I. CHARACTERISTICS OF THE FEDERAL COURT SYSTEM

A. ADVERSARIAL
   1. A court provides an arena for two parties to bring their conflicts before an impartial arbiter, or judge.
   2. The plaintiff brings a charge.
   3. The defendant is the one being charged.

B. PASSIVE
   1. Federal judges are restrained by the Constitution to deciding actual disputes or cases rather than hypothetical ones.
   2. The judiciary is thus a passive branch of government that depends on others to take the initiative.

C. JURISDICTION
   1. Jurisdiction is a court’s authority to hear a case.
   2. Types of jurisdiction
      - Original jurisdiction—courts in which a case is first heard.
      - Appellate jurisdiction—courts that hear cases brought to them on appeal from a lower court.
      - Exclusive jurisdiction—cases that can be heard only in certain courts.
      - Concurrent jurisdiction—cases that can be heard in either a federal or a state court.
D. A COMPLEX DUAL COURT SYSTEM

1. Because of its federal system, the United States has two separate court systems.
2. Each of the 50 states has its own system of courts. Over 97 percent of all criminal cases are heard in state and local courts.
3. The federal judiciary system spans the entire country.

II. THE FEDERAL COURT SYSTEM

A. THE CONSTITUTION

1. The Supreme Court is the only court specifically mentioned in the Constitution.
2. The Constitution gives Congress the power to create all other federal courts.

B. THE JUDICIARY ACT OF 1789

1. The Judiciary Act of 1789 established the basic three-tiered structure of federal courts that still exists.
2. The Judiciary Act of 1789 set the size of the Supreme Court at six justices. This was later expanded to nine in 1869.

C. DISTRICT COURTS

1. There are currently 94 district courts staffed by just under 700 judges. Every state has at least one district court.
2. The district courts handle over 300,000 cases a year, or about 80 percent of the federal caseload.
3. Most cases end in a plea bargain negotiated by the defense and prosecution. Only about 2 percent of the cases are decided by trials.

D. THE COURTS OF APPEALS

1. The courts of appeals are appellate courts authorized to review all district court decisions. In addition, they are empowered to rule on decisions of federal regulatory agencies such as the Federal Trade Commission.
2. The courts of appeals do not hold trials or hear testimony.

E. THE SUPREME COURT

1. The Supreme Court is America’s “court of last resort.” It reviews cases from the United States courts of appeals and state supreme courts.

2. The Supreme Court is the final arbiter of the Constitution. Supreme Court decisions establish precedents that are binding on the entire nation.

3. *Marbury v. Madison* and judicial review:
   - *The Supreme Court established the power of judicial review in the case of Marbury v. Madison.*
   - *Judicial review is the power of the Supreme Court to declare federal legislation invalid if the legislation violates the Constitution.*

III. THE SELECTION OF JUDGES

A. THE LOWER COURTS

1. All federal judges are appointed by the president and confirmed by a majority vote of the Senate.

2. Senatorial courtesy is an unwritten tradition whereby the Senate will not confirm nominations for lower court positions that are opposed by a senator of the president’s own party from the state in which the nominee is to serve.

B. THE SUPREME COURT

1. Nomination criteria
   - Competence—*Nominees are expected to have impressive credentials, including prior judicial or governmental experience.*
   - Ideology and policy preferences—*Nominees are expected to share the president’s policy preferences. For example, Franklin Delano Roosevelt appointed justices who supported his New Deal programs, while Ronald Reagan appointed justices who were sympathetic to his conservative goals.*
Race, ethnicity, and gender—Contemporary presidents pay close attention to race, ethnicity, and gender. The Supreme Court has had two African American justices, three female justices, and one Hispanic justice. Sonia Sotomayor is the Court’s 111th justice, its third female justice, and its first Hispanic justice.

2. The confirmation process
   - The names of possible nominees are sent to the Federal Bureau of Investigation for a thorough background check. In addition, the names of nominees are usually sent to the American Bar Association (ABA) for a professional rating.
   - Interest groups are playing an increasingly important role in the confirmation process. Interest group tactics include public protest demonstrations, appearances on TV and radio talk shows, media advertisements, editorials, and e-mails to senators.
   - The Senate Judiciary Committee holds public hearings on each Supreme Court nominee. The committee then makes a recommendation to the full Senate.

III. HOW THE SUPREME COURT WORKS

A. SELECTING CASES

1. The Supreme Court exercises original jurisdiction in cases involving the following:
   - Two or more states.
   - The United States and a state government.
   - The United States and foreign ambassadors and diplomats.

2. Writs of certiorari
   - The Court’s original jurisdiction only generates two to three cases a year. The remaining cases come under the Court’s appellate jurisdiction.
   - Nearly all appellate cases now reach the Supreme Court by a writ of certiorari. A writ of certiorari is an order by the Court directing a lower court to send up the record in a given case for its review.
The certiorari process enables the Supreme Court to control its own caseload. Cases must involve a serious constitutional issue or the interpretation of a federal statute, action, or treaty.

3. The Rule of Four
   - Supreme Court clerks screen the approximately 9,000 petitions that come to the Supreme Court each term. The clerks are exceptional law school graduates who usually have experience clerking for a judge on one of the courts of appeal.
   - The justices conduct weekly conference meetings where they discuss petitions prepared by their clerks.
   - For a case to be heard on appeal, at least four of the nine justices must agree to hear the case. This is called the Rule of Four.

The Supreme Court agrees to hear very few lower court appeals. Be sure that you can identify a writ of certiorari and the Rule of Four and explain their role in the case selection process.

4. The solicitor general
   - The solicitor general is the fourth-ranking member of the Department of Justice.
   - The solicitor general is responsible for handling all appeals on behalf of the United States government to the Supreme Court.
   - The solicitor general plays an important role in influencing the Court’s decision on which cases to hear.

B. FILING BRIEFS

1. Each party is required to file a brief, or detailed written statement, arguing one side of a case. Briefs cite relevant facts, legal principles, and precedents that support their arguments.

2. Interested persons and groups that are not actual parties to the case may file amicus curiae (“friend of the court”) briefs. Cases involving controversial issues such as affirmative action
and abortion attract a large number of amicus curiae briefs. Interest groups use amicus curiae briefs to lobby the Court.

C. LISTENING TO ORAL ARGUMENTS
1. Oral arguments are open to the public.
2. Attorneys are allowed exactly 30 minutes to present their case.

D. DISCUSSION AND VOTING
1. The justices discuss each case in a closed meeting held on Friday.
2. The Chief Justice presides over the meeting. Chief Justice Roberts is known to encourage discussion.

E. WRITING OPINIONS
1. After reaching a decision, the justices must write a formal opinion. Opinions present the issues, establish precedents, and set guidelines for lower courts.
2. Types of opinions
   - Majority opinion—Officially known as “the opinion of the Court,” the majority opinion is the law of the land.
   - Concurring opinion—Supports the majority opinion but stresses different constitutional or legal reasons for reaching the judgment.
   - Minority or dissenting opinion—Expresses a point of view that disagrees with the majority opinion. Dissenting opinions have no legal standing.

I. FACTORS THAT INFLUENCE SUPREME COURT DECISIONS

A. PRECEDENT
1. Stare decisis
   - Stare decisis is a Latin phrase meaning “let the decision stand.”
The vast majority of Supreme Court decisions are based on precedents established in earlier cases. Precedents help make Supreme Court decisions more uniform, predictable, and efficient.

2. Examples
   - In Marbury v. Madison, the Court established the principle of judicial review as applied to Congress and the president. In Martin v. Hunter’s Lessee, the Court extended the power of judicial review to overrule state courts.
   - In Baker v. Carr, the Supreme Court established the principle of one person, one vote. In Wesberry v. Sanders, the Court applied this principle to congressional districts.

3. Exceptions
   - Although precedent is very important, the Court can overturn previous decisions.
   - For example, Plessy v. Ferguson permitted segregation if the facilities were “separate but equal.” The Court reversed this ruling in Brown v. Board of Education of Topeka, declaring that “segregation is a denial of the equal protection of the laws.”

B. JUDICIAL PHILOSOPHY

1. Judicial restraint
   - Advocates of judicial restraint argue that the Supreme Court should use precedent and the Framers’ original intent to decide cases.
   - Advocates of judicial restraint also argue that the Supreme Court should defer to the elected institutions of government.

2. Judicial activism
   - Advocates of judicial activism argue that the federal courts must correct injustices when other branches of government or the states refuse to do so.
   - Advocates of judicial activism point to the Court’s decision in Brown v. Board of Education of Topeka as an example of how judicial activism promoted social justice.
C. PUBLIC OPINION

1. The Constitution insulated Supreme Court justices from direct political pressures.
   - Justices are appointed to serve life terms subject only to good behavior.
   - The salaries of justices cannot be reduced.
   - The certiorari process enables the Supreme Court to set its own agenda.
   - The public has limited access to Court proceedings.

2. The Supreme Court is nonetheless aware of and sensitive to public opinion.
   - The appointment and confirmation processes keep the Supreme Court from deviating too far from public opinion.
   - Congress and the state legislatures can amend the Constitution.
   - Congress can change the Supreme Court’s appellate jurisdiction.
   - Congress has the power to change the number of justices on the Court.
   - Justices can be impeached.

Judicial restraint and judicial activism are well-known philosophies that appear on most AP U.S. Government and Politics exams. Do not overlook the ways in which the Supreme Court is insulated from public opinion and the factors that restrain the Court from straying too far from public opinion.