Supreme Court of the United States Procedures: Crash Course Government and Politics #20

Crash Course: U.S. Government and Politics
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Hi, I'm Craig, and this is Crash Course Government and Politics and today, finally, we are stepping into the big leagues. That's right, I'm trying out for the Cubs.

No, we're gonna talk about how the Supreme Court of the United States actually works! I could try out for the Cubs right, Stan?

Sometimes people refer to it by the unfortunate nickname S. C. O.

T. U. S but I'm not gonna do it, I'm gonna call it the supreme cocoa, or cocoa supreme.

Now, let's just be respectful. So strap in and get ready for some highly technical discussion of procedure as we learn how you, yes you, probably not you, can bring a case to the Supreme Court.

[Intro]

The first thing you need to take a case to the Supreme Court is a case, or controversy, and except in certain rare situations where the court has original jurisdiction, that case has to have already heard and decided by a lower court and appealed.

And not just once; before a case gets to the Supreme Court you have to have exhausted your appeals at lower levels of the state or federal system. If you've lost your previous appeals but still think that you have an issue worthy of the court's attention, you can petition for a writ of certiorari, which people in the know call 'the cert', 'cause they're keepin' it cash...which is short for casual. For a look at how the court chooses its cases, let's go to the Thought Bubble, or the thobub. Lot of nicknames today, Stan!

Or ST. Certiorari is a formal request that the Supreme Court hear your case, but petitioning for a writ is no guarantee of anything. The federal government's chief lawyer, the solicitor general, is basically like a bouncer at a hot club, if you're old enough to get into a hot club.

They screen out a lot of petitions because those cases don't raise a lot of federal law questions or because they've already been decided in other cases, or they're not wearing good enough shoes to get into the club. If, and it's a big if, your petition is granted, it goes into the cert pool - the first round in which the justices decide which cases they're actually going to decide. The list of cases that will be decided is called the discussion list. For the judges to actually hear the case, called granting certiorari, 4 of the 9 justices have to agree to hear it.

This is called the rule of 4. The discussion of the discussion list and decision about whether or not to grant certiorari happens at the conference, which is like the back of the club where the really well-dressed people go. So the judges have read your petition and 4 of them have decided that your case is one of about 80 that they will hear, congratulations! Now you, and the side that disagrees with your position, have to submit briefs.

Briefs are not underwear; briefs are written legal arguments from each side explaining why the law favors their position. The party bringing the case seeking to overturn the lower court decision is the petitioner. The party that wants the court to uphold or affirm the lower court's decision is called the respondent.

The petitioner also files a reply, which attempts to rebut the respondent, which is not a euphemism. After filing all this, you're finally on your way out of the Thought Bubble. I mean you're on your way to court.

Thanks thobub. You might think that there would only be two briefs in a case, one from each side, and it's true that there must be at least two. But often there are many, many more briefs, and even boxer briefs! That's what Stan wears.

Stan put your pants on! All undergarments aside, individuals or groups who are not actually parties to the case, but have an interest in the outcome can also file amicus curiae, or friend of the court briefs. Amicus briefs often contain different legal, economic, or historical arguments that can sometimes persuade justices and appear in their opinions.

They are also one way that interest groups can attempt to influence the Supreme Court. After the briefs have been filed, the court schedules oral arguments, giving them time to read and consider the briefs. Each side gets half an hour to make its case, but this time includes questions from the justices, so most of the time it's usually spent answering questions. Imagine a presentation with the most intense teacher you've ever had bombarding you with questions, except that there 9 teachers!

Well, 8 because Clarence Thomas never speaks. After oral arguments, you wait for a decision. The justices then meet in another conference which is held on a Wednesday or a Friday, 'cause there's good TV the other days. In order for the court to render an official decision, 5 of the 9 justices, a majority must agree on at least one of the legal arguments that either affirms or overturns the lower court's decision.

Although they can also send a case back down to the lower court for another decision, which is called a remand. Although, you might call it... a punt! Woo!

That was like 30 yards. The chief justice presides over the conference and assigns the task of writing the court's decision, called the majority opinion. The opinions are given in writing, although sometimes justices will read them from the bench. Sometimes the court will issue a single majority opinion which is a very strong statement of unified agreement.

In the key civil rights case of Brown v. Board of Education, the court issued a single opinion that was even stronger because it was unanimous. But sometimes the court will issue multiple opinions on the same case.

The decision of the court either to affirm or overturn the lower court's ruling is called 'the holding', and this is the first thing you need to know in any Supreme Court decision. The second thing that matters is the legal reasoning, or rationale, behind the holding. If a justice agrees with the holding in the majority opinion, but for different legal reasons, they write a concurring opinion. The rationale in this concurrence is cool and everything, but the lower courts do not need to follow it.

Only the holding of the majority and its rationale are binding on lower courts. A single justice writes a concurrence, but other justices can sign onto it if they agree with its logic. For instance, the eagle and I both agree that fish are delicious, but I would write a concurrence that the scales and the eyeballs are gross.

It's unlikely this will go to the Supreme Court though. Let's solve it now. Problem solved.

Many Supreme Court cases are not unanimous. In fact, in an ideologically divided court, you're likely to find a lot of cases decided by 5 to 4 margins. The judges who are on the losing side who didn't support the majority decision can write a dissenting opinion. A dissent does not set a precedent for a lower court and has no force of law, but often dissents are very eloquent and they can provide arguments that might persuade later courts in similar decisions.

Sometimes, as with the famously bad case of Plessy v. Ferguson, the arguments in a dissent can form the foundation for the majority opinion in a later case, even though it can take 50 years to get from a case like Plessy to Brown v. Board of Education. So that's the nuts and bolts of how Supreme Court decisions are made.

But before we wrap this up, here are a few key things to remember. First, there are a lot of hurdles you need to jump over before a court makes a decision in a case. Most certiorari petitions, there are usually about 8,000 each year, don't make it past the clerks or the solicitor general, and don't get granted.

It takes 4 judges to agree to hear a case, but 5 to render a majority opinion. Only the holding and the rationale supported by at least 5 of the 9 justices becomes binding precedent for lower courts. Dissents and concurrences may be fun and interesting to read, especially if there are pictures, and they may include important legal ideas, but lower courts don't need to follow them.

So that's how to court works procedurally, but there's another way to think about Supreme Court decision-making. To really understand the Supreme Court, we need to consider the thinking behind judicial decisions, but that's for another episode. Thanks for watching. Crash Course Government and Politics is produced in association with PBS Digital Studios.

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Thanks for watching.