

Federal Judicial Power: CAN WE GET INTO COURT? → JX and JUSTICIABILITY

Authority for Judicial Review: Article III defines the powers of the federal courts BUT nothing in the Constitution expressly gives SC judicial-review power. Comes from SC decisions:

- I. Authority to review federal laws and executive actions: Marbury v. Madison (1803).
- II. Authority to review federal-law state-court decisions: Martin v. Hunter’s Lessee (1816: nature of the case, not the court of origin, confers the jx) and Cohen’s v VA (1821: app jx even where state is a party).

JURISDICTION REQUIREMENTS: SC has judicial review jx over state-court judgments ONLY where there is a FED Q and there is a final judgment from the state’s highest court. Congress sets specifics of federal-court jx (e.g., amount in controversy) per Art. III; need statutory AND constitutional jx.

ELEVENTH AMENDMENT	EXCEPTIONS CLAUSE (Art. III §2)
<p>Bars suits by other citizens <u>and</u> own citizens (<u>Hans v. LA</u>) <u>directly against states or their agencies</u> for suits in law OR equity.</p> <p>States and US can still sue states (even for damages) in SC with original jx (per Art III); if done in own interest but can’t be acting as agent (“nominal actor”) on behalf of citizens just to get around 11th A.</p> <p>Limited to states and their agents (doesn’t apply to local agencies/municipalities); <u>Alden v ME</u>: can’t sue state even if emp’er; <u>FL Prepaid</u>: can’t sue state agency w/o waiver.</p> <p>CAN sue state officers (<u>Ex parte Young</u>) for injunctive or declaratory relief.</p> <p>States can WAIVE immunity BUT must be very clear.</p> <p>11th A is limited by <u>14th A, §5</u>, which modifies (Congress can authorize remedies, <u>Fitzpatrick</u>, but intent to remove bar must be clear, <u>Atascadero</u>)</p> <p>Cannot sue states under the CC power b/c doesn’t modify 11th A (<u>Seminole Tribe v. FL</u>).</p> <p>Ways around:</p> <ul style="list-style-type: none"> • Make consent to suit a condition of receiving federal \$ (via T&S Clause). • State can otherwise consent to suit (good-faith consent). • Congress can act under 14th A, §5 (but make very clear) to create private COA against states. • Sue lesser entities of the sovereign states (e.g., officers) for injunctive/declaratory relief instead of \$; <i>nb</i>: can sue subdivisions for damages. 	<p>Congress may <u>limit</u> SC’s app jx “with such exceptions and under such regulations as Congress shall make” Can’t expand SC’s jx.</p> <p>Must be limited (need other means of redress, e.g., other fed cts can still hear, per <u>Ex parte McCordle</u> and <u>Ex parte Yerger</u> [every right has a remedy]) and modest contraction (too much would violate SOP); can’t take away fed forum b/c SOP and need uniformity of constitutional decisions.</p> <p>Can’t withhold to make case come out a certain way, put thumb on the scale (<u>Klein</u>).</p>

STATE-ACTION DOCTRINE: Constitutional guarantees (except 13th A/no slavery) run only against the national and state gov’ts. Only to private conduct if have “state action.”

1. Serves a public function? VERY narrow rule; must be traditional and exclusive gov’t functions (e.g., running elections or see Marsh: Exxon owned/ran whole town). Jackson: Elec. co; no delegation of excl/trad gov’t function; not responsible for shut-off policy.
2. When agent of the state (e.g., cop) acting “under color of law.”
3. When joint participant (such encouragement, approval, and entanglement that “acting in concert”). Burton: Relation btw coffeeshop and DE state parking lot so symbiotic and entwined (mutual benefits from operation) that yes, state action. Moose Lodge: Private club with liquor license; gov’t must be responsible for the action (must ENCOURAGE, REQUIRE, ENFORCE); here not.

<p>Cases and Controversies: Article III, §2 defines judicial power as needing (need “flesh and blood” controversy). 3 elements (acs):</p> <ol style="list-style-type: none"> 1. Case must be in <u>adversarial form</u> and context. 2. Must be <u>capable of judicial resolution</u>. 3. Resolution <u>must not violate the SOP</u>. <p>No advisory opinions (Muskra): infringe on checks & balances, not adversarial, can’t have specific answer w/ abstract/general Q. Discretionary avoidance: Need “strict necessity” and no other ground to decide case on to answer Const Q (Rescue Army). “C&C” gives rise to the JUSTICIABILITY requirements (standing, ripeness, mootness, political Q) all of which must be met.</p>			
<p>I. STANDING (most important)</p> <p>(Lujan: no standing b/c “vague, someday intentions”)</p> <p>A. Injury in Fact Invasion of legally protected interest of the P’s that is concrete and particularized and actual or imminent. <i>P seeking injunctive or declaratory relief must show likelihood of future harms.</i> Types of harm that satisfy: violations of (1) CL rights (breach of K, tort); (2) statutory rights; (3) constitutional rights; and (4) any other important harm (environmental, economic, or aesthetic).</p> <p>B. Causation and Redressibility Must show that the P <i>caused</i> the injury (fairly traceable) such that a favorable court decision will likely remedy the injury (can’t be speculative). Warth: No standing where couldn’t show restrictive zoning caused exclusion of blacks from ‘hood BUT yes in <u>Arlington Heights</u> (b/c were plans). Allen v. Wright: no causation btw IRS and school integration; O’Connor: can’t generally sue state to do a better job (SOP; but Stevens: should be distinct considerations).</p> <p>C. No third-party standing P needs personal harm AND a. <u>Close relation</u> btw P and injured party (e.g., doctor-patient relationship) such that P can be trusted to assert the TP’s rights (where P meets other standing requirements) b. <u>Hardship</u>: injured TP unlikely to be able to assert own rights (e.g., jury-discrimination cases) (where P meets other standing requirements).</p> <p>D. No generalized grievances P cannot sue solely as a citizen or taxpayer (where P’s <i>only</i> claim is that the gov’t is violating a law or mispending tax \$) EXCEPT: Taxpayer standing where taxpayer challenging the gov’t expenditure of \$ as violating the <u>Establishment Clause</u> (<u>Flast v. Cohen</u>, but narrow exception b/c can’t apply to property grants under the EC; see <u>VF College</u>). Challenged enactment must (1) be an <u>exercise of T&S power</u> and (2) <u>offend specific limitation on T&S power</u>. Statutory citizen suits: Congress can give new COA (“any citizen may sue...”); <u>Laidlaw</u>: cannot confer standing on everyone; still need inF. No legislative standing where members of Congress only claim injury that is loss of political power (<u>Raines</u>: challenge to Line Item Veto; no concrete injury); legislators shouldn’t sue if others are a better fit (but CAN sue if have actual injury / individual standing: <u>Powell</u>).</p> <p>E. Associational standing (<u>Hunt v. WA Apple</u>) Can sue on behalf of members if: <ol style="list-style-type: none"> 1. At least one member has individual standing. 2. Interest sought to be protected is germane to organization’s purpose. 3. Don’t need indie member participation in suit (can’t be relief where they have to be there). </p>	<p>II. RIPENESS</p> <p>Most ripeness decisions involve P requesting <u>declaratory judgment</u>. NEED: <ol style="list-style-type: none"> 1. Need “sharp” issue. Does the ct have before it all that it needs to review now or is there reason to wait? Would court benefit from further factual development of the issues presented? 2. Not premature need harm now of imminently (likely); a “bleeding P” 3. Hardship the P will suffer w/o pre-enforcement review (the greater the hardship, the more likely that the ct will review). 4. Fitness of the issues in the record for judicial review (would resolution improperly interfere with <u>administrative action</u>?) <p><u>Abbott Labs</u>: great hardship (drug co’s had to either comply [costly] or risk criminal cx’s) and fit for review (b/c only a Q of law) so RIPE.</p> </p>	<p>III. MOOTNESS</p> <p>If events after the filing of the lawsuit end the P’s injury, the case shall be moot (dismissed; ct determination of legal issue is no longer necessary to compel result originally sought). P <u>must present a live controversy at ALL stages</u> of the fed-ct proceedings (\$-damage suits are never moot). EXCEPT (not moot where): A. For wrongs “capable of repetition [to the P] but evading review” (e.g., <u>Roe v. Wade</u>); must be a <u>rsbl likelihood</u>. B. Voluntary cessation (if D halts practice but may resume any time; n/a post-settlement, when there is a judicially enforceable prevention of resumption; n/a if D CAN’T do again [e.g., deny law school admission: <u>DeFunis</u>]). C. Class-action suits: Not moot as long as one member of the class has an on-going injury. D. Collateral consequences: Risk of adverse impact on litigant? Demonstrable continuing legal effect of suit? \$\$\$?</p>	<p>IV. POLITICAL Q’s</p> <p>Federal cts won’t adjudicate some allegations of constitutional violations and leave Qs to the political branches to decide (many say should’ve been the case in <u>Bush v. Gore</u>, 2000). <u>Baker v. Carr</u>: <ol style="list-style-type: none"> 1. Classical considerations (if textually committed to another branch BUT SC decides if this is the case). 2. Functional considerations (if court decides it lacks resources or judicially discoverable and manageable stds). 3. Prudential considerations (court cannot decide if pudd): a. requires <u>policy determination</u> of kind for nonjudicial discretion b. there is a <u>need for unquestioning adherence</u> to a political decision already made c. would be <u>disrespectful</u> to other branches d. there is potential for <u>disobedience</u> or for <u>embarrassment</u> for multifarious pronouncements <p>Examples of non-justiciable political Qs: A. Guarantee Clause cases (Art. IV, §4: republican form of gov’t guaranteed); are all PQs since <u>Luther v. Borden</u> (1849). B. Challenges to the President’s conduct of foreign policy (<u>Goldwater v. Carter</u>; 1979 Taiwan treaty); also Qs of <u>national security and war powers</u> (incl. when Congress can start and end war). C. Challenges to the impeachment and removal process; given to Senate by Const (<u>Nixon v. US</u>; 1993 judge case). D. Amendments to the Constitution.</p> </p>

Federal Legislative Power: WHAT AUTHORITY DID CONGRESS HAVE TO PASS THIS LAW?

<p>Congress' Authority to Act: Article I defines Congress' powers. Congress may only act if power is express or implied (there is no general federal police power like states have; states can do anything not prohibited by the Constitution but limits on federal power). Note: Although Congress can create any <u>tax</u>, it cannot create any <u>law</u> to help gen. welfare b/c no gen. police power.</p>				
Necessary & Proper Clause (Article I, §8)	Taxing & Spending Power (Art. I, §8)	Commerce Clause Powers (Art. I, §8)	10th Amendment	14th Amend, § 5
<p>Congress can adopt all laws N&P to carrying out authority (<i>any</i> means as long as not prohibited by the Constitution; applied broadly per <u>McCulloch v. MD</u>), e.g., can fund the military. TEST: 1. Need legitimate end within scope of the Const. 2. Means must be canp: consistent w/ spirit of Const, appropriate, not prohibited, and plainly adapted to that end. If it is convenient and useful to carrying out constitutional grants of power, then N&P. Limited by other parts of Const (e.g., EPC, 10th A).</p>	<p>Congress may tax and spend for the general welfare (create <u>ANY TAX to help the general welfare</u>). Anything counts as a tax if it produces revenue even if it has substantial regulatory effects (<u>Kahringer</u>: gambling tax valid even though negligible amount of \$). "General welfare" includes all matters of national concern and Congress gets substantial deference to define. Can put rsbl conditions on states as a prerequisite for getting fed \$. guruc TEST (SD v. Dole: hwy funds withheld if drinking age below 21): 1. T&S use for <u>general welfare</u>? 2. Congress desire to condition the states must be done <u>unambiguously</u> so states can exercise choice knowingly. 3. Condition must be <u>rationaly related</u> to the fed interest, program, or project. 4. T&S use <u>cannot be unconstitutional</u>. 5. Condition <u>cannot be so coercive as to make it compulsion</u>. O'Connor dissent: condition vs. regulation</p>	<p>Congress may regulate commerce btw nations and states; <u>very broadly construed</u> even with the limits of <u>Lopez</u> and <u>Morrison</u>. This power was broadly defined until 1995 (no laws were out of scope), when <u>Lopez</u> (gun-free school-zone act unconstitutional) began the substantial limits. 3 circs where Congress CAN regulate w/ CC power (<u>Lopez</u>): 1. Channels of IC (places where IC occurs, e.g., hwys and the Internet). 2. Instrumentalities of IC and people and things in IC (e.g., trucks, phones, Internet, cattle, electricity, radio waves); see <u>Gibbons v. Ogden</u>. 3. Anything with a substantial effect on /connection to IC, including effect on economic activity (<u>Morrison</u>; even if part of "cumulative effect" per <u>Wickard v. Filburn</u>: wheat case) but can't be activity traditionally regulated by the state. Must be to the "naked eye" w/o "inference upon inference" (<u>Lopez</u>). 11th A is a potential bar.</p>	<p>All powers not granted to the federal gov't are reserved to the states. A. Congress CANNOT compel state legislative or regulatory activity (i.e., tell states what laws to enact on its own [<u>NY</u>: can't "commandeer" the state's legislative process]); this is about political accountability. Can't make states enforce/administer a federal regulatory program (e.g., Brady Bill in <u>Printz</u>). Congress can't make private COA to let citizens sue a state in state court (<u>Alden v. ME</u>). B. Congress CAN pass its own laws that affect states (e.g., as emp'ee in <u>Garcia</u>) or tell states what to do/not do / prohibit harmful commercial behavior by state gov'ts (<u>Reno</u>: driver info can't be sold).</p>	<p>Congress <u>may</u> adopt laws to enforce the 14th A (e.g. due process, discrimination). Congress <u>cannot</u>: 1. Create new rights or 2. Expand the scope of rights. BUT Congress <u>can</u> adopt laws to <u>prevent violation of or remedy rights</u> recognized by the courts if laws are <u>narrowly tailored (proportionate and congruent)</u>. No 11th A bar.</p>

SEPARATION OF POWERS

Judiciary: explains laws and decides whether constitutional.

Executive: sees that laws are carried out; heads armed forces; makes appointments; makes treaties; signs/vetoes laws.

Legislative: makes laws; provides for and maintains armed forces; collects taxes and borrows money; prints/coins money.

Std to preserve balance (**aeii**)?

1. Does it aggrandize the power of one branch?
2. Does it encroach on one branch?
3. Is it impair a constitutional function?
4. Is it incongruous?

Constitutional Limits on State and Local Gov't Power: CAN THE STATE ENACT THIS LAW?

States have general police power to act for the health, safety, and welfare of their citizens.		
Congress did SOMETHING	Congress has done NOTHING (no Congressional involvement)	
Preemption	Negative Commerce Clause & Privileges and Immunities Clause	
<p>If one federal and one state statute, ask: <i>allowed</i> or <i>preempted</i> by Congress? Supremacy Clause (Art. VI): if conflict btw fed and state laws, fed law trumps and local law is preempted. Three ways to find:</p> <ol style="list-style-type: none"> Express: Congress explicitly preempts state/local law (e.g., says that federal law is exclusive in a particular field). Implied: State law preempted when (mo fi): <ol style="list-style-type: none"> Federal and state laws are mutually exclusive (cannot simultaneously comply). Both stand if complementary. Congress' regulations are so extensive as to wholly occupy the field (e.g., special agency is created). State/local law impedes or frustrates the achievement of a federal objective (i.e., if direct conflict btw their purposes). Congress evinces intent to preempt state/local law. States may not tax or regulate federal gov't activity: <u>McCulloch v. MD</u> (couldn't tax the bank b/c power to tax is power to destroy) Selective exclusivity: states ousted rarely (mostly when discrimination against or burden on IC). 	<p>Is the state/local law discriminatory? (i.e., does it discriminate against out-of-staters)? Truck cases were NOT discriminatory b/c applied to <u>all</u> trucks but <u>Philly v. NJ</u> (no out-of-state trash) was discriminatory.</p> <p>NO discrimination:</p> <ol style="list-style-type: none"> Do NCC balancing test (from <u>Pike</u>: if even-handed regulation to effect legitimate interest and effects on commerce only incidental, upheld unless burdens on commerce clearly outweigh benefits, e.g., <u>Bibb</u> mudflaps case); if <u>grossly</u> disproportionate "undue burden" on IC, invalid (burden can be very large as long as there is a benefit; must be <i>very</i> disproportionate b/c there is a heavier presumption of validity for non-discriminatory issues; even more deference given if h/s rsn). P&I inapplicable. <p>YES discrimination:</p> <ol style="list-style-type: none"> NCC will strike law down (presumption against laws that discriminate; e.g., if for economic protectionism [or solely to discriminate], per se invalid) unless it is (a) necessary to achieve a legitimate health/safety objective AND (b) there is no rsbl non-discriminatory alternative (<u>Philly v. NJ</u>: same harm regardless of trash's origin; solely protectionist) OR unless exceptions (Congressional approval or MPD). P&I will strike it down (IF livelihood or another P&I is affected) unless law achieves an important gov't purpose. 	
	EXCEPTIONS to the NCC <i>Free trade and political accountability.</i>	Privileges & Immunities Clause (Art. IV §2) <i>Harmony/unity and political accountability.</i>
	<ol style="list-style-type: none"> Congressional approval (b/c plenary power); Congress can let states act unconstitutionally (i.e., discriminate). Market Participant Doctrine: State may prefer own citizens if state-owned business (e.g., <u>Reeves</u> cement plant). Is state's own \$ on the line? (yes in <u>Reeves</u>, no in Alaska timber). State is an MP if buying and selling but not if regulating or taxing (e.g., <u>conditions on sale</u> or <u>down-stream effects</u> morph state back into regulator). Can't be for natural resources (as a mask for resource-hoarding) but can if have changed w/ service (e.g., cement). Can't be if state monopolizes particular property/element (no unique access). <p><u>White v. MA Construction</u>: Boston wanted to hire only Boston workers (buy labor); <u>okay under NCC</u> b/c MP but would've been invalid if under P&I.</p> <p><u>United Bldg v. Camden</u>: (can only hire mostly in-staters under P&I if can pass test) but this would have been valid under NCC (as market participant).</p>	<p>State may not deny out-of-staters the P&Is that it accords its own citizens (must give same P&Is to both). This is an anti-discrimination provision. State discriminating against out-of-staters re: their ability to earn a living violates P&I unless it is necessary to achieve an important gov't purpose. When state is putting itself out there and in-staters are receiving benefits from state-subsidized programs (e.g., welfare, higher-education tuition, recreation [pool fees, hunting licenses], state-funded health care [free clinics]) usually okay. If state is subsidizing an activity that wouldn't otherwise exist, tip off that maybe okay. If unique/would result in loss of life, then pushed to the edge; maybe no good if barred entirely (unless just charged more, then okay).</p> <ol style="list-style-type: none"> There MUST be discrimination against out-of-staters and the discrimination must be re: P&I (civil liberties or person's emp't [ability to earn livelihood or participate in commercial activities]; rights to courts, roads, same taxation, hold property). Compare <u>Piper</u> (VT lawyer could take NH bar exam as a nonresident b/c affected ability to work across state border) with <u>Baldwin</u> (elk hunting is a hobby, not a P&I). TEST: <ol style="list-style-type: none"> Basic to survival of the union? Would it create ill will / disharmony? Corporations and aliens cannot invoke the P&I Clause (only individual citizens); <i>nb</i>: if citizen, consider <i>both</i> NCC and P&I. Discrimination is allowed only if necessary to achieve an important gov't goal/purpose. State must show (1) out-of-stater responsible for problem and (2) statute narrowly drafted to address problem (hard to satisfy; <u>Hicklin</u>: AK Hire case where P&I violated b/c not caused by out-of-staters).

Federal Executive Power

Article II defines power of the President and Executive Branch.					
Foreign Policy			Domestic Affairs		
Treaties	Executive Agreements	Commander-in-Chief Powers	Appointment and Removal Power (Article II, §2)	Impeachment and Removal from Office	Executive Privilege & Absolute Immunity
<p>Agreements btw the US & foreign nations that are negotiated by the Pres and effective when ratified by the Senate.</p> <p>A. State laws that conflict with treaties are invalid.</p> <p>B. <i>If conflict btw federal law and treaty, last in time controls.</i></p> <p>C. Treaties are invalid if they violate the Constitution (supreme law of the land).</p>	<p>Agreements btw the US & foreign nations that are effective when signed by the Pres and the foreign leader (no Senate approval required).</p> <p>May be used for <i>any</i> purpose (anything that can be done by treaty can be done by EA).</p> <p>Prevail over conflicting state laws but <i>never</i> over federal statutes or the Constitution.</p> <p><u>Dames v. Moore</u> (attachments on property)</p>	<p>President has broad powers to use US troops in foreign countries; has <i>never</i> been declared unconst.</p> <p>Implied consent of Congress if don't act otherwise?</p>	<p><u>Who may possess appointment power?</u></p> <p>1. Const says Pres appoints ambassadors, fed. judges, and <u>officers</u> of the US (Senate confirms, but appointment power is solely the Pres's).</p> <p>2. Congress may vest the appointment of <u>inferior officers</u> in the Pres, dept. heads, or the lower fed. cts. <u>Morrison v. Olson</u>: b/c Atty Gen could fire special prosecutor, was inferior officer. Congress cannot vest AP in persons other than those specified in Art. II, §2, cl.2.</p> <p>3. Congress cannot give appointment power to itself or its officers.</p> <p><u>Who may possess removal power?</u></p> <p>1. Unless limited by fed. Statute, Pres can fire any exec branch official (per <u>Myers</u>, get RP as incident to AP) BUT:</p> <p>a. Must be in office where independence from the Pres is desirable (e.g., can't fire person meant to investigate the Pres just as Congress cannot remove cabinet members)?</p> <p>b. Statute cannot prohibit <i>all</i> removal (can only <i>limit</i> removal to where there is good cause, as long as doesn't impede executive authority or infringe on SOP). Congress cannot itself appoint or remove executive branch officials (<u>Bowsher</u>).</p>	<p>Pres, VP, fed judges, etc can all be I'd and R'd from O for treason and "high crimes and misdmmrs."</p> <p>A. Impeachment itself doesn't remove from office (only removed if Senate convicts).</p> <p>B. Impeachment in House needs majority vote; conviction by Senate needs 2/3 vote.</p>	<p>Immunity: Pres has absolute immunity from civil suits for \$ damages for things done while Pres; <u>Nixon v. Fitzgerald</u> BUT no immunity for acts from before took office (<u>Clinton v. Jones</u>). Why? Don't want to (1) <u>distract</u> or (2) <u>render indecisive</u> the President.</p> <p>Privilege: Protects papers, info, conversations from Congress, Judiciary, criminal proceedings BUT must yield to overriding need. <u>US v. Nixon</u> (need for evidence in criminal trial overrode EP so had to give tapes). This privilege is PRESUMED, with the BOP on the seeker to show that info is NOT privileged. Look at procedural protections so only narrowest and most necessary info disclosed.</p>
<p>War Powers: Congress declares war, but scope of President's power is unclear. President can:</p> <ol style="list-style-type: none"> 1. Rescue 2. Repel (defend) 3. Reprisal 4. Per treaty <p>War Powers Resolution: 60 days after the President reports that armed forces have been engaged, use must stop unless Congress approves; unconstitutional delegation of Congress' power to declare war or . . .</p>			<p><u>Domestic:</u> President can act temporarily w/o Congressional authority (where no law) if there is an emergency (Emergency Power) to maintain the status quo but NOT if Congress has specifically rejected such an action/said "no" unless there is an independent Constitutional authority (<u>Youngstown</u>: Congress had rejected seizure of steel mills but Truman did it anyway; NG).</p> <p>President has absolute Pardon Power except for self or impeachment (b/c SOP issues; designed to check Presidential appointment power).</p> <p>FORMALISM V. FUNCTIONALISM?</p>		
<p>Delegation of CONGRESS' Powers: There is NO limit on Congress' ability to delegate legislative powers to executive agencies or even to the judiciary. Before 1937, there were non-delegation doctrines but since then not <i>one</i> federal law has been struck down as an over-broad delegation. Need "some intelligible principle" to guide discretion (but all have been upheld). See <u>Mistretta</u>: sentencing guidelines given to judiciary committee (okay). Can't delegate impeachment powers.</p> <p>Legislative and Line-Item Vetos are unconstitutional: For Congress to adopt a law, there must always be (1) bicameralism (House & Senate) and (2) presentment (President must sign or veto bill in its entirety). When Congress attempts to overturn an executive action w/o <i>both</i>, unconstitutional. See <u>Chadha</u>.</p>					