

THE IMPACT OF JUDICIAL REVIEW

Lesson Plan Summary



OBJECTIVE

Students will be able to identify how court decisions impact the law and individuals and will be able to apply the concept of judicial review.

INQUIRY QUESTIONS

- How do appellate court decisions impact individuals and the law?
- Do you think judicial review is a necessary part of the constitutional process? Why or why not?

COLORADO ACADEMIC STANDARDS

SS.HS.4.2.EOf. Evaluate the role of the judicial system in protecting life, liberty, and property for all persons in the United States

SS.HS.4.2.EOg. Understand the structure of the American judicial system, the process of judicial appointments and key court decisions, in both Colorado and the United States, that affect the system of checks and balances and interactions of the local, state, tribal, and federal systems.

ACTIVITIES

Video or lecture, Research (optional), Discussion

MATERIALS

Graphic organizer for optional research activity

GRADE LEVEL

High School

TIME

One to two class periods, depending on class format.

KEY TERMS

- **Judicial Review:** Power of the Supreme Court to examine the actions of the legislative, executive and administrative arms of the government and to determine whether such actions are consistent with the constitution.
- **Marbury v. Madison:** This landmark 1803 U.S. Supreme Court case established the principle of judicial review, allowing courts to declare laws unconstitutional.
- **Original Jurisdiction:** The legal authority of a court to hear and decide a case in the first instance, rather than on appeal. This term is an essential principle of the judicial system as it allows courts to review and decide cases based on the evidence presented in court. The concept of original jurisdiction is embedded in the U.S. Constitution, which grants original jurisdiction to the Supreme Court in cases involving disputes between two or more states, or cases in which a state is a party.
- **Appellate Jurisdiction:** The power of a higher court to review and decide on the validity of decisions made by lower courts. This jurisdiction allows appellate courts to assess whether the law was applied correctly and whether proper legal procedures were followed during the trial. The appellate court does not conduct a new trial; instead, it reviews the record of the lower court's proceedings and considers legal arguments presented by the parties involved.

Find more legal terms in our Courts in the Community Teaching Materials.

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Lesson Background, Preparation and Lecture



LESSON BACKGROUND

The goal of this lesson is to help students understand the constitutional concept known as judicial review and how it impacts our rights and social structures. The main job of our courts – especially trial courts – is to render justice in individual cases. Yet every court decision impacts more than just the parties in a particular case; these decisions can also affect other courts, other branches of government, and the social and economic fabric of our lives. The lesson provides background on the U.S. and Colorado Supreme Court's role and how the concept of judicial review has been applied at the federal level. The activity helps students better understand how the federal court system protects civil liberties by analyzing these protections and answering questions.

This is a lesson from our Courts in the Community curriculum. Find out more about this program (coloradojudicial.gov/courts-community) and our lessons (coloradojudicial.gov/community-and-educational-resources/lesson-plans).

CLASS PREPARATION

- Write the Key Terms and definitions on the board or on the screen and refer to them as needed during class.
- Review Tips for Diverse Learners on p. 11 to determine the best way for your students to engage with the content.
- Determine whether you want to share the video or present a lecture about judicial review.
- Since the goal of this lesson is to help students understand the role of judicial review in key decisions, you may want to have students review the facts of each case discussed during the activity. Links to case summaries are included. A graphic organizer is also included for students.
- Determine which cases you want to have students' review. You could use the jigsaw cooperative learning method, where students become experts on a specific part of a topic and then teach that knowledge to other group members or the class.
- If you don't have time to research the cases, have students discuss the questions about a particular court protection in their small groups.

CLASS LECTURE

Impact of Court Decisions

- The main job of courts is to render justice in cases. Every court decision impacts more than just the parties in a particular case; these decisions can also affect other courts, other branches of government, and the social and economic fabric of our lives.
- Court decisions impact those who are before the court. The most immediate impacts of court decisions, especially at the trial level (district and county courts) include:
 - In criminal cases, court decisions can determine whether the accused is guilty or not, whether the accused will go free or go to prison, whether they have to pay significant financial penalties, and even whether the accused will suffer the death penalty (not in Colorado).

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Class Lecture (con't)



CLASS LECTURE

- In civil matters, like contract cases, evictions, debt collections, or car accident cases, court decisions determine the parties' rights and their obligations to one another.
- In family law cases, like divorce or child custody, court decisions establish where children will live and how money and possessions will be divided.
- Court of Appeals and the Supreme Court (appellate courts) review the trial courts' applications of the law. They rarely re-evaluate the facts; those are set at the trial court.
- The meaning of the law is ultimately the responsibility of the appellate courts, and so their decisions can have more far-reaching impact. Appellate courts interpret and apply constitutions, statutory and regulatory laws, legal doctrines and principles of law. Their decisions establish precedents that can require trial courts in the same jurisdiction to apply those laws the same way in future cases.
- Courts in other jurisdictions that are not required to follow the decisions of a particular appellate court often consider the decisions as informative or persuasive and choose to apply the same reasoning. This is how appellate court decisions can have broad impact in future cases.
- Appellate court decisions also serve to inform others not involved in the case about how laws and policies are likely to be applied in the future. Individuals and corporations can look to court decisions to understand the law, to make decisions and to take actions based on the precedents established in those decisions.

Background on Federal Appellate Courts

- The Judicial Branch is established in Article III of the U.S. Constitution. Article III begins by saying "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish." So, the U.S. Constitution only requires a Supreme Court.
- However, there are currently 13 federal appellate judicial circuit courts. Colorado is part of the 10th Circuit Court of Appeals. Eleven other circuits cover different geographic areas, and there is also a U.S. Court of Appeals for the Federal Circuit, which primarily hears intellectual property (copyright and patent) cases.
- When a litigant has lost a case in a federal trial court, they have a right to appeal to the applicable federal appellate court. Because the U.S. Supreme Court hears about 1 percent of the cases they are asked to hear, most cases that are appealed in the federal system end at one of these appellate courts.
- One of the U.S. Supreme Court's most important responsibilities is to decide cases that raise questions of constitutional interpretation.

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Class Lecture (con't)



CLASS LECTURE

- The court also interprets federal statutes, but the cases that tend to get the most attention are the cases in which the nine justices decide if a law or government action violates the Constitution. This constitutional interpretation is known as judicial review and it enables the court to invalidate both federal and state laws when they conflict with the Constitution.
- The concept of judicial review was first established in a case called *Marbury v. Madison* (1803), where the Supreme Court explained that in our system of three different branches of government it was the job of the judicial branch to evaluate whether laws passed by the legislature were consistent with the Constitution.
- Since the Supreme Court stands as the ultimate authority in constitutional interpretation, its decisions can be changed only by another Supreme Court decision or by a constitutional amendment.
 - For example, in 1973, in a case called *Roe v. Wade* the Court found that the 14th Amendment gave women a right to medical and bodily autonomy that permitted them to choose whether or not to have an abortion. In 2022, however, the Supreme Court reversed *Roe* and concluded that the 14th Amendment did not include the rights recognized in *Roe* and that decisions about abortion rights were a matter of state concern.
 - An example of change by constitutional amendment was the passage of the 14th Amendment, which reversed the 1857 Supreme Court decisions in *Dred Scott v. Sanford*, that Black people were not citizens.
- The Supreme Court exercises complete authority over the federal courts, but it has only limited power over state courts.
- The Supreme Court has the final word on cases heard by federal courts, and it writes procedures that these courts must follow.
- All federal courts must abide by the Supreme Court's interpretation of federal laws and the U.S. Constitution.
- The Supreme Court's interpretations of federal law and the federal Constitution also apply to the state courts.
- When state courts make decisions under state laws or state constitutions, however, the only way the Supreme Court can consider those cases is if a party argues that they conflict with federal law. Otherwise, it is the state's supreme court that is the ultimate interpreter of state law and that supervises state court operations.

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Class Lecture (con't)



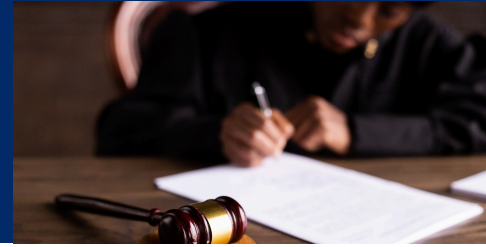
CLASS LECTURE

Colorado Courts

- The Colorado Constitution (Article VI, § 1) recognizes two kinds of courts: (1) those that are enumerated in the Constitution itself (the Supreme Court, district courts, and others); and (2) additional courts that are established by the General Assembly (the Court of Appeals).
- Both the Court of Appeals and the Supreme Court are courts of appellate jurisdiction. This means that, with limited exceptions, these courts will hear only cases where the trial court has rendered a final judgment on the outcome of the case.
- The Court of Appeals has jurisdiction to hear most cases where there is a final ruling by the trial court.
- The Supreme Court, on the other hand, generally hears only cases where the parties have had a trial and have appealed to the Court of Appeals, and where there is a question of law presented in the case that has not already been decided by the Supreme Court or that has been interpreted in conflicting ways by different divisions of the Court of Appeals. For cases involving certain topics, such as water rights or cases in which a state or local law has been found unconstitutional by a trial court, the Supreme Court must hear appeals.
- In addition, the Supreme Court may also exercise original jurisdiction to grant relief when it decides that justice requires it to hear the case before a trial or appeal to the Court of Appeals is completed. An example of original jurisdiction can be found in search and seizure cases: the Supreme Court must hear appeals when evidence from a police search is suppressed at the trial court.
- Colorado Constitution Article VI provides for judicial review of state cases by the Colorado Supreme Court.

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Lesson Instructions



INTRODUCTION (5 minutes)

Begin by reviewing the key terms on the board and then say the following: *"Today we will discuss a few of the major contributions the federal court system has made to the protection of civil liberties. Every one of these decisions was made through a court telling either the state or federal legislature or someone acting in the executive branch (police or a prosecutor) that what they had done was unconstitutional."*

DIGGING IN

Video or Lecture (10 minutes)

You can help students understand the concept of judicial review either by showing this eight-minute video or through the lecture provided.

youtube.com/watch?v=mWYFwI93uCM&t=344s

Court Protection Activity (30 minutes)

Divide the students into small groups and assign each group one court protection described below.

Option One: Have students discuss the following questions about the court protection they have been assigned and discuss the following questions as a group:

- What would life be like if this case had been decided differently?
- What might society be like if the principle of judicial review had never been established?
- Do you think courts should hold this kind of power? Why or why not?

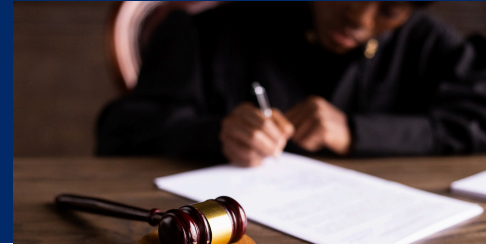
Option Two: If you want the students to dig into the case, links to summaries are provided. Have students use the graphic organizer below to take notes as they do a read around or use the jigsaw approach to learning the content. You can also assign this as an extension activity.

Federal Court Protections

- Schools may not segregate children based upon race (*Brown v. Board of Education*): supreme.findlaw.com/supreme-court-insights/understanding-brown-v--board-of-education--a-case-summary.html or landmarkcases.org/cases/brown-v-board-of-education/
- Police need to have a warrant to collect evidence through a wiretap. (*Katz v. US*): oyez.org/cases/1967/35
- Every defendant has a right to a lawyer in any criminal case. (*Gideon v. Wainwright*): supreme.findlaw.com/supreme-court-insights/gideon-v--wainwright-case-summary--what-you-need-to-know.html or landmarkcases.org/cases/gideon-v-wainwright/
- Police must read you your rights when arresting you and before interrogating you (*Miranda v. Arizona*): supreme.findlaw.com/supreme-court-insights/miranda-v--arizona-case-summary--what-you-need-to-know.html or <https://landmarkcases.org/cases/miranda-v-arizona/>

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Lesson Instructions (con't)



Court Protection Activity (con't)

Federal Court Protections (con't)

- Citizens have an individual right to own a gun (*D.C. v. Heller*): oyez.org/cases/2007/07-290
- Students have a right to non-disruptive exercise of free speech in schools (*Tinker v. Des Moines*): landmarkcases.org/cases/tinker-v-des-moines/

Colorado appellate cases that protect civil liberties:

- Police investigators cannot search bookstore receipts for information to use against a criminal defendant (*Tattered Cover, Inc. v. City of Thornton*): supreme.findlaw.com/legal-commentary/the-tattered-cover-case.html
- Abortion protestors must stay at least 8 feet away from persons entering medical clinic (*Hill v. Thomas*): lawweekcolorado.com/article/the-history-behind-colorados-limited-loading-buffer-zone
- Where suspect was described as “Hispanic” male, the fact that defendant’s photo was the only picture of a Hispanic male in a photo lineup was impermissibly suggestive (*Bernal v. People*): casemine.com/commentary/us/bernal-v.-people-of-colorado:-reinforcing-standards-for-out-of-court-identification-and-hearsay-statements/view

EXIT TICKET (2 minutes)

Have students write down whether they think courts should have the power of judicial review.

EXTENSION ACTIVITY Research Court Cases

If you had students do Option One of the Court Protection Activity, you could have students dig into one of the cases above as homework. Share the link to the case or they can do their own online research, if you would like. Hand out the graphic organizer and have students prepare a small presentation about the case.

Reading

If you showed the video, assign the reading as homework. Have them prepare responses to the following questions and turn them in:

- Describe how the judicial review process works.
- What might society be like if the principle of judicial review had never been established?
- Do you think the courts should hold this kind of power? Why or why not?

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Extension Activity: Reading



By Colorado Supreme Court Justice Melissa Hart

Introduction

The main job of our courts – especially trial courts – is to render justice in individual cases. Yet every court decision impacts more than just the parties in a particular case; these decisions can also affect other courts, other branches of government, and the social and economic fabric of our lives.

It is obvious that court decisions impact the parties who are before the court. For example, in criminal cases, court decisions can determine whether the accused is guilty or not, whether the accused will go free or go to prison, whether they might have to pay significant financial penalties, and even whether the accused will suffer the death penalty (although not in Colorado). In civil matters, like contract cases, evictions, debt collections, or car accident cases, court decisions determine the parties' rights and their obligations to one another. In family law cases, like divorce or child custody, court decisions establish where children will live and how money and possessions will be divided. These are the most immediate impacts of court decisions, especially at the trial level (district and county courts).

Court of Appeals and the Supreme Court (appellate courts) review the trial courts' applications of the law. They rarely re-evaluate the facts; those are set at the trial court. However, the meaning of the law is ultimately the responsibility of the appellate courts, and their decisions can therefore have more far-reaching impact. Appellate courts interpret and apply constitutions, statutory and regulatory laws, legal doctrines and principles of law. Their decisions establish precedents that can require trial courts in the same jurisdiction to apply those laws the same way in future cases. Moreover, courts in other jurisdictions that are not required to follow the decisions of a particular appellate court often consider the decisions as informative or persuasive and choose to apply the same reasoning. In these ways, appellate court decisions can have broad impact in future cases.

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Colorado Courts

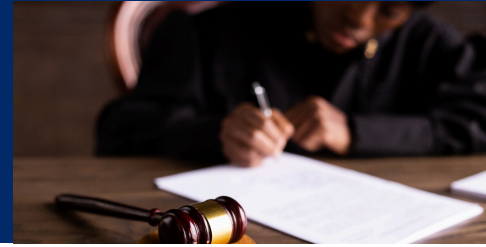
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Court Protection Activity: Graphic Organizer



Case Name:

Background and facts

Arguments for the petitioner

Arguments for the respondent

Constitutional Provisions/Statutes/Precedents

Decision & Opinions

What would life be like if this case had been decided differently?

What might society be like if the principle of judicial review had never been established?

Do you think the courts should hold this kind of power? Why or why not?

TIPS FOR DIVERSE LEARNERS



- Post key terms on the board or on the screen for students to revisit.
- Introduce key vocabulary the day before the lesson and review before teaching the content, either through a handout or a document you create using your school's virtual classroom tool.
- Consider having students make a drawing or sketch about the concepts being taught, which could be posted in the room to add with learning. Prompt students to use these drawings and other visuals to remember vocabulary words or skills that have been taught.
- Combine students with varying learning abilities, interests, language proficiencies, or other skill strengths into groups of two or more for the reading activity to provide peer support throughout a lesson. You may want to alter the makeup of working groups according to the activity at hand, e.g. sometimes heterogeneous grouping is appropriate, where at other times, same-language or more homogenous groups may work best.
- Provide a T-chart or graphic organizer for note taking, or project one as you are teaching the content to help students track on the content.
- Allow students to demonstrate their knowledge through a range of options, such as written responses, presentations, projects or oral assessments.
- Empower students to share their thoughts and experiences about how the concept being taught has impacted Americans throughout history.
- Work with a partner or in a small group.
- Assign roles to students to help them in completing activities.
- Add pictures, photos or other visual aids to help explicitly teach skills.
- Try different discussion techniques, including jigsaw, fishbowl or wrap around.

EDUCATIONAL RESOURCES



COLORADO JUDICIAL DEPARTMENT RESOURCES

Lesson Plans: coloradojudicial.gov/community-and-educational-resources/lesson-plans

Supreme Court or Court of Appeals tours: cjlccolorado.gov/book-a-tour-of-the-ralph-l-carr-judicial-center

Visit the Judicial Learning Center: cjlccolorado.gov

JUDICIAL DEPARTMENT INFORMATION

Colorado Supreme Court: coloradojudicial.gov/supreme-court

Colorado Court of Appeals: coloradojudicial.gov/court-appeals

Map of Colorado Judicial Districts: coloradojudicial.gov/colorado-judicial-district-map

Supreme Court Library: cjlccolorado.gov/colorado-supreme-court-library

OTHER EDUCATIONAL RESOURCES

Glossary of Legal Terms: uscourts.gov/glossary

Ben's Guide to the U.S. Government: bensguide.gpo.gov

Bill of Rights Institute: billofrightsinstitute.org

Center for Civic Education: civiced.org

Digital Civics Toolkit: digitalcivicstoolkit.org

iCivics: vision.icivics.org

Colorado Council for the Social Studies: coloradocouncilforthesocialstudies.org

Annenberg Guide to the Constitution: annenbergclassroom.org/constitution

Constitution Annotated: constitution.congress.gov

The Constitutional Sources Project (ConSource): consource.org

Teach Democracy: teachdemocracy.org/curriculum

The Rendell Center for Civics and Civic Education: rendellcenter.org