ACTIVITY 9.1

SEE YOU IN COURT: AN INTRODUCTION TO THE ECONOMIC DECISIONS OF THE U.S. SUPREME COURT

Directions: In the following activity, several students play a role. The teacher will assign students to play particular roles; other students are to read along and play the role of "ALL" by reading the lines of "ALL" aloud when they appear in the play.

Characters
(portrayed by:)

_____ Narrator

_____ Mr. Jones, Economics Teacher

_____ Ms. Smith (Supreme Court Docent)

_____ Mr. Brown (Supreme Court Docent)

_____ Madison (Student)

_____ Lilly (Student)

_____ Zach (Student)

_____ Clay (Student)

_____ Alex (Student)

_____ Jeff (Student)

_____ Kristin (Student)

_____ Bethany (Student)

Narrator: The setting is outside of the U.S. Supreme Court building in Washington, D.C. A group of high school seniors is visiting Washington for their senior class trip. Their chaperone is Mr. Jones, their economics teacher. Before the class goes into the building, Mr. Jones has a few words to say.

Mr. Jones: All right class, before we go into this hallowed hall, who can remind us of the important role the Supreme Court plays in our system of government? Madison?

Madison: The Supreme Court is at the top of one of the three branches of government, the judicial branch. It acts as an important check against the powers of Congress and the President because it can review laws to see if they are constitutional or not.

Mr. Jones: Very good, Madison! Yes, the Court plays a very important part in our system; its actions represent one way in which power is shared among the three branches of government. But it is a court, after all, and so

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it is concerned not just with reviewing laws, but also with making sure justice is done. Look above this door here [points to the frieze above the Supreme Court building]. What is written in the stone?

ALL: "EQUAL JUSTICE UNDER LAW"!

Mr. Jones: Excellent! Remember that as we begin our tour…. Alright, settle down, here come our docents.

Ms. Smith: Welcome to the Supreme Court! Let's all quiet down as we go inside. We must keep in mind that very serious business goes on behind these doors.

Mr. Brown [once all students are inside]: Again, welcome to the Supreme Court. I wonder, did anyone notice what was written above the doorway as we came in?

ALL [slightly perturbed…]: "EQUAL JUSTICE UNDER LAW"!

Mr. Brown [a little surprised]: Well, that's right! [Turning to Mr. Jones] Your teacher has done an excellent job with you!

Ms. Smith: Who can tell me what kind of cases the Supreme Court hears in this building?

Lilly: We learned that the Supreme Court is the "court of last resort" for all cases that have to do with federal law….

Clay:… and that it can hear cases that involve arguments between states, or ambassadors from other countries….

Alex: …and that the Court has the power of judicial review…to judge whether laws are constitutional or not….

Ms. Smith: That's right…this is certainly a smart group of seniors!

Mr. Jones: OK, but I'm an economics teacher and these are students from my senior-level economics class. Have any of the Court's cases involved economic issues? I mean issues that affect the nation's economy or how companies do business?

Mr. Brown: Of course. In fact one of the early landmark cases in the Court's history—*McColloch v. Maryland*—dealt with whether Congress could create a national bank, something we take for granted today with our Federal Reserve System.

Ms. Smith: Does anyone know what happened in this case? It was from a long, long time ago, nearly 200 years ago.

Jeff: Something about Maryland not wanting any banks that weren't from their own state….

Kristin: …and they were taxing banks from other states. I think Maryland argued that nowhere in the Constitution was Congress given the authority to create a bank.

Ms. Smith: Excellent! Yes, but the Court found that Congress could create a bank and that no state had the right to impede valid constitutional exercises of power by the federal government—in this case, Congress.

Mr. Jones: OK, so even early on in its history, the U.S. Supreme Court decided cases that impacted our economy. Certainly not allowing a national bank would have had a tremendous negative impact on the early economy.

Bethany: Are there other Supreme Court cases that deal with the economy?

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Mr. Jones [adding to Bethany's good question]: And don't many of the economic cases have to do with the Commerce Clause, found in Article 1, Section 8 of the Constitution?

Bethany: Hey, I remember that from the Government final we took last semester. Isn't that the clause that says Congress can regulate "Commerce with foreign Nations, and among the several States, and with the Indian Tribes"?

Mr. Brown: You are both right. Many cases are related to the Commerce Clause, including one of the most famous cases, *Gibbons v. Ogden*.

Ms. Smith: In this case, the Court ruled that under the Commerce Clause, Congress had power to regulate any aspect of commerce that crossed state lines, including modes of transportation. Since *Gibbons* was decided way back in 1824, Congress has continued to increase its power over a number of national issues.

Madison: Are there any other types of economic cases?

Mr. Brown: In addition to the Commerce Clause cases, cases that deal with the economy generally fall into three other categories….

Lilly: I remember the Court just decided something about MP3 files and music downloads.

Mr. Brown: Yes, that's right, in *MGM v. Grokster*, the Court found that using peer-to-peer software for sharing music files was copyright infringement against the artists and record companies. This is a second type of case, those that deal with copyrights and patents.

Zach: What about monopolies? I remember my parents talking about the Microsoft case. Wasn't that about monopolies?

Ms. Smith: That particular case did not make it to the Supreme Court, but a number of famous cases have. These cases dealt with whether Congress could encourage competition in the economy—by outlawing monopolies—or not. The Court has found in a number of cases that Congress can pass laws to better promote competition by eliminating monopolies.

Mr. Jones: Are there any other types of cases?

Mr. Brown: The last type has to do with regulating the economy. In one famous case, *West Coast Hotel v. Parrish*, the Court found that states could regulate businesses by requiring companies to pay a minimum wage.

Mr. Jones: OK class, let's do a quick review. What are the four types of economic cases the Court has taken on?

ALL: REGULATION, COPYRIGHTS AND PATENTS, COMPETITION, AND INTERSTATE COMMERCE.

Mr. Jones: And one of the greatest economic powers Congress has is found in the…

ALL: COMMERCE CLAUSE, IN ARTICLE 1, SECTION 8!!

Ms. Smith: What a wonderful group! Would you all like to follow me and see the "highest court in the land"?

Jeff: I thought the Supreme Court *was* the highest court. Is there another?

Mr. Brown: She's making a joke—that's the name the Justices have given to the *basketball* court in the gym on the top floor of this building. Get it: "highest court in the land"?!? Come along….

ACTIVITY 9.2

TYPES OF ECONOMIC CASES BROUGHT BEFORE THE U.S. SUPREME COURT[1]

Directions: The four case studies that follow are examples of the four different types of economic cases on which the U.S. Supreme Court has ruled. Read all four silently. Your teacher will then assign you to a study group, and you and other members of your group will use these case studies to complete the accompanying data chart. As you read, pay close attention to what distinguishes each of the four types of cases.

***West Coast Hotel v. Parrish* (1937)**

Background:

In 1932, a law entitled "Minimum Wages for Women" was passed by the Washington State Legislature. The law required companies to pay minimum wages for women and children in order to protect their well-being. The law created a special commission to determine what the minimum-wage levels should be. A housekeeper at the West Coast Hotel, Elsie Parrish, sued the hotel in a state court, claiming that it had not paid her the law's minimum wages. The hotel's defense was that the Washington State law was unconstitutional. A Washington State court found the law unconstitutional and ruled for the hotel. On appeal, the Washington State Supreme Court reversed the state-court ruling and directed the hotel to pay back wages to Ms. Parrish. The hotel appealed to the U.S. Supreme Court, which issued its opinion in 1937.

The Court's Opinion:

The Supreme Court, in a 5-4 decision written by Chief Justice Charles Evans Hughes, found that the law did not violate the U.S. Constitution. West Coast Hotel argued that the law violated the Fourteenth Amendment's Due Process Clause, which states that no state "shall deprive any person of life, liberty, or property, without due process of law." The hotel argued that the law deprived employers and employees of the "liberty" of contract negotiation without due process of the law. The Court's opinion held that the Fourteenth Amendment does not prohibit states from enacting "reasonable" regulation in pursuit of the public good. In part due to the impact of the Great Depression, the Court held that it was sometimes reasonable for governments to set a wage floor. Thus, the minimum wage law was constitutional because it was a reasonable attempt to regulate commerce in order to protect the health and welfare of workers.

[1] Sources for these case studies include K. Hall, *The Oxford Companion to the Supreme Court of the United States* (Oxford: Oxford University Press, 1992); FindLaw.com (http://www.findlaw.com/); and Oyez (http://www.oyez.org/).

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TYPES OF ECONOMIC CASES BROUGHT BEFORE THE U.S. SUPREME COURT

Gibbons v. Ogden **(1824)**

Background:

This was an early landmark case in which the Court said that the U.S. Constitution trumped state law. The case developed when the New York Legislature passed a law giving Robert Fulton (and others, including Aaron Ogden) a monopoly on steamship travel between New York State and the state of New Jersey.

Thomas Gibbons, the owner of another steamship company, was operating a ferry which had been licensed by a 1793 act of Congress regulating coastal trade. The state of New York—citing its law giving Fulton's ferry company monopoly control over New York waterways—denied access to Gibbons. Ogden obtained an injunction from a New York court against Gibbons to keep his ferry company out of New York. Gibbons then sued to overturn the injunction. The case was then appealed to the United States Supreme Court.

The Court's Opinion:

The majority opinion, written by Chief Justice John Marshall, greatly expanded the federal government's ability to regulate commerce. Earlier court decisions found that the federal government had power over only *interstate* commerce. In this case, however, Marshall found that the U.S. Constitution's Commerce Clause allowed the federal government to regulate *all* commerce, including commerce within the borders of a state:

> The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation…. a Congressional power to regulate navigation is as expressly granted as if that term had been added to the word 'commerce.'

Marshall also concluded that the power of Congress to regulate commerce should extend to all aspects of it, overriding state law to the contrary:

> If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several states is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

Metro-Goldwyn-Mayer Studios, Inc., et al. v. Grokster, Ltd., et al. **(2005)**

Background

In October 2001, MGM and other major music and movie companies sued Grokster and StreamCast (which distributes the file-sharing program Morpheus) for facilitating the theft of copyrighted music and movies. According to MGM, over 90 percent of the material exchanged using Grokster's file-sharing software was copyrighted material and, therefore, copyright infringement

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occurred every time users exchanged the information. MGM contended that Grokster contributed to this infringement by making the file-sharing software available to the public.

In 2003, a federal court concluded that the file-sharing software could be used for legitimate purposes and thus rejected the entertainment companies' arguments. The federal court determined that such legitimate use was protected under the 1984 Sony Betamax ruling. The case was appealed to the U.S. Supreme Court.

The Court's Opinion:

The Supreme Court, in a unanimous decision written by Justice David Souter, ruled that the providers of software that enabled "file-sharing" of copyrighted works may be held liable for any copyright infringement that takes place using that software:

> We hold that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.

As a result of the Court's decision, Grokster announced that it would no longer offer its peer-to-peer file sharing service. A posting on the Grokster web site stated:

> The United States Supreme Court unanimously confirmed that using this service to trade copyrighted material is illegal. Copying copyrighted motion picture and music files using unauthorized peer-to-peer services is illegal and is prosecuted by copyright owners.

Standard Oil Co. of New Jersey v. United States **(1911)**

Background:

During a 20-year period in the 1880s and 1890s, the Standard Oil Company of New Jersey bought more than 90 percent of the oil refining companies in the United States. The company used this overwhelming market control to manipulate the rates it was charged by railroads. By undercutting the production costs of refining in this way, Standard Oil was able to put pressure on smaller refiners in a number of ways that were considered "anti-competitive": under-pricing, threatening suppliers who worked with Standard's competitors, etc. The U.S. government prosecuted Standard Oil as an illegal trust under the relatively new Sherman Antitrust Act. Standard Oil then challenged the Sherman Act as unconstitutional. The key issue before the Court was whether Congress could prevent a company from acquiring other companies in the same industry by legal means if those acquisitions violated the anti-competition clauses of the Sherman Act.

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The Court's Opinion:

The Court found that the Sherman Antitrust Act was within Congress' Constitutional authority under the Commerce Clause, and that the term *restraint of trade* referred to a wide range of contracts including some that do not harm the public. The Court noted that the Sherman Act referred to contracts that resulted in "monopoly or its consequences." The Court identified three consequences of resulting monopolies: (1) higher prices, (2) reduced output, and (3) reduced quality. The Court held that business practices violated the Sherman Act only when such practices restrained trade "unduly" by resulting in one of these three consequences. Any other definition, the Court stated, would jeopardize normal contracts, thus infringing the liberty of contract. The Court also endorsed the rule of reason first described in *Addyston Pipe and Steel Company v. United States* (1898), and found that Standard Oil Company went beyond the limits of this rule.

Data Chart: Economic Cases by Type

Case	***Type of Case***	***Reason for the Case***	***Court Findings***