Demystifying the Cert 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
U.S. District Court
- 94 districts

Federal Trials

Original Jurisdiction

U.S. Circuit Court of Appeals:
12 circuits + Federal Circuit

FEDERAL: 1 million cases/yr

U.S. Supreme Court

State Supreme Court – highest state court

Intermediate Appeals Court

Trial Courts – municipal or county
Local Trials

STATES: 30 million cases/yr

~80% of cases accepted come from federal system
<1% of cases accepted are original jurisdiction

~80 Decisions

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Geographic Boundaries
of United States Courts of Appeals and United States District Courts
How many cert petitions are considered?

- Out of approx. 8,000 petitions in the average year, about 1% are granted

- *In forma pauperus* (ifp) = litigants who can’t pay the filing fee of $300
  (These are granted about .1% of the time even though they make up more than half the Court’s cert petitions.)
Cert: The Numbers

~6,000 IFP Petitions

~2,000 paid Petitions

~80 cases

1% of all petitions!

~6 IFP cases (0.1% of IFP petitions granted)

~75 paid cases (4% of paid petitions granted)
Cert Pool

IN the pool

Roberts
Scalia
Kennedy
Souter
Thomas
Ginsburg
Breyer
Alito

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

Stevens

4 clerks x 1 justice = 4 law clerks

= read 8,000 petitions
Advantages of the Pool

- Saves time
- Someone is more thoroughly going over 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 Lists”

• 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 (#4 in Justice Dept) are automatically discussed
• So are all Capital Cases (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 exists 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”
- 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!

- 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* are *lower priority*

Ranking tends to be:

- **#1** - U.S. Solicitor General
- **#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