

JUDICIAL REVIEW DISCUSSION

Read the arguments below that express arguments **for** and **against** the power of judicial review. Respond to the questions below to prepare for a class discussion.

FOR	AGAINST
<p>While the power of Judicial Review is not explicitly stated in the Constitution, it is quite obviously implied. It is the job of the Supreme Court to apply laws to cases. Article VI calls the Constitution “the supreme Law of the Land.” Therefore, if the Supreme Court applies laws to cases and the <i>supreme law</i> is the constitution, then obviously they must determine whether laws are constitutional before they can apply it to a case.</p> <p>The power of judicial review is one of the fundamental checks and balances that keeps any individual branch of government from having too much power. If the Executive and Legislative branches could act without anyone making sure they were following the constitution, their power would be basically unlimited and the rights of citizens would be endangered.</p> <p>For example, imagine that Congress passed a law declaring that you, as a high school student, could not wear clothes that protested a war. (This happened in <i>Tinker v. Des Moines</i>). Without a body like the Supreme Court and its power of judicial review, this law would be passed, and you would have your first amendment rights stolen from you. The Supreme Court exists to protect your constitutional rights.</p> <p>Acts of Congress are often politically motivated. They are written and decided by Republicans and Democrats trying to get re-elected. The Supreme Court exists to make</p>	<p>Do you want to know the greatest irony of all concerning the Supreme Court’s power to deem a law unconstitutional? It is a power that is itself nowhere found in the Constitution. One might conclude that, in fact, the Constitution <i>isn’t</i> the “Supreme Law of the Land!”</p> <p>If it were possible for the Supreme Court to be made up of robots without any political affiliation whatsoever, perhaps judicial review could work. However, the Supreme Court is made up of people and is, therefore, as politically biased as any other body. So, rather than having an objective body judging laws by the Constitution, we have a bunch of Republicans and Democrats making decisions based on their own political views. Former President Donald Trump seemed to understand this fact when he tweeted, “We need more Republicans in 2018 and must ALWAYS hold the Supreme Court!”</p> <p>Further, the idea that the Supreme Court <i>protects</i> citizens from unfair laws is verifiably false. In 1857, the Supreme Court kept Congress from banning the spread of slavery. It has also repeatedly kept Congress from passing anti-discrimination laws and laws that protect voting rights.</p> <p>You might ask, what difference does it make who decides? Is Congress not also made up of people who are Republicans and Democrats? Yes. The difference is that those people were <i>elected</i> by citizens of the United</p>

sure those acts are fair and constitutional. As Justice Neil Gorsuch said at his confirmation, "There is no such thing as a Republican judge or Democratic judge. We just have judges." We need a non-political body like this to protect citizens from the political whims of Washington elites.

States. Supreme Court Judges are *appointed* by Presidents for life and *can never lose their job unless they die*.

Why should nine appointed people have more power than 535 elected people who were chosen by tax-paying citizens?

Reflection Questions:

1. Does the fact that Supreme Court judges are appointed, not elected, influence your opinion on the power of judicial review?
2. Is it possible for Supreme Court judges to be unbiased in decision making?
3. Does the power of judicial review give the Supreme Court too much power over the legislative and executive branches?
4. What changes, if any, would you make to the power of judicial review?

References

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