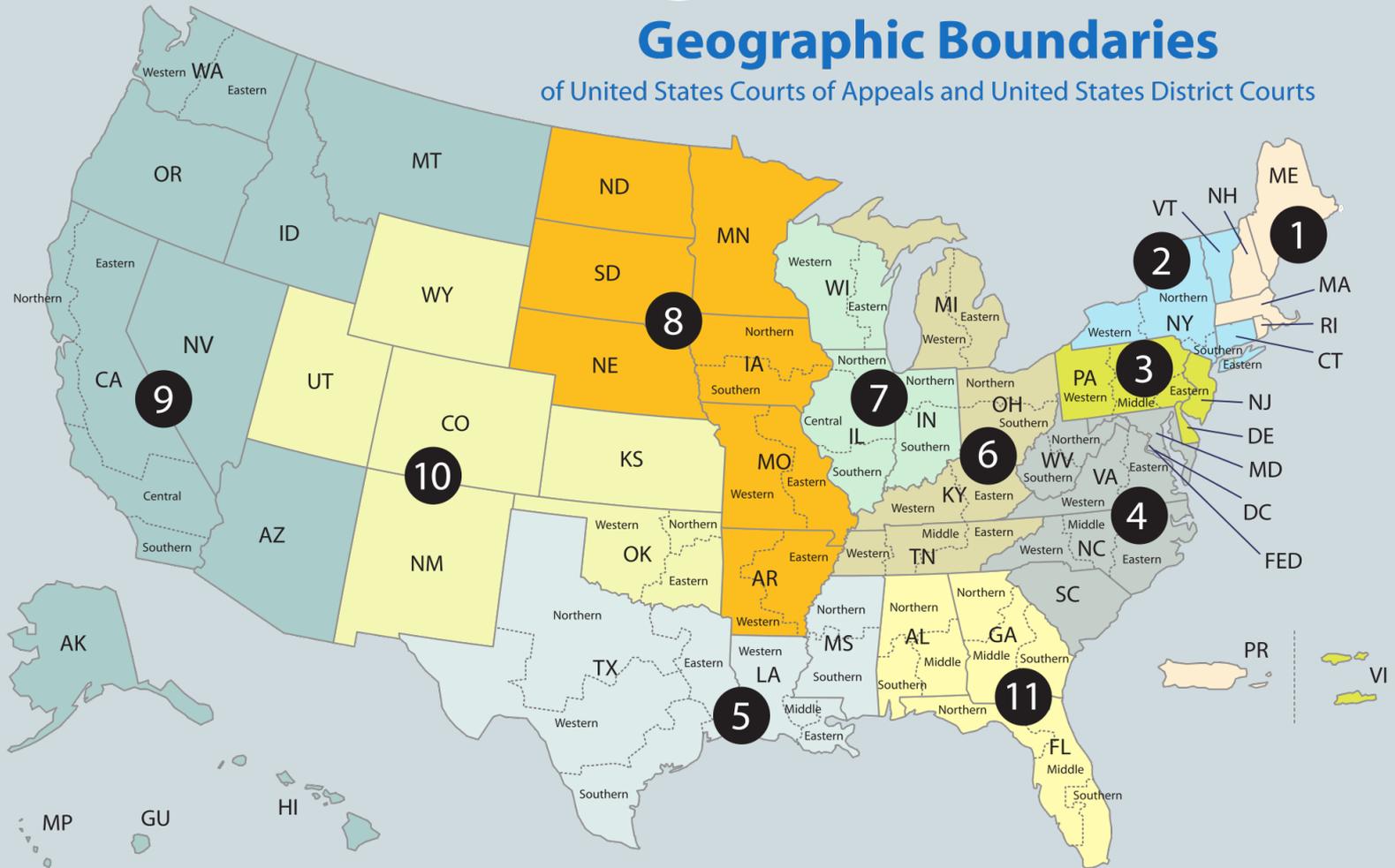
U.S. Court of Federal Claims

U.S. Courts of Appeals & District Courts

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Geographic Boundaries

of United States Courts of Appeals and United States District Courts



Becoming a Justice

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- President nominates justices, Senate approves or rejects the nomination
- Home state Senators have “Senatorial courtesy”
- Justices appointed for life
- ABA ratings (American Bar Association)

Members of the Supreme Court

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Members of the Supreme Court

Name	Year of Birth	Prior Experience	Appointed By	Year of Appointment	Senate Vote
Antonin Scalia	1936	Federal Judge	Reagan	1986	98-0
Anthony Kennedy	1936	Federal Judge	Reagan	1988	97-0
Clarence Thomas	1948	Federal Judge	G.H.W. Bush	1991	52-48
Ruth Bader Ginsburg	1933	Federal Judge	Clinton	1993	96-3
Stephen Breyer	1938	Federal Judge	Clinton	1994	87-9
John Roberts	1955	Federal Judge	W. Bush	2005	78-22
Samuel Alito	1950	Federal Judge	W. Bush	2006	58-42
Sonia Sotomayor	1954	Federal Judge	Obama	2009	68-31
Elena Kagan	1960	Solicitor General	Obama	2010	63-37

Confirmation Process

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- Appointed Judges go before the Senate Judiciary Committee
- Judiciary Committee votes to advance the nominee to the Senate floor
- The Senate votes to confirm or reject a nominee (or filibuster/not allow a vote to occur)
- Since 1900: 69 nominations (including chief justice)
 - 4 withdrawn
 - 4 rejected
 - 2 no action
 - 59 confirmations

Nominated in Presidential Election Year?

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- Since 1900
- Taft nominates Pitney (Feb. 19, 1912) – C.
- Wilson nominates Brandeis (Jan. 28, 1916) – C.
- Wilson nominates Clarke (Jul. 14, 1916) – C.
- Hoover nominates Cardozo (Feb. 15, 1932) – C.
- FDR nominates Murphy (Jan. 4, 1940) – C.
- LBJ nominates Thornberry (Jun. 26, 1968) – W.

Number of Justices

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- The Constitution does not set the number of judges
- Judiciary Act of 1789: 6 judges
- Maximum size: 10 in 1863
- 1869: Set the number to 9
- Last effort to change the size of the Supreme Court: Franklin Roosevelt's court packing plan

Judicial Review

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- **Judicial Review** – The power of the courts to declare actions of the legislative and executive branches invalid or unconstitutional
- Judicial review is not explicitly granted to the Court in the Constitution but was asserted by the Court in *Marbury v. Madison* (1803)

Marbury v. Madison (1803)

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- **The Judiciary Act of 1789:**
 - Establishes federal court structure. Supreme Court has 6 Justices, 13 District Courts. 3 Circuit Courts
 - raised the number of courts so Federalists could appoint a lot of judges on the way out
- **Specified jurisdiction:**
 - Gives the SCOTUS “original jurisdiction” in some areas

Marbury v. Madison

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- Adams loses election and in the final 2 weeks of his presidency, approves 16 judges.
- Appoints his Secretary of State, John Marshall, to Chief Justice of SCOTUS
- Political rivals were not pleased

Marbury v. Madison

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- William Marbury had been granted a judicial commission but the commission had not been delivered in time
 - Jefferson Administration refuses to send the commission
- Marbury sued and the Court ruled that the portion of the Judiciary Act of 1789 that gave the Court power to compel Madison to deliver the commission was invalid
- The Court thus asserted it had the power to rule a law unconstitutional

Judicial Review in Action

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- The Court did not use judicial review much right after *Marbury v. Madison* but it has used it quite a bit more frequently in recent decades
- Judicial review has been used to:
 - reverse state actions
 - overturn federal agency actions
 - challenge presidential action
 - overturn federal law

Case from District to Appeals to SCOTUS

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- *Obergefell v. Hodges*
- James Obergefell and John Arthur married in 2013 in Maryland (same sex marriages allowed)
- Arthur diagnosed with ALS
- Wanted Obergefell listed as surviving spouse on death certificate
- Why? To be buried in the same family plot

Obergefell v. Kasich

- Case brought to U.S. District Court for the Southern District of Ohio (July 19, 2013)
- Judge Black ruled in favor of Obergefell (Dec. 23, 2013)
- “Throughout Ohio's history, Ohio law has been clear: a marriage solemnized outside of Ohio is valid in Ohio if it is valid where solemnized,”
- “When a state effectively terminates the marriage of a same-sex couple married in another jurisdiction, it intrudes into the realm of private marital, family, and intimate relations specifically protected by the Supreme Court.”

On to Appeals

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- Ohio appealed the ruling to the U.S. Court of Appeals for the Sixth District
- Case combined with 5 other same sex marriage cases
 - Case given new name, *Obergefell v. Hodges*
- Appeals court overturned the District court (Nov. 6, 2014) by a vote of 2-1, cited *Baker v. Nelson*
- “Not one of the plaintiffs' theories, however, makes the case for constitutionalizing the definition of marriage and for removing the issue from the place it has been since the founding: **in the hands of state voters.**”

On to SCOTUS

- Obergefell asked the court to consider if Ohio's refusal to recognize his MD marriage violated the 14th Amendment's guarantee of due process and equal protection clauses
- Due Process clause: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”
- Equal Protection clause: “[N]or deny any person within its jurisdiction the equal protection of the law.”

SCOTUS

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- Jan. 16, 2015 SCOTUS agreed to hear the case
- SCOTUS ordered briefs and arguments on 2 questions:
 - Does the 14th Amendment require a state to license a marriage between two people of the same sex?
 - Does the 14th Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

SCOTUS

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- Oral arguments April 28, 2015
- Representing the plaintiffs:
 - Civil Rights lawyer Mary Bonauto
 - D.C. lawyer Douglas Hallward-Driemeier
 - U.S. Solicitor General Donald Verrilli
- Representing the states:
 - Michigan Solicitor General John Bursch
 - Tennessee Associate Solicitor General Joseph Whalen

The Decision

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- Decision Announced June 26, 2015
- 5-4 SCOTUS declared that the 14th Amendment requires ALL states to grant same-sex marriages and recognize same-sex marriages from other states
- Case overturned *Baker v. Nelson* (1971)
 - “The appeal is dismissed for want of a substantial federal question.”
 - MN Supreme Court, “in commonsense and in a constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex.” – response to *Loving v. Virginia*

How Was *Baker* & Appeals Court Overturned?

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- Ruth Bader Ginsburg in 2013: “same-sex intimate conduct was considered criminal in many states in 1971, so I don't think we can extract much in *Baker v. Nelson*.”
- *Loving v. Virginia* cited 11 times
- “An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act... **fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.**”

Any Questions?

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