

# HOW CASES REACH THE SUPREME COURT

Most cases reach the Supreme Court via *writ of certiorari*: a request that the Supreme Court order a lower court to send up a case for review. The Court receives about 8,000 of these requests a year. Four of the 9 justices must decide a case is “certworthy” for the Court to grant *certiorari* and hear the case. These are the criteria that Supreme Court justices use to make their decision:

## 1. **Circuit Conflict**

This is the primary criterion used by the Court. This is when there is a conflict among the lower federal or state courts about an issue. The conflict must be intolerable and current. The reputation of the lower courts that are in conflict is also variable when applying this criterion. If the lower court is generally considered of low quality then the Supreme Court will often not take the case, figuring that the system will “cleanse itself” eventually with other judges.

## 2. **Importance**

There are a number of different ways that a case can be important enough to attract the Supreme Court’s attention. Unusual or “one of a kind” cases like *United States v. Nixon* (concerning the Watergate tapes) are somewhat more likely to be heard. Likewise, cases that are important because of the political and societal impact of their resolution, such as *Brown v. Board of Education* and *Roe v. Wade*, can attract the Court’s attention. Finally, cases of substantial legal significance, such as a clarification of a rule of evidence or an administrative procedure, can be important enough to merit the Court’s involvement. Their importance stems from the confusion that has been created in the legal system by different rules in different circuits.

As a general rule, two other factors affect the Court’s assessment of the importance of a case: breadth (potential impact on many people) and the effect on the federal government. If the Solicitor General of the United States urges the Court to grant *certiorari* because a case is extremely important to the federal government, the Court pays close attention.

Public pressure can work to encourage the Court to either grant or deny *certiorari*. The Court took no cases involving gay rights until the late 1980s and waited more than 20 years to take a case about anti-miscegenation statutes (which prohibited people of different races from marrying).

## 3. **Areas of Interest to the Justices**

Some justices may have a particular interest that can influence whether the Court grants *certiorari*. This might be determined by a justice’s personal history or geographic origin. For example, justices from the West may favor granting *certiorari* in water rights cases. Another example: a justice whose earlier law practice involved representation of large corporations may believe the Court should accept more business cases.

## 4. **Egregious Legal Errors in Lower Courts**

Flagrant abuses of justice or flagrant disregard for accepted legal doctrine will sometimes lead the Court to grant *certiorari*. However, the justices do not see their overall role as being responsible for correcting errors of lower court judges.

## DECIDING TO DECIDE

Read the descriptions of each case and discuss the arguments for granting and not granting *cert*. Focus your discussions on the above criteria as they apply to the specific cases. Then, decide for each case whether or not the Supreme Court would grant *certiorari*. You do not need to be in unanimous agreement, but try to be clear about why (i.e., on which criteria) you are disagreeing. Select a spokesperson to represent your group's deliberations in the debriefing of the activity.

# CASE 1

## DRUG SWEEP IN SCHOOL PARKING LOT

In the spring semester of 2002, Scott County School District instituted a policy that allowed suspicion-less campus-wide drug sweeps with drug-sniffing dogs to be conducted at local schools. At Austin High School, one such search turned up a handgun in a student's car. The student was charged with possession of a firearm on school property. At trial, the student argued that the gun was found as a result of an illegal search.

The court denied the motion and both the court of appeals and Indiana Supreme Court affirmed that decision. The petitioner argues that the Supreme Court needs to decide whether the Fourth Amendment allows suspicion-less drug sweeps such as this at school. The respondent argues that lower courts agree that suspicion-less, warrantless searches on school grounds are reasonable. No court has held that the Fourth Amendment prohibits this type of drug sweep at school.

# CASE 2

## VIDEO VOYEURISM

A man in Mississippi was convicted of five counts of video voyeurism (which state law makes a felony) and sentenced to fifteen years in prison plus five years of probation. State police had observed him, on five separate occasions, videotaping a woman in her apartment from his car. The woman was clothed and the door of her apartment was open. He repeatedly zoomed in on her chest and crotch. The state statute for video voyeurism requires that the videotaping be committed with lewd intent, without the victim's permission, and in a location where a person would intend to be in a state of undress and have a reasonable expectation of privacy.

On appeal through the Mississippi state courts, the man argued that the woman was not in a location where a person would intend to be in a state of undress, since her door was open. The state supreme court upheld his conviction, finding the fact that the woman was in a private dwelling sufficiently met the "location" test of the statute. The man appealed the decision to the U.S. Supreme Court, arguing that the courts below had misinterpreted the statute, and as such, violated his right to due process as guaranteed by the Fourteenth Amendment.

# CASE 3

## PUBLIC MONEY FOR COMPUTERS IN RELIGIOUS SCHOOLS

A federal law allowed for the allocation of federal aid to provide computer equipment in public and private schools for “secular, neutral and non-ideological” programs. In Jefferson Parish, Louisiana, about 30% of the funding allocated under this law went to private schools, many of them religiously affiliated.

Several public-school parents sued, arguing that the law allocating funds for educational materials to private schools violated the Establishment Clause of the First Amendment. The Fifth Circuit ruled that this provision did violate the First Amendment because it was an impermissible governmental aid to religious schools. The Ninth Circuit, in analyzing the same issue in a different case, said that there was no violation of the First Amendment.

A recent Supreme Court decision already decided that it was ok for public school teachers to offer remedial courses in parochial school classrooms. The Solicitor General of the U.S. filed a brief asking the Court to grant certiorari.

# CASE 4

## SCHOOL DRESS CODES

Nicholas Boroff, a 17-year-old public high school student in Ohio, was sent home from school on consecutive days for wearing a t-shirt depicting shock rocker Marilyn Manson. Marilyn Manson was often criticized as being satanic and presenting himself as the “anti-Christ.” The shirt was not obscene, but school officials said that he could not wear it at school because it presented immoral, satanic, and offensive images, which conflicted with Christian beliefs that were widely held by students and officials at the school. The prior school year, Boroff often wore Marilyn Manson t-shirts to school, and it caused no disruption. The school continues to let students wear t-shirts depicting other rock and roll groups, many of which are similar to Marilyn Manson. Additionally, some students can have small Marilyn Manson patches on their backpacks and are not sent home or asked to remove them.

Boroff’s mother sued the school district for violating her son’s First Amendment right to free speech. The district court ruled in favor of the school district and the Sixth Circuit Court of Appeals affirmed this decision. The U.S. Supreme Court was asked to decide whether the First Amendment forbids public school officials from banning a student from wearing a t-shirt with a message that is contrary to the religious beliefs held by the majority of the students. The Sixth Circuit’s ruling is in conflict with the rulings of the Third and Fourth Circuits on this same issue.

Name(s) \_\_\_\_\_

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Criteria	Case #1	Case #2	Case #3	Case #4
<b>Conflict among lower courts?</b>				
<b>Importance?</b>				
<b>Area of Interest?</b>				
<b>Egregious Error by a Lower Court?</b>				
<b>Intractable issue or other considerations?</b>				
<b>Should cert be granted?</b>				

# ANSWER KEY & TEACHER'S GUIDE

## **Case One: Drug Sweep in School Parking Lot**

The Court did not grant *certiorari*. While some believe that suspicionless sweeps for drugs at school are bad policy or maybe even bad law, there are no circuit conflicts on this issue.

## **Case Two: Video Voyeurism**

The Court denied *certiorari* in this case. The petitioner's main argument for the grant was that the court below got the decision wrong. This is also an issue of state law and doesn't appear to be in conflict with other states.

## **Case Three: Public Money for Computers in Religious Schools**

The Court granted *certiorari* in this case. There was a clear circuit conflict, involvement of the federal government, impact on many people, and a request from the Solicitor General to take the case. In *Mitchell v. Helms* (2000), the Court found that this federal program did not violate the Establishment Clause and was religiously neutral.

## **Case Four: School Dress Codes**

The Court denied *certiorari* in this case even though a circuit conflict was present. This case presents a fairly common situation for the Court as there was a circuit split but one that the Court found "tolerable." This case might also have been viewed as presenting a legal issue of insufficient importance for the Court to grant review.