

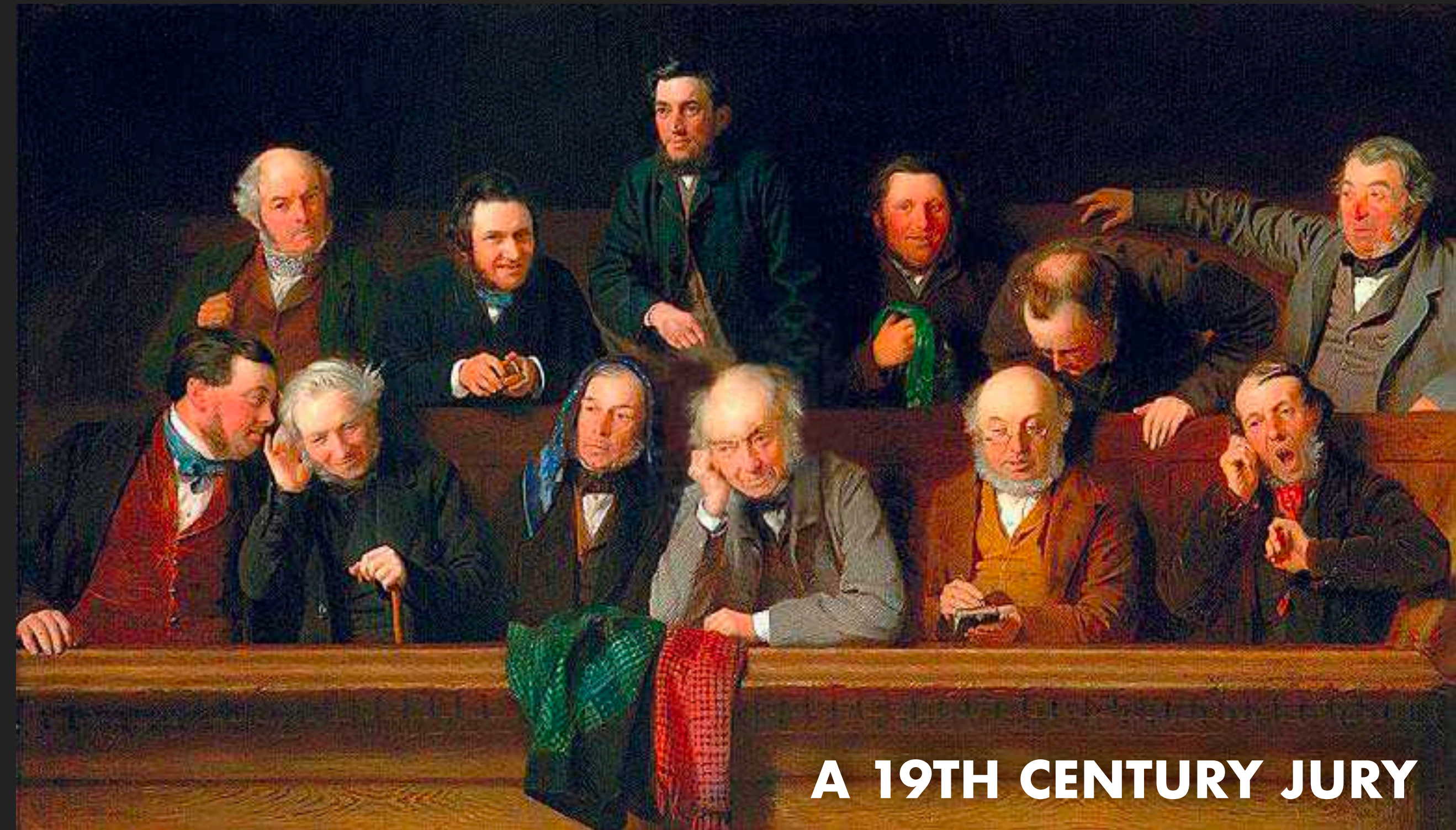
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**MR. POGREBA, PARKER SCHOOL**

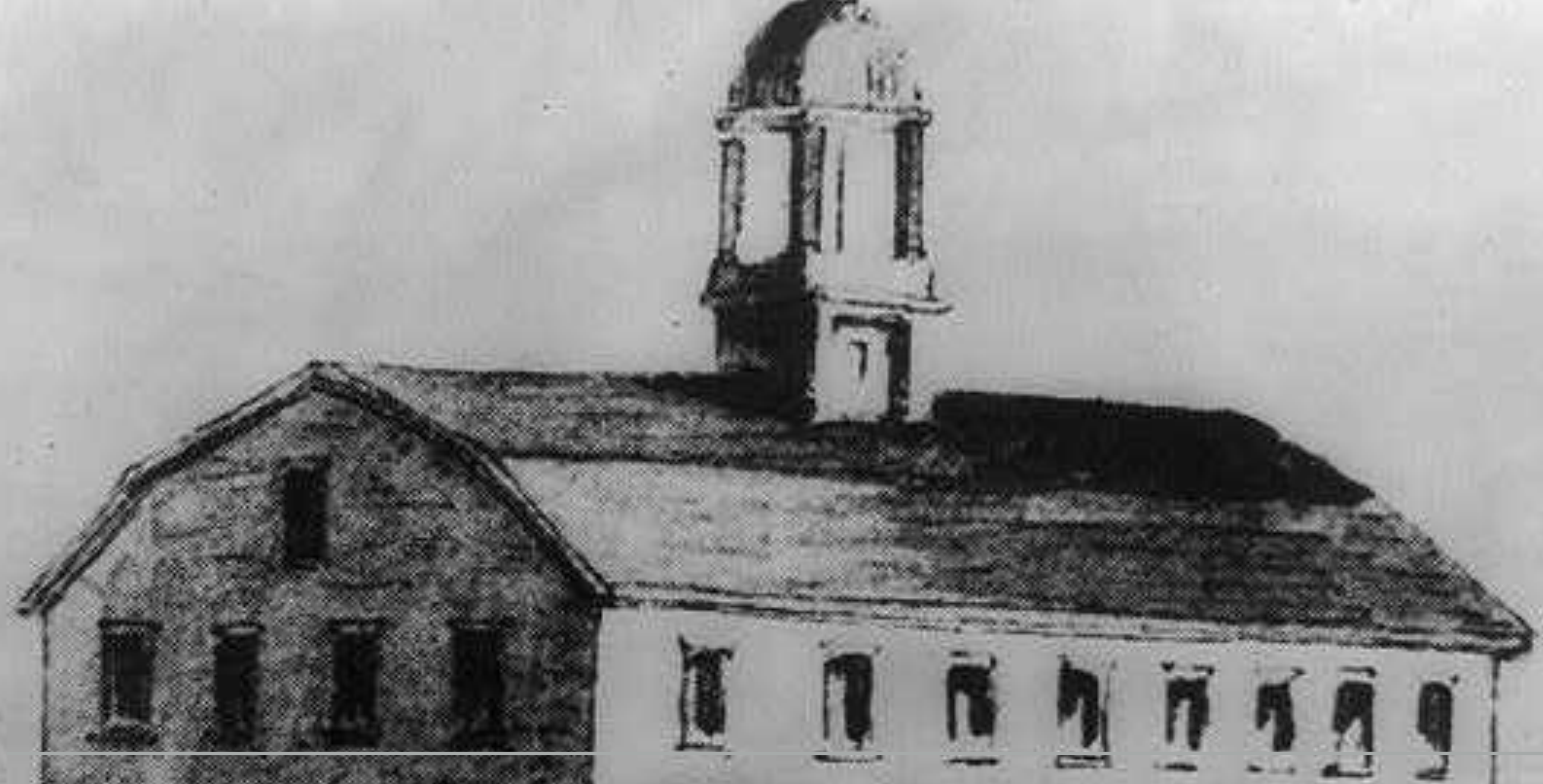
**UNIT 4: THE JUDICIARY, Part 1**

## ARTICLE III

- ▶ The only court mentioned in the Constitution is the **Supreme Court**.
- ▶ Federal judges are appointed for life. Why?
  - ▶ Unpopular decisions
  - ▶ Consistent application of the law
  - ▶ A check on the more powerful branches
- ▶ The Supreme Court has **original jurisdiction** in cases involving states and ambassadors.
- ▶ It has **appellate jurisdiction** in the vast majority of cases it hears.
- ▶ Article III also defines **treason** and provides the right to a **trial by jury**.

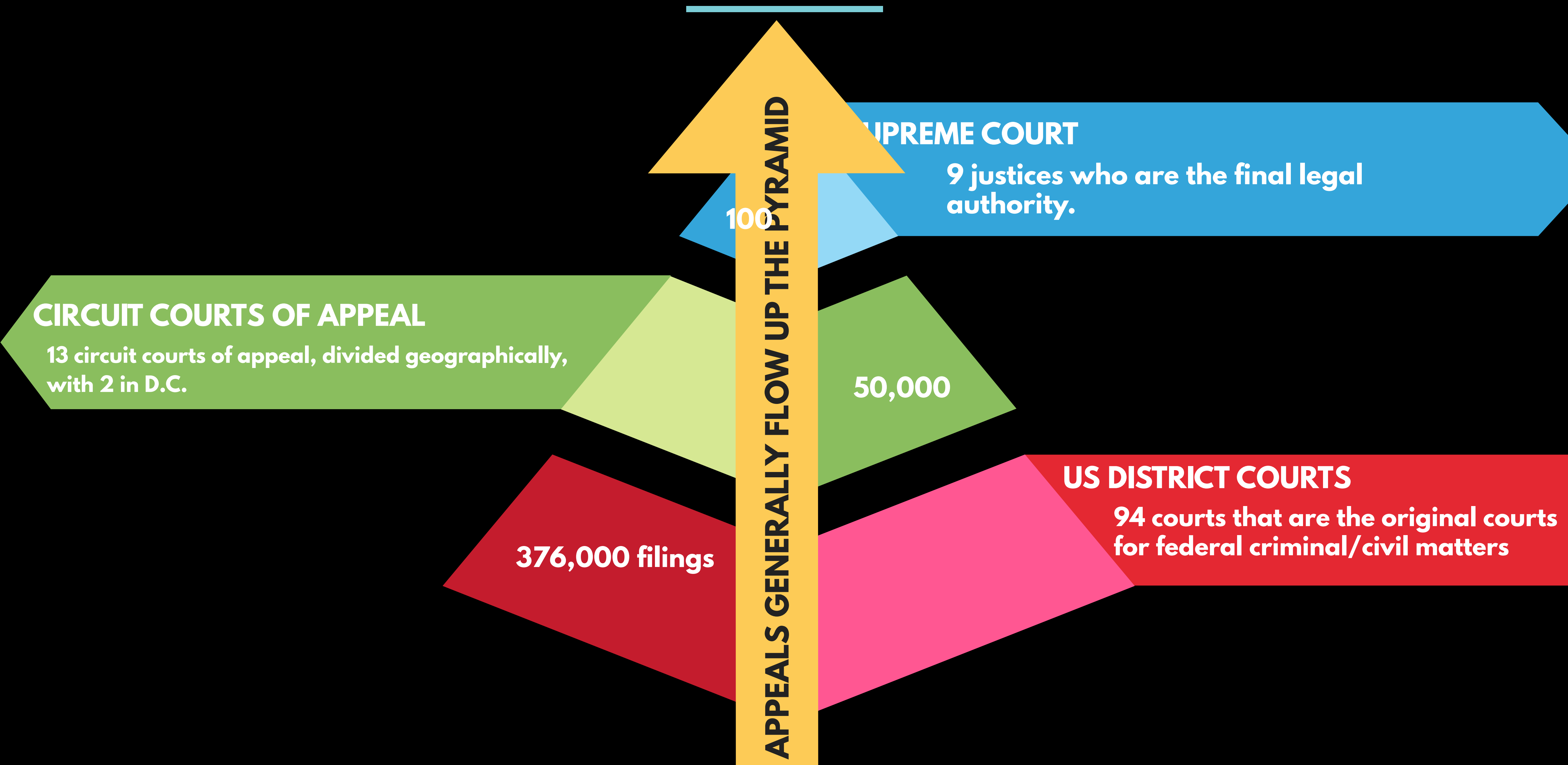


**A 19TH CENTURY JURY**



**A THREE TIER COURT SYSTEM**

# THREE TIER FEDERAL COURT SYSTEM



# US DISTRICT COURTS

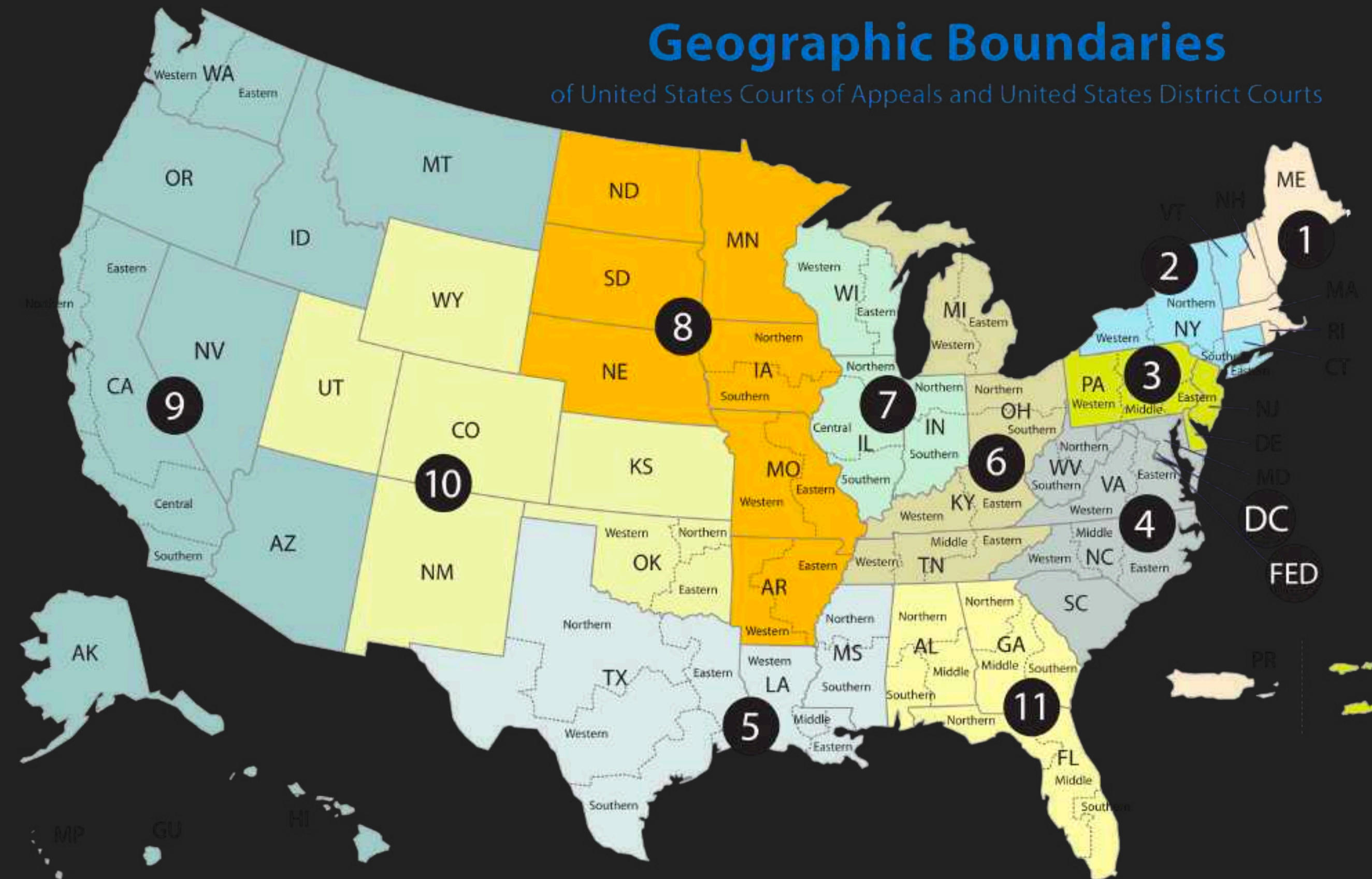
- ▶ 94 district courts, each with a **U.S. Attorney**
- ▶ Hear federal criminal and civil cases
- ▶ These courts are **trial courts** with **original jurisdiction** over federal crimes and civil cases.
- ▶ In criminal cases, it is the **prosecution** against the **defense**.
- ▶ In civil cases, a **plaintiff** brings a complaint of **injury** against a **defendant**.
- ▶ Citizens can sue the government here, but **sovereign immunity** limits these claims.



**U.S. DISTRICT COURT IN WORCESTER, MA**

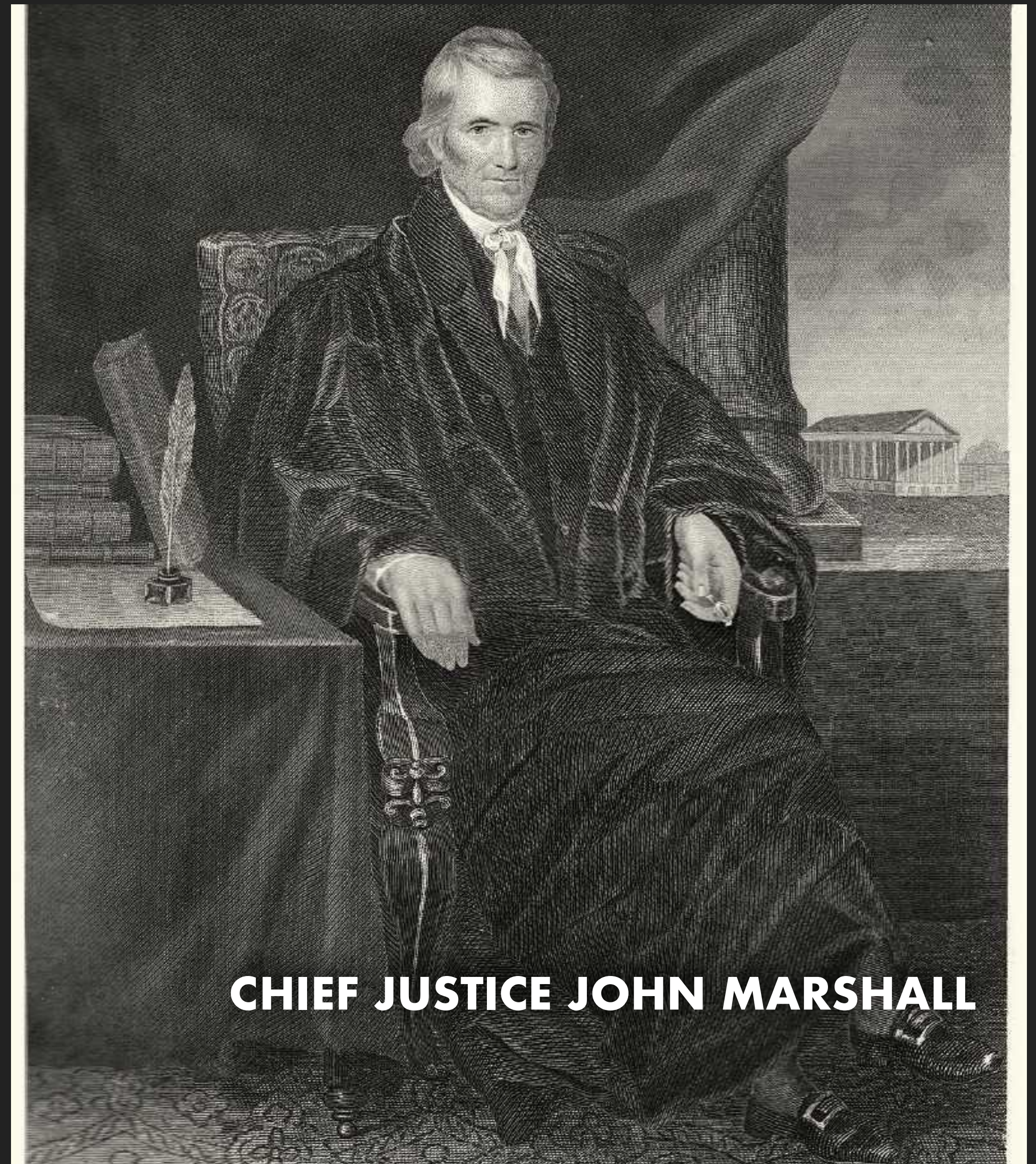
# CIRCUIT COURTS OF APPEAL

- ▶ 11 regions plus two in D.C.
- ▶ These courts do not decide matters of fact; they make determinations about the application of law.
- ▶ The courts can issue a **writ of certiorari**, Latin for “to make more certain.”
- ▶ These cases are heard by panels of three judges with no witnesses or new evidence introduced.



# THE SUPREME COURT

- ▶ At the top of the hierarchy is the Supreme Court, which has a **chief justice** and 8 **associate justices**.
- ▶ The court takes 80-120 cases a year and overturns the appellate court ruling about 70% of the time.
- ▶ At the heart of the Supreme Court's power as a coequal branch is the **1803 Marbury v. Madison** decision, which established the concept of **judicial review**, solidifying the argument Hamilton made in **Federalist 78**.



**CHIEF JUSTICE JOHN MARSHALL**

[F]rom the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office . . . . No legislative act contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves. A Constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them [the judges] to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. . . .

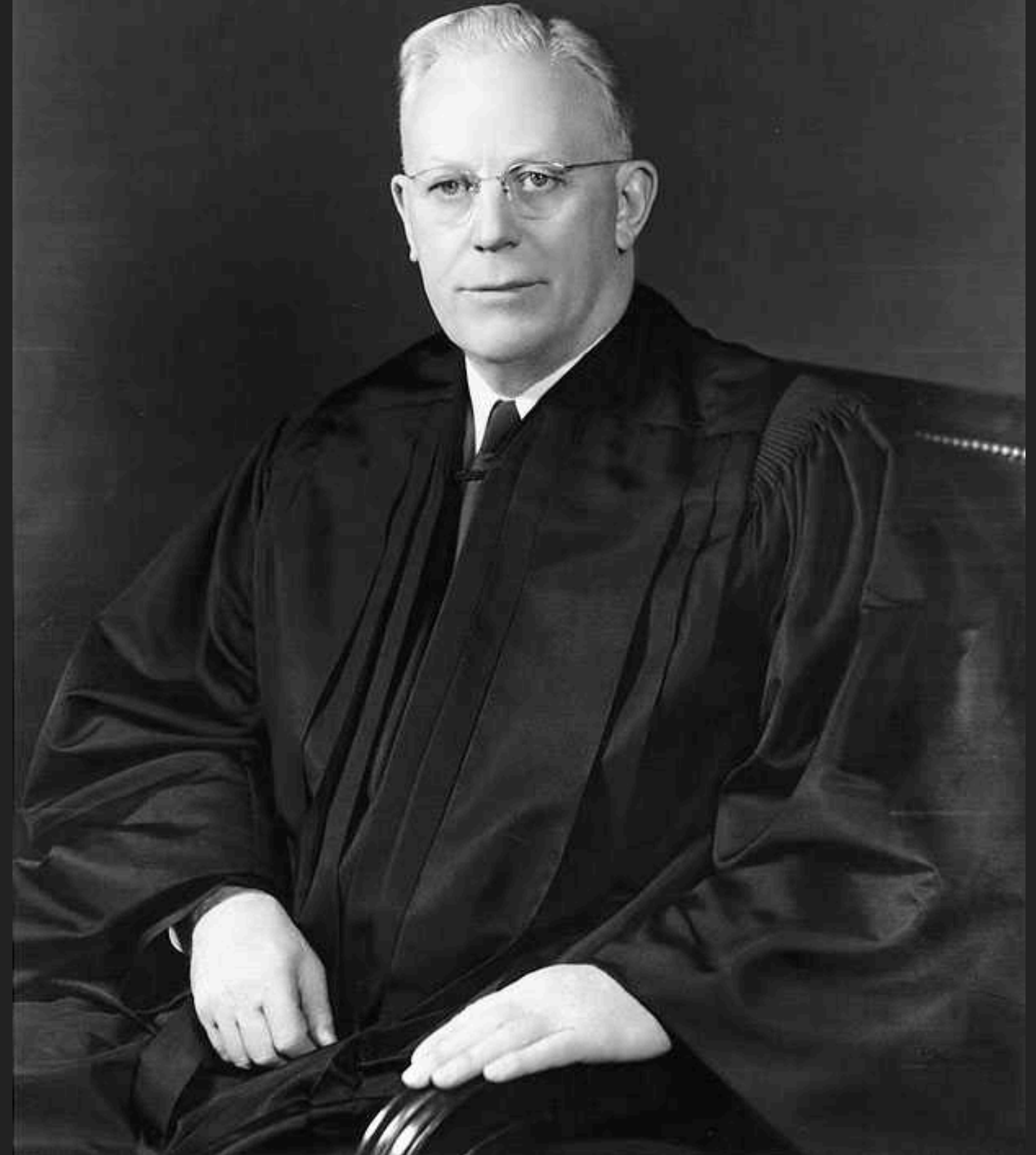
Alexander Hamilton, *Federalist* 78.

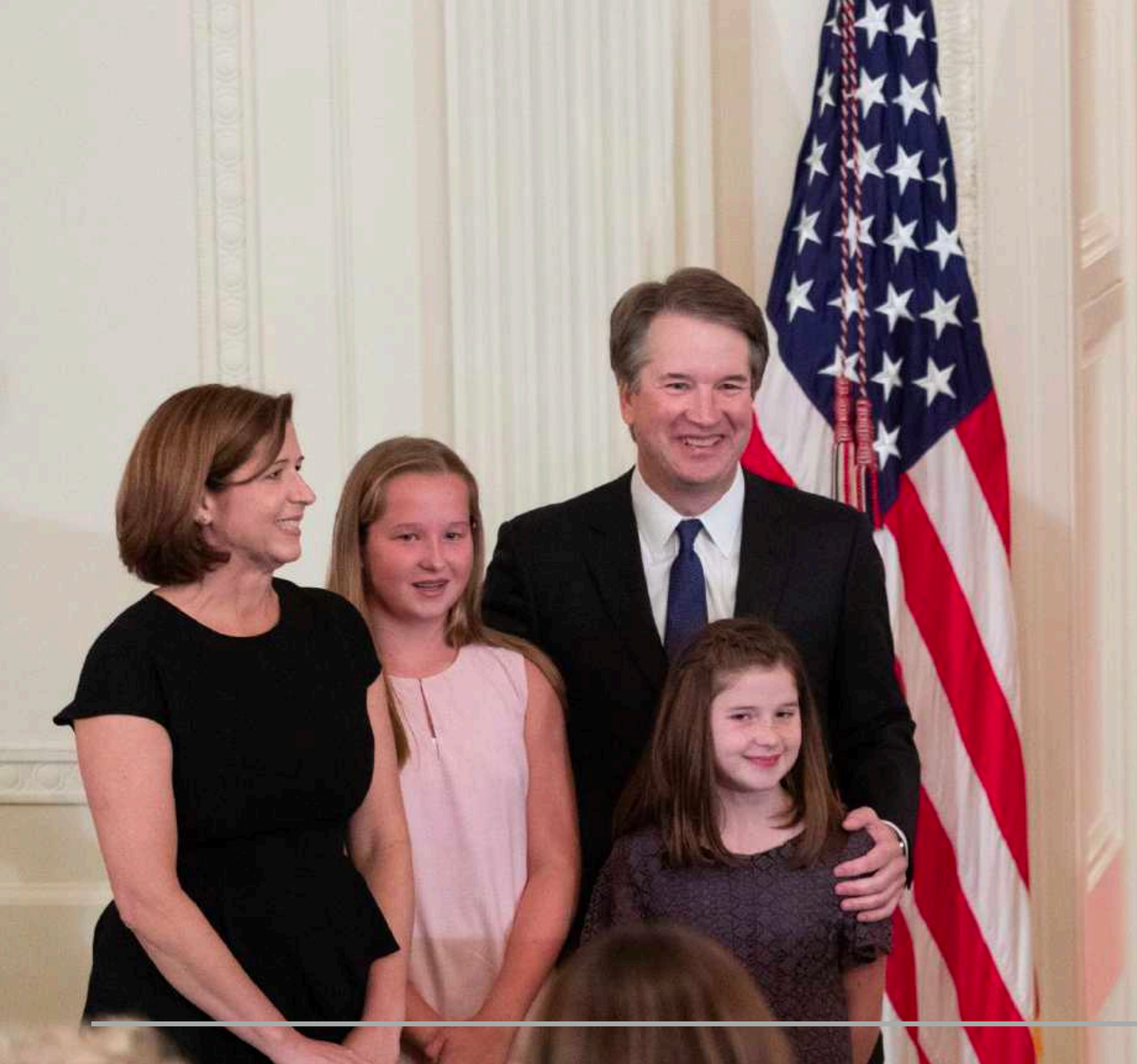


# SUPREME COURT RULINGS

- ▶ The Supreme Court takes cases from federal appellate courts (2/3) and state courts (1/3).
- ▶ Those wanting an appeal file a **petition for certiorari**, an argument why the lower court erred. Four judges must agree to take the case, which must be about **real, not hypothetical, injury**.
- ▶ After a hearing and considering **amicus briefs**, the court will issue a ruling:
  - ▶ **Majority opinion** is the ruling from the Court.
  - ▶ A **concurring opinion** agrees with the majority, but differs in some key aspects.
  - ▶ The **dissenting opinion** is an explanation of why the majority was wrong, written by the losing side.

CHIEF JUSTICE EARL WARREN





**LEGITIMACY OF THE COURT**

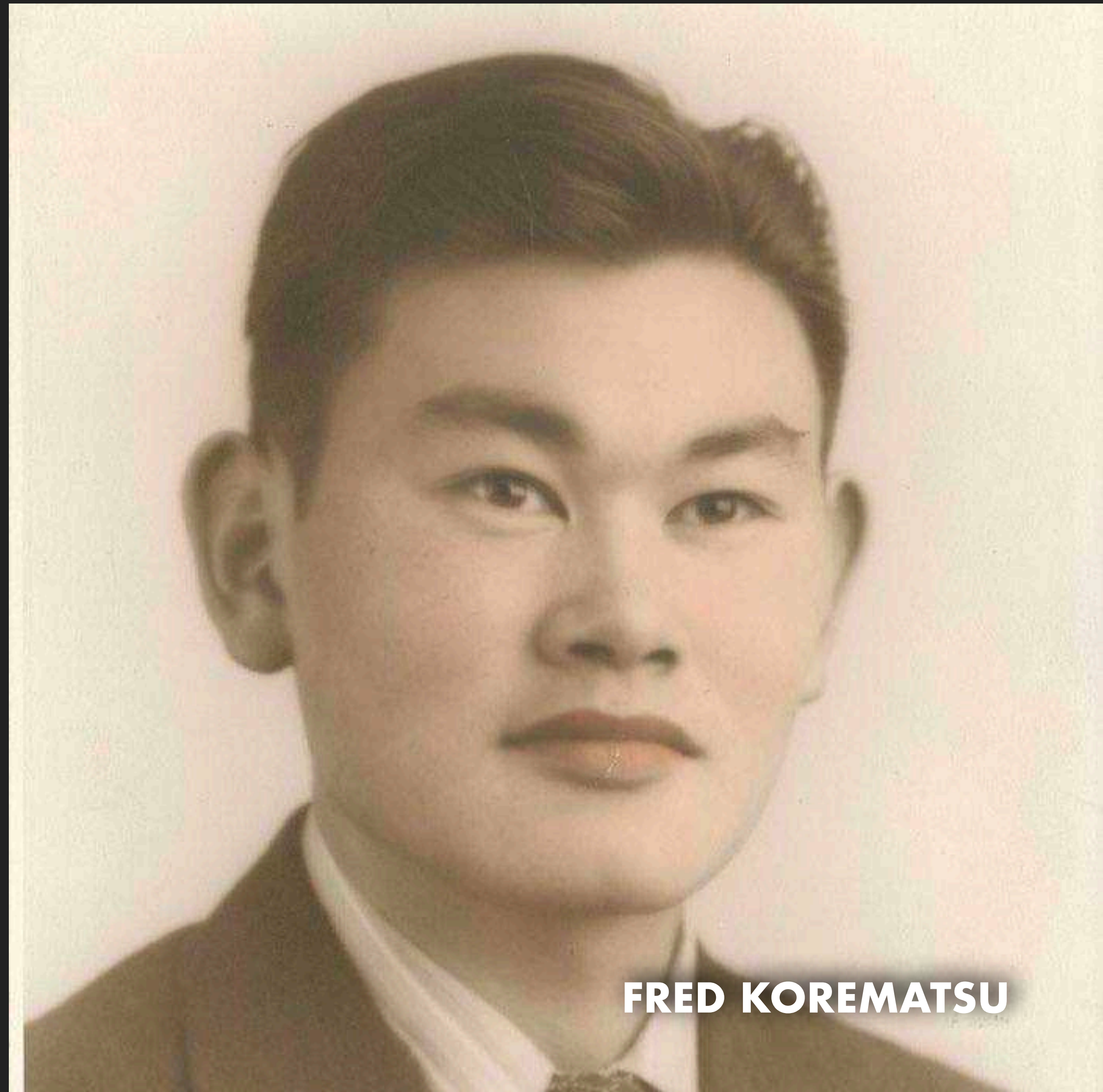
### PRECEDENT

- ▶ Much of American law is rooted in English **common law**.
- ▶ Court rulings often establish a **precedent** for future rulings. When courts preserve the law, they are acting on the concept of **stare decisis**, to let stand.
- ▶ Because of the concept of **binding precedent**, lower courts must follow upper court rulings, but...
- ▶ **Persuasive precedent** refers to using the opinions of courts in other areas and times.



## BUT STARE DECISIS IS NOT ABSOLUTE

- ▶ As times, justices, and culture change, the Court will change precedent.
- ▶ From **Plessy v. Ferguson (1896)** to **Brown v. Board (1954)**.
- ▶ From **Korematsu v. United States (1944)** to **Trump v. Hawaii (2018)**.
- ▶ **Roe v. Wade (1973)** is an example of a decision that has subsequently been narrowed by other cases.



FRED KOREMATSU

# CHALLENGES TO LEGITIMACY

- ▶ Supreme Court nominations have become a more explicitly **partisan process**, with much closer votes in the Senate.
- ▶ Changes that lead to overturning decisions lead to accusations that justices are engaging in **judicial activism**—legislating from the bench—rather than interpreting the law.
- ▶ While John Marshall wanted unanimity, the court has more and more **divided decisions**.
- ▶ Critics on the left and right tend to argue that the Court is too political.
- ▶ Bush v. Gore (2000) was a 5-4 decision.

