

# AP<sup>®</sup> UNITED STATES GOVERNMENT AND POLITICS

## 2012 SCORING GUIDELINES

### Question 3

**8 points**

**Part (a): 2 points**

One point is earned for each of two descriptions of political factors that affect presidential appointment decisions.

Acceptable descriptions include:

campaign promises	party
gender	potential for confirmation success
geographic diversity	professional background, experience, education
home-state senator (if lower courts)	race
ideology	religion
interest group input	scandal
issue positions	

**Part (b): 4 points**

One point is earned for each of two identifications of political factors that affect the confirmation process for presidential nominees. One point is earned for each of two explanations for **how** the political factor complicates the confirmation of judicial appointees.

Acceptable factors include:

advice and consent	the media (televising Judiciary Committee hearings)
campaign promises	party
filibuster	professional background, experience, education
gender	race
geographic diversity	religion
holds	safe/weak nominee
home-state senator (if lower courts)	scandal
ideology	senatorial courtesy
interest group input	
issue positions	

**Part (c): 1 point**

One point is earned for correctly explaining **how** a legislative power serves as a check on court decisions.

Acceptable legislative powers include:

amendments	impeachment
confirmation	jurisdiction stripping
congressional funding	legislation

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**Question 3 (continued)**

**Part (d): 1 point**

One point is earned for correctly explaining **how** an executive power serves as a check on court decisions.

Acceptable executive powers include:

- power of appointment
- executive enforcement

A score of dash (—) is assigned to an answer that is blank.

A score of zero (0) is assigned to an answer that is completely off task or is on task but earns no points.

3. The judicial branch is often assumed to be insulated from politics. However, politics affects many aspects of the judiciary.
- Describe two political factors that affect presidents' decisions to appoint members of the federal judiciary.
  - Identify two political factors that affect the confirmation process of a president's nominees and explain how each factor complicates a confirmation.
  - Explain how one legislative power serves as a check on court decisions.
  - Explain how one executive power serves as a check on court decisions.

3. Several political factors influence the Presidents' decisions to appoint federal judges. One is that the President would like his opinion to be heard by the courts. By appointing judges with similar ideological backgrounds to the judging positions, the president is fulfilling ~~the~~ his goal. Federal judges serve long after the President leaves office so the power to maintain an influence in government remains as well. A second political factor would be the opinion of Congress. Congress, specifically the Senate must approve the President's appointee. In a divided government the President must choose a appointee that still holds his ideological preference, while also being favorable to the Senate of opposite party members.

Two factors affect the confirmation process of a president's nominee to the federal judiciary. The party make-up of the Senate is highly influential. They must confirm the nominee by a  $\frac{2}{3}$  vote which may be difficult to obtain when ~~they are the~~ the majority of members is of the opposite party of the president. A second political factor in the confirmation process is the qualification of the nominee. Congress would rather elect a judge with previous knowledge and

ADDITIONAL ANSWER PAGE FOR QUESTION 3.

experience in the judicial ~~field~~ field. Though the president may have found a nominee with strongly similar ideological preferences, qualifications must be taken into consideration if the president is expecting political approval of the senate, again completing the process.

The legislative power of amending the Constitution effectively checks the judicial branch and court decisions.

The judicial system must interpret the Constitution, so if Congress successfully amends the document, the judiciary must adhere to it. The executive power of nominating judges to the judiciary checks court decisions as the President is able to affect their outcome. When the president has a judge serving with similar ideological beliefs to him, he has his opinions lead by the court. The judge is likely to vote in a manner that pleases ~~both~~ the two of them.

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3. The judicial branch is often assumed to be insulated from politics. However, politics affects many aspects of the judiciary. *Wants them to be of the same party/wants to reflect same political views or looks over past court decisions.*
- (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. *Congress has to approve nominations/fed. justices in lifetime terms, so if Pres changes mind, Congress can remove with justification.*
  - (c) Explain how one legislative power serves as a check on court decisions. *Congress can make amendments which can change case law.*
  - (d) Explain how one executive power serves as a check on court decisions. *power to pardon causes case decision completely.*

Two political factors that affect the confirmation process of a president's nominees is the party the nominee is affiliated with and the decisions he or she has made in previous court decisions. The party of the nominee complicates the confirmation because, for the president, it would be most beneficial if the confirmed nominee belonged to the same political party as him or her. Yet, if the ~~pr~~ presidency and Congress are divided, in that the majority of those in Congress are of an opposing party of the president, then Congress will be much less willing to confirm the president's nominee. The past decisions a nominee has made in court cases further complicates a confirmation in that it shows the nominee's political beliefs and how he or she will use judicial review when determining the outcomes of future cases. If ~~Cong~~ the majority of Congress does not agree with the nominee's political standing, it will be difficult for the president to receive a confirmation.

One legislative power that serves as a check on ~~and~~ court decisions is the power to make Amendments. These Amendments can change the

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ADDITIONAL ANSWER PAGE FOR QUESTION 3.

meaning of a case or nullify the ~~meaning~~  
impact of the outcome entirely.

One executive power that serves as a check on  
court ~~decision~~ decisions is the power to pardon.  
Despite how the court rules on an issue, the  
president can choose to pardon the crime or  
impact of the offense that results as a decision  
of a court case.

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- 3. 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.

Two political factors that affect presidents' decisions to appoint members of the federal judiciary are party affiliation and current legislation, i.e. race/discrimination laws. This is because party affiliation shows/predicts what a federal judge might or might not rule in favor of, and generally the president would look for someone with like principles and ideas as himself/herself. ~~Discrimination~~ Discrimination laws affect what a president decides because in previous years, when laws such as these didn't exist, the president may choose a judge solely based on race.

Two political factors that affect the confirmation process of a president's nominees are the system of checks and balances and foreign diplomacy. These are because the system of checks and balances makes it so that the president's power may be undermined if the system changes, ~~making~~ <sup>making</sup> his/her decision, ~~will~~ <sup>will</sup> ~~which~~ <sup>which</sup> foreign diplomacy could mean that because a war is going on, the general background information of a ~~war~~ <sup>war</sup> nominee could mean that he will not be ~~any~~ <sup>any</sup> nominated.

The legislative power that serves as a check on court decisions is Congress' ability to override minor court decisions with a ~~trial~~ <sup>trial</sup>. This makes it so

## ADDITIONAL ANSWER PAGE FOR QUESTION 3.

What about the court's decision can always be avoided in the rare sense that the ruling is unfair and unjust.

One executive power that ~~allows~~ serves as a check on the court's decisions is the president's ability to veto. This is because it gives the president a chance to have an initial ultimate say over ~~the~~ something before it is not in favor of. If a court ruling has implications to a law he is currently faced with, he can veto the law therefore nullifying the court's decision.

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## 2012 SCORING COMMENTARY

### Question 3

#### Overview

This question examined the role politics plays in the appointment and confirmation of federal judges and also legislative and executive checks on the judiciary. It asked students to confront the idea that the Supreme Court is above or separate from politics. Students were asked to (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 and explain how the identified factors complicate the confirmation process; (c) explain how a legislative power serves as a check on court decisions; and (d) explain how an executive power serves as a check on court decisions.

#### Sample: 3A

##### Score: 8

In part (a) the response earned 1 point for describing ideology as a factor that affects presidents' decisions to appoint members of the federal judiciary by stating that "the President would like his opinion to be heard by the courts. By appointing judges with similar ideological backgrounds to the judiciary positions, the president is fulfilling his goal." The response also earned 1 point for describing the likelihood of confirmation success by stating that "[i]n a divided government the President must choose an appointee that still holds his ideological preference, while also being favorable to the Senate of oposite [*sic*] party members."

In part (b) the response earned 1 point for identifying "party" as a political factor that affects the confirmation process. The response also earned 1 point for explaining how party complicates a confirmation by stating that the Senate "must confirm the nominee . . . which may be difficult to obtain when the majority of members is of the oposite [*sic*] party of the President." The earned another point for identifying professional background as a political factor that affects presidents' decisions by stating "qualification." The response earned 1 point for explaining how qualifications complicate a confirmation: "qualifications must be taken into consideration if the president is expecting political approval of the Senate, again complicating the process."

In part (c) the response earned 1 point for explaining amendment as a legislative power that serves as a check on court decisions by stating "amending the Constitution" and "[t]he judicial system must interpret the Constitution, so if Congress seccessfully [*sic*] amends the document, the judiciary must adhere to it."

In part (d) the response earned 1 point for explaining an executive power that serves as a check on court decisions by stating "nominating judges" and "[t]he judge is likely to vote in a manner that pleases the two of them."

#### Sample: 3B

##### Score: 4

The response earned no points in part (a). The response discusses "party" as a political factor that affects presidents' decisions to appoint members of the federal judiciary but does not describe the factor. The response also discusses professional background as a political factor that affects presidents' decisions to appoint members of the federal judiciary by stating "the decisions he or she has made" but again does not describe the factor.

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**Question 3 (continued)**

In part (b) the response earned 1 point for identifying a political factor that affects the confirmation process as “the party of the nominee.” The response discusses how party complicates the confirmation process but incorrectly identifies “Congress” as the confirming body. The response earned 1 point for identifying background as a political factor that affects the confirmation process by stating “past decisions a nominee has made.” The response discusses how past decisions complicate the confirmation process but again incorrectly identifies “Congress” as the confirming body.

In part (c) the response earned 1 point for explaining how a legislative power serves as a check on court decisions by stating “the power to make Amendments” and “Amendments can change the meaning of a case or nullify the impact of the outcome entirely.”

In part (d) the response earned 1 point for explaining how a legislative power serves as a check on court decisions by stating “power to pardon” and “the president can choose to pardon the crime or impact of the offense.”

**Sample: 3C**  
**Score: 1**

In part (a) the response earned 1 point for describing “party” as a political factor that affects presidents’ decisions to appoint members of the federal judiciary by stating that “generally the president would look for someone with like principles and ideas as himself/herself.”

In part (b) the response incorrectly identifies “checks and balances” and “foreign diplomacy” as political factors that affect the confirmation process.

In part (c) the response does not correctly explain how a legislative power serves as a check on court decisions.

In part (d) the response incorrectly identifies “veto” as an executive power that serves as a check on court decisions.