



LWVBC 2025 FEDERAL JUDICIARY STUDY

What is a LWV “Position”?

A League position is established after members have studied an issue and achieved consensus on policies and practices that would best serve the public interest.

League positions serve as the foundation for League action and ensure we are speaking with one voice on issues.

The best League positions are written in general principles — broad concepts — rather than in specific topics. This allows positions to have a long life, allowing the League to act even as the issues change over time.

A position should outline the principles to be applied as we make decisions on action in the future.

The Goal of this Study

To develop a LWV position on the Federal Judiciary as an essential component of US democracy. The scope addresses the US Supreme Court as well as the other Article III federal courts. The other Article III federal courts include 94 federal district courts (which include bankruptcy courts), and 13 circuit courts of appeals.

The Study includes but is not limited to addressing concerns and clarifying:

Judicial Independence.

Judicial Accountability.

Judicial Transparency.

Judicial Ethics.

HISTORICAL BACKGROUND

WHAT DOES THE CONSTITUTION OF THE U.S. ACTUALLY SAY???

ARTICLE III 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.

Constitutional Basis (1787).

Article III of the U.S. Constitution created the Supreme Court and allowed Congress to establish lower federal courts.

Federal courts have the power to decide cases involving the Constitution, federal laws, treaties, disputes between states, and cases involving foreign governments.

HOW HAS THE ROLE OF THE COURT CHANGED OVER TIME ?

1. Judiciary Act of 1789: This law established the structure of the federal court system, including district courts and circuit courts. It also affirmed the Supreme Court's authority to review state court decisions.

2. Marbury v. Madison (1803) – Judicial Review

This landmark case, led by Chief Justice John Marshall, established the principle of judicial review, giving courts the authority to strike down laws that violate the Constitution. This ruling significantly expanded the power of federal courts.

3. Expansion of Federal Court Authority

McCulloch v. Maryland (1819): Confirmed federal supremacy over state laws.

Gibbons v. Ogden (1824): Strengthened federal power over interstate commerce.

Civil War & Reconstruction Era (1860s-1870s): Federal courts upheld civil rights

laws and enforced Reconstruction Amendments (13th, 14th, and 15th Amendments).

WHO HAS JURISDICTION : State Courts? OR Federal Courts?

Aspect	State Courts	Federal Courts
Jurisdiction Basis	State laws and constitutions	U.S. Constitution and federal laws
Types of Cases Heard	Most criminal cases, contract disputes, family law, personal injury, probate, traffic violations	Cases involving federal law, U.S. Constitution, treaties, and disputes between states or citizens of different states (diversity jurisdiction)
Criminal Cases	State crimes (e.g., theft, assault, murder, DUI)	Federal crimes (e.g., tax evasion, terrorism, drug trafficking, mail fraud)
Civil Cases	Contracts, property disputes, family law (divorce, custody), torts (e.g., personal injury)	Cases involving federal statutes, civil rights violations, bankruptcy, intellectual property
Parties Involved	Individuals, businesses, state agencies	Individuals, businesses, federal government, state governments
Appeals Process	State trial courts → Intermediate appellate courts → State supreme court	U.S. District Courts → U.S. Courts of Appeals → U.S. Supreme Court
Exclusive Authority	Family law, real estate law, traffic violations, probate	Bankruptcy, patents, copyrights, immigration, antitrust law
Concurrent Jurisdiction	Some cases may be heard in either state or federal court (e.g., civil rights cases, environmental laws, some crimes)	Some cases may be heard in either federal or state court (e.g., diversity cases over \$75,000, certain constitutional claims)

THE ROLE OF CONGRESS

Congress provides the finances needed to administer the courts; can and has acted multiple times to create additional courts; and also to override or modify the effects of U.S. Supreme Court rulings by passing new legislation or constitutional amendments. Congress has also impeached 15 judges. Here are a few notable examples of legislation.

1. Judiciary Act of 1789

This law established the structure of the federal court system, including district courts and circuit courts. It also affirmed the Supreme Court's authority to review state court decisions.

2. The Civil Rights Act of 1991

Supreme Court Case: *Patterson v. McLean Credit Union* (1989)

What Happened: The Supreme Court limited the scope of employment discrimination claims under Section 1981 of the Civil Rights Act of 1866.

Congress' Response: Congress passed the Civil Rights Act of 1991, which expanded protections against workplace discrimination and overturned several Supreme Court decisions that had narrowed such protections.

3. The Religious Freedom Restoration Act (1993)

Supreme Court Case: *Employment Division v. Smith* (1990)

What Happened: The Court ruled that laws burdening religious practices do not need to meet the "compelling interest" standard as long as they apply generally to everyone.

Congress' Response: Congress passed the Religious Freedom Restoration Act (RFRA), which required the government to meet a stricter standard when restricting religious practices.

4. The 14th Amendment (1868)

Supreme Court Case: Dred Scott v. Sandford (1857)

What Happened: The Court ruled that African Americans were not U.S. citizens and had no constitutional rights.

Congress' Response: The 14th Amendment was ratified, granting citizenship and equal protection under the law to all persons born or naturalized in the U.S.

5. The 16th Amendment (1913)

Supreme Court Case: Pollock v. Farmers' Loan & Trust Co. (1895)

What Happened: The Court ruled that a federal income tax was unconstitutional because it was a direct tax not apportioned among the states.

Congress' Response: The 16th Amendment was passed, giving Congress the power to levy an income tax without apportioning it among the states.

6. The Civil Rights Act of 1991

Supreme Court Case: Patterson v. McLean Credit Union (1989)

What Happened: The Supreme Court limited the scope of employment discrimination claims under Section 1981 of the Civil Rights Act of 1866.

Congress' Response: Congress passed the Civil Rights Act of 1991, which expanded protections against workplace discrimination and overturned several Supreme Court decisions that had narrowed such protections.

7. The Religious Freedom Restoration Act (1993)

Supreme Court Case: Employment Division v. Smith (1990)

What Happened: The Court ruled that laws burdening religious practices do not need to meet the "compelling interest" standard as long as they apply generally to everyone.

Congress' Response: Congress passed the Religious Freedom Restoration Act (RFRA), which required the government to meet a stricter standard when restricting religious practices.

8. The Lilly Ledbetter Fair Pay Act (2009)

Supreme Court Case: Ledbetter v. Goodyear Tire & Rubber Co. (2007)

What Happened: The Court ruled that a woman could not sue for pay discrimination under Title VII of the Civil Rights Act if the discriminatory pay decision had been made more than 180 days earlier.

Congress' Response: The Lilly Ledbetter Fair Pay Act was passed in 2009, making it clear that each discriminatory paycheck resets the 180-day limit to file a claim.

9. The Ethics Reform Act of 1989

This Act significantly affected federal judges and Justices of the Supreme Court in several key ways. It requires annual financial disclosures, limits outside income, and established cost-of-living adjustments. The goal was to enhance transparency and public trust in the judiciary by revealing potential conflicts of interest.

10. Federal Judiciary Stabilization Act of 2024 converted 10 temporary district judgeships to permanent positions.

ADMINISTRATION OF THE FEDERAL COURTS

The Administrative Offices supporting the Federal Courts play a crucial role in managing the non-judicial functions of the federal judiciary. Here's a breakdown of their key responsibilities:

1. Judicial Conference of the United States

The governing policy-making body of the federal courts.

Chaired by the Chief Justice of the U.S. Supreme Court. Chief judges of other courts serve.

Establishes administrative policies for all federal courts.

Reviews court budgets and legislative proposals.

Oversees the operation of court rules and procedures.

2. Administrative Office of the U.S. Courts (AOUSC)

Manages the budget and financial administration of the judiciary.

- Provides HR services (judicial staffing, payroll, benefits).

- Oversees IT services for federal courts (case management systems).

- Manages court security and facilities in coordination with the U.S. Marshals.

- Collects and analyzes judicial statistics and workload data.

3. Federal Judicial Center (FJC)

The education and research agency of the federal courts.

Develops training programs for judges, clerks, and legal professionals.

Conducts studies to improve judicial administration.

Provides historical and legal research on court operations.

4. U.S. Sentencing Commission

Develops federal sentencing guidelines for judges.

Collects and analyzes sentencing data.

Reviews and recommends changes to sentencing policies.

Provides training on sentencing laws to judges and attorneys.

These offices ensure that the federal courts function smoothly by handling finance, training, policy-making, and research, allowing judges to focus on legal decision-making.

OUR JOB IS TO FIND CONSENSUS ON THE FOLLOWING 12 QUESTIONS!!

Question 1. Independence is essential to an effective Federal Judiciary.

An independent judiciary is a cornerstone of democracy because it ensures that the legal system operates fairly, impartially, and free from political influence. Here's why judicial independence is crucial:

1. Upholding the Rule of Law. An independent judiciary ensures that laws are applied consistently and that no one is above the law—not politicians, government officials, or powerful individuals.

2. Protecting Constitutional Rights & Freedoms. Judges must be able to strike down unconstitutional laws or government actions without fear of retaliation. This is vital for safeguarding freedom of speech, due process, and equal protection.

3. Preventing Abuse of Power. A judiciary free from political pressure can act as a check on the executive and legislative branches, preventing authoritarian overreach, corruption, and abuse of power.

4. Ensuring Fair Trials & Justice for All. Judicial independence guarantees that cases are decided based on facts and law, not political pressure, money, or personal bias. This ensures fairness, particularly for marginalized or unpopular groups.

5. Encouraging Economic Stability & Investment. Businesses and investors rely on an independent legal system to enforce contracts and protect property rights. If courts are subject to government interference, it discourages investment and economic growth.

6. Public Confidence in the Legal System. If courts are seen as puppets of politicians or special interests, people lose faith in democracy and the judicial system. An independent judiciary reassures citizens that justice is impartial.

7. Peaceful Resolution of Disputes. In democracies, courts provide a structured and non-violent way to resolve disputes, reducing the likelihood of political or civil unrest.

Threats to Judicial Independence:

Political Pressure – Governments trying to appoint loyal judges or influence court decisions. Corruption – Bribery or favoritism undermining fair rulings.

Public or Media Influence – Popular opinion swaying judicial decisions instead of the law and facts. Lack of Resources – Underfunded courts struggle to function effectively.

A strong, independent judiciary is vital for democracy, justice, and freedom.

Without it, democratic institutions can crumble, leading to authoritarianism or lawlessness.

CHOOSE ONE: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 2- Transparency is essential to an effective Federal Judiciary.

Transparency can both support and challenge the ability of judges to make impartial decisions free from external pressures. Transparency, in this context, refers to openness in the judicial process—such as public access to court proceedings, decisions, and the reasoning behind those decisions. Judicial independence means that judges can rule based solely on the law, without interference from the government, public opinion, or other influences.

Transparency can strengthen an independent judiciary in several ways:

Accountability: When judicial decisions and processes are open to the public, it's easier to detect any improper influence, such as corruption or political pressure. This scrutiny can encourage judges to remain impartial and adhere strictly to the law.

Public Trust: By allowing people to see how justice is administered, transparency builds confidence in the judiciary.

Deterrence of Undue Influence: Openness makes it harder for external forces to manipulate the judiciary in secret. Public trials and published opinions provide openness.

Too much transparency can pose risks to judicial independence:

Pressure from Public Opinion: If judges feel their decisions are constantly under public scrutiny, they might be tempted to rule in ways that align with popular sentiment.

Personal Threats or Harassment: Excessive openness, such as televising trials or exposing judges' personal details, could lead to threats or intimidation.

Media Spectacles: In some cases, transparency—such as televised proceedings—can turn trials into public entertainment, potentially influencing judges, lawyers, or witnesses and shifting focus away from legal merits.

The key is to strike a balance where transparency ensures accountability without compromising independence. While virtually all opinions are public, there need to be limits that protect our national security and the safety of witnesses, parties and court personnel. While open court proceedings are valuable, limits on real-time media coverage (e.g., no live broadcasts in some systems) can prevent undue influence while maintaining public access.

Transparency needs to be implemented carefully to protect the various interests and parties. The standard should be transparency unless good cause requires otherwise.

Choose one: Strong consensus for / Moderate consensus for/ Strong consensus against / Moderate consensus against /No consensus

Question 3. Accountability is essential to an effective Federal Judiciary.

The term accountability can mean two widely different things. It could refer to accountability to the public. It could also mean accountability by means of a system of ethics and law that allow the reasoning and impartiality of the judge to be examined.

PROS

As a rule, judges know their actions are subject to scrutiny by means of a code of conduct and by reason of the right of appeal. Vigorously maintained codes of ethics and appeals systems incentivize judges to manage cases efficiently and treat all parties fairly. Such accountability can ensure consistent application of the law, enhancing the judiciary's overall performance.

As one of the three branches of government, the judiciary must operate within the system of checks and balances. Accountability mechanisms—like Congressional oversight or impeachment for extreme misconduct—prevent the judiciary from becoming too powerful or detached from scrutiny, preserving the constitutional framework.

Accountability should therefore focus on conduct and ethics, not the substance of rulings, unless they clearly violate legal standards.

CONS

Accountability to public figures or public pressure creates situations where decisions are based on popularity of a party or issue, not on the law and facts. For example:

- Political Pressure: Excessive oversight from elected officials might push judges to align rulings with popular or political views rather than the law.
- Chilling Effect: Harsh accountability measures could deter judges from making legally sound decisions that might be unpopular.

To avoid these risks, accountability in the Federal Judiciary must be carefully limited to ethical behavior, procedural fairness, and legal adherence, rather than dictating specific outcomes.

Accountability, but limited to ethical behavior, procedural fairness, and legal adherence mitigates the negative concerns .

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 4. Ethics is essential to an effective Federal Judiciary.

Arguments in favor:

Ethics is essential to an effective Federal Judiciary.

A judiciary built on ethical principles ensures impartiality, fairness, and public trust—cornerstones of a functioning legal system.

Judges wield significant power, interpreting laws and shaping societal norms.

Without ethics, that power risks corruption, bias, or abuse, undermining justice.

Ethics governs conflicts of interest, impacting recusals when personal or financial ties could sway a ruling.

Demands intellectual honesty: rulings based on law and evidence, not ideology or pressure.

Public confidence in the judiciary drops when ethical scandals occur. After the 2023 outcry over Supreme Court justices' undisclosed gifts a 2024 Gallup poll showed trust in the judicial branch at 35%, a steep fall from 80% in 1999.

An unethical judiciary invites claims of unequal treatment, eroded legitimacy, or even defiance of rulings.

Arguments against:

Enforcement of ethical rules can be problematic—rigid or ambiguous rules enforced by the other branches of government could paralyze the judicial process,

Enforcement could provide a vehicle for frivolous accusations to discredit judges,

Delay court proceedings

Put pressure on judges to make popular opinions instead of focusing on the law and facts.

Enforcement within the Judicial Branch of government could address some of these concerns.

Ethics is about accountability and maintaining a system people can believe in.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 5 - There should be binding universal standards of conduct for judges and justices at all levels of the Federal Courts.

There are standards of conduct for U.S. Supreme Court Justices, though they differ somewhat from those for lower federal judges. The standards governing their behavior include a combination of formal rules, informal guidelines, and ethical expectations:

1. Code of Conduct for United States Judges: While the U.S. Supreme Court Justices are not formally bound by the Code of Conduct for United States Judges, which applies to lower federal judges, they generally follow its principles. The code emphasizes impartiality, integrity, and independence, along with provisions about conflicts of interest, financial disclosures, and recusal from cases where there might be a bias or appearance of bias.

Arguments in Favor:

Consistency and Accountability: A binding code of conduct ensures that all judges adhere to the same ethical principles, reducing inconsistencies in judicial behavior.

Public Confidence: Clear standards promote trust in the judiciary by assuring the public that judges are held to high ethical standards.

Preventing Conflicts of Interest: A binding code can help prevent real or perceived ethical lapses, such as conflicts of interest or improper political influence.

Arguments Against:

Judicial Independence: If the code is too rigid or politically influenced, it could undermine judicial discretion and autonomy.

Separation of Powers Concerns: If enforcement mechanisms involve the executive or legislative branches, it might open the door to undue influence over judicial decisions.

Existing Safeguards: Some argue that existing norms, self-regulation, and impeachment provisions are sufficient without formalizing binding rules.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 6. Court hearings, documents filed in the court, and rulings for all federal cases should be open and available to the public.

Pros:

Transparency & Accountability – Public access ensures that courts operate openly, allowing citizens to scrutinize legal proceedings and hold the judiciary accountable.

Public Trust in the Legal System – When people can see how cases are decided, they are more likely to trust the legal process and believe in the rule of law.

Legal Research & Precedent Awareness – Lawyers, scholars, and the public can study court decisions to understand legal trends and apply precedent effectively.

Media & Public Oversight – Journalists can report on cases accurately, leading to better-informed public discourse.

Fairness & Equal Access to Legal Resources – Open records can help parties with limited means access crucial legal arguments, ensuring a more level playing field.

Deterrence of Judicial Misconduct – Judges and attorneys may be less likely to act improperly if they know their actions are subject to public scrutiny.

Cons:

Privacy Concerns – Sensitive personal details (e.g., in family law, immigration, or medical cases) could be exposed, risking identity theft, harassment, or reputational

damage.

National Security & Confidentiality Issues – Some cases involve classified or sensitive government information that could endanger national security if disclosed.

Chilling Effect on Litigants & Witnesses – Public disclosure might deter individuals from seeking justice, especially in cases involving whistleblowers, victims of crime, or corporate wrongdoing.

Potential for Misuse – Bad actors could use publicly available court records for doxxing, harassment, or even financial fraud.

Information Overload & Misinterpretation – Legal documents are complex, and the public or media may misinterpret rulings, leading to misinformation.

Administrative & Financial Burden – Managing, redacting, and maintaining an extensive, publicly accessible database requires significant resources.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

7. There should be an effective enforcement mechanism for the Federal Judiciary code of ethics at all levels.

Argument against:

Requiring Supreme Court justices to follow an enforceable code—especially one created or enforced by Congress—could be seen as infringing on the independence of the judiciary and opening the door to political influence or pressure. If enforcement relies on congressional action or political appointees, the process could be biased, leading to partisan battles over supposed violations.

Some worry that rigid ethics codes might undermine judicial independence by second-guessing justices' behavior or associations that are normal parts of their role (like giving speeches or meeting with scholars).

Ethics rules can be open to interpretation, and what's a "conflict of interest" or "improper conduct" may not always be clear.

Disagreements over interpretation might themselves become politically charged.

Arguments in favor:

The legitimacy of the Court depends on the public's confidence in the judiciary. Unlike lower court judges, there's no higher court or body to oversee the Supreme Court. Impeachment is the only constitutional tool for serious misconduct, and that's a very high bar.

Alternatives are available:

Create an “inspector general” for the federal judiciary. The inspector general would be an independent watchdog with the power to investigate allegations of misconduct, fraud, or ethical breaches, then publish findings.

Establish an external ethics review panel. Retired federal judges or outside experts to advise on or decide ethical violations.

Strengthen existing Judicial Conference powers. The Judicial Conference, (comprised of the Chief Justice and other Chief Judges) which oversees the Code of Conduct for United States Judges, could be given more muscle to investigate and sanction.

Congress could legislate to expand the Conference’s authority.

Legislative mandates. The Senate Judiciary Committee could propose a formal process for investigating code violations, with a mechanism for public complaints and transparent recusal explanations.

Cultural and procedural shifts within the judiciary itself. These include an internal ethics office to offer consistent guidance, paired with whistleblower protections for law clerks.

This wouldn’t need new laws but would rely on the judiciary to act voluntarily .

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 8. An enforcement mechanism should include a process to require a judge or Justice to recuse him or herself when a reasonable litigant would believe that the judge or Justice has a bias against any party or an issue raised in the case.

Due process under the U.S. Constitution requires a judge or justice to recuse themselves when a "reasonable litigant" perceives bias. In the case of *Caperton v. A.T. Massey Coal Co.* (2009), the Supreme Court ruled that due process requires recusal when an objective observer would see a significant risk of bias. Federal law formalizes the recusal process.

PROS:

An enforcement mechanism requiring judges to recuse themselves when there is a reasonable appearance of bias appears could strengthen the system. The "reasonable litigant" standard aligns with the Supreme Court in *Caperton* .

CONS:

Judges are likely to oppose this. While existing ethics guidelines and policies support these standards for judges, they rely almost exclusively on each judge self-policing and on confidential conflict lists not open to litigants.

Opponents argue "reasonable belief" risks being too subjective it might delay cases. It could also undermine judicial independence if external bodies were able to have control over which cases were in a specific judge's docket.

The counterargument is that self-policing isn't enough. Studies, (American Political Science Review (2018)), suggest judges sometimes fail to recuse despite clear conflicts, especially in politically charged cases. Public confidence requires more transparency.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 9. A judge or Justice's decision and rationale to recuse or not recuse should be publicly disclosed in writing.

Whether a judge's decision and rationale to recuse or not recuse should be publicly disclosed in writing is a question that balances transparency, accountability, and judicial independence.

In favor of public disclosure:

Transparency is important. When a judge discloses their reasoning for recusing or declining, citizens can assess whether the decision aligns with ethical standards.

The Code of Conduct for United States Judges currently doesn't mandate public disclosure. Public disclosure could deter accusations of impropriety and bolster confidence. Recall Justice Scalia's 2004 memo defending his choice not to recuse in a case involving Dick Cheney after a hunting trip.

Against public disclosure:

Requiring written disclosure could burden the system or chill judicial candor. Judges might feel pressured to over justify routine decisions, slowing down proceedings. The Code almost exclusively leaves the decision to the judges themselves, seeing recusal

as a personal ethical call. Mandating public explanation, they argue, would risk politicizing it.

Recusal decisions themselves are generally not confidential, as they are part of the judicial process and often documented in court records. However, the reasons behind a judge's decision to recuse or not recuse may involve sensitive information, such as personal relationships or financial interests, which could be treated with discretion.

In some cases, judges may issue a written explanation for their recusal, especially if it is contested or raises significant ethical questions. These explanations are typically part of the public record unless sealed for specific reasons, such as protecting privacy or national security.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 10 - Federal Judges and Justices should be subject to rigorous financial disclosure requirements, enforcement, and penalties for all financial benefits, including but not limited to income, gifts, paid speaking engagements, and book deals.

U.S. Supreme Court Justices are required to file financial disclosures in order to promote transparency and avoid potential conflicts of interest. These requirements are part of the Ethics in Government Act of 1978, which applies to all federal judges and officials. Here's a summary of the key disclosure requirements:

1. Annual Financial Disclosure Report

Justices must file an annual financial disclosure report, which is publicly available. This report must detail:

Income: Any income over \$200, including salaries, dividends, interest or other sources.

Assets: Financial assets such as stocks, bonds, real estate, and other investments, including their value ranges.

Liabilities: Debts, including loans, mortgages, and other liabilities over a certain threshold.

Gifts: Any gifts received that exceed a certain amount (usually \$415)

Reimbursed Travel: Any travel expenses reimbursed, including those for conferences or events.

2. Public Availability

The financial disclosures of Supreme Court Justices are made available to the public by the Administrative Office of the U.S. Courts (AOUSC). The information is posted online and can be accessed for transparency.

3. Exceptions to Full Disclosure

- Certain assets may be disclosed in a range (e.g., \$1,000 to \$15,000), and the full details may not be made public in the interest of personal privacy.
- Certain confidential investments or financial dealings may not need to be fully disclosed to the public if revealing the details could pose security risks or affect the Justice's ability to perform their duties.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 11 - Stability of law (stare decisis) is a value that contributes to a strong democracy.

The principle of stare decisis—which means "to stand by things decided"—refers to the legal doctrine that courts should follow precedents set by previous decisions when making rulings in similar cases. In the context of the U.S. Supreme Court, this principle is essential in ensuring consistency, stability, and predictability in the law. However, its application comes with both advantages and disadvantages.

Pros of Stare Decisis in U.S. Supreme Court Decisions:

Consistency and Predictability

Legal Stability: Following precedents ensures that the law remains stable over time.

Litigants, lawyers, and judges can rely on past decisions to predict outcomes, which fosters fairness and order in the legal system.

Public Confidence: When the Court adheres to established decisions, it promotes confidence in the justice system and the rule of law, as people know what to expect from judicial rulings.

Efficiency: Avoiding Re-litigation: Stare decisis helps to avoid the need for courts to

readdress the same issues repeatedly, saving time and resources. Once a decision has been made on a legal question, it can generally be applied to similar cases.

Judicial Economy: With precedents in place, courts do not need to reinvent the wheel for each case, allowing them to focus on new and novel issues.

Promotes Fairness: Equal Treatment: By following precedent, the Court ensures that similarly situated individuals are treated in the same way, which is a key aspect of fairness and equal protection under the law.

Limits Judicial Activism: Stare decisis helps prevent judges from making arbitrary decisions based on personal views, reducing the risk of politically motivated decisions.

Clear Legal Principles: Precedents often establish clear legal principles that lower courts and future Supreme Court cases can reference, which helps in interpreting the law.

Cons of Stare Decisis in U.S. Supreme Court Decisions:

Rigidity and Inflexibility:

Outdated Precedent: Sometimes, decisions made in the past become outdated or no longer align with contemporary values or advancements in society, technology, or science. Stare decisis can make it difficult to adapt the law to changing circumstances.

Potential for Injustice: If a precedent was flawed or unjust, strictly following it may perpetuate injustice. For example, cases like *Plessy v. Ferguson* (1896) upheld segregation, and it took many years before *Brown v. Board of Education* (1954) overturned that precedent.

Stifling Legal Development :

Slow Progress: The Court may be less likely to evolve the law quickly in response to new social or technological realities, slowing legal progress when society's values change.

Precedent as a Barrier: Sometimes, a harmful or wrong precedent can become a barrier to legal reforms, especially in areas like civil rights, where entrenched precedents may inhibit social justice movements.

Judicial Discretion is Limited: Restricting Judicial Interpretation: Stare decisis can limit the Court's ability to apply its own reasoning and interpretations to cases. This can be problematic when a previous decision is based on flawed reasoning or doesn't address important legal changes.

Conflicts in Precedent: Over time, different precedents may conflict with each other, creating confusion and inconsistency in the law. When this happens, it can be difficult for the Court to harmonize these conflicting rulings.

Political and Ideological Pressure:

Influence of Politics: Critics argue that stare decisis may be influenced by political or ideological factors. For example, when the Court is dominated by justices with a particular political philosophy, they might use stare decisis to justify preserving or overturning certain precedents for political purposes, leading to accusations of bias or partisanship.

Difficulty in Overruling Bad Precedents:

Hesitation to Overturn Precedent: While it is possible for the Court to overturn its past decisions, doing so requires a clear and convincing argument, and the Court may be reluctant to overrule a longstanding precedent, even when it is clearly flawed. This can prevent necessary changes in the law.

Conclusion:

Stare decisis plays a crucial role in maintaining legal consistency and stability in the U.S. Supreme Court, but it can also be a hindrance when it comes to adapting to changing societal values or correcting previous errors. Ultimately, the use of stare decisis is a balancing act—while it promotes fairness and order, it must also allow for the possibility of legal evolution and reform.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus

Question 12 - Public perception of the Supreme Court's legitimacy contributes to a strong democracy.

Public perception of the U.S. Supreme Court's legitimacy is critically important. The legitimacy of the Court—defined as the public's belief that the Court is fair, impartial, and acting in the best interests of the nation—underpins the entire judicial system and its authority. When the public perceives the Court as legitimate, it enhances the effectiveness of the Court and its rulings. On the other hand, when the Court is seen as politically biased or disconnected from the public's values, its legitimacy can be undermined, leading to a variety of problems.

Trust in the Rule of Law: Public confidence in the Court's legitimacy ensures that people trust the rule of law and the judicial system as a whole. If people perceive the Court as fair and impartial, they are more likely to accept its rulings, even if they disagree.

Deference to Authority: A legitimate Court can command respect and authority. Citizens

are more likely to follow rulings that they perceive as legitimate, which helps maintain order and stability in society.

Judicial Independence: For the Supreme Court to operate effectively, it must be seen as independent from political pressure. If the public perceives the Court as politically influenced or driven by partisan motivations, it undermines its role as an impartial interpreter of the Constitution and the law. The Court's independence ensures that it can make decisions based on legal reasoning rather than political considerations, which is crucial for the proper functioning of a democracy.

Effectiveness of Legal Rulings: When the public views the Supreme Court as legitimate, its rulings are more likely to be accepted and followed. This makes the Court's decisions more effective, especially when they involve complex or controversial issues. For example, landmark decisions like *Brown v. Board of Education* (1954) were more successful because they carried weight with the public, even though they overturned longstanding precedents and were contrary to public opinion in many areas of the country.

Public Support for Enforcement: The Court may rely on other branches of government or local authorities to implement its decisions. If public perception is positive, it can increase the likelihood that these branches will carry out the Court's decisions without resistance.

Political Stability: When the Court is perceived as legitimate, it helps preserve political stability. If people believe the Court is making fair and neutral decisions, it strengthens the democratic process by encouraging the public to have faith in judicial decisions rather than resorting to other means (e.g., protests, civil disobedience, or violence) to address grievances. In contrast, if the Court's legitimacy is questioned, it can lead to public unrest or diminish faith in the democratic process. For instance, if people believe that the Court is driven by political partisanship, they may feel less compelled to respect its decisions.

Prevents Erosion of Democratic Principles: A Court that is perceived as legitimate helps safeguard constitutional principles like equality, fairness, and justice. If the public loses trust in the Court's ability to uphold these principles, it could weaken the overall democratic framework and allow for the erosion of rights and protections. Public perception of legitimacy also helps ensure that the Court operates as a check on the other branches of government, preventing overreach and maintaining the balance of powers.

Legitimacy and Court Packing: The perception of legitimacy is essential in the context of proposals like court-packing, where the size or composition of the Court is changed to influence its rulings. If public trust in the Court erodes, it could create more support for such changes, which could further politicize the judiciary and undermine its

independence. A legitimate Court stands as a counterbalance to any political attempts to influence its decisions, preserving its role as a nonpartisan arbiter of the law.

When Perception of Legitimacy is Undermined:

Partisanship and Political Influence: If the Court is perceived as politically biased, especially when appointments seem driven by party affiliation, it can diminish its legitimacy. This has been a concern with the confirmation process for Supreme Court justices, which has become increasingly contentious and partisan in recent decades. Decisions that appear to align with the interests of one political party or ideology may further erode public confidence in the Court's neutrality.

Divisive or Controversial Rulings: Sometimes, the Court issues decisions that are controversial or unpopular with large segments of the population (e.g., *Citizens United v. FEC* in 2010). While the Court may be acting within its constitutional bounds, the perception that the decision undermines democratic principles or public will can harm its legitimacy. If the public sees the Court as out of touch with social values or majoritarian views, it may lose respect for the Court's authority.

Lack of Transparency: If the Court's processes seem opaque or disconnected from public understanding, it can undermine its legitimacy. Transparency in its decision-making and reasoning helps build trust in the Court's fairness.

Public perception of the Supreme Court's legitimacy is crucial for the smooth functioning of the judiciary and the broader legal system in the United States. A Court seen as fair, impartial, and independent commands respect, which in turn ensures that its decisions are effective, respected, and followed. Conversely, when public perception of legitimacy wanes, it can undermine the Court's authority, weaken the rule of law, and create political instability. Therefore, maintaining a strong sense of legitimacy is essential for the Court to fulfill its role as an impartial arbiter of the Constitution and the law.

Choose one: • Strong consensus for • Moderate consensus for • Strong consensus against • Moderate consensus against • No consensus