

The Structural Safeguards of Federal Jurisdiction

Hypothesis: Congress's power to curb federal jurisdiction (known as "jurisdiction stripping") is controlled and limited by the structural and political constraints on Congress, rather than (as most scholars believe) by judicial enforcement.

Results: The Article I lawmaking procedures (bicameralism and presentment) effectively create a supermajority requirement for any piece of legislation and thus allow political factions (even political minorities) to veto legislation. Historically, political factions that support the judiciary have used their "veto points" in the House or in the Senate to block jurisdiction-stripping proposals.

Interesting Finding: Members of Congress tend to vote along partisan lines (*i.e.*, the political faction opposing the judiciary seeks to strip jurisdiction; the faction supporting the judiciary seeks to block those efforts). But the executive branch appears to oppose jurisdiction-stripping legislation regardless of partisan affiliation. (For example, the Reagan Administration opposed efforts to strip jurisdiction over cases involving school prayer and abortion.) In future work, I will explore whether the executive branch has different incentives that lead it to protect the judiciary in more contexts.

Next Steps: My ultimate goal in exploring jurisdiction stripping is to show that (as a practical matter) it is less of a concern than legal scholars have generally assumed. I argue that Congress is likely to leave the current judicial scheme in place. Thus, my future scholarship will examine how well this scheme works. I plan to explore the Supreme Court's role in supervising the lower federal and state courts, and how well the Article III courts as a whole oversee bankruptcy courts and administrative tribunals. In sum, my future work will examine the interaction among courts within the judicial hierarchy.

Sample of Historical Evidence: In the late nineteenth century, Democrats (who controlled the House of Representatives) opposed the federal judiciary, which was seen as biased in favor of big business. They attempted to strip jurisdiction over suits involving corporations via the Culberson Bill. But pro-business Republicans controlled the Senate and managed to block those proposals.

House Vote on Culberson Bill: 1880

March 4, 1880

10 CONG. REC. 1305 (1880)

Party	Vote			Total
	Nay	Yea	No Vote	
Democrat	1	117	23	141
Greenbacker		5	2	7
Independent Democrat		6	1	7
National		3		3
Republican	73	28	30	131
None		3		3
Total	74	162	56	292

Conversely, in more recent years, the judiciary has been attacked by Republicans. House Republicans have sought to strip jurisdiction over certain constitutional claims, such as whether the use of "under God" in the Pledge of Allegiance violates the Establishment Clause. But Democrats have used their veto points in the Senate to block those jurisdiction-stripping efforts.

House Vote on Pledge Protection Act of 2004

September 23, 2004

150 CONG. REC. H7478 (daily ed. Sept. 23, 2004)

Party	Vote			Total
	Nay	Yea	No Vote	
Democrat	165	35	5	205
Democrat/Republican		2		2
Independent	1			1
Republican	7	210	8	225
Total	173	247	13	433

