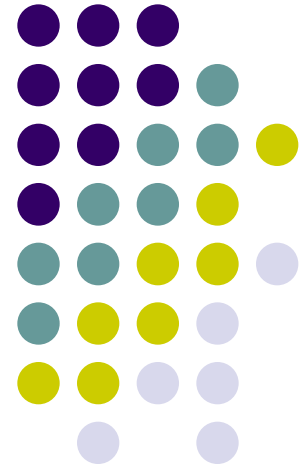


The *Certiorari* Process



The Supreme Court
“is not and has never been
primarily concerned with
the correction of errors in
lower court decisions.”
- Chief Justice Vinson



The Court's Primary Role



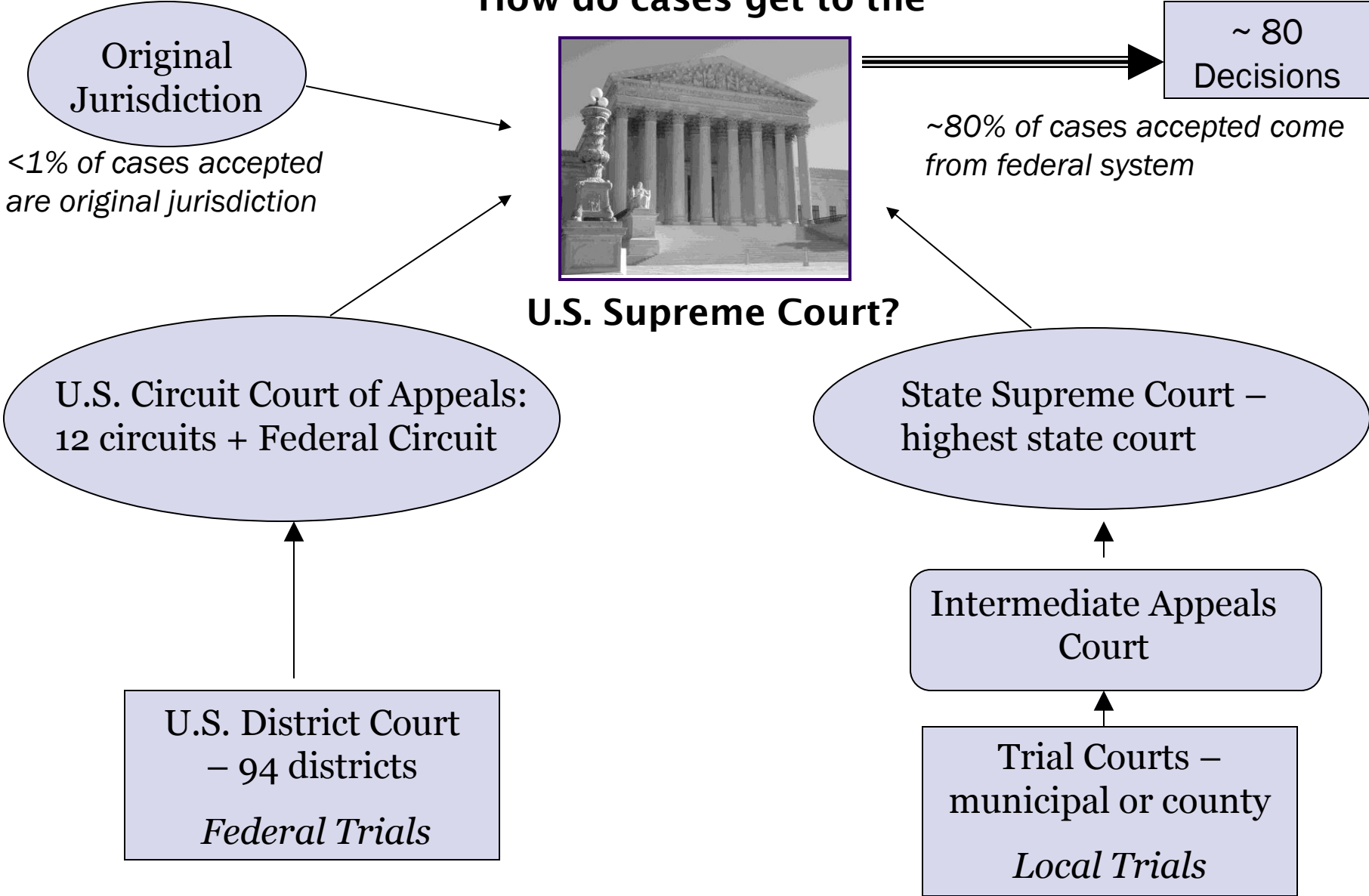
To resolve conflicts in lower courts; interpret the constitution, laws, and treaties of the United States

In other words:

“To secure the national rights and uniformity of judgments”

- John Rutledge at the Constitutional Convention

How do cases get to the

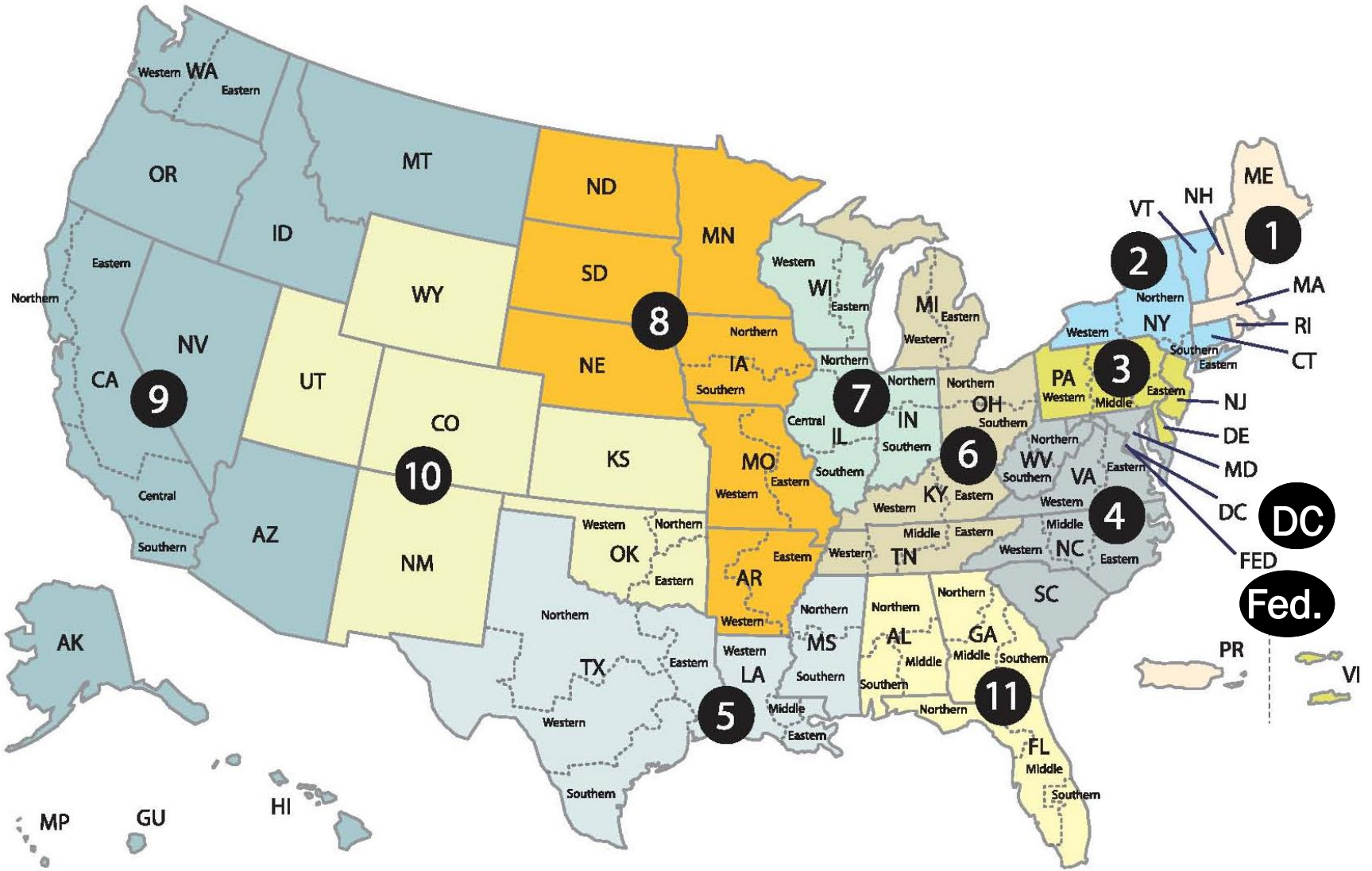


FEDERAL: 1 million cases/yr

STATES: 30 million cases/yr

Geographic Boundaries

of United States Courts of Appeals and United States District Courts

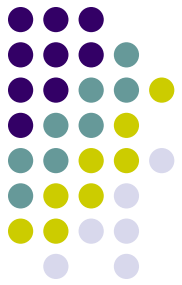


How many cert petitions are considered?



- In recent terms, there have been between 7,000 and 9,000 cases appealed to the Supreme Court each year
- Out of approx. 8,000 petitions in the average year, about 80 are granted (**1%**)

Paid Petitions Petitions that pay the \$300 filing fee	In forma pauperis litigants who can't pay the filing fee (often prisoners)
~20% of petitions	~80% of petitions
3-4% granted	0.2% granted
Make up 85-90% of docket	Make up 10-15% of docket



Cert: The Numbers in 2011-12

6,160 IFP
Petitions

1,552 paid
Petitions



73 cases argued, 65
signed opinions after
argument

Less than 1% of all
petitions!

+

7,712 total
Petitions

Statistics compiled from SCOTUSBlog,
9.25.2012 StatPack and *SCOTUS for law
students: The Court's shrinking docket*, Seth
Wermiel, 9.26.2012

Cert: The Justices' Role



With 8,000 petitions per year:

If a Justice spent 40 hours per week, 50 weeks per year **ONLY** reading cert petitions, they would be able to allocate approximately **15 minutes** to each petition (which may include the petition itself, the brief in opposition, a reply brief, and amicus briefs).

The Justices cannot possibly read all the cert petitions. They just don't have the time.

Cert Pool



IN the pool

- Roberts
- Scalia
- Kennedy
- Sotomayor
- Thomas
- Ginsburg
- Breyer
- Kagan

= 4 clerks x 8 justices =
32 law clerks

= read 8,000 petitions

Each clerk reads and
writes a memo on
250 petitions/yr

NOT in the pool

- Alito

4 clerks x 1 justice =
4 law clerks

= read 8,000 petitions

Each clerk reads
2,000 petitions/yr

Advantages of the Pool



- Saves time
- More thorough consideration of each petition
- Clerks from other chambers can mark up pool memos and give to their justice

Disadvantages of the Pool



- Reduces independence if eight of the nine justices are in the pool and they're relying on one writer for each memo
- The pool gives clerks - generally one year out of law school and only at the Court for one year - too much responsibility for setting the Court's agenda

“Discuss List”



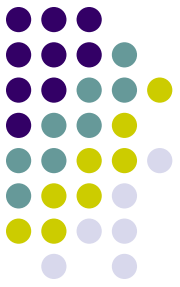
- The Chief Justice generates a discuss list based on memos prepared by clerks. Other justices may add to the list.
- All cases generated by Solicitor General (head Supreme Court lawyer for federal government) are automatically discussed.
- All Capital Cases are discussed (no such thing as a “frivolous case” here).

The Rule of Four



- If four justices vote to grant cert, it is granted
- Designed to prevent tyranny of the majority
- If a case does not gain four votes, a justice may write a “dissent from denial,” but this is extremely rare
- All votes are secret

More “cert-worthy” criteria



- **Conflict in lower courts**
- **Important**
 - Multiple *amicus* briefs at cert stage
 - Affects large number of people
 - Unique/one of a kind case this Court must decide

More reasons to deny than to grant!



- A better case “in the pipeline”
- The issue hasn’t “percolated” enough
- A petition that raises too many questions (prefer focusing on one issue)
- Bad vehicle for reaching this legal issue
- Case is deemed “frivolous”

Cases are fungible!



- What's important is the **legal issue** raised, not the parties or facts
- Assumption is: a better case will come along if the issue is important
- Don't want to risk producing a fractured opinion (4-4-1 or 4-2-3 splits)

Petitions filed by *individuals* tend to be heard less



Ranking tends to be:

#1 - U.S. government

#2 - Corporations

#3 - States

#4 - Organized groups

#5 - Individuals

Then again...



“It is really hard to know what makes up the broth of the certification process... Some cases are ones you can just smell as grants.”

Supreme Court Justice, 1990

