Lesson Overview
This lesson examines the judicial branch and the power of judicial review. Students learn that the courts protect the rights of the people against any unconstitutional actions by the president or Congress. The power of judicial review is an important check by the judiciary on the other two branches of government. Students will read about an actual case, *Torcaso v. Watkins*, to see how the Supreme Court used its power of judicial review to strike down an unconstitutional state of law.

Lesson Objectives
At the conclusion of this lesson:

1. Students should be able to describe the functions of the judicial branch.
2. Students should be able to explain how members of the judiciary are selected.
3. Students should be able to define judicial review and explain its importance.

Teaching Procedures
Here is an introductory activity to increase understanding of the role of the judicial branch.

Read aloud to the class the following excerpt from the Constitution: "Congress shall have Power...[to] provide for the...general welfare of the United States." Ask students if the meaning of this phrase is clear. Why might people argue about what it means? Who should decide what the words in the Constitution mean?

Explain that one of the functions of the judicial branch is to settle disputes about what the Constitution and the federal law mean. Have students read the section below and discuss it with them.

**Freedom Not to Believe**


The state of Maryland had a law saying that everyone who wanted a job in the state government had to swear that he or she believed in God. A man named Torcaso applied for a job as a government official. He was denied the job because he would not say that he believed in God.

Mr. Torcaso said that the Maryland law was unconstitutional because it limited his freedom of religion. He said that freedom of religion meant the freedom to believe in God or not to believe in God, as a person wishes.

The Supreme Court agreed with Mr. Torcaso. The Court said the Maryland law was unconstitutional and could not be enforced. The Court ruled that people cannot be required to say that they believe in God or do not believe in God.
The Supreme Court was using its power of judicial review over the action of a state
government.

What Does the Judicial Branch Do?
The framers created the judicial branch to handle disagreements over the law. Article III of our
Constitution describes the responsibilities and powers of this branch. In this lesson, you will
learn how the judicial branch works.

Suppose you thought the government had taken away one of your rights guaranteed by the
Constitution. What could you do? You could ask a court to listen to your case. If the court
agreed with you, it would order the government to stop what it was doing and protect your
rights.

The courts interpret the law. They also settle disagreements between individuals and the
government. Different levels of court handle different kinds of cases. Federal courts handle
cases about the Constitution and the laws made by Congress. They also deal with problems
between one or more states.

How Is It Organized?
To help students understand the structure of the judicial branch, have them read the following
paragraphs.

The Supreme Court is the highest court in the judicial branch. The judicial branch also includes
lower courts. The judges on the Supreme Court are called justices. The head of the Supreme
Court is the chief justice.

The framers believed that if judges were elected by the people, they might favor some people
over others. For this reason, judges are not elected. They are appointed to office. Judges on
all federal courts are appointed by the president. However, the Senate must approve all the
president's appointments. Judges serve in the judicial branch until they retire or die. They can
also be impeached, tried, and removed from their positions, just like the president.

Ask the students whether they agree that judges should be appointed rather than elected. You
might wish to discuss whether judges, who are appointed, should have the power to overrule
the will of the majority as expressed by elected representatives.

Understanding Judicial Review
Have the students read the following paragraphs.

Judicial review is one of the most important powers of the judicial branch. Judicial review is the
power of the courts to say that the Constitution does not allow the government to do
something. For example, the Supreme Court can say that a law passed by Congress is not
constitutional. The Supreme Court can also say that the president is not allowed to do certain
things.

Suppose Congress passed a law that said you must belong to a certain religion. The
Constitution says Congress cannot do this. You can go to court and say that Congress has no
right to tell you to belong to a certain religion. The court will review your case. The court has
the power to say that the law made by Congress is unconstitutional. If the court does this, the
law cannot be enforced.

When you read the story of the Torcaso case, you will see how the Supreme Court used its
power of judicial review. In this case, the Court decided a state law was unconstitutional.

Conclusion
Discuss the meaning of judicial review and remind students of its importance in protecting our
constitutional rights. Judicial review allows people, especially minorities, to seek protection of
rights that government agencies have attempted to limit. The case of Torcaso v. Watkins
provides students with an opportunity to see how the Supreme Court used its power of judicial
review to protect religious freedom.

Conclude the lesson with a discussion of these questions:

1. What court is the highest court in the judicial branch?
2. Why are Supreme Court justices appointed and not elected? Do you agree with the
3. Do you think the Supreme Court should have the power to declare a law made by majority vote in Congress to be unconstitutional? Why or why not?

4. Find an article in the newspaper that explains something the Supreme Court is doing. Be prepared to explain the article in your class.

5. Explain these terms: interpret, Supreme Court, justices, chief justice, judicial review.

Students could be given an opportunity to work on a bulletin board display. Students could also add the new terms in this lesson to their vocabulary-building activity.

Optional Activities
For reinforcement, extended learning, and enrichment:

1. Have individual students research the lives and careers of famous justices on the U.S. Supreme Court.

2. Interested students could write a proposal for a student court at your school. They would need to decide what types of cases they would hear, the extent of punishment they would recommend to the principal, the procedures in the student court, and the selection of the student judges.

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