# CERF/CERA REPORT

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## The Real Path to the Supreme Court of the United States

*by Judy Bachman - NY*

While watching the senate confirmation hearings of Justice Kavanaugh and now Judge Amy Coney Barrett, I cannot help but wonder. How many members of the Senate Judiciary Committee or the mainstream press have personally attended a Supreme Court of the United States (SCOTUS) hearing? Does the mainstream media intentionally gin up misunderstanding or is it just woefully uninformed of the process?

I joined CERA in 2002 and served as its chair of the board for 10 years. Through that experience I have gained considerable knowledge of the process of the courts. It has given me a great and varied understanding of what it takes to get a case argued before SCOTUS. The ability to help proof complaints and do the actual filing to the courts has been an enlightening experience.

Most often it takes years to achieve a case accepted by SCOTUS.

The SCOTUS journey advances slowly and deliberately through three levels of our federal court system.

The entry level is the Federal District Courts. There are 96 districts comprised of 670+ judges within 12 circuit courts established across the United States. A case must be worked through a district court before even beginning to think about SCOTUS.

Once a group or individual decides to challenge a legal issue the long journey begins. Attorneys specialize their practice within many different subdivisions of the law. Some in real property, some in estates, divorce and family law, some in state court and some in federal jurisdiction. The first thing necessary is an attorney admitted to federal court. The preparation of a complaint requires a great deal of research and if an attorney needs to learn a new specialty the cost in time and expense becomes even greater. Once the issue is researched a complaint is filed. This complaint (now the filing party becomes the Plaintiff) must be prepared, filed with the courts (Filing fees need to be paid) and all of the defendants served. One of the 670+ district federal judges is assigned the case. Then the clock begins and the path toward SCOTUS starts. The complaint filed in a district court must adhere to the "local rules." These rules set up cost, format, number of words allowed and a time frame for the defendant to answer. Usually a period of months. Once the defendant has filed his answer another time frame starts for the Plaintiff to file his response. Again, local rules set time frames and number of words. The district judge then decides if the case will be ruled on submission or if there will be a court hearing. If submission, the wait begins for the judge to rule. If a court hearing is decided upon a date for argument is set. Once that argument is submitted no additional arguments may be added and the wait begins again for the judge's ruling. In some districts there is no time frame requirement for the judge to rule. It can and has been months.

In the district court a party may file its own paperwork. In some of the circuit courts that also applies. However, some of the circuit courts only accept paperwork filed by an accredited commercial printer. (another added expense)

Once the district level ruling becomes finalized and any appeals are heard the case moves on to the next level. That level becomes one of the 12 circuit courts that are established across the country. The losing party will appeal to their circuit and again there are times and word limitations for all filings. For a second time agreements on whether to let a panel of the circuit court rule on submission or if an argument before a panel of the circuit court judges will be held. Each circuit court has its own number of judges. When a case is appealed to the circuit court a panel of three Justices will hear the case. If the case is decided by the panel the losing party may ask for what is called an En Banc hearing.

That is a request for the case to be ruled on by a larger panel or in some cases all of the justices. The second circuit has 13 Justices and the 9th circuit has 112. Once more, time passes.

Until all Circuit Court options have been exhausted an appeal cannot be set before SCOTUS. Very often, to get to this point the process takes years, mountains of paperwork, research submissions, and citations of previous relevant court decisions. By this time there are usually several judges, lawyers and advocates that have listened to and argued both sides of the issue. Lots of monetary donations and can drives and bake sales.

To have SCOTUS hear the case the losing party in circuit court must file a petition for a Writ of Certiorari. Being a member of CERA and having had the opportunity to work with our legal representative and our local attorney has been a varied, educational and interesting journey through the Supreme Court. Whether you are the appealing party, the served defendant or an amicus, SCOTUS is quite different from the lower level of courts.

When a writ to SCOTUS is filed it must be done through an admitted printer. This brief is now filed in small booklet form. The court rules designate a limited number of words, a specific color and an approximate size of 6 X 9 inches. Depending on whether complaint, defendant or amicus in support of one of the parties a specific color is required. Some white, some green, some cream, or grey and some red. This indicates to the clerks and justices at a glance which argument they will be reviewing. The printer files the brief and also sends copies of the booklet to all parties involved. Everyone gets everyone else's arguments both in booklet form and electronically. If you are not a party to the case and are contemplating filing in support of one of the parties your brief is called an Amici curiae or friend of the court. Before you can file an Amici curiae you must request permission to file from attorneys for both sides. This also has a time frame within which you may make that request. In most cases the approval is received. If not approved the next option is to petition the court for permission to file a hostile brief. Once the briefs are filed you again wait. The Supreme court usually receives over 6,000 Writs each term for the court to accept their case. The court then narrows it down to approximately 100 cases.

The court does not usually accept a case for argument unless there is a conflict between two or more of the circuit courts, a constitutional question or an incorrect precedent applied by a lower court.

Once your writ is before the courts it is assigned a new number. Then the first persons to look at it are usually the clerks. There are over 30 law clerks who work with the 9 SCOTUS Justices. Perhaps the term "clerk" is a misnomer. The persons chosen to "clerk" for an associate justice are among the brightest students from the best law schools in the country. It is their job to read and summarize for the justices.

Final court decisions are made on a majority basis but acceptance for cert only takes four of the justices. Conferences are usually held on Fridays and four of the Justices need to indicate they feel the case should be accepted for argument. Monday morning the court releases, online a list of cases which designates which cases are scheduled for conference. That list also includes cases which have been denied, accepted or rescheduled for an additional conference. The legal world across the country watches this list with nervous anticipation.

Once the list is published and you experience the joy of seeing your case listed under the accepted category the work begins all over again. SCOTUS sets the questions to be argued, and the dates for briefing. Once briefed by all parties the court begins once again its review of the arguments.

I have had the privilege to attend two oral arguments at SCOTUS, both of which CERA was an Amici and was on the winning side. In order to attend a hearing, one must request a ticket from the Clerk of the Court to sit in the chamber for the entire argument. Once a ticket is obtained you enter through a different door than the general public. The general public waits in line on the front steps for admittance to hear approximately 20 minutes of the argument. The press sits to the left of the justices and Attorneys admitted to SCOTUS are to the right. There are two tables situated on the floor in front of the Justices bench for the Attorneys presenting their arguments. It is quite exciting to be sitting in the courtroom waiting for the Justices to appear from behind the large purple curtains. You have had to lock up your purses and any outside hearing amplifiers (replaced with court authorized items), you are allowed no paper or writing instruments or recorders.

I was asked to take my glasses off the top of my head by he guards who stand with their back to the Justices intently keeping constant watch over the gallery of spectators. The seating of the justices is quite impressive. Once the attorneys begin their presentation they are interrupted almost immediately with questions of the Justices. The time is divided and they do not get extra if they have to answer the justice's questions. It is impressive to listen to how thorough and in depth the justice's questions are of the presenters. The presenters are critically challenged on the position they represent. Having sat through all levels of other court proceedings on CERA/CERF issues I have seen justices that I felt had not read the briefs before them. NOT SO WITH THIS COURT. The nine persons who sit in final judgment of the hard work it has taken to get the case before them show recognition of that effort.

The last thing we hear is a gavel dropped and the words "the case is submitted." There is not another word that can be said, or argued or written.

Upon submission the court deliberation begins, behind closed doors in secret until the decision is published. There are precedent setting cases that have gone before and the deliberation must consider relevant cases and rulings. It takes a powerful case to overrule a previous constitutional ruling and does not happen overnight nor does one person alone make the decision. Many times, it takes many cases like peeling an onion before a prior ruling can be overturned. A decision is rarely ruled 9 to 0. Often even when all Justices agree on the outcome, the path they take to get there differs. It is like traveling on two separate roads to get to the same city. A dissenting opinion adds additional insights into the deliberations of the court and can guide future filings. Often one can see SCOTUS tell congress the problem is theirs and if a different outcome is to happen, they must pass legislation.

***Merry Christmas***
***and***
***Happy New Year***

***from CERA & CERF***

My experiences with CERA/CERF have enabled me to listen to and ask questions of presentations by great constitutional attorneys, scholars and authors at our national conferences, enabled me to listen late into the night following a day of conference as those presenters informally discussed and argued among themselves statutes, constitutional basis and prior decisions. I find it hard to believe that anyone that has followed this process to the conclusion can really believe that one justice or another will rule on sympathy, feelings or preconceived notions instead of as the constitution sets forth. Perhaps the mainstream press should sit in on the full procedure before they render their opinion.

## Please Consider Helping CERF Combat Unconstitutional and Hurtful Federal Indian Policy

*Curt Knoke, Treasurer - WI*

The most effective way that CERA/CERF has of combating unconstitutional Federal Indian Policy is to write Friend of the Court briefs. These amicus curiae briefs have been a valuable and effective tool for CERF in recent years. These briefs are not inexpensive.

As the holidays are approaching and your mailbox is getting full of year-end appeals consider the following two tips:

1. Donating appreciated stock to Citizens Equal Rights Foundation has a greater tax benefit than redeeming the security and donating cash.

Giving Securities May be Appropriate if…

-- You own stocks, bonds or mutual fund shares that you have held at least one year.

-- Those securities have increased significantly in value.

-- Your financial advisor suggests you rebalance your portfolio.

CERF would sell your securities upon receipt.

2. If you are age 70.5 and older you can make a gift from an IRA to a qualified charity while excluding the amount distributed from income. IRA owners can transfer up to $100,000 per year to one or more charities, including CERF. Charitable gifts from an IRA count against your required minimum distribution and reduce your income even if you don't itemize.

Please contact us in advance to ensure a prompt and accurate transfer of gifts of stock. Please call or text Curt Knoke at 715-853-3888.

Any gift you might consider is most appreciated.

*Federal Indian policy is unaccountable, destructive, racist and unconstitutional. It is therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States*

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