

Judicial Branch Free-Response Question Assignment

The judicial branch is often assumed to be insulated from politics. However, politics affects many aspects of the judiciary.

- a. Describe two political factors that affect presidents' decisions to appoint members of the federal judiciary.
- b. Identify two political factors that affect the confirmation process of a president's nominees and explain how each factor complicates a confirmation.
- c. Explain how one legislative power serves as a check on court decisions.
- d. Explain how one executive power serves as a check on court decisions.

When appointing members of the federal judiciary, there are many factors that the President must take into consideration; in terms of political factors, one of the most important to consider is the opinion of Congress. To choose a definitively unpopular nominee would be to destine him (or her) for failure to gain Senate approval of the appointment. It is therefore a near necessity for the President to choose a candidate who is palatable to a majority of members of the Senate as well as reflective of his own beliefs. It must be a balance carefully struck so as to not neglect his own voice while still considering the sentiment of others. If the President chooses an agreeable nominee, the process is smooth and allowing of government to function with as little trouble as possible. Another important political factor that must be taken into consideration, is, of course, the beliefs the President would like to see reflected on the Supreme Court and for how long. This goes hand in hand with the 'agreeableness' factor, and goes back to that careful balance that must be struck. A President's priority is to see his nominee appointed, primarily so the beliefs of the Administration and the values it holds can influence the Court for as long as possible. Some Presidents may also want to offer a more moderate candidate if they have had the fortune of many appointments. It is their responsibility to carefully consider what is best for the health of the court, respecting the opinion of the nation, and holding the court to vital values.

Political factors are not only something the President must take into consideration when nominating a candidate for the Court; political factors can also make or break the confirmation of the nominee. Take the recent appointment of Justice Neil Gorsuch or the current confirmation process of Brett Kavanaugh. For one, the party division of Congress, and particularly the Senate, have significant bearing on how nominees are received, as well as the political beliefs of the President himself. With a 51-49 split barely favoring the Republicans in the Senate, especially with the current Administration being so politically controversial, as well as the Administration holding many beliefs unpalatable to many members of the Senate, nominees must either be pushed through with great force or with great skill. Members of the Senate must be convinced or made to confirm the nominee. Brett Kavanaugh's confirmation process has not gone nearly so well as Neil Gorsuch's, who was confirmed with 54-45 vote primarily on the basis of his experience in the Judicial field, which ties into the other important factor to consider. The nominee's level of qualification, the skills and experience he or she holds, can significantly mitigate or heighten the effect of the previous factor. In the case of Gorsuch, his experience (likely alongside political maneuvering) was able to swing three Democrats to help confirm his nomination. A justice

must be chosen not based only on likely political beliefs but also experience, skill, and record.

Court decisions have a check placed on them by Congress through the legislative power of proposing Constitutional Amendments. This enables the Legislative Branch to potentially overturn previous Court Decisions by altering the Constitution and thereby altering what is deemed Constitutional or Unconstitutional. This can not only alter the interpretation of laws but the very nature of the validity of Court decisions. Take, for example, the Dred Scott case and all cases pertaining to slavery; all were made inconsequential and invalid by consequence of the 13th Amendment being passed.

The Executive Branch also holds checks on the Judicial Branch's power. The President, of course, can appoint Federal Judges, allowing influence of the beliefs and values of the Court; the President also possesses the power to pardon all federal crimes, potentially being able to nullify the result of a court case that found an individual or group guilty of a federal crime. This executive power prevents abuse of the Justice System to hand down unjust sentences. Thus, their power is not absolute and can be negated by the power of the Executive Branch, also influencing the Courts to be more considerate in their rulings and more legitimate in their actions.