

AP GOV Final: SCOTUS Justices Requirements and Sample

One enumerated role of the Supreme Court of the United States is to evaluate disputes in which the United States is a party. This is further expressed to include disputes between the states and the national government.

The written opinion of a justice carries much weight. It can be cited in other cases and holds significant ramifications toward public policy. **The written opinion settles any uncertainty in the questions of the Court.** Each **individual** justice will be applying strict constitutional scrutiny to questions of the Court to establish an original legal decision that settles the dispute and answers the questions of the Court.

Level 2 Near Proficiency	Level 3 Proficient	Level 4 Exceeds Proficiency
Identify the constitutional issues present in the court case in question	Apply the Constitution and Bill of Rights to evaluate legal arguments that answer the questions of the Court.	Evaluate evidence, including the Bill of Rights, the Constitution, oral arguments, and Judicial precedent to create an original legal decision that answers the questions of the Court.

A good written opinion uses evidence from the Constitution, stare decisis, and amicus briefs to address **all** the questions of the court in a **clearly organized, efficient manner** that leaves little doubt as to the conclusion of the dispute.

Your written opinion must meet the following requirements:

- Address **ALL** Questions of the Court
- A minimum of 1.5-2 pages in length, no more than 4 pages (double-spaced).
- Cite and Apply **AT LEAST TWO** prior court cases as precedent
- Cite and Apply **AT LEAST TWO** pieces of evidence from the U.S. Constitution

Additionally: Justices will be hearing oral arguments from the Petitioner (*United States*) and the Respondent (*Texas*). During oral arguments, Justices may interrupt litigants to ask questions that challenge the argument or request clarification. Many of these questions may be improvised, but it is always wise for a justice to prepare to hear oral arguments by coming to the hearing with prepared questions.

Sample Quotes from Concurring Written Opinion: Justice Robert H. Jackson, *Youngstown Tube & Tube Co. v. Sawyer* (1952)

Background: To avert a nation-wide strike of steel workers in April 1952, which he believed would jeopardize national defense, President Truman issued an Executive Order directing the Secretary of Commerce to seize and operate most of the steel mills. The Order was not based upon any specific statutory authority but was based generally upon all powers vested in the President by the Constitution and laws of the United States and as President of the United States and Commander in Chief of the Armed Forces. The Secretary issued an order seizing the steel mills and directing their presidents to operate them as operating managers for the United States in accordance with his regulations and directions. The president promptly reported these events to Congress; but Congress took no action. It had provided other methods of dealing with such situations and had refused to authorize governmental seizures of property to settle labor disputes. The steel companies sued the Secretary in Federal District Court, praying for a declaratory judgment and injunctive relief.

Below is a sample of Justice Jackson's concurring opinion with the majority.

"1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. [*States v. Curtiss-Wright Corp*]

In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government, as an undivided whole, lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables, rather than on abstract theories of law. [*Hirabayashi v. United States*]

3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. [*Humphrey's Executor v. United States*]

Presidential claim to a power [referring to executive orders] at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

Into which of these classifications does this executive seizure of the steel industry fit? It is eliminated from the first by admission, for it is conceded that no congressional authorization exists for this seizure.

Can it then be defended under flexible tests available to the second category? It seems clearly eliminated from that class, because Congress has not left seizure of private property an open field, but has covered it by three statutory policies inconsistent with this seizure. In cases where the purpose is to supply needs of the Government itself, two courses are provided:

One, seizure of a plant which fails to comply with obligatory orders placed by the Government; [Selective Service Act of 1948] another, condemnation of facilities, including temporary use under the power of eminent domain. [Defense Production Act of 1950, *United States v. Westinghouse Co*] The third is applicable where it is the general economy of the country that is to be protected, rather than exclusive governmental interests. [Labor Management Relations Act, 1947] None of these were invoked. In choosing a different and inconsistent way of his own, the President cannot claim that it is necessitated or invited by failure of Congress to legislate upon the occasions, grounds and methods for seizure of industrial properties.