# The Power of Judicial Review Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **What If...?** Judicial review and specifically judicial activism have, in many cases, expanded rights. Read about two landmark cases of judicial review and think about how their rulings helped expand rights for all.

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| JUDICIAL ACTIVISM |  |
| **Brown v. Board of Education** (1954) In 1951, Oliver Brown tried to enroll his daughter in their neighborhood school in Topeka, Kansas. But because his school district was segregated, and his daughter was Black, the school turned him away. The Brown family, along with 12 other families, felt this was unfair. They filed a lawsuit against the Topeka Board of Education. The case made it all the way to the Supreme Court. The Court overturned their previous judgment in Plessy v. Ferguson by ruling that racially segregated schools were unequal and violated the Constitution’s promise of equal protection. | **Gideon v. Wainwright (1963)** In Florida, Clarence Earl Gideon was charged with breaking and entering. In court, he asked the judge to assign him a lawyer since he couldn’t afford to pay for one. The court denied his request, and Gideon was sentenced to prison. Florida law said that only a person facing the death penalty could have a free, court-appointed lawyer. Gideon wrote a letter to the Supreme Court claiming that his right to equal protection and legal representation was violated. The Court agreed. They ruled that courts must provide lawyers for criminal defendants who cannot afford their own. |
| **What if......** | **What if……** |
| What if the Court had stuck to its precedent? | What if the Court had upheld Florida’s law? |

1. **For or Against?** Some people think the Court should never disregard precedent or allow societal influences to affect their decisions. What do you think? Use the chart below to think through some of the pros and cons of judicial activism. (There are arguments on both sides!)

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| **PROS** | **CONS** |
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1. **Primary Source.** Even though judicial review isn’t mentioned in the Constitution, the Founders did assume the Court would use this power. Read an excerpt from James Wilson’s speech to the Pennsylvania Constitutional Convention on December 1, 1787, and then answer the questions.

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| I say, under this Constitution, the legislature may be restrained, and kept within its prescribed bounds, by the interposition of the judicial department. This I hope, sir, to explain clearly and satisfactorily. I had occasion, on a former day [24 November], to state that the power of the Constitution was paramount to the power of the legislature, acting under that Constitution. For it is possible that the legislature, when acting in that capacity, may transgress the bounds assigned to it, and an act may pass, in the usual mode, notwithstanding that transgression; but when it comes to be discussed before the judges—when they consider its principles and find it to be incompatible with the superior power of the Constitution, it is their duty to pronounce it void. And judges, independent and not obliged to look to every session for a continuance of their salaries, will behave with intrepidity and refuse to the act the sanction of judicial authority. |

1. What reason does Wilson give for why the judicial branch would need to restrain the legislature through the use of judicial review?

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1. How will the judicial branch decide if a law goes against the Constitution? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Why does Wilson believe that the judges will act with intrepidity (fearlessness) in exercising judicial review? In other words, why wouldn’t they feel pressured to act or rule in a certain way? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Supreme Court justices also serve in their positions for life. It’s another check that’s used to balance the judicial branch and help them maintain independence or influence from the other branches of government. Why do you think it is important for the justices to be independent? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_