

# COURTS IN THE COMMUNITY



## LESSON PLANS



Colorado Supreme Court version

*Updated August 2025*

# CURRICULUM BACKGROUND

## GUIDE TO USING OUR LESSONS

These materials are designed to help students understand how the Colorado Judicial Department operates and how appellate cases are decided. These lessons can supplement the curriculum you are already using to teach students about the judicial system. The lesson plans can be used before a Courts in the Community visit or separate from a visit. Each lesson plan meets Colorado Academic Standards for high school civics, and includes lesson background for teachers, key terms, classroom activities, extension activities and more. Most of our lessons can be completed in one lesson period, although there are extension activities that go into greater depth with the subject matter.

If you are looking for ways to meet the learning needs of your class, consider incorporating Tips for Diverse Learners found on page 3.

## PEDAGOGY

The goal with our lessons is to help build content knowledge and fluency of concepts so students will have the tools to actively listen to and engage with Oral Arguments. Students who are learning new information need to understand vocabulary and introductory concepts before moving to more complex forms of instruction.

We have incorporated the following elements into our lesson design:

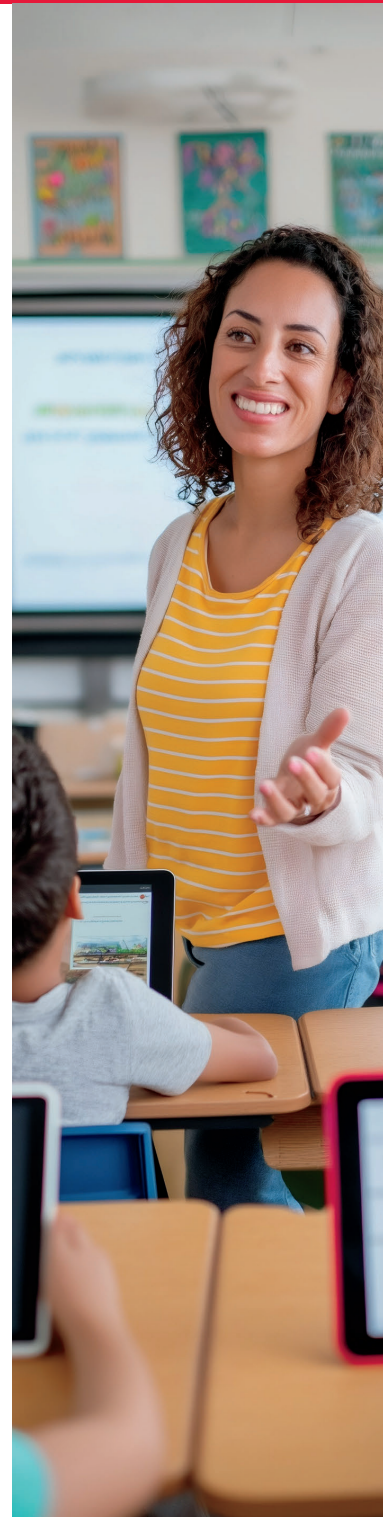
- Thoughtful approaches to inquiry, including Bloom's Taxonomy
- Active and cooperative learning techniques
- Multiple modalities
- Effective assessment strategies such as discussion and writing assignments

## TEACHING STRATEGIES

We have suggested various strategies to teach the lessons. You know your students best and are free to use your own methods for teaching the curriculum. Teachers have used guest speakers, read-arounds, real-life applications and other techniques to make the content accessible.

Here are some additional resources:

- Facing History and Ourselves offers a variety of techniques for teaching social studies content: [facinghistory.org/resource-library/teaching-strategies](https://facinghistory.org/resource-library/teaching-strategies)
- The Colorado Department of Education provides modules that teach high-impact instructional strategies in social studies that connect with the Colorado Academic Standards: [sitesed.cde.state.co.us/mod/page/view.php?id=11402](https://sitesed.cde.state.co.us/mod/page/view.php?id=11402)





# 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.

# AT-A-GLANCE LESSON PLANS

## PART ONE

The first five lessons provide background about the law, the judicial system and how the courts operate. Feel free to use the content or activities in conjunction with your own curriculum.

| LESSON TITLE  | PAGES     | OBJECTIVE  | INQUIRY QUESTIONS   |
|---|-----------|--|---|
| <b>Lesson One:<br/>The Rule of Law</b>                  | pp. 4–12  | Students will be able to identify key elements of the rule of law and the role it plays in our judicial system.  | <p>What does it mean for a society to have and follow rules?</p> <p>Can rules be biased toward or against a particular group of people?</p> <p>What is the “rule of law” and what is its role in the policies and practices of the judiciary?</p>   |
| <b>Lesson Two:<br/>What’s the Big Idea?</b>             | pp. 13–26 | Students will be able to define the Constitution’s core concepts, how the U.S. Constitution has changed over time to include more groups of people and how the Colorado Constitution differs from the U.S. Constitution. | <p>Do the core concepts included in the U.S. and Colorado Constitutions support each other? How do they conflict with each other?</p> <p>How have amendments to the U.S. Constitution made the document more inclusive?</p> <p>What elements of the Colorado Constitution are similar to the U.S. Constitution? What parts are different?</p> <p>How does the ability to easily amend the constitution serve the people of Colorado? How is it problematic?</p> |
| <b>Lesson Three:<br/>History of the Colorado Courts</b> | pp. 27–38 | Students will be able to explain the role of courts in a democratic society, the history of the Colorado courts and how those courts have evolved over time.   | <p>What cultural and social forces impacted the development of Colorado’s court system?</p> <p>What are the main differences between Indigenous legal customs and Western legal customs?</p> <p>How do the structures of the Colorado court system impact democratic decision making?</p>   |
| <b>Lesson Four:<br/>Impact of Judicial Review</b>       | pp. 39–48 | Students will be able to identify how court decisions impact the law & individuals and will be able to apply the concept of judicial review.   | <p>How do appellate court decisions impact individuals and the law?</p> <p>Do you think judicial review is a necessary part of the constitutional process? Why or why not?</p>  |
| <b>Lesson Five:<br/>Becoming a Colorado State Judge</b> | pp. 49–63 | Students will be able to describe how judges become judges, what criteria qualifies them for the job and what attributes they must have to retain their positions.   | <p>What qualities do you think are necessary to be a judge?</p> <p>Do you think the merit selection and retention system in Colorado is effective? Why or why not?</p>  |



# AT-A-GLANCE LESSON PLANS

## PART TWO

These lessons are specifically designed to prepare students to watch Oral Arguments. If you don't have enough time to teach all the lessons, please focus on the lessons listed below.

| LESSON TITLE   | PAGES       | OBJECTIVE   | INQUIRY QUESTIONS   |
|--|-------------|---|---|
| <b>Lesson Six:<br/>How the<br/>Colorado Courts<br/>Work</b>        | pp. 64–79   | Students will be able to explain the structure of the Colorado judicial branch, the types of cases that different courts handle to deepen their understanding of state government and how cases are appealed.   | How are the roles of the different courts similar and different?<br><br>How do the different court structures impact democratic decision making?<br><br>What are the benefits and drawbacks of having three tiers of courts in Colorado?  |
| <b>Lesson Seven:<br/>You be the<br/>Judge</b>                      | pp. 80–92   | Students will be able to describe the appellate process and how a case is appealed.<br><br>Students will be able identify what it means to analyze court cases using the standards of fairness and objectivity and describe the process for considering relevant issues and facts presented in court cases. | What do you see as the benefits and drawbacks of the appellate process?<br><br>Is it possible to be fair and objective in analyzing the issues in a court case? Why or why not?   |
| <b>Lesson Eight:<br/>Diving into<br/>Appellate Court<br/>Cases</b> | pp. 93–106  | Students will be able to identify the facts, arguments and legal issues in cases to be heard at Oral Arguments at their high school as part of Courts in the Community.   | What role does the appeals process play in ensuring people have access to justice?<br><br>Is there anything about the process that seems unfair or inequitable?   |
| <b>Lesson Nine:<br/>What to Expect<br/>at Oral<br/>Arguments</b>   | pp. 107–111 | Students will be able to describe appropriate behavior in a courtroom in preparation for hearing Oral Arguments at their school.<br><br>Students will be able to identify key elements of Oral Arguments in preparation for hearing Oral Arguments.   | Is it important or necessary for everyone to present themselves professionally in a courtroom?<br><br>Should observers have a right to share their opinions during court proceedings?<br><br>In what ways do the structure of Oral Arguments help or hinder the judicial process? |

# EDUCATIONAL RESOURCES



## COLORADO JUDICIAL DEPARTMENT RESOURCES

Lesson Plans: [coloradojudicial.gov/community-and-educational-resources/lesson-plans](https://coloradojudicial.gov/community-and-educational-resources/lesson-plans)

Supreme Court or Court of Appeals tours: [cjlcolorado.gov/book-a-tour-of-the-ralph-l-carr-judicial-center](https://cjlcolorado.gov/book-a-tour-of-the-ralph-l-carr-judicial-center)

Visit the Judicial Learning Center: [cjlcolorado.gov](https://cjlcolorado.gov)

## JUDICIAL DEPARTMENT INFORMATION

Colorado Supreme Court: [coloradojudicial.gov/supreme-court](https://coloradojudicial.gov/supreme-court)

Colorado Court of Appeals: [coloradojudicial.gov/court-appeals](https://coloradojudicial.gov/court-appeals)

Map of Colorado Judicial Districts: [coloradojudicial.gov/colorado-judicial-district-map](https://coloradojudicial.gov/colorado-judicial-district-map)

Supreme Court Library: [cjlcolorado.gov/colorado-supreme-court-library](https://cjlcolorado.gov/colorado-supreme-court-library)

## OTHER EDUCATIONAL RESOURCES

Glossary of Legal Terms: [uscourts.gov/glossary](https://uscourts.gov/glossary)

Ben's Guide to the U.S. Government: [bensguide.gpo.gov](https://bensguide.gpo.gov)

Bill of Rights Institute: [billofrightsinstitute.org](https://billofrightsinstitute.org)

Center for Civic Education: [civiced.org](https://civiced.org)

Digital Civics Toolkit: [digitalcivicstoolkit.org](https://digitalcivicstoolkit.org)

iCivics: [vision.icivics.org](https://vision.icivics.org)

Colorado Council for the Social Studies: [coloradocouncilforthesocialstudies.org](https://coloradocouncilforthesocialstudies.org)

Annenberg Guide to the Constitution: [annenbergclassroom.org/constitution](https://annenbergclassroom.org/constitution)

Constitution Annotated: [constitution.congress.gov](https://constitution.congress.gov)

The Constitutional Sources Project (ConSource): [consource.org](https://consource.org)

Teach Democracy: [teachdemocracy.org/curriculum](https://teachdemocracy.org/curriculum)

The Rendell Center for Civics and Civic Education: [rendellcenter.org](https://rendellcenter.org)



# THE RULE OF LAW

## Lesson Plan Summary



### OBJECTIVE

Students will be able to identify key elements of the rule of law and the role it plays in our judicial system.

### INQUIRY QUESTIONS

- What does it mean for a society to have and follow rules?
- Can rules be biased toward or against a particular group of people?
- What is the “rule of law” and what is its role in the policies and practices of the judiciary?

### COLORADO ACADEMIC STANDARDS

**SS.HS.4.2.EOe.** Describe the role and development of the founding documents of Colorado and the United States from their inception to modern day.

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

### ACTIVITIES

Rules Game, Rule of Law video (<https://www.youtube.com/watch?v=bmAKAHDSnGs>), reading, extension activities

### MATERIALS

Erasers for game, poster paper, markers, reading handout

### GRADE LEVEL

High School

### TIME

Two class periods (one for game and video, a second for the reading or extension activities)

### KEY TERMS

- **Accountability:** The government and all people are accountable under the law.
- **Just Law:** The law is clear, publicized and stable and is applied evenly. It ensures human rights as well as property, contract, and procedural rights.
- **Open Government:** The processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient.
- **Accessible and Impartial Justice:** Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.
- **Judicial Independence.** The ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private.

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

# THE RULE OF LAW

## Background and Class Preparation



### LESSON BACKGROUND

Through this lesson, students are introduced to the rule of law, which is the foundation of our democracy. The rule of law can be defined as a system in which everyone knows and understands the law and these laws apply equally to everyone. These laws uphold human rights, what our Declaration of Independence defines as the right to “life, liberty and the pursuit of happiness.” It also means that anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proven guilty. The rule of law is a fundamental principle that guides judges in their decision-making. It requires judges to apply the law fairly and impartially to all, ensuring that decisions are based on legal principles rather than personal opinions or political influences. Judges are expected to be independent, accountable, and transparent in their actions, upholding the law and protecting individual rights.

This is a lesson is part of our Courts in the Community curriculum. Find out more about the program ([coloradojudicial.gov/courts-community](https://coloradojudicial.gov/courts-community)) and our lessons ([coloradojudicial.gov/community-and-educational-resources/lesson-plans](https://coloradojudicial.gov/community-and-educational-resources/lesson-plans)).

### CLASS PREPARATION

- Determine which class activities to do with your students given class time and student interest.
- Review Tips for Diverse Learners on p. 3 to consider how best to engage your student with the content.
- Write the lesson objective and key terms on the board or screen.
- Review the Rules, Rules, Rules game ([americanbar.org/content/dam/aba/administrative/public\\_education/lesson-plans/middle\\_school/RulesRulesRules\\_Activity.pdf](https://americanbar.org/content/dam/aba/administrative/public_education/lesson-plans/middle_school/RulesRulesRules_Activity.pdf)), where students are asked to pass an eraser (or other object) without being given clear instructions. Determine how many versions of the game to play. Students will be asked to reflect on when and why rules are important and necessary. This can be connected to the rule of law and the importance of law in our society.
- **If you are using the readings:** Before class, write one question on the top of each poster and post on walls in the classroom. You may need multiple posters with the same question, depending on the number of students in your class. Or, you could have students use a graphic organizer to take notes, with the questions on top.
  - What are key elements of the rule of law?
  - What are some challenges we face today in upholding the rule of law?
  - How does the rule of law protect individual rights (right to a trial, equal protection under the law, etc.)?
  - Do you think the rule of law is applied equally to different groups of people in the United States? Why or why not?



# THE RULE OF LAW

## Lesson Instructions



### INTRODUCTION (2 minutes)

Begin by explaining: *"Today we are going to discuss the rule of law, the foundation of our democracy. The rule of law can be defined as a system in which everyone knows and understands the law and these laws apply equally to everyone. These laws uphold human rights, such as the right to speak freely without punishment and equality before the law. It also means anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proven guilty. The rule of law guides judges as they make decisions, requiring them to apply the law fairly and impartially to all, ensuring that decisions are based on legal principles rather than personal opinions or political influences. Judges are expected to be independent, accountable, and transparent in their actions, upholding the law and protecting individual rights. The judges you meet at Oral Arguments are guided by these principles."*

### WARMUP Rules Game (10-15 minutes)

Explain they will be playing a game **and follow the script in the linked document, only give the instructions listed for each version of the game:**  
([americanbar.org/content/dam/aba/administrative/public\\_education/lesson\\_plans/middle\\_school/RulesRulesRules\\_Activity.pdf](http://americanbar.org/content/dam/aba/administrative/public_education/lesson_plans/middle_school/RulesRulesRules_Activity.pdf)).

After you play the game, write the rules you create together (or in groups) on the board or on the screen so students continue to think about the connection between rules and laws.

### DIGGING IN Option One: (25 minutes) Video

Decide whether you are going to watch the video or do the readings and poster activity.

Ask students to write down key elements of the rule of law as they watch the video: <https://www.youtube.com/watch?v=bmAKAHDSnGs>.

### Discussion

Discuss key elements, referring to the terms written on the board or on the screen.

### Option Two: (50 minutes)

### Reading

Divide students into groups and hand out one attached reading about the rule of law to the group. Students can do a read around, read individually and discuss or whatever works best. You may want to have students use a graphic organizer to take notes on the reading.

### Poster Activity

If time, assign a poster to a group and have them consider the question posed on the poster (see questions listed under class preparation.) Have students write their responses on the sheets. Depending on time, you could have students visit other posters and discuss the question on that poster.

### Discussion

Have students share comments from the posters and discuss as a class.

# THE RULE OF LAW

## Exit Ticket and Extension Activities



### EXIT TICKET

Have students write down what they consider the most important elements of the rule of law. Or they can share with you as they leave.

### EXTENSION ACTIVITIES

#### Written Response

Consider assigning the readings as homework.

- Assign one of the following as homework. Have students write a short summary, using your assessment rubric.
  - The definition of the rule of law is strongly impacted by a country's social and political structure. Compare the definitions discussed in class with the definition of the rule of law from another country.
  - The most commonly accepted purpose of the rule of law is to limit the arbitrary acts of government. Explain how this influences the judicial branch.
- Have students research times in U.S. history when the rule of law has been under attack or when certain groups of people have not received fair treatment under the law. Explain what, if anything, has been done to address these inequities.

#### Research Project



# THE RULE OF LAW

## Reading #1: Courts and the Rule of Law



*by Colorado Supreme Court Justices Melissa Hart and Carlos Samour*

In America we have agreed to govern ourselves with written state and federal constitutions and to implement laws made by our elected representatives. When we have disputes that we cannot settle among ourselves, we take them to court. We trust juries and judges to decide our most important concerns and to make those decisions based on laws that are written and available to all.

The judicial system upholds the rule of law in a variety of ways, such as holding trials to determine whether people accused of breaking the law are guilty, interpreting constitutional provisions and statutes, and holding trials in cases involving civil or personal rights. Courts safeguard rights that are enshrined in the U.S. and Colorado constitutions, such as the right to due process, trial by jury, speedy trial, and equal protection under the law.

In the novel *To Kill a Mockingbird*, the author Harper Lee talks about the courts as the great “levelers” of society. Lee means that the courtroom is the one place where all people are treated as equals. Disputes are to be decided on the merits. Differences among the parties in wealth, intelligence and social status should not determine the outcome of a case.

This concept of the courts as society’s great levelers comes directly from the statement in the Declaration of Independence that all of us are created equal. As the motto above the entrance to the United States Supreme Court puts it, a courthouse is a place of “Equal Justice under Law.”

Of course, like any other human institution, the courts do not always live up to these ideals, so we have tried to establish methods to correct errors. Cases can be appealed from trial courts to the appellate courts and erroneous decisions can be reversed or overruled. Laws, including our federal and state constitutions, can be amended. Because court decisions and laws are publicly available, decisionmakers are accountable and conscious of their obligation to apply the law impartially and to explain their reasoning so that the public can see the rule of law in action.

This system has endured for nearly 250 years and remains an effective means of resolving disputes, protecting individual rights, and providing a check on the other branches of government.

# THE RULE OF LAW

## Reading #2: Rule of Law in American Life (American Bar Association)



### **Everyone contributes to the rule of law.**

No country can maintain a rule of law society if its people do not respect the laws. Everyone must make a commitment to respect laws, legal authorities, legal signage and signals, and courts. Imagine if everyone in your community decided that they did not want to be bothered by traffic laws and signals, for example. The streets in your community would quickly become a chaotic and less safe place. Police officers might be overwhelmed trying to help the situation or ignored altogether. The rule of law functions because most of us agree that it is important to follow laws every day. As a result, we teach about law in schools, talk about law, enjoy numerous courtroom dramas, and accept law as a part of American culture. As Danish scholar Helle Porsdam has said, “Americans practically think and breathe in legal terms.”

### **There is a long tradition of rule of law in the United States.**

Even before the United States was a nation, there was talk among colonists that laws should govern a new nation, not individuals, including kings or queens, as they’d seen in Britain and other countries. One colonist, Thomas Paine, produced a booklet in 1776 called *Common Sense*, and it became a bestseller by today’s standards. In it, he detailed how, “in America, law is king.”

### **The Declaration of Independence was a legal document.**

Structured as a legal document known as a bill in equity, the Declaration of Independence includes a statement regarding jurisdiction, the identification of parties, a list of wrongs, an explanation of why other remedies would not suffice, a request for remedy, and even a typical concluding oath. Had Thomas Jefferson not been presenting his claim for independence to the court of world opinion, he might have used the very same document to request that a Virginia court prevent a neighbor’s cow from trampling his client’s vegetable garden.

### **The Constitution is the foundation for law in the United States.**

The Constitution created a framework for American government, establishing three separate branches so that each branch would be independent and balanced among the others. The Legislative Branch—Congress—would make laws openly and transparently. The Executive Branch—the President, Cabinet, and other agencies—would enforce laws, consistently, and never place anyone above the law. The Judicial Branch—federal courts, including the U.S. Supreme Court—would interpret laws and resolve disputes independently and impartially.

### **Rights are protected under the U.S. Constitution.**

The U.S. Constitution identifies certain individual rights, including rights to due process and a lawyer in court. The Constitution also limits the actions of the government, protecting everyone against an established state religion, a state-controlled press, unlawful searches, and cruel and unusual punishments.

# WHAT'S THE BIG IDEA?

## Lesson Plan Summary



### OBJECTIVE

Students will be able to define the Constitution's core concepts, how the U.S. Constitution has changed over time to include more groups of people and how the Colorado Constitution differs from the U.S. Constitution.

### INQUIRY QUESTIONS

- Do the core concepts included in the U.S. and Colorado Constitutions support each other? How do they conflict with each other?
- How have amendments to the U.S. Constitution made the document more inclusive?
- What elements of the Colorado Constitution are similar to the U.S. Constitution? What parts are different?
- How does the ability to easily amend the constitution serve the people of Colorado? How is it problematic?

### COLORADO ACADEMIC STANDARDS

**SS.HS.4.2.EOb.** Identify the structure, function, and roles of current members of local, state, and national governments. Including but not limited to: understanding the three branches of government at each level of government.

**SS.HS.4.2.EOe.** Describe the role and development of the founding documents of Colorado and the United States from their inception to modern day. Including but not limited to: the Great Law of Peace, the Declaration of Independence, the Constitutions of the United States and Colorado, the Federalist Papers, and the Bill of Rights.

**SS.HS.4.2.EOf.** Evaluate the role of the judicial system in protecting life, liberty, and property.

### ACTIVITIES

Video, reading/lecture, debate (optional)

### MATERIALS

Readings (attached), sheet for debate (optional)

### GRADE LEVEL

High School

### TIME

One class period; additional time for debates

### LESSON BACKGROUND

The goal of this lesson is to help students understand elements of the U.S. and Colorado Constitutions, the similarities and differences between the two documents and how amendments have changed the two documents. This lesson could be done in conjunction with Constitution Day on Sept. 17.

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



# WHAT'S THE BIG IDEA?

## Key Terms



### KEY TERMS

- **Checks and Balances:** The constitutionally granted power for one branch of government to block action by an equal branch of government. The U.S. Constitution specifies instances in which one of the three branches can stop action by another. Historical precedents have established others.
- **Federalism:** A system of constitutional government in which power is divided into layers with several states on one level and an overarching federal government on another with authority balanced between the state and federal governments.
- **Limited Government:** The government has only the powers granted to it in the Constitution, and it can only conduct actions permitted by the Constitution.
- **Popular Sovereignty:** The preamble to the Constitution is an introduction to the type of government the Founders were creating. Its opening phrase stresses that the government is made by the people and exists to represent, protect, and serve them.
- **Republicanism:** A system of government in the U.S. based in the concept of popular sovereignty and put into practice by the constitutional institutions and processes of representative government.
- **Separation of Powers:** The U.S. Constitution keeps the three branches of government (executive, legislative, and judicial) separate and equal but does not specifically state that it is dividing power among three separate, independent branches. The Colorado Constitution explicitly describes that power is divided into three distinct branches and that one branch may not exercise power over another branch (except as directed or permitted by the constitution).
- **Individual Rights:** The first 10 amendments to the U.S. Constitution, known as the Bill of Rights, explicitly protect fundamental freedoms and rights of individuals. This guarantees essential liberties, such as freedom of speech, trial by jury, religion, and the press, and provides protections for individuals accused of crimes, ensuring a fair and just society. Ratified in 1876 after the Civil War, these individual rights are incorporated into the original text of the Colorado Constitution.
- **Water Rights.** A property right that allows the owner to use a specific portion of the state's water resources. It's a right to divert and use water from a stream or other source, and it's governed by the "first in time, first in right" principle. This means the first person to put water to beneficial use has the senior claim to that water, and later users can only access water if senior users' needs are already met. This is part of the Colorado Constitution, but not the U.S. Constitution.

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

# WHAT'S THE BIG IDEA?

## Class Preparation and Class Lecture



### CLASS PREPARATION

- On the board, write the following:  
**Big Ideas in the Constitution**
  - Popular Sovereignty
  - Republicanism
  - Limited Government
  - Separation of Powers
  - Checks and Balances
  - Federalism
  - Individual Rights
- **Two options:** 1) Write a general definition of phrases using the Key Terms provided above. Discuss the terms before the video, using the video to reinforce learning. 2) Have students take notes on the video about the phrases on the board. You can have students volunteer to write the definitions on the board after watching the video.
- Decide whether to lecture or have students read the different articles using the method that works best for your students. The lectures and the readings include information about the U.S. Constitution, its amendments and the Colorado Constitution. You can adapt the lecture to the needs of your class. For example, you may have already taught students about the U.S. Constitution and could focus solely on the Colorado Constitution.
- Make copies of readings if necessary.
- Review Tips for Diverse Learners to consider how best to engage your student with the content.
- This lesson includes an optional debate, and a worksheet for that activity is included below. This will likely take a day or two.

### CLASS LECTURE

#### Background on the U.S. Constitution:

- Embodies ideas that have shaped the American system of government.
- The "big ideas" enshrined in the Constitution have impacted the U.S. and the world, creating a government framework that is accountable to the people, protects individual freedoms.
- Our constitution has inspired other democracies around the globe.
- Big ideas include:
  - **Popular Sovereignty:** Preamble to the Constitution states "We the People," which emphasizes that the government's power comes from the consent of the governed. This principle established a democratic republic where citizens hold the ultimate authority, setting the stage for self-governance and challenging traditional notions of monarchs or ruling elites.
  - **Republicanism:** Government is based on the consent of the governed, with citizens electing representatives to make decisions on their behalf. This principle ensures that the government is accountable to the people and reflects their will.

# WHAT'S THE BIG IDEA?

## Class Lecture (con't)



### CLASS LECTURE

- **Limited Government:** Government's power is restricted and defined by the Constitution. Government can only exercise powers specifically granted to it, while other powers are reserved for the states or the people. Safeguards individual liberty and prevents the government from infringing upon the rights of its citizens.
- **Separation of Powers:**
  - Federal government power is divided among three branches: the legislative (Congress), the executive (President), and the judicial (Supreme Court and federal courts).
  - Each branch has specific responsibilities and functions: legislative branch makes laws, the executive branch carries out the laws and the judicial branch interprets laws.
  - Framers of the U.S. Constitution deliberately created tension among these branches to prevent any single branch from becoming too powerful and infringing upon the rights and freedoms of citizens. Reduces risk of tyranny, ensuring a balanced and accountable government.
  - State governments also have separation of powers. In Colorado it is the General Assembly, the Governor and the state courts.
- **Checks and Balances:** Each branch of government can limit or "check" the actions of other branches. This system ensures that different branches operate in balance and prevents any one branch from becoming overly powerful. Examples include:
  - U.S. President or the governor of a state, including Colorado, can veto a bill passed by the legislative branch.
  - Courts can declare a law passed by the legislative branch or an action of the branch to be unconstitutional.
  - Chief executive appoints members of the judiciary, but at the national level requires the approval of the legislative branch.
  - Legislative branch can impeach the chief executive or members of the judiciary.
- **Federalism:** Power is divided between the federal government and state governments, with each level having its own distinct powers and responsibilities. Allows for diverse ways of making policy at the state level and promotes greater responsiveness to local needs. It also acts as a check on federal power, preventing the national government from becoming too centralized.
- **Individual Rights (Bill of Rights):** The first 10 amendments to the Constitution, known as the Bill of Rights, explicitly protect fundamental freedoms and rights of individuals. Guarantees essential liberties, such as freedom of speech, trial by jury, religion, and the press, and provides protections for individuals accused of crimes, ensuring a fair and just society.

# WHAT'S THE BIG IDEA?

## Class Lecture (con't)



### CLASS LECTURE

- These ideas continue to be debated and interpreted, ensuring the Constitution remains a dynamic document that adapts to the changing needs of the nation.
- The U.S. Constitution was the world's first written constitution to contain all these elements. We celebrate Constitution Day on September 17 each year as a reminder of the historic documents that give life to these principles.

### How the U.S. Constitution has changed

- Today's Constitution is different from the original Constitution of 1787.
- Many amendments passed after the Civil War made our constitution more inclusive of other groups.
- The First Amendment (1791) prohibits Congress from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof." However, at that time, every state was free to establish a religion or to block its free exercise.
- The original Constitution never provided equal rights for Black Americans, free or slave. Nor did it supply citizenship to free blacks. Citizenship qualifications were left to the states. A majority recognized free people of color as citizens, but some did not. As decades passed, more states denied them citizenship and rights.
- In 1987, Supreme Court Justice Thurgood Marshall said the Constitution "was defective from the start, requiring several amendments, a civil war & momentous social transformation to attain the system of constitutional government & its respect for the individual freedoms & human rights, we hold as fundamental today."
- The Constitution left the rights of women to the states as well.
  - New Jersey recognized women's right to vote from 1790 to 1807, but then fell into line with other states, erasing that right.
  - Although courts acknowledged the actual citizenship of white women, when they married, their property and their children became their husband's. No constitution, state or national, limited husbands' control of the property or the children.
  - When the first women's political movement gained force in the 1840s a few states, notably New York, enacted legislation recognizing property rights for married women. But neither the U.S. nor any state constitution guaranteed such rights.



# WHAT'S THE BIG IDEA?

## Class Lecture (con't)



### CLASS LECTURE

- Civil War created revolution that transformed the U.S. Constitution.
- Union victory gave Republicans control of Congress, Presidency, and more than two-thirds of the states.
- Republican reformers amended the Constitution they regarded as defective.
  - In 1865, the Thirteenth Amendment ended slavery.
  - In 1868, the Fourteenth Amendment provided citizenship for every person born or naturalized in the U.S., prohibiting states from denying citizens equal protection.
  - Because states still interfered with Black Americans voting, in 1870 the Fifteenth Amendment prohibited them from denying suffrage based on “race, color, or previous condition of servitude;” though states retained the right to prescribe voting qualifications.
- Women still excluded: Provisions of the Fourteenth Amendment excluded women, and the Fifteenth Amendment omitted them, despite the National Women’s Suffrage Association’s efforts. The Nineteenth Amendment (1920) provided national protection for women’s suffrage, a right already recognized by many states at the time, including Colorado.
- Since the 1930s, Supreme Court decisions extended reforms related to separation of church and state, voting rights, or a woman’s right to equal protection under the laws.

### Colorado Constitution

- Signed in 1876, incorporates the same principles designed to protect the liberties of Colorado citizens. Creates the basic framework of the state’s government and is the state’s original and only constitution.
- Ratified by Congress in the immediate years after the Civil War.
- As in other states, ultimate power rests with the people. Power is exercised by representatives in the separate branches. Citizens have the right to initiate laws, to hold referenda on laws enacted by the legislature, and to change the Constitution.
- Delegates chose a “rights first” approach to their new constitution. They declared the rights of the citizens before specifying the structure of the government. Like the U.S. Constitution, the Colorado Constitution divided the government into three branches.
- Diversity of people in the territory meant state grappled with these issues. One/fifth of the residents spoke Spanish and there were many German speakers. The original constitution explicitly provided that the publication of laws be printed in Spanish and German.
- The Colorado Constitution gave the right to vote to all men over the age of 21.

# WHAT'S THE BIG IDEA?

## Class Lecture (con't)



### CLASS LECTURE

- Constitution took a stand against racial discrimination.
- Guaranteed a free education for all.
- Women given the right to vote only on questions pertaining to schools. Were not granted full suffrage in Colorado until 1893.
- Original constitution provided for the freedom of elections, equality of justice, due process of law, prohibition of slavery, and guarantees for the property rights of aliens.
- Water rights were enshrined in the Constitution guided by the concept of “first rights.” First rights prioritized older, more senior rights to water access over those with more recent rights. In addition, the Constitution granted right-of-way across both public and private lands to build ditches.
- Colorado is one of only 21 states that still has its original constitution.
- Since 1876, the Constitution has been amended 176 times.
- Initially two ways to amend the Constitution: constitutional convention or a legislatively referred constitutional amendment. Amendments were placed on ballot for a vote of the people.
- In 1900s, citizens given new powers: the referendum and the initiative. The referendum allowed citizens a direct say on legislation passed by the General Assembly. The initiative allowed citizens to petition to place measures on the ballot.
- Starting in the late 1980s, Colorado cities passed ordinances to protect citizens based on sexual orientation. In response, religious-rights groups helped pass Amendment 2, which took away these protections and stopped the state from creating laws to protect anyone on the basis of sexual orientation. The Supreme Court later declared Amendment 2 unconstitutional, saying it violated the Fourteenth Amendment’s equal protection clause.
- Recent tax and funding amendments:
  - The Gallagher Amendment, keeps consistent ratio between revenue from taxes on residential and business properties.
  - The Taxpayer Bill of Rights (TABOR), which gives citizens the right to vote on taxes and provides limitations on spending growth.
  - Amendment 23 mandates that the state increase K-12 per-pupil funding by the rate of inflation every year.
- Cannabis amendments: Amendment 20, allowed the use of medical marijuana; Amendment 64, allows recreational marijuana use.
- In 2016, voters approved Amendment 71 to make the Colorado Constitution harder to amend

# WHAT'S THE BIG IDEA?

## Lesson Instructions



### INTRODUCTION (1 minute)

Start the class by saying the following: “Today we are going to talk about the big ideas that are included in the constitution, which I have written on the board. We will begin by watching a video that introduces these core concepts. Take notes about each of the concepts listed in this video.”

### WARMUP (15 minutes)

Watch the video “Principles of the U.S. Constitution”

<https://www.youtube.com/watch?v=efiOr5ShSkE> Ask for volunteers to define concepts; either you or student can write definition on the board.

Another option would be to write a general definition from Key Terms on the board and discuss before the video. Then, show the video to reinforce learning.

### DIGGING IN

#### Lecture/Reading (25 minutes)

Deliver lecture; students can take notes using a graphic organizer. Another option would be to divide students into small groups and hand one reading to each group. Students could do a read aloud within their group and take notes using a graphic organizer about the main ideas.

### DISCUSSION (15-20 minutes)

Discuss a few of these questions as a class. Or, divide students into small groups and have each group discuss one question.

- How do the core concepts in the U.S. and Colorado Constitutions support each other? How do they conflict with each other?
- Who was left out of the U.S. Constitution and how have constitutional amendments included other groups?
- What elements of the Colorado Constitution are similar to the U.S. Constitution? What parts are different?
- How does the ability to easily amend the constitution serve the people of Colorado? How is it problematic?
- How did the U.S. Constitution reflect the ideas & people of the time?
- How does the Constitution limit the government’s power over citizens?

### EXIT TICKET (2 minutes)

Have students write their own definition of one of the core concepts in the Constitution.

### EXTENSION ACTIVITY: DEBATE

adapted from: [archives.gov/legislative/resources/education/constitution](https://www.archives.gov/legislative/resources/education/constitution)

Have a debate where teams argue for Position A or Position B. Each debate will have five participants on a team. Each participant will speak for no more than two minutes and teams will alternate speakers. Teams can use the worksheet below to plan their arguments. Encourage students to anticipate and respond to the opposing team’s arguments. Each team will choose a speaker to deliver the opening overview of the team’s position. Three speakers on each team should each give one supporting arguments. One speaker on each team should deliver the closing argument.

# WHAT'S THE BIG IDEA?

## Extension Activity (con't)



### DEBATE TOPICS

Use the debate topics listed below or create your own:

- **Popular Sovereignty:** Should voter ballot initiatives be allowed to overturn laws passed by the Colorado General Assembly?
  - Position A: Yes; ballot initiatives allow voters to directly participate in their state government.
  - Position B: No; voters already express their views through election of public officials.
- **Republicanism:** What should be the citizens' role in creating public policy?
  - Position A: Public policy should reflect the opinion of voters.
  - Position B: Public policy should be created by officials who are most informed about the issues involved.
- **Limited Government:** To what extent should state government be involved in economic issues?
  - Position A: The government's powers over taxation should allow significant latitude in directing economic policy in the state.
  - Position B: The state government should only act to remedy unfavorable economic conditions for business activity in the state.
- **Checks and Balances:** When the President makes a nomination, what should be the nature of the Senate's "advice and consent?"
  - Position A: The Senate should defer to the President's choice of who he wants working under him.
  - Position B: It is the Senate's duty to make an independent judgment of a nominee's suitability for a position serving the American people, even if that means denying the President his choice.
- **Separation of Powers:** Should the judiciary be able to overturn executive orders made by the President?
  - Position A: The Judicial Branch should have the right to overturn executive orders since the constitution allows for judicial review.
  - Position B: Since he was elected, the President is in the best position to determine the needs of the country and his decisions should not be subject to judicial review.
- **Federalism:** How should power be divided between the federal government and the states?
  - Position A: The federal government should retain the most power because it is best positioned to insure fair treatment, safety and equal protection for all Americans.
  - Position B: The states should retain the most power because they are closer to the people, better informed on local issues and best positioned to exercise authority for their residents.



# WHAT'S THE BIG IDEA?

## Reading #1: Big Ideas in the Constitution



The U.S. Constitution embodies several core ideas that have shaped the American system of government. These "big ideas" enshrined in the Constitution have created a durable framework for a government that is accountable to the people, protects individual freedoms, and has inspired similar systems of government in other democracies around the globe. These ideas continue to be debated and interpreted, ensuring the Constitution remains a dynamic document that adapts to the changing needs of the nation. The key concepts included in the Constitution are so vital to our democracy that we celebrate Constitution Day on September 17 each year as a reminder of the historic documents that give life to these principles. Colorado's constitution, signed in 1876, incorporates many of the same principles, including the separation of powers and the system of checks and balances designed to protect the liberties of Colorado citizens. Here are some of the key concepts and their significance:

**Checks and Balances:** The constitutionally granted power for one branch of government to block action by an equal branch of government. The U.S. Constitution specifies instances in which one of the three branches can stop action by another. Historical precedents have established others. The legislative branch of government can impeach the chief executive or members of the judiciary. In Colorado, the Judicial Discipline Commission and an Independent Adjudicative Board, whose members are appointed by leaders of all three branches of government, also can remove members of the judiciary from office.

**Federalism:** A system of constitutional government in which power is divided into layers with several states on one level and an overarching federal government on another with authority balanced between the state and federal governments.

**Limited Government:** The government has only the powers granted to it in the Constitution, and it can only conduct actions permitted by the Constitution.

**Popular Sovereignty:** The preamble to the Constitution is an introduction to the type of government the Founders were creating. Its opening phrase stresses that the government is made by the people and exists to represent, protect, and serve them.

**Republicanism:** A system of government in the U.S. based in the concept of popular sovereignty and put into practice by the constitutional institutions and processes of representative government.

**Separation of Powers:** The U.S. Constitution keeps the three branches of government (executive, legislative, and judicial) separate and equal but does not specifically state that it is dividing power among three separate, independent branches. The Colorado Constitution explicitly describes that power is divided into three distinct branches and that one branch may not exercise power over another branch (except as directed or permitted by the constitution).

**Individual Rights:** The first 10 amendments to the U.S. Constitution, known as the Bill of Rights, explicitly protect fundamental freedoms and rights of individuals and were ratified in 1791. This guarantees essential liberties, such as freedom of speech, trial by jury, religion, and the press, and provides protections for individuals accused of crimes, ensuring a fair and just society. Additional Constitutional Amendments protect other rights, including a prohibition against slavery and involuntary equal protection under the law involuntary servitude, a guarantee of due process as well as voting rights for people of color, women and people over the age of 18. The Colorado Constitution, which was ratified in 1876 after the Civil War, incorporates these rights into the original text.

# WHAT'S THE BIG IDEA?

## Reading #2: The Original Constitution



*Adapted from "The Original Constitution of the United States: Religion, Race, and Gender" (Yale University Press, Sept. 2018) by Richard Brown, Emeritus Distinguished Professor of History, University of Connecticut*

Many who declare that Americans should stick to the original words of the United States Constitution, ratified in 1788, fail to acknowledge that in reality the nation has been ruled by a substantially different constitution for years. The Union victory in 1865, and the amendments Republicans quickly enacted, gave this nation a new constitution—one where, increasingly, national, not state, standards ruled. The consequences of this new constitution have been profound.

Advocates of religious freedom typically rest their arguments on the First Amendment (1791), because it prohibited Congress from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof." What many fail to acknowledge, however, is that originally every state was free to establish a religion or to block its free exercise. Under the original constitution, the state of New York could create a loyalty oath that barred Catholic immigrants from citizenship and suffrage, and it did. Under the original constitution, Massachusetts and Connecticut could provide tax support for Protestant churches, and they did. Up and down the Atlantic seaboard, states that professed religious freedom commonly limited office holding to Protestants. In the early republic full religious freedom as we understand it today, was scarce.

That the original constitution never provided equal rights for African Americans, free or slave, is undeniable. Nor did it supply citizenship to free blacks. As with religious liberty, citizenship qualifications were left to the states. A majority actually recognized free people of color as citizens, but some did not. Moreover, as decades passed and free blacks multiplied, increasingly states denied them citizenship—and rights. No constitutional guarantee hindered this rights rollback. No wonder that when Congress enacted the first Naturalization Act in 1790, it excluded non-whites. In the view of Supreme Court justice Thurgood Marshall, speaking in 1987, the constitution "was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, we hold as fundamental today."

That the constitution left the rights of women to the states is also well known. One state, New Jersey, recognized women's right to vote from 1790 to 1807, but then fell into line with other states, erasing that right. Although courts acknowledged the actual citizenship of white women, when they married, their property and their children became their husband's. No constitution, state or national, limited husbands' control of the property or the children. As with the rights of people of color, the constitution provided women no recourse. When the first women's political movement gained force in the 1840s a few states, notably New York, enacted legislation recognizing property rights for married women. But neither the U.S. nor any state constitution guaranteed such rights.

The Civil War created the revolution that transformed the U.S. Constitution. Union victory gave Republicans control of Congress, the Presidency, and more than two-thirds of the states. Republican reformers—who aimed to cement their hold on national government and to assert national supremacy over states—now amended a constitution they regarded as defective. In 1865, their

# WHAT'S THE BIG IDEA?

## Reading #2: The Original Constitution (con't)



Thirteenth Amendment ended slavery. In 1868, their Fourteenth Amendment provided citizenship—state and national—for every person born or naturalized in the U.S., prohibiting states from denying citizens equal protection. Because states still interfered with African American voting, in 1870 the Fifteenth Amendment prohibited them from denying suffrage based on “race, color, or previous condition of servitude;” though states retained the right to prescribe voting qualifications.

From a constitutional standpoint, the advance toward racial equality was momentous—momentous, that is, for men. Provisions of the Fourteenth Amendment specifically excluded women, and the Fifteenth Amendment omitted them, despite the National Women’s Suffrage Association’s efforts. Though Wyoming and Utah territories already allowed women to vote, in 1873 the U.S. Supreme Court ruled that because “Man” was “woman’s protector and defender,” Illinois could prohibit women from becoming lawyers. Divine law, the Court opined, assigned “the domestic sphere . . . to womanhood.” For women, the Supreme Court would not even go as far as it would in its now infamous *Plessy v. Ferguson* case (1896), when it endorsed “separate but equal” for blacks and whites. A generation later, the Nineteenth Amendment (1920) would provide national protection for women’s suffrage, a right already recognized by Arizona, California, Colorado, Illinois, Montana, New York, Oregon, Utah, Washington, and Wyoming.

Since the 1930s, a series of Supreme Court decisions upholding New Deal legislation has extended national supremacy far beyond post-Civil War reforms. Consequently, it is decisions in Washington, D.C., that count most. Politics, state and national, make actual practices inconsistent and uneven; but Constitutional protections for religion, race, and gender are broader than ever before. Now critical policy decisions govern the entire nation and rest with the President and Congress, not the states. Whether the question is separation of church and state, guaranteeing religious freedom, civil rights like voting, or a woman’s right to equal protection of the laws, it is Congress, the President, and the Supreme Court that possess ultimate power—even though implementation and judicial interpretation may leave much to state and local government. The constitution [of today] is not the constitution of 1787, and no one should wish otherwise.

# WHAT'S THE BIG IDEA?

## Reading #3: The Colorado Constitution



from Colorado Encyclopedia: <https://coloradoencyclopedia.org/article/colorado-constitution>

The Colorado Constitution creates the basic framework of the state's government. Written and ratified in 1876, it is the state's original and only constitution. As in other states, ultimate power rests with the people. Power is exercised by representatives in the executive, legislative, and judicial branches. Citizens have the right to initiate laws, to hold referenda on laws enacted by the legislature, and to change the constitution. The document has seen more than 176 amendments in its history.

### Writing and Ratification

On December 20, 1875, 39 delegates gathered in Denver for a constitutional convention. For almost three months, they studied and debated the issues. The delegates chose a “rights first” approach to their new constitution. They declared the rights of the citizens before specifying the structure of the government. Like the U.S. Constitution, the Colorado Constitution divided the government into three branches. The executive, legislative, and judicial would check and balance each other's power. The delegates completed their task on March 14, 1876, with all members signing. The document they created was 40 handwritten pages. It is one of the longest state constitutions.

The Colorado Constitution was ratified by voters on July 1, 1876, by a vote of 15,443 to 4,062. On August 1, 1876, President Ulysses S. Grant accepted Colorado into the union as the 38th state.

### Inclusion and Suffrage

The first issue the delegates confronted was the diversity of its people. Shifting boundaries meant people who had been living on the northern frontier of Mexico, Texas, or New Mexico Territory found themselves in Colorado after the territory's borders were defined in 1861. In the 1870s, nearly one-fifth of the state's population was Spanish speaking. Casimiro Barela, a delegate from southern Colorado, had the convention pledge that the constitution would be available in Spanish until 1900. German immigrants made up the largest segment of the new state's foreign-born population, so the constitution was printed in German as well.

The Colorado Constitution gave the right to vote to all men over the age of 21. In addition, the Constitution took a stand against racial discrimination. It guaranteed a free education for all. Women were given the right to vote only on questions pertaining to schools. At the urging of two delegates, the constitution provided for a referendum on women's suffrage the following year and any time thereafter. The first vote in 1877 failed. Women in Colorado were not granted full suffrage until 1893.

### Water Rights and Conservation

Water rights have always been an issue in Colorado. The constitutional convention had a recent example that shaped its approach to water law. Two years earlier, there was a dispute between two communities. The Union Colony (now Greeley) had built two ditches to access water from the Cache la Poudre River. Their water flow dried up in 1874, when colonists in Camp Collins (now Fort Collins) built their own ditch. The ditch diverted the entire flow of the river to Camp Collins. The question was whether upstream newcomers could take water that downstream residents already relied on. The delegates enshrined in the constitution the concept of “first rights.” First rights prioritized older, more senior water rights over more recent rights. In addition, the constitution granted right-of-way across both public and private lands to build ditches. Conservation was also important to the framers of Colorado's Constitution. They made their document the first state constitution to mention forests.



# WHAT'S THE BIG IDEA?

## Reading #3: The Colorado Constitution (con't)



### Direct Democracy

Colorado is one of only 21 states that still has its original constitution. However, since 1876, the constitution has been amended 176 times. Initially, Article XIX specified two ways of amending the constitution. There could be a constitutional convention or a legislatively referred constitutional amendment. Amendments are placed on the ballot for a vote of the people. Both methods of amending the constitution begin with elected representatives.

The amendment process changed in the Progressive Era of the early 1900s. Reformers pushed to make Colorado's political system more democratic. In 1910 a special legislative session referred a new amendment to the ballot. The voters approved, giving citizens two new powers: the referendum and the initiative. The referendum allowed citizens a direct say on legislation passed by the General Assembly through a process of gathering signatures on a petition to place the legislation on the ballot. Voters could approve or reject.

The second new power, the initiative, allowed citizens to petition to place measures on the ballot. The measures would enact either new statutes or constitutional amendments. Citizen-initiated statutes, like other laws, could later be changed by the General Assembly. But citizen-initiated constitutional amendments could be changed only by another amendment. In 1912, the first year the initiative option was available, there were 32 ballot initiatives. The use of the ballot initiative to amend the state's constitution peaked in that decade. It wasn't used much for the next 60 years.

### Recent Amendments

Starting in the late 1980s, Boulder, Denver, Aspen and other Colorado cities passed ordinances to protect citizens based on sexual orientation. In response, religious-rights groups helped pass Amendment 2 in 1992, which took away these protections and stopped the state from creating laws to protect anyone on the basis of sexual orientation. The Supreme Court later declared Amendment 2 unconstitutional, saying it violated the Fourteenth Amendment's equal protection clause.

Three recent amendments dealing with taxes and funding have impacted the state legislature:

- The Gallagher Amendment, approved through a legislative referral in 1982, keeps a consistent ratio between revenue from taxes on residential and business properties. This has led to a decline in revenues collected from property taxes over time.
- The Taxpayer Bill of Rights (TABOR) was passed by ballot initiative in 1992, which gives citizens the right to vote on taxes and provides limitations on spending growth.
- Amendment 23 was passed in 2000. It mandates that the state increase K-12 per-pupil funding by the rate of inflation every year.

Other amendments include Amendment 20, which allows for the use of medical marijuana and Amendment 64, which allows for recreational marijuana use. In 2016, voters approved Amendment 71, making the Colorado Constitution harder to amend. This amendment continues to be litigated.

# HISTORY OF THE COLORADO COURTS

## Lesson Plan Summary

### OBJECTIVE

Students will be able to explain the role of courts in a democratic society, the history of the Colorado courts and how those courts have evolved over time.

### INQUIRY QUESTIONS

- What cultural and social forces impacted the development of Colorado's court system?
- What are the main differences between Indigenous legal customs and Western legal customs?
- How do the structures of the Colorado court system impact democratic decision making?

### 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.

### ACTIVITIES

Teacher lecture or reading, class discussion/Socratic seminar, optional extension activities

### MATERIALS

"History of Colorado Courts" reading

### GRADE LEVEL

High School

### TIME

One to two class periods, depending on lesson format

### KEY TERMS

- **Miners' Districts.** These districts were created when a group of miners settled in one area in the 1860s. The residents in the district established boundaries, defined property rights, elected officers, set up courts, tried lawsuits, and punished criminals.
- **Claim clubs.** Organized to settle land disputes and address other issues like water rights.
- **People's Courts.** These courts were not permanent or even official institutions, but were summoned to handle murders and other serious crimes. The courts followed general procedures, allowing for both prosecution and defense, but the sentence was usually death, and it was carried out immediately after the ruling.
- **Indigenous law.** It is not monolithic, but varies between different Indigenous nations and communities, reflecting their unique histories, cultures, and relationships with the land. Many Indigenous legal systems emphasize relationships between people, the natural world, and the spiritual realm, and prioritize restoring balance and harmony within the community, rather than solely focusing on punishment.
- **Tribal Courts.** They operate separately from the state or federal courts. Established in 1934, they focus on restorative justice and communal resolution.

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

# HISTORY OF THE COLORADO COURTS

## Lesson Plan Background & Preparation; Class Lecture



### LESSON BACKGROUND

This lesson provides background about the History of the Colorado's Courts from early history to the present. The goal is to help students understand how the Colorado courts developed and what was left out of the court system.

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

### CLASS PREPARATION

- Decide whether to lecture about the content or have students read the article. Because it is long, consider dividing the reading into sections and have students create a short presentation about different sections of the history.
- Make copies of readings if necessary.
- Review Tips for Diverse Learners on page 3 to consider how best to engage your student with the content.
- Write the lesson objective and key terms on the board or screen.

### CLASS LECTURE

#### Early History

- For thousands of years, the land that is now Colorado was inhabited by Native Peoples.
- Spanish explorers arrived in the 1600s, followed by people of Mexican heritage who settled in Trinidad and other areas of southern Colorado. These groups brought their own customs and systems of justice.
- In 1803, the United States acquired territory that included the land that is now northern and eastern Colorado through the Louisiana Purchase.
- National borders changed again in 1848 at the conclusion of the Mexican-American War. Signed on February 2, the Treaty of Guadalupe Hidalgo officially ended the war and transferred the territory that is now southern and western Colorado from Mexico to the United States.
- U.S. government encouraged migration of white settlers to the newly acquired territory and made treaties with native populations to ensure that settlers could access this land.
- The government rarely adhered to these treaties and ignored Indigenous land use customs as it sought to overlay an economic system based on individual property ownership. Spanish and Mexican civil law that allowed women to own property was also ignored.

#### Gold Rush

- Discovery of gold in 1858 drew 1000s of would-be miners to the area.
- A fledgling judicial system developed along the Front Range to attempt to bring order to the rapidly expanding population.

# HISTORY OF THE COLORADO COURTS

## Class Lecture (con't)

### CLASS LECTURE

- Prior to 1861, most of what is now Colorado was part of Arapahoe County in the Territory of Kansas. In 1855, the Territory of Kansas' legislature appointed Allen P. Tibbitts as probate judge of Arapahoe County. Tibbitts was effectively Colorado's first judge.
- Residents of Arapahoe County held an election in March 1859 and elected S.W. Wagoner as probate judge. Shortly after, a restlessness to secede from Kansas began to grow. In response, an election held on October 24, 1859, established the extralegal Territory of Jefferson.
- This self-proclaimed government instituted the region's first Supreme Court with a chief justice and two associate justices. Within two months, Jefferson Territory's legislature expanded the judicial system to include district, county, and justice of the peace courts, in addition to the already established Supreme Court.
- The new "territory" was not recognized by the U.S. government, and many residents refused to acknowledge its presumed authority, or that of its courts.
- Conflict arose between the Arapahoe County courts and the Jefferson Territory courts. Neither had a good grip on its claimed jurisdiction, and criminals frequently slipped through gaping loopholes in the system. As a result, People's Courts emerged, which dealt with serious crimes, such as murders. The courts followed general procedures, allowing for both prosecution and defense, but the sentence was usually death, and it was carried out immediately after the ruling.

### **Miners' districts and claim clubs**

- Miners' districts, claim clubs, and other local government entities were also created to provide order.
- In the mountains, "Miners' Districts" sprung up whenever a large enough group of miners settled in one area. Residents established boundaries, defined property rights, elected officers, set up courts, tried lawsuits, and punished criminals. Among the first districts were Gold Hill near present day Boulder, Jackson Diggings in Clear Creek County, and Gregory District near Blackhawk, all established in 1859.
- Claim (or neighborhood) clubs provided a similar function, which defended land claims until a federal land survey made legal purchase possible. They settled land disputes and other issues like water rights. Two of the most prominent were the Arapahoe County Claim Club, which included the City of Denver, and the El Paso Claim Club, which included much of present day El Paso County.



# HISTORY OF THE COLORADO COURTS



## Class Lecture (con't)

### CLASS LECTURE

#### Colorado Territory

- In February 1861, Congress passed a bill creating the Territory of Colorado and all existing governing entities ceded power to the new government.
- The territory was divided into three judicial districts. President Abraham Lincoln appointed three justices to the first legal Supreme Court in the territory. The first case to be tried before the Territorial Supreme Court was *Gardner v. Dunn* on appeal from Park County.
- Colorado was admitted to the union as a state on August 1, 1876. The state's original constitution provided for a Supreme Court with a bench of three justices, as well as four judicial districts, with one judge serving each.

#### Colorado Supreme Court

- Colorado's highest court began before Colorado became the 38th state.
- The first Supreme Court was established in 1859 by the Territory of Jefferson, an extra-legal government.
- When Colorado became an official territory, a new Supreme Court was established. This court held its initial session in Denver on July 10, 1861.
- The court continued with the same structure when Colorado became a state. It moved into a grand courthouse in the state capitol's north wing in the early 1890s, and heard arguments there until 1977, when a new courthouse was built a block away at 2 E. 14th Avenue.
- That courthouse served the supreme court and the court of appeals until 2010, when it was razed to make way for the Ralph L. Carr Colorado Judicial Center, the court's current location.
- The Supreme Court grew to seven justices in 1905 to help address its heavy caseload, which is the number we have today.
- The Supreme Court is the highest court in Colorado. It is often referred to as the court of last resort.
- Requests to review decisions of the Colorado Court of Appeals constitute a majority of the Supreme Court's filings.
- The Supreme Court also has direct appellate jurisdiction over cases in which a statute has been held to be unconstitutional, cases involving decisions of the Public Utilities Commission, writs of habeas corpus, cases involving adjudication of water rights, summary proceedings initiated under the Election Code, and prosecutorial appeals concerning search and seizure questions in pending criminal proceedings.
- All of these appeals are filed directly with the Supreme Court, and, in these cases bypass the Court of Appeals.
- The Supreme Court also has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions.

# HISTORY OF THE COLORADO COURTS

## Class Lecture (con't)

### CLASS LECTURE

#### **Court of Appeals**

- Colorado's Court of Appeals has a fragmented history. The first Court of Appeals was established in 1891 by the Colorado General Assembly for an indeterminate term to help the Supreme Court with its heavy caseload. This court consisted of three judges and lasted until 1904, when it was no longer believed to be necessary.
- In 1913, a second Court of Appeals was created, this time with five judges, but with a pre-established term of only four years. Its mandate expired in 1917.
- In 1970, the third and present Court of Appeals was established, with six judges at its inception. In 1974, the number of judges increased to 10; on January 1, 1988, that number increased to 13. Effective July 1, 1988, three additional positions were created by the General Assembly, bringing the number of judges to 16. The most recent court expansion became effective on July 1, 2008, bringing the number of judges to 22.
- The court's location during its first two terms is unclear, but due to its close relationship with the Supreme Court, it may have been held in the same location. The third Court of Appeals began hearing cases in 1970 at the Supreme Court courtroom in the Capitol. When the court expanded to 10 judges in 1974, it moved to a new courtroom on the sixth floor of the Farmer's Union Building. In 1977 it joined the Supreme Court in the former Colorado Judicial Department Building at 14th and Broadway, and it now has two courtrooms in the Ralph L. Carr Colorado Judicial Center.
- The Court of Appeals has initial jurisdiction, with exceptions, over appeals from the Colorado District Courts, Denver Probate Court, and Denver Juvenile Court.
- The Court of Appeals has specific appellate jurisdiction over decisions originating from a number of state administrative boards and agencies, including the Industrial Claim Appeals Office. Reviews of the Court of Appeals' decisions are directed to the Colorado Supreme Court.

#### **Judicial Districts**

- When Colorado became a state on August 1, 1876, it was divided into four large judicial districts, each with a district court to hear major cases and crimes and a county court for lesser issues.
- Geographic barriers and widely spread populations were significant challenges for the new judicial system. The need for local courts became quickly evident, and justice of the peace courts were created to provide local law enforcement and to settle minor disputes.
- As the state grew, so too did the number of "j.p. courts."
- There was little or no coordination between these local courts, however, and the elected justices of the peace were often local residents who had minimal or sometimes no legal training.

# HISTORY OF THE COLORADO COURTS

## Class Lecture (con't)

### CLASS LECTURE

#### Judicial Districts (con't)

- Additional judicial districts added over time as state's population grew.
- In 1962, j.p. courts abolished. Supreme Court given the power to create uniform standards and procedures for the various courts.
- There are 23 judicial districts in the state today. Each district is a distinct geographic area that includes one or more of the state's 64 counties. Each judicial district has district and county courts:
  - District Courts hear civil cases in any amount, as well as domestic relations, criminal, juvenile, probate, and mental health cases.
  - District court decisions may be appealed to the Colorado Court of Appeals (in some cases directly to the Colorado Supreme Court).
  - County Courts handle civil cases under \$25,000, misdemeanors, traffic infractions, felony complaints (which may be sent to district court), protection orders, and small claims.
  - County court decisions may be appealed to the district court.

#### Tribal Courts

- Modern tribal courts were established in the United States in 1934 with passage of the Indian Reorganization Act.
- Tribes were encouraged to enact their own laws and establish their own governments, constitutions and justice systems.
- Many tribes, impoverished from years of Indian policy that had decimated their communities and culture, couldn't afford to adopt their own tribal codes or develop courts and chose to operate under provisions of the Code of Federal Regulations (CFR). Additional federal laws were passed to establish and strengthen tribal courts and police departments.
- Today, there are 400 tribal justice systems in the United States; they operate separately from federal and state courts and are governed by tribal law.
- Tribal courts in Colorado: the Southern Ute Indian Tribal Court in Ignacio and the Ute Mountain Ute Agency (Southwest Region) in Towaoc. These courts exercise and protect the sovereignty and jurisdiction of the tribes, providing a forum for the enforcement of tribal law and the administration of justice, while honoring tribal culture. Based in tribal traditions, they focus on restorative justice and communal resolution.

# HISTORY OF THE COLORADO COURTS

## Lesson Instructions



### INTRODUCTION (2 minutes)

Reviews lesson objective and key terms.

### WARM UP (10 minutes)

Divide students into small groups. Read the following scenario or project on a screen: *"You are a white settler who has recently arrived in the foothills (or mountains) of the western territory of the United States. As more people arrive, they start to disagree about who has access to land and water. They also want land that belongs to Indigenous people and Mexican people who already live here. What would you do to solve this problem without a court of law?"*

Have students briefly discuss the scenario in small groups. Call on groups to see how they solved this issue.

### DIGGING IN

#### Lecture/Reading (25 minutes)

Present class lecture about court history. Alternatively, have the students read the history out loud in groups and use a graphic organizer to record key events, people, terms and more. Or have each small group take a small section of the reading to discuss and present what they learned to the rest of the class.

#### Discussion (15 minutes)

Hold a class discussion stemming from the following questions:

- Why did the early systems of justice clash in Colorado (i.e. Indigenous tribal law, Miners Courts, People's Courts)?
- What are similarities and differences between how Indigenous people's solved problems and how Miners and People's courts solved problems?
- How would you have solved justice problems that arose among settlers and Indigenous peoples, or the conflict between the Territory of Jefferson and Arapahoe County?
- What was the impact of the Colorado court system on Indigenous ways of life?

### EXIT TICKET (2 minutes)

Have students write down one thing they learned about a system of justice discussed today.

### EXTENSION ACTIVITIES

#### Research Projects

- Assign the readings as homework. Have students research systems of justice that arose before the Territory of Colorado. How were disputes resolved? Who had rights within their legal system?
- Have them address one of the following questions:
  - Choose one early system of justice that arose before the Territory of Colorado. Compare that system to the system of justice white settlers arriving in the area would have used to solve disputes.
  - Compare one of the early systems of justice in this area to our current judicial system. In what ways are they similar? In what ways are they different?



# HISTORY OF THE COLORADO COURTS



## Reading: History of the Courts

### Early History

For thousands of years, the land that is now Colorado was inhabited by Native Peoples.<sup>1</sup> The original inhabitants included the Jicarilla Apache Nation (Haisndayin),<sup>2</sup> the Arapaho Tribe (Hinono'ei), the Cheyenne Tribe (Tsistsistas),<sup>3</sup> the Ancestral Puebloans,<sup>4</sup> the Shoshone Tribe (Newe)<sup>5</sup> and the Ute people (Nuche).<sup>6</sup> Spanish explorers arrived in the 1600s, followed by people of Mexican heritage who settled in Trinidad and other areas of southern Colorado. These groups brought their own customs and systems of justice.<sup>7</sup>

In 1803, the United States acquired territory that included land that is now northern and eastern Colorado through the Louisiana Purchase. National borders changed again in 1848 at the end of the Mexican-American War. Signed on February 2, the Treaty of Guadalupe Hidalgo officially ended the war and transferred the territory that is now southern and western Colorado from Mexico to the United States.<sup>8</sup> Eager to populate the new land, the U.S. government encouraged migration of primarily white settlers to the newly acquired territory and made treaties with native populations to ensure settlers could access this land. The government rarely adhered to these treaties and ignored Indigenous land use customs as it sought to overlay an economic system based on individual property ownership.<sup>9</sup> Spanish and Mexican civil law allowing women to own property was also ignored.<sup>10</sup>

### Gold Rush

The discovery of gold in 1858 drew thousands of would-be miners to the area.<sup>11</sup> "As many as 100,000 gold seekers may have started for the Pike's Peak goldfields over the course of 1859, but observers believed only 40,000 reached Denver."<sup>12</sup> A fledgling judicial system developed along the Front Range to attempt to bring order to the rapidly expanding population. Prior to 1861, most of what is now Colorado was part of Arapahoe County in the Territory of Kansas. In 1855, the Territory of Kansas' legislature appointed Allen P. Tibbitts as probate judge of Arapahoe County. Tibbitts was effectively Colorado's first judge, although he never visited Arapahoe County, much less held court there. He likely never claimed the bench because travel in this region could be treacherous.<sup>13</sup>

"Recognizing a need for a single judicial authority to cover the region, the residents [of Arapahoe County] organized an election" in March of 1859 and elected S.W. Wagoner as probate judge.<sup>14</sup> Shortly after, a restlessness to secede from Kansas began to grow. As a response, an election held on October 24, 1859, established the extralegal Territory of Jefferson. This self-proclaimed government instituted the region's first Supreme Court with a chief justice and two associate justices. Within two months, Jefferson Territory's legislature expanded the judicial system to include district, county, and justice of the peace courts, in addition to the already established Supreme Court.<sup>15</sup>

The new "territory" was not recognized by the U.S. government, and many residents refused to acknowledge its presumed authority, or that of its courts. Inevitably, conflict arose between the Arapahoe County courts and the Jefferson Territory courts. Neither had a good grip on its claimed jurisdiction, and criminals frequently slipped through gaping loopholes in the system. As a result, People's Courts emerged. These were not permanent, or even official institutions, but they were summoned to deal with serious crimes, such as murders. The courts followed general procedures, allowing for both prosecution and defense, but the sentence was usually death, and it was carried out immediately after the ruling.<sup>16</sup>

# HISTORY OF THE COLORADO COURTS

## Reading: History of the Courts

### Miners' districts and claim clubs

Miners' districts, claim clubs, and other local government entities were also created to “provide a sense of order until the United States government organized the region.”<sup>17</sup> In the mountains, “Miners' Districts” sprung up whenever a large enough group of miners settled in one area. The residents in the district established boundaries, defined property rights, elected officers, set up courts, tried lawsuits, and punished criminals. Among the first districts were Gold Hill near present day Boulder, Jackson Diggings in Clear Creek County, and Gregory District near Blackhawk, all established in 1859.<sup>18</sup>

Claim clubs provided a similar function. “As on earlier frontiers, miners, farmers, and land boomers agreed amongst themselves to respect and defend each other's claims until the extension of the federal land survey made legal purchase possible.”<sup>19</sup> Also referred to as neighborhood clubs, claim clubs were organized to settle land disputes and address other issue like water rights.<sup>20</sup> Two of the most prominent were the Arapahoe County Claim Club, which included the City of Denver, and the El Paso Claim Club, which included much of present day El Paso County.<sup>21</sup>

After Kansas made the transition from territory to state in January 1861, people living in the region recognized the necessity, and inevitability, of coming under United States authority. An application for territorial status was filed, and in February 1861 Congress passed a bill creating the Territory of Colorado. Immediately upon becoming an official territory, all existing governing entities ceded power to the new government.<sup>22</sup>

The territory was divided into three judicial districts. President Abraham Lincoln appointed three justices to the first legal Supreme Court in the territory. Chief Justice Benjamin F. Hall was given jurisdiction of the Denver District; Justice Charles Lee Armour, the Central City District; and Justice S. Newton Pettis, the Southern District, near Pueblo.<sup>23</sup> The first case to be tried before the Territorial Supreme Court was *Gardner v. Dunn* on appeal from Park County.<sup>24</sup>

Colorado was admitted to the union as a state on August 1, 1876. The state's original constitution provided for a Supreme Court with a bench of three justices, as well as four judicial districts, with one judge serving each.<sup>25</sup>

### Colorado Supreme Court

As discussed above, the history of Colorado's highest court began even before Colorado became the 38th state in the nation. The first Supreme Court was established in 1859 by the Territory of Jefferson, an extra-legal government existing prior to the Territory of Colorado. When Colorado became an official territory, a new Supreme Court was established. This court held its initial session in Denver on July 10, 1861. The court convened in a 7-by-9-foot room in the 12-by-25-foot Commonwealth Building on the corner of Larimer and 13th Street.<sup>26</sup>

The court continued with the same structure when Colorado became a state. It moved into a grand courthouse in the state capitol's north wing in the early 1890s, and heard arguments there until 1977, when a new courthouse was built a block away at 2 E. 14th Avenue. That courthouse served the Supreme Court and the Court of Appeals until 2010, when it was razed to make way for the Ralph L. Carr Colorado Judicial Center, the court's current location.

# HISTORY OF THE COLORADO COURTS



## Reading: History of the Courts

The Supreme Court grew to seven justices in 1905 to help address its heavy caseload. That number remains the same today. The Supreme Court is the highest court in Colorado. It is often referred to as the court of last resort. The justices sit en banc, or in a full panel, for every case. Requests to review decisions of the Colorado Court of Appeals constitute a majority of the Supreme Court's filings. The Supreme Court also has direct appellate jurisdiction over cases in which a statute has been held to be unconstitutional, cases involving decisions of the Public Utilities Commission, writs of habeas corpus, cases involving adjudication of water rights, summary proceedings initiated under the Election Code, and prosecutorial appeals concerning search and seizure questions in pending criminal proceedings. All of these appeals are filed directly with the Supreme Court, and, in these cases bypass the Court of Appeals. The Supreme Court also has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions.<sup>27</sup>

### Colorado Court of Appeals

Colorado's Court of Appeals has a fragmented, yet fascinating, history.

- The first Court of Appeals was established in 1891 by the Colorado General Assembly for an indeterminate term to help the Supreme Court with its heavy caseload. This court consisted of three judges and lasted until 1904, when it was no longer believed to be necessary.<sup>28</sup>
- In 1913, a second Court of Appeals was created, this time with five judges, but with a pre-established term of only four years. Its mandate expired in 1917.<sup>29</sup>
- In 1970, the third and present Court of Appeals was established, with six judges at its inception. In 1974, the number of judges increased to 10; on January 1, 1988, that number increased to 13. Effective July 1, 1988, three additional positions were created by the General Assembly, bringing the number of judges to 16. The most recent court expansion became effective on July 1, 2008, bringing the number of judges to 22.<sup>30</sup>

The court's location during its first two terms is unclear, but due to its close relationship with the Supreme Court, it may have been held in the same location. The third Court of Appeals began hearing cases in 1970 at the Supreme Court courtroom in the Capitol. When the court expanded to 10 judges in 1974, it moved to a new courtroom on the sixth floor of the Farmer's Union Building on 16th and Sherman.<sup>31</sup> In 1977 it joined the Supreme Court in the former Colorado Judicial Department Building at 14th and Broadway, and it now has two courtrooms in the Ralph L. Carr Colorado Judicial Center.

The Court of Appeals has initial jurisdiction, with exceptions, over appeals from the Colorado District Courts, Denver Probate Court, and Denver Juvenile Court. In addition, the Court of Appeals has specific appellate jurisdiction over decisions originating from a number of state administrative boards and agencies, including the Industrial Claim Appeals Office. Reviews of the Court of Appeals' decisions are directed to the Colorado Supreme Court.<sup>32</sup>

### Judicial Districts

When Colorado became a state on August 1, 1876, it was divided into four large judicial districts, each with a district court to hear major cases and crimes and a county court for lesser issues.<sup>33</sup> Geographic barriers and widely spread populations were significant challenges for the new judicial system. The need for local courts became quickly evident, and "justice of the peace courts were organized in each community to provide local law enforcement and to settle minor disputes." As the state grew, so too did the number of "j.p. courts".<sup>34</sup> "There was little or no coordination between these local courts.

# HISTORY OF THE COLORADO COURTS



## Reading: History of the Courts

The elected justices of the peace were often local residents who had minimal or sometimes no legal training.”<sup>35</sup> Additional judicial districts were added over time as the state’s population grew. By 1962, the inadequacies of the j.p. courts had grown to a level that prompted the state legislature to refer “to the voters a constitutional amendment that provided for the first major reorganization of the court system since 1876.”<sup>36</sup> The adopted amendment abolished the justices of the peace and gave the Supreme Court the power to create uniform standards and procedures for the various courts. “This court plan went into effect in 1965 and provided an integrated statewide rather than localized focus for the state judicial system.”<sup>37</sup>

There are 23 judicial districts in the state today. Each district is a distinct geographic area that includes one or more of the state’s 64 counties. Each judicial district has district and county courts to serve the judicial needs of its population. District Courts hear civil cases in any amount, as well as domestic relations, criminal, juvenile, probate, and mental health cases. District court decisions may be appealed to the Colorado Court of Appeals (in some cases directly to the Colorado Supreme Court). County Courts handle civil cases under \$25,000, misdemeanors, traffic infractions, felony complaints (which may be sent to district court), protection orders, and small claims. County court decisions may be appealed to the district court.<sup>38</sup>

### **Tribal Courts**

Modern tribal courts were established in the United States in 1934 with passage of the Indian Reorganization Act. Tribes were encouraged to enact their own laws and establish their own governments, constitutions, and justice systems. Many tribes, impoverished from years of Indian policy that had decimated their communities and culture, couldn’t afford to adopt their own tribal codes or develop courts and chose to operate under provisions of the Code of Federal Regulations (CFR). Additional federal laws were passed to establish and strengthen tribal courts and police departments.

Today, there are 400 tribal justice systems in the United States; they operate separately from the federal and state courts and are governed by tribal law. There are two tribal courts in Colorado: the Southern Ute Indian Tribal Court in Ignacio and the Ute Mountain Ute Agency (Southwest Region) in Towaoc. These courts exercise and protect the sovereignty and jurisdiction of the tribes, providing a forum for the enforcement of tribal law and the administration of justice, while honoring tribal culture. Based in tribal traditions, they focus on restorative justice and communal resolution.



# HISTORY OF THE COLORADO COURTS



## Reading: Footnotes

<sup>1</sup>Carl Ubbelohde et al., *A Colorado History* 20 (10<sup>th</sup> ed. 2015).

<sup>2</sup>Jicarilla Apache Nation, <https://tentribespartnership.org/tribes/jicarilla-apache-nation/> (last visited May 29, 2025).

<sup>3</sup>Tisististas/Hinono'ei Cheyenne and Arapaho Tribes, Language and Culture, <https://www.cheyenneandarapaho-nsn.gov/> (last visited May 29, 2025).

<sup>4</sup>Indian Pueblo Cultural Center, <https://tinyurl.com/yk3adeh4> (last visited March 28, 2025).

<sup>5</sup>Eastern Shoshone Tribe, History, <https://easternshoshone.org/about/> (last visited March 28, 2025).

<sup>6</sup>Southern Ute Indian Tribe, History, <https://www.southernute-nsn.gov/history/> (last visited March 28, 2025); Ute Mountain Ute Tribe, <https://www.utemountainutetribes.com/> (last visited March 28, 2025); History Colorado, Ute Tribal Paths, <https://exhibits.historycolorado.org/ute-tribal-paths> (last visited March 28, 2025).

<sup>7</sup>Carl Abbott et al., *Colorado: A History of the Centennial State* 14 (5<sup>th</sup> ed. 2013).

<sup>8</sup>*Id.* at 23-24. See generally Virginia Sánchez, *Pleas and Petitions: Hispano Culture and Legislative Conflict in Territorial Colorado*, (2020).

<sup>9</sup>Thomas J. Noel and William J. Hansen, *Boom and Bust Colorado* 8-9 (2021).

<sup>10</sup>Carol Archer, "El Amparo de la Ley" Hispanas' Use of Spanish Mexican and Anglo American Law in Northern New Mexico and Southern Colorado, 1848-1912 (Doctoral thesis, University of Calgary, Calgary, Canada) (<http://hdl.handle.net/11023/1986>).

<sup>11</sup>Robert G. Athearn, *The Coloradans* 7 (1976).

<sup>12</sup>Abbott, *supra* note 7, at 52.

<sup>13</sup>*Id.* at 57; Fred Y. Holland, *Early Colorado Courts and Judges*, 9 *Dicta* 22, 22 (1931).

<sup>14</sup>Barbara Bintliff, *A Jurisdictional History of the Colorado Courts*, 65 *U. Colo. L. Rev.* 577, 585 (1994).

<sup>15</sup>Ubbelohde, *supra* note 1, at 108-10; Denver Public Library Special Collections and Archives, Brian K. Trembath, *Jefferson Territory: The Renegade State that Almost Replaced Colorado* (June 24, 2020), <https://history.denverlibrary.org/news/literary-research/jefferson-territory-renegade-state-almost-replaced-colorado#:~:text=Back%20then%2C%20much%20of%20what,been%20located%20on%20another%20planet>, (last visited May 30, 2025).

<sup>16</sup>Bintliff, *supra* note 14, at 582-83.

<sup>17</sup>*Id.* at 585.

<sup>18</sup>*Id.* at 580-81.

<sup>19</sup>Abbott, *supra* note 7, at 54.

<sup>20</sup>Bintliff, *supra* note 14, at 582.

<sup>21</sup>*Id.*

<sup>22</sup>Holland, *supra* note 13, at 25.

<sup>23</sup>David L. Erickson, *Early Justice and the Formation of the Colorado Bar* 24 (2008).

<sup>24</sup>*Gardner v. Dunn*, 1 *Colo.* 1 (1864).

<sup>25</sup>Erickson, *supra* note 23, at 53-56.

<sup>26</sup>The United States Court of Appeals for the 10<sup>th</sup> Circuit, *Building History*, <https://www.ca10.uscourts.gov/building-history>, (last visited June 1, 2025).

<sup>27</sup>Colorado Judicial Branch, Supreme Court, <https://www.coloradojudicial.gov/supreme-court> (last visited June 1, 2025).

<sup>28</sup>Jeanie Towle Mellinger and Molly Wingate, *The Colorado Court of Appeals: History of Colorado's Intermediate Appellate Court* 9-20 (2008).

<sup>29</sup>*Id.* at 21.

<sup>30</sup>*Id.* at 33-76.

<sup>31</sup>*Id.* at 57.

<sup>32</sup>Colorado Judicial Branch, Court of Appeals, <https://www.coloradojudicial.gov/court-appeals> (last visited June 1, 2025).

<sup>33</sup>Thomas e. Cronin and Robert D. Loewy, *Colorado Politics and Policy: Governing a Purple State*, 238 (2012).

<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>Colorado Judicial Branch, *Trial Courts by County*, <https://www.coloradojudicial.gov/trial-courts-county> (last visited June 2, 2025).

# 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.*

# THE IMPACT OF JUDICIAL REVIEW

## 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](https://coloradojudicial.gov/courts-community)) and our lessons ([coloradojudicial.gov/community-and-educational-resources/lesson-plans](https://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. 3 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).

# THE IMPACT OF JUDICIAL REVIEW

## 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.



# THE IMPACT OF JUDICIAL REVIEW

## 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.

# THE IMPACT OF JUDICIAL REVIEW

## 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.

# THE IMPACT OF JUDICIAL REVIEW

## 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](https://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](https://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/](https://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](https://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](https://supreme.findlaw.com/supreme-court-insights/gideon-v--wainwright-case-summary--what-you-need-to-know.html) or [landmarkcases.org/cases/gideon-v-wainwright/](https://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](https://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/>

# THE IMPACT OF JUDICIAL REVIEW

## 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](https://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/](https://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](https://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](https://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](https://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?



# THE IMPACT OF JUDICIAL REVIEW

## 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.

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. Today, however, there are 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% of the cases they are asked to hear, most cases 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. 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

# THE IMPACT OF JUDICIAL REVIEW

## Extension Activity: Reading



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.

### 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.

# THE IMPACT OF JUDICIAL REVIEW

## 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?

# BECOMING A COLORADO STATE JUDGE

## Lesson Plan Summary



### OBJECTIVE

Students will be able to describe how judges become judges, what criteria qualifies them for the job and what attributes they must have to retain their positions.

### INQUIRY QUESTIONS

- What qualities do you think are necessary to be a judge?
- Do you think the merit selection and retention system in Colorado is effective? Why or why not?

### COLORADO ACADEMIC STANDARDS

**SS.HS.4.2.EOb.** Identify the structure, function, and roles of current members of local, state, and national governments. Including but not limited to understanding the three branches of government at each level of government.

**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

What Makes a Good Judge? Activity, Lecture/reading, Writing, Extension Activities

### MATERIALS

“Judge Qualities” Worksheets, “Judge Evaluation” Handouts, Reading

### GRADE LEVEL

High School

### TIME

One to two class periods

### KEY TERMS

- **Merit Selection:** Colorado's judicial system that aims to ensure that judges are qualified for their positions and are accountable to the public. Political affiliation is not a consideration in this selection process.
- **Judicial Nominating Commission:** Groups of people who review applicants for judge positions. The commissions are nonpartisan and made up of a mix of attorneys and other citizens who are not attorneys.
- **Judicial Disciplinary Commission:** This commission is responsible for investigating allegations and prosecuting charges against judges. The commission members include judges, lawyers, and non-lawyers selected by the Governor and the Supreme Court.
- **Judicial Independence:** Judges are not subject to pressure and influence and are free to make impartial decisions based on fact and law. An independent judge can assure that cases will be decided according to the law and the facts and not a shifting political climate.

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



# BECOMING A COLORADO STATE JUDGE

## Lesson Background and Class Preparation



### LESSON BACKGROUND

The goal of this lesson is to help students understand the qualities that it takes to become a judge as well as Colorado's merit selection and retention system for judges. Colorado voters adopted a constitutional amendment in 1966 aimed at taking judges out of politics. This amendment created a judicial merit selection system by which judges apply to nonpartisan nominating commissions that conduct comprehensive reviews of the judicial applicants' backgrounds and qualifications. The commission provides a slate of two or three finalists to the Colorado governor, who appoints a candidate after further reviewing the candidates' qualifications.

After being appointed, judges are evaluated by nonpartisan judicial performance evaluation commissions, which determine and then report to the public whether the judges meet or do not meet certain performance standards. Voters thereafter decide, in a nonpartisan election, whether the judge should continue to serve. In addition to the judicial evaluation process, Colorado has an independent judicial disciplinary commission that may take action to deal with a judge's unethical or improper behavior.

This is a lesson from our Courts in the Community curriculum. Find out more about this program ([coloradojudicial.gov/courts-community](https://coloradojudicial.gov/courts-community)) and our lessons ([coloradojudicial.gov/community-and-educational-resources/lesson-plans](https://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. 3 to determine the best way for your students to engage with the content.
- Determine which class activities to do with your students and how you want to teach them.
- Make copies of "What Makes a Good Judge?" and "Qualities of a Good Judge" worksheets for first activity
- Make copies of Judicial Evaluations so that each student gets one evaluation. We have provided evaluations without names for two judges who did not meet standards and two who did. You are welcome to use other judges' evaluations from the Office of Judicial Performance Evaluation website: [judicialperformance.colorado.gov/judicial-evaluations](https://judicialperformance.colorado.gov/judicial-evaluations)
- Determine whether to lecture about the content or have students read through the content in small groups.
- Decide whether to do any extension activities to further understanding of the content.

# BECOMING A COLORADO STATE JUDGE

## Class Lecture



### CLASS LECTURE

#### How a judge becomes a judge

- Qualifications
  - Supreme Court justice or Court of Appeals judge
    - Must be a qualified elector in the state of Colorado
    - Must have been licensed to practice law in Colorado for at least five years
    - Must be under the age of 72 at the time their name is submitted to the governor
  - District Court or County Court judge
    - Must be a qualified elector in the judicial district or county in which the judge will serve at the time the judge is sworn into office
    - Must have been licensed to practice law in Colorado for at least five years, except in counties with populations of under 35,000, where candidates for county court positions do not have to be licensed to practice law but must have graduated from high school or have attained the equivalent of a high school education and meet residency and qualified elector status
    - Must be under the age of 72 when their name is submitted to the governor
- Nomination and selection process
  - Colorado Supreme Court or Court of Appeals vacancy
    - A 17-member nominating commission reviews applications and conducts interviews. This commission is composed of:
      - One lawyer and one non-lawyer from each congressional district
      - One at-large appointee who is not a lawyer
      - No political party can have a majority of more than one
      - The commission must recommend two or three nominees to the governor within 30 days of the vacancy (three nominees for appellate vacancies)
      - The governor must select one of the nominees within 15 days
      - If the governor does not do so in the allotted time, then the Chief Justice makes the selection from the list
  - District Court or County Court vacancy
    - A seven-member nominating commission reviews applications and conducts interviews. This commission is composed of:
      - Three lawyers and four non-lawyers
      - No more than four members can be of one political party
      - The commission must recommend two or three nominees to the governor within 30 days of the vacancy
      - The governor must select one of the nominees within 15 days
      - If the governor does not do so in the allotted time, then the chief justice makes the selection from the list

# BECOMING A COLORADO STATE JUDGE

## Class Lecture (con't)



### CLASS LECTURE

#### How a judge stays a judge

- Terms
  - Once chosen, all judges in the state court system serve a two-year provisional term. After that term, they come up for their first retention election
  - If a judge or justice is retained after term, they can serve subsequent terms of the following lengths before coming up for retention again:
    - County Court judges – 4 years; District Court judges – 6 years; Court of Appeals judges – 8 years; Supreme Court justices – 10 years
- Performance evaluation
  - Judicial performance evaluation commissions
    - There are 10-member judicial performance evaluation commissions in each of the 23 judicial districts. The governor appoints two non-lawyers, the Chief Justice appoints two lawyers, the President of the Senate and Speaker of the House each appoint one lawyer and one non-lawyer, and the Minority Leaders of the Senate and House each appoint one non-lawyer to each commission
    - There is an 11-member statewide judicial performance evaluation commission for judges and justices serving on the Colorado Court of Appeals and Supreme Court. Its members are appointed in a similar manner except that the governor also appoints one lawyer
- The evaluation
  - The process
    - Self-evaluation by the judge
    - Surveys of other judges, lawyers, parties, jurors, court staff, and law enforcement
    - Interview judge's supervising judge (e.g., judge's chief judge)
    - Sometimes interview the local district attorney and public defender
    - Observe the judge in court
    - Interview the judge
    - After considering all of this information, the commission authors a report indicating whether a justice or judge meets performance standards or does not meet performance standards
  - Criteria
    - Integrity and judicial temperament
    - Knowledge and understanding of substantive, procedural, and evidentiary law
    - Communication skills
    - Preparation, attentiveness, and control over judicial proceedings
    - Docket management and prompt case disposition
    - Administrative skills
    - Effectiveness in working with participants in the judicial process
    - Service to the legal profession and the public

# BECOMING A COLORADO STATE JUDGE

## Lesson Instructions



### INTRODUCTION (2 minutes)

Begin class by explaining: *“Today we are going to talk about what qualities are needed to become a judge as well as how judges are selected and retained in Colorado. We are going to start with an activity where you will review possible qualities for a judge and determine which you think are essential, desirable, undesirable, or unnecessary qualities. Then write your own definition of a good judge. You don’t have to use all of the qualities listed and can think of your own.” (Optional: Please write some questions that you would ask to determine whether the candidate has these qualities.)*

### WARMUP

#### Judge Qualities Activity (15 minutes)

Divide students into groups. Hand out the “What Makes a Good Judge?” and “Qualities of a Good Judge” worksheets.

Have students complete worksheet, write a definition and prepare optional questions for candidates.

#### Discussion (5 minutes)

Ask a few students to share their definitions or write them on the board to open discussion about what makes a qualified or unqualified judge.

### DIGGING IN

#### Lecture or Reading (15 minutes)

Share the lecture provided about becoming a state judge. Or divide students into small groups and assign sections of the reading. Have students take notes while you are lecturing or about the reading using a graphic organizer.

#### Judge Evaluation Activity (15 minutes)

Divide students into small groups. Hand each group a judicial evaluation. Have students read the evaluation out loud or do a read around.

Ask students to discuss in their groups the following questions:

- Based on the qualities you identified, do you think this judge should have been retained?
- After reading the evaluation, has your list of qualifications for a judge changed?

### EXIT TICKET (2 minutes)

Have students update their definition of what qualities are needed for judges.

### EXTENSION ACTIVITIES

- Have students compare and contrast the federal judicial selection system and Colorado’s merit selection system, identifying positive and negative attributes of each.
- Ask students to compare and contrast Colorado’s merit selection system with the systems in states that elect judges in partisan political elections, identifying positive and negative attributes of each.
- Have students write responses to the following questions, referencing the reading material provided with this lesson:
  - What is your opinion of the judicial nominating and retention process?
  - Under what circumstances would you vote to have a judge removed from office?



# BECOMING A COLORADO STATE JUDGE

## Worksheet: What Makes a Good Judge?



### WHAT MAKES A GOOD JUDGE?

*Adapted from "What makes a good Supreme Court Justice" by Debra Hallock Phillips*

Assume that you are appointed to a committee to determine what qualities we should consider in selecting judges in Colorado. Review the qualities listed below and categorize them on the chart provided under the most appropriate heading. You don't need to use all the qualities and you can also write down others not listed here.

Following the activity, develop a definition for a "good" judge.

Female  
Old and wise  
Mediator  
Fair  
Radical  
Determined  
Youthful  
Pro-environment  
Friendly  
Member of a gender-specific group  
Good campaigner  
Aggressive  
Self-reliant  
Honest  
Good looking  
Clear thinker  
Concise writer  
Rural background  
Perceptive  
Male  
Single parent  
Good health  
Conservative  
Honest

Humane  
Traditional  
Well-educated  
Democrat  
Liberal  
Controversial  
Strong communicator  
Family-oriented  
Supports welfare  
Lobbyist  
Trustworthy  
Risk-taker  
Feminist  
Religious  
Loyal  
Impartial  
Service to the public  
Good fundraiser  
Trial attorney  
U.S. citizen  
Independent thinker  
Strict constructionist  
Christian  
Open minded  
Strong manager

Prosecution oriented  
Defense oriented  
Opposes school prayer  
Ethnic minority  
Opposes higher taxes  
Civil rights activist  
Held public office  
Skeptical  
Firm and in control  
Business background  
Pro death penalty  
Distinguished lawyer  
Follows party line  
Middle of the road  
Tough on crime  
DWI conviction  
Eminent legal scholar  
Brilliant mind  
Judicial experience  
Bilingual  
Legal experience  
Patient  
Unbiased

# BECOMING A COLORADO STATE JUDGE

## Worksheet: Qualities of a Good Judge



### QUALITIES OF A GOOD JUDGE

List the qualities from “What Makes a Good Judge” sheet in the boxes below. Feel free to add other qualities not listed above.

| Essential | Desirable | Undesirable | Unnecessary |
|-----------|-----------|-------------|-------------|
|           |           |             |             |

Your definition of a good judge:

(If assigned) Possible questions to determine whether the candidate has these qualities:

# BECOMING A COLORADO STATE JUDGE

## Handout: Judicial Evaluation #1



### JUDGE #1

A Judicial District Commission on Judicial Performance finds [this judge] DOES NOT MEET PERFORMANCE STANDARDS. Five members of the Commission voted that [this judge] does not meet performance standards, while one voted that he does meet performance standards (three members did not participate and there is one vacancy on the Commission).

[This judge] has been serving as a County Court Judge for three years. This is a part-time position. [This judge] is a lay judge with no prior formal legal training or experience. The Commission conducted an interim evaluation in the spring of 2019, which identified significant deficiencies in the areas of application and knowledge of the law, communications, diligence, and case management. As a result of these deficiencies, the Commission recommended [this judge] complete a Performance Improvement Plan (PIP) focused on mastering legal procedure. As part of the PIP, [this judge] observed other judges in the courtroom and had a senior judge observe and critique some of his own courtroom proceedings. He has sought the continued guidance and mentorship of that senior judge from time to time. He has also developed written tools to aid him on the bench and availed himself of bench book materials available to judges. Overall, the Commission found [this judge] did satisfactorily follow the PIP, although it notes that he did not follow the Commission's recommendation that he begin regularly utilizing written orders, rather than making only oral rulings.

While admittedly the types of cases that usually come before [this judge] are of a nature that oral rulings are often sufficient, the Commission felt that developing and using written orders would assist [this judge] in honing his skills. Nonetheless, it was evident that [this judge] took the Committee's feedback to heart, has made concerted efforts to improve his performance since the interim evaluation, and remains committed to continued learning and professional development. Indeed, [this judge]'s receptiveness to constructive feedback and willing attitude are notable strengths. However, the Commission continues to have concerns. Of the judicial performance criteria that the Commission is tasked with evaluating, the areas of greatest concern continue to be legal knowledge and communication skills, while the areas of greatest strength are integrity and judicial temperament. By all accounts and based upon the Commission's interactions and observations, [this judge] is kind, fair, and even tempered. The Commission does not believe any available additional training is likely to remedy the identified deficiencies in a timely manner.

The Commission conducted two personal interviews with [this judge]. It also reviewed transcripts and recordings of court proceedings; written materials, including a self-evaluation and orders issued; an appellate order reversing one of [this judge]'s rulings in part; and interim survey results. The Commission was unable to consider subsequent survey results due to an insufficient number of responses. Prior to his appointment, [this judge] was a semi-retired financial advisor and consultant.

**Judge's response:** A County Court's Jurisdiction is limited to lesser crimes and misdemeanors. The knowledge and experience required of a county judge is less than that of a judge in a higher court, and the satisfactory performance standards for all trial judges measured by the expected legal background and experience in the court room. Over the last three years, as a lay judge, extensive legal knowledge and experience has been acquired to adequately perform in the position. I believe my overall performance is satisfactory. Justice continues to be served and the public trust and confidence has been maintained. I am committed and confident in my abilities.

# BECOMING A COLORADO STATE JUDGE

## Handout: Judicial Evaluation #2



### JUDGE #2

A Judicial District Commission on Judicial Performance finds that [this judge] DOES NOT MEET PERFORMANCE STANDARDS, by a vote of 4-3 (with three members absent and not voting). The judicial performance standards are: integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public.

[This judge] exhibits some strengths as a judge, particularly with regards to her integrity. She is compassionate, thoughtful, and runs an impartial courtroom. However, the majority of the commission found her legal knowledge and administrative performance in need of further development. Her interpretation and application of the law at times is inconsistent. Her demonstrated discomfort from the bench with certain defendant situations has called into question her judicial temperament.

Since her initial evaluation a year ago, [this judge] has taken steps to improve her docket management but still struggles with administrative efficiency. Judge Roff has taken proactive measures to improve in those areas, and several Commissioners believe that with an adequate performance-improvement plan she might advance her legal knowledge and administrative performance enough to meet performance standards.

But as of the date of her evaluation, the majority of Commissioners believe that her need for improvement remains. In evaluating [this judge], the Commission afforded her two interviews, read a selection of her legal opinions, observed her in court, reviewed survey results from both attorneys and non-attorneys who have appeared before her, interviewed representatives from the district attorney's and public defender's office, reviewed her self-evaluation, and met with the Chief Judge. Additional written input was received from the court clerk's office, the Chief Judge, and the district attorney.

[This judge] was appointed by Governor Polis and took the bench October 1, 2023. She was a judge advocate and air combat command in the U.S. Air Force. She earned her B.A. from the University of New Mexico and her J.D. from the University of Denver, Sturm College of Law.

**Judge's Response:** This job is a privilege to hold, and I acknowledge the Commission's comments, favorable and unfavorable. Case closure rates have improved by 59% with only 13% of 630 open cases being greater than six months old—the benchmark is 20%. My appeal rate is less than ½% with no cases overturned due to knowledge or application of the law. I have supportive judicial mentors who assist with the steep learning curve of the job. I encourage everyone to observe my courtroom and see for themselves. I am dedicated to serving my community of 17 years with integrity, humility, and compassion.

# BECOMING A COLORADO STATE JUDGE

## Handout: Judicial Evaluation #3



### JUDGE #3

The State Commission on Judicial Performance finds that [this judge] MEETS PERFORMANCE STANDARDS by a vote of 10–0 with one recusal. The Colorado statutory judicial performance standards are integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public.

[This judge] has been a member of the Colorado Supreme Court since 2021. The Commission finds that [this judge] received high scores in all areas in her 2024 Evaluation including fairness and impartiality, issuing timely written opinions solidly based upon the facts and law, and being a leader in effective judicial administration and community service. These scores are consistent with the high scores she received in her 2023 Interim Evaluation. Comments from attorneys and judges include that she is thoughtful, practical, kind, and respectful in her approach to the parties, counsel, and other justices. Her written opinions are clear and well-organized. The Commission was especially impressed with [this judge's] leadership in addressing the issues raised by the lawyers' and judges' use of artificial intelligence and her positive efforts to help achieve team collaboration among other members of the judiciary, law clerks, and staff.

To conduct the evaluation, the Commission interviewed [this judge], reviewed her self-evaluation, observed Oral Arguments, read a selection of her legal opinions, and considered survey responses from attorneys and judges. One survey question asked whether [this judge] met judicial performance standards. Of the attorneys who responded to that question, 91% answered yes and 9% answered no. Of the judges who responded to that question, 100% answered yes. A total of 54 attorneys and judges responded to the survey.

Prior to her appointment to the Colorado Supreme Court, [this judge] served as a District Court Judge in the Twentieth Judicial District from 2006 to 2013 and served as the Chief Judge of the Twentieth Judicial District from 2013 to 2017. Following her District Court experience, [this judge] conducted complex mediations, arbitrations, and judge pro tem appointments while at the Judicial Arbiter Group, Inc. Prior to her judicial experience, she led the Antitrust, Consumer Protection and Tobacco Litigation Units of the Colorado Attorney General's Office and was in private practice at Holmes & Starr, P.C. in Denver. She also clerked for Justice Howard M. Kirshbaum of the Colorado Supreme Court after graduating from the University of Denver Sturm College of Law in 1987.



# BECOMING A COLORADO STATE JUDGE

## Handout: Judicial Evaluation #4



### JUDGE #4

The State Commission on Judicial Performance finds that [this judge] MEETS PERFORMANCE STANDARDS, by a vote of 10–0 with one recusal. Colorado’s statutory judicial performance standards are integrity, legal knowledge, communication skills, judicial temperament, and service to the legal profession and the public.

[This judge] has been on the Colorado Court of Appeals since July 2021, and this is his first time standing for retention as a Court of Appeals Judge. The Commission finds that his opinions are timely, clear, and well-reasoned. At Oral Arguments, he is well-prepared, succinct in his questions, and respectful. The Commission commends [this judge] for his collegiality and collaboration among his colleagues, for his work on a special division to help reduce the court’s COVID backlog, and also for his work as the Co-Chair of the Appellate Courts Technology Committee. In sum, the Commission find [this judge] is a valuable addition to the Court of Appeals.

To conduct our evaluation, the Commission interviewed [this judge], reviewed his self-evaluation, observed Oral Arguments, read a selection of his legal opinions, and considered survey responses from attorneys and judges. Survey respondents agreed [this judge] meets judicial performance standards. 88% of attorneys and 100% of judges who responded to that question answered “yes.” He received an overall score of 3.7 on a 4.0 scale. [This judge] received positive comments from lawyers for his preparation and temperament at oral argument, and comments from fellow judges for his collegiality and work ethic. A total of 18 attorneys and 24 judges responded to the survey.

[This judge] joined the Colorado Court of Appeals in 2021. He earned his undergraduate degree from Colorado College and his law degree from the University of Denver. He started his career in private practice handling probate and estate planning matters. He moved to the Colorado Department of Law where he served as a Senior Assistant Attorney General in the Health Care and Public Officials Units. In those roles, he handled all aspects of advice, litigation, and appeals, focusing on healthcare, public health, and complex constitutional and legal questions faced by elected officials and government agencies. He is an active member of the Minoru Yasui Inn of Court and is a trustee for a national foundation focused on innovations in aging.

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# BECOMING A COLORADO STATE JUDGE

## Reading: The Merit Selection System



*by Supreme Court Justice Richard L. Gabriel*

The way federal judges are selected is reasonably well known: the president nominates a candidate, the Senate Judiciary Committee holds hearings, and the full Senate confirms the appointment. That process has received ample attention, particularly when the president nominates someone to serve on the United States Supreme Court.

Less well known is how states select their judges. Most states elect judges, many through partisan elections that include candidate fundraising and media advertising.

In 1966, Colorado voters adopted a constitutional amendment aimed at taking judges out of politics. This amendment created a judicial merit selection system by which judges apply to nonpartisan nominating commissions that conduct comprehensive reviews of the judicial applicants' backgrounds and qualifications. The commission provides a slate of two or three finalists to the Colorado governor, who appoints a candidate after further reviewing the candidates' qualifications.

After being appointed, judges are evaluated periodically by nonpartisan judicial performance evaluation commissions, which determine and then report to the public whether the judges meet or do not meet certain identified performance standards. Voters thereafter decide, in a nonpartisan election, whether the judge should continue to serve.

In addition to the judicial evaluation process, Colorado has an independent judicial disciplinary commission that may take action to deal with a judge's unethical or improper behavior.

### **Colorado's Merit Selection System for Selecting Judges**

Colorado is divided into 23 judicial districts. Each district has a judicial nominating commission comprised of seven members (four non-lawyers and three lawyers). The non-lawyers are appointed by the governor, and the lawyers are appointed jointly by the governor, the attorney general, and the chief justice. By law, not more than four members of the nominating commission can be from the same political party. The district nominating commissions are involved in selecting Colorado's district court and county court judges (i.e., Colorado's trial court judges). The Denver County Court has its own nominating commission, but the process parallels the state district nominating commissions.

In addition, Colorado has a statewide judicial nominating commission. This commission is comprised of 17 members (nine non-lawyers and eight lawyers). Again, the governor appoints the non-lawyers, and the governor, the attorney general, and the chief justice jointly appoint the lawyers. The statewide nominating commission, which includes one non-lawyer and one lawyer from each congressional district and one non-lawyer at large, cannot have more than nine members from the same political party. The statewide nominating commission is involved in selecting Colorado's Supreme Court justices and Court of Appeals judges (i.e., Colorado's appellate court judges).

The composition of the judicial nominating commissions reflects an intention to ensure the commissions remain nonpartisan. Although the law prohibits any political party from having a majority of more than one on any nominating commission, in practice, commissions have historically included relatively equal numbers of Republicans, Democrats, and politically unaffiliated or

# BECOMING A COLORADO STATE JUDGE

## Reading: The Merit Selection System (con't)



independent members. The commission's composition also reflects a desire to ensure that non-lawyers have an important voice in the judicial selection process.

### Filling a Judicial Vacancy

When a judicial vacancy arises, the Colorado Judicial Department announces the vacancy, and qualified candidates may apply to the relevant judicial nominating commission. In general, candidates are required to be lawyers and must have practiced law for at least five years. In Colorado counties with populations of under 35,000, however, candidates for county court positions do not have to be licensed to practice law but must have graduated from high school or have attained the equivalent of a high school education. Candidates must be registered electors in the district or county in which they will serve on the date they are sworn in as judges.

The applications for judicial positions are detailed, and they are designed to allow the nominating commissioners to consider whether the candidate has the attributes necessary to ensure success as a judge (e.g., knowledge of the law, relevant legal experience, personal integrity and professionalism, and an appropriate judicial temperament). Thus, the application asks for detailed information regarding, among other things, candidates' prior residences, educational backgrounds, and work histories; a listing of five cases in which the candidate was involved (listing all of the other attorneys and their contact information, to allow commissioners to contact those attorneys for information about the candidate); a recitation of any lawsuits in which the candidate was involved as a party or a witness; an indication as to whether the candidate has ever been charged with a crime, been the subject of an ethics complaint, or failed to file their taxes on time; a narrative indicating why the candidate would like to be a judge; letters of reference; and, for appellate judge candidates, a writing sample. Notably, the application does not ask the candidate's political affiliation.

Once the nominating commission receives the applications, the commissioners meet to determine which candidates the commission would like to interview. The commission then conducts the interviews and recommends two or three individuals to the governor for consideration (three nominees must be submitted for an appellate judgeship). The commission has 30 days from the date the vacancy is announced to send the names to the governor. So, this process is expeditious.

Once the governor receives the names of the candidates, the governor solicits and receives information about the candidates from the community and from bar association groups and typically interviews the candidates (the governor's staff members usually attend these interviews as well). The governor then has 15 days to appoint a candidate from the nominating commission's list. If the governor does not act in that time period, then the chief justice appoints one of the individuals recommended by the commission.

### Colorado's Judicial Performance Evaluation Process

Unlike federal judges, Colorado state court judges are not appointed for life. Instead, every new Colorado state court judge, including every new Supreme Court justice, serves a two-year provisional term. The judge is subject to a retention vote during the next general election occurring in an even-numbered year. If the justice or judge is successfully retained by the voters in an election, then the justice or judge must periodically stand for retention. By law, county court judges serve for four years

# BECOMING A COLORADO STATE JUDGE

## Reading: The Merit Selection System (con't)



before again appearing on the general election ballot; district court judges stand for retention every six years; a Court of Appeals judge must face the voters again in eight years; and a Supreme Court justice will serve for a 10-year period before again standing for retention. All Colorado state court justices and judges must retire by age 72.

As noted above, judicial retention elections in Colorado are nonpartisan. Justices and judges who stand for retention are generally not allowed to campaign, and no one runs against the justice or judge on the ballot. Rather, the ballot simply asks voters whether the justice or judge should be retained in office, with the voter voting “yes” or “no.”

So, how do voters, and especially non-lawyers, obtain sufficient information to allow them to vote on judges in an educated way? Since 1988, nonpartisan judicial performance evaluation commissions have been charged with evaluating Colorado state judges and sharing the evaluation results with the public.

Each of Colorado's 23 judicial districts has a judicial performance evaluation commission composed of 10 members (six non-lawyers and four lawyers) that is tasked with evaluating Colorado's District Court and County Court judges. In addition, a statewide judicial performance evaluation commission composed of 11 people (six non-lawyers and five lawyers) is tasked with evaluating Colorado's Court of Appeals judges and Supreme Court justices. In the district commissions, the governor appoints two non-lawyers, the chief justice appoints two lawyers, the Senate president and the Colorado House of Representatives speaker appoint one lawyer and one non-lawyer, and the minority leaders of the Senate and the House each appoint one non-lawyer. The appointments for the statewide commission are the same except that the governor also appoints one lawyer. These commissions are separate and independent from the judicial nominating commissions discussed above.

The judicial performance commissions use the following criteria, among others, when evaluating a judge's performance:

- integrity and judicial temperament;
- knowledge and understanding of substantive, procedural, and evidentiary law;
- communication skills;
- preparation, attentiveness, and control over judicial proceedings;
- docket management and prompt case disposition;
- administrative skills;
- punctuality;
- effectiveness in working with participants in the judicial process; and
- service to the legal profession and the public.

To determine whether a judge has these attributes, the commissions obtain a detailed self-evaluation from the judge; survey other judges, lawyers, parties, jurors, court staff, and law enforcement; interview the judge's supervising judge (e.g., the judge's chief judge); sometimes interview the local district attorney and public defender; observe the judge in court; and interview the judge. After compiling information from these sources, the commissions develop a narrative for each judge, stating whether the judge “meets performance standards” or “does not meet performance

# BECOMING A COLORADO STATE JUDGE

## Reading: The Merit Selection System (con't)



standards” (and indicating the vote of the commission on that subject, e.g., a 10-0 vote, an 8-2 vote, etc.). These narratives also contain biographical information about the judge, a recitation of the commission’s methodology for compiling the evaluation report, and a statement of the reasons supporting the commission’s determination.

Once the narrative is prepared, a draft is shared with the judge, and if the judge has questions or concerns, the judge can ask the commission for corrections or modifications or request another interview. Once the commission finalizes its evaluation, the judge makes a final decision as to whether to stand for retention. If the judge receives an unfavorable recommendation but chooses to stand for retention, then the judge is given the opportunity to draft a brief response to the commission’s evaluation, and the judge’s response will be published with the commission’s report.

Since 1998, the commission’s narratives (and any responses from the judge) have been published in the “Colorado Voter Information Guide,” also known as the “Blue Book,” which is published by the Colorado Legislature and sent to every voter household prior to the general election. In addition, these narratives, the commission’s full survey results, and other valuable information about the judicial performance evaluation process are available on the Colorado Judicial Performance Evaluation Commission’s website: [judicialperformance.colorado.gov/](https://judicialperformance.colorado.gov/). These resources help Colorado voters educate themselves and make informed decisions about judges who are standing for retention.

In addition to informing voters about the abilities and record of those serving on the bench, the evaluation process provides valuable feedback to the judges and can help them to improve their judicial skills.

### **The Colorado Judicial Discipline Process**

Finally, Colorado judges’ performance is overseen by the independent Colorado Commission on Judicial Discipline, which is charged with reviewing allegations of judicial misconduct, including alleged violations of the Colorado Code of Judicial Conduct. Originally created in 1966, this commission is comprised of 10 members: two county court judges and two district court judges who are appointed by the Chief Justice and two lawyers and four citizens who are neither lawyers nor judges who are appointed by the Governor.

For further information on the Colorado Commission on Judicial Discipline, see the Commission’s webpage: <https://ccjd.colorado.gov/>



# HOW COLORADO COURTS WORK

## Lesson Plan Summary



### OBJECTIVE

Students will be able to explain the structure of the Colorado judicial branch, the types of cases that different courts handle to deepen their understanding of state government and how cases are appealed.

### INQUIRY QUESTIONS

- How are the roles of the different courts similar and different?
- How do the different court structures impact democratic decision making?
- What are the benefits and drawbacks of having three tiers of courts in Colorado?

### 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

### ACTIVITIES

Lecture/Reading, Courts in the Community Activity, Courts in the News Activity, Courts in the Movies Activity, Design a Social Media Campaign (extension activity)

### MATERIALS

Courts in the Community, Courts in the News, Courts in the Movies Worksheets

### GRADE LEVEL

High School

### TIME

One to two class periods, depending on activities selected.

### KEY TERMS

- **Trial Courts:** The initial court where a case is presented, evidence is heard, facts of a case are decided and the law is applied to reach a verdict or judgment. These courts may involve a jury or be decided by a judge alone. Decisions made in trial courts can be appealed to a higher court. In Colorado, these are made up of county and district courts.
- **Colorado Court of Appeals:** This is the intermediate appeals court in Colorado that reviews decisions made by trial courts. They focus on whether the lower court correctly applied the law and followed proper procedures, rather than re-trying the case or hearing new evidence. A three-judge panel renders a decision.
- **Colorado Supreme Court:** This is the highest state court in Colorado and is considered the court of last resort. The court picks which requests to hear and decide. There are seven justices on the court.
- **Petition of Certiorari:** A petition for certiorari is a formal request made by a party to a higher court, asking it to review a decision made by a lower court.

*Find more legal terms in the Courts in the Community Teaching Materials*

# HOW COLORADO COURTS WORK

## Lesson Background and Class Preparation



### LESSON BACKGROUND

The goal of this lesson is to help students understand the role of the judicial system and specifically the Colorado Judicial Branch. In the U.S., the courts exist to resolve conflicts when people, companies, or governments cannot settle them privately. Courts look at the facts of a conflict and interpret and apply the law to resolve the disagreement. The judicial system upholds the rule of law in a variety of ways, such as holding trials to determine whether people accused of breaking the law are guilty, interpreting constitutional provisions and statutes, and holding trials in cases involving civil or personal rights. Courts safeguard rights are enshrined in the U.S. and Colorado constitutions, such as a right to due process, trial by jury and equal protection.

There are two main court systems in the United States: federal courts and state courts. More than 95 percent of cases are resolved by state courts. Issues that come up in state courts include, but are not limited to, traffic offenses, divorces, crimes (misdemeanors and felonies), dependency and neglect, wills and estates, and buying and selling property. In general, state courts apply state law, while federal courts apply federal law. In Colorado there are three tiers of courts: trial, Court of Appeals & Supreme Court.

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

### CLASS PREPARATION

- This lesson offers a variety of activities, which you can tailor to the interests of your students.
- Write lesson objective & key terms on the board or screen before class.
- Review Tips for Diverse Learners on page 3 to determine the best way to engage your students with the content.
- Decide whether you want to lecture about the Colorado Courts or have students do the reading. Make copies of the reading if needed. Display the Colorado Case Flow and Jurisdiction (below) on your class screen.
- Decide whether to do the Courts in the Community, Courts in the News, and/or Courts in the Movies activity. Make copies of worksheets.

- **Courts in the Community Activity**

- Make copies of the “Courts in the Community” worksheet for the case or cases you want students to review. Share portions of the Supreme Court proceedings from past Courts in the Community programs, so students can witness proceedings before the Supreme Court visit.

Below are some recent cases and a short summary. To find these cases:

- Go to this website: <https://www.coloradojudicial.gov/court-appeals/live?topic=77&wrapped=true>
- In Case Locator, select State Supreme Court.
- Enter the name of the case in “Case Number or Description”

# HOW COLORADO COURTS WORK

## Class Preparation (con't)



### CLASS PREPARATION

- ***People v. Nathan Hollis***: At issue in this criminal case is whether a defendant can be required to pay restitution to a police department for money the department used to execute a controlled drug buy, and which the department never recovered. Whether the trial court properly awarded such restitution depends on whether the buy money was either an extraordinary investigative cost or “money advanced by law enforcement.”
- ***Hobbs v. City of Salida***: At issue in this civil case is whether a local government can grant a permit allowing for increased noise limits to a private, for-profit business that is holding an event on private property. The parties disagree about whether such a permit was prohibited under the state-wide Noise Abatement Act.
- ***Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society***: At issue is whether five elephants that are currently housed at the Cheyenne Mountain Zoo are being unlawfully detained and are entitled to release. Appellants ask the court to extend writs of habeas corpus under the common law to animals. The zoo argues extending such protections should be up to the legislature and not the court.
- If you don't think those cases will interest your students, you can access all Supreme Court recorded Oral Arguments here:  
<https://www.coloradojudicial.gov/court-appeals/live?topic=77&wrapped=true>
- **Courts in the News Activity**
  - Find or have your students find news articles about recent court cases that would be of interest.
  - Make copies of the “Courts in the News” worksheet, enough for each student to have a copy.
- **Courts in the Movies Activity**
  - Make copies of the “Courts in the Movies” worksheet.
  - Select a few clips from the list below or find your own to share. You may want to provide a little background about the movie.
    - 12 Angry Men: <https://www.youtube.com/watch?v=KhnmAwiHtzo>
    - Philadelphia: <https://www.youtube.com/watch?v=hBEgITRjNbo>
    - A Few Good Men: [https://www.youtube.com/watch?v=2sLcfQKU\\_co](https://www.youtube.com/watch?v=2sLcfQKU_co)
    - My Cousin Vinny: <https://www.youtube.com/watch?v=W7YoxrKa4f0&list=PLk7oY38R3EsABWLdpyzJl2GXRnCcJw1PA&index=21>
    - Boston Legal: <https://www.youtube.com/watch?v=hmpzL5r6aKE>
    - Legally Blonde: <https://www.youtube.com/watch?v=GSu7BGbyJqc>
    - Erin Brockovich: <https://www.youtube.com/watch?v=M84jESdUXWk>
    - On the Basis of Sex: [https://www.youtube.com/watch?v=D4UKzfq-v\\_g](https://www.youtube.com/watch?v=D4UKzfq-v_g)

# HOW COLORADO COURTS WORK

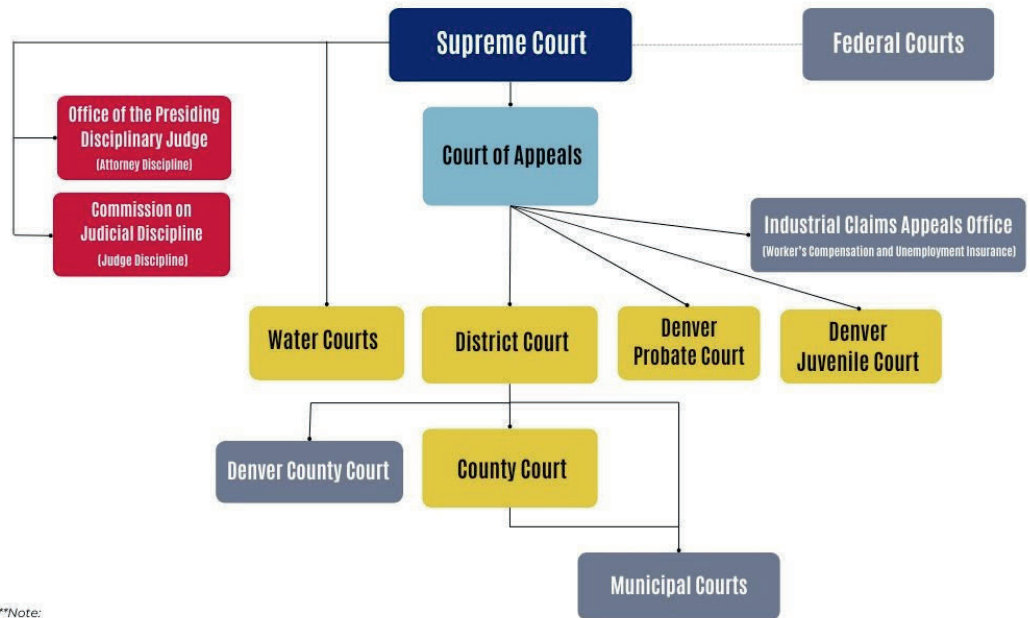
## Class Preparation (con't)



### CLASS PREPARATION

- As you are lecturing, you can show the chart below. Or make copies to share with students.

COLORADO JUDICIAL CASE FLOW AND JURISDICTION



**\*\*Note:**

- Entities shown in grey are not part of the State Court System.
- Entities shown in red represent independent offices of the Colorado Supreme Court.

# HOW COLORADO COURTS WORK

## Class Lecture



### CLASS LECTURE

#### **Role of the Courts**

The Judicial Branch upholds the rule of law in the following ways:

- holding trials that determine the guilt or innocence of persons accused of breaking the law;
- resolving disputes involving civil or personal rights;
- interpreting constitutional provisions and laws enacted by the legislature;
- providing appellate court review for decisions of lower courts.

#### **Independent courts**

- Independent judges can ensure a case will be decided according to the law and the facts, not shifting political currents

#### **Two distinct court systems**

- Federal courts
- State courts
  - Handle more than 95 percent of cases
  - Traffic offenses, divorce, wills and estates, buying and selling property are governed primarily by state laws, so are heard in state courts
- State and federal courts divided into three layers
  - Trial courts, where cases start
  - Intermediate appellate courts, where most appeals are first heard
  - Supreme courts, which hear further appeals and have final authority in the cases they hear

#### **General Structure of the Colorado Courts**

- The Colorado judicial system is modeled after the U.S. judicial system.
  - Trial courts
  - Court of Appeals
  - Supreme Court
- There are three main kinds of trial courts in Colorado: county courts, district courts, and water courts
- County courts are courts of limited jurisdiction. The county courts handle cases involving:
  - misdemeanors
  - traffic infractions
  - small claims
  - felony complaints (which may be sent to the district court)
  - civil cases under \$25,000



# HOW COLORADO COURTS WORK

## Class Lecture (con't)



### CLASS LECTURE

- District courts are courts of general jurisdiction. There are 23 judicial districts in Colorado, composed of one to seven counties. These courts handle cases involving:
  - felony criminal offenses
  - civil cases in any amount
  - domestic relations
  - juvenile issues, including adoption, dependency and neglect, juvenile delinquency, and paternity actions
  - probate issues
  - mental health
- Colorado's seven water courts have jurisdiction over water issues in the state's seven different river basins (South Platte, Arkansas, Rio Grande, Gunnison, Colorado, White, and San Juan Rivers). Case issues include:
  - water rights
  - the use and administration of water
  - all other water matters within the jurisdiction of water divisions
- Court of Appeals
  - State's intermediate appellate court.
  - 22 judges serve in this court, and they sit in panels of three to hear cases. Chief judge assigns these panels and regularly rotates them. These judges serve terms of eight years.
  - Created by statute, so its jurisdiction is limited to specifically defined areas. It has initial jurisdiction over appeals from Colorado District Courts, Denver Probate Court, and Denver Juvenile Court. Some types of cases skip the Court of Appeals and go directly to the Colorado Supreme Court for their first appeal.
- Supreme Court
  - Colorado's court of last resort.
  - Seven justices make up the Supreme Court, and all of them hear every case, with limited exceptions; this is referred to as sitting en banc.
  - Justices serve terms of 10 years.
  - Has the authority to accept or refuse cases on appeal from decisions in the Court of Appeals. It also is the court of first appeal in some circumstances, thereby skipping the Court of Appeals. These circumstances include cases involving:
    - water rights
    - decisions of the Public Utilities Commission
    - writs of habeas corpus
    - summary proceedings initiated under Election Code
    - search and seizure questions in pending criminal proceedings
  - Decisions made by this court can only be appealed to the U.S. Supreme Court, generally when there is a federal constitutional question.

# HOW COLORADO COURTS WORK

## Lesson Instructions



### INTRODUCTION (2 minutes)

Begin by saying “Today we are going to learn about the judicial system and specifically the Colorado Judicial Branch. In the U.S, courts exist to resolve conflicts when people, companies, or governments cannot settle them privately. Courts will look at the facts of the conflict and interpret and apply the law to resolve the disagreement. The judicial system upholds the rule of law in a variety of ways, such as holding trials to determine whether people accused of breaking the law are guilty, interpreting constitutional provisions and statutes, and holding trials in cases involving civil or personal rights.”

### WARMUP

Review key terms on the board or the screen

### Lecture or Reading (15 minutes)

Deliver the lecture about the judicial system. Or, divide the students into groups and handout copies of the reading. Have students take turns reading sections in their groups. Then, discuss the following, in groups or as a class:

### Discussion (5 minutes)

- How are county and districts similar? How are they different?
- How are trial courts similar to appellate courts? What are their different functions? What types of cases does each court handle?

### DIGGING IN

#### Option #1: Courts in the Community Activity (20 minutes)

Hand out the “Courts in the Community” worksheet for the case you want the students to discuss. Chose one of the following options: 1) Watch portions of the proceedings for the case. Have students take notes on the proceedings. 2) Have students read a summary of the case on the worksheet and answer the questions. After doing 1) or 2), conduct a discussion, asking students to share what they learned about the case.

#### Option #2: Courts in the News Activity (20 minutes)

Divide students into small groups. Distribute different news articles to students (or have them find articles) and ask them to complete the Courts in the News” worksheet together. Have one student from each group present what they learned about the case in question to the class.

#### Option #3: Courts in the Movies Activity (20 minutes)

Show a few clips of movies or TV shows that feature court case. If needed, provide some background about the scene they are going to see. Hand out “Courts in the Movies” worksheet and have students complete as they watch the clips. Discuss the types of cases featured, how they are resolved, and whether or not the students agree with the outcome.

### EXIT TICKET (2 minutes)

Have students write a benefit/drawback to Colorado’s court system.

### EXTENSION ACTIVITIES

- Have students design a social media campaign to explain key elements of our judicial system. This would include: goals for the campaign (what do you want people to learn?) audience, key messages, communications tools (reels, videos, stories, posts) and channels.
- If you don’t have time for the reading, you could send it home and ask students to answer the questions posed in the warmup.

# HOW COLORADO COURTS WORK

## Reading: The Colorado Judicial System



*By Supreme Court Chief Justice Monica Márquez and Justice Carlos Samour*

In the United States, the courts exist to peacefully resolve conflicts when people, companies, or governments cannot settle them privately. There are two main court systems in the United States: federal courts and state courts. More than 95 percent of cases are resolved by state courts. In general, state courts apply state law, while federal courts apply federal law.

Courts look at the facts of these disputes or “cases” and interpret and apply the law to resolve the disagreement. These cases can involve anything from crimes (misdemeanors or felonies), business disputes over contracts or property, personal injury lawsuits following an accident, family law matters such as divorce or custody disputes, or even cases to determine how much water a farmer is entitled to use on certain fields.

Colorado state courts resolve disputes through trial courts, the Colorado Court of Appeals and the Colorado Supreme Court. The Colorado Judicial Branch also includes probation offices in each of Colorado’s 23 judicial districts, and the State Court Administrator’s Office, which provides administrative support to the districts. Probation employees prepare assessments and pre-sentence information for the courts and supervise offenders who are sentenced to community programs.

The judicial system upholds the rule of law in many ways, such as holding trials to determine whether people accused of breaking the law are guilty, interpreting constitutional provisions and statutes, and holding trials in cases involving civil or personal rights. The multiple levels of our court system ensure people get to have their day in court. Courts safeguard rights that are enshrined in the U.S. and Colorado constitutions, such as the right to due process, trial by jury, speedy trial, and equal protection.

### **Need for an independent judiciary**

Judges must be free from outside pressure or influence in order to make impartial and fair decisions based on the facts and the law. The judicial system has mechanisms in place to ensure this independence. For example, federal judges are nominated by the president of the United States and confirmed by the Senate for their lifetime to ensure they do not make decisions with future elections in mind. In Colorado, state court judges are nominated by bipartisan commissions that include lawyers and non-lawyers and then appointed by the governor of the state. Judges stand for retention every few years.

### **Colorado’s three-tiered judicial system**

Colorado state courts, like federal courts, have three tiers: trial courts, the state court of appeals, and the state supreme court. Cases start in trial courts and are reviewed by the state court of appeals. A very small percentage of cases (less than 10%) are reviewed again by the state supreme court (at the court’s discretion). The Colorado Supreme Court is the highest court in the state. However, a party may seek review of a decision by the Colorado Supreme Court in the U.S. Supreme Court.

These tiers help to ensure that justice is done in each case. Here’s a more detailed look at how those tiers work in Colorado.

# HOW COLORADO COURTS WORK

## Reading: The Colorado Judicial System



### **Trial Courts: District Courts, County Courts and Water Courts**

In Colorado, almost all cases (both criminal and civil) are first heard by a judge or a jury either in a county court or a district court. Trial courts are the courts usually portrayed in movies and television. There, judges and juries listen to witnesses, review exhibits, and resolve issues of fact (for example, Was the light red when the car entered the intersection? Was the defendant the person who committed the crime?). They also apply the law to the facts they have found. This process results in a verdict or ruling in favor of one party and against the other.

In criminal cases, misdemeanor offenses are handled in county court, whereas felony offenses are handled in district court. County courts hear civil cases under a certain dollar amount; otherwise, civil cases start in district court. There are 64 counties in Colorado and each county has a county court. Colorado currently has 114 county court judges who are appointed by the governor and retained by the Colorado voters for four-year terms. Colorado has 23 judicial districts, each with its own district court. There are currently 196 district court judges who are appointed by the governor and retained by the voters of Colorado for six-year terms.

In Colorado we also have water courts, which are a type of trial court that determines water rights. Water is a public resource. A water right is not a right to own water, but instead, is a right to use a certain amount of water for a specific purpose or “beneficial use,” such as for agriculture, industry, domestic, or municipal purposes. Unlike most trial courts, water courts do not rely on juries. There are seven water divisions across Colorado, which align with the main river basins of the state (South Platte, Arkansas, Rio Grande, Gunnison, Colorado, White, San Juan rivers). Each water division is staffed with a division engineer, appointed by the state engineer; a water judge (a district court judge who is appointed by the Chief Justice to serve as a water judge for the water division); a water referee, appointed by the water judge; and a water clerk, assigned by the district court.

There are other trial courts that are not part of the Colorado Judicial Branch, including administrative courts and municipal courts.

### **Appellate Courts**

When a party is unhappy with the ruling from the trial court, they have the right to appeal that decision and have it reviewed at least once by an appellate court. Appellate courts do not have juries or take testimony. Instead, they review transcripts of the proceedings that happened in the trial court, read legal briefs filed by the parties, and sometimes hear Oral Arguments.

If the defendant is convicted in a criminal case, they can ask a higher court to review the judge’s decisions and rulings in their case, even if it was a jury trial. In a civil case, either party can appeal the judge’s decisions and rulings (again, even if it was a jury trial). A jury’s verdict is not usually appealable (either in criminal cases or in civil cases).

If the appellate court concludes that the trial court ruling was correct, the appellate court “affirms” the ruling of the trial court. If the appellate court concludes that the trial court ruling was wrong, and that the trial court error requires reversal, the appellate court “reverses” the trial court’s ruling. Sometimes, it requires the trial court to hold a new trial, or “remands” the case (sends it back to the

# HOW COLORADO COURTS WORK

## Reading: The Colorado Judicial System



trial court) to hold another hearing or explain its decision in more detail.

### Colorado Court of Appeals

The Colorado Court of Appeals is the state's largest intermediate appellate court. It hears appeals from district courts and administrative courts, and criminal and civil cases from across the state. The Court of Appeals has 22 judges who are appointed by the governor and retained by the voters of Colorado for eight-year terms. The court hears cases in three-judge divisions. The Chief Judge assigns cases to each division and rotates the division assignments three times per year.

Appeals from county court are filed in district court, but this is relatively rare. When such an appeal is brought, the district court acts as an appellate court. Any decision by the district court in its role as an appellate court may be appealed to the Colorado Supreme Court.

### Colorado Supreme Court

If a party is unhappy with the ruling from the Court of Appeals, they can request review by the Colorado Supreme Court. These formal requests are called **petitions for certiorari**. This court is the "court of last resort" in Colorado, and with a few exceptions listed below, it has discretion to decide which cases it wants to hear (or to grant these petitions). The Supreme Court generally decides cases that are especially important to Coloradans. Like other appellate courts, the Supreme Court reviews transcripts of the trial proceedings and then determines what the law is or should be for that particular matter. Its decisions serve as guidance for the Court of Appeals and Trial Courts.

The Supreme Court is the first level of appellate court in cases related to water rights, the state's electricity and power supply, habeas corpus (in which a prisoner contends they are being wrongfully imprisoned), the Election Code and cases where a trial court in a pending criminal proceeding has ordered the suppression of key evidence (usually involving searches or seizures).

The Supreme Court has seven justices who are appointed by the governor and retained by the voters of Colorado for 10-year terms. The court sits together **en banc** as a group to hear cases. The Chief Justice is chosen by the other justices and serves as the executive head of the branch. The Chief Justice also appoints the chief judges in each judicial district and the Court of Appeals.

The Supreme Court oversees the legal profession in Colorado, including the licensing of attorneys and licensed legal paraprofessionals. It also oversees committees that propose amendments to rules of procedure that govern legal proceedings.

### United States Supreme Court

If a person is unhappy with a decision of the Colorado Supreme Court, the only option is to appeal to the U.S. Supreme Court, which will only review issues involving a federal statute or the U.S. Constitution (it will not review the Colorado Supreme Court's ruling on Colorado state law or the Colorado Constitution). The U.S. Supreme Court accepts less than 1% of cases that seek its review. The cases the Supreme Court agrees to review tend to involve important federal issues. A ruling by the U.S. Supreme Court on a federal constitutional issue is the law of the entire United States. Although a state court can provide more protection under its own state constitution, it cannot provide less protection than that afforded by the federal constitution as interpreted by the U.S. Supreme Court.



# HOW COLORADO COURTS WORK

## Worksheet: Courts in the Community Activity



### COURTS IN THE COMMUNITY

Title of Court Case: \_\_\_\_\_

What kind of case is mentioned (domestic relations, criminal, civil)? \_\_\_\_\_

Give a one-sentence summary of the facts of the case. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Which court is hearing or heard this case (county, district, appellate)? \_\_\_\_\_

What are the arguments of the appellant? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What are the main arguments of the appellee? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How you would decide this case? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# HOW COLORADO COURTS WORK

## Worksheet: Courts in the Community Activity



### COURTS IN THE COMMUNITY

#### Supreme Court Case: *People v. Nathan Hollis*

- At issue in this case is whether a defendant can be required to pay restitution to a police department for money the department used to execute a controlled drug buy, and which the department never recovered. Whether the trial court properly awarded such restitution depends on whether the buy money was either an extraordinary investigative cost or “money advanced by law enforcement.”
- Hollis was a criminal suspect who pled guilty to drug-dealing following a police department operation involving a controlled drug buy. Police used so-called “buy money” to purchase the drugs but were unable to recover money following Hollis’ arrest.
- The trial court ordered Hollis to pay restitution to the police department for that lost buy money. A division of the court of appeals reversed.
- The police department argues the division erred because the money was recoverable pursuant to the restitution statute, section 18-1.3-602(3) as money that was “advanced by law enforcement” or as an “extraordinary direct public...investigative cost.”
- Hollis argues the division correctly concluded that money “advanced by law enforcement” only includes money paid to victims of crimes, and the police department itself is not a victim.
- He further argues that the buy money was part of a routine police investigation and therefore cannot be recovered as an extraordinary investigative cost.
- Court considered whether “buy money” is recoverable under the restitution statute.

What kind of case is mentioned (domestic relations, criminal, civil)? \_\_\_\_\_

Give a one-sentence summary of the facts of the case. \_\_\_\_\_

\_\_\_\_\_

Which court is hearing or heard this case (county, district, appellate)? \_\_\_\_\_

What are the arguments of the appellant? \_\_\_\_\_

\_\_\_\_\_

What are the main arguments of the appellee? \_\_\_\_\_

\_\_\_\_\_

How you would decide this case? \_\_\_\_\_

\_\_\_\_\_

# HOW COLORADO COURTS WORK

## Worksheet: Courts in the Community Activity



### COURTS IN THE COMMUNITY

#### Supreme Court Case: *Hobbs v. City of Salida*

- At issue in this case is whether a local government can grant a permit allowing for increased noise limits to a private, for-profit business that is holding an event on private property. The parties disagree about whether such a permit was prohibited under the state-wide Noise Abatement Act.
- The City of Salida granted a private business, the High Side! Bar and Grill, a permit to exceed state-wide noise limits during certain outdoor concerts on its private property. Hobbs, a citizen and neighbor of the High Side! brought suit, arguing that under state law, specifically the Noise Abatement Act, section 25-12-103(11), C.R.S. (2024), the City could not permit a private entity on private property to exceed the noise limits.
- The City and High Side! argue that the statute provides an exception which allows local governments to exempt certain cultural events from the state-wide limits. Hobbs argues that the exception applies only when the local government entity itself, or a non-profit entity, is involved in the event for which the permit was issued.
- The Court considered the meaning of the Noise Abatement Statute.

What kind of case is mentioned (domestic relations, criminal, civil)? \_\_\_\_\_

Give a one-sentence summary of the facts of the case. \_\_\_\_\_

\_\_\_\_\_

Which court is hearing or heard this case (county, district, appellate)? \_\_\_\_\_

What are the arguments of the appellant? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What are the main arguments of the appellee? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How you would decide this case? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# HOW COLORADO COURTS WORK

## Worksheet: Courts in the Community Activity



### COURTS IN THE COMMUNITY

#### Supreme Court Case:

#### ***Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society:***

At issue is whether five elephants that are currently housed at the Cheyenne Mountain Zoo are being unlawfully detained and are entitled to release. Appellants ask the court to extend writs of habeas corpus under the common law to animals. The zoo argues that extending such protections should be up to the legislature and not the court.

What kind of case is mentioned (domestic relations, criminal, civil)? \_\_\_\_\_

Give a one-sentence summary of the facts of the case. \_\_\_\_\_

\_\_\_\_\_

Which court is hearing or heard this case (county, district, appellate)? \_\_\_\_\_

What are the arguments of the appellant? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What are the main arguments of the appellee? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How you would decide this case? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# HOW COLORADO COURTS WORK

## Handout: Courts in the News Activity



### COURTS IN THE NEWS

News article title: \_\_\_\_\_

News source: \_\_\_\_\_

Author: \_\_\_\_\_

What kind of case is mentioned (domestic relations, criminal, civil)? \_\_\_\_\_

Give a one-sentence summary of the facts of the case. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Which court is hearing or heard this case (county, district, appellate)? \_\_\_\_\_

Is the case in the state courts or federal courts (if the article mentions "U.S. District Court" or "federal judge," it is a federal case, not a state case)?

\_\_\_\_\_

Is the article stating facts, an opinion, or both? \_\_\_\_\_

If it states an opinion, what is the opinion? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Do you agree with the opinion stated? Why or why not? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Was a sentence proposed or given? Do you agree with the sentence? Why or why not?

\_\_\_\_\_

\_\_\_\_\_



# HOW COLORADO COURTS WORK

## Worksheet: Courts in the Movies Activity



### COURTS IN THE MOVIES

| Movie | Type of Case<br>(criminal,<br>domestic,<br>civil) | Court setting<br>(State/Federal<br>? Jury trial?) | Facts of the<br>Case | How<br>resolved? |
|-------|---|---|----------------------|------------------|
|       |   |   |                      |                  |
|       |   |   |                      |                  |
|       |   |   |                      |                  |

# YOU BE THE JUDGE

## Lesson Plan Summary



### OBJECTIVE

- Students will be able to describe the appellate process and how a case is appealed.
- Students will be able to identify what it means to analyze court cases using the standards of fairness and objectivity and describe the process for considering relevant issues and facts presented in court cases.

### INQUIRY QUESTIONS

- What do you see as the benefits and drawbacks of the appellate process?
- Is it possible to be fair and objective in analyzing the issues in a court case? Why or why not?

### COLORADO ACADEMIC STANDARDS

**SS.HS.4.2.EOb.** Identify the structure, function, and roles of current members of local, state, and national governments. Including but not limited to: understanding the three branches of government at each level of government.

**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

### ACTIVITIES

Lecture/Reading, You Be the Judge Activity, Continuum Activity

### MATERIALS

“You be the Judge” Case Worksheets, Reading (if using), masking tape

### GRADE LEVEL

High School

### TIME

One class period

### KEY TERMS

**Appellant:** Party appealing the lower court’s decision.

**Appellee:** Party prevailing in the lower court and arguing, on appeal, against setting aside the lower court’s decision.

**Appellate Brief:** Establishes the legal argument for the party, explaining why the reviewing court should affirm or reverse the lower court’s judgment based on legal precedent and citations to the controlling cases or statutory law.

**Oral Arguments:** Presentation of a case before a court by spoken word. Lawyers or parties representing each side in a dispute have 30 minutes to make their case and answer questions from Supreme Court justices and 15 minutes in the Court of Appeals.

**Opinion:** Written decision made by appellate courts after reviewing briefs and hearing Oral Arguments in a case.

**Certiorari:** A legal order by which a higher court commands a lower court to certify or to send up a record of a trial or other proceedings in the lower court for the purpose of judicial review. “Granting certiorari” means agreeing to consider a request or appeal.

# YOU BE THE JUDGE

## Lesson Background and Class Preparation



### KEY TERMS (CON'T)

**Per curiam:** By decision of a judge, or of a court in a unanimous agreement.

**Objective:** Expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations

**Fairness:** Ability to judge without personal feelings or interests and to make specific judgments in a particular case.

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

### LESSON BACKGROUND

The goal of this lesson is to help students understand the appellate process, how a case is appealed and how cases are argued and analyzed using standards of fairness and objectivity. You can choose to lecture about the process or have students read about it. We want students to understand that the appellate process ensures justice by reviewing decisions made in lower courts. Unlike trial courts, appellate courts do not preside over trials, hear testimony from witnesses, or consider new evidence. Instead, they examine the trial record to determine whether legal errors were made that could have affected the outcome of the case. Appeals are not automatic and typically require a valid legal basis, such as a mistake in how the law was applied or in trial procedures.

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

### CLASS PREPARATION

- Write lesson objective and key terms on the board or on the screen.
- Review Tips for Diverse Learners on p. 3 to consider how best to engage your student with the content.
- Determine which cases you want the students to discuss:
  - **Case #1:** Students who are part of a vampire club called The Fangtastics at Central High School post vampire-related content on the student wall of their's school's official FaceBook page. When the principal decides not to recognize The Fangtastics as a legitimate school club because she believes it endorses dangerous cult activity, a student posts a critical satire about the decision on the student wall. The student administrator of the wall does not remove the satire or student postings about the club. The principal makes the students remove the content, claiming that all the students violated school policies by posting content that threatened a safe and efficient learning environment. The students claim that their First Amendment rights were violated and sue the principal and the school district in federal court.

# YOU BE THE JUDGE

## Class Preparation



### CLASS PREPARATION

- **Case #2:** Prairie Grove has redesigned a 50-acre park in the center of the city. The city council wants to preserve some elements of nature in the park, undisturbed by city noise, traffic, pollution, and crowding. It is a place where people can go and enjoy trees and flowers; there are also playgrounds and picnic areas. At all entrances to the park the following sign has been posted: **No Vehicles in the Park.** Bikes are not allowed in the park and people wanting to bike from one side of town to the other have to ride all the way around the park. One day, Angelina Martin decides to ride her bike through the park because she is late for work. She is stopped by police who fine her for violating the law. Angelina sues in municipal court saying the law is too restrictive and there should be an exemption for bicycles. She wins but the city appeals to the Court of Appeals, claiming that an exemption for bicycles will lead to exemptions for unicycles, scooters, skateboards and more.
- **Case #3:** Terry Smith was fired by his employer Burgers or Bust, a fast-food restaurant, after another employee reported to the manager that Smith called a customer a "scum bag" during a disagreement. The manager, who fired Smith, did not witness the exchange between Smith and the customer. Smith denies calling the customer anything and says the customer called him a scum bag. Smith and the customer each have one witness to the incident who supports their claim. The manager says that Smith could be terminated at will and that there was good cause. Smith disputes the terms of his work contract and contends there was not good cause. Smith sues his employer, claiming wrongful discharge from employment and that he was really fired because he is Jehovah's Witness and won't work on Saturdays. Smith says he has evidence the manager has been "looking for reasons to fire him" before the disagreement. Smith is seeking reinstatement and damages in the amount of lost earnings. The case goes to the Colorado Civil Rights Division, who determines Smith has a right to sue.
- Make copies of worksheets for the cases you are using. You may want to divide the students into three groups, one for each case, or have smaller groups with some groups reviewing the same case.
- Make copies of the reading, if you are using.
- Consider doing the Continuum Activity, where students stand on a line on the floor to show how they think a case should be decided. Place masking tape in a long line on the floor and have students stand on the line showing which side they agree with and to what degree.

# YOU BE THE JUDGE

## Class Lecture



### CLASS LECTURE

#### Who Can Appeal

- In civil cases, either party can appeal to a higher court. In criminal cases in Colorado, the defendant has an automatic right to appeal.
- In criminal cases, the prosecution may appeal only under limited circumstances before a verdict, usually on specific points of law. Post-verdict appeals by the prosecution are restricted due to the protection against double jeopardy under the U.S. Constitution.
- After exhausting state-level appeals, criminal defendants may seek a federal review through a **writ of habeas corpus**, arguing violations of federal constitutional rights.

#### What Can Be Appealed

- Not all cases are eligible for appeal. A legal basis must exist—typically a claim that the trial involved procedural errors or a misapplication of the law.
- An appeal is not a retrial and does not involve new evidence or witnesses. Instead, appellate courts review the trial record, briefs, and legal arguments to determine whether a significant legal error occurred.
- The Colorado Court of Appeals must hear all properly filed appeals. In contrast, the Colorado Supreme Court selects which cases to hear and grants certiorari to approximately 10% of petitions.

#### Steps in the Appellate Process

- Notice of Appeal: Filed by the appellant to begin the process.
- Record on Appeal: Complete record from the lower court is submitted.
- Briefs:
  - Opening Brief (Appellant): Outlines legal errors and arguments.
  - Answer Brief (Appellee): Responds to the appellant's arguments.
  - Reply Brief (Appellant): Optional rebuttal to the appellee's points.
  - Amicus Briefs: Third parties may submit supporting arguments.
- Oral Argument: Optional opportunity for attorneys to summarize arguments and answer judges' questions.
- Deliberation: Judges meet to discuss and vote. Opinions are issued (majority, concurring, or dissenting).

#### How Judges Analyze an Appellate Court Case

- Analyzing a case begins with examining witness statements. Not all testimony carries equal weight. Misperceptions, forgetfulness, reticence, or motives for dishonesty can all affect credibility.
- Judges think about the following questions:
  - Did the witness experience the event firsthand, are they repeating what someone else told them or are they simply speculating as to what happened?



# YOU BE THE JUDGE

## Class Lecture (con't)



### CLASS LECTURE

- Does the witness have a motive to lie (e.g., personal gain or avoiding punishment)?
- Does the story logically align with other evidence?
- There are usually at least two sides to every story, so they objectively ask, “What makes sense here? Which story is the most logical?”
- Then they compare statements with the physical evidence—documents, photographs, contracts, etc. If testimony contradicts “cold, hard facts” it likely isn’t reliable. They apply all relevant statutes and case law objectively to the scenario.

### Oral Arguments

- Appeals courts often make decisions only on the basis of the written briefs but sometimes they hear Oral Arguments
- Oral argument is a structured yet dynamic part of the appellate process. Each attorney must be well-prepared, having reviewed all facts and legal authorities.
- The attorney must identify two or three of their strongest arguments that have the best chance of convincing the court. Sometimes, this will mean emphasizing the strengths of a part of the written brief, or a counter position to an opponent’s argument, or a combination of both.
- The attorney should talk to the court in a conversational manner and not read the argument. In response to individual court members’ questions, the attorney must answer each question directly and candidly. Thus, as part of preparation, the attorney must consider concerns that court members might have about the case and anticipate questions that may be asked.
- The attorney should frame his or her entire talk around the perspective of what would be important to know and take into consideration if the attorney were on the court and had to decide the case.
- Appellants present first and may reserve part of their time for rebuttal.
- In the Colorado Supreme Court: Each side gets 30 minutes.
- In the Colorado Court of Appeals: Each side gets 15 minutes.
- Judges assess not just persuasiveness but legal reasoning. Oral argument often clarifies written briefs and can influence the court’s decision.

### How lawyers prepare for oral argument

- Review briefs and relevant law
- Summarize the case and their arguments
- Prepare to answer questions from the Court
- Anticipate sticking points with some justices/judges
- Practice in front of mirror

# YOU BE THE JUDGE

## Class Lecture (con't)



### CLASS LECTURE

#### Colorado Supreme Court

- All seven justices take part in every case (unless there's a conflict of interest)
- Each side is given 30 minutes during Oral Arguments.
- After the completion of Oral Arguments or review of briefs, justices meet to take a tentative vote
- Chief Justice assigns case to one justice who has voted in the majority
- Occasionally Supreme Court will issue unsigned opinion called a per curiam
- The justice assigned to the case writes the court's majority opinion; other justices can write concurring or dissenting opinions
  - Concurring opinion: a justice agrees with the majority opinion but not for the same reasons
  - Dissenting opinion: a justice disagrees with the result reached by the majority of the other justices

#### Colorado Court of Appeals

- Three judges (out of 22) decide each case
- Composition of each panel of three judges rotates so all judges handle equal workload
- Majority is necessary to make a ruling
- After the completion of Oral Arguments or after reviewing the briefs, panel judges meet to take a tentative vote
- Usually a case is assigned to a particular judge for the writing of the opinion before the oral argument or review of briefs, but assignment may change after the panel discusses the case
- Judge assigned to the case writes court's majority opinion
- Other judges on the panel can write concurring or dissenting opinions

#### Outcomes and Judgments

- The appellate court may affirm (uphold), reverse (overturn), or remand (send back) the case for further proceedings
- If the appeals court affirms lower court's judgment
  - Case can end
  - Losing party can appeal to a higher court
  - The lower court decision stands if appeals court dismisses the appeal
- If judgment is reversed
  - Appellate court will send the case back to the lower court
  - Order the trial court to take further action
  - May order that:
    - New trial be held
    - Trial court's judgment be modified or corrected
    - Trial court reconsider the facts, take additional evidence, or consider case in light of a recent decision by the appellate court

# YOU BE THE JUDGE

## Lesson Instructions



### INTRODUCTION (1 minute)

Begin by saying: *"Today we are going to discuss the appellate process, how a case is appealed, how cases are argued and analyzed. We will start with an activity where you get to be the judge in a court case."*

### WARMUP

Read the lesson objective and key terms.

### DIGGING IN

#### Lecture/Reading (15 minutes)

Lecture or divide into small groups and do a read around, assigning parts of the reading.

#### Discussion (5 minutes)

Then discuss the following:

- What do you see as the benefits and drawbacks of the appeals process?
- Do you think it is possible to be fair and objective in analyzing the issues in a court case? Why or why not?

#### You be the Judge (25 minutes)

**Option 1:** Divide the students into three or more groups (depending on how big you want the groups) and hand out one court case with questions to each group. Have students complete the worksheet below about the case assigned, including arguments for the **appellant** (the party appealing the lower court's decision) and arguments for the **appellee** (the party prevailing in the lower court and arguing, on appeal, against setting aside the lower court's decision). Bring the class back together. Go through each case, having one student be a spokesperson to represent the arguments for the appellant and one for the appellee.

**Option 2:** Select one case and display on the screen. Walk through the facts, legal issues and arguments, asking students to share their ideas.

#### Take a Vote or Continuum Activity (15 minutes)

For each case (or the ones you have time to discuss):

**Take a Vote:** Have the students vote on how they would rule. Ask a few to share their reasoning.

**OR**

**Continuum:** Tell students to stand on the masking tape line, with one end marking they would definitely rule for the appellant, the other end for the appellee. Explain the following to the students:

- The line is a continuum, which means they can place themselves on the line based on how strongly they agree with one side.
- They can't stand in the middle; they have to take a position.
- They need to have a reason for their position.

Ask a few students to share their reasoning. Encourage the class to consider whether the reasons change their ruling. If so, they can move to a different position on the line.

Have students write one thing they learned about the appellate process.

### EXIT TICKET (2 minutes)

# YOU BE THE JUDGE

## Reading: The Appellate Process



*By Colorado Supreme Court Justice Maria Berkenkotter*

The appellate process ensures justice by reviewing decisions made in lower courts. Unlike trial courts, appellate courts do not preside over trials, hear testimony from witnesses, or consider new evidence. Instead, they examine the trial record to determine whether legal errors were made that could have affected the outcome of the case. Appeals are not automatic and typically require a valid legal basis, such as a mistake in how the law was applied or in trial procedures.

Appellate courts serve two essential functions: checking judicial power and promoting uniform interpretation of the law. In Colorado, appellate courts include the Colorado Court of Appeals and the Colorado Supreme Court. Our appellate courts are composed of more than one judge or justice. That way it takes more than one jurist to review the work of another and to make decisions binding on lower courts. Our Court of Appeals sits in panels of three judges, and the Supreme Court is composed of seven justices who hear all cases before that court. The Court of Appeals must hear all properly filed appeals, while the Supreme Court selects only about 10% of cases submitted through a process called **certiorari**.

In a civil case, either party may appeal to a higher court. In a criminal case in Colorado, the defendant has a right to an appeal, while the prosecution has a limited right to appeal to determine certain points of law. Prosecution appeals usually occur before the actual trial is concluded and go directly to the Supreme Court for determination. Appeals by the prosecution after a verdict in a criminal case are not normally allowed because of the prohibition in the U.S. Constitution against double jeopardy or being tried twice for the same crime.

On the Court of Appeals, the composition of each panel of three judges rotates so all judges handle an equal amount of arguments. The judges discuss the case and take a vote to determine the views of the panel; at least two of the three judges on a panel must agree for an opinion to be issued. Usually, a case is assigned to a particular judge for the writing of the opinion before the actual oral argument or review of the case, but that assignment may change after the panel discusses the case. The other judges on the panel can write concurring or dissenting opinions if they so choose.

All seven justices on the Supreme Court hear and take part in every case reviewed by the Supreme Court (unless there is a conflict of interest). Immediately after the completion of Oral Arguments or review of the case, the justices meet in a conference room to determine the views of the members of the court and take a tentative vote. A majority is necessary to make a ruling in each case the court hears. The chief justice presides, and, in general, the members of the court express their views in order of seniority, with the most junior justice opening the discussion.

The chief justice assigns the case to one of the justices who has voted in the majority. The justice assigned to the case will, in most instances, write the court's majority opinion. The opinion is a statement of the court's decision and the reasons upon which that decision is based. The opinion may go through several drafts before a majority of the court agrees with it. Other justices can write concurring or dissenting opinions in the case. A concurring opinion is one in which a justice agrees with the majority opinion but not for the same reasons. A dissenting opinion is one in which a justice

# YOU BE THE JUDGE

## Reading: The Appellate Process (con't)



disagrees with the result reached by the majority of the other justices. However, the majority opinion is the official opinion of the court in the case. Occasionally, the Supreme Court will simply issue an unsigned opinion. These are called *per curiam* (by the court).

Criminal defendants convicted in state courts have a further safeguard. After using all their rights of appeal on the state level, they may file a writ of habeas corpus in the federal courts in an attempt to show that their federal constitutional rights were violated. The right of a federal review imposes the check of the federal courts on abuses that may occur in the state courts.

### Breaking down the Appellate Process

Appeals are argued in written documents called briefs. While briefs contain a recitation of the facts (as determined by the jury or the trial court), their focus is on legal arguments. Oral arguments are held in some cases to allow the judges or justices an opportunity to ask the parties questions, as well as to give the attorneys a chance to argue their cases directly to the judges or justices.

Appellate courts decide appeals in writing. Their orders are called opinions. The whole body of appellate opinions is known as case law. Some (but not most) of the opinions by the Colorado Court of Appeals are published, while all of the opinions by the Colorado Supreme Court are published. Any published opinion by an appellate court constitutes precedent, which means that it must be followed in the future.

Precedents from the appellate courts must be followed by the trial courts (both district courts and county courts). Appellate courts, too, must follow precedents from higher appellate courts. So, for example, the Colorado Court of Appeals must follow opinions published by the Colorado Supreme Court, but the Colorado Supreme Court is not bound by opinions published by the Colorado Court of Appeals. Of course, the Colorado Supreme Court must follow its own opinions from the past. It can't disregard them just because the justices on the court now think differently than the justices who were on the court at the time of the prior opinion.

Not all published case law is binding. That means Colorado's appellate courts are not bound to follow opinions from Montana's appellate courts (and vice versa). If the case law is from a higher court in the same jurisdiction, then it is binding.

### How Judges Analyze a Court Case

The legitimacy of trials depends on the notion that trials represent a "search for the truth." In our justice system, juries and trial judges are expected to base their verdicts on what really happened. We are all, to some extent, influenced by our own backgrounds. Lawyers and judges must set aside personal biases and think objectively about the facts and legal arguments presented.

Analyzing a case begins with examining witness statements. Not all testimony carries equal weight. Misperceptions, forgetfulness, reticence, or motives for dishonesty can all affect credibility. For example, if the police say someone gave them permission to search a car, but the person says they didn't give permission, the jury or the trial court must decide who to believe. These credibility determinations allow juries and trial courts to decide what the facts are. We call these findings of fact.



# YOU BE THE JUDGE

## Reading: The Appellate Process (con't)



Findings of fact are usually final when the case is reviewed on appeal, which explains why jury verdicts are generally not subject to change on appeal. What is usually argued on appeal is that the trial judge erred in applying the law while making a decision or ruling (such as allowing a particular item of evidence to be shown to the jury or permitting a witness to provide certain testimony).

Judges consider the following when they review a case:

- Did the witness experience the event firsthand or is she repeating what someone else told her or simply speculating as to what happened?
- Is there any motive to lie (e.g., personal gain or avoiding punishment)?
- Does the story logically align with other evidence?
- Remembering that there are two sides to every story and must objectively ask, “What makes sense here? Which story is the most logical?”

Then they will compare statements with the physical evidence—documents, photographs, contracts, etc. If testimony contradicts “cold, hard facts” it likely isn’t reliable. Lastly, they apply all relevant statutes and case law objectively to the scenario.

### **How Attorneys Prepare and Argue in an Appellate Court**

Oral argument is a critical part of the appellate process. It allows each side to clarify and emphasize key legal points before the judges and persuasively explain why their client’s position should prevail. It is dynamic—judges may interrupt at any point with questions. Lawyers must anticipate tough questions and remain flexible in their presentations. Strong preparation is critical.

To write a strong argument, lawyers must:

- Know the facts and issues inside and out.
- Understand relevant statutes and case law.
- Identify two or three of the strongest legal arguments.
- Anticipate and respond directly to judges’ concerns.
- Keep their tone conversational and avoid reading word-for-word from an outline
- Structure their time: Appellants can reserve rebuttal time (e.g., 10 minutes + 5-minute rebuttal).

Above all, attorneys should think from the court’s perspective: “What does the court need to know to make a just decision?”

# YOU BE THE JUDGE

## Worksheet: Case 1 (Vampire Club)



### Case 1: Does the First Amendment Protect a Vampire Club?

Students who are part of a vampire club called The Fangtastics at Central High School post vampire-related content on the student wall of their's school's official FaceBook page. When the principal decides not to recognize The Fangtastics as a legitimate school club because she believes it endorses dangerous cult activity, a student posts a critical satire about the decision on the student wall. The student administrator of the wall does not remove the satire or student postings about the club. The principal makes the students remove the content, claiming that all the students violated school policies by posting content that threatened a safe and efficient learning environment. The students claim that their First Amendment rights were violated and sue the principal and the school district in federal court.

#### Find the Facts

*List the facts of the case. What are the most important facts? Are there any facts you need to know not listed above?*

#### Identify the Issues

*What rights are in conflict in this case? What questions or issues does this case ask the court to answer?*

#### List the Arguments

Students (Appellant) Arguments

Principal and School District (Appellee) Arguments

#### What should the judge decide?

Decision

Reasons for your decision

# YOU BE THE JUDGE

## Worksheet: Case 2 (No bikes allowed!)



### Case 2: No bikes allowed!

Prairie Grove has redesigned a 50-acre park in the center of the city. The city council wants to preserve some elements of nature in the park, undisturbed by city noise, traffic, pollution, and crowding. It is a place where people can go and enjoy trees and flowers; there are also playgrounds and picnic areas. At all entrances to the park the following sign has been posted: **No Vehicles in the Park**. Bikes are not allowed in the park and people wanting to bike from one side of town to the other have to ride all the way around the park. One day, Angelina Martin decides to ride her bike through the park because she is late for work. She is stopped by police who fine her for violating the law. Martin sues in municipal court saying the law is too restrictive and there should be an exemption for bicycles. She wins but the city appeals to the Court of Appeals, claiming that an exemption for bicycles will lead to exemptions for unicycles, scooters, skateboards and more.

#### Find the Facts

*List the facts of the case. What are the most important facts? Are there any facts you need to know not listed above?*

#### Identify the Issues

*What rights are in conflict in this case? What questions or issues does this case ask the court to answer?*

#### List the Arguments

City of Prairie Grove (Appellant) Arguments

Angelina Martin (Appellee) Arguments

#### What should the judge decide?

Decision

Reasons for your decision

# YOU BE THE JUDGE

## Worksheet: Case 3 (Wrongful Termination)



### Case 3: Wrongful Termination

Terry Smith was fired by his employer Burgers or Bust, a fast-food restaurant, after another employee reported to the manager that Smith called a customer a "scum bag" during a disagreement. The manager, who fired Smith, did not witness the exchange between Smith and the customer. Smith denies calling the customer anything and says the customer called him a scum bag. Smith and the customer each have one other witness to the incident who supports their claim. The manager says that Smith could be terminated at will and that there was good cause. Smith disputes the terms of his work contract and contends there was not good cause. Smith sues his employer, claiming wrongful discharge from employment and that he was really fired because he is Jehovah's Witness and doesn't work on Saturdays. Smith says he has evidence that the manager has been "looking for reasons to fire him" before the disagreement. Smith is seeking reinstatement and damages in the amount of lost earnings. The case goes to the Colorado Civil Rights Division, who determines Smith has a right to sue.

#### Find the Facts

*List the facts of the case. What are the most important facts? Are there any facts you need to know not listed above?*

#### Identify the Issues

*What rights are in conflict in this case? What questions or issues does this case ask the court to answer?*

#### List the Arguments

Terry Smith (Appellant) Arguments

Burgers or Bust restaurant (Appellee) Arguments

#### What should the judge decide?

Decision

Reasons for your decision

# DIVING INTO APPELLATE CASES

## Lesson Plan Summary



### OBJECTIVE

Students will be able to identify the facts, arguments and legal issues in cases to be heard at Oral Arguments at their high school as part of Courts in the Community.

### INQUIRY QUESTIONS

- What role does the appeals process play in ensuring people have access to justice?
- Is there anything about the process that seems unfair or inequitable?

### 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

Appellate Case activities

### MATERIALS

Courts in the Community cases and briefs, masking tape, worksheets

### GRADE LEVEL

High School

### TIME

Two to three class periods before Oral Arguments, one to two after Oral Arguments.

### KEY TERMS

**Appellant:** Party appealing the lower court's decision

**Appellee:** Party prevailing in the lower court and arguing, on appeal, against setting aside the lower court's decision

**Appellate Brief:** Establishes the legal argument for the party, explaining why the reviewing court should affirm or reverse the lower court's judgment based on legal precedent and citations to the controlling cases or statutory law.

**Oral Arguments:** Spoken presentation of a case before a court. Lawyers or parties representing each side in a dispute have 30 minutes to make their case and answer questions from Supreme Court justices and 15 minutes in the Court of Appeals.

**Civil Case:** A legal dispute between two or more parties, typically involving a claim for money or other compensation, rather than criminal charges. It arises when one party (the plaintiff) alleges that another party (the defendant) has caused them harm or violated their rights.

**Criminal Case:** A legal proceeding where the government accuses an individual of committing a crime and seeks to punish them. It's a legal action initiated by the state against someone who has allegedly violated criminal laws, which are laws designed to protect society.

**Additional key terms will be included in the summary for each case.**



# Lesson Instructions

## LESSON BACKGROUND

**Note: Before teaching this lesson, make sure to teach the “You Be the Judge” lesson, which teaches about the appellate process and how cases are decided. This lesson builds on content learned in that lesson.**

This lesson provides activities that prepare students to understand the cases they will hear at Oral Arguments. The goal is to help students understand what factors the appellate courts consider when they decide a case, the legal issues, the language used and more.

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

## CLASS PREPARATION

- This lesson offers a variety of activities, which you can tailor to the interests of your students. Some of the activities are designed to be done before Oral Arguments, others after Oral Arguments. Most have worksheets for students to complete. If you do the Continuum Activity, you will need masking tape to create a line. The six activities:
  - Activity One: Case Study Analysis
  - Activity Two: The Continuum
  - Activity Three: Mock Oral Arguments
  - Activity Four: Student Essays
  - Activity Five: Evaluating Oral Arguments
  - Activity Six: Simulating the Colorado Supreme Court
- You can likely do Activity One and Two in one class period. Activity Three will take one or two class periods. The others each take a class period.
- Note that you will be doing these activities twice, once for the civil case and again for the criminal case.
- Write lesson objective and key terms on the board/screen before class.
- Review Tips for Diverse Learners on p. 3 to determine the best way to engage your students with the content.
- More class preparation tips are listed for each activity.

## INTRODUCTION (1 minute)

Begin by saying the following: *“For the next few days, we will be learning about the cases to be argued before the Supreme Court Justices. One thing to remember as we review: Supreme Court Justices usually take six factors into account when they decide a case. These include:*

- *The facts of the case, as set forth in the record presented on appeal*
- *Errors in the application of the laws*
- *The Colorado Constitution and the United States Constitution*
- *Statutory laws enacted by legislative bodies and legislative intent*
- *Precedents and/or persuasive authority*
- *The lawyers’ written briefs and Oral Arguments.”*

# DIVING INTO APPELLATE CASES

## Lesson Instructions (con't)



### ACTIVITY #1: CASE STUDY ANALYSIS

**Read/Take Notes**  
(30 minutes)

**Discussion**  
(15 minutes)

Hand out the Case Study Analysis worksheet for the civil case. You will be repeating this activity for the criminal case.

Read the case summary as a class, reviewing key terms, legal issues and more. Divide into small groups and do a read around, or have students read the summary on their own. Have students take notes on their Case Study Analysis sheet.

Discuss in groups or together what they see as the key facts, issues, arguments, their decisions and reasons for their decisions.

**Take a Vote:** Have the students vote on how they would rule. Ask a few to share their reasoning. You can skip this and go right to the continuum activity.

### ACTIVITY #2: CONTINUUM ACTIVITY (10 minutes)

**Continuum:** Tell students to stand on the masking tape line, with one end marking they would definitely rule for the appellant, the other end for the appellee. Explain the following to the students:

- The line is a continuum, which means they can place themselves on the line based on how strongly they agree with one side.
- They can't stand in the middle; they have to take a position.
- They need to have a reason for their position.

Ask a few students to share their reasoning. Encourage the class to consider whether the reasons change their ruling. If so, they can move to a different position on the line.

**If space is an issue,** you can ask each student to make an individual continuum by drawing a line on a sheet of paper and placing an X at the appropriate point representing the student's position. Ask the students to circulate and discuss their positions with students whose positions are similar and different from their own.

### ACTIVITY #3: MOCK ORAL ARGUMENTS

**Introduction**  
(5 minutes)

Explain to the students the following before doing this activity: *"We will be holding our own Supreme Court Oral Arguments, although it will be a shortened version. During actual Oral Arguments, each side has 30 minutes to present its case, including taking questions from the justices. The appellant argues first and has the option to "save" some minutes to use after the appellee has argued. For example, an appellant can use 25 minutes in the initial presentation, reserving the remaining five minutes to summarize or to address anything that arose during the appellee's 30-minute argument. The appellee cannot reserve any minutes to use later. Our Oral Arguments will allow each side four minutes."*

# DIVING INTO APPELLATE CASES

## Lesson Instructions (con't)



### ACTIVITY #3: MOCK ORAL ARGUMENTS

#### Preparing Arguments (45 minutes)

Then explain that they will be divided into the following groups:

- **Lawyer teams for the appellant and appellee, three to five people on each team.** These teams will prepare arguments to support their positions and make a presentation to the justices. Each side has four minutes for its presentation.
- **Seven justices, one presiding justice.** As the court hears the arguments, explain that they should write down questions during the arguments to ask afterwards. (*During Oral Arguments, justices often interrupt. However, that may be difficult for students to do so asking questions afterwards may make more sense.*) After the lawyers have spoken and questions have been answered, the presiding justice moderates a five-minute private meeting in which the justices express their views. At the end of the meeting, the justices take a vote and make a ruling. They will share their ruling with the class.
- **One Bailiff.** During, the Oral Arguments, the bailiff ensures that each side adheres to the time limits for each argument.

Divide the students into groups. Give students the worksheet for their group, making sure each student has one.

Hand back the Case Study Analysis worksheet they completed in Activity One, explaining they should use the information from their analysis of the case to prepare for their Mock Oral Arguments. The bailiff can join a team for this part of the activity.

#### Conducting Oral Arguments (25 minutes)

Conduct the mock Oral Arguments, using this schedule:

- Appellant's argument: 4 minutes
- Appellee's argument: 4 minutes
- Justices' questions: 5 minutes
- Justices' discussion and ruling: 5 minutes

#### Discussion (25 minutes)

After the justices have issued a ruling, debrief with the following questions:

- What were the strongest arguments presented by the lawyer(s) for appellant? What arguments would have improved this side of the case?
- What were the strongest arguments presented by the lawyer(s) for appellee? What arguments would have improved this side of the case?
- What were the key questions asked by the justices? What other questions, if any, should they have asked? During their meeting, what arguments did they consider? Did they disregard any arguments?
- Does the justices' decision have a societal impact or benefit? Explain.
- Do you agree with their decision? Explain your answer.

**Collect student worksheets and Case Summary. You will use these again in Activity Four!**

# DIVING INTO APPELLATE CASES

## Lesson Instructions (con't)



### ACTIVITY #4: STUDENT ESSAYS (Homework + In-class peer review)

Ask students to write a short essay supporting or refuting the statement:

**Our student Supreme Court made a wise decision in the case of**

---

Hand out the “Student Instructions” worksheet for this activity to help students organize their essays.

Tell students to write their student ID number on the essay and NOT their names so their essays are anonymous and can be evaluated more objectively by their peers.

After students turn in their essays, schedule a time to do an in-class review of the essays. Distribute copies of the students’ essays along with the “Student Critique” worksheet.

*Note: This activity can be repeated after the Colorado Supreme Court Oral Arguments at your school and then again after the court issues its opinion.*

**Collect student worksheets and Case Summary. You will use these again in Activity Six!**

### ACTIVITY #5: EVALUATING ORAL ARGUMENTS (2 hours)

**Right before Oral Arguments**, pass out **two** Oral Arguments worksheets, one for each case. Tell students to take notes. Collect at the end.

### ACTIVITY #6: SIMULATING THE SUPREME COURT (40 minutes)

**Note: This activity should be conducted after Oral Arguments at your school.**

Students will be simulating two parts of the appellate court decision-making process that are very important but unseen by the public: meeting to discuss the case and writing an opinion.

Hand out to students the notes they took during actual Oral Arguments, the case summary, the “Simulating the Supreme Court” worksheet, and, if desired, a link to the sample Colorado Supreme Court decision.

Divide students into groups of three or five (needs to be an odd number.)

In their groups, the students should discuss the questions on the worksheet. Encourage disagreement.

# DIVING INTO APPELLATE CASES

## Lesson Instructions (con't)



### ACTIVITY #6: SIMULATING THE SUPREME COURT (CON'T)

**Discussion**  
(15 minutes)

After each student has shared their ideas within their groups, an informal vote should be taken within the group. The majority is responsible for a majority opinion; the minority is responsible for a dissenting opinion.

Walk around the classroom, keeping track of individual and group voting patterns.

Have groups compare and contrast opinions. Take a final class vote.

### EXTENSION ACTIVITIES:

**Writing An  
Opinion**

Instruct each student to write and submit a brief opinion (about two pages), in support of their vote, stating:

- A short recap of the facts of the case;
- The key arguments of the case;
- The student's reasoning toward a solution of the arguments (why the student decided that way); and
- The student's decision based upon his or her reasoning.

You may want to have them refer to a Supreme Court opinion online, such as ***The Nonhuman Rights Project v. Cheyenne Mountain Zoo*** opinion: <https://research.coloradojudicial.gov/en/vid/1067527556>

**Listening to  
Oral  
Arguments**

As preparation for Oral Arguments, you may want to have students watch arguments in ***The Nonhuman Rights Project v. Cheyenne Mountain Zoo*** case. Go to our website and scroll down on the page under "Cases you may be interested in": <https://www.coloradojudicial.gov/court-appeals/live>



# DIVING INTO APPELLATE CASES

## Activity #1 Worksheet: Case Study Analysis



**Read the Case Summary for** \_\_\_\_\_

### **Find the Facts**

*List the facts of the case. Don't make up any information that is not provided. What are the most important facts? Are any important facts left out of the case?*

### **Identify the Issues**

*Are any rights in conflict in this problem? What questions or issues does this case ask the court to answer? State the question or questions the case raises.*

### **List the Arguments**

- Appellant Arguments
  
  
  
  
  
  
  
  
  
  
- Appellee Arguments

### **Give Decisions and Reasons**

*Make your decision and give the reasons that support your decision. If you are working in a group, you might discuss your decision and reasoning with other group members and listen to their thoughts.*

- Decision
  
  
  
  
  
  
  
  
  
  
- Reasons for your decision

# DIVING INTO APPELLATE CASES

## Activity #3 Worksheet: Mock Oral Arguments



### LAWYER TEAMS' INSTRUCTIONS

When preparing for an oral argument, lawyers review the briefs and summarize the case and their arguments. They prepare themselves to answer questions from the Supreme Court justices.

For this Mock Oral Argument, your team should complete the information below using information from the Case Study Analysis worksheet you completed during Activity One and the Case Summary. You will be presenting this argument to the justices. Your presentation must not exceed four minutes.

**What are some of the main arguments you will make for your side?**

**What might the opposing side argue? What will you say in response?**

**What questions might the justices ask?**

**Prepare an argument to support your position and write it below. Decide who will present each argument during Mock Oral Arguments.**

# DIVING INTO APPELLATE CASES

## Activity #3 Worksheet: Mock Oral Arguments



### BAILIFF'S INSTRUCTIONS

A bailiff in an appellate court is a court employee who keeps order in the courtroom. The bailiff is generally one of the judge's law clerks. Bailiffs keep track of lawyers as they enter the courtroom, run the tape recorder and perform other duties. A trial court bailiff keeps order in the courtroom and is in charge of the jury. There are no juries at Supreme Court or Court of Appeals Oral Arguments.

For this Mock Oral Argument, you will be responsible for:

- Keeping order in the courtroom.
- Ensuring each side adheres to the time limit (four minutes per presentation).

*During the Oral Argument preparation time, participate in preparing arguments with one of the Lawyers' Teams.*

# DIVING INTO APPELLATE CASES

## Activity #3 Worksheet: Mock Oral Arguments



### JUSTICES' INSTRUCTIONS

When preparing to hear Oral Arguments, Colorado Supreme Court Justices review documents about a case with their law clerks and identify questions they want to ask the lawyers. These include previous court decisions, legal precedents and more.

You will do this as well. Assign one person to be the presiding judge. Have that person take notes. That person will also lead the discussion about how you should rule.

To prepare for Mock Oral Arguments, discuss together the following using the worksheet completed in Activity One and the Case Summary.

**What don't you understand about the case?**

**What facts do you want clarified?**

**Which of their clients' actions would you like the lawyers to justify or explain?**

**Which of the cases you read about in the case summary could be applied to this case?**

# DIVING INTO APPELLATE CASES

## Activity #4 Worksheet: Essay Instructions



Write a short essay supporting or refuting the statement:

**Our student Supreme Court made a wise decision in the case of \_\_\_\_\_.**

In organizing your essay:

- Restate the decision of the court and indicate whether you support or disagree with the decision.
- Briefly summarize the case.
- List two facts that support your position.
- Cite a previous court case that supports your position.
- Develop an argument that supports your position.
- Develop the reasoning behind your argument.

Do not sign your name. Instead, use your student ID number instead.

All essays will be read and critiqued by three students using the student critique sheet.



# DIVING INTO APPELLATE CASES

## Activity #4 Worksheet: Student Critique



Essay No. \_\_\_\_\_

- Does the essay support/disagree (circle one) with the decision of the court?

- Is the case summarized? Circle one: Yes/No

Comments:

- Are relevant facts that support the statement presented? Circle one: Yes/No

Comments:

- Is a previous court case cited? Circle one: Yes/No

Comments:

- Is an argument that supports the statement given? Circle one: Yes/No

Comments:

- Is reasoning behind the argument given? Circle one: Yes/No

Comments:

- On the essay, mark any spelling, punctuation or grammatical errors.

- What is the best part of the paper?

- What needs improvement?

# DIVING INTO APPELLATE CASES

## Activity #5 Worksheet: Evaluating Oral Arguments



Use this worksheet to take notes during the actual Supreme Court Oral Arguments. Write down key points and arguments made. You will refer to these notes in a later activity.

**Case Name:**

**Your Name:**

**Date:**

**Appellant’s Arguments**

1.

2.

3.

4.

5.

**Appellee’s Argument**

1.

2.

3.

4.

5.

**Justices Questions**

**Your Decision**

**Your Explanation**

# DIVING INTO APPELLATE CASES

## Activity #6 Worksheet: Making a Decision



In your group, using the case summary and notes from Oral Arguments, discuss the following and, as needed, write down responses.

**What did you agree with or disagree with from each attorney?**

**What were some of the questions from the justices?**

**How would you decide the case?**

After your discussion, take a vote within the group whether the justices should side with the appellant or appellee. The majority is responsible for a majority opinion; the minority is responsible for a dissenting opinion. Then discuss with the class.

**If assigned:** At home, write and submit a brief opinion (about two pages), in support of the way they voted, stating the following. You can refer to a Supreme Court Opinion online. ***The Nonhuman Rights Project v. Cheyenne Mountain Zoo*** might be of interest:

<https://research.coloradojudicial.gov/en/vid/1067527556>

1. A short recap of the facts of the case;
2. The key arguments of the case;
3. The student's reasoning that would lead to a certain decision in the argument; and
4. The student's decision based on his or her reasoning.

# WHAT TO EXPECT AT ORAL ARGUMENTS

## Lesson Plan Summary



### OBJECTIVE

- Students will be able to describe appropriate behavior in a courtroom in preparation for hearing Oral Arguments.
- Students will be able to identify key elements of Oral Arguments in preparation for hearing Oral Arguments.

### INQUIRY QUESTIONS

- Is it important or necessary for everyone to present themselves professionally in a courtroom?
- Should observers have a right to share their opinions during court proceedings?
- In what ways do the structure of Oral Arguments help or hinder the judicial process?

### 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

### ACTIVITIES

Proper Etiquette Scenarios, lecture/reading

### MATERIALS

“What is Proper Etiquette?” Scenarios sheet,  
“Courtroom Rules” and “Oral Program Process and Schedule” readings

### GRADE LEVEL

High School

### TIME

One class period, designed to be done a day or two before Oral Arguments.

### KEY TERMS

**Appellant:** Party appealing the lower court’s decision

**Appellee:** Party prevailing in the lower court and arguing, on appeal, against setting aside the lower court’s decision

**Appellate Brief:** Establishes the legal argument for the party, explaining why the reviewing court should affirm or reverse the lower court’s judgment based on legal precedent and citations to the controlling cases or statutory law.

**Oral Arguments:** Spoken presentation of a case before a court. Lawyers or parties representing each side in a dispute have 30 minutes to make their case and answer questions from Supreme Court justices and 15 minutes in the Court of Appeals.

**Civil Case:** A legal dispute between two or more parties, typically involving a claim for money or other compensation, rather than criminal charges.

**Criminal Case:** A legal proceeding where the government accuses an individual of committing a crime and seeks to punish them.

**Etiquette:** Set of customary and accepted rules for behavior within specific groups. It’s a code of conduct that dictates how people should interact with each other, promoting respect, consideration, and a polite environment.

# WHAT TO EXPECT AT ORAL ARGUMENTS

## Lesson Plan Instructions



### LESSON BACKGROUND

The goal of this lesson is to prepare students for Oral Arguments, so they understand how the arguments are structured and how to behave in the courtroom. Compliance with rules of behavior and etiquette in the courtroom reflect respect, as citizens, of not only the judge, but, more importantly, of the law itself and our justice system that holds fairness and equality of treatment as its ideals. Common courtesy and politeness are sound guides for how to act in the courtroom.

### CLASS PREPARATION

- Write lesson objectives and key terms on the board or on the screen.
- Review Tips for Diverse Learners on p. 3 to determine the best way to engage your students with the materials.
- Make copies of the “What is Proper Etiquette? Scenarios,” enough for a pair of students.
- Make copies of “Courtroom Rules” and “Oral Argument Process and Schedule” readings, if necessary. You can also project on the screen.

### INTRODUCTION

Begin by reviewing the lesson objectives and key terms and then say: *“Today we are going to review the structure of Oral Arguments and proper etiquette during Oral Arguments. We will begin by reviewing some scenarios about proper behavior.”*

### WARM UP Etiquette Scenarios (10 minutes)

Divide students into pairs. Hand the “What is Proper Etiquette? Scenarios” sheet to each pair. Have the students quickly review the scenarios and decide whether they each shows proper behavior or not.

Then ask, by a show of hands, whether the students think the scenario exhibits proper courtroom behavior. Discuss if there are any disagreements.

### DIGGING IN

#### Lecture/Reading 25 minutes

Use the scenarios as a segue into the “Courtroom Rules” and “Oral Argument Process and Schedule” readings. You can project on the screen and review together. Or, you can divide students into small groups and distribute readings. Have them do a read aloud. Ask if students have any questions.

**Important: Explain how you expect your students to dress for Oral Arguments.**

#### Discussion 10 minutes

After reading or reviewing the material, discuss the following:

- Is it important or necessary for everyone to present themselves professionally in a courtroom? Why or why not?
- Should observers have a right to share opinions during proceedings?
- In what ways does the structure of Oral Arguments help or hinder the judicial process?

### EXIT TICKET

As they leave, ask students what they are going to wear to Oral Arguments.



# WHAT TO EXPECT AT ORAL ARGUMENTS

## Activity: What is Proper Etiquette? Scenarios



### Scenario #1:

While they are waiting for Oral Arguments to begin, the appellee asks her attorney questions.

***Is this proper etiquette in a courtroom?***

### Scenario #2:

Students walk into the auditorium on the day of Oral Arguments wearing t-shirts and hats that align themselves with a certain political position.

***Is this proper etiquette in a courtroom?***

### Scenario #3:

The appellant yells out his disagreement with the opposing lawyers' argument during Oral Arguments.

***Is this proper etiquette in a courtroom?***

### Scenario #4:

A student has a question during Oral Arguments about the justices' line of questioning. She leans over to ask another student to clarify what is happening.

***Is this proper etiquette in a courtroom?***

### Scenario #5:

A student suddenly feels ill during Oral Arguments and rushes out of the auditorium.

***Is this proper etiquette in a courtroom?***

### Scenario #6:

A group of students are sitting in the back of the auditorium sleeping.

***Is this proper etiquette in a courtroom?***

### Scenario #7

Two teachers are sitting next to each other during Oral Arguments discussing what they are seeing.

***Is this proper etiquette in a courtroom?***

# WHAT TO EXPECT AT ORAL ARGUMENTS

## Reading: Courtroom Rules



The rule of law and respect for the judicial system are hallmarks of our American system of government. Compliance with rules of behavior and etiquette in the courtroom reflect our respect, as citizens, of not only the judge, but, more importantly, of the law itself and our justice system, whose ideals are fairness and equality of treatment. By their codes of ethics, lawyers are required to be respectful of not only the judicial officers, but also the opposing attorneys and parties (as well as the witnesses and jurors who are not part of an appeals case.)

As spectators, you are expected to show respect for the judges and justices who have earned the right to rule on certain matters, and for the lawyers and parties who are arguing before the court. It is important to behave respectfully in any kind of courtroom so the proceedings are not unnecessarily disrupted.

Interrupting the court process could find you in contempt of court. If necessary, you will be removed from the auditorium for violating these rules.

### Courtroom Rules

- Come into and leave the courtroom or auditorium quietly.
- Listen and watch carefully; focus on the details.
- Talking, whispering, giggling, shuffling papers and using your phone are prohibited.
- Photography (except by approved people) is prohibited.
- Don't embarrass yourself by yelling out, whistling, or making any other inappropriate noises.
- Don't bring food, gum, or anything to drink.
- Don't talk to your friends during the court session. If you don't understand something or wish to say something, please save your comments for the break.
- Don't leave the auditorium, unless you feel ill. Please find an adult to help you.
- Don't throw anything.
- Don't bring backpacks or bulky jackets into the courtroom or auditorium.
- Don't bring cell phones (or turn them off).
- Bring your Oral Arguments worksheets and writing implement so that you may take notes.
- Dress professionally as though you were going to court yourself. No hats are allowed.
- A bailiff in an appellate court is a court employee whose job it is to keep order in the courtroom. The bailiff will bang the gavel to begin the court proceedings. Participants and observers are required to stand when court is called to order. The bailiff will tell you when you may be seated. You are also required to stand when court is called into recess.
- Members of the media are required to follow additional rules that regulate their use of cameras.

# WHAT TO EXPECT AT ORAL ARGUMENTS

## Reading: Oral Argument Process and Schedule



Colorado Supreme Court decisions are made by a process similar to the one we did during our shortened mock trial, except for the following:

- Lawyers for the petitioner (appellant) and respondent (appellee) must give the court detailed written arguments, called briefs, before the case is heard. Because decisions of the Supreme Court can set precedents that affect the entire state, other interested parties can present their views about a case in “friend-of-the-court” (amicus curiae) briefs.
- During Oral Arguments, each side is allowed 30 minutes to argue, including justices’ questions. This time limit is strictly enforced. However, the appellant (the party appealing the lower court’s decision) argues first and may “reserve” some time to use after the appellee has argued. For example, an appellant can use 25 minutes in the initial presentation, reserving the remaining five minutes to summarize or to address anything that arose during the appellee’s 30-minute presentation. The appellee cannot reserve any time. Any party may make a motion to be granted additional time for argument, but such a motion must be filed within 10 days after the final deadline for briefs to be filed and must show good cause for the additional time for argument. The Supreme Court may terminate Oral Arguments if it believes further argument is unnecessary.
- Colorado’s appellate rules contain certain requirements concerning the content of Oral Arguments. First, the appellant must include a “concise statement of the case.” Second, the lawyers are forbidden to read “at length” from briefs, from the record, or from authorities. Third, lawyers are limited to arguments raised in the briefs, unless permitted by the court. Fourth, when multiple parties urge the same result, lawyers are directed to avoid duplication of argument.
- Immediately after Oral Arguments, the justices meet in a conference to determine the views of the members of the court and to take a tentative vote. The Chief Justice presides and justices generally present their views in order of seniority with the most junior justice opening the discussion. The Chief Justice assigns the case to one of the justices who voted in the majority.
- One justice assigned to the case will, in most instances, write the panel’s majority opinion. An opinion is a comment on the court’s decision and the reasons upon which it was based. A concurring opinion is one in which a justice agrees with the majority opinion but not for the same reason or reasons. A dissenting opinion is one in which a justice disagrees with the result reached by the majority of the other justices.

### Courts in the Community Schedule

|                           |  |
|---------------------------|--|
| <b>9–9:15 a.m.</b>        | Intro remarks  |
| <b>9:15–10:15 a.m.</b>    | Civil Case Oral Arguments  |
| <b>10:15–10:30 a.m.</b>   | Justices conference; Question and answer session, attorneys and students |
| <b>10:30–11:30 a.m.</b>   | Criminal Case Oral Arguments   |
| <b>11:30–11:45 a.m.</b>   | Justices conference; Question and answer session, attorneys and students |
| <b>11:45 a.m.–12 p.m.</b> | Question and answer session: Justices and students                       |