Behind the Ruling

Compare the methods judges use to decide difficult cases

9-12.GOV.42 "Compare and contrast different judicial philosophies including activism vs. conservatism, originalism vs. living constitution, and textualism."

NAME _____ DATE _____

1 READ AND MARK

Read it twice

YOUR JOB Underline the legal words and sources judges would interpret. Circle each judicial philosophy, then number two places where the passage compares approaches.

A Smartwatch in Court

1 Imagine officers seeking messages stored on a locked smartwatch after an arrest. A state statute says officers need a warrant to "open a sealed container." The Fourth Amendment also guards against unreasonable searches. Neither source names a smartwatch. Judges must decide which legal questions they are answering: what the legislature's words cover and what the Constitution protects. Those are different inquiries, even when the same search raises both. A judge's method of reading a legal source is part of a judicial philosophy, but no method alone predicts whether the officers win.

2 A textualist confronting the statute concentrates on the enacted words, such as "open" and "sealed container," read in their legal context. Legislative speeches may matter less than the language lawmakers actually passed. For the constitutional question, an originalist asks how the Fourth Amendment's words would have been publicly understood when ratified, then reasons about applying that meaning to today's devices. A living-constitution approach considers constitutional principles in light of changing conditions, including the amount of private information a smartwatch can store. Both constitutional approaches can take the text seriously, but they differ on how historical meaning shapes its modern application.

3 Another comparison concerns a court's role, not just its reading method. Judicial activism describes a willingness to overturn government actions or established precedents when judges believe the law requires it. Judicial conservatism can mean judicial restraint: deference to elected branches and caution about changing precedent. It does not automatically mean favoring politically conservative outcomes. In the smartwatch dispute, one judge might strike down a broad search policy; another might decide only whether this search violated the law. Either judge might also be a textualist or an originalist. The result alone cannot prove a judge's philosophy.

2 ANSWER WITH EVIDENCE

Use the passage

1. How would a textualist's reading of the state statute differ from an originalist's reading of the Fourth Amendment?

2. How might an originalist and a living-constitution judge approach the smartwatch, even if both take the Fourth Amendment's text seriously?

3. Contrast judicial activism with judicial conservatism understood as restraint in the smartwatch dispute.

4. How could one judge be both a textualist and an originalist in this dispute? Why would the ruling alone not establish either label?

3 YOUR TURN

Your own words

Roadside cameras record every driver's location each hour. A state law says, "Police must get a warrant before using an electronic device to track a person." A driver challenges the program under that law and the Fourth Amendment. In 4 to 5 sentences, compare how a textualist and an originalist or living-constitution judge would analyze the challenge, then contrast activism with judicial restraint. Do not claim that any approach requires a particular result.

ANSWER KEY

Behind the Ruling

PART 1 · READ AND MARK

Underline the legal words and sources judges would interpret. Circle each judicial philosophy, then number two places where the passage compares approaches. Accept any marking that follows this job and points at the right text.

PART 2 · ANSWERS

#	QUESTION	ANSWER
1	How would a textualist's reading of the state statute differ from an originalist's reading of the Fourth Amendment?	**The textualist would focus on the enacted statute's words in context. The originalist would examine the Fourth Amendment's public meaning when ratified and apply it to the smartwatch.**
2	How might an originalist and a living-constitution judge approach the smartwatch, even if both take the Fourth Amendment's text seriously?	**The originalist would use the amendment's historical public meaning to guide its application. The living-constitution judge would consider its principles in light of changed conditions, such as how much private information the device stores.**
3	Contrast judicial activism with judicial conservatism understood as restraint in the smartwatch dispute.	**An activist judge might be more willing to strike down a broad search policy. A judge favoring restraint might defer to officials or decide only whether this search violated the law.**
4	How could one judge be both a textualist and an originalist in this dispute? Why would the ruling alone not establish either label?	**The judge could read the statute using textualism and the Fourth Amendment using originalism. Either method could lead to different outcomes, so the ruling alone does not reveal the judge's reasoning.**

PART 3 · YOUR TURN (SAMPLE ANSWER)

A textualist would focus on whether the law's words "electronic device" and "track a person" cover the cameras and location records. An originalist would ask how the Fourth Amendment's protection against unreasonable searches was understood when ratified and apply that meaning to modern tracking. A living-constitution judge might consider how constant recording changes the threat to privacy while interpreting that protection. A judge inclined toward activism might be more willing to strike down the program, while a judge favoring restraint might defer to officials or decide narrowly. None of these approaches guarantees a particular ruling.

Accept either originalism or the living-constitution approach in Part 3. Look for a distinction between interpreting the statute and interpreting the Constitution, plus a separate comparison of activism and restraint.