WHOSE JUDGE ARE YOU ANYWAY?

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| **Class: American Government / Honors American Government / AP US Government and Politics**  |
| **Unit:** The Judiciary |
| **Lesson Title or Topic/Essential Question:**What is the relationship between judges/justices and the president who nominates them?How well do Judges/Justices maintain their independence regarding the desires of the executive branch /party that was responsible for their nomination? |
| **Estimated Classroom Time Required for the Lesson:** One ninety (90)-minute block class OR two (2) standard non-block periods. |
| **Content Standard Alignment:** CCSS.ELA-LITERACY.RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationship among the key details and ideas.CCSS.ELA-LITERACY.RH.11-12.6: Evaluate authors’ differing points of view on the same historical event or issue by assessing the authors’ claims, reasoning, and evidence. |
| **Lesson Objectives/Instructional Outcomes:**Students will identify how judges/justices uses the rule of law to maintain impartiality, despite expectations from the president and/or party that is responsible for their appointment to the bench. |
| **Lesson’s Relationship to Unit Structure:** This lesson will take place near the conclusion of a unit on the judiciary. Prior to this lesson, students will be familiar with the nomination process, the concept of judicial review, how cases are decided, and how the majority/dissenting opinions relate to the establishment of a common law. The purpose of this lesson, however, is to address modern day conceptions of judges’/justices’ relationship with the president or party that puts them on the bench. For instance, will an “Obama Justice” always/typically rule in favor of position that Democrats take, or will a “Trump Justice” always/typically rule in favor a position that Republicans take? This will require a clear understanding of the judicial branch and should be used as a supplemental or capstone lesson towards the end of a unit. |
| **Instructional Materials/Resources:****Resources:** * List of Justices by Presidential Appointment (US Supreme Court Website): <https://www.supremecourt.gov/about/members_text.aspx>
* Oyez.org and Supreme.Justice.com: Websites used for the written decisions of the judges on multiple cases.
* Hosanna-Tabor Evangelical Church and School v. EEOC (Oyez): <https://www.oyez.org/cases/2011/10-553>
* Hosanna-Tabor Evangelical Church and School v EEOC (Justia): <https://supreme.justia.com/cases/federal/us/565/171/#tab-opinion-1963683>
* Our Lady of Guadalupe School v Morrissey-Berru (Oyez): <https://www.oyez.org/cases/2019/19-267>
* Our Lady of Guadalupe School v Morrissey-Berru (Justia): <https://supreme.justia.com/cases/federal/us/565/171/#tab-opinion-1963683>
* Washington Post Article: “Justices tend to agree with the presidents that pick them – but stray later”- December 20, 2015: <https://www.washingtonpost.com/politics/courts_law/supreme-court-justices-are-loyal-to-their-presidents--they-stray-later/2015/12/20/0016886a-a5a1-11e5-9c4e-be37f66848bb_story.html>

Content specific vocabulary and terms include rule of law, judicial review, majority opinion, dissenting opinion, writ of certiorari, and amicus brief. |
| **Methods and Instructional Strategies** |
| **Concept Prerequisites:**Key concepts and terms: Judicial Review, Dissent, Amicus Brief, Judicial Impartiality |
| **Anticipated Student Misconceptions:** Students might believe: Justices are often seen as being loyal to the president/party that is responsible for their nomination. The Court’s structure is often referred to as “conservative” or “liberal” based on the number of justices that were appointed by Republican or Democratic presidents. However, justices’ rulings are not always in line with the opinion of the president or party that is responsible for their nomination. |
| **Introduction/Anticipatory Set:**Before the lesson, teachers should make the links from the above resources available to their students, preferably on an online learning platform (Schoology, Google Classroom, Edmodo, etc.).Ask students to spend five minutes with their peers (either in quick think-pair-share with their neighbor or in previously established classroom groups) generating ideas on potential Supreme Court topics that are often considered to be controversial. Teachers can give an example before they start to prime students’ brains (abortion, same-sex marriage, flag burning, etc.). After students have had an opportunity to generate their lists, the teacher will ask for examples to write on the board.Note: If the class isn’t particularly talkative, teachers can softly guide students towards topics that will pique the interest of the class. |
| **Instructional Activities:**Activities:* Reminder: If the teacher/school uses an online platform to organize electronic materials (Schoology, Google Classroom, Edmodo, etc.), the links in the resources should have been uploaded and made available before the class begins.
* The teacher will put up a slide and/or list of current Supreme Court justices with the name of the president who nominated them to the Court, below their picture. The teacher will then ask students to return to their previous groups to discuss how they believe each Justice would rule on a hypothetical case that considered one of the topics the students had generated. For instance, a hypothetical Wyoming law that outlawed the burning of the American flag.
* When students have completed this task, they will return to the full class to discuss their answers. Students will generally have come to one of two determinations. The most common will be that justices appointed by a Democrat will rule in a manner more consistent with Democratic politics, and that justices appointed by Republicans will rule in a manner more consistent with Republican politics. It is possible, however, that the students will determine that justices do a good job of being impartial and suggest that there is no way to predict how they will rule based solely on the president who appointed them. Either way, the teacher will tell the students that the following activities are designed to either confirm or dispel their pre-conceived notions of how politics affects judicial decision making.
* At this point the class should be split in half, either in pairs, or groups. One half of the pairs/groups will be looking at the case of Hosanna-Tabor Evangelical Lutheran Church vs. EEOC. The other half will be looking at the case of Our Lady of Guadalupe School v Morrisey Berru. In both cases, students will be looking at the vote by Justice Elena Kagan, an Obama appointee.
* The teacher will pass out Supplemental Resource #1 (Hosanna) or Supplemental Resource #2 (Guadalupe) to either each student or just one student per pair/group, depending on the teacher’s preference. The supplemental resource contains guiding questions and mentions which side of the case the then-president’s administration took when filing an amicus brief to the Supreme Court.
* Students will first be asked to look at the background of the case on the Oyez resource and make predictions about where Justice Kagan would land based *solely* on who appointed her to the Supreme Court.
* Students will then use the Justia links to find the opinion that Justice Kagan signed onto and summarize how the rule of law was applied to the decision-making process.
* Finally, students will determine if Justice Kagan’s decision aligned with their pre-conceived notions about whether Justices always vote in accordance with the president/party responsible for their nomination.
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| **Differentiation According to Student Needs:**Teachers could choose to forgo the close reading of the primary sources and instead have students analyze the summary of the opinion on the Oyez website. The supplementary documents can also be edited to include more explicit guiding questions. |
| **Wrap Up- Synthesis/Closure:**When students have completed their assignment as a group/pair, the teacher will ask if what they found supports or combats their previous notions regarding whether justices always rule in accordance with the president/party that is responsible for their nomination.  |
| **Assessment (Formative and Summative):** The teacher will use the conclusions drawn and voiced by the students after the group/partner activity as a formative assessment for this assignment. If the teacher chooses to assign the supplemental materials to each student in the class, collection of those papers can serve as a summative assessment.  |
| **Extension and Evaluation of the Lesson** |
| Further evaluation of how justices tend to rule, as it pertains to the opinion of the President and/or Party who is responsible for their appointment, can be done through a reading of the Washington Post article “Justices tend to agree with the Presidents that pick them – but stray later”. Ask students to write an exit ticket that summarizes the findings of the article or expresses an opinion on why they believe this trend tends to occur. |

Supplemental Material #1 (Hosanna-Tabor)

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Block/Period\_\_\_\_

Instructions: Using the links posted on (Schoology/Edmodo/Google Classroom), click on the Oyez link regarding the case of Hosanna-Tabor Evangelical Lutheran Church v EEOC case. As a group, discuss and answer the following questions:

1. Summarize the facts of the case’s background. Who believed that their constitutional rights were being infringed upon?
2. Barack Obama’s Justice Department filed an amicus brief supporting the teachers in the case. Based on this information alone, how do you believe Justice Elana Kagan would rule in this case? Why?
3. Read the majority opinion written by Chief Justice John Roberts (signed on by Justice Kagan). Summarize the ruling of Justice Kagan and the rest of the Court.
4. Did this ruling support or oppose your previous notion of how Justice Kagan would rule? Explain.

Supplemental Material #2 (Our Lady of Guadalupe)

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Block/Period\_\_\_\_

Instructions: Using the links posted on (Schoology/Edmodo/Google Classroom), click on the Oyez link regarding the case of Our Lady of Guadalupe School v Morrisey Berru case. As a group, discuss and answer the following questions:

1. Summarize the facts of the case’s background. Who believed that their constitutional rights were being infringed upon?
2. Donald Trump’s Justice Department filed an amicus brief supporting the school in the case. Based on this information alone, how do you believe Justice Elana Kagan would rule in this case? Why?
3. Read the majority opinion written by Justice Samuel Alito (signed on by Justice Kagan). Summarize the ruling of Justice Kagan and the rest of the Court.
4. Did this ruling support or oppose your previous notion of how Justice Kagan would rule? Explain.