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**TEXTBOOK:** Magleby 24th Edition, Chapter 14 (pp. 374-394)  
{Magleby 2009 Brief Edition, Chapter 11 (pp. 324-349)}

**OBJECTIVES**

- 5.1 Explain what judicial review is and trace its origins.
- 5.2 Distinguish between Strict Constructionist and Activist judicial philosophy
- 5.3 List and comment on the three eras of varying Supreme Court influences on national policy.
- 5.4 Explain what is meant by a dual court system and describe its effects on how cases are processed, decided, and appealed.
- 5.5 List the various steps that cases go through to reach the Supreme Court and explain the considerations involved.
- 5.6 Discuss the power exercised today by the Supreme Court and the opposing viewpoints on an activist Supreme Court.

**OUTLINE**

An independent judiciary with the power of judicial review—the power to decide the constitutionality of acts of Congress, the executive branch, and state governments—can be a potent political force. The judicial branch of the United States government has developed its power from the earliest days of the nation, when Marshall and Taney put the Supreme Court at the center of the most important issues of the time.

From 1787 to 1865, the Supreme Court focused on the establishment of national supremacy. From 1865 to 1937, it struggled with defining the scope of the government’s power over the economy. In the present era, it has deliberated about personal liberties. It became easier for citizens and groups to gain access to the federal courts in the mid- to late twentieth century. This is the result of judges’ willingness to consider class action suits and amicus curiae briefs and to allow fee shifting. The lobbying efforts of interest groups also had a powerful effect. At the same time, the scope of the courts’ political influence has increasingly widened as various groups and interests have acquired access to the courts, as the judges have developed a more activist stance, and as Congress has passed more laws containing vague or equivocal language. Still, the Supreme Court controls its own workload and grants certiorari to a very small percentage of appellate cases. As a result, although the Supreme Court is the pinnacle of the federal judiciary, most decisions are made by the twelve circuit courts of appeals and the ninety-four federal district courts.

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**ESSENTIAL QUESTIONS**

The purpose of this chapter is to give the student a preview of the major questions to be asked throughout the textbook and to introduce key terms. After reading and reviewing the material in this chapter the student should be able to do each of the following:

- What are enumerated and implied powers of the judiciary?
  - What are the checks on the power of the judiciary? Are they easily invoked, or weak and difficult to use?
  - What sorts of legal doctrines or principles will an activist judge favor?
  - In what respects is the Supreme Court a political institution?
  - Why do presidents give careful thought to the political views of prospective judicial nominees? Isn’t legal competence more important?
  - What does the Roosevelt court-packing plan suggest about the relationship between the Supreme Court and the other branches of government?
  - What kinds resources are required to bring a case to the Supreme Court?
  - Is the judicial system more accessible than the legislative or executive branches?
  - How can successful assertions of judicial power such as *Marbury* be distinguished from unsuccessful ones such as *Dred Scott*?
  - What are the reasons for a greater number of concurring and dissenting opinions in the Court decisions of recent decades?
  - Is the clerk system an appropriate way for the Court to manage its workload? What are the advantages and disadvantages of this system?
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VOCABULARY

Activist Approach  
Adversarial Legal System  
Amicus Curiae  
Blue Slip  
“Bork”  
Brief  
Circuit Court  
Class Action Suit  
Concurring Opinion  
Courts Of Appeals  
Civil Law  
Criminal Law

Common Law System  
Code Law System  
Dissenting Opinion  
District Courts  
Diversity Cases  
Federal Question Cases  
Inquisitorial Legal System  
Judicial Review  
Legislative Court  
Litmus Test  
Opinion Of The Court  
Original Jurisdiction  
Per Curiam Opinion

Plaintiff  
Political Question  
*Stare Decisis*: Precedent  
Remedy  
Senatorial Courtesy  
Sovereign Immunity  
Standing  
Strict Constructionist  
Writ Of Certiorari  
  
Court Cases:  
*Marbury v Madison*  
*Mcculluch v Maryland*