



AMERICAN **BAR** ASSOCIATION

What is the Judicial Branch

Grade Level: Middle

Overview: This lesson exposes students to the judicial branch and the power of judicial review. They will read about an actual Supreme Court case, *Torcaso v. Watkins*, to see how the judicial branch used its power of judicial review to strike down an unconstitutional state law.

Time Needed: 1 class period

Objectives

During your session, students will:

- Be able to describe the functions of the judicial branch.
- Be able to explain how members of the judiciary are selected.
- Be able to define judicial review and explain its importance.

Materials Needed:

Torcaso v. Watkins Handout

[Download Handout](#)

Procedure

1. *Introduction* Read aloud to the class the following excerpt from the Constitution: “Congress shall have Power...[to] provide for the...general welfare of the United States.” Ask students if the meaning of this phrase is

clear. Why might people argue about what it means? Who should decide what the words in the Constitution mean?

2. Explain that one of the functions of the judicial branch is to settle disputes about what the Constitution and the federal law mean. Have students read the *Tarscaso v. Watkins* handout and discuss it with them.
3. *Discussion* As students are working through the discussion on *Tarcaso*, consider framing the discussion around the following questions:

What Does the Judicial Branch Do?

The framers created the judicial branch to handle disagreements over the law. Article III of our Constitution describes the responsibilities and powers of this branch. In this lesson, you will learn how the judicial branch works. Suppose you thought the government had taken away one of your rights guaranteed by the Constitution. What could you do? You could ask a court to listen to your case. If the court agreed with you, it would order the government to stop what it was doing and protect your rights. The courts interpret the law. They also settle disagreements between individuals and the government. Different levels of court handle different kinds of cases. Federal courts handle cases about the Constitution and the laws made by Congress. They also deal with problems between one or more states.

How Is It Organized?

To help students understand the structure of the judicial branch, have them read the following paragraphs.

The Supreme Court is the highest court in the judicial branch. The judicial branch also includes lower courts. The judges on the Supreme Court are called justices. The head of the Supreme Court is the chief justice.

The framers believed that if judges were elected by the people, they might favor some people over others. For this reason, judges are not elected. They are appointed to office. Judges on all federal courts are appointed by the president. However, the Senate must approve all the president's appointments. Judges serve in the judicial branch until they retire or die. They can also be impeached, tried, and removed from their positions, just like the president.

Ask the students whether they agree that judges should be appointed rather than elected. You might wish to discuss whether judges, who are appointed, should have the power to overrule the will of the majority as expressed by elected representatives.

Understanding Judicial Review

Judicial review is one of the most important powers of the judicial branch. Judicial review is the power of the courts to say that the Constitution does not allow the government to do something. For example, the Supreme Court can say that a law passed by Congress is not constitutional. The Supreme Court can also say that the president is not allowed to do certain things.

Suppose Congress passed a law that said you must belong to a certain religion. The Constitution says Congress cannot do this. You can go to court and say that Congress has no right to tell you to belong to a certain religion. The court will review your case. The court has the power to say that the law made by Congress is unconstitutional. If the court does this, the law cannot be enforced.

When you read the story of the *Torcaso* case, you will see how the Supreme Court used its power of judicial review. In this case, the Court decided a state law was unconstitutional.

4. *Conclusion* Discuss the meaning of judicial review and remind students of its importance in protecting our constitutional rights. Judicial review allows people, especially minorities, to seek protection of rights that government agencies have attempted to limit. The case of *Torcaso v. Watkins* provides students with an opportunity to see how the Supreme Court used its power of judicial review to protect religious freedom. Conclude the lesson with a discussion of these questions:

1. What court is the highest court in the judicial branch?
2. Why are Supreme Court justices appointed and not elected? Do you agree with the system? Why or why not?
3. Do you think the Supreme Court should have the power to declare a law made by majority vote in Congress to be unconstitutional? Why or why not?
4. Find an article in the newspaper that explains something the Supreme Court is doing. Be prepared to explain the article in your class.
5. Explain these terms: interpret, Supreme Court, justices, chief justice, judicial review. Students could be given an opportunity to work on a bulletin board display. Students could also add the new terms in this lesson to their vocabulary-building activity.

Optional Activities

1. Have individual students research the lives and careers of famous justices on the U.S. Supreme Court.
2. Interested students could write a proposal for a student court at your school. They would need to decide what types of cases they would hear, the extent of punishment they would recommend to the principal, the procedures in the student court, and the selection of the student judges.

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National Curriculum Standards for Social Studies, National Council for the Social Studies

Theme 5: Individuals, Groups, and Institutions

Theme 6: Power, Authority, and Governance

Theme 10: Civic Ideals and Practices