

Annotated Readings for

The Supreme Court: The Judicial Power of the United States



Student Name _____ Date _____

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1. Article IX of the Articles of Confederation (1781)

The United States in Congress assembled, shall have the sole and exclusive right and power of ... appointing courts for the trial of piracies and **felonies** committed on the high seas and establishing courts for receiving and determining finally **appeals** in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following.

2. The Constitution of the United States (1789)

ARTICLE I

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

COMMENTARY:

The first three articles of the Constitution divide the powers of the United States government among three separate branches: (1) the legislative branch, represented by Congress; (2) the executive branch, represented by the President; and (3) the judicial branch, represented by the Supreme Court. This constitutional division, called the *separation of powers*, is designed to prevent any branch of the government from becoming too powerful. In addition, the Constitution creates checks and balances by providing the means by which each branch is required to work with the other branches in order to carry out its functions. **For example, the President nominates federal judges but the Senate must confirm them.**

ARTICLE I

Section 2

(5) The House of Representatives shall chuse (choose) their Speaker and other Officers; and shall have the sole Power of Impeachment.

COMMENTARY:

The House chooses an officer called the *Speaker* to lead meetings. The House alone has the power to bring impeachment charges against a federal official. It has impeached 16 federal officers, including two presidents, Andrew Johnson in 1868 and William Jefferson Clinton in 1998. The Senate tries impeachment cases.

ARTICLE I

Section 3

(6) The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

COMMENTARY:

The provision that the Chief Justice, rather than the Vice President, shall preside over the Senate when a President is on trial probably grows out of the fact that a Senate conviction of a President would make the Vice President the President. The phrase "on oath or affirmation" means that Senators are placed under oath when trying impeachment cases, just as jurors are in a regular court trial.

(7) Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

COMMENTARY:

If an impeached person is found guilty, she or he can be removed from office and forbidden to hold federal office again. The Senate cannot impose any other punishment, but the person may also be tried in regular courts. **The Senate has convicted seven persons, all of them judges.** All these men were removed from office, but only two of them were disqualified from holding any federal office.

ARTICLE I

Section 8

(9) To constitute Tribunals inferior to the supreme Court;

COMMENTARY:

Examples of federal courts "inferior to the Supreme Court" include the United States district courts and United States Courts of Appeals.

Section 2

(2) He shall... nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

COMMENTARY:

The framers of the Constitution intended that in some matters the Senate should serve as an advisory body for the President, somewhat as the House of Lords advised the monarch in Great Britain. The President can make treaties and appoint various government officials. But two-thirds of the Senators present must approve before a treaty is confirmed. Also, high appointments require approval of more

than half the Senators present.

ARTICLE III

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such **inferior Courts** as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour; and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

COMMENTARY:

The Constitution gives federal courts considerable independence from both the Congress and the President. The guarantee that judges shall hold office during "good behavior" means that, unless they are impeached and convicted, they can hold office for life. This protects judges from any threat of dismissal by the President who appointed them, or by any other President during their lifetime. The rule that a judge's salary may not be reduced protects the judge against pressure from Congress, which could otherwise threaten to fix the salary so low that the judge could be forced to resign.

ARTICLE III

Section 2

(1) The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-- to all Cases affecting Ambassadors, other public Ministers and Consuls;-- to all Cases of admiralty and maritime Jurisdiction;-- to Controversies to which the United States shall be a Party;-- to Controversies between two or more States;-- [between a State and Citizens of another State;]-- between Citizens of different States,-- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, [Citizens or Subjects.]

COMMENTARY:

The right of the federal courts to handle "cases arising under this Constitution" is the basis of the Supreme Court's right to declare laws of Congress unconstitutional. This right of "judicial review" was established by Chief Justice John Marshall's historic decision in the case of *Marbury v. Madison* in 1803. The 11th Amendment set aside the phrase "between a state and citizens of another state" and removes from federal courts suits by citizens against a state.

(2) In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have **original Jurisdiction**. In all the other Cases before mentioned, the supreme Court shall have **appellate Jurisdiction**, both as to **Law and Fact**, with such Exceptions, and under such Regulations as the Congress shall make.

COMMENTARY:

The statement that the Supreme Court has *original jurisdiction* in cases affecting foreign governments and their representatives and in cases to which a state government is one of the parties means that cases of this kind go directly to the Supreme Court. In other cases, the Supreme Court has *appellate jurisdiction*. This means that the cases are tried first in a lower court and may come up to the Supreme Court for review if Congress has authorized an appeal for such kinds of cases. Congress cannot take away or modify the original jurisdiction of the Supreme Court, but it can take away the right to appeal to that Court or fix the conditions one must meet to present an appeal.

(3) The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Amendment 11

LAWSUITS AGAINST STATES

This amendment was proposed on March 4, 1794, and ratified on February 7, 1795.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

COMMENTARY:

This amendment makes it impossible for a citizen of one state to sue another state in federal court. The amendment resulted from the 1793 case of *Chisholm v. Georgia*, in which a man from South Carolina sued the state of Georgia over an inheritance. Georgia argued that it could not be sued in federal court, but the Supreme Court ruled that the state could be. Georgia then led a movement to add this amendment to the Constitution. However, individuals can still bring actions against state authorities in federal court to prevent these authorities from depriving them of their Constitutional rights.

DEFINITIONS:

- ❑ Appeal(s): the hearing of a previously tried case by a superior court.
- ❑ Appellate jurisdiction: A court that hears a case that has already been heard by another court is said to have appellate jurisdiction. In other words, the case has been "appealed" to a higher court.
- ❑ Felonies: Crimes of a serious nature.
- ❑ Inferior court: A court, such as a district court whose decisions can be appealed to a higher court. The Supreme Court is the "most superior" court in the land; there is no higher court of appeal.
- ❑ "Law and fact": The court with original jurisdiction judges the facts of the case as well as what laws apply. Except in those rare cases of original jurisdiction (which are infrequent), the Supreme Court rules only on the law and not on the facts of a case. Thus no witnesses are called.
- ❑ Original jurisdiction: The court in which a case first appears is said to have original jurisdiction. The Supreme Court can only have original jurisdiction in cases involving ambassadors, certain public officials, and disputes between states. This happens only rarely.