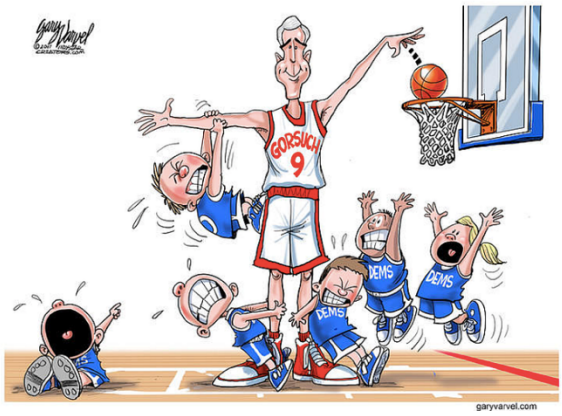
Unit 2 INTERACTIONS AMONG BRANCHES OF GOVERNMENT Room 2B HIVE

2.11 Checks on the Judicial Branch



ESSENTIALS

Checks on the Supreme Court are represented by:

- Congressional legislation to modify the impact of prior Supreme Court decisions
- Constitutional amendments
- Judicial appointments and confirmations
- The president and states evading or ignoring Supreme Court decisions
- Legislation impacting court jurisdiction

1. What is the underlying idea of this cartoon? [Write your response as a thesis using a "because" statement]

2. Why are appointments to the Supreme Court fought with such partisan fury? Should we make confirmation easier or more difficult? Explain.

How many total amendments have there been to our U.S. Constitution? How do constitutional amendments limit the Supreme Court's power? How effective has this check been?

STORYTELLING: Find a Supreme Court nominee who was either rejected by the Senate or withdrew consideration. Explain what happened. How significant of a check is this?

Look for at least two (2) examples of occasions where the president and/or states chose to ignore Supreme Court decisions:

President ignores:	States ignore:

DEFINE: JURISDICTION. Trace the history of jurisdiction rules in the U.S. judiciary. When is the last time Congress legislated changes to the court's jurisdiction?

CONCEPT APPLICATION

In the myriad of checks and balances that each branch of the government maintains over the others, Congress possesses the power to strip jurisdiction from the courts, thereby preventing courts from hearing certain legal disputes. Jurisdiction stripping occurs when Congress classifies specific legislative or administrative actions as unreviewable by the courts. Congress's power to remove jurisdiction from the courts has various implications, some of which are potentially troubling. Removing jurisdiction may be viewed as a way for Congress to limit and restrict judicial power. Additionally, when certain governmental actions are removed from judicial review, citizens cannot access the courts and petition for redress against the government. Recent research suggests that jurisdiction stripping is designed by Congress to do just that--limit litigation against the government. This study seeks to further examine the factors that might cause Congress to remove judicial review. This study concludes that the amount of litigation against the federal government strongly corresponds with congressional jurisdiction-stripping activity.

Much of the prior scholarship addressing jurisdiction stripping focuses on political ideology as the motivating factor behind instances of Congress removing court jurisdiction. Proponents of this view argue that jurisdiction stripping is a tool used by Congress to help ensure that its political goals are met. The theory is that when Congress and the courts share similar politics, ideology, or preferences, court decisions comport with Congress's goals and aims. However, if the courts and Congress differ ideologically, court decisions may undermine and contradict Congress's agenda. Consequently, when the courts and Congress differ ideologically, Congress may strategically strip courts' jurisdiction to prevent them from undercutting Congress's legislative objectives.

Recent empirical studies of jurisdiction stripping, however, emphasize practical concerns--like the administrative burdens created by litigation against the government--as the motivating forces behind jurisdiction stripping. Over the past few decades, litigation against the federal government has steadily increased. This increase in litigation has not been matched by a similar increase in the number of federal judges. Consequently, federal judges face increased caseload pressures. Litigation also typically involves a consequential drain on government resources, both in terms of time and money. Finally, litigation--even unsuccessful litigation-can frustrate policy implementation by imposing delays. Congressional concern with the resource drain and policy delays imposed by litigation may help explain why jurisdiction stripping is used to limit litigation against the government.

SOURCE: Nicole A. Heise, "Stripped: Congress and Jurisdiction Stripping," Faulkner Law Review, Fall 2011

A. Describe what it means for Congress to strip jurisdiction according to this scenario.
B. In the context of the scenario, explain how the response in part A is affected by political considerations.
C. In the context of the scenario, explain how another branch of government apart from Congress can affect the power and jurisdiction of the Supreme Court.